

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
MILTON WAYNE SHAMBO, an)	AWA Docket No. 05-0024
individual doing business as Wayne's)	
World Safari and Arbuckle Wilderness;)	
ANIMALS, INC., a Texas domestic)	
stock corporation doing business as)	
Wayne's World Safari; and)	
ANIMALS, INC., an Oklahoma)	
domestic stock corporation doing)	
business as Arbuckle Wilderness,)	
)	
Respondents.)	Decision and Order by Reason of Default

Preliminary Statement

This is a Decision and Order by Reason of Default as to all the respondents, that is, Milton Wayne Shambo; Animals, Inc., a Texas corporation; and Animals, Inc., an Oklahoma corporation. This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 et seq.), by a complaint filed on July 8, 2005, by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture ("APHIS"), alleging that the respondents willfully violated the Act and the regulations and standards ("Regulations" and "Standards") issued thereunder (9 C.F.R. § 1.1 et seq.).

The Hearing Clerk sent copies of the complaint, by certified mail, return receipt requested, to respondents on July 12, 2005. Respondents were informed in the accompanying letter of service that an answer to the complaint should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that

allegation. Respondents Milton Wayne Shambo and Animals, Inc., (Oklahoma) received the complaint on July 16, 2005.¹ Respondent Animals, Inc., (Texas) received the complaint on October 4, 2005.²

Respondents have failed to file an answer, and the material facts alleged in the complaint, which are admitted by the respondents' failure to file an answer (7 C.F.R. §1.136(c)), are adopted and set forth herein as Findings of Fact. This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice.³

FINDINGS OF FACT

1. Respondent Animals, Inc., is an Oklahoma domestic stock corporation doing

¹ See Domestic Return Receipt for Article Numbers 7003 1670 0011 8982 5766; 7003 1670 0011 8982 5773.

² The U.S. Postal Service marked the Hearing Clerk's certified mailing to Animals, Inc. (Texas) "undeliverable as addressed" and returned it on July 25, 2005. On August 12, 2005, the Hearing Clerk sent said respondent, by certified mail addressed to its agent's address of record, copies of the complaint and Rules of Practice. See Memorandum to File, dated August 12, 2005. The U.S. Postal Service marked this mailing "refused" and returned it on August 29, 2005. See Memorandum to File, dated October 4, 2005. On October 4, 2005, in accordance with section 1.147(c)(1) of the Rules of Practice, the Hearing Clerk served respondent, by regular mail, with copies of the complaint and the Rules of Practice. See *id.*

³ 7 C.F.R. § 1.139.

business as Arbuckle Wilderness (“AI-OK”) and whose agent for service of process is Wayne Shambo, Route 1, Box 63, Davis, Oklahoma 73030. At all material times mentioned herein, said respondent was operating as exhibitor, as that term is defined in the Act and the Regulations, under the direction, control and management of its president, secretary, and sole shareholder: respondent Shambo.

2. Between November 2, 1998 and on or about November 25, 2002, Respondent Animals, Inc., was a Texas domestic stock corporation doing business as Wayne’s World Safari (“AI-TX”) and whose agent for service of process was Wayne Shambo, 400 Mann Street, Suite 901, Corpus Christi, Texas 78401. At all material times mentioned herein, said respondent was operating as exhibitor, as that term is defined in the Act and the Regulations, under the direction, control and management of its president, secretary, and director: respondent Shambo.

3. Respondent Milton Wayne Shambo is an individual doing business as Wayne’s World Safari and Arbuckle Wilderness, whose mailing address is Route 1, Box 63, Davis, Oklahoma 73030. At all times mentioned herein, said respondent was licensed and operating as an exhibitor as that term is defined in the Act and the Regulations.

Between August 26, 1999 and August 26, 2002, respondent Shambo held Animal Welfare Act license number 74-C-0467 issued to “WAYNE SHAMBO DBA: WAYNE’S WORLD SAFARI.”

Between April 8, 2002, and April 8, 2004, Respondent Shambo held Animal Welfare Act license number 73-C-0146 issued to “WAYNE SHAMBO DBA: ARBUCKLE WILDERNESS.”

During all material times respondent Shambo exhibited animals at respondent AI-TX’s facility known as Wayne’s World Safari in Mathis, Texas and respondent AI-OK’s facility known as Arbuckle Wilderness in Davis, Oklahoma.

4. The acts, omissions, and failures to act by respondent Shambo identified herein were within the scope of said respondent's offices, and are deemed the acts, omissions and failures of respondents AI-TX and AI-OK, as well as respondent Shambo, for the purpose of construing or enforcing the provisions of the Act and Regulations. Respondents Shambo, AI-TX, and AI-OK, are herein frequently referred to collectively as "respondents."

5. APHIS personnel conducted inspections of respondents' facilities, records and animals for the purpose of determining respondents' compliance with the Act and the Regulations

and Standards on:

<u>Date</u>	<u>Site Location</u>	<u>Regulated Animals</u>
August 21, 2000	Davis, OK	77
September 19, 2000	Mathis, TX	155
January 19, 2001	Mathis, TX	approximately 158
January 23, 2001	Mathis, TX	158
April 19, 2001	Mathis, TX	unavailable
February 12, 2001	Davis, OK	749
May 10, 2001	Mathis, TX	unavailable
September 5, 2001	Davis, OK	609
November 7, 2001	Davis, OK	725
November 29, 2001	Davis, OK	662
February 26, 2002	Davis, OK	466
August 12, 2003	Davis, OK	553

NONCOMPLIANCE WITH REGULATIONS

6. On November 29, 2001, respondents violated section 2.4 of the Regulations by failing to not interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official in the course of carrying out his or her duties, and specifically, respondents verbally abused APHIS officials in the course of carrying out their duties.

