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Controls Over APHIS Licensing of Animal Exhibitors

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REPLY TO
ATTN OF: 33601-0010-Ch

TO: Cindy J. Smith
Administrator
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ATTN: Joanne Munno
Acting Deputy Administrator
Marketing and Regulatory Programs Business Services

FROM: Gil H. Harden /s/
Assistant Inspector General
for Audit

SUBJECT: Controls Over Animal Plant Health Inspection Service Licensing of Animal Exhibitors

This report presents the results of the subject review. Excerpts of your May 28, 2010, response and the Office of Inspector General's position are incorporated in the applicable sections of the report. Based on your written response, we are accepting your management decision for all audit recommendations in the report and no further response to us is necessary. Please follow your agency's internal procedures in forwarding documentation for final actions to the Office of the Chief Financial Officer.

We appreciate the courtesies and cooperation extended to us by members of your staff during this audit.

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Controls Over APHIS Licensing of Animal Exhibitors

Executive Summary

The Animal and Plant Health Inspection Service (APHIS) administers the Department of Agriculture's (USDA) responsibilities under the Animal Welfare Act (AWA) of 1966, as amended. The AWA outlines minimum standards for the care and housing of certain warm-blooded animals used for research, exhibition, and commerce in order to ensure their humane treatment. APHIS authorizes individuals, carnivals, zoos, circuses, and educational exhibitors to display animals to the public by requiring them to obtain USDA exhibitor's licenses. Federal regulations require that during public exhibition, all animals must be handled in such a way as to assure the safety of both the animals and the public. APHIS' Animal Care unit inspects exhibitor facilities based on risk criteria derived from previous inspection results; these criteria include program violations or other noncompliant items¹ identified, as well as the presence of dangerous animals, such as a lion or a tiger, at the licensee's place of exhibition. In fiscal year 2009, Animal Care inspected nearly all licensed exhibitors at least once, and exhibitors deemed to be of higher risk under APHIS' criteria were inspected more often. Additional inspections are also made to ensure the timely correction of serious noncompliant items documented in previous inspections.²

We conducted this audit to evaluate whether APHIS has controls to safeguard both the animals and members of the public who visit exhibitor facilities. We evaluated animal enclosures and facilities but we did not specifically evaluate exhibitors' treatment of animals at the sites we visited.³ We also evaluated the corrective actions taken by APHIS in response to recommendations in a prior audit. Since the issuance of our previous report, we found that APHIS had made significant improvements in its controls to ensure that only legitimate exhibitors obtain licenses. However, agency officials also need to strengthen their inspection processes to ensure that licensed exhibitors comply with safety requirements for exhibiting dangerous animals. APHIS officials have acknowledged that they need to establish better guidance for Animal Care inspectors to enable them to more effectively evaluate exhibitor compliance and have begun to take corrective actions.

During this audit, we visited 31 exhibitor facilities to determine whether the facilities complied with APHIS' safety requirements for dangerous animals, and we questioned safety conditions at 15 of them. For example, at one facility, we found that a visitor could reach across the public barrier and easily insert a hand into an enclosure where a cougar was being kept. Regulations require⁴ that exhibitors provide either a sufficient distance and/or barrier to keep the public safe, but do not specify what distance or barriers would be considered sufficient. Another exhibitor's facility we visited still had a tiger enclosure whose features were similar to those at another facility which had failed to prevent a tiger from escaping in 2007, resulting in the death of a zoo visitor. Not only did the inspector at this facility not know the details of the escape, but he was

¹ A noncompliant item is a finding that the licensee or registrant has not complied with a specific regulation or standard.

² For example, if the inspector notices there is an immediate danger of an animal escaping from its primary enclosure, inspectors would identify this as a direct noncompliant item, require a short correction time frame, and come back within 45 days of the agreed upon correction date to verify the correction.

³ Nothing came to our attention on the mistreatment of animals in violation of the Animal Welfare Act.

⁴ 9 CFR 2.131 (c) (1), dated July 14, 2004.

also unaware of the similarity of the two facilities; thus, he was not in a position to evaluate whether the deficiencies identified at the other facility could also apply to the facility he inspects.

We attributed this to the fact that when evaluating the safety of exhibitors' facilities, APHIS veterinarians and other field Animal Care inspectors relied on broadly-worded guidance which they had difficulty interpreting. We agreed with APHIS officials' position that it was not always practical to provide explicit guidance on the dimensions or other construction details for each type of animal enclosure. However, we also noted that APHIS did not implement other controls to compensate for this, such as instituting a process that would require Animal Care inspectors to consult with APHIS' designated animal experts when evaluating the adequacy of dangerous animal enclosures, particularly in situations where animal escapes have indicated that a facility's safety features may be questionable. In addition, APHIS lacked a process to ensure that all Animal Care inspectors were aware of the details regarding incidents that occurred at other exhibitors' facilities nationwide, so that they could determine whether their own facilities might be at risk and take appropriate actions. Also, APHIS regulations do not currently require exhibitors to report animal escapes, even when these involve attacks by dangerous animals. Finally, we found that Animal Care inspectors did not always receive periodic onsite supervision, and as a result were not consistently identifying safety-related deficiencies during their facility inspections. As a result of these factors, APHIS Animal Care inspectors were not always aware of potentially dangerous situations at facilities they inspected. If uncorrected, these could result in escapes by dangerous animals that would endanger the visiting public.

We also found that, although APHIS has strengthened its controls to ensure that only legitimate exhibitors receive USDA exhibitor licenses,⁵ current inspection procedures could still allow non-exhibitors to obtain and keep such licenses. Since APHIS did not require licensees to document their activities, we found that 5 of the 14 exhibitors⁶ we visited could not prove they had exhibited their animals in the past year. In fact, these five exhibitors appeared to maintain their exotic animals as pets. We attributed this to the fact that current APHIS regulations and procedures allow Animal Care to renew a license based on the licensee's stated intent to exhibit, rather than on any proof of actual exhibition. As a result, we believe it is still possible for individuals to obtain and keep APHIS exhibitor licenses to assist them in circumventing State and local laws which restrict the ownership of dangerous exotic animals.⁷

Finally, we found that, for 6 of 40 traveling exhibitors we reviewed, Animal Care inspectors could not perform timely reinspections to ensure that serious noncompliant items that were identified in previous inspections had been resolved. For example, one exhibitor continued to show its elephants on the road even though an animal care inspector had previously cited the exhibitor for the animals being too thin for travelling exhibition. This occurred because APHIS had no requirement for exhibitors to submit travel itineraries, and the Animal Care inspectors were therefore unable to determine the exhibitors' current locations. Without reinspection, APHIS Animal Care inspectors cannot determine if the serious safety violations cited have been corrected.

