In re: THE INTERNATIONAL SIBERIAN TIGER FOUNDATION, AN OHIO CORPORATION; DIANA CZIRAKY, AN INDIVIDUAL; DAVID CZIRAKY, AN INDIVIDUAL; THE SIBERIAN TIGER FOUNDATION, AN UNINCORPORATED ASSOCIATION; AND TIGER LADY, a/k/a TIGER LADY LLC, AN UNINCORPORATED ASSOCIATION.
AWA Docket No. 01-0017.
Decision and Order as to The International Siberian Tiger Foundation, an Ohio corporation; Diana Cziraky, an individual; The Siberian Tiger Foundation, an unincorporated association; and Tiger Lady, a/k/a Tiger Lady LLC, an unincorporated association.
Filed February 15, 2002.

AWA – Exhibition – Handling – Preponderance of the evidence – Public, general viewing – Exhibitors, general public, not included as – Willful – Preemption – Cease and desist order – License revocation.

The Judicial Officer (JO) reversed the Initial Decision issued by Chief Administrative Law Judge James W. Hunt. The JO concluded that Respondents failed to handle lions and tigers during public exhibition so there was minimal risk of harm to the animals and the public and failed to have sufficient distance or barriers or distance and barriers between the animals and the general viewing public so as to assure the safety of the animals and the public, in willful violation of 9 C.F.R. § 2.131(b)(1). The JO also concluded that Respondent Diana Cziraky exhibited animals during a period when her Animal Welfare Act license was suspended, in willful violation of 9 C.F.R. § 2.10(c). The JO stated Complainant proved Respondent Diana Cziraky's violation of 9 C.F.R. § 2.10(c) and Respondents' violations of 9 C.F.R. § 2.131(b)(1) by a preponderance of the evidence, which is the standard of proof applicable in administrative proceedings under the Animal Welfare Act. The JO rejected Respondents' contention that 9 C.F.R. § 2.131(b)(1) does not provide Respondents with adequate notice of the conduct which is required of Respondents. The JO rejected Complainant's contention that Respondents' trainees were members of "the public" or "the general viewing public" as those terms are used in 9 C.F.R. § 2.131(b)(1), but agreed with Complainant's contention that exhibitors exhibiting animals are not members of "the public" or members of "the general viewing public" as those terms are used in 9 C.F.R. § 2.131(b)(1). The JO also held that assumption of the risk of harm by members of the public is not relevant to whether Respondents violated 9 C.F.R. § 2.131(b)(1). The JO rejected Respondents' contentions that 9 C.F.R. § 2.131(b)(1) exceeds the authority granted to the Secretary of Agriculture under the Animal Welfare Act and that 9 C.F.R. § 2.131(b)(1) interferes with state and local regulations designed to control animals to protect human beings. The JO also stated the Animal Welfare Act does not explicitly or implicitly preempt state or local regulation of animal or public welfare. The JO ordered Respondents to cease and desist violations of the Animal Welfare Act and the regulations issued under the Animal Welfare Act and revoked Respondent Diana Cziraky's Animal Welfare Act license.

Colleen A. Carroll, for Complainant.
Richard D. Rogovin, Columbus, Ohio, for Respondents.
Initial decision issued by James W. Hunt, Chief Administrative Law Judge.
Decision and Order issued by William G. Jenson, Judicial Officer.

PROCEDURAL HISTORY

Bobby R. Acord, Administrator, Animal and Plant Health Inspection Service,

United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a "Complaint" on December 8, 2000. Complainant instituted this proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-2.133) [hereinafter the Regulations]; the standards issued under the Animal Welfare Act (9 C.F.R. §§ 3.1-.142) [hereinafter the Standards];[1] and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

Complainant alleges that: (1) on or about March 2000, April 29, 2000, May 14, 2000, June 2000, July 14, 2000, September 2000, October 21, 2000, October 28, 2000, October 29, 2000, and December 2, 2000, the International Siberian Tiger Foundation, Diana Cziraky, The Siberian Tiger Foundation, and Tiger Lady, a/k/a Tiger Lady LLC [hereinafter Respondents], failed to handle lions and tigers during public exhibition so there was minimal risk of harm to the public and failed to have sufficient distance or barriers between the animals and the public so as to ensure the safety of the public, in willful violation of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)); (2) on or about March 2000, April 29, 2000, May 14, 2000, June 2000, July 14, 2000, September 2000, October 21, 2000, October 28, 2000, October 29, 2000, and December 2, 2000, Respondents failed to have a responsible, knowledgeable, and readily identifiable employee or attendant present at all times of public contact with Respondents' animals, in willful violation of section 2.131(c)(2) of the Regulations (9 C.F.R. § 2.131(c)(2)); (3) on or about March 2000, April 29, 2000, May 14, 2000, June 2000, July 14, 2000, September 2000, October 21, 2000, October 28, 2000, October 29, 2000, and December 2, 2000, Respondents publicly exhibited lions and tigers outside the direct control and supervision of a knowledgeable and experienced animal handler, in willful violation of section 2.131(c)(3) of the Regulations (9 C.F.R. § 2.131(c)(3)); and (4) on at least three occasions between November 25, 2000, and December 2, 2000, while her Animal Welfare Act license (Animal Welfare Act license number 31-C-0123) was suspended, Respondent Diana Cziraky exhibited lions and tigers, in willful violation of section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)) (Compl. ¶¶ 6-9).[2] On January 2, 2001, Respondents filed an "Answer" denying the material

[1]Although Complainant instituted this proceeding under the Standards, Complainant does not allege that the International Siberian Tiger Foundation, Diana Cziraky, David Cziraky, The Siberian Tiger Foundation, or Tiger Lady, a/k/a Tiger Lady LLC, violated the Standards (Compl.).

[2]Complainant also alleges that David Cziraky violated section 2.131(b)(1), (c)(2), and (c)(3) of the Regulations (9 C.F.R. § 2.131(b)(1), (c)(2)-(3)) (Compl. ¶¶ 6-8). David Cziraky entered into a consent decision on June 29, 2001, and he is no longer a party to this proceeding. *In re The International Siberian Tiger Foundation*, 60 Agric. Dec. 291 2001) (Consent Decision as to David Cziraky).

allegations of the Complaint.

Chief Administrative Law Judge James W. Hunt [hereinafter the Chief ALJ] presided over a hearing in Columbus, Ohio, on February 7, 2001, through February 9, 2001, and on March 13, 2001, through March 15, 2001. Colleen A. Carroll, Office of the General Counsel, United States Department of Agriculture, represented Complainant. Richard D. Rogovin, Bricker & Eckler, LLP, Columbus, Ohio, represented Respondents.

On June 29, 2001, Respondents filed "Respondents' Post-Hearing Brief." On July 2, 2001, Complainant filed "Complainant's Proposed Findings of Fact, Conclusions of Law, Order, and Brief in Support Thereof" [hereinafter Complainant's Post-Hearing Brief]. On August 7, 2001, Complainant filed "Complainant's Reply Brief."

On August 23, 2001, the Chief ALJ issued a "Decision and Order" [hereinafter Initial Decision and Order]: (1) finding that from on or about February 28, 2000, through October 29, 2000, Respondents failed to handle lions and tigers during public exhibition so there was minimal risk of harm to the public and failed to have sufficient distance or barriers or distance and barriers between the animals and the public so as to assure the safety of the public; (2) concluding that from on or about February 28, 2000, through October 29, 2000, Respondents violated the Animal Welfare Act and section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)); and (3) revoking Respondent Diana Cziraky's Animal Welfare Act license (Animal Welfare Act license number 31-C-0123) (Initial Decision and Order at 23-24).

On September 19, 2001, Respondents appealed to the Judicial Officer. On October 12, 2001, Complainant filed "Complainant's Petition for Appeal of Decision and Order." On October 18, 2001, Complainant filed "Complainant's Response to Respondents' Petition for Appeal of Decision and Order." On November 2, 2001, Respondents filed "Respondents' Response to Complainant's Petition for Appeal of Decision and Order." On November 8, 2001, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

Based upon a careful consideration of the record, I agree with the Chief ALJ's conclusion that Respondents violated section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)). However, I also conclude that Respondent Diana Cziraky violated section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)). Further, I disagree with portions of the Chief ALJ's discussion. Therefore, while I retain much of the Chief ALJ's Initial Decision and Order, I do not adopt the Chief ALJ's Initial Decision and Order as the final Decision and Order.

Complainant's exhibits are designated by "CX." Transcript references are designated by "Tr."

APPLICABLE STATUTORY PROVISIONS AND REGULATIONS

7 U.S.C.:

TITLE 7–AGRICULTURE

. . . .

CHAPTER 54–TRANSPORTATION, SALE, AND HANDLING OF CERTAIN ANIMALS

§ 2131. Congressional statement of policy

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

(1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;

(2) to assure the humane treatment of animals during transportation in commerce; and

(3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

§ 2132. Definitions

When used in this chapter—

. . . .

(h) The term "exhibitor" means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary, and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not[.]

. . . .

§ 2134. Valid license for dealers and exhibitors required

No dealer or exhibitor shall sell or offer to sell or transport or offer for transportation, in commerce, to any research facility or for exhibition or for

use as a pet any animal, or buy, sell, offer to buy or sell, transport or offer for transportation, in commerce, to or from another dealer or exhibitor under this chapter any animals, unless and until such dealer or exhibitor shall have obtained a license from the Secretary and such license shall not have been suspended or revoked.

. . . .

§ 2143. Standards and certification process for humane handling, care, treatment, and transportation of animals

(a) Promulgation of standards, rules, regulations, and orders; requirements; research facilities; State authority

(1) The Secretary shall promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors.

. . . .

(8) Paragraph (1) shall not prohibit any State (or a political subdivision of such State) from promulgating standards in addition to those standards promulgated by the Secretary under paragraph (1).

. . . .

§ 2145. Consultation and cooperation with Federal, State, and local governmental bodies by Secretary of Agriculture

. . . .

(b) The Secretary is authorized to cooperate with the officials of the various States or political subdivisions thereof in carrying out the purposes of this chapter and of any State, local, or municipal legislation or ordinance on the same subject.

. . . .

§ 2149. Violations by licensees

(a) Temporary license suspension; notice and hearing; revocation

If the Secretary has reason to believe that any person licensed as a dealer, exhibitor, or operator of an auction sale subject to section 2142 of this title, has violated or is violating any provision of this chapter, or any of the rules or regulations or standards promulgated by the Secretary hereunder, he may suspend such person's license temporarily, but not to exceed 21 days, and after notice and opportunity for hearing, may suspend for such additional period as he may specify, or revoke such license, if such violation is determined to have occurred.

(b) Civil penalties for violation of any section, etc.; separate

offenses; notice and hearing; appeal; considerations in assessing penalty; compromise of penalty; civil action by Attorney General for failure to pay penalty; district court jurisdiction; failure to obey cease and desist order

Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, that violates any provision of this chapter, or any rule, regulation, or standard promulgated by the Secretary thereunder, may be assessed a civil penalty by the Secretary of not more than $2,500 for each such violation, and the Secretary may also make an order that such person shall cease and desist from continuing such violation. Each violation and each day during which a violation continues shall be a separate offense. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing with respect to the alleged violation, and the order of the Secretary assessing a penalty and making a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States Court of Appeals. The Secretary shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person involved, the gravity of the violation, the person's good faith, and the history of previous violations[.]

(c) Appeal of final order by aggrieved person; limitations; exclusive jurisdiction of United States Courts of Appeals

Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, aggrieved by a final order of the Secretary issued pursuant to this section may, within 60 days after entry of such order, seek review of such order in the appropriate United States Court of Appeals in accordance with the provisions of sections 2341, 2343 through 2350 of title 28, and such court shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the Secretary's order.

