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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:

) AWA Docket No. 05-0026
CRAIG A. PERRY, an individual; and)
PERRY's WILDERNESS RANCH &)
ZOO, INC., an Iowa corporation,)
Respondents)
Decision and Order)

Appearances:

Colleen A. Carroll, Esq., Office of the General Counsel (Marketing Division), United States Department of Agriculture, Washington, D.C., for the Complainant (APHIS); and

Larry J. Thorson, Esq., Cedar Rapids, Iowa, for the Respondents (the individual, and the corporation).

Decision Summary

1. The principal issue is whether Animal Welfare Act license number 42-C-0101 should be revoked (revocation is a permanent remedy) and the individual and the corporation permanently disqualified from having Animal Welfare Act licenses. I conclude that such remedies are not needed, not justified, not reasonable, and too harsh; and that the just and appropriate remedies for the individual's and the corporation's failures to comply with the Animal Welfare Act are cease and desist orders, and civil penalties totaling \$7,250.

Parties and Allegations

2. The Complainant is the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (herein frequently "APHIS" or "Complainant").
3. The Respondents, for this Decision,¹ are Craig A. Perry, an individual (herein frequently "Craig Perry"); and Perry's Wilderness Ranch & Zoo, Inc., an Iowa corporation (herein frequently "the corporation"); the individual and the corporation together are herein frequently called "Respondents".
4. The Complaint, filed on July 14, 2005, initiated a disciplinary proceeding under the Animal Welfare Act, as amended, 7 U.S.C. § 2131 *et seq.* (frequently herein the "AWA" or the "Act"), and Regulations issued thereunder. As to these two Respondents, the Regulations specified in the Complaint are 9 C.F.R. § 2.4, 9 C.F.R. § 2.40(a), 9 C.F.R. § 2.40(a)(1), 9 C.F.R. § 2.40(a)(2), 9 C.F.R. § 2.40(b)(1), 9 C.F.R. § 2.75(b)(1), 9 C.F.R. § 2.126(a), 9 C.F.R. § 2.131(b)(1) [formerly § 2.131(a)(1)], 9 C.F.R. § 2.131(b)(2), 9 C.F.R. § 2.131(c)(1) [formerly § 2.131(b)(1)], 9 C.F.R. § 2.131(c)(3) [formerly § 2.131(b)(3)], 9 C.F.R. § 2.131(d)(1) [formerly § 2.131(c)(1)], and 9 C.F.R. § 2.100(a) (including a number of standards).

¹ (a) By separate Decision, I will decide the allegations against Respondent Le Anne Smith, an individual. (b) By Consent Decision issued April 21, 2006, I decided the allegations against Respondent American Furniture Warehouse, a Colorado corporation, 65 Agric. Dec. 378 (2006), http://www.dms.usda.gov/oaljdecisions/AWA_05-0026_042106.pdf. (c) By Decision issued November 16, 2009 (the first day of the hearing), I decided the allegations against Respondents Jeff Burton and Shirley Stanley, individuals doing business as Backyard Safari, when they failed to appear, 68 Agric. Dec. 819 (2009), http://www.dms.usda.gov/oaljdecisions/files/091116_AWA_05-0026_do.pdf.

5. The Answer on behalf of these Respondents (Craig Perry and the corporation) was filed by Mr. Thorson on August 8, 2005.

6. The hearing was held during 13 days: November 16-20, 2009; and December 7-11, 2009 in Chicago, Illinois; and January 11-13, 2010 in Cedar Rapids, Iowa. Thereafter, the parties filed Briefs. The last filing, on April 7, 2011, was Respondents' Motion to Strike a Portion of the Complainant's Reply Brief.

Mixed Findings of Fact and Conclusions

7. From the last half of 2000 through June 20, 2002, the individual, Craig A. Perry, is the Animal Welfare Act licensee. From June 21, 2002 through 2005, the corporate entity, Perry's Wilderness Ranch and Zoo, Inc., is the Animal Welfare Act licensee, and Craig A. Perry is the licensee's agent. *See* the next two paragraphs.

8. The allegations addressed here run from the last half of 2000 through 2005. The corporation Perry's Wilderness Ranch and Zoo, Inc., had been incorporated since 1993. CX 67, p. 10. Animal Welfare Act license no. 42-C-0101 was issued to Craig A. Perry in about 1995. CX 1, esp. p. 1. [Craig Perry had been issued other Animal Welfare Act license numbers previously.] For the last half of 2000 through the first half of 2002 (a two-year period), Craig Perry had selected "Individual" to describe the Type of Organization that was applying for renewal of license no. 42-C-0101. CX 1, esp. pp. 5-6. APHIS thought of the licensee as "Craig Perry dba: Perry's Wilderness Ranch and Zoo" for the period that expired June 20, 2002. CX 1, p. 7. For the year beginning with the last half of 2002 Craig Perry scratched out his name in box 1 of the renewal application and marked Corporation to

describe the Type of Organization. CX 1, esp. p. 8. From June 20, 2002 through 2005, license no. 42-C-0101 was in the name of Perry's Wilderness Ranch and Zoo, the corporation. The renewal applications include the tax identification number of the corporation. CX 1, esp. pp. 9-16.

9. For his acts, omissions and failures under the Animal Welfare Act, Craig Perry is liable, and while acting for the corporation Craig Perry subjects the corporation to liability, in addition to himself, pursuant to section 2139 of the Animal Welfare Act (entitled "Principal-agent relationship established"). 7 U.S.C. § 2139.

10. The maximum civil penalty here is (a) \$2,750 for each violation occurring through June 22, 2005² and (b) \$3,750 for each violation occurring from June 23, 2005 through June 17, 2008.³ 7 U.S.C. § 2149(b), and *see* 28 U.S.C. § 2461 note; 7 C.F.R. § 3.91(b)(2)(ii).

11. Each violation and each day during which a violation continues shall be a separate offense. 7 U.S.C. § 2149(b).

12. 9 C.F.R. § 2.4 allegation NOT PROVED, paragraph 10 of the Complaint. The Complaint alleges that Craig Perry "interfered with" and "threatened". Craig Perry was talking, by phone, to Investigator Lies, who worked for APHIS IES (Investigative

² 28 U.S.C. § 2461 note; 62 Fed. Reg. 40924 (July 31, 1997); 62 Fed. Reg. 42857 (Aug. 8, 1997); 7 C.F.R. § 3.91(b)(2)(ii). The civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$2,750; and knowing failure to obey a cease and desist order has a civil penalty of \$1,650.

³ 28 U.S.C. § 2461 note; 70 Fed. Reg. 29575 (May 24, 2005) (final rule effective June 23, 2005); 7 C.F.R. § 3.91(b)(2)(ii). The civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$3,750, and knowing failure to obey a cease and desist order has a civil penalty of \$1,650.

Enforcement Services). Craig Perry had promptly returned Investigator Lies's call, and she was interviewing him, on December 29, 2004, about what had happened on August 1, 2004. I do not regard Craig Perry's words or loud and agitated tone of voice during that telephone call as either interference or a threat, but I can understand why APHIS took precautions. APHIS, in its Brief filed September 20, 2010, argues that Mr. Perry made "a threat (albeit only a slightly veiled one)". 2010 APHIS Br., at 11 of 56. APHIS states that APHIS was interfered with, that APHIS did take precautions, alerting the Inspector General and APHIS inspectors, and thereafter having inspectors be accompanied. APHIS Brief filed March 31, 2011 (2011 APHIS Br.) at 5 of 19. Craig Perry was cooperative with Investigator Lies, in that he returned her call, and he answered her questions about what had happened on August 1, 2004. He talked with "no filter" which was foolish, and he vented loudly. He referred to one of Investigator Lies's colleagues as a stupid bitch. He warned Investigator Lies that he had heard of threats:

- Again, off the record, he stated that he has a friend that works in Fort Collins in a building next the USDA, APHIS building and says that USDA receives bombs threats weekly.
- He stated that "APHIS should watch out before there is another Oklahoma City bombing."

With his warnings, Craig Perry made a nuisance of himself; he made Investigator Lies uncomfortable, so uncomfortable that she alerted her supervisor and thereafter, as instructed, she wrote a memo to the Inspector General. In the Discussion section, I detail much of

Investigator Lies's testimony and her reports, to put into context the alarming parts of Craig Perry's conversation with Investigator Lies. *See* paragraphs 35 - 43. APHIS has the burden of proof, of persuasion, by a preponderance of the evidence, that Craig Perry "interfered with" and "threatened" -- and from Investigator Lies's testimony, and from her memo to the Inspector General, I do not find that she felt "interfered with" or "threatened." She conducted an excellent interview, kept Craig Perry talking, and obtained the information she was assigned to get, about what had happened on August 1, 2004. Further, I do not find that Craig Perry "interfered with" or "threatened" the agency (APHIS) as a whole. I find the allegation NOT PROVED.

13. HANDLING VIOLATION ALLEGATIONS PROVED: 9 C.F.R. § 2.131(b)(1)
[formerly § 2.131(a)(1)], 9 C.F.R. § 2.131(c)(1) [formerly § 2.131(b)(1)], 9 C.F.R. §
2.131(c)(3) [formerly § 2.131(b)(3)], and 9 C.F.R. § 2.131(d)(1) [formerly § 2.131(c)(1)].
Of the alleged handling violations, about half were proved and half were not proved. This paragraph recounts the PROVED handling violations, including those found in paragraphs 27, 29, 30 and 33 through 35 of the Complaint. The handling violations involve tiger cubs and lion cubs. Craig Perry did try to comply with APHIS requirements: he purposely chose the young tigers and young lions (cubs) for the public's photo opportunities, because he understood the risks of the bigger, stronger, faster, more dangerous juvenile and adult tigers and lions, which he did NOT use for the public's photo opportunities.

(a) PROVED. Addressing the most recent handling violations first, I begin with paragraph 35 of the Complaint, in Loveland, Colorado, 2004 December 27, Thunder

Mountain Harley Davidson Dealership. APHIS feared the cubs might go through the double-sided fireplace that Respondents were using as a backdrop. The danger was more theoretical than practical, but I acquiesce to APHIS's judgment, find that the Respondents promptly complied with APHIS's directives, find that no harm was done, and conclude that a \$150 civil penalty suffices.

(b) PROVED. Next, I address paragraphs 33 and 34 of the Complaint, in Grayslake, Illinois, 2004 August 1, Lake County Fair. I have spent much time analyzing these allegations in the Discussion section; *see* paragraphs 44 - 52. Rarely have I encountered witnesses so indisputably credible as John Bogdala and his wife Mary Lou Bogdala. Yet Craig Perry and his volunteer Erich Cook were incredulous that a lion cub could have bitten John Bogdala during his photo opportunity, because John Bogdala gave no indication at all while at the exhibit that he had been bit. John Bogdala was unaware he had been bit until after he had left the exhibit. The bite did not tear John Bogdala's shirt; it did leave a mark on his skin. Bottom line is, the lion cub did bite John Bogdala; John Bogdala's physician (his wife insisted that he go) and the health authorities did everything right, and the Respondents cooperated so that the lion cub was quarantined, and no permanent harm was done. The reason that John Bogdala was bit is that the lion cub was unrestrained and climbed up John Bogdala's torso and bit him on the shoulder. Tr. 368-69. Even cubs can harm the public and here, this one needed to be better monitored or controlled in some fashion, or separated or distanced from the public, more than was done here. (John Bogdala was a member of the public, even though he had paid and come into the "private" photo

opportunity.) For the two regulations (based on the one occurrence, paragraphs 33 and 34), I conclude that a \$1,500 civil penalty (total for both regulations) suffices.