⁵ This was originally reported in Audit 33601-01-Ch, Licensing of Animal Exhibitors, dated June 1996.

⁶ We selected these 14 because of their size—4 or fewer animals—or because APHIS inspectors had other reasons to believe they might be pet owners rather than actual exhibitors.

⁷ In our previous audit, 33601-01-Ch, Licensing of Animal Exhibitors, we concluded that 70 percent of the licensees we visited (with 4 or fewer animals) were pet owners, rather than legitimate exhibitors.

We believe that APHIS needs to strengthen its controls and guidance over animal exhibitors. By making these improvements, APHIS will be able to better protect the public and ensure that the exhibitor program cannot be used to circumvent State and local laws regarding the ownership of dangerous animals.

Recommendation Summary

We recommend that APHIS issue clear guidance to Animal Care inspectors, defining what constitutes a sufficient public barrier to ensure that visitors maintain a safe distance from dangerous animal enclosures. We also recommend that APHIS implement regulations requiring exhibitors to report all escapes and attacks involving dangerous animals to APHIS Animal Care inspectors, and that APHIS personnel determine the cause of these escapes or attacks, document the corrective actions taken, and ensure this information is available to other Animal Care inspectors when evaluating similar facilities. We recommend that APHIS require its Animal Care inspectors to consult agency experts to assist in evaluating exhibitor compliance, especially for those facilities that exhibit dangerous animals. Additionally, we recommend that APHIS implement procedures which include supervisory oversight of personnel to ensure that, during every inspection, Animal Care inspectors review all of the public safety related areas and cite all items that do not meet regulations. Finally, we recommend that APHIS implement regulations requiring exhibitors to maintain verifiable documentation to support their exhibiting activities and traveling exhibitors to submit their itineraries.

Agency Response

In their response dated May 28, 2010, APHIS officials agreed with all the findings and recommendations in this report. We have incorporated portions of the APHIS response, along with our position, in the applicable sections of this report. APHIS' response to the official draft report is included in its entirety at the end of this report.

OIG Position

Based on APHIS' response, we have reached management decisions on all recommendations in this report.

Background & Objectives

Background

Under the Animal Welfare Act (AWA), the Animal and Plant Health Inspection Service (APHIS) is responsible for regulating the use of certain warm-blooded animals used in research, exhibition, and commerce in order to ensure their humane treatment. As part of its mission, APHIS Animal Care is charged with providing leadership in (1) determining standards of humane care and treatment of animals, (2) implementing those standards, and (3) ensuring compliance with those standards through inspection, education, and cooperative efforts. To ensure that compliance with the AWA is continually maintained, all facilities that exhibit animals regulated under the AWA must be licensed⁸ with APHIS and inspected on a periodic basis.

Although Federal requirements establish minimum acceptable standards, many State and local governments have their own animal welfare legislation. Some of this legislation provides broader and stricter regulations for the humane care and treatment of animals. Licensees must follow all State and local laws in addition to Federal animal welfare standards. The AWA does not supersede State and local authorities or restrict them in any way when their laws are more stringent than the AWA.

Animal exhibitors are public or private entities that exhibit animals for compensation. In some cases, this may be non-monetary,⁹ such as educational exhibitors. These exhibitors can be individuals, public zoos, roadside zoos, circus/traveling exhibitors, and State parks.

APHIS requires licensed exhibitors to provide their animals with adequate care and treatment in the areas of housing, handling, transportation, sanitation, nutrition, veterinary care, and protection from extreme weather and temperatures. Exhibitors must maintain, on their premises, accurate records of the animals that come into their possession and of the veterinary care the animals receive. Exhibitors must minimize possible harmful risks to animals and the public during public exhibition by providing sufficient distance and/or barriers between the animals and the public.

Our previous audit¹⁰ found that 70 percent of the licensed exhibitors visited (with 4 or fewer animals) at the time did not actually exhibit their animals, but instead maintained them as pets. We reported that individuals, using the regulation's broad definition of an exhibitor, obtained exhibitor licenses in order to circumvent State or local laws intended to protect the public by restricting private ownership of wild or exotic animals such as bears and tigers. The previous audit found that 14 of the 20 licensees, in this category, were actually pet owners. We concluded that allowing pet owners to use their licenses to circumvent State or local laws could endanger both the animals and the public. We also concluded that APHIS could conserve its limited

⁸ There are approximately 11 "registered" exhibitors, such as a State-operated park, that are not required to be licensed or pay the applicable fees, but still must meet the same animal care and treatment requirements.

⁹ APHIS' Animal Welfare website states that compensation is not limited to monetary compensation and in the case of zoos, compensation is not required for the facility to meet the definition of "exhibitor."

¹⁰ Audit 33601-01-Ch, Licensing of Animal Exhibitors, dated June 1996.

inspection resources by making such non-exhibitors ineligible to receive licenses. The previous audit did not evaluate APHIS' controls over larger exhibitors, such as zoos and circuses.

APHIS Animal Care is headquartered in Riverdale, Maryland, and has regional offices located in Raleigh, North Carolina, and Fort Collins, Colorado. The Animal Care regional offices are responsible for administering the AWA in the specific States within their respective jurisdictions. Each regional office employs a cadre of field inspectors (veterinary medical officers and animal care inspectors) within the Animal Care program. APHIS also employs supervisory personnel to oversee the activities of 8-15 field inspectors. These supervisors are responsible for the review and evaluation of generalized and specific compliance problems encountered by field inspectors and they aid in enforcing the AWA and in implementing corrective actions. Enforcement of the AWA is primarily through periodic, unannounced inspections of regulated entities.

If, during an unannounced visit, an inspector observes that the facility is not in full compliance with the AWA requirements, he or she will explain to the owner or manager all deficiencies noted during the inspection. The licensee is then given an appropriate amount of time to correct the cited problems and become compliant. In serious cases of negligence or suffering, the inspector can recommend formal legal action, including issuing fines or revoking the license.

APHIS developed a Risk Based Inspection System for inspection to ensure that resources were effectively targeted and that entities with the highest risk for noncompliant items are inspected more frequently. Under this system, exhibitors deemed to be of higher risk were required to be inspected more often. High-risk facilities with a high probability of AWA violations should be inspected three times a year. For example, a facility that allows direct contact with dangerous animals and has a history of AWA violations would be inspected three times a year. A serious noncompliant item, such as an immediate danger of an animal escaping from a primary enclosure, requires an inspector to identify this as a direct noncompliant item, require a short correction time frame, and reinspect within 45 days to verify the correction. In addition, APHIS Animal Care inspectors follow up on complaints from private citizens.