. . . .

§ 2151. Rules and regulations

The Secretary is authorized to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this chapter.

7 U.S.C. §§ 2131, 2132(h), 2134, 2143(a)(1), (a)(8), 2145(b), 2149(a)-(c), 2151.

28 U.S.C.:

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

. . . .

PART VI—PARTICULAR PROCEEDINGS

. . . .

CHAPTER 163—FINES, PENALTIES AND FORFEITURES

§ 2461. Mode of recovery

. . . .

FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Civil Penalties Inflation Adjustment Act of 1990"

FINDINGS AND PURPOSE

SEC. 2. (a) FINDINGS.–The Congress finds that–

(1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations;

(2) the impact of many civil monetary penalties has been and is diminished due to the effect of inflation;

(3) by reducing the impact of civil monetary penalties, inflation has weakened the deterrent effect of such penalties; and

(4) the Federal Government does not maintain comprehensive, detailed accounting of the efforts of Federal agencies to assess and collect civil monetary penalties.

(b) PURPOSE–The purpose of this Act is to establish a mechanism that shall–

(1) allow for regular adjustment for inflation of civil monetary penalties;

(2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and

(3) improve the collection by the Federal Government of civil monetary penalties.

DEFINITIONS

SEC. 3. For purposes of this Act, the term–

(1) "agency" means an Executive agency as defined under section 105 of title 5, United States Code, and includes the United States Postal Service;

(2) "civil monetary penalty" means any penalty, fine, or other sanction that–

(A)(i) is for a specific monetary amount as provided by Federal law; or

(ii) has a maximum amount provided for by Federal law; and

(B) is assessed or enforced by an agency pursuant to Federal law; and

(C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts; and

(3) "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

CIVIL MONETARY PENALTY INFLATION ADJUSTMENT REPORTS

SEC. 4. The head of each agency shall, not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996 [Apr. 26, 1996], and at least once every 4 years thereafter–

(1) by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986 [26 U.S.C. 1 *et seq.*], the Tariff Act of 1930 [19 U.S.C. 1202 *et seq.*], the Occupational Safety and Health Act of 1970 [20 U.S.C. 651 *et seq.*], or the Social Security Act [42 U.S.C. 301 *et seq.*], by the inflation adjustment described under section 5 of this Act [bracketed material in original]; and

(2) publish each such regulation in the Federal Register.

COST-OF-LIVING ADJUSTMENTS OF CIVIL MONETARY PENALTIES

SEC. 5. (a) ADJUSTMENT.–The inflation adjustment under section 4 shall be determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this subsection shall be rounded to the nearest–

(1) multiple of $10 in the case of penalties less than or equal to $100;

(2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) multiple of $25,000 in the case of penalties greater than $200,000.

(b) DEFINITION.–For purposes of subsection (a), the term "cost-of-living adjustment" means the percentage (if any) for each civil monetary penalty by which–

(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

ANNUAL REPORT

SEC. 6. Any increase under this Act in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.

LIMITATION ON INITIAL ADJUSTMENT.–The first adjustment of a civil monetary penalty . . . may not exceed 10 percent of such penalty.

28 U.S.C. § 2461 note (Supp. V 1999).

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

. . . .

PART 3—DEBT MANAGEMENT

. . . .

Subpart E—Adjusted Civil Monetary Penalties

§ 3.91 Adjusted civil monetary penalties.

(a) *In general.* The Secretary will adjust the civil monetary penalties, listed in paragraph (b), to take account of inflation at least once every

4 years as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104-134).

(b) *Penalties*–. . . .

. . . .

(2) *Animal and Plant Health Inspection Service*. . . .

. . . .

(v) Civil penalty for a violation of Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of $2,750[.]

7 C.F.R. § 3.91(a), (b)(2)(v).

9 C.F.R.:

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—ANIMAL WELFARE

PART 1—DEFINITION OF TERMS

§ 1.1 Definitions.

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

. . . .

Exhibitor means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not.

. . . .

PART 2—REGULATIONS

SUBPART A—LICENSING

. . . .

§ 2.10 Licensees whose licenses have been suspended or revoked.

. . . .

(c) Any person whose license has been suspended or revoked shall not buy, sell, transport, exhibit, or deliver for transportation, any animal during the period of suspension or revocation.

. . . .

SUBPART I—MISCELLANEOUS

. . . .

§ 2.131 Handling of animals.

. . . .

(b)(1) During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public.

. . . .

(c)(1) Animals shall be exhibited only for periods of time and under conditions consistent with their good health and well-being.

(2) A responsible, knowledgeable, and readily identifiable employee or attendant must be present at all times during periods of public contact.

(3) During public exhibition, dangerous animals such as lions, tigers, wolves, bears, or elephants must be under the direct control and supervision of a knowledgeable and experienced animal handler.

9 C.F.R. §§ 1.1; 2.10(c), .131(b)(1), (c)(1)-(3).

STATEMENT OF THE CASE

Respondent Diana Cziraky is licensed by the Animal and Plant Health Inspection Service to operate as an exhibitor under the Animal Welfare Act. Respondent Diana Cziraky holds Animal Welfare Act license number 31-C-0123. (Compl. ¶ 4; Answer; CX 3, CX 4.) Respondent Diana Cziraky is the founder and director of Respondent The Siberian Tiger Foundation and the president of Respondent Tiger Lady LLC (CX 43). The Siberian Tiger Foundation, also referred to as The International Siberian Tiger Foundation, is an Ohio corporation. The Siberian Tiger Foundation's place of business is 22143 Deal Road, Gambier, Ohio 43022, where it exhibits lions and Siberian tigers to the public. (CX 71). The Siberian Tiger Foundation's promotional material describes Siberian tigers as animals that are threatened with extinction in the wild. The material states that, to

preserve Siberian tigers, The Siberian Tiger Foundation exhibits them to the public as an educational endeavor to make the public aware of this threat. (CX 37).

The Siberian Tiger Foundation, operated by its founder, Respondent Diana Cziraky, offers interested members of the public the opportunity to have what it calls "close encounters" with its lions and tigers and the opportunity to enter into a training program to become animal trainers. The Siberian Tiger Foundation has five Siberian tigers and three lions ranging in age from 9 months to 6 years. The mature tigers weigh from 650 to 800 pounds. (Tr. 183; CX 42). Respondent Diana Cziraky has raised the animals since they were cubs and said they are "trained, but not tame" (Tr. 929-30, 934). She testified that she has not had formal animal training but has learned about lions and tigers by reading books, talking to other animal handlers, and attending programs sponsored by the American Zoological Association and through over 10 years of actual experience with the animals (Tr. 991-92).

A person becomes a trainee by paying $2,500 and entering into an agreement with The Siberian Tiger Foundation. The agreement provides that the trainee will receive "hands-on training" in such matters as feeding, training, and raising lions and tigers. The agreement further provides:

> Trainee understands and verifies by signing below that there are inherent risks associated with exotic cats (specifically Lions and Tigers) and that any and all injuries or illnesses resulting from the contact of, or association with these animals is unintentional by [The Siberian Tiger Foundation]. Trainee assumes full responsibility for any accidents, injuries or related incidents that may occur to themselves, the cats, or others while training with the exotic cats.

CX 6.

Trainees are also personally told to expect "some minor cuts and bruises." As part of the "hands-on" phase of their training, trainees work with handlers who accompany persons entering the animal compound to have close encounters with the cats. After 500 hours of training, the trainee receives a certificate and, generally, after 1,000 hours of training, Respondents consider the trainee fully trained in animal behavior and control. The Siberian Tiger Foundation has not kept records of the number of persons it has certified. (Tr. 126-27, 720-21, 986-90, 1001).

Members of the public desiring a close encounter pay $35 and sign a liability waiver. Close encounters provide persons with the opportunity to have physical contact with Respondents' cats. The liability waiver provides:

> I understand that entering into the compound with Lions and Tigers is

> VERY DANGEROUS and that I can be injured in many different ways by the lions or tigers themselves or just by falling down. I may also suffer damage to my clothing, camera equipment, or any other personal items that I bring in with me. Although many others have entered the compound without harm, it does not mean that I may not be injured. I hold The Siberian Tiger Foundation and its agents blameless and I accept ALL responsibility for anything that may happen to me.

CX 32.

During the time material to this proceeding, Respondents permitted parents to sign liability waivers on behalf of their children, thereby allowing children to have close encounters with Respondents' animals (Tr. 36, 113, 227, 232-34).

Before members of the public are allowed in the compound, they are given a lecture on proper behavior during the close encounter, such as following the directions of handlers, not turning their backs to the animals, keeping their heads higher than the cat's head, not making sudden movements, not pulling away if "mouthed" by a lion or tiger, and backing away slowly after the close encounter. Respondent Diana Cziraky testified that each day before close encounters begin, she visits with each animal and that she evaluates adults and children to determine whether they are good candidates for close encounters. She said she can tell whether a lion or tiger is in the mood to be viewed by the public. If not, she keeps the animal out of the compound where the close encounters will take place. She also limits close encounters to 3 hours a day. (Tr. 21-23, 227-29, 252-56, 388, 592, 608, 622-24, 719).

During the time material to this proceeding, Respondents allowed groups of up to 20 people at a time in the compound, an outdoor area surrounded by a high wire fence. During close encounters, Respondents chained most of the animals to the fence near wooden wire spools which, from photographs, appear to be 3 to 4 feet high. The animals were apparently allowed to recline on the ground or on the spools during the close encounters. (Tr. 24, 121, 135; CX 13).

As people enter the compound, they walk through a disinfectant to prevent diseases from being tracked into the compound. Those persons in the group desiring a close encounter are generally taken, one at a time by the handlers, to a chained lion or tiger and allowed to approach and touch or pet the animal. Generally, to maintain control over the animal, one handler stands near the animal's head. This handler is to keep his or her "eye on what is going on." Often, another handler is stationed on the animal's other side and stands on the chain during the encounter. Respondent Diana Cziraky testified that with these controls one handler can distract the animal and slow it down if it makes a sudden movement to give the other handler enough time to move the person having a close encounter with the animal the few feet to a safe area beyond the length of the animal's chain. After a

close encounter, the person having the close encounter is to back away from the animal. A handler's other means of control is a vinegar spray bottle. The vinegar stings the cat's eyes but does not cause permanent injury. (Tr. 121, 130-32, 135-37, 300-02, 592-94, 716-17, 794, 817, 936-38, 941, 987).

Respondent Diana Cziraky testified that the animals are declawed and that three of the tigers have been defanged. She said that tigers have short attention spans and that she can control the animals with just voice commands or a rap on the nose. Over 12,000 persons have visited The Siberian Tiger Foundation to have close encounters. (Tr. 931, 993, 1016-17).

Respondent Diana Cziraky said the Regulations are vague and that when she contacted the Animal and Plant Health Inspection Service for interpretation of the Regulations, she received different answers. She stated: "I think it's probably up to the inspector at the time to decide whether it should be this way or that way because it's not very defined." (Tr. 1032).

The Siberian Tiger Foundation has been inspected since 1997 by Animal and Plant Health Inspection Service employees. A number of witnesses testified that Respondents' facility was clean and that Respondents' animals appeared healthy, well-fed, and clean. Prior to the violations alleged in the Complaint, Respondents had not been cited for any violation of the Animal Welfare Act, the Regulations, or the Standards. (Tr. 40-43, 101-02, 249-51, 305-08, 517-18, 575, 639-41, 660-61, 665-66, 683; CX 106).