(c) PROVED. Next, I address paragraphs 27, 29, and 30 of the Complaint, primarily in Thornton, Colorado, 2003 February 19-22, American Furniture Warehouse. Craig Perry is certain that the 3 tiger cubs were doomed when they were denied the opportunity to nurse their mother (not by their mother the tiger, but by Jeff Burton, who in his ignorance, rather than leave them with their mother to be nursed, immediately took the 3 tiger cubs away from their mother in the heated garage, into the heated house with a heating pad). Craig Perry's veterinarian, Dr. James Slattery (RXt-17), agrees with Craig Perry, that the failure to get colostrum and the other immunity building nutrients from the mother's milk doomed the 3 tiger cubs. The APHIS large cat specialist, Dr. Laurie Gage, disagrees, citing instances where survival despite the lack of colostrum has occurred. I hold Jeff Burton about 97% responsible for the death of each of the 3 tiger cubs, at about 11 days old. I hold Timothy Carper, who arranged the donation from Jeff Burton to Craig Perry and then transported the 3 tiger cubs in his truck for about 10 hours nearly non-stop, when they were about 8 days old, about 2% responsible for their deaths. And I hold Craig Perry about 1% responsible for their deaths, on the theory that Craig Perry had a last clear chance to try to save the tiger cubs. It was too late for colostrum by the time Craig Perry learned they hadn't had any (after the first to die, in the early morning hours of February 22, 2003). Actually it was already about a week too late for colostrum by the time Timothy Carper was driving the tiger cubs to Craig Perry (February 19, 2003). *See RXt-39A from Paul Zollman, DVM,*

explaining the urgency when trying to use colostrum substitute or serum; RXT-39A also shows the effort Craig Perry would make if he knew in time. I do fault Craig Perry for failing to talk to Jeff Burton as soon as he knew he was getting a donation of 3 tiger cubs from Jeff Burton. Craig Perry relied on Timothy Carper's representations and consequently assumed Jeff Burton would know the importance of colostrum. Craig Perry's veterinarian testified that that was a reasonable assumption. Perhaps, but assuming was not safe. I do not fault Craig Perry for switching the cubs' formula or for taking the cubs with him to Colorado. I find that the Warehouse was adequately heated, and that the Complaint overstates the number of hours the cubs were exhibited. Nevertheless, I conclude that the 3 tiger cubs were too young to be exhibited, even when they were in a basket before being placed on laps (Tr. 3084-85); even if they had been totally prepared by colostrum and the other benefits of nursing their mother for their exposures to the "outside world", which they were not. Although APHIS had not specified guidelines for exhibiting baby tigers and lions, I conclude that Craig Perry should have known that these tigers were too young to be exhibited (about 10 days old when exhibited). Dr. Gage testified that 6 weeks of age should be attained, or at least 5 weeks, after the 2nd vaccinations. Tr. 4133-34. Perhaps keeping the 3 tiger cubs in the hotel room with one handler, where they might have slept more and been kept at a constant temperature, and their exposure to so many people would not have happened, and getting them the best local veterinary care, might have given the tiger cubs a sliver of a chance of surviving or eased their deaths. For Craig Perry's failures with regard to Jeff Burton's 3 tiger cubs (failing to talk to Jeff Burton as soon as he knew he was getting

a donation of 3 tiger cubs from Jeff Burton; and exhibiting the 3 tiger cubs when they were too young), I conclude that a \$500 civil penalty, per day of exhibition, per tiger cub suffices. As I understand the evidence, there was one day of exhibition, February 21, 2003, for all 3 tiger cubs. If I understand correctly, the 2 surviving cubs were taken to the Warehouse on February 22, 2003, but were not exhibited that day. I conclude that a \$1,500 civil penalty (total for paragraphs 27, 29, and 30 of the Complaint, for all 3 tiger cubs) suffices. [There are additional civil penalties arising from this situation imposed for veterinary care violations; *see* paragraph 15.]

14. HANDLING VIOLATION ALLEGATIONS NOT PROVED: 9 C.F.R. § 2.131(b)(1) [formerly § 2.131(a)(1)], 9 C.F.R. § 2.131(c)(1) [formerly § 2.131(b)(1)], 9 C.F.R. § 2.131(c)(3) [formerly § 2.131(b)(3)], and 9 C.F.R. § 2.131(d)(1) [formerly § 2.131(c)(1)]. Of the alleged handling violations, about half were proved, and about half were not proved. This paragraph 14 recounts the NOT PROVED alleged handling violations, including those found in paragraphs 21 through 23, 24, 25, 31 and 32 of the Complaint.

(a) NOT PROVED. Addressing the most recent handling violations first, I begin with paragraph 32 of the Complaint, in Tucson, Arizona, 2003, April 21, Pima County Fair. *See* Respondents' Brief filed January 20, 2011 (2011 Respondents' Br.), at 21 of 41. NOT PROVED.

(b) NOT PROVED. Next, I address paragraph 31 of the Complaint, regarding transporting two tiger cubs from Jackson, Minnesota to Colorado, 2003 February 25-26,

donated from Vogel's Exotics. Craig Perry obtained health certificates for these two tiger cubs, but not until after he had transported them. CX 33, p. 4. CX 23, p. 3. RXt-36, p. 2. The allegation seems to be that Craig Perry should have gotten the health certificates before he transported them. What is cited, is 9 C.F.R. § 2.131(b)(1) [formerly § 2.131(a)(1)] (perhaps intended to address these two tiger cubs a couple of months later in Tucson, Arizona, 2003, April 21, Pima County Fair), which was NOT PROVED.

(c) NOT PROVED. Next, I address paragraph 25 of the Complaint, from Dr. Bellin's visit to Cedar Rapids, Iowa, 2003, February 1, Cedar Rapids Sportsmen's Show. The evidence (CX 20 and Tr. 562-78) shows that Dr. Bellin anticipated that something might go wrong in the photo opportunities. Dr. Bellin's inspection was prior to exhibition; Dr. Bellin insisted Craig Perry get leashes and collars. Dr. Bellin also has concerns about disease transmission (from young tigers and lions to humans; and from humans to young tigers and lions). The allegation that Craig Perry's handling of the young tiger and lions in photo opportunities was inadequate comes entirely from Dr. Bellin, who does not believe that members of the public can touch young tigers and lions safely. Dr. Bellin has concerns about "bites, zoonotic disease transmission, toxoplasmosis to pregnant women. The list can go on." Dr. Bellin has concerns about "fomites" being transmitted. Dr. Bellin has concerns about humans bringing from their housecats panleukopenia that the young tigers and lions could get. Dr. Bellin: "If you own a cat that happens to have it and then you go sit down for a photograph of that person's lion or tiger there, and you accidentally cough, sneeze or you're

allowed to touch it or pet it and still have the virus, because some viruses can last up to six to ten hours in sunlight, some can't. But some can live up to six to ten hours after --

Q On your clothes or whatever?

A Right, and you go up there and you've just given that animal panleukopenia.

So, requiring photo opportunity subjects to wash their hands before and after the photo opportunity may be helpful but could not be expected to eliminate all transfer possibilities. Although Dr. Bellin cannot envision any safe photo opportunity where the members of the public can touch young tigers and lions, Dr. Bellin never saw any violation, nor was he aware of any violation having occurred. NOT PROVED.

(d) NOT PROVED. Next, I address paragraph 24 of the Complaint. One lion cub, Shelby, had ringworm, which is contagious. Shelby was being treated with an ointment, but the allegation is that the proper precautions were not being taken to prevent the spread of ringworm from the lion cub Shelby. I agree. See paragraph 15(d), where I find a veterinary care violation. The photos in CX 17 that show Shelby being touched by humans and other cubs were not made during exhibition. Rather, the handler Lindsay Pierce, who was a vet tech student, is shown with Shelby, together with Lindsay's sister. From Dr. Gage's testimony, I know that Shelby was not sufficiently isolated to prevent the spread of ringworm to humans and other animals. Tr. 4128-32. What is not proved, is exhibition to the public of an animal with ringworm. NOT PROVED.

(e) NOT PROVED. Last, of the handling allegations that were not proved, I address paragraphs 21-23 of the Complaint, Albuquerque, New Mexico, 2000, September 10, New

Mexico State Fair. I conclude that, if the 4-month old tiger cub put her mouth on Richard Namm's left forearm, that occurred because of Richard Namm's behavior in disobedience to Jason Karr's repeated instructions. Richard Namm's testimony (Tr. 62-123) has troubling internal inconsistencies. Jason Karr (Craig Perry's employee) had been subpoenaed to the hearing (Tr. 910) but failed to appear. I do have Jason Karr's deposition from the civil suit filed by Richard Namm. CX 13 and CX 13a. [Richard Namm's intended target was really the State of New Mexico, but that did not work out.] Richard Namm testified that the photo opportunity exhibit operator, Jason Karr, acknowledged during the photo opportunity that the young tiger had bitten Richard Namm. Jason Karr's testimony was that Mr. Namm had a little red spot on his wrist that was not bleeding (CX 13, p. 52), and that he (Jason Karr) was not aware of any other injury to Mr. Namm. Jason Karr's testimony was that "they left like nothing had ever happened" (speaking of Richard Namm and the two who had accompanied him). CX 13, p. 13. Jason Karr's testimony was that he had had to instruct (3 times) Richard Namm not to pet the tiger cub on her head and face down in front of her eyes and across her nose. CX 13, p. 50-51; RXt-1. Jason Karr's testimony was that the tiger cub had not lunged toward the woman sitting next to Richard Namm or the child on the woman's lap. CX 13, pp. 51-52; p. 13. I conclude that lunging would have been prevented by the hold Richard Namm had on the cub. Tr. 103. The photograph at CX 4 is instructive, as was Mr. Thorson's cross-examination. Tr. 87-107. Richard Namm's description of the tiger cub's teeth is not credible. Richard Namm's estimate of the tiger cub's weight (whether 75 pounds, or 50-55 pounds - - "I thought it weighed about 50, 55 pounds mainly

because I was able to hold it somewhat control" Tr. 112) is not credible. Jason Karr's testimony was that the 4-month old tiger cub weighed about 20 pounds (CX 13, p. 9), a more credible estimate. Upon weighing the evidence, including Richard Namm's course of action as he left the photo opportunity, both while still on the fair grounds and subsequently during medical attention and litigation, I find Jason Karr's recounting of what happened on September 10, 2000 more credible than Richard Namm's recounting of it. I find this true even though Jason Karr is a convicted felon and Richard Namm is a veteran and a federal employee. From my evaluation of the evidence on this topic as a whole, I am puzzled as to Richard Namm's decision to undergo rabies prevention shots, which do not appear to have been necessary. I do not believe that the cub could not have been located for testing as Richard Namm testified. Tr. 99-100. A preponderance of the evidence does not show that the cubs used for photo opportunities on September 10, 2000 at the New Mexico State Fair needed to be better monitored or controlled, or more separated or distanced from the public; I conclude that the allegations that Craig Perry committed handling violations on September 10, 2000 are NOT PROVED.

15. VETERINARY CARE VIOLATION ALLEGATIONS PROVED: 9 C.F.R. § 2.40(a), 9 C.F.R. § 2.40(a)(1), 9 C.F.R. § 2.40(a)(2), 9 C.F.R. § 2.40(b)(1). Of the alleged veterinary care violations, I find that all but one were proved, at least in part. This paragraph recounts the PROVED veterinary care violations, including those found in paragraphs 12, and 14 through 18, of the Complaint.

(a) PROVED. I address paragraph 18 of the Complaint, regarding transporting two tiger cubs from Jackson, Minnesota to Colorado, 2003 February 25-26, donated from Vogel's Exotics. Craig Perry obtained health certificates for these two tiger cubs, but not until after he had transported them. CX 33, p. 4. CX 23, p. 3. RXt-36, p. 2. Craig Perry should have gotten the health certificates before he transported them. A \$150 civil penalty as to each tiger cub suffices; thus a total civil penalty of \$300 (for both tiger cubs) suffices.

(b) PROVED. Next I consider paragraphs 14, 15 and 17 of the Complaint, regarding primarily Thornton, Colorado, 2003 February 19-27. I find these proved, but ONLY as to the 3 tiger cubs donated by Jeff Burton. Craig Perry should have had a veterinarian inspect the 3 tiger cubs, preferably before leaving Iowa for Colorado. When symptoms arose for which emergency care should have been sought locally, February 22, 2003, each of the 3 tiger cubs would live only one day or less before death at the age of 11 days old; thus for one day ONLY it is appropriate to penalize Craig Perry for failure to obtain emergency care. Craig Perry did obtain veterinary advice by telephone, but of course no examination was conducted. To the extent that these allegations were intended to cover animals other than the 3 tiger cubs donated by Jeff Burton, I find them not proved. For failure to have the 3 tiger cubs inspected before leaving Iowa, a \$150 civil penalty as to each tiger cub suffices; thus a total civil penalty of \$450 (for 3 tiger cubs) suffices. For failure to obtain emergency care, a \$500 civil penalty as to each of the 3 tiger cubs suffices (as to all 3 regulations); thus a total civil penalty of \$1,500 (for 3 tiger cubs) suffices. [Additional civil penalties arising from this situation were imposed for handling violations; *see* paragraph 13.]