During fiscal year 2009, APHIS had 97 Animal Care inspectors who performed over 4,300 inspections of more than 2,700 exhibitors. When inspecting a facility, APHIS Animal Care inspectors are required to observe and document in inspection reports all areas of care and treatment covered by the AWA. In the past few years there have been several dangerous animal attacks reported in the media involving licensees such as zoos and circuses. In one incident, a tiger at a public zoo escaped its confinement and attacked and killed a visitor. Such incidents have raised questions as to the adequacy of the standards these licensees are required to meet.

Objectives

The objectives of our audit were to evaluate APHIS' controls over the licensing of exhibitors of exotic animals, and to evaluate the agency's efforts to safeguard both the animals and members of the public who visit exhibitor facilities. As part of this audit we followed up on the recommendations of our previous audit to determine if adequate corrective actions had been implemented.

Section 1: APHIS Inspection of Animal Exhibitors

Finding 1: APHIS Needs to Strengthen the Inspection Process to Safeguard the Public at Animal Exhibitors

In our visits to the facilities of 31 APHIS-licensed animal exhibitors, we questioned safety conditions at 15 of them. APHIS Animal Care inspectors did not report these conditions because they had difficulty interpreting the broadly-worded guidance that was available for evaluating facilities' compliance with safety requirements. At the same time, officials had not implemented other controls and processes—such as a requirement for Animal Care inspectors to consult with APHIS' designated animal experts when certain conditions arise—which would have compensated for the lack of detailed guidance. Finally, due to factors including a lack of periodic onsite supervision, we noted several instances in which APHIS Animal Care inspectors either failed to identify safety-related deficiencies during inspections, or failed to document the conditions and require corrective actions. As a result, we found a lack of consistency in the safety determinations made by APHIS Animal Care inspectors from one facility to another, and in some cases between different Animal Care inspectors at a single facility. In addition, at two facilities we visited, we identified potentially dangerous situations which, at other similar facilities, had allowed dangerous animals to escape their enclosures. Without clear and consistent standards to follow and a process that ensures that potentially dangerous conditions are identified and remedied, APHIS cannot adequately ensure the safety of the animals, or of the public who visits the various zoos, circuses, and other exhibitors who operate under an APHIS license.

The AWA, which APHIS enforces, is designed primarily to address the safety of animals rather than that of the public. However, APHIS does have regulations included in Title 9 of the Code of Federal Regulations (9 CFR) which address public safety. The regulations require Animal Care inspectors to ensure that exhibits have enclosures sufficient to contain the animals,¹¹ and that these provide a sufficient distance and/or barrier to keep the public safe.¹² They also require an exhibitor with dangerous animals to have a perimeter fence around the entire exhibit that is at least eight feet high.¹³ However, these regulations and other APHIS guidance do not specifically describe how to achieve those assurances. APHIS' inspection guide requires that Animal Care inspectors develop a consistent method to ensure that inspections are thorough and accurate.¹⁴ When Animal Care inspectors become aware of any escapes or attacks by dangerous animals they are to report the incidents to their APHIS regional office, but the regulations did not require exhibitors to do the same.

We judgmentally selected 31 exhibitor facilities to evaluate APHIS' inspection process.¹⁵ During our audit we found that Animal Care inspectors determined 15 of the 31 facilities to be adequate even when there were potentially unsafe conditions present. For example, even though exhibitors are required to keep members of the public at a safe distance from dangerous animal enclosures, we noted at one facility that the public barrier was narrow enough that a visitor could

¹¹ 9 CFR 2.131 (c) (1), dated July 14, 2004.

¹² 9 CFR 3.125 (a), dated November 2, 1979.

¹³ 9 CFR 3.127 (d), dated November 28, 2000.

¹⁴ APHIS Exhibitor Inspection Guide, section 6.1.1, dated November 2004.

¹⁵ See Scope and Methodology section for a description of how we selected our sample.

reach across it into an enclosure where a cougar was being confined. At 10 facilities, Animal Care inspectors stated that the regulations were not clear enough to support citing unsafe conditions which they believed to exist at those facilities. At five facilities, even though sufficient requirements existed, the Animal Care inspectors failed to detect or document deficiencies. In addition, the Animal Care inspectors were unaware that their facilities had enclosures similar to the ones that had previously failed to contain dangerous animals.

Broadly-Worded Guidance

APHIS officials did not provide clear guidance to their Animal Care inspectors to ensure safety conditions were reported at 10 of the exhibitor facilities we visited. Neither the AWA regulations nor APHIS guidance for evaluating the adequacy of exhibitors' animal enclosure areas and public barriers listed specific criteria, such as required dimensions for enclosure walls or moats. Some APHIS officials stated that, because each animal exhibitor facility was unique, animal escapes or attacks occurring at one facility were not indicative of potential risks at others. Instead, APHIS used performance-based inspection criteria¹⁶ that gave wide discretion to individual Animal Care inspectors. Both APHIS regional and Headquarters officials interpreted these criteria to mean that a particular enclosure, enclosure area, or public barrier can be evaluated as safe based on the grounds that there had been no prior escapes or attacks. APHIS officials stated they used performance-based criteria because other factors besides the design of the enclosure area—such as the age and physical condition of the animals—must be taken into consideration in deciding if the enclosure is adequate.

We found that APHIS' use of performance-based inspection criteria has a basic weakness. Unlike engineering criteria that require, for example, that a given fence be a specific height, performance-based inspection criteria require that facilities be sufficient to achieve the goals of containing their animals while keeping the public out. While we agree with the officials' position that it would not be feasible to develop precise engineering requirements to fit every specific circumstance, we also believe that APHIS' performance-based standards, as currently applied, may not be sufficient to guide an inspector in determining whether an exhibitor's facility is adequate to achieve safety goals which the standards call for. This can result in situations where APHIS Animal Care inspectors do not cite apparent safety concerns or require corrective actions until an event—such as an escape or attack by a dangerous animal—has already occurred. At present, APHIS lacks the additional controls and processes needed to overcome these weaknesses.