On February 28, 2000, Terry Aston was in an encounter group of four people. A lion put its paw around her foot and when she tried to pull away the lion "nipped" her on the back of the leg but without breaking the skin. Terry Aston said she was aware that lions and tigers are dangerous animals and that the encounter constituted a risk, but she also stated the animals are "such a wonderful thing to see, that you don't have any regard for anything. You just want to get in there and touch them." The nip did not deter her. She later returned to The Siberian Tiger Foundation and entered its program to become a trainer. (Tr. 356-58, 361, 388-90).

In April 2000, Gayle Channell took her 12-year-old daughter to The Siberian Tiger Foundation to have an encounter. A tiger bit the girl on the foot but quickly let go when a handler hit the tiger on the nose. (Tr. 623-25; CX 104).

On April 29, 2000, Gayle DeLeon took her daughter, Lauren DeLeon, to The Siberian Tiger Foundation where a tiger bit the girl's shoe and bit even harder when sprayed with vinegar before releasing the shoe. Lauren suffered two puncture wounds on her foot which were treated at The Siberian Tiger Foundation and later at a hospital. (Tr. 233-38; CX 75). Gayle DeLeon also said she saw a 5-year-old boy in the compound petting a tiger. When the tiger stood up, the tiger frightened the boy who "took off running towards the lioness. The [boy's] Grandmother stopped the boy, turning him in another direction running towards another tiger. She grabbed him again and stopped him. He was screaming all this time. All the animals were up and watching him." (CX 75 at 2-3).

Brittany Sly, a 10-year-old, liked tigers. On July 14, 2000, her father, Robert Sly, took her to The Siberian Tiger Foundation. Though he knew tigers were dangerous, he thought "it would be a special treat for her to be able to touch one." (Tr. 21). Brittany was in an encounter group of four which was accompanied by three attendants. Robert Sly testified that, when he saw Brittany bend down to pet the tiger's paw, the cat "stood up and came down with his mouth on my daughter's head, on Brittany's head . . . and drove her to the ground and started moving her around -- with him [sic] mouth on her head -- kind of like shaking her." (Tr. 28). The attendants got wrapped in the tiger's chain but managed to make the tiger release the girl by hitting the tiger on the nose. After calming down and receiving treatment for the bites, Brittany was taken back into the compound by her father to pet another tiger because, he said, of her "love for tigers." (Tr. 20-21, 28-33, 44).

On October 21, 2000, Robert Newman took his 10-year-old son, Ethan, to The Siberian Tiger Foundation. It was Ethan's fourth visit. Robert Newman said Ethan was interested in tigers and "learned to read by reading Calvin and Hobbs cartoons. So, you can see how much he is interested in tigers." Robert Newman said he was aware that tigers are predators but believed that an encounter with tigers at The Siberian Tiger Foundation was "a low level of risk." (Tr. 202, 217, 224, 227-29).

When Ethan encountered the tiger, she moved "relatively quickly" and grabbed his leg with her mouth. Ethan stood still as directed, but then the "tiger bit down and [Ethan] said that it hurt and then she bit down harder and he started to scream that it really hurt and at that point, he really started to scream quite loudly and was obviously in serious pain." The tiger let go when the handler hit her on the nose. The wound required 50 stitches. (Tr. 205-06, 208-09, 211).

Jessica Lee, 19, was present at the time Ethan was bitten. She observed the incident. As it was taking place, Jessica Lee said she "backed up apparently into the range of a male lion -- just on his chain. So, he just knocked me over and pounced on me and had me flat on the ground and was trying to bite my back. And did manage to -- not really sink his teeth in, but I had a bite." The lion released her after being sprayed with vinegar. (Tr. 594).

On October 28, 2000, a person named Jason Adelsberger was reported to have been bitten at The Siberian Tiger Foundation (Tr. 91, 552; CX 39, CX 40).

On October 29, 2000, Tonya Ware, who was enrolled in the animal trainer program, was working with another handler while a man was having a close encounter with a tiger. When the tiger made a quick move, Tonya Ware told the man to step back. As she turned her head to see if the man had backed up, the tiger bit her foot. Tonya Ware remained quiet and did not try to pull away, but the tiger continued to bite her foot despite being sprayed with vinegar and being hit on the nose. The tiger finally released her, but not before Tonya Ware had eight wounds in her foot. Tonya Ware was treated by a doctor, but did not require hospitalization or stitches for the wounds. Tonya Ware said she knew that even trained tigers were dangerous and that she was at risk working with the animals when she entered the

trainer program but did so because of her fascination and compassion for the animals. (Tr. 138-41, 150, 153, 162-64; CX 5, CX 6, CX 51).

In the meantime, on September 12, 2000, Carl LaLonde, a senior Animal and Plant Health Inspection Service investigator, instituted an investigation of The Siberian Tiger Foundation, and on November 24, 2000, served a notice of a 10-day suspension of Respondent Diana Cziraky's Animal Welfare Act license (Tr. 518, 524-25; CX 64, CX 67). The explanation accompanying the notice states:

> I. The current method of exhibition at this facility, allowing the public direct contact with adult dangerous animals such as lions and tigers has resulted in bites and other injuries to individual members of the public. Therefore, this method is not compliant with Title 9 Code of Federal Regulations, Subchapter A, Animal welfare:
>
> > Section 2.131(b)(1) which indicates that animals should be exhibited so that there is minimal risk of harm to the public and the animals being exhibited. We have received information that several bites have occurred during the past 8 months.
> >
> > Section 2.131((b)(1) which indicates that there should be sufficient distance and/or barriers between the animals and the general viewing public to assure the safety of the animals and the public. Many people are in the cage at one time.
> >
> > Section 2.131(c)(3) which indicates that during public exhibition, animals should be under direct control of experienced handlers. The handlers are apparently unable to prevent these adverse interactions from occurring.
>
> II. The following conditions of exhibition are in compliance with Section 2.131.
>
> > Dangerous animals in direct contact with the public for such activities as photographic sessions or "petting" must be:
> >
> > > Less than six months of age, and
> > > Less than seventy-five pounds in weight and
> > > Collared, and
> > > On a leash not longer than 18 inches in length
> >
> > Members of the public not engaging in direct contact with the animals at the time must be kept away from the exhibit animals by a barrier.

The handlers, as well as the license holder, should meet the requirements for knowledge and experience for direct public contact venues as explained in the "Dear Applicant" letter. A copy of the letter should be left with the license holder.

III. Any methods or conditions for direct contact exhibition other than those listed in II above should be approved by Animal Care prior to exhibition.

CX 53.

Ellen Magid, a veterinary medical officer and an Animal and Plant Health Inspection Service supervisory animal care specialist, testified that she had authorized Mr. LaLonde's investigation and that the explanation accompanying the suspension notice (CX 53) was based on a settlement involving another exhibitor. She said the explanation was not intended to be a requirement but only "something to give Ms. Cziraky to help her understand the problems that we were facing and to give her some guidance on how to correct them." (Tr. 660-62, 667, 683-84).

Dr. Peter Kirsten, a United States Department of Agriculture veterinary medical officer, and Richard Porter, a United States Department of Agriculture investigator, went undercover to Respondents' facility on December 2, 2000, during the period when Respondent Diana Cziraky's Animal Welfare Act license was suspended. Dr. Kirsten and Richard Porter testified that they attended a close encounter with Respondents' animals on December 2, 2000. (Tr. 164-67, 627-30). Dr. Kirsten took photographs and Richard Porter took a video of Respondents' exhibition of animals that show no distance or barriers between members of the general viewing public and Respondents' animals and both Dr. Kirsten and Richard Porter each testified without contradiction that there was no distance or barriers between members of the general viewing public and Respondents' animals (Tr. 169, 177-81, 183-84, 190-94, 305, 630-32; CX 1, CX 54-CX 62).

Respondent Diana Cziraky admits that she received the notice of suspension of her Animal Welfare Act license and exhibited animals during the period of suspension, but she states that she exhibited animals during the period of suspension only after being advised by counsel that the notice of suspension was not enforceable, as follows:

[BY MR. ROGOVIN:]

Q. I would like to take you back to your suspension by the USDA.

[BY MS. CZIRAKY:]

A. Okay.

Q. Did you in fact exhibit while under suspension from the USDA?

A. Yes, we did.

Q. Why did you do that?

A. Well, we didn't at first. It happened on a Friday and I had to wait until I talked to an attorney and the one I talked to is in Akron. His name is Tony -- I have trouble saying his name -- T-S-A-R-O-U or something like that. But the reason I wanted to speak to Tony is that he specializes in laws that pertain to animals and I wasn't sure what to do or what was going on, so come Monday, we were turning people away. And once people start traveling, we can't stop. And people come from hours and hours away. So, we were handing out extra gift certificates to use at a later date to compensate for their inconvenience.
I did finally reach Tony on the phone and I talked to him –

Q. What day did you reach him?

A. It would have been on Monday.

Q. The first Monday of your suspension?

A. Yes.

Q. Okay.

A. So, I talked to Tony and I had him on the speaker phone and he said read the letter to me, so I did and he specifically asked me is this paper signed by a judge. I said, no, it is not. Then he asked for it to be faxed over to his office.

Q. Okay.

A. Then I handed it to Jennifer and –

Q. Jennifer Adams?

A. Yes, because she was in the room, so she -- we have two lines, so she faxed it off to his office. He told us to go ahead and continue exhibiting

because it was not signed by a judge and it was okay for us to keep running our business.

Q. If he had told you that it was an enforceable order even though it was not signed by a judge, would you have exhibited?

. . . .

THE WITNESS: If he had told us that we should listen to the letter, we would have listened to the letter.

BY MR. ROGOVIN:

Q. And you would have not exhibited?

A. Of course not.

Tr. 945-47.

When Respondent Diana Cziraky failed to comply with the November 2000 suspension order, the Animal and Plant Health Inspection Service issued another suspension order on December 5, 2000, suspending Respondent Diana Cziraky's Animal Welfare Act license for 11 days (Tr. 667, 945-49; CX 33).

At the hearing, Complainant presented a series of witnesses for the purposes of showing the dangerous nature of lions and tigers and showing Respondents exhibited lions and tigers without providing the safeguards to the animals and the public required by the Regulations.

Dr. Kirsten has had experience inspecting Animal Welfare Act licensees exhibiting exotic animals. He said that other licensed exhibitors providing close encounters evaluate both the animals and the people for safety and said he was familiar with incidents where animals have had to be "traumatized" after attacks on their handlers, citing one instance where four bears were shot and another where a tiger was sprayed with pepper. Dr. Kirsten testified that tigers are "ambushers" and "opportunistic predators" which would view a small person, a person with an infirmity, or an elderly person as an "opportunity" and that they attack by biting their prey. He visited The Siberian Tiger Foundation on December 2, 2000, and expressed the opinion that encounter groups of 10 or 12 persons are too large to supervise, that there did not appear to be any criteria for selecting persons for encounters, that the safe area was not clearly marked, that the chains allowed the animals too much movement, and that a man standing on a tiger's chain could not have controlled a 400- or 500-pound tiger if the tiger decided to move. (Tr. 166-71, 173-74, 176-78, 181-84, 344).

Dan Hunt, assistant director of the Living Collection for the Columbus (Ohio) Zoo, has had over 20 years' experience handling "large cats," which includes lions

and tigers. The Columbus Zoo, which has an Animal Welfare Act license, uses pepper spray to control the animals. He said, because of their genetic makeup, tigers are programmed predators which have killed thousands of persons in India and that even hand-raising an animal does not "unwire that predisposition." Dan Hunt said their behavior is unpredictable, their disposition can change in a "split second," and direct contact with the animals is "inherently dangerous." A tiger, he said, uses a sweeping motion with its paw to knock small game off balance and when a tiger similarly curves its paw around a human, the tiger thinks it "owns that human being." Dan Hunt said, under some circumstances, the Columbus Zoo will allow persons to pet tiger cubs up to the age of 6 months but even that can constitute a risk. Columbus Zoo board members and their guests, including children, have also been allowed to have encounters with animals. Dan Hunt said that he has been attacked by a tiger at the Columbus Zoo and that a woman was injured by a tiger. (Tr. 426, 437-39, 457-58, 462, 472, 483-84, 501, 506-08, 514-15, 917-19).