(c) PROVED. Now I consider paragraph 16 of the Complaint, regarding the "home base" in Iowa, 2003 February 27, through March 10. Dr. Burden had inspected on February 27, 2003 and dated his report March 10, 2003. CX 22. Concerned that the 3 tiger cubs donated by Jeff Burton had not received emergency veterinary care when on February 22, 2003, they showed vomiting, listlessness, and dehydration, Dr. Burden examined the emergency care plan. CX 22. Regarding CX 21, there was an emergency care plan; but there was a separate space for another emergency care plan for exotic animals, which had been left blank. The noncompliance was, that the blank needed immediate completion. CX 22. A \$150 civil penalty suffices.

(d) PROVED. Addressing paragraph 12 of the Complaint, regarding Fort Collins, Colorado, 2002, October 26, American Furniture Warehouse, this concerns lion cub Shelby's ringworm. *See* paragraph 14(d). From Dr. Gage's testimony, I know that Shelby was not sufficiently isolated to prevent the spread of ringworm to humans and other animals. Ringworm is a fungus that can be spread by its spores, even when there has been no contact with a lesion. Tr. 4136-39. *See also* Tr. 4128-32. A \$500 civil penalty suffices.

16. VETERINARY CARE VIOLATION ALLEGATION NOT PROVED: 9 C.F.R. § 2.40(b)(1). Of the alleged veterinary care violations, I conclude that one was not proved. This paragraph recounts the NOT PROVED alleged veterinary care violation, found in paragraph 11 of the Complaint, regarding Albuquerque, New Mexico, 2000, September 10, New Mexico State Fair. I have considered carefully APHIS's argument. 2010 APHIS Br.,

at 34-41 of 56. Contrary to APHIS's allegation and argument, I do not find Jason Karr inadequate to the responsibility he had. *See* paragraph 14(e). NOT PROVED.

17. BOOKKEEPING VIOLATION ALLEGATIONS NOT PROVED. 9 C.F.R. § 2.75(b)(1). The alleged bookkeeping violations, in paragraph 19 of the Complaint, were not proved and were frustrating to deal with. I'm disappointed in APHIS that these items were written up as noncompliance items. Dr. Bellin's analysis (or that of Inspector Beard or other co-worker(s)) failed to take into account animal births at home and animal deaths and their impact on inventory. The Record of Animals on Hand (RXt-60) was apparently not referenced adequately by Dr. Bellin or Inspector Beard or other co-workers. (Were only the Form 7020s looked at?) Disproving these alleged noncompliances has been an expensive process for Respondents to set the record straight. Didn't someone at APHIS consider it odd that Respondents would suddenly develop so many failures in accounting for their animals? Tr. 3127. Craig Perry testified that they had thought the inventory of animals had to kept from the beginning of time (Tr. 2983); Steve (Dr. Bellin) is the one that said you don't need to do that. All you need to do is keep the ones that you have on hand for that. Okay. Tr. 2983. (Dr. Bellin) also told us that we only needed to keep the 7020 forms for one year. So we started disposing of them after one year. Tr. 2983.

Mr. Thorson did an excellent job of walking us through the Record of Animals on Hand (RXt-60) and other documents to deal with the allegations, animal by animal. RXt-50 shows disposition (sale) on October 18, 2003 of 2 African lions (6-week old), 1 Zebra (gelding, 4 years old), and 1 ZeDonk (male, 3 years old). Tr. 3040-42. Thus, the allegations

in paragraph 19. ii. and 19. iii. are nullified. RXt-51 shows that Dr. Slattery euthanized Bobby, a 17 year old bobcat, on October 13, 2003. Tr. 3043-44. RXt-60, p. 6. Thus, the allegations in paragraph 19. x. and 19. xi. regarding the bobcat are nullified. RXt-52 shows disposition (donation) on June 11, 2003, of 1 Zorse (2-1/2 months), 1 camel (born 5-4-03), and 1 tiger (born 11-21-03). Tr. 3047-58. RXt-60, Tr. 3098-3101. Thus, the allegations in paragraph 19. iv., vii. (except the birthdate is obviously mistaken, and see RXt-60, page 5, which shows 2 tigers born at home, and the date 11/21/03 has been corrected to 11/21/02. Tr. 3108) are nullified. RXt-60, p. 5, shows disposition of multiple reindeer on January 25, 2004. Thus, the allegations in paragraph 19. i. are nullified. RXt-60, page 4 shows 2 aoudads died in April 2003 (one died in shipping, and one from injuries from being laid on). Thus, the allegations in paragraph 19.v. are nullified. RXt-60, page 4, shows another aoudad, male, bought 11-03, got rammed and died. Regarding the 2 tigers born at home 11/21/02 (RXt-60, page 5), one, the female, died on her birthdate, 11/21/02, when she got laid on; and the other, Popeye, went to Amarillo Wildlife on 06/11/03. RXt-60, p. 5. Tr. 3109. RXt-60, page 1, shows 2 tigers that were at Craig Perry's premises in February 2005. Then, RXt-60, page 3, shows Sasha and Pasha, born at home on April 4, 2002; and 3 tigers born at home on May 5, 2003. Counting the tigers on hand, all are accounted for. Tr. 3110-16. CX 35, p. 2 shows 3 eland purchased on April 11, 2003. That corresponds with the 3 eland shown on RXt-60, page 6. Tr. 3120-21. I weary. The matching goes on through Tr. 3127, and I will not detail the rest of it here.

I am unhappy that these noncompliances were alleged (CX 59), in part because Dr. Bellin had instructed Le Anne Smith to rewrite and consolidate Craig Perry's animal inventory lists; Dr. Bellin had also instructed Le Anne Smith that the Form 7020 did not need to be kept for over a year. The following excerpt of Le Anne Smith's testimony (on direct examination) is instructive (she calls Dr. Bellin "Steve"). Tr. 2052-55.

A Yes, during -- during an inspection with Dr. Bellin, he had asked me to convert Craig's ongoing inventory over the years down to what was presently there because he was going through 20 pages where he felt that was an inconvenience. So, he asked me to convert it all down there. So, I did that for him.

(Whereupon, the document was marked as RXT-60 for identification.)

BY MR. THORSON:

Q Was the original inventory, this 20 pages -- was it 20 pages at least or more?

A At least.

Q Was this in your handwriting or Craig Perry's handwriting?

A Craig's. As far as I know, that inventory took him clear back probably to when he started, but it was a lot of papers for Steve to go through and Steve just asked me to simply convert it down to what there was presently.

Q Was he sitting there while you did that?

A I believe -- yes, I believe I was -- I think I did get through the whole thing while he was there.

Q So, Dr. Bellin saw this inventory at some point in time. Do you remember exactly when that was or approximate date that you would have done this?

A If -- if I can remember right, I believe it was the inspection prior to -- is it the February '05 inspection possibly? The one with Mr. Beard.

Q You can look at the Government exhibits. CX-59 and 60 I believe are the last.

A Um-hum. Yes, I believe that I did this the prior inspection to the February 5th or 15th, '05 inspection.

Q And when you say the 15th, that's the date at the bottom of the page or the top of the page?

A Oh, the bottom. I guess it would be February 8, '05.

Q All right. And as far as the inventory itself goes, you copied this from other paperwork. Is that correct?

A Yes, I did.

Q Does that explain why the dates are different on it and they go from '95 to 2005 for instance?

A Well, yes, I just -- I just went through the old inventory and it's probably not in order. I just went through the pages and what was still present, I put on this one.

Q Now, did Dr. Bellin ever tell you it had to be in order or did he tell you what order it had to be in?

A No, he told me he just wanted a condensed version so he didn't have to shuffle through so many papers.

Q Did Dr. Bellin tell you or Mr. Perry whether or not Form 7020 had to be kept for a certain period of time?

A I believe he had told me that they did not need to be kept for over a year because I would hand him the whole folder. He didn't like shuffling through all of those papers either. So, I believe he had told me that.

Tr. 2052-55.

I conclude that Dr. Bellin's instructions, which I find interfered with Respondents' bookkeeping, are additional reasons to find that no record-keeping violations were proved.

18. FAILURE TO ALLOW INSPECTION ALLEGATION NOT PROVED. 7 U.S.C. § 2146(a). 9 C.F.R. § 2.126(a). Paragraph 20 of the Complaint. Craig Perry was loading up the traveling exhibit at the time Dr. Bellin and Investigator David Watson (APHIS IES) arrived to inspect, and Craig Perry was expecting his veterinarian to arrive, and Craig Perry wanted to beat a snow storm. CX 58. As Dr. Bellin writes, Craig Perry asked if they could come back some later time. As Dr. Bellin writes, they could. Craig Perry was not told this would constitute failure to allow inspection. Craig Perry did not refuse inspection (as Dr. Bellin writes). NOT PROVED.

19. NONCOMPLIANCE WITH STANDARDS ALLEGATIONS PROVED: 9 C.F.R. § 2.100(a) (including a number of standards). This paragraph recounts the PROVED noncompliances with standards, including those found in paragraph 36 of the Complaint.

36.a. For the corroded aluminum trailer (not cosmetically appealing) (in 2000), no civil penalty is necessary.

36.b. For the cattle panels (in 2001, CX 15), a \$100 civil penalty suffices.

36.c. and 36.g. For failure to remove cattle excreta (in 2001, CX 15), a \$100 civil penalty suffices.

36.d. For inadequate shade for the lion (in 2001, CX 15), a \$100 civil penalty suffices.

37.e. For standing water and mud (in 2001, CX 15) (after rain during 7 of the 13 days concluding with this inspection, RXt-14), a \$100 civil penalty suffices.

36.f. For lack of nutritional supplements for the large felids on meat (in 2001, CX 15), a \$100 civil penalty suffices. No civil penalty is necessary for frozen meat having an expiration date months before; or for thawing of meat in an igloo-type cooler instead of a refrigerator.

36.g. *See 36.c., where the cattle excreta is adequately addressed.*

36.i. For the lack of a (written) feeding protocol for young tiger cubs (in 2003), a \$100 civil penalty suffices.

36.j. and 36.p. For failure to remove animal waste, food waste, and ice and snow (from the ice and snow, the low was 17° having fallen from a high of 51° 4 days earlier, RXt-53, p. 13), (in 2005, CX 59), a \$100 civil penalty suffices.

36.k. For failure to repair the camel's wall (in 2005, CX 59), a \$100 civil penalty suffices.

36.l. For failure to repair the lion's shade tarps (in 2005, CX 59), no civil penalty is necessary.

36.m. For failure to repair the wolves' shade tarps (in 2005, CX 59), no civil penalty is necessary.

36.n. For storing open packages of meat in an outdoor feed shed (in 2005, CX 59), a \$100 civil penalty suffices.

36.o. For lack of nutritional supplements for the large felids on meat (in 2005, CX 59), a \$100 civil penalty suffices. No civil penalty is necessary for any loss of vitamin C from the monkey biscuits (Purina primate chow) because of the great abundance of vitamin C in the fresh fruits and vegetables the monkeys ate every day; no civil penalty is necessary for the exposure to the elements of the meat remains, including bones, that the large felids were still working on.

36.p. See 36.j., where the waste is adequately addressed.

36.q. For the food remains (uneaten portions of a calf), that had been in the large felids' enclosure for 24 hours (in 2005, CX 60), a \$100 civil penalty suffices.

36.r. For the failure to eliminate standing water (in 2005, CX 60), a \$100 civil penalty suffices.

20. NONCOMPLIANCE WITH STANDARDS ALLEGATIONS NOT PROVED: 9 C.F.R. § 2.100(a) (including a number of standards). This paragraph recounts the NOT PROVED alleged noncompliances with standards, found in paragraph 36 of the Complaint.

36.h. No violation of 9 C.F.R. § 3.137(c) was proved regarding transporting camels. The regulation itself includes the following: "*Provided, however,* That certain species may be restricted in their movements according to professionally accepted standards when such

freedom of movement would constitute a danger to the animals, their handlers, or other persons." 9 C.F.R. § 3.137(c). NOT PROVED.