At 7 of the 10 facilities we visited, we found that Animal Care inspectors agreed with our observations regarding apparent safety deficiencies. However, they stated that they did not believe the regulations or other guidelines were specific enough to support them in citing these as noncompliant items. The following examples illustrate the type of problems we found at these seven exhibitors. At one public zoo we visited, the cheetah enclosure had failed on three separate occasions over a period of 8 years to prevent escapes by these animals. We found that on one occasion a cheetah had escaped by jumping across the enclosure's moat, and on two others by jumping over the back wall. According to an APHIS inspector and zoo officials, the

¹⁶ Performance-based criteria require that a facility achieve a certain goal, such as containing an animal, without outlining specific requirements on how to achieve that goal.

zoo did make changes to the enclosure after each escape. However, the inspector told us that there was no certainty that the changes would be effective because the regulations were too vague to use.¹⁷ The inspector stated that she relied on the word of the zoo staff and the fact that the Association of Zoos and Aquariums had recently re-accredited this facility in making her determination that the enclosure was sufficient. An APHIS Headquarters official stated that Animal Care inspectors should not rely on anyone other than an APHIS designated official or expert as an authority when making such determinations. APHIS personnel are encouraged to consult these experts when questions arise regarding the health, care, or enclosure of the animals involved. Inspectors are specifically instructed by their supervisors that if they have a question about a regulatory decision they are to contact their supervisor or one of the APHIS experts.

At another facility, we found that the public barrier was so close to a cougar enclosure that a visitor could reach across the barrier and insert a hand into the enclosure (see Photograph No. 1). The inspector for this facility did not feel the public barrier was safe, but stated that she could not cite a noncompliance or require corrective action because there had not been any documented attacks related to this barrier.



Photograph No. 1

An OIG auditor reached her arm over the public barrier and touched the cage containing a cougar, showing that a member of the public could reach a hand into the enclosure.

At another facility, we found that tigers, bears, lions, and other dangerous animals were regularly exhibited to groups of 30 schoolchildren who would visit the facility for guided tours. At this facility, the “public barrier” consisted of no more than single lengths of plastic chain that varied from 30 inches to as low as 12 inches above the ground, which a child could cross (see Photograph No. 2). As a result, the facility depended on tour guides to maintain sufficient

¹⁷ 9 CFR 3.125 (a), dated November 2, 1979.

distance between the animal enclosures and the public.¹⁸ The inspector believed this to be an unsafe situation, but stated that she could not require the exhibitor to change this because of the lack of support in the regulations.



Photograph No. 2

A plastic chain used as a public barrier at an exhibitor's lion exhibit.

We found that APHIS Animal Care inspectors did not regularly consult with the agency's resident animal expert to determine if an animal enclosure or barrier was sufficient. In the example where a cheetah escaped by jumping over a wall, the APHIS inspector stated that she did not consult the animal expert about the moat width, log placement, or wall heights of this exhibit before making a determination of its adequacy. These designated animal experts¹⁹ have specialized knowledge that allows them to assist Animal Care inspectors in evaluating the sufficiency of specific exhibitors' facilities, as well as to answer general questions about animal care. APHIS' current procedures encourage—but do not require—its Animal Care inspectors to seek out this assistance. Of nine Animal Care inspectors we interviewed who expressed concerns that written requirements for public barriers were too broad to be useful, only three had ever consulted with APHIS' animal experts to resolve public safety questions during inspections. APHIS Headquarters officials stated that they believed that their animal experts may not have always been consulted in such cases because some supervisors require that Animal Care inspectors first go through their own regional offices before contacting the designated experts.

¹⁸ We have noted that tour guides have not always been able to keep the public safely away from dangerous animals at other facilities. For example, at another facility we visited which also used tour guides as public barriers, documentation indicated that a member of the public had a finger bitten off by a bear. We discussed this matter with the exhibitor, who stated that APHIS requirements changed several times since the incident depending on the APHIS inspector assigned. He emphasized that the regulations only mention that a sufficient barrier is needed to protect the public and animal, and APHIS has not defined a "sufficient barrier."

¹⁹ APHIS has designated three experts; one each in the areas of non-human primates, elephants, and big cats. APHIS personnel are encouraged to consult these experts when questions arise regarding the health, care, or enclosure of the animals involved. APHIS also uses the expert for big cats to answer any questions about all animals that are not non-human primates or elephants.

An APHIS Headquarters official acknowledged that the guidance regarding public barriers needed to be clarified, and we believe this would be of significant assistance to the Animal Care inspectors. This same official agreed that field Animal Care inspectors would also benefit if they better utilized their resident animal experts to answer technical questions on animal enclosures and public barrier concerns.

Inspector Oversight in Detecting Deficiencies

APHIS Animal Care inspectors did not report deficient items that involved public safety for five exhibitors we visited, even though sufficient guidance was available to allow them to make these determinations. We attributed this to certain factors including the lack of a requirement for periodic onsite visits by APHIS Animal Care supervisors, who should have identified and corrected such deficiencies in the inspection process.

We noted the following examples:

- At one facility, we found a 12-inch gap at the bottom of a perimeter gate through which a child could access the lion and tiger primary enclosures. In addition, we found several places where the perimeter fences around exhibits housing dangerous exotic cats had sagged from the required 8 feet down to 7 feet. However, these deficiencies were not cited in prior inspection reports and the inspector only cited them as noncompliant items following our own observations. The inspector stated that she had never noticed these conditions prior to our visit, and stated that they could not catch everything during inspections. An APHIS Headquarters official stated that even a 1 foot difference in a perimeter fence is critical because it acts as a secondary enclosure which can prevent or delay the animal's escape. We conclude that allowing such deficiencies to persist gives APHIS reduced assurance that either the animals or the public have been properly safeguarded.
- In a visit to another facility, we found that the primary enclosure for an exhibit that housed three coyotes lacked the required perimeter fence. The APHIS inspector stated that he was not going to cite this exhibitor because, due to the exhibit's location in a rural area, he did not feel it was a danger. We recognize that the Animal Care inspectors are given discretion on when to write up indirect noncompliant items.²⁰ However, an APHIS Headquarters official confirmed that this should have been cited as a noncompliant item because the lack of a perimeter fence can threaten both the animal and the public, regardless of mitigating circumstances such as those stated by the inspector. The supervisor for this inspector accompanied inspectors on inspections at least once a year; however, she had not been to this facility. We have concluded that with adequate time and effort, the supervisor would eventually have uncovered and addressed the inspector's refusal to cite the noncompliance.

We attributed instances of this type, in part, to the fact that APHIS had not implemented a requirement that Animal Care supervisors periodically accompany each inspector during inspections to exhibitors or other licensed facilities. This compensating control would allow

²⁰ An indirect noncompliant item is one that violates the AWA, but does not threaten the animal's health or public safety.

supervisors to review and evaluate the performance of each inspector, and to correct any weaknesses—such as overlooked or undocumented violations—that might be observed.