Baron Julius von Uhl, an exhibitor licensed under the Animal Welfare Act, has worked in circuses and shows as a trainer of lions, tigers, and leopards since 1954. He said that tigers are too dangerous to allow people to interact with them. He has seen a trainer killed and knows others who "got chewed up" and even bought the cats that killed their trainer as publicity for his show. Julius von Uhl said that a cat putting its paw around a person's leg is demonstrating its dominance and places the person at the "mercy of the animal." Julius von Uhl said a person standing on a lion's chain cannot control the animal and the chain could wrap around and break the person's leg if the animal moved. He uses a whip and stick to control the animals with which he interacts but said a trainer has to be dominant and have the respect of the animals. He said it takes 3 years to become a trainer. (Tr. 392, 400-10, 413-15).

Alicia Hall, a zoologist called by Respondents as a witness, has studied animal behavior. She said tigers and lions are dangerous but curious animals with short attention spans. While they are predators, she said, socialized tigers do not regard humans as prey. As for the risks involved with the encounters at The Siberian Tiger Foundation, Ms. Hall testified, as follows:

> [BY MR. ROGOVIN:]
>
> Q. Based on your experience and observations at the Siberian Tiger Foundation, how would you evaluate the risks of people having close encounters with these tigers?
>
> . . . .
>
> [BY MS. HALL:]
>
> THE WITNESS: Inherently, any time any human is around a larger order primate -- or larger order animal, there is a risk. By nature these

> animals are predators, therefore, they are equipped with equipment to do damage to prey. So, there is an inherent risk.
>
> The question is specifically are risks addressed? It's a really hard question to answer. I think it's all a matter of degrees. Like I said, I was a dog groomer. There is not a dog groomer in existence that hasn't been bit every single day they go to work. You go to work, you get bit. That's just the rule.
>
> . . . .
>
> THE WITNESS: There is a risk involved and it's just inherent. It's not that the risk is any greater because these animals [lions and tigers] are vicious or violent. It's just they have bigger equipment. So, an accidental touch or an accident [sic] move of the head can inflict a larger wound than an accidental movement of a dog's head, but I don't think in a controlled environment like [The Siberian Tiger Foundation's environment], that the risk of intentional damage or intentional infliction of harm is any greater at all. I don't think there is a significant risk.

Tr. 265-66.

Other witnesses were presented to testify that, because of their interest in or love of tigers and lions, they were willing to assume the risk of being injured just to have the opportunity for an encounter with these animals.

Beth Wismar, for example, a faculty member of the College of Medicine, Ohio State University, with a doctorate in anatomy, has been a volunteer teacher at the Columbus Zoo for 14 years. She testified that when she visited The Siberian Tiger Foundation she was aware of the danger when she petted the animals. (Tr. 801, 805, 810-11, 813).

Marie Collart, a registered nurse, said that she visited The Siberian Tiger Foundation because of her "life-long interest in the big cats." She said she was aware of the danger and risk of injury. Her comment on her willingness to have encounters with lions and tigers was that "life has risks." (Tr. 752, 780).

Jane Zickau, a vice president of administrative services, Central Ohio Breathing Association, said she visited The Siberian Tiger Foundation because "I am [a] cat lover and an animal lover" and she knew there was a risk and she accepted the risk. Asked if she would return to The Siberian Tiger Foundation despite the incidents that occurred there, she responded: "As soon as this is over, I will go back. Absolutely." (Tr. 784, 799-800).

Anne Taylor, a municipal court judge and a member of the board of the Columbus Zoo, testified that she is an animal lover and photographer. She said that she has had encounters with grizzly bears and with tigers in China, as well as at The Siberian Tiger Foundation, and that "I think there ought to be a place in the world

for people to have this personal, unique encounter with animals, particularly the big cats, which I think are probably the most beautiful animal." She added that leopards have been allowed to attend board meetings at the Columbus Zoo, that a python was allowed to wrap itself around her neck, and that, as part of the Columbus Zoo's program to allow board members and contributors to the Columbus Zoo to have "behind the scenes" tours and encounters, Judge Taylor's niece and nephew, 6 and 15 years of age, were allowed by the Columbus Zoo to have an encounter with a Siberian tiger weighing between 300 and 400 pounds. (Tr. 900-01, 903-05, 917-19).

Since Complainant filed the Complaint, Respondents have improved their safety practices. These improvements include shortening the control chains on the animals, using more handlers during close encounters, making encounter groups smaller, not allowing children under the age of 16 to have close encounters, and acquiring a tranquilizer gun. (Tr. 938, 1035).

DISCUSSION

Complainant contends Respondents repeatedly violated the handling provisions of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) in a manner that placed the public and the exhibited animals at risk of harm.

Respondents argue, *inter alia,* that there was no violation of the Animal Welfare Act as it relates to the public. Respondents contend that section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) purporting to deal with public safety exceeds the scope of the Animal Welfare Act because the fundamental purpose of the Animal Welfare Act is to insure the humane treatment of animals and that "there is nothing in the Act which even suggests the purpose of protecting the public against animals." (Respondents' Post-Hearing Brief at 9). Respondents argue "Congress did not authorize the Secretary to become the general guardian of public safety where animals are concerned. It is not the function of [an administrative proceeding] to rectify each and every perceived threat or actual injury to the public simply because a holder of a license under the Act becomes the subject of publicity and Complainant suffers some embarrassment. There are local courts, laws and remedies for this." (Respondents' Post-Hearing Brief at 12-13). As Respondents contend, the historic police power of a state or municipality to regulate animals has not been supplanted by the Animal Welfare Act. *DeHart v. Town of Austin*, 39 F.3d 718 (7th Cir. 1994).

Complainant counters with the argument that Congress intended that animals be exhibited in a manner that is safe for both animals and the public because the Animal Welfare Act refers to the public concern for animals and that, before there can be an exhibition, animals must be exposed to the public. Complainant further argues the lack of adequate safeguards when animals are exhibited can lead to injuries to the public which, in turn, can result in the animals being subjected to

unnecessary discomfort or harm through such means as being hit with a stick, sprayed with a CO_2 fire extinguisher, or even being killed. (Complainant's Post-Hearing Brief at 2-5). Respondents argue that this discomfort, which Respondents contend is momentary, is a necessary disciplinary means of controlling the animal (Respondents' Post-Hearing Brief at 2).

The purpose of the Animal Welfare Act, as it relates to exhibited animals, is to insure that they are provided humane care and treatment (7 U.S.C. § 2131). The Secretary of Agriculture is specifically authorized to promulgate regulations to govern the humane handling of animals by exhibitors (7 U.S.C. §§ 2143(a), 2151). The Regulations deal almost exclusively with the care and treatment of animals. However, section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) also provides that exhibited animals must be handled in a manner that assures not only their safety but also the safety of the public.

Animals that attack or harm members of the public are at risk of being harmed. The record establishes that effective methods of extricating people from the grip of an animal can cause the animal harm and can cause the animal's death (Tr. 406-07, 409-10, 458-59, 671-72). Even after an animal attacks a person, the animal is at risk of being harmed for revenge or for public safety reasons (Tr. 520-21, 671). Respondents often sprayed their animals with vinegar or struck their animals when the animals bit members of the public. Occasionally, Respondents sprayed their animals with CO_2 fire extinguishers to stop an attack. (Tr. 27, 937-38, 992-93). Respondent Diana Cziraky testified that her first tiger that attacked a small girl was confiscated by the health department and decapitated to test it for rabies (Tr. 926-27, 949). Thus, section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)), which requires that, during public exhibition, animals be handled so there is minimal risk of harm to the public, with sufficient distance or barriers or distance and barriers between the animals and the general viewing public so as to assure the safety of the public, is directly related to the humane care and treatment of animals and within the authority granted to the Secretary of Agriculture under the Animal Welfare Act.

Complainant contends the incidents where members of the public were injured were the direct result of Respondents' failures to handle their animals as required by section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)). Specifically, Complainant alleges Respondents' following practices led to the incidents where persons were injured and were therefore violations: (a) allowing small children to have direct contact with adult lions and tigers without having adequate barriers or controls; (b) allowing persons to be placed in the position of appearing as prey to the animals; (c) allowing animals to be exhibited to the public without having adequately trained and experienced personnel to control the animals; (d) using chains to tether the animals that were inadequate to prevent the animals from injuring people; (e) using ineffective measures, such as hitting the animals or spraying the animals with vinegar to control the animals; (f) allowing encounter

groups that were too large to supervise; and (g) failing to provide a safe distance between the animals and the public (Complainant's Post-Hearing Brief at 12-31).

Respondents argue the Secretary of Agriculture has not issued standards covering the practices used by Respondents in handling and exhibiting animals. Respondents state the Animal and Plant Health Inspection Service was aware of Respondents' practices through its inspections of Respondents' facility and had therefore, in effect, approved them. Respondents contend, therefore, that, in the absence of standards, the practices that they followed must be considered adequate. (Respondents' Post-Hearing Brief at 1-7).

"In order to satisfy constitutional due process requirements, regulations must be sufficiently specific to give regulated parties adequate notice of the conduct they require or prohibit." *Freeman United Coal Mining Co. v. Federal Mine Safety and Health Review Comm'n*, 108 F.3d 358, 362 (D.C. Cir. 1997); "Traditional concepts of due process incorporated into administrative law preclude an agency from penalizing a private party for violating a rule without first providing adequate notice of the substance of the rule." *Satellite Broadcasting Co. v. FCC*, 824 F.2d 1, 3 (D.C. Cir. 1987). Section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) specifically requires Respondents to handle animals during public exhibition so there is minimal risk of harm to the animals and the public with sufficient distance or barriers or distance and barriers between the animals and the general viewing public so as to assure the safety of the animals and the public.

The evidence presented by Complainant overwhelmingly establishes that lions and tigers are instinctive and dangerous predators. They can be trained but not tamed. Even when trained, these powerful animals can inflict serious injuries on people as demonstrated not only by the incidents at Respondents' facility, but also by the incidents referred to at the Columbus Zoo, the incidents involving handlers referred to by Dr. Kirsten, and the incidents involving injuries to trainers referred to by Baron Julius von Uhl.

Respondents' lions and tigers are simply too large, too strong, too quick, and too unpredictable for a person (or persons) to restrain the animal or for a member of the public in contact with one of the lions or tigers to have the time to move to safety. Respondents' animals had a history of injuring members of the public and a history of being hit and sprayed with vinegar in order to stop their attacks on members of the public. Nonetheless, Respondents failed to have any distance or barriers between their animals and the general viewing public. I conclude section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) provides Respondents with adequate notice of the manner in which Respondents' animals are required to be handled during public exhibition. Given the size, quickness, strength, and unpredictability of Respondents' animals, Respondents should have known that some distance or barrier between Respondents' animals and the general viewing public is necessary so as to assure the safety of Respondents' animals and the public.

The incidents that occurred at Respondents' facility during the period February 28, 2000, through December 2, 2000, show that Respondents were not in compliance with the handling requirements of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)). Therefore, by failing to handle animals during public exhibitions so there was minimal risk of harm to the animals and the public and by failing to maintain sufficient distance or barriers or distance and barriers between the animals and the general viewing public so as to assure the safety of the animals and the public, Respondents willfully violated section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)).