36.s. No violation of 9 C.F.R. § 3.129(a) was cited (CX 60). NOT PROVED.

21. In assessing the civil penalties, I have kept in mind the remedial purpose of the Animal Welfare Act, the Regulations, and APHIS's mission. I have kept in mind Craig Perry's good faith, which is obvious to me, even when on occasion he is mistaken or rash. I have kept in mind the long history Craig Perry has as an Animal Welfare Act licensee. I know of a few, those that were recounted by witnesses, of the many successes he has had which benefitted animals and people. Tr. 2184. Such witnesses testified of Craig Perry's courage and his expertise in caring for animals. I have kept in mind that Craig Perry has a prior Consent Decision, CX 61, pp. 8-10, issued in 1990, in which he admitted only jurisdiction. I am satisfied that he did invest in improving the facility as required by that Consent Decision. I have kept in mind that the business is medium in size, not highly profitable, and that Craig Perry has invested much in the vehicles and equipment and facility that are used for the animals. I have kept in mind that Craig Perry stopped offering photo opportunities with tiger cubs in about 2005 or 2006. Tr. 3081. I have kept in mind Craig Perry's efforts to comply, and his instructions to his workers to comply (Tr. 1828, 3192). Craig Perry testified: "You know, we complied to everything we've ever been asked to do, and it still isn't -- still is never good enough. You know, I don't know, it's, it's -- the problem is, with a lot of this, is if you have this blue book, is left to an inspector's

discretion, in a lot of ways, there's a lot of things that aren't clear-cut in that animal care book." Tr. 3086. I have kept in mind the gravity of the violations. 7 U.S.C. § 2149(b).

22. Craig Perry's civil penalties total \$7,250. The corporation is also liable (joint and several obligation) (beginning June 20, 2002) for \$6,750 of that total.

23. APHIS filed proposed corrections to the Transcript on October 5, 2000, and on October 6, 2000. The Respondents filed proposed Transcript corrections on January 20, 2011.

24. The Respondents' Motion to Strike a Portion of the Complainant's Reply Brief, filed April 7, 2011, is GRANTED.

Discussion

25. February 19-22, 2003, Thornton, Colorado. The deaths of the three tiger cubs were the saddest, most tragic happenings of all the alleged noncompliances in the Complaint. More damage, more harm, was done to these three tiger cubs than to any other animals, including humans,⁴ mentioned in the Complaint's more than 5 years (2000 through 2005) of alleged noncompliances. Craig Perry was third in the chain of humans who failed the three tiger cubs; he had the last clear chance to give the tiger cubs everything they needed to have a shot at survival, or to ease their deaths, and he failed.

26. The first human to fail the three tiger cubs was Jeff Burton, the custodian of the mother tiger when she birthed the three tiger cubs on February 11, 2003, in Ohio, and never

⁴ If you know the Complaint, you may be thinking of Mr. Richard Namm and the treatment he underwent to be certain he would avoid rabies, and the New Mexico State Fair in Albuquerque, New Mexico, in September 2000. A reading of paragraph 14(e) shows why I do not rank as higher any damage or harm suffered by Mr. Namm.

got the opportunity to nurse them. The Findings of Fact against Jeff Burton (*see, Jeff Burton and Shirley Stanley, individuals doing business as Backyard Safari*, referenced in footnote 1) include:

From approximately February 11, 2003, through February 19, 2003, respondent Jeff Burton failed to have a veterinarian provide adequate veterinary care to three unweaned infant tigers, born February 11, 2003, and instead, on or about February 19, 2003, “donated” them to respondent Perry’s Wilderness Ranch, and transported them by truck from Ohio to Iowa.

On or about February 19, 2003, respondent Jeff Burton failed to handle animals as expeditiously and carefully as possible in a manner that would not cause trauma, unnecessary discomfort, behavioral stress, or physical harm, and specifically, “donated” three 8-day-old infant tigers to respondent Perry’s Wilderness Ranch, and caused the transportation of the three infants by truck from Ohio to Iowa, for use in exhibition.

27. The second human to fail the three tiger cubs was Timothy Carper (Tr. 692-721).

Timothy Carper was the go-between, the man who “brokered the deal” and then drove the three tiger cubs from Ohio to Iowa on February 19, 2003. CX 25, pp. 3-4. “It took me approximately 8 to 10 hours to get to the Perry’s from Jeff Burton’s. The tiger cubs slept the whole way there. I did not see them exhibiting any problems.” That was Timothy Carper’s recollection, as dictated to an APHIS investigator, Carl LaLonde, Jr., nearly six months after February 19, 2003. Timothy Carper continued talking:

I know both Jeff Burton and Craig Perry from my experience in the industry. I have more than 20 years of experience with tigers and have transported animals many times for at least 16 years. Jeff Burton asked me to haul the tiger cubs out there, which I did as a favor for him and no money changed hands. I was also picking up some fence in IA to bring back home.

CX 25, p. 4.

28. By the time Timothy Carper was testifying, more than 6 years after he had given his statement to Investigator LaLonde, Timothy Carper could remember very little. Tr. 712. He was able to identify Le Anne Smith, pointing her out in the hearing room, as the person to whom he delivered the tiger cubs, carrier, paperwork, and formula that Jeff Burton had sent with him. I was uncomfortable with Timothy Carper's testimony because it appeared that 3 tiger cubs, 8 days old, were not fed during the drive from Ohio to Iowa, more than 400 miles, which Timothy Carper recalled was approximately an 8- to 10-hour trip. It was difficult for me to believe that the tiger cubs had slept the whole trip; that that, in itself, was not a problem. Timothy Carper had been an Animal Welfare Act licensee. And also during that time he was a corrections officer. Tr. 693. In 2003, Timothy Carper had a good understanding of the APHIS paperwork utilized for a donation such as that of the three tiger cubs. When Timothy Carper testified, he minimized his responsibility in the transfer. Not until Craig Perry testified, did I realize that the transfer of the three tiger cubs from Jeff Burton to Craig Perry was all Timothy Carper's idea.

29. Craig Perry testified (Tr. 3429-30 and 3431-32):

JUDGE CLIFTON: When Tim Carper communicated to you that there were these three cubs that he could or would be bringing you, what was that conversation or communication?

THE WITNESS (Craig Perry): He was coming up to get some fence. He knew that I was out in Denver, Colorado, doing photos with cubs. He said that this Burton that does these, is federally licensed, he knows you Craig. He's seen you when you've been in Ohio

with your petting zoo. This is where the guy's from. He's seen you there. And anyway, he had this litter of tiger cubs, and if you would like them, you know, they've got full time jobs, and if you'd like them, I'm coming up that way and I'll bring them.

Tr. 3429-30.

* * * *

THE WITNESS (Craig Perry): Carper. What it was is he explained to me that these folks had seen me, that, you know, I may know of them. They do animal education shows. They're federally licensed. They go around doing school programs, things of that nature. So already I'm geared up on this individual knows what he's doing, you know, he's licensed, going around giving educational programs, et cetera, things of that nature. He works with big cats, he's, you know, he's done commercials, you know. Tim's explaining all this to me. But he's got these three cubs, you know. They've also got full-time jobs. They don't have time, you know, what it takes to take care of these cubs. I recommended you.

I'm going to be up your way. I'll bring them to you if you can use them. Okay, well we like the younger ones, as I've expressed before. So, I said sure, Tim, bring them with you, you know.

Tr. 3431-32.

30. I fault Timothy Carper for failing to communicate to Craig Perry the circumstances surrounding the tiger cubs' birth. Surely Timothy Carper understood the critical importance of colostrum and how devastating it was that the three tiger cubs hadn't had any. Timothy Carper was delivering to Craig Perry three adorable little ticking time bombs, with no

warning. Timothy Carper had no business involving himself in Jeff Burton's situation without having gotten to the bottom of it. Not until after the first of the three tiger cubs died, did Craig Perry find out from Jeff Burton, after telephoning him, the circumstances surrounding the tiger cubs' birth.

31. Craig Perry testified (Tr. 3243-79):

Q (by Mr. Thorson) Now after the first day of exhibiting the cubs, do you know how long that was by the way, that the cubs were on "exhibit"?

A (by Craig Perry) The first day probably like, this is a guess, but I think it was from, again I'm guessing. I think it was from like three to seven.

Q And did the cubs exhibit any signs of illness during that first day that you were there?

A No. No, I've used cubs that size many times and, you know, they were acting no differently than any other cub I ever used before.

Q Did you feed them during that period of time?

A Oh, absolutely. I fed them prior to that time, during that time, you know.

Q And again, were they defecating normally or were they --

A Oh, yeah. They were eating fine, urinating fine, defecating fine. I mean there were no signs, you know, anything in their stools. I mean, there was no reason to believe anything was wrong.

Q Did you see any type of discharge from the cubs that would be unusual like blood or something like that?

A No. If I'd seen that I'd address it right away.

Q And you took the cubs back to your hotel room that night, is that correct?

A That's correct.

Q What happened that night? Did one of the cubs die?

A Yup.

Q And when did you find out about that?

A Well, early the next morning.

Q When you got up early the next morning, did you go see what was going on with the cubs? Did you think they had to be fed, did you --

A I had a routine I did with them every night, you know. We love what we did. And we'd always get them out every night, you know, maybe play with them. You know, just let them enjoy being tigers. Everybody enjoyed, you know, it really was a great time.

And so -- going to get hungry, we normally stayed up, me and the guys until like 11:00, 12:00 because you know, the little shits wanted to eat late, so we'd just stay up and watch TV or whatever. We'd give them their final feeding and then the guys would go to their room and I'd just go to bed.

And I'm a light sleeper from being on a farm, so the minute they'd start crying I'd get up. And there's a microwave, refrigerator, formula, so, wonderful things. So, I hear them crying and I get up and you know, they're crawling for the door. So I feed them and one didn't come to the door. You know, that's not uncommon. So, you know, I look in the door after feeding the other two and went in their den.

Q And after that happened did you try to call somebody? Did you try to get a hold of your veterinarian? What did you do?

A Yeah, I got their 24-hour call thing, and she said she'd contact Dr. Slattery as soon as possible, and I said, ma'am, I need to hear from him soon.

Q Did you try to talk to other people like Le Anne and tell her what had happened and have her try to get a hold of Dr. Slattery?

A Yeah.

Q At that point in time did you think, or what did you see when you went to the dead cub? Was there something you'd seen when you looked at the dead cub?

A Yeah, he had blood coming out of his mouth, you know, like he vomited blood. And what I first thought was, is he got a hold of something in the cage. But we always put the same thing in the cages so they can't hurt themselves, you know, towels and everything. So I got the other two all taken care of and I'm looking the dead one over and I'm looking down his mouth and I'm trying to figure out what could have possibly happened, you know, because I had no idea why this cub would perish, you know.

Q And after you, do you remember what time it was that Dr. Slattery finally got a hold of you?

A I don't remember everything exactly as far as times because I was, before I leave home I would always stop by Sam's and I would pick up, you know, all the ink, all the paper, you know, the formula, you know, the stuff to make the formula that, you know, and then a card, you know, a calling card because back then, you know, they didn't have the

national plan for U.S. Cellular that we got now. I mean you can take a look at these phone bills that we supplied and you can see that.

So what I would do to save money is a lot of times I'd use a phone card, you know, and then if somebody really needed to get a hold of me while I wasn't at the hotel, which pretty much everybody had the number at the hotel because we were there all the time. If I'd make a call out, I'd do it from the hotel on the phone card after like 10:00. You can tell from the phone bills that I'd start utilizing the cell phone because I wasn't at the hotel. It was an inconvenience to walk all the way out to where the phones were at American Furniture.

So I just remember just as soon as I heard the other cubs crying, I got up and you know, I called him.

Q Did you stay up then after that happened or did you go back to bed or what happened?

A Oh no, I didn't go back to bed. I mean I was calling and calling and calling, you know, and then Dr. Slattery called me back.

Q And did you discuss with him the symptoms of the cub had shown or what had happened?

A Yes, I did.

Q And did Dr. Slattery say something to you at that point in time and tell you what his diagnosis was at this point?

A Yeah, he said Craig, he says you've raised a bunch of these. He says, I know you know what you're doing. He says I think what it was was that I don't think these cubs are getting colostrum.

Q And when he said that did you then decide you were going to try to call somebody else about the situation?