Animal Escapes and Attacks

APHIS' current inspection processes are largely based on the assumption that Animal Care inspectors can consistently and correctly evaluate the adequacy and safety of animal enclosure facilities using their own knowledge, training, and experience. During our audit, however, we concluded that Animal Care inspectors were called upon to make determinations about the safety of animal enclosures even though they may not have been aware of relevant information—such as specific details of escapes and attacks at other, similar facilities—which could influence their decisions. In addition, Animal Care inspectors were not always aware of incidents that had occurred at exhibits for which they themselves were responsible because exhibitors were not required to report these. The APHIS Exhibitor Inspection Guide requires that Animal Care inspectors report to the regional office any incident that involves dangerous animals once they learn about the incident. APHIS regional officials stated that the Animal Care inspectors do inform them when they learn of incidents that involve dangerous animals. However, regional officials stated that while they do inform Animal Care inspectors when there have been escapes or attacks, they generally do not disseminate the details of these incidents because they believe that each facility is “too unique to compare,” and that doing so might cause confusion on the part of the Animal Care inspectors.

To evaluate this, we obtained drawings, photographs, and key dimensions of facilities for dangerous animals at several public zoos, and discussed these with APHIS' animal expert. She stated that it is sometimes possible to compare key safety features²¹ at different facilities to determine whether documented design deficiencies at one facility may indicate a similar risk at others that share similar characteristics. This contradicts APHIS officials' statement that facilities are “too unique to compare.” As a result, APHIS' standard practice of not disseminating such information—either directly to Animal Care inspectors or through the designated animal experts—caused at least two Animal Care inspectors to repeatedly approve exhibits that, according to APHIS' animal expert, could use additional review, as these exhibits were similar to other exhibits at which incidents involving dangerous animals had occurred.

For example, we visited a public zoo, where a tiger, in 2007, escaped from an enclosure and attacked and killed a zoo patron. Although the Animal Care inspectors we interviewed at other exhibitor facilities we visited were aware of the escape, they did not know the details of how it had occurred. In discussions with APHIS Headquarters officials, we found that APHIS had not performed a review to identify other exhibitors whose facilities might be sufficiently similar to the zoo involved in the 2007 tiger attack to put them at risk. However, in our field visits to eight public zoos, we identified one whose tiger enclosure appeared very similar to the one that had failed in 2007. We provided APHIS' animal expert with drawings, including key dimensions, of these two exhibits and requested that she compare them. Based on her expertise, and on her

²¹ These can include the height of enclosure walls and the width of moats surrounding animal enclosures. However, these can also be affected by other design features such as the presence of electrified “hot” wires around the enclosures, or the presence or absence of water in the moats. The size, age, and physical condition of the animals in any particular enclosure must also be evaluated as part of an inspector's safety determination.

knowledge of the events surrounding the 2007 attack,²² she believed that the exhibit we visited could use modifications to better ensure the safety of the public. We believe when escapes or attacks by dangerous animals occur, APHIS needs a process to determine whether other exhibitors with similar facilities need to be re-evaluated to ensure their continued safety.

At another public zoo we visited, a cheetah escaped from an enclosure in a manner similar to an escape at another facility a few years earlier. The inspector for the first facility stated that she had never heard of any previous cheetah escapes. She also stated that, if she had, she would have re-evaluated this exhibit using the details of the previous escape to ensure that this exhibit did not have the same issues. Although no attacks occurred as a result of either of these escapes, the possibility did exist since, in both cases, the escaped animals were first encountered by visitors of the zoos. APHIS officials stated there was no requirement for exhibitors to report escapes to APHIS, even when they result in attacks by dangerous animals. The zoos did make changes to the enclosures after the escapes; however, since the Animal Care inspectors were not aware of these escapes, they continued to deem the enclosures sufficient without reevaluating them in light of the incidents. In addition, since APHIS officials did not know about these incidents and the resulting changes to the enclosures, there was no way to inform other Animal Care inspectors at similar facilities about these incidents even though the information could affect their evaluations of the facilities.

An APHIS Headquarters official stated that field employees do make use of information about attacks and escapes from other exhibitor facilities when it is available to them. He continued by saying that, while there currently is no requirement for exhibitors to report escapes or attacks involving dangerous animals, it would be a good idea to require them to do so. He also stated that Animal Care inspectors need to know what goes on at their facilities as well as at other facilities. In addition, officials at APHIS Headquarters stated that, due to the vague language of the regulations, it is hard for Animal Care inspectors to argue that a public barrier is, or is not, sufficient. According to an APHIS official, APHIS has not implemented specific requirements because there are no scientifically based standards available. This issue is complicated because facilities and animals are so different and that the establishment of specific standards is difficult.

To ensure that APHIS Animal Care inspectors are able to adequately safeguard both animals and the public at the exhibitors they oversee, they need to be provided with the best and most current guidance and information possible to make their safety determinations. In some instances, such as the adequacy of public barriers to keep visitors away from dangerous animal enclosures, we agree with APHIS officials that this can be accomplished through clarifications to the existing regulations and other written guidance. However, since we also agree that the regulations cannot address every situation that Animal Care inspectors may encounter during their inspections, we believe that APHIS also needs to implement a process under which the designated animal experts would have greater involvement in evaluating the safety of enclosures containing dangerous animals. This—along with a process under which the designated experts would review incidents involving dangerous animal escapes, to determine and document their causes—would ensure that relevant information would be available to the Animal Care inspectors in making their safety

²² The animal expert had earlier analyzed the events surrounding the 2007 attack, and compiled her findings and recommendations in a formal presentation. Our review of this presentation found that the information was useful. However, as of January 2010, this had received only limited distribution to approximately 30 percent of the inspectors within APHIS.

determinations. This involvement should include, but not be limited to, either onsite visits or reviews of photographs and design specifications for new or existing facilities. In addition, we believe that APHIS should implement a time-phased plan under which the designated experts would—on a schedule to be set by APHIS Animal Care—have the opportunity to review and evaluate all pre-existing dangerous animal enclosures maintained by licensed exhibitors. Finally, to ensure that Animal Care inspectors are performing comprehensive inspection reviews and are uniformly enforcing the requirements of the regulations, we believe that APHIS officials need to ensure Animal Care inspectors receive periodic, onsite supervision while performing inspection duties.

Recommendation 1

Issue clear regulations and guidance that define what constitutes a sufficient public barrier and require exhibitors to report all escapes and attacks involving dangerous animals to APHIS Animal Care inspectors.

Agency Response

In their response dated May 28, 2010, APHIS officials stated that they agreed with this recommendation and will develop a regulatory work plan to amend current regulations to clarify the intent of the public barriers and to require notification of all escapes and attacks. They also stated that APHIS will issue guidance to define what constitutes a sufficient public barrier and include this guidance in Animal Care's consolidated Inspection Guides. APHIS anticipates issuing the new guidance by September 30, 2010, and completing the development of the regulatory work plan by December 31, 2010.

OIG Position

We accept APHIS' management decision.