Section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)) prohibits any person whose Animal Welfare Act license has been suspended from exhibiting any animal during the period of suspension. Respondents do not argue that section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)) fails to provide them with adequate notice of the conduct which is prohibited. I conclude that section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)) provides exhibitors with adequate notice of the conduct which is prohibited.

Complainant proved by a preponderance of the evidence that on December 2, 2000, Respondent Diana Cziraky exhibited animals during a period when her Animal Welfare Act license was suspended, in willful violation of section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)).[3] Specifically, the record establishes that

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[3]The proponent of an order has the burden of proof in proceedings conducted under the Administrative Procedure Act (5 U.S.C. § 556(d)), and the standard of proof by which the burden of persuasion is met is the preponderance of the evidence standard. *Herman & MacLean v. Huddleston*, 459 U.S. 375, 387-92 (1983); *Steadman v. SEC*, 450 U.S. 91, 92-104 (1981). The standard of proof in administrative proceedings conducted under the Animal Welfare Act is preponderance of the evidence. *In re Reginald Dwight Parr*, 59 Agric. Dec. 629, 643-44 n.8 (2000) (Order Denying Respondent's Pet. for Recons.); *In re James E. Stephens*, 58 Agric. Dec. 149, 151 (1999); *In re Judie Hansen*, 57 Agric. Dec. 1072, 1107-08 (1998), *appeal dismissed*, 221 F.3d 1342 (Table), 2000 WL 1010575 (8th Cir. 2000) (per curiam); *In re David M. Zimmerman*, 57 Agric. Dec. 1038, 1052 (1998); *In re Richard Lawson*, 57 Agric. Dec. 980, 1015 (1998), *appeal dismissed*, No. 99-1476 (4th Cir. June 18, 1999); *In re Marilyn Shepherd*, 57 Agric. Dec. 242, 272 (1998); *In re John D. Davenport*, 57 Agric. Dec. 189, 223 n.4 (1998), *appeal dismissed*, No. 98-60463 (5th Cir. Sept. 25, 1998); *In re Peter A. Lang*, 57 Agric. Dec. 59, 72 n.3 (1998), *aff'd*, 189 F.3d 473 (9th Cir. 1999) (Table) (not to be cited as precedent under 9th Circuit Rule 36-3); *In re Samuel Zimmerman*, 56 Agric. Dec. 1419, 1455-56 n.7 (1997), *aff'd*, 173 F.3d 422 (Table) (3d Cir. 1998), printed in 57 Agric. Dec. 869 (1998); *In re David M. Zimmerman*, 56 Agric. Dec. 433, 461 (1997), *aff'd*, 156 F.3d 1227 (3d Cir. 1998) (Table); *In re Volpe Vito, Inc.*, 56 Agric. Dec. 166, 169 n.4 (1997), *aff'd*, 172 F.3d 51, 1999 WL 16562 (6th Cir. 1999) (not to be cited as precedent under 6th Circuit Rule 206), *printed in* 58 Agric. Dec. 85 (1999); *In re Big Bear Farm, Inc.*, 55 Agric. Dec. 107, 109 n.3 (1996); *In re Otto Berosini*, 54 Agric. Dec. 886, 912 (1995); *In re Micheal McCall*, 52 Agric. Dec. 986, 1010 (1993); *In re Ronnie Faircloth*, 52 Agric. Dec. 171, 175 (1993), *appeal dismissed*, 16 F.3d 409, 1994 WL 32793 (4th Cir. 1994), *printed in* 53 Agric. Dec. 78 (1994); *In re Craig Lesser*, 52 Agric. Dec. 155, 166 (1993), *aff'd*, 34 F.3d 1301 (7th Cir. 1994); *In re Pet Paradise, Inc.*, 51 Agric. Dec. 1047, 1066-67 (1992), *aff'd*, 61 F.3d 907, 1995 WL 309637 (7th Cir. 1995) (not to be cited per 7th Circuit Rule 53(b)(2)); *In re Terry Lee Harrison*, 51 Agric. Dec. 234, 238 (1992); *In re Gus White, III*, 49 Agric. Dec. 123, 153 (1990); *In re E. Lee Cox*, 49 Agric. Dec. 115, 121 (1990), *aff'd*, 925 F.2d 1102 (8th Cir.), *reprinted in* 50 Agric. Dec. 14 (1991),

pursuant to section 19(a) of the Animal Welfare Act (7 U.S.C. § 2149(a)), the Administrator, Animal and Plant Health Inspection Service, temporarily suspended Respondent Diana Cziraky's Animal Welfare Act license for a 10-day period beginning on November 24, 2000 (CX 64, CX 67). On December 2, 2000, during the period of suspension, Respondent Diana Cziraky exhibited animals (Tr. 166-67, 169, 177-81, 183-84, 190-94, 305, 629-32; CX 1, CX 49, CX 54-CX 62). Respondent Diana Cziraky admits that she received the notice of suspension of her Animal Welfare Act license and exhibited animals during the period of suspension, but she states that she exhibited animals during the period of suspension only after being advised by counsel that the notice of suspension was not enforceable (Tr. 945-47).

Respondent Diana Cziraky's reliance on erroneous advice is not a defense to her violation of section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)). Moreover, Respondent Diana Cziraky's reliance on erroneous advice does not negate the willfulness of Respondent Diana Cziraky's violation of section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)). An action is willful under the Administrative Procedure Act (5 U.S.C. § 558(c)) if a prohibited act is done intentionally, irrespective of evil intent or reliance on erroneous advice, or done with careless disregard of statutory requirements.[4] The United States Court of Appeals for the

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cert. denied, 502 U.S. 860 (1991); *In re Zoological Consortium of Maryland, Inc.*, 47 Agric. Dec. 1276, 1283-84 (1988); *In re David Sabo*, 47 Agric. Dec. 549, 553 (1988); *In re Gentle Jungle, Inc.*, 45 Agric. Dec. 135, 146-47 (1986); *In re JoEtta L. Anesi*, 44 Agric. Dec. 1840, 1848 n.2 (1985), *appeal dismissed*, 786 F.2d 1168 (8th Cir.) (Table), *cert. denied*, 476 U.S. 1108 (1986).

[4] *Toney v. Glickman*, 101 F.3d 1236, 1241 (8th Cir. 1996); *Cox v. United States Dep't of Agric.*, 925 F.2d 1102, 1105 (8th Cir.), *cert. denied*, 502 U.S. 860 (1991); *Finer Foods Sales Co. v. Block*, 708 F.2d 774, 777-78 (D.C. Cir. 1983); *American Fruit Purveyors, Inc. v. United States*, 630 F.2d 370, 374 (5th Cir. 1980) (per curiam), *cert. denied*, 450 U.S. 997 (1981); *George Steinberg & Son, Inc. v. Butz*, 491 F.2d 988, 994 (2d Cir.), *cert. denied*, 419 U.S. 830 (1974); *Goodman v. Benson*, 286 F.2d 896, 900 (7th Cir. 1961); *Eastern Produce Co. v. Benson*, 278 F.2d 606, 609 (3d Cir. 1960); *In re Reginald Dwight Parr*, 59 Agric. Dec. 601, 621 (2000), *aff'd per curiam*, 273 F.3d 1095 (5th Cir. 2001) (Table); *In re James E. Stephens*, 58 Agric. Dec. 149, 201 n.7 (1999); *In re Judie Hansen*, 57 Agric. Dec. 1072, 1144 (1998), *appeal dismissed*, 221 F.3d 1342 (Table), 2000 WL 1010575 (8th Cir. 2000) (per curiam), *printed in* 59 Agric. Dec. 533 (2000); *In re David M. Zimmerman*, 57 Agric. Dec. 1038, 1061 (1998); *In re Richard Lawson*, 57 Agric. Dec. 980, 1034 (1998), *appeal dismissed*, No. 99-1476 (4th Cir. June 18, 1999); *In re Marilyn Shepherd*, 57 Agric. Dec. 242, 286 (1998); *In re John D. Davenport*, 57 Agric. Dec. 189, 223 (1998), *appeal dismissed*, No. 98-60463 (5th Cir. Sept. 25, 1998); *In re Peter A. Lang*, 57 Agric. Dec. 59, 81 (1998), *aff'd*, 189 F.3d 473 (9th Cir. 1998) (Table) (not to be cited as precedent under 9th Circuit Rule 36-3); *In re Samuel Zimmerman*, 56 Agric. Dec. 1419, 1454 n.4 (1997), *aff'd*, 173 F.3d 422 (3d Cir. 1998) (Table), printed in 57 Agric. Dec. 869 (1998); *In re David M. Zimmerman*, 56 Agric. Dec. 433, 476 (1997), *aff'd*, 156 F.3d 1227 (3d Cir. 1998) (Table); *In re Volpe Vito, Inc.*, 56 Agric. Dec. 166, 255-56 (1997), *aff'd*, 172 F.3d 51 (Table), 1999 WL 16562 (6th Cir. 1999) (not to be cited as precedent under 6th Circuit Rule 206), *printed in* 58 Agric. Dec. 85 (1999); *In re Big Bear Farm, Inc.*, 55 Agric. Dec. 107, 138 (1996); *In re Zoological Consortium of Maryland, Inc.*, 47 Agric. Dec. 1276, 1284 (1988); *In re David Sabo*, 47 Agric. Dec. 549, 554 (1988). *See also Butz v. Glover*

Fourth Circuit and the United States Court of Appeals for the Tenth Circuit define the word "willfulness," as that word is used in 5 U.S.C. § 558(c), as an intentional misdeed or such gross neglect of a known duty as to be the equivalent of an intentional misdeed. *Capital Produce Co. v. United States*, 930 F.2d 1077, 1079 (4th Cir. 1991); *Hutto Stockyard, Inc. v. United States Dep't of Agric.*, 903 F.2d 299, 304 (4th Cir. 1990); *Capitol Packing Co. v. United States*, 350 F.2d 67, 78-79 (10th Cir. 1965). Appeal in this proceeding does not lie either to the United States Court of Appeals for the Fourth Circuit or to the United States Court of Appeals for the Tenth Circuit. However, even under this more stringent definition, Respondent Diana Cziraky's violation of section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)) would still be found willful.

Section 2.131(c)(2) of the Regulations (9 C.F.R. § 2.131(c)(2)) requires that a responsible, knowledgeable, and readily identifiable employee or attendant must be present during periods of public contact with animals, and section 2.131(c)(3) of the Regulations (9 C.F.R. § 2.131(c)(3)) requires that, during public exhibition, dangerous animals must be under the direct control and supervision of a knowledgeable and experienced animal handler. Complainant failed to prove by a preponderance of the evidence that Respondents violated section 2.131(c)(2) and (c)(3) of the Regulations (9 C.F.R. § 2.131(c)(2), (c)(3)).[5]

COMPLAINANT'S APPEAL PETITION

Complainant raises 12 issues in Complainant's Petition for Appeal of Decision and Order [hereinafter Complainant's Appeal Petition]. First, Complainant asserts the record does not support the Chief ALJ's statement that a person becomes a trainer by paying $2,500 and entering into an agreement with The Siberian Tiger Foundation (Complainant's Appeal Pet. at 5). The Chief ALJ states "[a] person becomes a trainer by paying $2,500 and entering into an agreement with the Foundation" (Initial Decision and Order at 2). I agree with Complainant that the

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Livestock Comm'n Co., 411 U.S. 182, 187 n.5 (1973) ("'Wilfully' could refer to either intentional conduct or conduct that was merely careless or negligent."); *United States v. Illinois Central R.R.*, 303 U.S. 239, 242-43 (1938) ("In statutes denouncing offenses involving turpitude, 'willfully' is generally used to mean with evil purpose, criminal intent or the like. But in those denouncing acts not in themselves wrong, the word is often used without any such implication. Our opinion in *United States v. Murdock*, 290 U.S. 389, 394, shows that it often denotes that which is 'intentional, or knowing, or voluntary, as distinguished from accidental,' and that it is employed to characterize 'conduct marked by careless disregard whether or not one has the right so to act.'")