A He told me that I needed to call the guy I got the cubs from and find out if they got any colostrum. And I says, I said this guy has been doing, he is USDA licensed, he's been doing animal education courses with big cats for a long time. I said personally I don't really know the guy but I know a lot about him. You know, I said I can't imagine anybody raising anything doing something like that.

He says well Craig, he says I'm just telling you what the symptoms are. He says it sounds like they never got colostrum. He says call the guy up, find out, have him take you through the birthing process, you know, and then you'll know for sure and then we can go from there. And he says call me back as soon as you get a hold of the guy. And I said all right.

Q Now did you attempt to call Mr. Burton then during that day?

A Yes, I did.

Q And if you'd look at RXT31 for me. Is that the cell phone bill that you would have received back in March of 2003?

A Correct.

Q And if you would turn to page what's been marked 16 and 16 of that exhibit.

A Okay.

Q There are calls made to a Waynesfield, Ohio on that. Do you see those calls?

A Yes, I do.

Q And it looks like there are numerous attempts to call Ohio. Do you know when you were finally successful in getting a hold of Mr. Burton?

A Yeah, it was earlier. It was probably right at that, it was in the morning at some point.

Q So what time was the exhibit opened at American Furniture?

A 10 a.m.

Q Okay. So would you have been using a phone card prior to 10 a.m.?

A Correct. At the hotel.

Q Okay.

A And that's, there's probably 50 more calls on here.

Q Did you talk to Mr. Burton that day then?

A Yes, I did. I talked to him that morning.

Q Okay, and what did Mr. Burton tell you about the situation?

A I called him up and I said can you, this is Craig Perry. I said I wanted to know if you could take me through the birthing process of these cubs. He goes, yeah, that's no problem, why? And I said well it's just, I was just wondering about it, you know, if you could take me through the birthing process of the cubs.

He goes yeah. He said that's why you got them is because you know, we've both got jobs, blah, blah, blah, blah, blah, you know, and he says from the minute it started it was a major inconvenience. He said it was Ohio, which they were, was having the record snow storm. And the tigress, the mother to these cubs began whelping.

And so he said, I'd just got home from work, and you know, this was a tiger that we used for animal education courses. So he says, I took a bunch of straw. And he says I bedded down the stock trailer with a little bed. He says I put her on a leash, he says I walked her from her habitat into the back of the stock trailer and shut the door.

I said, okay. He says I had a heated shop. He says I pulled the stock trailer into the heated shop and just as soon as I did that, she laid down and started giving birth. And I said okay, take me through the rest of it. He says well, he says my girlfriend was there. He says she had a heating pad in her house and as each cub was born, he says I would hold the cub up to its mother. And I said so it could suckle. And he said, no so she could lick him off.

And I said okay, then what happened? And he says well them we took them directly into the house and put them on a heating pad. And I says okay, I said so that process was repeated what, three times? And he says yes. And I said so I understand this, none of those cubs ever nursed their mother. And he says, no it was her first litter and she wouldn't have known what to do anyway. I said okay.

So I said what did you do? He says well, we took them in the house and they started eating right away, which I knew was complete bologna because no cub starts eating

right away. But anyway, I said so did you give them colostrum then being that you're now feeding them. And he says colostrum, what's that?

And I says well, what did you feed them? Even thought there's my answer, I said what did you feed them? And he said well I gave you the formula. And I says so that's what you fed them. I said that's what they got, that's all they ever got. And he said, yes. And I says well do you realize what you've just done? Have you got --

Q And did he have a response for that at all or not?

A I didn't know.

Q He said I didn't know?

A He said I didn't know. He didn't even know what colostrum was.

Q Now we talked a little bit about your experience with cubs that had not received colostrum before this in your previous testimony. Were there other animals that you also got colostrum for besides lion cubs or exotic animals?

A Yeah.

Q What other types of animals?

A My kids. I had a horse that was in foal. And on one of our wonderful Iowa weather nights it started to storm as this mare foaled. And lightening (sic) killed her but not the foal. So Stormy, as she was named, the little colt, beautiful little colt, I ran and got colostrum for her. Because I knew without it, there was no future to her either.

Q Was this prior to the tiger cubs dying in February of 2003 that this incident with the horses?

A Yeah. This was like '99 or something like that.

Q Had you had other experience with colostrum or getting colostrum for young animals prior to that?

A Oh yeah. Anybody that raises livestock, you know, runs a pet store, it's common knowledge.

Q After you had your conversation with Mr. Burton about the way the cubs were born and the fact they didn't nurse with the mother, did you talk to your veterinarian again?

A Oh, immediately. I called Jim immediately.

Q Okay. And what did Jim tell you at that point in time?

A He said, Craig you've already lost one cub. He says whatever virus the one has contracted, he says at this, I don't remember from, I remember what was said, I don't, word for word.

Q Well based on the gist of what he said.

A The gist of what he said was is at this late stage in the game there's absolutely nothing we can do for these cubs. It doesn't matter if you spend \$700 or \$7,000 a piece on these cubs. There's absolutely nothing you can do for these cubs. You know that. You've been doing this long enough. Anything that's gone this long without colostrum is not going to survive, you know.

And then he went into the explanation of course, that I already know, you know, that after, you know, after so much time, after 18 hours of time, you know, the

intestinal walls start to close down where they can actually start absorbing, you know, the colostrum. You can give them the serum, which I've done before, you know, long before this ever happened. But you know, again that was within a 24-hour period. These guys were, you know, two weeks old. You know, so that's what, I think he was trying to comfort me because he knew there's nothing I could do and how upset I was, you know.

Q Did you take the cubs, the remaining two cubs back to the American Furniture Warehouse with you that day then?

A I took all three of them back there.

Q And where did you put the deceased cub?

A In a freezer so I could get it posted immediately.

Q And when you say post, do you mean as far as getting a necropsy?

A Correct.

Q Why did you decide to have that done in Iowa rather than, for instance, Colorado?

A Jim's my vet and that's, you know, I wanted to use my vet.

Q Tell me about the other two cubs and when they were at American Furniture Warehouse on Saturday, were they together then most of the day, or did you separate them, or what did you?

A No, there was one that was always smaller than the other three, and you know, I wanted, if anything was gonna happen, you know, because the whole time with these cubs, they never gave any indication that anything was wrong with them. You know,

I'd never been through this before. You know, I know of people not getting animals colostrum, but I've never experienced it, you know.

I know what the end result is if they don't get it, you know. But, and I imagine different species of animals respond differently to it. I can't speak to that. But what I can speak to is on these particular cubs, they gave absolutely no, they ate fine, urinated fine, defecated fine up to the moment they perished. And the three of the cubs, there was one of them, you know, and that's not uncommon when you have litters, whether it be puppies, kittens, dogs, tigers and lions, leopards, whatever. You sometimes have one that's smaller than the rest and, you know, and the one that was smaller than the rest, Lindsay was there.

She showed up, you know, and she started breaking down when I told her what had happened, you know. And, which I didn't want to do because she'd been overreacting to a lot of things anyway because, anyway, different story. But, so I asked if she would please take this one, I don't think there's going to be a problem, but take this one back to the hotel.

If you have a problem, call me. So I gave her, you know, the card to my room and told her to take the cub there because there's already formula there, there were already bottles there, everything else was there, and told her to take it back to the room, you know, and if you have any kind of problem whatsoever, call me.

Q So how did she get from the exhibit to your room? Did she have her own car or vehicle, or what?

A Yeah, she had her own car. And John, John Phillips, that was another good thing that American Furniture did for us. They supplied us with a company vehicle, you know, and so we had pet porters for the cubs and we would take blankets and put over, not a blanket but like a, the hotel would let us use their towels, you know.

So we put the towels over the top of the pet porter. So what Lindsay did is she pulled her car up, and it was already warm and everything like that. So John just basically went through our daily routine and put the cub in there on the towels, and then put towels over the top of the pet porter and then carried them out to the vehicle for her, and then she, you know, everybody at the hotel knew us so, she would just walk in with the pet porter and you know, go up to the room.

Q What time of day do you think was, do you know?

A I'm guessing that was probably around two maybe.

Q And did she have instructions then to call you if something happened?

A Mmm-hmm.

Q Or did you tell her to get a hold of you? Is that a yes?

A No. That's a yes. I said if there's any problems at all, give me a call. I don't, you know, and I told her, you know, I told her, I said you know, if you think it's a problem, if you think you're going to have a problem, and you know, just give me a call. Give me a call, but I want you to know, you know, that this, there's a distinct possibility that, even though they look fine, you know, they may perish.

Q Did she call you or did you show up at the hotel room, I guess is my question. Did you eventually, you went over to the hotel room and met with Lindsay, is that correct?

A Correct.

Q Did she call you to come to the hotel room?

A Yeah, she called me.

Q And when she called you, was she upset at that point in time?

A Oh yeah, very upset.

Q Did she tell you what had happened?

A I got a call, I got a page from American Furniture that I needed to immediately go to the front sales counter, which is normally where the calls come in. So I went to the front sales counter and she was crying hysterically, and she just said the cub is dead. And I said what do you mean the cub is dead. She says the cub is dead. And I says I told you to call me if it looked like you were having any problems. She says, I'm sorry, she says, I'm sorry, this is all my fault. I fell asleep on the bed. I had the cub with me and I was laying there watching TV and fell asleep.

And I said Lindsay, it's not your fault. You know, it's not your fault, it will be all right. And she, you know, she says, I don't know what to do, I don't know what to do, blah, blah, blah and I says I'll be there, I'll be there in a minute.

Q So you went from American Furniture Warehouse then to the hotel?

A Correct.

Q When you got to the hotel, did you meet with Lindsay then?

A Correct.

Q And what was your conversation like at that point in time?

A I mean, she was very hysterical and I, you know, understood. I was that morning, you know. The only difference was is you know, I kind of explained to her what the possibility was of what could happen, you know.

I had no idea what was going to happen, you know. She knew that, I explained to her that these cubs didn't get colostrum, that this could be a final outcome, you know. But it was gonna happen, you know.

Q Did you try to comfort her at that point in time?

A I explained to her, you know, there's nothing you did wrong, Lindsay. It's not, it's not in your hands, you know, it's nature.

Q Did she stay around at the hotel room for a while then?

A Oh, yeah.

Q Do you know how long?

A I made her stay there for, I made her stay there for at least another half hour or so because she was trembling and you know, she was very upset and understandably, you know. She just thought it was her fault because she fell asleep, you know, and she should have called me, and you know.

Q Did you know that she was being treated for depression at that time?

A Yeah.

Q Did she say anything else about her being treated for depression? Was she taking medication at that time?

A Prior, when we first got there, she, you know, I asked her if she had got her medication yet. And she says no, I'm trying to wean myself off of it because it makes her tired or something like that, you know. But she, prior to that, you know, I didn't even know that she was being treated for anything, you know. And then she would occasionally go through these break downs, you know, and I talked to her about it.

Because she's, I thought she was a very good volunteer, you know. She was studying to be a vet tech, which I was glad to see when she came here. It sounds like she accomplished that, you know. And she really cared, you know, really cared about the animals. So anyway, occasionally she would go through these break downs, and finally one day I said listen Lindsay, I said I don't know, I'm not gonna get into your personal life or anything like that, you know, but this has really got to stop. I don't know where it's coming from, I don't know what's going on but you know, it's, I just wasn't used to anything like that, you know.

I said you got to tell me what's going on. And she says I just, she said I've never been so happy in my life. You know, and I says well why do you sit back here and cry if you're so happy. Why wouldn't you be out front where everybody else is, you know, and kind of enjoying what's going on, you know.

And she says oh, I'm just so happy, I'm just, you know, and this happened a few different times. So I said well, is there something that I need to know. And she says

well, I'm a whatever, she's a, she gets depressed easy and over responds to things. Anyway she assured me she's on medication, she was going to get on it next week, blah, blah, blah, blah.

And this was sometime back, you know, long before this. And I said if you're going to be working around these animals, I said, you know, you need to stay on your medication, you know, because these are just little babies, you know.

But as far as the bigger ones, you know, you're fully aware it takes a lot, you know, and that instability isn't good. So, she assured me she'd be back on her medicine, and she, she apparently was for a while because I didn't have a long, I didn't have a problem with her a long time after that.

Q Now did you have conversations with Lindsay Pierce after she left your hotel room and went home that night?