7. Respondents violated the attending veterinarian and veterinary care regulations, as follows:

a. January 19, 2001 (TX). Respondents failed to maintain a written program of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine, and specifically, failed to obtain veterinary care for a spider monkey that had an injured finger and sores on his hand.

b. Respondents failed to establish and maintain programs of adequate veterinary care, that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care, and specifically:

- (i) October 19, 2000 (TX). Respondents failed to provide veterinary treatment, as directed by their attending veterinarian, to a bobcat that exhibited signs of behavioral stress.
- (ii) May 10, 2001 (TX). Respondents failed to provide veterinary treatment, as directed by their attending veterinarian, to a caracal, coatimundi and kinkajou.
- (iii) May 10, 2001 (TX). Respondents allowed the goat's hoofs to become overgrown, thereby risking disease and injury.
- (iv) February 12, 2001 (OK). Respondents failed to obtain treatment for a female goat in the petting zoo that appeared thin and lame.

c. On or about December 26, 2000 through on or about January 5, 2001 (OK).

Respondents failed to establish and maintain programs of adequate veterinary care that included the availability of appropriate facilities, personnel, equipment, and services to provide care to three lemurs, one spider monkey, two giraffes, one female addax, one female gemsbok, four blackbucks (two adults, two juvenile), two adult elk, one male nilgai antelope, one adult fallow deer, one juvenile eland, during an eight-day ice storm, which failure resulted the animals' deaths.

8. On September 5, 2001 (OK). Respondents willfully violated the Regulations by failing to make, keep, and maintain records that fully and correctly disclose required information concerning animals in their possession, and specifically, failed to maintain accurate records concerning covies that arrived at the facility in April 2001 and had no records concerning a fennec fox.

9. On or about December 26, 2000 through on or about January 5, 2001, respondents violated the Regulations by failing to take appropriate measures to alleviate the impact of climatic

conditions that present a threat to an animal's health or well-being, and specifically, failed to provide appropriate heat, shelter, and care to hundreds of animals during an eight-day ice storm, which failure resulted in the deaths of no fewer than eighteen animals.

10. Respondents violated the Regulations by failing to meet the minimum facilities and operating standards for nonhuman primates, as follows:

a. Respondents failed to spot-clean hard surfaces of primary enclosures for nonhuman primates daily to prevent accumulation of excreta or disease hazards, and specifically:

(i) October 19, 2000 (TX). Respondents failed to remove old food, old bedding and fecal matter from the nonhuman primates' enclosures (Monkey Barn), thereby depriving the animals of the freedom to avoid contact with excreta.

(ii) January 19, 2001 (TX). Respondents failed to remove old food, old bedding, excessive feces, and algae from the nonhuman primates' enclosures, thereby exposing the animals to disease hazards.

b. Respondents failed to equip housing facilities with disposal facilities and drainage systems that are constructed, installed, maintained, and operated so that animal wastes and water are rapidly eliminated and the animals stay dry and as to minimize vermin and pest infestation, insects, odors, and disease hazards, and specifically:

(i) January 19, 2001 (TX). The drainage system in the nonhuman primate housing facility allowed water, liquid wastes, feces, and algae to accumulate in the drain, thereby exposing the animals to disease hazards.

(ii) January 23, 2001 (TX). The drainage system in the nonhuman primate housing facility allowed water, liquid wastes, feces, and algae to accumulate in and around the animals' enclosures (including two spider and two vervet monkeys),

thereby depriving the animals of the ability to stay clean, dry and free from disease.

(iii) April 19, 2001 (TX). The drainage system in the nonhuman primate housing facility allowed water, liquid wastes, feces and algae to accumulate in and around the animals' enclosures, thereby depriving the animals of the ability to stay clean, dry and free from disease.

(iv) May 10, 2001 (TX). The drainage system in the nonhuman primate housing facility allowed water, liquid wastes, feces and black algae to accumulate in and around the animals' enclosures and in the drains, thereby depriving the animals of the ability to stay clean, dry and free from disease.

c. Respondents failed to maintain all surfaces of nonhuman primate facilities on a regular basis, and specifically:

(i) August 21, 2000 (OK). Respondents failed to repair or replace the peeling paint in the nonhuman primates' enclosures.

(ii) September 5, 2001 (OK). Respondents failed to repair and remove the chipped concrete flooring from spider monkeys' enclosure, and the peeling paint and rusted posts in the chimpanzees' enclosure.

d. Respondents failed to light indoor housing facilities well enough to permit routine inspection and cleaning of the facility, and observation of the nonhuman primates, and specifically:

(i) August 21, 2000 (OK). There were no functioning lights in and around the enclosure housing six spider monkeys.