Recommendation 2

Implement a process to better utilize resident animal experts that would require Animal Care inspectors to submit technical questions in order to evaluate the safety of any newly-designed enclosure areas for dangerous animals, and establish a time-phased plan to review all existing facilities.

Agency Response

APHIS officials stated in their response that they agreed with this recommendation and that APHIS' Field Specialists (animal experts) will evaluate new enclosures and, according to a time-phased plan, review existing facilities. APHIS officials stated that a safety checklist/survey will be developed for inspectors to complete and forward with photos to the appropriate Specialist. APHIS officials stated that all enclosures for dangerous animals

would be evaluated within 2 years. APHIS anticipates the process to evaluate new enclosures, the time phased plan, and the safety checklist/survey to be developed and distributed to the employees by September 30, 2010.

OIG Position

We accept APHIS' management decision.

Recommendation 3

Implement a process to ensure that APHIS personnel determine the cause of dangerous animal escapes or attacks, document the corrective actions taken, and ensure that this information is readily available to all Animal Care inspectors when evaluating similar facilities in their respective jurisdictions.

Agency Response

In their response, APHIS officials stated that they currently determine and/or document the cause of all known escapes and attacks, but plan to implement a 2-tiered approach to incident reporting. Tier 1 involves disseminating initial information of the escape/attack immediately after notification, and Tier 2 involves disseminating followup information in the form of a formal update from the appropriate Field Specialist once the situation has been investigated and/or evaluated and corrective action has been determine. APHIS officials stated that they began implementing this notification process on May 20, 2010.

OIG Position

We accept APHIS' management decision.

Recommendation 4

Implement procedures requiring periodic onsite supervisory visits to ensure that inspections of exhibitor facilities meet APHIS standards in a consistent manner.

Agency Response

APHIS officials stated that changes are already underway to address this issue based on the OIG Audit of Problematic Dog Dealers (2010). The response stated that Animal Care will increase its field supervisory capabilities and oversight of inspectors, allowing amplified supervisory presence on more inspections by September 30, 2010.

OIG Position

We accept APHIS' management decision.

Section 2: APHIS' Licensing and Tracking of USDA Exhibitors

Finding 2: APHIS Renewed Exhibitor's Licenses to Individuals Not Engaged in Exhibiting Activities

We found that APHIS renewed Department of Agriculture (USDA) exhibitor licenses to individuals who could not provide evidence that they had actually exhibited their animals. APHIS officials stated that they did not believe that the AWA allowed them to require existing licensees to submit proof of their exhibiting activities, and therefore did not implement regulations to require that proof.²³ APHIS officials have made significant progress in strengthening their regulations and procedures in response to our prior audit, and our field visits on this audit disclosed a greatly reduced incidence of licensees who appeared to be pet owners rather than true exhibitors. However, because regulations under the AWA do not require licensees to provide documentation of their exhibition activities, we found that it was still possible for individuals to use exhibitor licenses to obtain and keep exotic animals as pets and thereby circumvent State and local laws.

The AWA provides APHIS the authority to issue exhibitor's licenses to individuals that exhibit animals to the public. Because an applicant is not permitted to exhibit animals before obtaining a license, APHIS' initial approval must be based on the applicant's stated intent to exhibit. APHIS officials stated that they do have the authority to deny an applicant's request for a license—or an existing licensee's request for renewal—but only if the agency can substantiate that an applicant's or licensee's intent was to circumvent State or local law and keep the animals as pets.²⁴

At the time we issued our previous audit report on this program in 1996,²⁵ APHIS regulations only required applicants to undergo an inspection of their facilities and to pay a licensing fee before receiving a license. They did not provide APHIS the authority to withhold issuing a license based on whether or not an applicant actually intended to exhibit. As a result, our sample of 20 licensees who maintained 4 or fewer animals²⁶ showed that 14 (70 percent) were not true exhibitors, and had obtained their licenses to aid them in circumventing State or local laws that restricted private ownership of dangerous exotic animals. Based on our audit, APHIS officials took action to strengthen their regulations to address this weakness. Included in these changes were requirements for applicants to state their intent to exhibit their animals as part of their application, and to provide proof of their training and/or experience in handling dangerous animals. However, APHIS officials did not believe that the AWA granted them the authority to require that exhibitors, once they receive their licensees, provide Animal Care with documentation of their activities. As a result, we believe it is possible for a licensee to maintain his or her status as an exhibitor indefinitely without ever actually exhibiting their animals.

²³ The AWA grants APHIS the authority to regulate animal exhibition including the issuance of exhibitor licenses in such form and manner as it may prescribe. In our review of the Act, we did not note any language that would prohibit APHIS from requiring exhibitors who are up for renewal to present proof of exhibiting activities.

²⁴ 9 CFR 2.11 (a) (5), dated July 14, 2004.

²⁵ Audit 33601-01-Ch Licensing of Animal Exhibitors, dated June 1996.

²⁶ We concluded that this group, as opposed to larger exhibitors such as zoos and circuses, had a greater likelihood of being pet owners rather than exhibitors. See Audit 33601-01-Ch Licensing of Animal Exhibitors, dated June 1996.

Our review found that, because of this, APHIS had continued to renew exhibitor licenses from year to year for individuals whom we concluded were not actually exhibiting dangerous animals, such as bears and cougars, but rather were keeping them as pets. Of the 31 licensed exhibitors we reviewed, we selected 14 because they resided in States whose laws restricted the private ownership of dangerous animals to licensed exhibitors, and because they either maintained 4 or fewer dangerous animals²⁷ or were identified by APHIS Animal Care inspectors as possible pet owners. Since APHIS did not require exhibitors to document their activities, we found that APHIS renewed the licenses for five of these (36 percent), without proof that the licensees had actually exhibited their animals during the previous year. For instance, we found that:

- One licensee, in a prior year’s application, stated that he wanted to exchange his USDA breeder’s license (which authorized him to breed cougars) for an exhibitor’s license in order to keep his animals. The county in which this individual lived had recently passed a law prohibiting the ownership of big cats unless a USDA exhibitor’s license was obtained. This licensee could not provide any evidence that the animals had ever been exhibited. In addition, the statement on the application concerning the reason for obtaining the license did not appear sufficient to demonstrate licensee’s intent to exhibit.
- A second licensee stated that she no longer advertised her cougar exhibit, and that no records were kept of instances where she had exhibited her cougars. She stated that her “boyfriend sometimes brings people to the facility to show them the animals,” and that this was how she met APHIS’ requirements to be a USDA licensed exhibitor. Based on her statements, we concluded that her activities were those of a pet owner, not an exhibitor.
- A third licensee provided scraps of paper—without specific dates—that listed the names of several people who had visited her property over the past 2 years (2007-2008). She explained that all but one of these visitors were either co-workers, friends, relatives, or neighbors. She added that she considered her bobcat and other animals as her pets, and that she treated them in that manner. As a result, we considered her evidence of exhibition to be very questionable.
- The other two licensees were unable to provide proof of exhibition, with one licensee stating that he obtained his bears so his son could have a pet.