A I think, yes. Yes, I did.

Q When were those conversations?

A The next morning she called to ask how the last cub was doing.

Q And what had happened to the last cub in the meantime?

A It passed away.

Q Okay. Let's focus in again on your conversations with Lindsay. We'll get to the last cub here in a second but, did she react then to that one passing away, or was she crying at that point in time?

A Yes, she was. But I mean, she just felt personally guilty, you know. She just kept going on about how she shouldn't have fell asleep. I mean, she blamed herself for that cub, the second cub, you know, and there was really no reason for her to.

You know, she just said that if she wouldn't have fell asleep, she could have called me. But even if she called me I couldn't change the outcome. You know, that's why I told her, you know, many times.

Q After that conversation, maybe the next morning, did she call you again after that or not?

A After I told her the last cub died?

Q Yes.

A She might have called me once. I don't, she might have called me one other time after that. I don't, it had been shortly thereafter that, about how, you know, she didn't know what to do, you know.

And it could have been the same phone call when I told her the last cub died. You know, she's like, I don't know what to do, you know. It seemed like I ought to be able to do something, I feel so bad about this. That was pretty much, whether she called me one other time and told me that or you know, the time I lost the last cub. I don't recall if it was one or two phone conversations. But she had said that many times.

Q Now there's a third cub. That cub is still at American Furniture Warehouse, is that the case?

A You mean when she --

Q Well when you went to the hotel room, she was with one cub. Did you bring the other cub back with you when you went to the hotel room, or was it still at the American Furniture Warehouse?

A It was still at the American Furniture Warehouse with John and Pete and Joe.

Q And did you bring that cub back with you then, or did you back or did you go back --

A I went back --

Q Okay.

A I took the cub with me back to put it in the freezer.

Q All right, the cub that died at the hotel room, you took it back, you put it in the freezer, is that correct?

A Correct.

Q And at that point in time did you pick up the third cub?

A I brought it back to the hotel.

Q And tell me what happened to that cub.

A It passed away too.

Q When did it pass away?

A Off the top of my head, because this is some years ago, I mean obviously I remember the first one and the second one very clearly. The third one, I can't recall if it was sometime that evening.

Q Was it still eating normally?

A That was the weird thing about it. They all ate fine, they all urinated fine, they all defecated fine, you know.

Q Until they passed away?

A Until they passed away. I mean, it was like they didn't wake up out of their sleep, is basically how it happened. They would go to sleep, and --

Q When did you make the decision to do a necropsy on the cubs then?

A Well, immediately.

Q Did you try to call anybody about picking up the cubs, or you were delivering the cubs to Iowa and you still had time on your contract with American Furniture Warehouse, didn't you?

A Correct.

Q So what did you do about getting the necropsy accomplished?

A Well I called Shannon, you know, to see if she could meet us halfway.

Q And Shannon was the volunteer that testified earlier in this case, is that right?

A Correct.

Q And what was her response?

A She was working. She couldn't do it. It was too short of a notice. I mean, she wanted to help out but there was no way she could fit it.

Q So when she couldn't do it what did you do as far as getting somebody to help?

A I called Le Anne and asked Le Anne if she could get Samantha, John Phillips's fiancé to meet us.

Q Okay, and what was Le Anne's response to that request?

A She said I'll talk to him, it shouldn't be a problem, that Sam was saying that.

Q So did you take off from Colorado then on Sunday or Monday, or do you remember?

A I don't remember.

Q But at some point in time you took off with the three cubs?

A It was like shortly thereafter the third cub died, we were, I talked to American Furniture, I went and talked to Mike Bucietta, the president at the time of American Furniture, explained the situation.

I told him exactly what transpired, you know. And I need to get these to a vet. And he said Craig, do what you gotta do and loaned me their brand-new company van to do it, because all I had there was the semi.

Q Did you make arrangements to get other cubs in to come out to Colorado?

A Yes, I did.

Q Where was that arrangement made?

A With Vogel Exotics.

Q Who was going to pick up those cubs, then?

A Samantha.

Q And did Samantha go directly up to Minnesota or what did she do?

A No, she went directly to Lincoln, met us and met John.

JUDGE CLIFTON: Went directly where?

THE WITNESS: To Kevin Vogel's.

JUDGE CLIFTON: To where?

THE WITNESS: Vogel's Exotics. Kevin Vogel.

JUDGE CLIFTON: Oh, Kevin Vogel. Okay and what's the city and state nearest to that?

THE WITNESS: Sanborn, Minnesota.

JUDGE CLIFTON: Okay.

BY MR. THORSON:

Q Is that in southern Minnesota or where's that at?

A That's in southwest Minnesota.

Q And when she went there to pick the cubs up, did you send her with a cell phone then, or did you give her a cell phone?

A I had her take the Durango, I had her take a cell phone, I had her take cash, you know, for gas. It's a long trip.

Q Did she then meet you someplace?

A In Lincoln.

Q And were you driving out to Lincoln with somebody else?

A Yeah, John Phillips. Samantha is his fiancé, or was at the time. They've since parted.

Q So you met in Lincoln, Nebraska, is that correct?

A Correct.

Q Did you meet anybody else in Lincoln, Nebraska besides Samantha?

A Yes.

Q Who?

A Le Anne.

Q And Le Anne came directly from --

A From, just as soon as her mom could watch the kids and she had to borrow her mom's car, and then she met me and John.

Q And when she met you and John, did you, did she go back home then again?

A We had breakfast and, yeah. The four of us ate breakfast and then they turned around and they all went back with the cubs.

Q So Le Anne took the cubs back to your veterinarian?

A Correct.

Q When you got back to Colorado, or before you got back to Colorado, were you getting phone calls?

A Oh, yeah.

Q From who?

A Elizabeth Kelpis.

32. The handling allegations in the Complaint against Craig Perry and the corporation concerning the three tiger cubs are found in paragraphs 27, 29, and 30 of the Complaint. Craig Perry is a very credible witness, although I do find he was wrong about some things he was sure of. Listening to the testimony of Lindsay Pierce at the hearing, I thought there was significant conflict between her testimony and Craig Perry's, until she produced her diary that she had kept during those days. Lindsay Pierce's notes corroborated Craig Perry's testimony, particularly that he had told her how essential it was for the babies to have gotten colostrum. Lindsay Pierce had forgotten that part by the time she testified, six years after the deaths of the three tiger cubs. Lindsay Pierce had forgotten Craig Perry's explanation of the importance of colostrum, but on cross-examination she produced the diary she had kept during those days, and I find great value in her notes. CX 16a.

33. The third human to fail the three tiger cubs was Craig Perry. I've already stated that Craig Perry is a very credible witness: (a) First, Craig Perry speaks with no "filter" - - he says what he thinks without counting the cost. (b) Second, Craig Perry is experienced with many of the types of animals regulated under the Animal Welfare Act, and he has the animals' best interests at heart. (c) Third, Craig Perry is intelligent and has excellent recall. Nevertheless, I disagree with Craig Perry's conclusions on a few important issues, including whether he could have done something to prevent the deaths of the three tiger cubs.

34. The first tiger cub to die, died in the early morning hours of February 22, 2003. Craig Perry had had the three tiger cubs only three-four days. February 22, 2003 (a

Saturday) was the day Craig Perry needed to take all 3, alive or not, to a local, qualified veterinarian.

35. December 29, 2004, Over the Telephone. More than seven years ago, on December 29, 2004, Craig Perry vented frustration and anger over the telephone to an APHIS investigator who seemed willing to listen, Katherine L. Lies. About five years later, on the first day of the hearing (November 16, 2009), Investigator Lies testified, in part (Tr. 280-87):

BY MS. CARROLL:

Q And did you have occasion to conduct an interview of Mr. Perry?

A Yes, I did.

Q And do you recall the circumstances of your interview?

A Yes, I do.

Q Can you describe what you did?

A At first I tried to interview Mr. Perry by going to his home to see if I could contact him. I was informed that he wasn't there. I left my business card, left the facility and then I would say approximately 10 minutes or so later I got a voice message from Mr. Perry asking me to return his call, which I did. So the interview was conducted over the phone.

Q And when was that interview conducted?

A I believe December 29th of 2004.

Q Okay. And did you memorialize that interview?

A Yes, I did.

Q Okay. Without looking at the document that you prepared to memorialize that interview, can you just describe how the interview was conducted and generally what was discussed?

A Basically like I said, it was over the phone. I returned his call. I documented the details of our conversation by taking notes as we spoke on the phone.

Q And you were in your car?

A Yes, I was.

Q Pulled over?

A Yes, I was.

Q And were you the principal investigator regarding the incident with Mr. Bogdala?

A Yes, I was.

Q And how did you come to learn that Mr. Bogdala had presented himself as having been bitten?

A I believe the case was referred to me through Animal Care IES Western Regional Office.

Q Okay. And were you located in Illinois?

A No, I am not.

Q Okay. At the time where was your geographic region?

A Iowa.

Q And about how long did your conversation take with Mr. Perry?

A I don't recall specifically but probably about 20 to 30 minutes.

Q And do you recall anything specifically today as to what you discussed?

A We did discuss the details surrounding the bite and we also discussed details surrounding some other investigations that he claimed IES and Animal Care was involved in.

Q Did you introduce that topic?

A No, I did not.

Q And what did Mr. Perry tell you?

A He explained that some of the things that he mentioned, he was venting and he seemed agitated and he was telling me about other investigations involving the death of some lion cubs, another individual that was bit. He talked about USDA, that he felt that USDA was harassing him and trying to put him out of business.

And he talked about some of the settlements that he had and that he received apology letters from USDA for misconduct. He discussed about having friends in buildings near the Federal Building in Fort Collins, Colorado. During our conversation he mentioned that if USDA wasn't careful that there would be another Oklahoma City bombing. He was talking that he and other people in his type of business were talking about bringing a class action suit against USDA.

Q Did he also mention any investigators in particular?

A Yes, he did.

Q Who?

A That would be Investigator Liz Kelpis, Elizabeth Kelpis.

Q And what do you recall that he said about Ms. Kelpis?

A He was pretty derogatory about her and said that she didn't know what she was talking about.

Q And do you recall any of the exact words that he used?

A He called her, the exact words?

Q Yes.

A He called her a stupid bitch and that she didn't know what she was talking about.

Q And what was Mr. Perry's demeanor at the beginning of the phone call when you first talked to him?

A He seemed agitated and hostile.

Q And he kept talking to you?

A Yes.

Q Did he answer your questions about your investigation about the Bogdala lion cub bite?

A He did. He basically stated that it didn't happen, that nothing was reported to either one of his handlers. And he mentioned something also about a waiver

that he said he would send to me. He wouldn't provide me the opportunity to meet with him in person or provide me with any information pertaining to his business.

Q He told you that on the phone?

A Yes. Correct.

Q And did he send you anything?

A I believe I was sent a fax in regards to a waiver that individuals would sign before they actually posed with an animal.

Q Okay. Let me ask you to turn to Exhibit 52. Can you identify that document?

A Yes. That is the waiver that I received.

Q And you received it by fax from Mr. Perry?

A I believe so.

Q And you did document your conversation with Mr. Perry correct?

A Yes, I did.

Q Can I ask you to turn to Exhibit 40 and ask you to identify that document?

A Yes, that is the log that I created after I had a conversation with Craig Perry on the phone.

Q And you said you took notes?

A I took notes during my conversation.

Q Okay. And were the notes the basis for this interview log?

A That is correct.

Tr. 280-87.

36. What Craig Perry told Investigator Lies during that phone interview became the most serious, in my view, allegation against him. That allegation (quoting from paragraph 10 of the Complaint), that Craig Perry "interfered with and threatened APHIS officials in the course of carrying out their duties, and specifically, advised an APHIS investigator, during the course of her investigation, among other things, that USDA should 'stop conspiring with PETA' and other animal rights organization 'before something bad happens,' and that 'APHIS should watch out before there is another Oklahoma City bombing,'" in willful violation of section 2.40(b)(1) of the Regulations (9 C.F.R. § 2.4), is a serious enough allegation, if proved, to cause by itself, revocation of an Animal Welfare Act license. [Revocation is a permanent remedy and would prevent all further activity for which an Animal Welfare Act license is required, including exhibiting.] The allegation, though, does not stand up to careful scrutiny.