(ii) November 29, 2001 (OK). Respondents housed nonhuman primates (lemurs and vervets) in an enclosure that contained one small light bulb that failed to provide

adequate lighting to permit inspection and cleaning.

(iii) February 12, 2001 (OK). The two functioning light bulbs in the chimpanzees' enclosure failed to provide adequate lighting to permit inspection and cleaning.

e. Respondents failed to construct and maintain facilities so that they are structurally sound for the species of nonhuman primates housed therein, maintained in good repair and that protect the animals from injury, contain the animals, and restrict other animals from entering, and specifically:

(i) February 12, 2001 (OK). Respondents failed to repair the sharp, chewed edges of the macaques' enclosure.

(ii) September 5, 2001 (OK). Respondents failed to repair or remove sharp, protruding nails that pointed into the lemurs' enclosure and the sagging roof that leaked in the chimpanzees' enclosure.

(iii) September 5, 2001 (OK). The interior area of shelters provided to four lemurs could not be readily cleaned and sanitized.

f. On or about December 26, 2000 through on or about January 5, 2001 (OK).

Respondents failed to sufficiently heat sheltered housing when necessary to protect the nonhuman primates from extreme temperatures to provide for their health and well-being, and so the ambient temperature does not fall below 45 F for more than 4 consecutive hours when nonhuman primates are present, and specifically, failed to provide sufficient heat to nonhuman primates during an eight-day ice storm, which failure caused the deaths of three lemurs and one spider monkey.

g. Respondents failed to provide nonhuman primates with adequate shelter from the

elements at all times that provides protection from the sun, rain, snow, wind, and cold, and from any weather conditions that may occur, and specifically:

(i) October 19, 2000 (TX). The nonhuman primates' shelters contained gaps between the walls, roofs, and floors and, therefore, failed to adequately protect the animals from wind, rain, and cold temperatures.

(ii) January 19, 2001 (TX). The nonhuman primates' shelters contained gaps between the walls, roofs, and floors and, therefore, failed to adequately protect the animals from wind, rain, and cold temperatures.

h. Respondents failed to have barriers between fixed public exhibits housing nonhuman primates and the public any time the public is present, in order to restrict physical contact between the public and the nonhuman primate, and specifically:

(i) November 7, 2001 (OK). Respondents housed one lemur in an enclosure that lacked an adequate barrier between the enclosure and members of the public, thereby allowing the public to have direct contact with the animal.

(ii) August 12, 2003 (OK). Respondents housed two lemurs and two vervets in enclosures that lacked adequate barriers between the enclosures and members of the public, thereby allowing the public to have direct contact with the animals.

i. August 12, 2003 (OK). Respondents failed to develop, document, and follow an appropriate plan for environment enhancement to promote the psychological well-being of nonhuman primates that is in accordance with the currently accepted professional journals or reference guides, or as directed by the attending veterinarian, and specifically, respondents' plan for environmental enrichment failed to describe the methods of enrichment and how often each animal (including two vervets, two lemurs, and one spider

monkey) would receive enrichment.

j. September 5, 2001 (OK). Respondents failed to provide nonhuman primates with diets that are appropriate for the species, size, age, and condition of the animals, and for the conditions in which the animals are maintained and with food that is clean, wholesome, and palatable to the animals that is of sufficient quantity and nutritive value to main a healthful condition, weight range, and to meet the animals' normal daily nutritional requirements, and specifically, respondents fed nonhuman primates expired food that failed to meet the animals' vitamin needs.

k. October 19, 2000 (TX). Respondents failed to provide nonhuman primates with a sufficient quantity of potable water, in water receptacles that are clean and sanitized, and specifically, the squirrel monkeys' water and water receptacle were contaminated with green, dirty water.

l. Respondents failed to keep premises where housing facilities are located, including buildings and surrounding grounds, clean and in good repair to protect the nonhuman primates from injury, to facilitate husbandry practices, and to reduce or eliminate breeding and living areas for rodents, pests and vermin, and specifically:

(i) August 21, 2000 (OK). Respondents failed to remove rotten produce from the refrigerator (including a fruit box infested with maggots) and the food-prep room was infested with flies and had unsanitary counters and floors.

(ii) February 12, 2001 (OK). The food-prep room had unsanitary floors and counters.

m. August 21, 2000 (OK). Respondents failed to have enough employees to carry out the requisite level of husbandry practices and care, that are trained and supervised by an

individual who has the knowledge, background, and experience in proper husbandry and care of nonhuman primates, and specifically, failed to have enough adequately trained and supervised employees to provide the minimally-adequate husbandry and care to their nonhuman primates as evidenced by the unsanitary conditions of respondents' facility, including the animals' enclosures and food-prep area.

11. Respondents violated section the Regulations and Standards by failing to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, as follows:

a. Respondents failed to construct indoor and outdoor housing facilities so that they were structurally sound and failed to maintain them in good repair to protect the animals from injury and to contain the animals, and specifically:

(i) October 19, 2000 (TX). Respondents failed to repair the roofs and sides of four shelters used by hoof stock (drive through area).

(ii) January 19, 2001 (TX). Respondents failed to repair the roofs and the sides of four shelters used by hoof stock in the drive through area.

(iii) May 10, 2001 (TX). Respondents failed to repair, replace or remove the rotting roof and sharp, protruding nails in the cavy's shelter; the chewed shelter in the prairie dogs' enclosure; and housed lions in enclosures that could not adequately contain them.