[5]See note 3.

record does not support the Chief ALJ's statement. Instead, the record establishes that a person who pays $2,500 and enters into an agreement with The Siberian Tiger Foundation is referred to as a "trainee" and the purpose of the agreement is to train the trainee "in the area of exotic cats and the ownership thereof" (CX 6). Further, the record establishes that a trainee must receive a minimum of 500 hours of training before losing the status of a trainee (Tr. 988-89). Therefore, I do not adopt the Chief ALJ's statement that a person becomes a trainer by paying $2,500 and entering into an agreement with The Siberian Tiger Foundation. Instead, I find that a person becomes a trainee by paying $2,500 and entering into an agreement with The Siberian Tiger Foundation.

Second, Complainant contends the record does not support the Chief ALJ's statement that after 1,000 hours a trainee is considered fully trained in animal behavior and control. Complainant asserts the Chief ALJ's statement appears to accept Respondents' view of what "fully trained" means (Complainant's Appeal Pet. at 5). The Chief ALJ states:

> As part of the "hands on" phase of their training, trainees work with handlers who accompany persons entering the animal compound to have a "close encounter" with the cats. After five hundred hours of training[,] the trainee receives a certificate and after a thousand hours the trainee is considered fully trained in animal behavior and control.

Initial Decision and Order at 3.

The Chief ALJ does not state that he found Respondents' trainees fully trained in animal behavior and control after 1,000 hours of training as Complainant contends. Instead, the Chief ALJ uses the passive voice of the verb "to consider" and does not indicate who considers Respondents' trainees fully trained in animal behavior and control after 1,000 hours of training. Based on the record, which establishes that Respondents generally consider their trainees fully trained after 1,000 hours of training (Tr. 720-21, 988-89) and my reading of the Initial Decision and Order, I infer the Chief ALJ found that Respondents consider their trainees fully trained in animal behavior and control after 1,000 hours of training. I restate the Chief ALJ's Initial Decision and Order by eliminating the passive voice of the verb "to consider" and stating that generally Respondents consider a trainee fully trained in animal behavior and control after 1,000 hours of training.

Third, Complainant contends the Chief ALJ's description of Respondents' close-encounter method of exhibition is error. The Chief ALJ states, as follows:

> Large groups are broken down into smaller groups and each group is accompanied by two to four handlers. The group is then stationed in a "safe area" which is beyond the length of the chains attached to each cat. Those

> persons in the group desiring a "close encounter" are taken one at a time by the handlers to the chained lion or tiger and allowed to approach and touch or pet the animals from behind. Meanwhile, to maintain control over the animal, one handler, a "spotter," stands near the animal's head with his/her hand either poised above the head or holding the animal's collar. The spotter is to keep his/her "eye on what is going on." The other handler is stationed on the animal's other side and stands on the chain to keep the chain taut during the encounter.

Initial Decision and Order at 4.

The record does not support the Chief ALJ's statement that each group of people was accompanied by two to four handlers. Respondent Diana Cziraky admitted that on some occasions Respondents allowed members of the public to have direct contact with lions and tigers with only one handler present (Tr. 990).

The record does not support the Chief ALJ's statement that groups were stationed in "safe areas" which is beyond the length of the control chain attached to each cat. On October 21, 2000, Jessica Lee was a member of the public observing another member of the public, Ethan Newman, pet a tiger named Imara. When Imara began biting Ethan Newman, Jessica Lee stepped back, whereupon Joseph, a male lion, knocked Jessica Lee over, pounced on her, bit her, and released her only after his eyes were sprayed with vinegar (Tr. 594). An incident such as the October 21, 2000, incident involving the injury to Jessica Lee establishes that Respondents did not always place groups in safe areas. Further, on February 28, 2000, Respondents allowed Nikita, a male tiger, to walk around freely during a close encounter (CX 84-CX 90, CX 94-CX 96). Terry Aston, one of Respondents' trainees, testified that Nikita was allowed to walk around freely on several occasions, as follows:

> [BY MS. CARROLL:]
>
> Q. And how long did you [train]?
>
> [BY MS. ASTON:]
>
> A. March to June was my last. I had moved, so I didn't go back there. In my training time that I was there, supposedly, my volunteering time as I call it, Nikita walked around freely quite a bit. I mean, we could have a crowd in there of 20 people and if Nikita decided to come of his den, he did and you just herd the people up and we would stand in front of him and Nikita would walk around.

> One day in May, they had put up the swimming pool. They have a swimming pool for the animals, but we had to put a big caging around it because Imara, the youngest one, she has a tendency to want to play in there and then use it as a bathroom.
>
> And two of the ladies that were there that day were so scared when Nikita walked out, they went in that enclosure closed the gate and locked themselves in there.
>
> Q. With Imara?
>
> A. No, Imara wasn't in there. Nobody was in there at that time because it's very intimidating to some people to have a cat that large just walking free.

Tr. 373-74.

I find that during the close encounters in which Respondents allowed Nikita to roam freely, no area could be considered a "safe area" which is beyond the length of the control chain attached to each cat.

The record does not support the Chief ALJ's statement that close encounters were limited to touching or petting the animals from behind. The evidence reveals that members of the public were often face-to-face with Respondents' animals (CX 1, CX 59-CX 61, CX 80-CX 88).

The record does not support the Chief ALJ's statement that during close encounters the control chain attached to each animal was kept taut by a handler. On a number of occasions, Respondents failed to keep taut the control chain attached to the animal with which a member of the public was having a close encounter or there was no control chain attached to the animal (CX 13, CX 93-CX 97).

Therefore, I do not adopt the Chief ALJ's description of Respondents' close-encounter method of exhibition, and I substantially modify the Chief ALJ's description of Respondents' close-encounter method of exhibition.

Fourth, Complainant asserts the Chief ALJ erroneously indicates Respondents had an accessible CO_2 fire extinguisher and an available tranquilizer gun on the dates alleged in the Complaint (Complainant's Appeal Pet. at 8). The Chief ALJ states: "A CO_2 fire extinguisher is also accessible. It provides control of the animal by temporarily depriving it of oxygen. A tranquilizer gun is available if necessary" (Initial Decision and Order at 5).

I agree with Complainant's contention that the record establishes that Respondents did not acquire a tranquilizer gun until February or March of 2001 (Tr. 938), well after the violations alleged in the Complaint. Further, the record does not establish that a CO_2 fire extinguisher was accessible during the entire

period covered in the Complaint (Tr. 1035). Therefore, I do not adopt the Chief ALJ's statement that "[a] CO_2 fire extinguisher is . . . accessible" and "[a] tranquilizer gun is available if necessary" (Initial Decision and Order at 5). Instead, I find Respondents made CO_2 fire extinguishers more accessible to handlers and acquired a tranquilizer gun after Complainant filed the Complaint.

Fifth, Complainant asserts the Chief ALJ erroneously stated that Respondent Diana Cziraky keeps a daily record of each animal's behavior and discusses each animal's behavior with the trainers (Complainant's Appeal Pet. at 8-9). The Chief ALJ states Respondent Diana Cziraky "keeps a daily record of each animal's behavior and discusses their behavior with the trainers" (Initial Decision and Order at 5).

The record does not support the Chief ALJ's statement that Respondent Diana Cziraky keeps a daily record of each animal's behavior and discusses each animal's behavior with the trainers. Complainant introduced part of a notebook in which one of Respondents' students recorded the behavior of one of Respondents' tigers. The notebook contains three consecutive entries: one for October 21, 2000; another for October 29, 2000; and the last for October 30, 2000. Further, Respondent Diana Cziraky testified that the students keep the notebooks and bring to her attention any issues of major concern. (CX 46; Tr. 993-94). Therefore, I do not adopt the Chief ALJ's statement that Respondent Diana Cziraky keeps a daily record of each animal's behavior and discusses each animal's behavior with the trainers.

Sixth, Complainant contends the Chief ALJ erroneously suggests that Complainant's legal theory is that Respondents were in compliance with section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) until people were bitten by Respondents' animals (Complainant's Appeal Pet. at 9-10).

The Chief ALJ states Complainant's "rationale for alleging a violation in this proceeding is that . . . the Foundation was in compliance with section 2.131(b)(1) until people were bitten" (Initial Decision and Order at 19). However, the Chief ALJ also indicates Complainant's position is that Respondents' failures to handle their animals so there was minimal risk of harm to the animals and the public with sufficient distance or barriers or distance and barriers between the animals and the general viewing public, so as to assure the safety of the animals and the public, constituted violations of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) (Initial Decision and Order at 9, 15, 17).

Complainant's filings reveal that Complainant's rationale for alleging Respondents violated section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) is that during public exhibition, Respondents failed to handle their animals so there was minimal risk of harm to the animals and the public, with sufficient distance or barriers or distance and barriers between the animals and the general viewing public, so as to assure the safety of the animals and the public. The record clearly establishes that Complainant views the bites and other injuries sustained by people who had close encounters with Respondents' animals as the

consequence of Respondents' violations of the Regulations. I find nothing in Complainant's filings indicating that Complainant takes the position that Respondents' animals' bites constitute violations of the Regulations, and I do not adopt the Chief ALJ's statement that Complainant's rationale for alleging a violation in this proceeding is that Respondents were in compliance with section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) until people were bitten.

Seventh, Complainant contends the Chief ALJ erroneously assumed that Respondents' "premium customers" who paid $2,500 for exposure to Respondents' animals were trainers and not members of the public. Complainant contends the record establishes that these "premium customers" were members of the "public" and "the general viewing public" as those terms are used in section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)). (Complainant's Appeal Pet. at 10-13).

I agree with Complainant that the record does not establish that persons who paid $2,500 for exposure to Respondents' animals were trainers. Instead, the record establishes that persons who paid $2,500 and entered into training agreements with The Siberian Tiger Foundation were Respondents' "trainees" (CX 6). However, I do not agree with Complainant's contention that Respondents' trainees were members of "the public" or members of "the general viewing public." The Regulations do not define the term "the public" or the term "the general viewing public" as used in section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)), and Complainant did not prove by a preponderance of the evidence that Respondents' trainees were members of "the public" or members of "the general viewing public" as those terms are used in section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)).[6]

Eighth, Complainant contends the Chief ALJ's suggestion that, under the Regulations, all dealers, exhibitors, intermediate handlers, and carriers and their bonafide employees are members of "the public" and "the general viewing public" under section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)), is error (Complainant's Appeal Pet. at 13-14).

The Chief ALJ states section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) prohibits any exhibition where there is human interaction with dangerous animals and, although it could be argued that persons who actually conduct the exhibitions of dangerous animals are not members of the viewing public, section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) does not provide for any exceptions (Initial Decision and Order at 19, 22 n.5).

I disagree with the Chief ALJ's conclusion that section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) prohibits any exhibition where there is human interaction with dangerous animals and the Chief ALJ's conclusion that persons who exhibit animals fall within the meaning of the term "the public" and the term "the general viewing public" in section 2.131(b)(1) of the Regulations (9 C.F.R. §

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[6]See note 3.

2.131(b)(1)).

Section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) clearly does not prohibit the exhibition of dangerous animals. To the contrary, section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) specifically states "during public exhibition" an exhibitor of animals must adhere to certain conditions.