37. Investigator Lies is not easily intimidated. When describing her educational background, she mentioned not only high school and community college, but also training in the U.S. Army. Tr. 463. Investigator Lies testified, "When I say he was trying to intimidate me maybe I was more he was like trying to control the conversation. He wanetd (sic) to let me know what type of agency I was working for." Tr. 295. Whatever Craig Perry may have been doing to control the conversation, it is clear that Investigator Lies very effectively gathered evidence from Craig Perry about the alleged lion cub bite on Mr. Bogdala.

38. Investigator Lies documented her December 29, 2004 conversation with Craig Perry:

INTERVIEW LOG
USDA, APHIS, IES

NAME AND ADDRESS OF PERSON(S) CONTACTED:

Craig A. Perry
(address intentionally omitted here)

DATE:

December 29, 2004

TYPE OF INTERVIEW (BY PHONE OR IN PERSON):

By Phone

ORGANIZATION:

Perry's Wilderness Ranch and Zoo

TELEPHONE NUMBER:

(telephone information intentionally omitted here)

SUBJECT:

IA04050-AC; It is alleged that Craig A. Perry, USDA licensed exhibitor, failed to meet the minimum standards while exhibiting a lion cub.

LOCATION OF INTERVIEW:

Center Point, Iowa

SUMMARY:

On December 29, 2004, at approximately 01:45 pm, I attempted to contact Mr. Craig Perry at his residence in Center Point, Iowa. Upon my arrival a lady who introduced herself as Mr. Perry's fiancé informed me that Craig Perry was in Colorado and would not be back until Saturday, January 1, 2004. I told her that I was an investigator employed by the United States Department of Agriculture. I informed her that I needed to visit with Mr. Perry regarding the quarantine of one of his lion cubs due to allegations of a bite incident. I gave her my business card and asked her to tell Mr. Perry to call me and schedule a convenient time to meet to discuss the allegations.

Approximately ten minutes later, I received a voice message on my cell phone from Mr. Perry requesting that I return his call. Within minutes I contacted Mr. Perry by phone as requested. I introduced myself to Mr. Perry as an investigator employed by USDA and told him that I would like to meet with him regarding allegations of a lion cub bite incident.

Immediately, Mr. Perry stated that the incident never took place and refused to meet with me in person to discuss the situation. Also, he informed me that he was aware of USDA's investigation process and that he will not give any type of written statement and/or affidavit regarding our conversation about the allegations. He agreed to answer my questions regarding the situation, but refused to give any type of personal and/or business information. I asked Mr. Perry to provide an explanation regarding his refusal to meet in person and refusal to give a written statement. At this time Mr. Perry expressed his extreme distrust with APHIS and stated that in the past USDA has given various types of animal rights organizations, including PETA, his business information. In order to try and develop some type of trust and a level of cooperation with Mr. Perry, I told him that I understood his frustrations with USDA and tried to get him back on track regarding the allegations of the incident.

Mr. Craig Perry stated the following facts in response to my questions:

- Mr. Perry refused to verify and/or give any information regarding his business history and his business relationship with the Lake County Fair.
- Mr. Perry stated that his business relationship and details of his business are none of USDA's business.
- Mr. Perry did confirm that he was present and exhibiting his animals at the Lake County Fair in Grayslake, Illinois from July 27, 2004 thru August 1, 2004.
- He stated about two or three days after he left the Lake County Fair that he received a call from the Lake County Health Department informing him that an individual, John Bogdala, claimed to have been bitten by one of his lion cubs while posing with it for a photo on August 1, 2004.
- Mr. Perry confirmed that he was exhibiting a two month old lion cub, weighing less than (sic) forty pounds, at the fair and was offering to the general public the opportunity to pose with it for photographing purposes for a fee.
- Mr. Perry stated that the bite incident allegations are "bullshit" and that the incident did not occur.
- He stated that USDA has been after him for many years and is trying to put him out of business.
- He stated that he knows the regulations pertaining to the Animal Welfare Act and abides by them.
- He stated while exhibiting his animals at the Lake County Fair no one reported to him, his employees, fair employees, and/or to emergency officials that a bit incident occurred.
- He stated that he personally was not present and/or working at the site where the photographs were being taken, but two of his handlers were.
- He stated that his handlers, Joe Hobson and Erik, were responsible for the handling of the lion cub during the photo shoots and they did not report any type of bite/scratch incidents to him.

- He stated that his handlers are knowledgeable and well experienced regarding the handling and exhibition of his animals. And, that both of the handlers listed above have at least four years of experience.
- He stated that he trains his employees himself and does not have any type of written log documenting their training experience.
- He stated that he would never allow an inexperienced employee to handle his big cats and/or to participate in the photographing part of his business.
- Mr. Perry stated that he has a specific process in place to guard against harm to the public and his animals while participating in photo shoots.
- He explained that the photo shoots take place in a 12' X 12' cage that is surrounded by a protective barrier.
- He stated before the individual is allowed to pose with animal they are required to pay a fee and sign a waiver recognizing that injuries can occur when coming in physical contact with wild exotic animals.
- He stated after the individuals pays (sic) and signs (sic) the waiver they are allowed to go beyond the barrier and enter the cage and are instructed on how to get situated for the photograph.
- He stated that Mr. Bogdala signed this waiver and that he would fax a copy to me if he could locate it.
- He stated that the animals, including the lion cub pertaining to the incident, are kept in separate enclosures.
- He stated after the individual gets situated the animal is removed from their separate enclosure and placed next to them. Also, the individual is instructed by the handler to place their hand on the back of the animal for photograph posing purposes.
- He stated that the individual is allowed to have physical contact with the animal under the supervision of the handler.
- He stated that there is always two handlers present for the photo shoot. One handler is responsible for taking the picture and the other one handles the animal,
- He explained while the individual is posing with the animal, the handler stays within two to three feet of the animal to maintain a reasonable amount of control and intervene if it decides to move.
- He stated that the animal is not allowed to jump up on and/or turn around towards the individual during the photo shoot.
- He stated that the animal is not on any type of leash/harness during the photo shoot, and that there is no type of barrier present between the individual and the animal during the photo shoot.
- He stated that his animals, including the lion cub that was on exhibition at the Lake County Fair, are vaccinated appropriately. But, he can not say for sure if the cub was old enough to have received rabies vaccinations at the time of the alleged incident.
- Mr. Perry stated that although he believes the bite incident never occurred, he allowed the lion cub to be quarantined and inspected by the Iowa Department of Agriculture in order to show that he was willing to cooperate with officials.

- He stated that his vet, Dr. Jim Slattery of the Winthrop Vet Clinic, also examined the lion cub to verify that the animal was not showing any signs of diseases.
- He stated he was not present when the quarantine was issued by the state, but it was lifted when the conditions and terms were met.
- He stated that currently the lion cub is still located at his residence.
- Throughout the phone interview, Mr. Perry expressed his frustrations with USDA regarding past incidents. He explained that another bite incident allegedly occurred a few years back in New Mexico and an incident regarding the death of three tiger cubs also occurred (sic).
- He stated that another USDA investigator named Liz Kelpis, contacted him about these past incidents.
- Mr. Perry stated off the record that "that bitch does not know what she was talking about."
- He stated that USDA, APHIS, is unjustly holding him accountable for incidents that do not pertain to any type of regulations.
- Again, off the record, he stated that he has a friend that works in Fort Collins in a building next the USDA, APHIS building and says that USDA receives bombs threats weekly.
- He stated that "APHIS should watch out before there is another Oklahoma City bombing."
- He stated many individuals in the exhibition business, including him, are discussing bringing a class action law suit against APHIS.
- Mr. Perry stated throughout the interview that APHIS is conspiring with PETA and other animal right organizations and they are trying to put people out the animal exhibition business.

At the conclusion of our interview, I thanked Mr. Perry for visiting with me and told him I was sorry that I did not get to talk with him in person. I told him that I found the details of our conversation to be interesting. Mr. Perry stated he would fax me a copy of the waiver. I gave him my fax number and instructed Mr. Perry to call me if he has any questions and ended the conversation.

NAME OF PERSON DOCUMENTING INTERVIEW:
Katherine L. Lies, Investigator

SIGNATURE:
s/ Katherine L. Lies

DATE:
December 30, 2004

CX 40.

39. From the Interview Log (CX 40), it is clear that Investigator Lies conducted an excellent interview: she kept Craig Perry talking, despite the unpleasant encounters he had been having with APHIS officials. Investigator Lies took good notes, to create such a detailed Log from a “20 to 30 minute” telephone call. Investigator Lies wrote from her notes into the Log for the most part what Craig Perry said; for the most part, she did not write what she said to prompt his responses. Investigator Lies was in Iowa; Craig Perry was in Colorado. Craig Perry had responded immediately to Investigator Lies’s message left with his “fiance” and when Investigator Lies called him back, he stayed on the phone with Investigator Lies for a lengthy conversation. Craig Perry confided in Investigator Lies, in his (“off the record”) complaints about another USDA investigator named Liz Kelpis, and in his (“off the record”) warning that USDA APHIS in Fort Collins (Colorado) “receives bombs threats weekly” according to his friend who works in the next building, and “should watch out before there is another Oklahoma City bombing.”

40. Did Investigator Lies feel threatened, intimidated, or interfered with? At the hearing Investigator Lies’s testimony continued, in part (Tr. 291-98):

THE WITNESS: I have completed reading the document. (CX 40)

JUDGE CLIFTON: All right. Was there anything you wanted to add to the bullet points in CX-40?

THE WITNESS: No, there is not.

JUDGE CLIFTON: When you talked with Mr. Perry on that occasion, did you already have the photograph of Mr. Bogdala with the lion?

THE WITNESS: I do not recall.

JUDGE CLIFTON: When you wrote the description of how the photo was taken which I'm trying to find, I should have marked it when I read it.

THE WITNESS: It's about halfway down on page 2.

JUDGE CLIFTON: I think so. What I wanted to ask you, and I haven't found the specific bullet, but were you aware that the animal was on the ground or the floor and that the person posing crouched next to it?

THE WITNESS: I do not recall.

JUDGE CLIFTON: Ms. Carroll, back to you.

BY MS. CARROLL:

Q What did you do after your phone call with Mr. Perry?

A After the phone call ended I contacted my immediate supervisor.

Q Why did you do that?

A I thought some of the details of our conversation that I should alert my supervisor to them.

Q Why?

A Because I felt that the interview did not go very well and I believe some of the comments that were made were threatening.

Q Which ones were those?

A Some of the derogatory statements about other investigators and the comment about APHIS should watch out before there's another Oklahoma City bombing.

Q And did you have occasion to speak with anyone else or communicate with someone else besides your supervisor about your conversation with Mr. Perry?

A Yes.

Q Who was that?

A I believe it was a Mr. Chadwick Olms, O-l-m-s, and I believe he identified himself as security at Fort Collins, Colorado at the Western Regional Office.

Q And what did Mr. Olms ask you for?

MR. THORSON: Objection. It calls for hearsay, your Honor.

JUDGE CLIFTON: What did he ask her for? I don't know that that's being offered for the truth of the matter asserted. I'll allow the answer.

THE WITNESS: He asked me to create a memo documenting my conversation--

MS. CARROLL: And did you do that?

THE WITNESS: --and my feelings in regards to the conversation I had with Craig Perry.

MS. CARROLL: Did you do that?

THE WITNESS: Yes, I did.

BY MS. CARROLL:

Q Let me ask you to turn to complainant's Exhibit 50. Can you identify that exhibit?

A Yes, I can.

Q What is it?

A It is the memo that I sent to Mr. Chadwick Olms.

Q And it says, "during our conversation I believe Mr. Perry was trying to intimidate me by being confrontational and offensive. Many times the tone of his voice was intensive and combative." And can you describe what you mean by that?

A Um, he seemed like he really wanted to express his discontentment with USDA APHIS and he was. I mean he just seemed like he was argumentative and he was very I guess agitated and excited in regards to the reason why I needed to talk to him.

Q Now you believe Mr. Perry was trying to intimidate you. What do you think he was trying to obtain by that?

A When I say he was trying to intimidate me maybe I was more he was like trying to control the conversation. He wanetd (sic) to let me know what type of agency I was working for.

Q Did he ever shout?

A Yes, he did.

Q And besides the language that you had identified in your interview log did he use profanity?