(iv) February 12, 2001 (OK). Respondents failed to repair the roofs in the tigers' and cavy's enclosures, the broken door in the porcupines' enclosure, and the coatimundis' shelter lacked a back side.

(v) September 5, 2001 (OK). Respondents housed a coatimundi, a fennec fox,

three cavies, three camels, two rhinoceroses, a serval and a white tiger in enclosures that were chewed, splintered and rotting wood; housed deer in enclosures that allowed three animals to escape; housed a tiger in an enclosure that lacked adequate structural integrity to contain him; and, the porcupine's and bears' shelters were structurally unsound and risked injury to the animals.

b. Respondents failed to store supplies of food and bedding in facilities that adequately protect such supplies against deterioration, molding, or contamination by vermin, and to provide refrigeration for perishable food, and specifically:

(i) August 21, 2000 (OK). Respondents failed to protect food supplies against deterioration and contamination by vermin, including food stored in three containers that had cracked lids, one open feed bag, and uncovered meat stored in the freezer.

(ii) February 12, 2001 (OK). Respondents failed to protect food supplies against deterioration and contamination by vermin, including food stored in two containers with holed and cracked lids.

(iii) November 7, 2001 (OK). Respondents failed to protect food supplies against deterioration and molding by storing fresh produce next to spoiled and moldy produce.

c. Respondents failed to make provisions for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris and to provide and operate disposal facilities as to minimize vermin infestation, odors, and disease hazards, and specifically:

(i) April 19, 2001 (OK). Respondents failed to remove excreta and manure from in and around the rhinoceroses' enclosure.

(ii) September 5, 2001 (OK). Respondents failed to remove trash, insulation,

and feces from the entrance of the coatimundi's enclosure.

d. Respondents failed to provide all animals kept outdoors with sufficient shade by natural or artificial means, when sunlight is likely to cause overheating or discomfort of animals, and specifically:

(i) April 19, 2001 (OK). Respondents failed to provide lions and giraffes with sufficient shade from sunlight.

(ii) May 10, 2001 (TX). Respondents failed to provide one juvenile deer and two juvenile calves with sufficient shade from sunlight.

e. Respondents failed to provide animals kept outdoors with natural or artificial shelter to afford them protection and to prevent their discomfort, and specifically:

(i) October 19, 2000 (OK). Respondents failed to provide any bedding to the prairie dogs and adequate shelter to four porcupines that shared one small wood box and two adult wolves that shared one dog house.

(ii) On or about December 26, 2000 through on or about January 5, 2001 (OK). Respondents failed to provide adequate shelter to giraffes, rhinoceroses, gemsbok, blackbucks, elk, antelope, eland and deer, which failure caused the deaths of no fewer than 12 animals.

(iii) January 19, 2001 (TX). Respondents failed to provide adequate shelter, including bedding, to no fewer than thirty animals (small felids, caracal, serval, bobcat, civits, kudu, cavies, cappybara, wolves, rhinoceroses, hyena, bears, lions, cougars, leopards, and tigers).

(iv) January 23, 2001 (TX). Respondents failed to provide adequate shelter to two wolves that shared one small dog house.

- (v) May 10, 2001 (TX). Respondents failed to provide adequate shelter to one juvenile deer and two calves.
- f. Respondents failed to provide a suitable method to rapidly eliminate excess water from animal enclosures, and specifically:
 - (i) October 19, 2000 (TX). The bison, camels, pigs and hoofstock had to walk through and stand in water and mud to access their water receptacles.
 - (ii) September 5, 2001 (OK). Respondents housed animals (petting area, four cavies and a fennec fox) in enclosures with standing water, thereby depriving the animals of the ability to stay clean and dry.
 - (iii) November 7, 2001 (OK). Respondents failed to rapidly eliminate standing water from the giraffe's enclosure; the giraffe had to walk through standing water and mud to access their outdoor paddock.
 - (iv) November 29, 2001 (OK). The rhinoceros and deer (near petting area) had to walk through and stand in water and mud to access their shelters, food and water receptacles.
- g. Respondents failed to construct a perimeter fence that restricts animals and persons from going through or under it, and specifically:
 - (i) On or about October 19, 2000 through on or about January 19, 2001 (OK). Respondents' perimeter fence lacked sufficient height to keep animals in and unauthorized persons out.
 - (ii) August 21, 2000 (OK). Respondents failed to construct a perimeter fence around dangerous animals, including large felids, bears, wolves, rhinoceros and nonhuman primates.