The Regulations do not define the term "the public" or the term "the general viewing public." However, generally, the term "the public" does not mean all people, as the Chief ALJ suggests. Instead, the term "the public" is often used to distinguish a large group of people from a smaller group of people. For instance, if one were to say "the plumber treats the public fairly," this statement generally would not be interpreted to indicate how the plumber treats his or her employees, apprentices, or himself or herself. Similarly, the term "the general viewing public" is not always used to mean "all people who view an event or object." The term "the general viewing public" is often used in a way that excludes those who are presenting the event or object to an audience. For instance, a projectionist in a movie theater and other movie theater employees who happen to see a movie or part of a movie which is being shown to movie theater patrons often would not be considered members of "the general viewing public." Thus, I find, as commonly used and in order to carry out the purpose of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)), the terms "the public" and "the general viewing public," as used in section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)), do not include exhibitors.[7]

Ninth, Complainant contends the Chief ALJ erroneously focuses on whether Respondents' customers voluntarily assumed the risk of injury in interacting with Respondents' lions and tigers. Complainant argues that assumption of the risk of close encounters with Respondents' animals is not relevant to the issue of whether Respondents violated section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) (Complainant's Appeal Pet. at 14).

I agree with Complainant that Respondents' customers' assumption of the risk of close encounters with Respondents' animals is not relevant to the issue of whether Respondents violated section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)). Section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) requires that, during public exhibition, animals must be handled so there is

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[7]*Cf. United States v. Bruno's Inc.*, 54 F. Supp. 2d 1252, 1257 (M.D. Ala. 1999) (stating, in the context of federal and Alabama medicaid regulations, the term "general public" refers to customers paying the prevailing retail price and does not include those covered by third-party payers such as Blue Cross-Blue Shield); *Lish v. Harper's Magazine Foundation*, 807 F. Supp. 1090, 1101-02 (S.D.N.Y. 1992) (holding the term "the public" in the Copyright Act does not include a fiction writer's prospective students to whom he had sent a copyrighted letter which stressed the confidentiality of class and restricted disclosure of the letter's contents); *Investment Registry v. Chicago & M. Electric R.*, 206 F. 188, 192 (N.D. Ill. 1913) (stating the general rule is that the public is free to bid for property offered at a judicial sale; however, the term "general public," as used in this connection, does not include persons who, by virtue of lien, ownership, or otherwise have an existing interest in the property to be sold).

minimal risk of harm to the animals and the public. Even if a member of the public acknowledges that there is greater than minimal risk of harm associated with a close encounter with Respondents' animals and accepts a greater than minimal risk, Respondents are still required by section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) to handle their animals during public exhibition so there is minimal risk of harm to the animals and the public. Further, section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) requires that Respondents provide sufficient distance or barriers or distance and barriers between their animals and the general viewing public so as to assure the safety of the animals and the public. The requirements in section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) are neither negated nor affected in any way by a customer's acknowledgment and acceptance of the risk of harm associated with a close encounter with Respondents' animals or by a customer's waiver of liability. Despite the Chief ALJ's focus on assumption of the risk, I note the Chief ALJ did not conclude that assumption of the risk by members of the public having close encounters with Respondents' animals constitutes a defense to Respondents' violations of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)). I retain some of the Chief ALJ's discussion concerning Respondents' customers' assumption of the risk; however, I do not conclude that Respondents' customers' assumption of the risk constitutes a defense to Respondents' violations of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)).

Tenth, Complainant contends the Chief ALJ erroneously found that section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) effectively bars all direct contact between any person and any dangerous animal (Complainant's Appeal Pet. at 15-16).

The Chief ALJ states "[i]nterpreted literally, [section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1))] effectively prohibits not only any 'close encounter' exhibition but also any other type of exhibition where there is human interaction with dangerous animals" (Initial Decision and Order at 19). The plain language of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) clearly does not prohibit human interaction with dangerous animals during exhibition. As previously discussed, I find, as commonly used and in order to carry out the purpose of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)), the terms "the public" and "the general viewing public," as used in section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)), do not include exhibitors. Therefore, section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) places no restriction on the interaction between an animal being exhibited and the exhibitor. Consequently, I reject the Chief ALJ's conclusion that section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) effectively prohibits human interaction with dangerous animals.

Eleventh, Complainant contends the Chief ALJ erroneously failed to find that Respondents violated section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) on December 2, 2000 (Complainant's Appeal Pet. at 16-17).

The Chief ALJ found that from on or about February 28, 2000, through October 29, 2000, Respondents failed to handle lions and tigers during public exhibition so there was minimal risk of harm to the public and failed to have sufficient distance or barriers or distance and barriers between the animals and the general viewing public so as to assure the safety of the public, in violation of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) (Initial Decision and Order at 23-24). Complainant alleges Respondents willfully violated section 2.131(b)(1)

of the Regulations (9 C.F.R. § 2.131(b)(1)) on or about March 2000, April 29, 2000, May 14, 2000, June 2000, July 14, 2000, September 2000, October 21, 2000, October 28, 2000, October 29, 2000, and December 2, 2000 (Compl. ¶ 6).

The record supports the conclusion that on December 2, 2000, Respondents failed to handle lions and tigers during public exhibition so there was minimal risk of harm to the animals and to the public and failed to have sufficient distance or barriers or distance and barriers between the animals and the general viewing public so as to assure the safety of the animals and the public, in willful violation of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)). Dr. Peter Kirsten and Richard Porter testified that they attended a close encounter with Respondents' animals on December 2, 2000 (Tr. 166-67, 629-30). Dr. Kirsten took photographs and Richard Porter took a video of Respondents' exhibition of animals that show no distance or barriers between members of the general viewing public and Respondents' animals, and Dr. Kirsten and Richard Porter each testified without contradiction that there was no distance or barriers between members of the general viewing public and Respondents' animals (Tr. 169, 177-81, 183-84, 190-94, 305, 630-32; CX 1, CX 54-CX 62). Therefore, I conclude that on December 2, 2000, Respondents failed to handle lions and tigers during public exhibition so there was minimal risk of harm to the animals and the public and failed to have sufficient distance or barriers or distance and barriers between the animals and the general viewing public so as to assure the safety of the animals and the public, in willful violation of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)).

Twelfth, Complainant contends the Chief ALJ erroneously failed to find that Respondent Diana Cziraky violated section 2.1 of the Regulations (9 C.F.R. § 2.1) by engaging in regulated activities without an Animal Welfare Act license (Complainant's Appeal Pet. at 17-18).

Complainant did not allege that Respondent Diana Cziraky violated section 2.1 of the Regulations (9 C.F.R. § 2.1) (Compl.). Therefore, I do not find the Chief ALJ erred by failing to conclude that Respondent Diana Cziraky violated section 2.1 of the Regulations (9 C.F.R. § 2.1).

However, Complainant did allege that on at least three occasions between November 25, 2000, and December 2, 2000, while Respondent Diana Cziraky's Animal Welfare Act license was suspended, Respondent Diana Cziraky exhibited lions and tigers, in willful violation of section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)). The record supports the conclusion that Respondent Diana Cziraky exhibited lions and tigers during the period her Animal Welfare Act license was suspended, in willful violation of section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)).

Specifically, the record establishes that pursuant to section 19(a) of the Animal Welfare Act (7 U.S.C. § 2149(a)), the Administrator, Animal and Plant Health Inspection Service, temporarily suspended Respondent Diana Cziraky's Animal Welfare Act license for a 10-day period beginning on November 24, 2000 (CX 64,

CX 67). On December 2, 2000, during the period her Animal Welfare Act license was suspended, Respondent Diana Cziraky exhibited animals (Tr. 166-67, 169, 177-81, 183-84, 190-94, 305, 629-32; CX 1, CX 49, CX 54-CX 62). Respondent Diana Cziraky admits that she received the notice of suspension of her Animal Welfare Act license and exhibited animals during the period of suspension, but she states that she exhibited animals during the period of suspension only after being advised by counsel that the notice of suspension was not enforceable (Tr. 945-47).

Respondent Diana Cziraky's reliance on erroneous advice is not a defense to her violation of section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)). Moreover, Respondent Diana Cziraky's reliance on erroneous advice does not negate the willfulness of Respondent Diana Cziraky's violation of section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)). An action is willful under the Administrative Procedure Act (5 U.S.C. § 558(c)) if a prohibited act is done intentionally, irrespective of reliance on erroneous advice.[8]

RESPONDENTS' APPEAL PETITION

Respondents raise four issues in Respondents' Appeal to Judicial Officer [hereinafter Respondents' Appeal Petition]. First, Respondents contend the Chief ALJ erroneously applied section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) to protect public safety. Respondents contend the application of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) to public safety exceeds the authority granted to the Secretary of Agriculture by Congress and interferes with the historic police power of the states and local governments to regulate the control of animals to protect human beings. Respondents state that nothing in the Animal Welfare Act suggests that Congress intended its protection to extend to human beings or that Congress intended to preempt local regulations designed to protect the public. (Respondents' Appeal Pet. at 1).

I disagree with Respondents' contention that the provisions of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) which relate to the risk of harm to the public and the safety of the public exceed the authority granted to the Secretary of Agriculture in the Animal Welfare Act. One of the purposes of the Animal Welfare Act is to insure that animals intended for exhibition are provided humane care and treatment (7 U.S.C. § 2131). The Secretary of Agriculture is specifically authorized to promulgate regulations to govern the humane handling of animals by exhibitors (7 U.S.C. §§ 2143(a)(1), 2151).

Animals that attack or harm members of the public are at risk of being harmed. The record establishes that effective methods of extricating people from the grip of an animal can cause the animal harm and can cause the animal's death (Tr. 406-07, 409-10, 458-59, 671-72). Even after an animal attacks a person, the animal is at

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[8]See note 4.

risk of being harmed for revenge or for public safety reasons (Tr. 520-21, 671). Respondents often sprayed their animals with vinegar or struck their animals when the animals bit members of the public. Occasionally, Respondents sprayed their animals with CO_2 fire extinguishers to stop an attack. (Tr. 27, 937-38, 992-93). Respondent Diana Cziraky testified that her first tiger that attacked a small girl was confiscated by the health department and decapitated to test the tiger for rabies (Tr. 926-27, 949). Thus, section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)), which requires that, during public exhibition, animals be handled so there is minimal risk of harm to the public, with sufficient distance or barriers or distance and barriers between the animals and the general viewing public so as to assure the safety of the public, is directly related to the humane care and treatment of animals and within the authority granted to the Secretary of Agriculture under the Animal Welfare Act.

With respect to Respondents' contention that section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) interferes with state or local regulations designed to control animals to protect human beings, Respondents cite no state or local law or regulation with which section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) interferes. Moreover, Respondents cite no state or local law or regulation that is preempted by section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)).