APHIS regional officials stated that the agency cannot deny requests for license renewals without evidence, even if the Animal Care inspectors have doubts that the licensees are actually exhibiting, because under existing regulations the burden of proof rests with APHIS rather than with the licensee. In addition, officials stated that Office of the General Counsel (OGC) verbally informed them that they could not deny an individual a USDA exhibitor’s license on the grounds that they were not exhibiting their animals. However, we found that this was not a written opinion and that there was no evidence OGC had been considering this issue.

²⁷ Our previous audit, 33601-01-Ch, Licensing of Animal Exhibitors, dated June 1996, found that USDA exhibitor licensees who kept 4 or fewer animals were more likely to be pet owners.

APHIS, with its exhibitor licenses, authorizes the act of animal exhibition rather than actual ownership of exotic animals. Therefore, we concur with agency officials' position that the issuance of such licenses should be restricted to those individuals or organizations who truly intend to exhibit rather than to maintain animals as pets. Our field visits indicated that APHIS, as a result of its 2004 regulatory changes, had made significant progress in eliminating private exotic pet owners from the ranks of its exhibitor licensees. However, the fact that licenses can continue to be renewed from year to year based solely on a stated intent to exhibit may continue to provide a means for individuals to obtain and hold exhibitor licenses for purposes other than those authorized under the Act. We believe that APHIS Animal Care officials should request a formal written opinion from OGC to determine whether, under existing regulations, their Animal Care inspectors may require licensees to provide documented proof of their activities and to withhold license renewal in any case where this cannot be provided. If so, we believe that APHIS officials should implement additional procedures that allow Animal Care inspectors to require proof of exhibition in any cases where this might be reasonably questioned. If OGC determines that the current regulations do not support this, we believe that APHIS officials should seek to amend the regulations to make this possible. We believe that only in this way can APHIS have reasonable assurance that its exhibitor licenses are being issued only to those engaged in activities covered by the AWA.

Recommendation 5

Obtain and document advice from OGC to determine whether APHIS can deny an individual's request for a USDA exhibitor's license renewal if that individual cannot prove he or she had exhibited animals to the public. If so, implement procedures for Animal Care inspectors to verify licensees' exhibiting activities in cases where this is considered questionable at the time of license renewal.

Agency Response

In their response, APHIS officials agreed to submit a formal request to OGC, by June 30, 2010, on the current interpretation of the AWA regulations and standards in order to determine what changes would be needed to support the intent of this recommendation. Based on OGC's response, APHIS will implement the action needed to establish this requirement and/or policy by December 31, 2010.

OIG Position

We accept APHIS' management decision.

Recommendation 6

If OGC issues an opinion that regulatory changes would be required, implement regulations to require that licensees provide verifiable documentation of exhibiting activities, if requested, before renewing an existing license.

Agency Response

APHIS officials agreed with the recommendation and stated that based on the response from OGC, APHIS will implement the action needed to establish this requirement and/or policy by December 31, 2010.

OIG Position

We accept APHIS' management decision.

Finding 3: APHIS Needs to Improve Their Tracking of Licensees That Travel with Their Exhibits

Our analysis²⁸ of APHIS' oversight of 40 traveling exhibitors (i.e., circuses) found that Animal Care inspectors could not timely locate 6 of these in order to conduct critical reinspections.²⁹ Although APHIS has proposed new regulations that would require traveling exhibitors to submit up-to-date travel itineraries, it has not established an effective date for the requirement to be implemented. Without reinspections, some traveling exhibitors possessing dangerous animals may fail to correct previously-cited deficiencies that could endanger both the exhibitors' animals and the public.

APHIS Animal Care inspectors perform routine inspections of traveling exhibitors to ensure the primary enclosures for dangerous animals are sufficient to prevent escape, and that other requirements to safeguard both the animals and the public have been met. APHIS guidelines state that when an inspector identifies a condition that would currently and adversely affect the animal or the public, the inspector will identify this as a direct noncompliant item, require a short correction timeframe, and reinspect the exhibitor's facility within 45 days of the correction date agreed upon by the inspector and exhibitor. However, because some traveling exhibitors do not routinely provide their current travel locations to APHIS, the Animal Care inspectors are not always able to timely reinspect these exhibitors to ensure that the cited deficiencies have been satisfactorily corrected. While it is APHIS' standard practice to request that traveling exhibitors submit their current itineraries, the regulations do not specifically require them to do so.

We evaluated APHIS' reinspections performed for 40 traveling exhibitors that were cited with 165 serious violations that placed either the animals or the public at risk. Based on our evaluation, we determined that APHIS Animal Care inspectors could not locate six of these to perform timely reinspections. At the time of our review, these critical reinspections were between 10 and 74 days late. APHIS Animal Care inspectors acknowledged that they needed to ensure that those conditions were timely corrected but stated that without up-to-date itineraries of the exhibitors' travel, they could not locate them in order to perform the reinspections.

An APHIS official agreed with our evaluation and stated that the agency has had problems with finding traveling exhibitors. This same official stated that the agency published a proposed regulation³⁰ that would require traveling exhibitors to submit itineraries. However, the proposed

²⁸ We reviewed the timeliness of APHIS' reinspections for traveling exhibitors performed from October 2006 through June 2009.

²⁹ Exhibitors with serious noncompliant items are to be reinspected within 45 days of the agreed upon correction date.

³⁰ APHIS proposed to amend the AWA regulations concerning the submission of itineraries for traveling exhibitors on October 1, 2009.

regulations did not list an effective date and therefore these regulations would remain proposed until APHIS established an implementation date. An APHIS official stated that they need to increase the priority in implementing this regulation. By requiring traveling exhibitors to submit and maintain current itineraries, APHIS can ensure timely reinspections intended to protect the animals and the public that visits these exhibits.

Recommendation 7

Establish a timeframe for implementing the proposed regulations that would specifically require traveling exhibitors to submit and maintain current travel itineraries.

Agency Response

In their response, APHIS officials stated that the Itinerary by Traveling Exhibitors Docket (APHIS-2006-0023) has been published as a proposed rule, and public comments have been collected. APHIS anticipates that the final rule can be published by December 31, 2010, and implemented 30 days after publication.

OIG Position

We accept APHIS' management decision.