- (iii) September 5, 2001 (OK). Respondents' perimeter fence failed to contain their animals; APHIS officials observed three deer outside the perimeter fence.
 - (iv) November 7, 2001 (OK). Respondents' perimeter fence failed to contain their animals; APHIS officials observed two deer in the public parking area.
- h. Respondents failed to provide animals with food that is wholesome, palatable, free from contamination and of sufficient quantity and nutritive value to maintain good animal health, that is prepared with consideration for the age, species, condition, size, and type of animal, and that is located so as to be accessible to all animals in the enclosure and placed so as to minimize contamination, and specifically:
 - (i) October 19, 2000 (TX). The food trough in the petting zoo contained old, wet, and spoiled food and the red deer appeared thin and had no food.
 - (ii) January 19, 2001 (TX). The hoofstocks' food supply was contaminated with dirt and mud.
- i. October 19, 2000 (TX). Respondents failed to keep food receptacles clean and sanitary at all times, and specifically, provided animals (petting area) with a food receptacle that was contaminated with old, wet, and spoiled food.
- j. Respondents failed to make potable water accessible to the animals at all times, or as often as necessary for the animals' health and comfort, and to keep water receptacles clean and sanitary, and specifically:
 - (i) October 19, 2000 (TX). The serval's water receptacle was rusted and could not be sanitized; the water provided to three racoons, two wolves, one capybara, three kudu, four lechews and petting zoo animals was contaminated with algae and dirt; the racoons' water receptacle was contaminated with green algae; and two

civets had no water at all.

(ii) January 19, 2001 (TX). The two wolves' water and water receptacle were contaminated with dirty, green water.

(iii) August 21, 2000 (OK). The only source of water available to animals in the petting zoo was a dirty wading pool and the water receptacles used by the cougars and tigers were dirty.

k. Respondents failed to remove excreta from primary enclosures as often as necessary to prevent contamination of animals, minimize disease hazards, and reduce odors, and specifically:

(i) August 21, 2000 (OK). Respondents housed three rhinoceroses in an enclosure that contained excessive feces, urine, and mud.

(ii) January 19, 2001 (TX). Respondents housed two hyenas and racoons in enclosures that contained excessive feces and waste.

(iii) February 12, 2001 (OK). Respondents housed a goat in an enclosure (food-prep room) that contained 1½ inches of packed excreta and a coatimundi in an enclosure that had, at least, a two-day accumulation of feces.

(iv) April 19, 2001 (TX). Respondents housed rhinoceroses in an enclosure that contained excessive excreta.

l. Respondents failed to keep premises (buildings and grounds) clean and in good repair to protect the animals from injury and to facilitate the prescribed husbandry practices, and to place accumulations of trash in designated areas that are cleared as necessary to protect the health of the animals, and specifically:

(i) August 21, 2000 (OK). Respondents failed to remove rotten produce from

the refrigerator (including a fruit box infested with maggots), failed to repair or replace the leaking water tap and deteriorating plywood the rhinoceros barn, the food-prep room was infested with flies and had unsanitary counters and floors, veterinary instruments were stored in a brown liquid and were rusty, and the giraffes' barn was contaminated with bird feces.

(ii) February 12, 2001(OK). Respondents failed to clean the unsanitary floors and counters in the food-prep room and to remove or clean the unoccupied, dirty enclosures outside the food-prep room.

(iii) September 5, 2001 (OK). Respondents failed to remove flies, feces and trash from in and around the coatimundi's enclosure, the refrigerator's interior surfaces were rusted and could not be sanitized.

(iv) November 7, 2001 (OK). Respondents failed to remove rotten produce from the refrigerator and failed to repair or remove damaged fencing throughout the facility.

m. September 5, 2001 (OK). Respondents failed to establish and maintain a safe and effective program for the control of insects, ectoparasites, and avian and mammalian pests, and specifically, failed to establish an maintain a minimally-adequate program to control fly infestation in and around the food-prep room and the coatimundi's enclosure.

n. Respondents failed to utilize a sufficient number of adequately trained employees to maintain the professionally acceptable level of husbandry practices, under a supervisor who has a background in animal care, and specifically:

(i) January 19, 2001 (TX). Respondents failed to have a supervisor with an adequate background in animal care provide training and supervision to employees

who handled or provided husbandry and care to animals.

(ii) January 23, 2001 (TX). Respondents failed to utilize a sufficient number of adequately-trained employees to maintain an acceptable level of husbandry.

(iii) August 21, 2001 (OK). Respondents failed to utilize a sufficient number of adequately-trained employees to provide husbandry and care to their animals.

(iv) September 5, 2001 (OK). Respondents' four week-day employees and three week-end maintenance employees, were not sufficient to provide minimally-adequate care to respondents' 800 regulated animals (including nonhuman primates, large and small felids, large canids, bears, rhinoceroses, giraffes, camels, and hoofstock), as evidenced by the facility's disrepair and deterioration and the condition of the animals and their enclosures.

o. Respondents failed to house animals in compatible groups so as not to interfere with their health or cause them discomfort, and specifically:

(i) October 19, 2000 (TX). Respondents jointly housed incompatible animals, including red deer that appeared thin and overcrowded.

(ii) January 23, 2001 (TX). Respondents jointly housed incompatible animals in the drive through area; the animals competed for food and APHIS officials observed a juvenile Nilgai antelope that appeared to have been trampled to death by other animals in the enclosure.

CONCLUSIONS

1. The Secretary of Agriculture has jurisdiction.

2. On November 29, 2001, respondents willfully violated section 2.4 of the Regulations

by verbally abusing an APHIS official in the course of carrying out his or her duties. 9 C.F.R. §

2.4.