The Animal Welfare Act does not expressly or impliedly preempt state or local law.[9] Instead, the Animal Welfare Act specifically provides that states and political subdivisions of states are not prohibited from promulgating standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors and authorizes the Secretary of Agriculture to cooperate with states and political subdivisions of states in carrying out the purposes of the Animal Welfare Act and any state, local, or municipal legislation or ordinance on

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[9] *DeHart v. Town of Austin*, 39 F.3d 718, 722 (7th Cir. 1994) (stating it is clear that the Animal Welfare Act does not evince an intent to preempt state or local regulation of animal or public welfare; the Animal Welfare Act expressly contemplates state and local regulation of animals); *Kerr v. Kimmell*, 740 F. Supp. 1525, 1529-30 (D. Kan. 1990) (stating in determining whether a particular state regulation is preempted by the Animal Welfare Act, the critical inquiry is one of congressional intent; finding the Animal Welfare Act does not evince a congressional intent to preempt state regulation of animal welfare); *Winkler v. Colorado Dep't of Health*, 564 P.2d 107, 111 (Colo. 1977) (rejecting the plaintiffs' contention that the Animal Welfare Act preempts Colorado regulation of the importation of pets for resale from states with less stringent licensing laws for commercial pet dealers than Colorado); *Hendricks County Board of Zoning Appeals v. Barlow*, 656 N.E.2d 481, 484-85 (Ind. Ct. App. 1995) (stating congress demonstrated no express or implied intent in the Animal Welfare Act to preempt state or local government regulation of wild or exotic animals); *Medlock v. Board of Trustees of the University of Massachusetts*, 580 N.E.2d 387, 389 n.3 (Mass. App. Ct.) (rejecting the defendants' argument that state animal welfare regulations are preempted by the Animal Welfare Act), *review denied*, 586 N.E.2d 10 (Mass. 1991) (Table).

the same subject.[10]

Therefore, I reject Respondents' contention that section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)) interferes with state and local regulation designed to control animals to protect human beings.

Second, Respondents contend the Chief ALJ misconstrued section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) as prohibiting the touching of an exhibited animal, effectively eliminating all petting zoos and other close-encounter exhibitions of animals which might bite or injure members of the public (Respondents' Appeal Pet. at 1-2).

The Chief ALJ states "[i]nterpreted literally, [section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1))] effectively prohibits not only any 'close encounter' exhibition but also any other type of exhibition where there is human interaction with dangerous animals" (Initial Decision and Order at 19). I agree with Respondents' contention that section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) does not prohibit the touching of an exhibited animal or effectively eliminate all close-encounter exhibitions of animals. Therefore, I do not adopt the Chief ALJ's conclusion that section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) effectively prohibits close-encounter exhibitions.

Third, Respondents contend the Chief ALJ's Initial Decision and Order directly conflicts with the evidence that Animal and Plant Health Inspection Service inspectors repeatedly found Respondents' close-encounter method of exhibition in compliance with the Animal Welfare Act. Respondents contend that having approved Respondents' close-encounter method of exhibition, Complainant cannot now, under due process principles, constitutionally apply the Regulations to end Respondents' close-encounter method of exhibition. (Respondents' Appeal Pet. at 2).

Respondents do not cite any evidence that Animal and Plant Health Inspection Service inspectors repeatedly found Respondents' close-encounter method of exhibition in compliance with the Animal Welfare Act or that Complainant approved Respondents' close-encounter method of exhibition. The record does not reveal that Animal and Plant Health Inspection Service inspectors viewed any of Respondents' public exhibitions of animals prior to October 4, 2000. Moreover, the record reveals that Animal and Plant Health Inspection Service inspectors viewed only two public exhibitions of Respondents' animals, one of which took place on October 4, 2000, the other on December 2, 2000. Complainant alleges that Respondents violated sections 2.10(c) and 2.131(b)(1), (c)(2), and (c)(3) of the Regulations (9 C.F.R. §§ 2.10(c), .131(b)(1), (c)(2)-(3)) on December 2, 2000 (Compl. ¶¶ 6-9). Dr. Markin, the Animal and Plant Health Inspection Service inspector who inspected Respondents' facility on October 4, 2000, did not cite Respondents for a violation of the Animal Welfare Act or the Regulations, and

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[10]7 U.S.C. §§ 2143(a)(1), (a)(8), 2145(b).

Complainant does not allege that Respondents violated the Animal Welfare Act or the Regulations on October 4, 2000 (Tr. 665-67, 675-79; CX 106; Compl.). However, a failure to cite Respondents during a routine facility inspection does not constitute "approval" of Respondents' methods of exhibition on other occasions, as Respondents contend.

Moreover, due process does not prevent Complainant from instituting this proceeding merely because an Animal and Plant Health Inspection Service inspector observed Respondents' public exhibition of animals on October 4, 2000, and did not cite Respondents for a violation of the Animal Welfare Act or the Regulations based on observations during the October 4, 2000, inspection.

Fourth, Respondents contend the Chief ALJ's sanction of license revocation was excessive in light of the facts of this case. Respondents state no violations of the Animal Welfare Act that relate to the care and treatment of Respondents' animals were found and the evidence shows that Respondents voluntarily reduced the risk of close encounters. (Respondents' Appeal Pet. at 2).

Respondents' contention that the revocation of Respondent Diana Cziraky's Animal Welfare Act license is excessive because Respondents did not violate any provisions of the Animal Welfare Act that relate to the care and treatment of their animals, is without merit. The evidence does establish that Respondents' facility was clean and Respondents' animals appeared healthy, well-fed, and clean (Tr. 40-43, 101-02, 249-51, 305-08, 639-41, 660-61, 665-66, 683). However, Complainant proved by a preponderance of the evidence that Respondents violated regulations governing the handling of animals, section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)), on seven occasions.[11] Handling clearly relates to care and treatment and the record reveals that because of the bites that resulted from Respondents' close-encounter method of exhibition, Respondents hit their animals, sprayed vinegar on their animals, and occasionally sprayed their animals with a CO_2 fire extinguisher.

The record reveals that Respondents have taken steps in an attempt to reduce the risk of harm to the animals and the public associated with close encounters with Respondents' animals. Specifically, Respondent Diana Cziraky testified that Respondents have increased the minimum age for children to participate in a close encounter from 7 to 16, Respondents no longer allow persons with physical impairments to participate in a close encounter, Respondents no longer allow more than six people in the cage with their animals at any one time, Respondents now require that three handlers accompany each group of six in the cage, Respondents have shortened the control chains on their cats, and Respondents have acquired a tranquilizer gun (Tr. 938-42, 1035). Complainant contends Respondents' changes to their close-encounter method of exhibition do not reduce the risk of harm to the animals and the public (Complainant's Response to Respondents' Pet. for Appeal

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[11] See note 3.

of Decision at 28-30). However, Dr. Peter Kirsten, a United States Department of Agriculture veterinary medical officer, testified that he was concerned about Respondents' allowing small and physically compromised persons and large groups of people into Respondents' animal enclosure (Tr. 170); Richard Porter, a United States Department of Agriculture investigator, found that the chains limiting Respondents' animals' range of motion were too long (Tr. 645); and Dr. Ellen Magid, a supervisory animal care specialist for the United States Department of Agriculture, suggested a length of the control chains on dangerous animals that would be "more acceptable" than the length of the control chains Respondents were using (Tr. 667; CX 53). I infer that these United States Department of Agriculture officials mentioned these aspects of Respondents' close-encounter method of exhibition because they viewed them as deficiencies in the context of risk of harm to the animals and the public. Therefore, I reject Complainant's contention that Respondents' changes to their close-encounter method of exhibition do not reduce the risk of harm to Respondents' animals and the public. Moreover, I find Respondents' changes in their close-encounter method of exhibition to be a mitigating factor. However, I do not find Respondents' improvements sufficiently mitigating to warrant reducing the sanction imposed by the Chief ALJ.

The record reveals that Respondents willfully violated section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)) on one occasion and willfully violated section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) on seven occasions. Respondents' violations of the Regulations are serious. Respondents' violations of section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)) resulted in harm to members of the public and more than a minimal risk of harm to Respondents' animals. Respondents' violation of section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)) thwarts the Secretary of Agriculture's ability to obtain compliance with the Animal Welfare Act and the Regulations. I conclude that a cease and desist order and the revocation of Respondent Diana Cziraky's Animal Welfare Act license are appropriate and necessary to ensure Respondents' compliance with the Regulations in the future, to deter others from violating the Regulations, and to thereby fulfill the remedial purposes of the Animal Welfare Act. In addition to the cease and desist order and the revocation of Respondent Diana Cziraky's Animal Welfare Act license, which I impose, Respondents could be assessed a maximum civil penalty of $2,750 for each of Respondents' eight violations of the Regulations.[12] However, I conclude that a cease and desist order and the revocation of Respondent Diana Cziraky's Animal Welfare Act license are sufficient to achieve the purposes of the Animal Welfare Act.

FINDINGS OF FACT

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[12] 7 U.S.C. § 2149(b); 28 U.S.C. § 2461 note; 7 C.F.R. § 3.91(b)(2)(v).

1. The International Siberian Tiger Foundation is an Ohio corporation. The International Siberian Tiger Foundation is also known as The Siberian Tiger Foundation. At all times material to this proceeding, The Siberian Tiger Foundation operated as an exhibitor as that term is defined in the Animal Welfare Act and the Regulations.

2. Tiger Lady, also known as Tiger Lady LLC, is an unincorporated association. At all times material to this proceeding, Tiger Lady LLC operated as an exhibitor as that term is defined in the Animal Welfare Act and the Regulations.

3. Respondent Diana Cziraky is an individual. At all times material to this proceeding, Respondent Diana Cziraky operated as an exhibitor as that term is defined in the Animal Welfare Act and the Regulations under Animal Welfare Act license number 31-C-0123. Respondent Diana Cziraky is the founder of, and doing business as, The International Siberian Tiger Foundation, The Siberian Tiger Foundation, and Tiger Lady, also known as Tiger Lady LLC.

4. Respondents' business address is 22143 Deal Road, Gambier, Ohio 43022.

5. On or about February 28, 2000, April 29, 2000, July 14, 2000, October 21, 2000, October 28, 2000, October 29, 2000 and December 2, 2000, Respondents failed to handle lions and tigers during public exhibition so there was minimal risk of harm to the animals and the public and failed to have sufficient distance or barriers or distance and barriers between the animals and the general viewing public so as to assure the safety of the animals and the public.

6. Effective November 24, 2000, the Administrator, Animal and Plant Health Inspection Service, acting pursuant to section 19(a) of the Animal Welfare Act (7 U.S.C. § 2149(a)), suspended Respondent Diana Cziraky's Animal Welfare Act license for a period of 10 days.

7. On December 2, 2000, Respondent Diana Cziraky exhibited animals during the period when her Animal Welfare Act license was suspended.

CONCLUSIONS OF LAW

1. On or about February 28, 2000, April 29, 2000, July 14, 2000, October 21, 2000, October 28, 2000, October 29, 2000, and December 2, 2000, Respondents willfully violated section 2.131(b)(1) of the Regulations (9 C.F.R. § 2.131(b)(1)).

2. On December 2, 2000, Respondent Diana Cziraky willfully violated section 2.10(c) of the Regulations (9 C.F.R. § 2.10(c)).

For the foregoing reasons, the following Order should be issued.

ORDER

1. Respondents, their agents, employees, successors, and assigns, directly or indirectly through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and in particular shall cease

and desist from:

a. Handling their animals during public exhibition in a manner that results in more than minimal risk of harm to the animals and the public;

b. Handling their animals during public exhibition without sufficient distance or barriers or distance and barriers between the animals and the general viewing public so as to assure the safety of the animals and the public; and

c. Exhibiting any animal during a period when Respondent Diana Cziraky's Animal Welfare Act license is suspended or revoked.

The cease and desist provisions of this Order shall become effective on the day after service of this Order on Respondents.

2. Respondent Diana Cziraky's Animal Welfare Act license (Animal Welfare Act license number 31-C-0123) is revoked, effective 60 days after service of this Order on Respondents.

3. Respondents have the right to seek judicial review of this Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341, 2343-2350. Such court has exclusive jurisdiction to enjoin, to set aside, to suspend (in whole or in part), or to determine the validity of this Order. Respondents must seek judicial review within 60 days after entry of this Order. 7 U.S.C. § 2149(c). The date of entry of this Order is February 15, 2002.