A On occasion he did.

Tr. 291-96.

41. The "memo that I sent to Mr. Chadwick Olms" is not dated (CX 50) and to some extent re-words Investigator Lies's Interview Log. It also contains more of Investigator Lies's impressions, including:

Based on the conversation I had with Mr. Perry, I got the impression that he was not being completely honest with me regarding past investigations. At times, he seemed argumentative and hostile when talking about USDA, APHIS. He stated his hostility towards USDA was not personally directed at me and he appreciated that I was willing to listen to him.

CX 50 at p. 3.

The last "bullet points" of the memo to Mr. Chadwick Olms show a subtle shift from those of the Interview Log:

- He stated that USDA is hiring and allowing themselves to be infiltrated by animal rights activists.
- He stated that USDA is getting millions of dollars from organizations like PETA.
- He stated that USDA is biting the hand that feeds them.
- He stated that if USDA keeps trying to put people like him out of business they are going to eliminate their reason to exist and they will no longer have a job to do.
- He stated that USDA, APHIS is upsetting many people in his type of business and they are talking about bringing a class action lawsuit against USDA.
- He stated that he knows what goes on in the USDA, APHIS building in Ft. Collins, CO.
- He stated off the record that he has a friend who works in the building next to it.
- He stated that his friend has told him that APHIS gets bomb threats weekly and that she hates to go into the building.
- He stated that the APHIS personnel that work in the building believe they are above the law.
- He stated that many of the APHIS staff are animal rights activist (sic).

- He stated that, “APHIS should watch out before there is another Oklahoma City bombing.”
- He stated that USDA should stop conspiring with PETA and other animal rights organization (sic) before something bad happens.
- He stated that he believes USDA is conspiring with PETA and other animal rights organizations in order to put people like him out of business.

42. Even based on APHIS’s evidence, including especially Investigator Lies’s testimony and CX 40 and CX 50, I do not find by a preponderance of the evidence that Craig Perry violated 9 C.F.R. § 2.4; instead, I find that allegation not proved:

§ 2.4 Non-interference with APHIS officials.

A licensee . . . shall not interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official in the course of carrying out his or her duties.
9 C.F.R. § 2.4

43. The allegation in the Complaint is that Craig Perry “interfered with and threatened APHIS officials in the course of carrying out their duties, and specifically, advised an APHIS investigator, during the course of her investigation, among other things, that USDA should ‘stop conspiring with PETA’ and other animal rights organization ‘before something bad happens,’ and that APHIS should watch out before there is another Oklahoma City bombing,” in willful violation of section 2.40(b)(1) of the Regulations (9 C.F.R. § 2.4). I find that while Craig Perry’s warnings may have been wrong, mistaken, misguided, and better left unsaid, I conclude that none rise to the level of interference, threat, abuse, or harassment. From my study of the record as a whole, I conclude that Craig Perry’s style is to do what he told Investigator Lies he would do: “He stated many individuals in the exhibition business, including him, are discussing a class action law suit against APHIS.” That would, in my opinion, be Craig Perry’s more likely course of action, certainly not

violence, and not even intimidation. Craig Perry was not trying to intimidate Investigator Lies, although he obviously was quite sure of himself in some opinions he expressed to Investigator Lies where I think he was just wrong.

44. August 1, 2004, at the Lake County Fair, in Grayslake, Illinois. When Investigator Lies interviewed Craig Perry, she was investigating alleged noncompliance with animal handling regulations, on August 1, 2004, at the Lake County Fair, in Grayslake, Illinois, that included the allegation that Mr. John Bogdala was bitten by a lion cub.

45. The allegations (quoting from paragraphs 33 and 34 of the Complaint), are that Craig Perry and the corporation:

“failed to handle animals as expeditiously and carefully as possible in a manner that would not cause trauma, unnecessary discomfort, behavioral stress, or physical harm, and specifically, allowed the public to handle and feed lion cubs, in willful violation of the Regulations and, as a result of such handling, the lion injured a member of the public, and was consequently quarantined for rabies testing. 9 C.F.R. § 2.131(b)(1) [formerly 2.131(a)(1)].

from Paragraph 33 of the Complaint. And

“failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, in willful violation of the Regulations, and specifically exhibited a lion cub to the public without any barriers or distance between the animal and the public to prevent the public from contacting the animal, and, as a result of such handling, the lion injured a member of the public, and was consequently quarantined for rabies testing. 9 C.F.R. § 2.131(c)(1) [formerly 2.131(b)(1)].

from Paragraph 34 of the Complaint.

46. Craig Perry did not believe the lion cub had bitten John Bogdala. But I do. It wasn’t much of a bite; Mr. Bogdala states he did not even know he had been bitten, until later. The

lion cub's bite broke the skin a little bit. Tr. 362. Mr. Bogdala, who had been a United Parcel Service delivery man, thought the bite was nothing. But, at his wife's insistence, Mr. Bogdala sought medical attention, and the medical channels worked as they should; Craig Perry was contacted to put his lion cub in quarantine, which he did.

47. The photograph of John Bogdala with a lion cub is CX 45. Craig Perry exhibited during August 2004 at the Lake County Fair, Grayslake, Illinois. Members of the public could pay to have a photo with a lion cub. Mr. John Bogdala was a patron of Craig Perry's, getting his photograph taken (CX 45), for the grandkids. Tr. 353. Mr. Bogdala testified in part (Tr. 353-54):

Ms. Carroll: Okay, and did you happen to have your picture taken with a lion cub while you were at the fair?

Mr. Bogdala: Yes ma'am.

Ms. Carroll: Could you just please describe what you did insofar as arriving at the venue for the lion cub and the process of getting your picture taken and what happened?

Mr. Bogdala: Well, I just thought it would be kind of neat to have a picture taken, you know. It's for the grandkids is what it was, and they were right across the midway from us, not too far. So I just went over there and had my picture taken, stood in line and --

Ms. Carroll: And what happened when you -- well, can you describe the enclosure or the area that you were in?

Mr. Bogdala: Yes. It's like a little 10 by 10 cage, you know, and they take you in there and bring the cub in and --

Ms. Carroll: And what happened when they brought the cub in?

Mr. Bogdala: Well, I don't know if I was holding him right or wrong or whatever, but he got up on my shoulder and he bit me, you know. I didn't even realize he bit me, but then he was kind of feisty, you know.

So he took him away, Mr. Perry I think I guess it was, and he brought in another one, a female, which was pretty docile.

Ms. Carroll: And then you had your picture taken?

Mr. Bogdala: Yes, that's the picture here I got.

CX 45 (photo), Tr. 353-54.

48. The lion cub is lying on the straw with head up, Mr. Bogdala kneeling behind, with one hand around the lion cub's shoulder. The lion cub is larger than most big housecats, but not by much. CX 45.

49. The man who "took him away" and "brought in another one" was not Mr. Perry, but was instead a handler who worked roughly full-time as a volunteer for Craig Perry, a man named Erich Cook. Mr. Cook testified in part (Tr. 1873-76):

Mr. Thorson: Were you there at that fair?

Mr. Cook: Yes.

Mr. Thorson: Were you in charge of taking photographs?

Mr. Cook: I was in charge of cub care.

Mr. Thorson: Were you around the photograph area?

Mr. Cook: Yes.

Mr. Thorson: Was there a photographer again?

Mr. Cook: Absolutely.

Mr. Thorson: This gentleman claimed that he was either bitten or scratched by that lion cub.

Were you aware of that at the time of the fair?

Mr. Cook: I wasn't at the time of the fair actually.

Mr. Thorson: Just explain to the Court again what your job would be. It would be to watch that cub while they were taking the photograph?

Mr. Cook: The photographer's job was to watch the people to make sure they sat where they sat and that's what they did. My job was to watch the cats, the cubs. If the cub did anything, moved out of any area where I thought it was a safety issue, then my job was to remove the cat from that area and remove him from the people's area.

That has always been my focus was watching the cat the whole time. I don't know about this. I don't -- I guess I don't believe this happened.

Mr. Thorson: So when you were there -- and you were there most or all the time?

Mr. Cook: All the time.

Mr. Thorson: -- you never saw an incident where a lion cub would have either scratched or bitten somebody's shoulder?

Mr. Cook: Never. Never. No, because that's something, one, I would have remembered and, two, I mean, that's something I would have had to go tell Craig (Craig Perry) immediately about. I mean, immediately. If I remember, I don't think I heard anything about this guy until four days after. I think it was at the end of the fair when I first heard

anything about this. Like I said, that's why because I was the man in the cage with that cat I don't believe it ever happened.

Mr. Thorson: Do you have any idea which cat this was or cub this was?

Mr. Cook: This would have been Shelby.

CX 45 (photo), Tr. 1873-76.

[Shelby was not the one that bit Mr. Bogdala; no photo was accomplished with the one that bit Mr. Bogdala.]

50. Mr. Bogdala testified on cross-examination in part (Tr. 361-62):

Mr. Thorson: And at the time, you went to the lion exhibit and you had your picture taken, were you even sure you'd been bitten or were you unsure whether you'd been bitten at all at that point in time?

Mr. Bogdala: Well, I just felt something, but when I got back to work and I looked and I could see teeth marks.

Mr. Thorson: Okay.

Mr. Bogdala: Broke the skin a little bit.

Mr. Thorson: All right. Didn't tear your shirt though, you said here (CX 41). It didn't tear your shirt you said?

Mr. Bogdala: No, no it didn't.

Tr. 361-62.

51. Craig Perry was skeptical about whether Mr. Bogdala's injury was caused by his lion cub. Tr. 3765-68. First, no report was made at the fair, not to him, not to his volunteer

employees, not to any official at the fair. Tr. 3773. Second, Craig Perry questioned Erich Cook, when the month-long quarantine was imposed on his cub, and Mr. Cook reported that Mr. Bogdala's injury could not have happened on his watch. Craig Perry was not persuaded that Mr. Bogdala's injury came from his lion cub, even after hearing the testimony of Mr. and Mrs. Bogdala. Tr. 3770 - 3774.

52. Craig Perry cautiously avoided the problems an exhibitor has with older, larger, more powerful big cats (juvenile and adult big cats) being used in photo shoots with members of the public. Craig Perry chose to use cubs for the lion and tiger photo shoots. There can be problems with cubs, too. Even if hundreds and thousands of photo shoots have occurred safely with no complications, the problems become evident when a lion cub or tiger cub bites a member of the public, such as John Bogdala. Some exhibitors address the problems by not allowing touching, by placing plexiglass between the cubs and the members of the public for the photo shoots. Some exhibitors address the problems by permitting only their trained handlers (their employees) to touch the cubs; not permitting the members of the public to touch the cubs or vice versa. Some exhibitors address the problems with a "tight rein" through some type of restraint on the cubs. When the "kind of feisty" little male cub reached Mr. Bogdala's shoulder, the handling error had already occurred - - it was too late to maintain minimal risk of harm.

Order

53. The following **cease and desist** provisions of this Order (paragraph 54) shall be effective on the day after this Decision becomes final. [See paragraph 57.]

54. Respondents Craig Perry and the corporation, their agents and employees, successors and assigns, directly or indirectly, or through any corporate or other device or person, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards issued thereunder.

55. Respondent Craig Perry is assessed civil penalties totaling **\$7,250**; the corporation is also liable (joint and several obligation) (beginning June 20, 2002) for **\$6,750** of that total, which the Respondents shall pay by certified check(s), cashier's check(s), or money order(s), made payable to the order of "**Treasurer of the United States**," within 90 days after this Decision becomes final. [See paragraph 57.]

56. Respondent Craig Perry and the corporation shall reference **AWA 05-0026** on their certified check(s), cashier's check(s), or money order(s). Payments of the civil penalties **shall be sent by a commercial delivery service, such as FedEx or UPS**, to, and received by, Colleen A. Carroll, at the following address:

US Department of Agriculture
Office of the General Counsel, Marketing Division
Attn: Colleen A. Carroll
South Building, Room 2325B, Stop 1417
1400 Independence Ave SW
Washington DC 20250-1417

Finality

57. This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A).

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties, and a separate copy shall be served upon Le Anne Smith (also addressed to Mr. Thorson).

Done at Washington, D.C.
this 29th day of March 2012



Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building Room 1031
1400 Independence Avenue, SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time

for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]Judicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145