3. Respondents willfully violated the attending veterinarian and veterinary care regulations (9 C.F.R. § 2.40), as follows:

a. January 19, 2001 (TX). Respondents Milton Wayne Shambo and Animals Inc. (AI-TX) failed to comply with section 2.40(a)(1) of the Regulations. 9 C.F.R. § 2.40(a)(1).

b. Respondents failed to establish and maintain programs of adequate veterinary care, that included the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care, and specifically:

(i) October 19, 2000 and May 10, 2001 (TX). Respondents Milton Wayne Shambo and Animals Inc. (AI-TX) failed to comply with sections 2.40(a) and 2.40(b)(2) of the Regulations. 9 C.F.R. §§ 2.40(a), 2.40(b)(2).

(ii) February 12, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.40(a) and 2.40(b)(2) of the Regulations. 9 C.F.R. §§ 2.40(a), 2.40(b)(2).

c. On or about December 26, 2000 through on or about January 5, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with section 2.40(b)(1) of the Regulations. 9 C.F.R. § 2.40(b)(1).

4. September 5, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) willfully violated section 2.75 of the Regulations (9 C.F.R. § 2.75), by failing to make, keep, and maintain records that fully and correctly disclose required information concerning animals in their possession. 9 C.F.R. § 2.75(b)(1).

5. On or about December 26, 2000 through on or about January 5, 2001. Respondents willfully violated the Regulations (9 C.F.R. _ 2.131(e)), by failing to take appropriate measures to

alleviate the impact of climatic conditions that present a threat to an animal's health or well-being. 9 C.F.R. _ 2.131(e), formerly cited as 9 C.F.R. _ 2.131(d), *see* 69 Fed. Reg. 42089, 42102 (July 14, 2004).

6. Respondents willfully violated sections 3.75-3.77 of the Regulations by failing to meet the minimum facilities and operating standards for nonhuman primates (9 C.F.R. §§ 3.75-3.77), as follows:

- a. October 19, 2000 and January 19, 2001(TX). Respondents Milton Wayne Shambo and Animals Inc. (AI-TX) failed to comply with sections 2.100(a) and 3.75(c)(3) of the Regulations and Standards by failing to spot-clean hard surfaces of primary enclosures for nonhuman primates daily to prevent accumulation of excreta or disease hazards. 9 C.F.R. §§ 2.100(a), 3.75(c)(3).
- b. January 19, 2001, January 23, 2001, April 19, 2001, and May 10, 2001 (TX). Respondents Milton Wayne Shambo and Animals Inc. (AI-TX) failed to comply with sections 2.100(a), 3.75(f), and 3.80(a)(2)(v) of the Regulations and Standards by failing to equip housing facilities with disposal facilities and drainage systems that are constructed, installed, maintained, and operated so that animal wastes and water are rapidly eliminated and the animals stay dry and as to minimize vermin and pest infestation, insects, odors, and disease hazards. 9 C.F.R. §§ 2.100(a), 3.75(f), 3.80(a)(2)(v).
- c. August 21, 2000 and September 5, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.75(c)(1), (2) of the Regulations and Standards by failing to maintain all surfaces of nonhuman primate facilities on a regular basis. 9 C.F.R. §§ 2.100(a), 3.75(c)(1), (2).
- d. August 21, 2000, November 29, 2001 and February 12, 2001 (OK). Respondents

Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.76(c) by failing to light indoor housing facilities well enough to permit routine inspection and cleaning of the facility, and observation of the nonhuman primates. 9 C.F.R. §§ 2.100(a), 3.76(c).

e. Respondents failed to construct and maintain facilities so that they are structurally sound for the species of nonhuman primates housed therein, maintained in good repair and that protect the animals from injury, contain the animals, and restrict other animals from entering, and specifically:

(i) February 12, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a), 3.75(a) and 3.80(a)(2)(i),(ii) of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.75(a), 3.80(a)(2)(i),(ii).

(ii) September 5, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a), 3.75(a) and 3.80(a)(2)(i),(ii) & (v) of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.75(a), 3.80(a)(2)(i),(ii) & (v).

(iii) September 5, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 3.75(a) and 3.80(ix) of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.75(a), 3.80(ix).

f. On or about December 26, 2000 through on or about January 5, 2001 (OK).

Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a), 3.77(a) and 3.80(a)(2)(vi) of the Regulations and Standards by failing to sufficiently heat sheltered housing when necessary to protect the nonhuman primates from extreme temperatures to provide for their health and well-being, and so the ambient

temperature does not fall below 45 F for more than 4 consecutive hours when nonhuman primates are present. 9 C.F.R. §§ 2.100(a), 3.77(a), 3.80(a)(2)(vi).

g. October 19, 2000 and January 19, 2001 (TX). Respondents Milton Wayne Shambo and Animals Inc. (AI-TX) failed to comply with sections 2.100(a), 3.75(a), 3.78(b) and 3.80(a)(2)(v),(vi) by failing to provide nonhuman primates with adequate shelter from the elements at all times that provides protection from the sun, rain, snow, wind, and cold, and from any weather conditions that may occur. 9 C.F.R. §§ 2.100(a), 3.75(a), 3.78(b), 3.80(a)(2)(v),(vi).

h. November 7, 2001 and August 12, 2003 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.78(e) of the Regulations and Standards by failing to have barriers between fixed public exhibits housing nonhuman primates and the public any time the public is present, in order to restrict physical contact between the public and the nonhuman primate. 9 C.F.R. §§ 2.100(a), 3.78(e).

i. August 12, 2003 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.81 of the Regulations and Standards by failing to develop, document, and follow an appropriate plan for environment enhancement to promote the psychological well-being of nonhuman primates that is in accordance with the currently accepted professional journals or reference guides, or as directed by the attending veterinarian. 9 C.F.R. §§ 2.100(a), 3.81.

j. September 5, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.82(a) of the Regulations and Standards by failing to provide nonhuman primates with diets that are appropriate for the

species, size, age, and condition of the animals, and for the conditions in which the animals are maintained and with food that is clean, wholesome, and palatable to the animals that is of sufficient quantity and nutritive value to main a healthful condition, weight range, and to meet the animals' normal daily nutritional requirements. (9 C.F.R. §§ 2.100(a), 3.82(a)).

k. October 19, 2000 (TX). Respondents Milton Wayne Shambo and Animals Inc. (AI-TX) failed to comply with sections 2.100(a) and 3.83 of the Regulations and Standards by failing to provide nonhuman primates with a sufficient quantity of potable water to nonhuman primates, in water receptacles that are clean and sanitized. 9 C.F.R. §§ 2.100(a), 3.83.

l. August 21, 2000 and February 12, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.131(c) of the Regulations and Standards by failing to keep premises where housing facilities are located, including buildings and surrounding grounds, clean and in good repair to protect the nonhuman primates from injury, to facilitate husbandry practices, and to reduce or eliminate breeding and living areas for rodents, pests and vermin. 9 C.F.R. §§ 2.100(a), 3.131(c).

m. August 21, 2000 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a), and 3.85 of the Regulations and Standards by failing to have enough employees to carry out the requisite level of husbandry practices and care, that are trained and supervised by an individual who has the knowledge, background, and experience in proper husbandry and care of nonhuman primates. 9 C.F.R. §§ 2.100(a), 3.85.

7. Respondents willfully violated section 2.100(a) of the Regulations and Standards by failing to meet the minimum facilities and operating standards for animals other than dogs, cats,

rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. §§ 3.125-3.142), as follows:

a. Respondents failed to construct indoor and outdoor housing facilities so that they were structurally sound and failed to maintain them in good repair to protect the animals from injury and to contain the animals, and specifically:

(i) October 19, 2000, January 19, 2001 and May 10, 2001 (TX). Respondents Milton Wayne Shambo and Animals Inc. (AI-TX) failed to comply with sections 2.100(a) and 3.125(a) of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.125(a).

(ii) February 12, 2001 and September 5, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.125(a) of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.125(a).

b. August 21, 2000, February 12, 2001 and November 7, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.125(c) of the Regulations and Standards by failing to store supplies of food and bedding in facilities that adequately protect such supplies against deterioration, molding, or contamination by vermin, and to provide refrigeration for perishable food. 9 C.F.R. §§ 2.100(a), 3.125(c).

c. April 19, 2001 and September 5, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.125(d) of the Regulations and Standards by failing to make provisions for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris and to provide and operate disposal facilities as to minimize vermin infestation, odors, and disease hazards. 9 C.F.R.

§§ 2.100(a), 3.125(d).

d. Respondents failed to provide all animals kept outdoors with sufficient shade by natural or artificial means, when sunlight is likely to cause overheating or discomfort of animals, and specifically:

(i) April 19, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.127(a) of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.127(a).

(ii) May 10, 2001 (TX). Respondents Milton Wayne Shambo and Animals Inc. (AI-TX) failed to comply with sections 2.100(a) and 3.127(a) of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.127(a).

e. Respondents failed to provide animals kept outdoors with natural or artificial shelter to afford them protection and to prevent their discomfort, and specifically:

(i) October 19, 2000, and on or about December 26, 2000 through on or about January 5, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.127(b) of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.127(b).

(ii) January 19, 2001, January 23, 2001 and May 10, 2001 (TX). Respondents Milton Wayne Shambo and Animals Inc. (AI-TX) failed to comply with sections 2.100(a) and 3.127(b) of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.127(b).

f. Respondents failed to provide a suitable method to rapidly eliminate excess water from animal enclosures, and specifically:

(i) October 19, 2000 (TX). Respondents Milton Wayne Shambo and Animals

Inc. (AI-TX) failed to comply with sections 2.100(a) and 3.127(c) of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.127(c).

(ii) September 5, 2001, November 7, 2001 and November 29, 2001 (OK).

Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.127(c) of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.127(c).

g. On our about October 19, 2000 through on or about January 19, 2001, August 21, 2000, September 5, 2001 and November 7, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.127(d) of the Regulations and Standards by failing to construct a perimeter fence that restricts animals and persons from going through or under it. 9 C.F.R. §§ 2.100(a), 3.127(d).

h. October 19, 2000 and January 19, 2001 (TX). Respondents Milton Wayne Shambo and Animals Inc. (AI-TX) failed to comply with sections 2.100(a) and 3.129(a), (b) of the Regulations and Standards by failing to provide animals with food that is wholesome, palatable, free from contamination and of sufficient quantity and nutritive value to maintain good animal health, that is prepared with consideration for the age, species, condition, size, and type of animal, and that is located so as to be accessible to all animals in the enclosure and placed so as to minimize contamination. 9 C.F.R. §§ 2.100(a), 3.129(a),(b).

i. October 19, 2000 (TX). Respondents Milton Wayne Shambo and Animals Inc. (AI-TX) failed to comply with sections 2.100(a) and 3.129(b) of the Regulations and Standards by failing to keep food receptacles clean and sanitary at all times. 9 C.F.R. §§ 2.100(a), 3.129(b).

j. Respondents failed to make potable water accessible to the animals at all times, or as

often as necessary for the animals' health and comfort, and to keep water receptacles clean and sanitary, and specifically:

(i) October 19, 2000 and January 19, 2001 (TX). Respondents Milton Wayne Shambo and Animals Inc. (AI-TX) failed to comply with sections 2.100(a) and 3.130 of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.130.

(ii) August 21, 2000 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.130 of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.130.

k. Respondents failed to remove excreta from primary enclosures as often as necessary to prevent contamination of animals, minimize disease hazards, and reduce odors, and specifically:

(i) August 21, 2000 and February 12, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.131(a) of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.131(a).

(ii) January 19, 2001 and April 19, 2001 (TX). Respondents Milton Wayne Shambo and Animals Inc. (AI-TX) failed to comply with sections 2.100(a) and 3.131(a) of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.131(a).

l. August 21, 2000, February 12, 2001, September 5, 2001 and November 7, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.131(c) of the Regulations and Standards by failing to keep premises (buildings and grounds) clean and in good repair to protect the animals from injury and to facilitate the prescribed husbandry practices, and to place accumulations of trash in designated areas that are cleared as necessary to protect the health of the animals. 9 C.F.R.

§§ 2.100(a), 3.131(c).

m. September 5, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.131(d) of the Regulations and Standards by failing to establish and maintain a safe and effective program for the control of insects, ectoparasites, and avian and mammalian pests. 9 C.F.R. §§ 2.100(a), 3.131(d).

n. Respondents failed to utilize a sufficient number of adequately-trained employees to maintain the professionally acceptable level of husbandry practices, under a supervisor who has a background in animal care, and specifically:

(i) January 19, 2001 and January 23, 2001 (TX). Respondents Milton Wayne Shambo and Animals Inc. (AI-TX) failed to comply with sections 2.100(a) and 3.132 of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.132.

(ii) August 21, 2001 and September 5, 2001 (OK). Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) failed to comply with sections 2.100(a) and 3.132 of the Regulations and Standards. 9 C.F.R. §§ 2.100(a), 3.132.

o. October 19, 2000 and January 23, 2001 (TX). Respondents Milton Wayne Shambo and Animals Inc. (AI-TX) failed to comply with sections 2.100(a) and 3.133 of the Regulations and Standards by failing to house animals in compatible groups so as not to interfere with their health or cause them discomfort. 9 C.F.R. §§ 2.100(a), 3.133.

FINDINGS OF FACT AND CONCLUSIONS REGARDING
RESPONDENTS' COMPLIANCE HISTORY,
SIZE OF RESPONDENTS' BUSINESS, GRAVITY OF THE VIOLATIONS,
AND RESPONDENTS' LACK OF GOOD FAITH

8. Respondents have a large business. At all material times mentioned herein respondents held, on average, 461 animals (including wild and exotic animals such as camels,

rhinoceroses, zebras, tigers, servals, chimpanzees, lemurs, and spider monkeys) for exhibition purposes.

9. The gravity of the violations identified herein is great. They include repeated instances in which respondents failed to provide minimally adequate husbandry and care to their animals despite having been repeatedly advised of animal care deficiencies.

10. Respondents do not have a previous history of violations. However, respondents' conduct over the material times in the complaint shows consistent disregard for, and unwillingness to abide by, the requirements of the Animal Welfare Act and the Regulations and Standards. An ongoing pattern of violations establishes a "history of previous violations" for the purposes of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) and lack of good faith.

ORDER

1. The provisions of this order shall be effective on the first day after this decision becomes final.

2. Respondents Milton Wayne Shambo, Animals Inc. (AI-OK), and Animals Inc. (AI-TX), and their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards issued thereunder.

3. Animal Welfare Act licenses numbered **74-C-0467 and 73-C-0146 are hereby revoked.**

4. Respondents Milton Wayne Shambo and Animals Inc. (AI-OK) are jointly and severally assessed a **civil penalty of \$23,265**, which they shall pay within 60 days after service of this Order upon them, as follows.

The civil penalty shall be paid by certified check(s), cashier's check(s), or money order(s),

made payable to the order of “**Treasurer of the United States**”. Respondents shall reference **AWA Docket No. 05-0024** on their certified check(s), cashier’s check(s), or money order(s).

Payments of the civil penalty shall be sent by a commercial delivery service, such as FedEx or UPS, to, and received by, Bernadette R. Juarez, at the following address:

United States Department of Agriculture
Office of the General Counsel, Marketing Division
Attn.: Bernadette R. Juarez, Esq.
Room 2343 South Building, Stop 1417
1400 Independence Avenue SW
Washington, D.C. 20250-1417.

FINALITY

This Decision and Order shall have the same force and effect as if entered after a full hearing and shall be final 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 attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 22nd day of February 2006

Jill S. Clifton
Administrative Law Judge

Hearing Clerk’s Office
U.S. Department of Agriculture
South Bldg 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]udicial [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