Scope and Methodology

We performed our audit at APHIS Headquarters in Riverdale, Maryland, and its regional offices located in Fort Collins, Colorado, and Raleigh, North Carolina. We judgmentally selected 31 out of the total 2,712 USDA licenses APHIS issued to exhibitors, as of January 2009. We reviewed these 31 exhibitors based on the criteria that these exhibitors housed dangerous animals (i.e., bears and cougars) in order to determine the adequacy of the animal enclosures and public barriers. However, our review did not specifically evaluate exhibitors' treatment of animals at the sites we visited.³¹ We selected 17 of the 31 because they had potential safety related issues, and 14 of the 31 were selected as potential pet owners and not bona fide exhibitors. The 31 exhibitors consisted of 15 individuals, 8 public zoos, 4 roadside zoos, 3 circus/traveling exhibitors, and 1 State park. These exhibitors were located in California, Illinois, Indiana, Missouri, Texas, and Washington, D.C.³² We conducted our field work between March 2008 and December 2009, and focused on exhibitor activities monitored by APHIS from October 2006 through July 2009.

To accomplish our objectives, we performed the following procedures:

- We interviewed APHIS Headquarters and regional officials and analyzed pertinent documents, which included public laws, procedures, and policies relating to the issuing of USDA exhibitor's licenses. We also interviewed APHIS' Animal Care experts on felids,³³ primates, and elephants.
- We interviewed officials at the Association of Zoos and Aquariums to determine their policies and procedures for accreditation of exhibitors.
- We analyzed APHIS' procedures to ensure that all complaints were investigated and handled in a timely manner. We selected 159 of the 1,212 total complaints APHIS received about animal exhibitors. The 159 complaints we reviewed related to public safety or contact, enclosure quality, knowledge and training, and other AWA violations. Our review did not disclose any issues with those complaints.
- We analyzed the APHIS Risk Based Inspection System (RBIS) to determine if APHIS was performing compliance inspections in a timely manner.
- We visited 31 USDA licensed exhibitors accompanied by at least 1 of the 16 APHIS Animal Care inspectors responsible for monitoring these exhibitors. During our visits, we conducted interviews with the licensee and observed the animal enclosures, public barriers, and perimeter fencing for safety related issues. For 2 of the 31, the licensees were not home at the time of our visit, and therefore we were unable to interview the owner or observe the animals or enclosures.

³¹ Nothing came to our attention on the mistreatment of animals in violation of the Animal Welfare Act.

³² The National Zoo located in Washington, D.C. is a Federal facility and not subject to separate State laws.

³³ APHIS' definition of felids includes cheetah, cougar (mountain lion, puma), jaguar, leopard, liger (which is a cross between a lion and a tiger), lion, panther, tiger (Bengal, Siberian), bobcat, and lynx.

- We interviewed State officials regarding their laws covering dangerous and/or exotic animal exhibits, as well as any licensing and inspection activities which they carry out. We reviewed exhibitors in five States, but interviewed officials in three States³⁴ because they explicitly prohibited private ownership of dangerous animals without a USDA exhibitor's license.
- To determine whether APHIS inspectors timely reinspected the selected 40 travelling exhibitors, we reviewed APHIS Animal Care's system-generated listing of Direct Noncompliant Items noted at the time of facility inspection to obtain the inspection date. We then reviewed the corresponding inspection reports that APHIS generated to document facility inspections to determine whether APHIS timely revisited the traveling exhibitor facilities having direct Noncompliant Items to ensure reinspection was conducted within 45 days of the correction date as required by RBIS guidelines. Our period of review covers fiscal years 2006 through June 2009.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APHIS used the Licensing and Registration Information System database to carry out this mission. During our audit, this system was replaced by the Animal Care Information System. While we used information from both systems during our audit, we make no representation regarding the accuracy or reliability of data from the system or the effectiveness of the system, as the data were not assessed and information system controls are not part of our audit objectives.

³⁴ This included officials with the California Departments of Fish and Game and Training and Administrative Services, Illinois Department of Natural Resources, and the Texas Animal Health Commission.

Abbreviations

APHIS	Animal and Plant Health Inspection Service
AWA	Animal Welfare Act
CFR	Code of Federal Regulations
OGC	Office of the General Counsel
OCFO	Office of the Chief Financial Officer
OIG	Office of the Inspector General
RBIS	Risk Based Inspection System
USDA	United States Department of Agriculture

USDA'S

APHIS

RESPONSE TO AUDIT REPORT



United States
Department of
Agriculture

Animal and Plant
Health Inspection
Service

Washington, DC
20250

MEMORANDUM

May 28, 2010

TO: Gil H. Harden
Assistant Inspector General
For Audit

FROM: Cindy J. Smith /S/
Administrator

SUBJECT: Animal and Plant Health Inspection Service (APHIS)
Response and Request for Management Decisions on
Office of Inspector General (OIG) Report, "Controls
Over APHIS Licensing of Animal Exhibitors (33601-10-CH)

Thank you for allowing APHIS to comment on the above OIG report. We have addressed each Recommendation with our corrective actions and timeframes for implementation of those actions.

Recommendation 1: Issue clear regulations and guidance that define what constitutes a sufficient public barrier and require exhibitors to report all escapes and attacks involving dangerous animals to APHIS Animal Care inspectors.

APHIS Response: APHIS agrees with this recommendation and will develop a regulatory work plan to amend current regulations to clarify the intent of the public barriers and to require notification of all escapes and attacks. APHIS anticipates completing the development of the regulatory work plan by December 31, 2010. APHIS will provide employees with a guidance document to define what constitutes a sufficient public barrier and include this guidance in Animal Care's consolidated Inspection Guides by September 30, 2010.

Recommendation 2: Implement a process to better utilize resident animal experts that would require Animal Care inspectors to submit technical questions in order to evaluate the safety of any newly-designed enclosure areas for dangerous animals, and establish a time-phased plan to review all existing facilities.

APHIS Response: APHIS agrees with this recommendation and will develop a process to have newly designed enclosure areas for dangerous animals reviewed by the Field Specialists. In addition, AC will develop a time-phased plan for review of existing facilities. This time-phased plan would entail the Field Specialist reviewing facilities under investigation and a systematic approach of reviewing photos of other existing facilities. A safety checklist/survey will be developed for



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AC inspectors to complete and forward with photos to the appropriate Specialist when inspecting an enclosure for a dangerous animal that has not already been evaluated by a Field Specialist. All enclosures for dangerous animals would be evaluated within 2 years, corresponding to the Risk Based Inspection System inspection cycle and workload timeframes. We anticipate the process to evaluate new enclosures, the time phased plan, and the safety checklist/survey to be developed and distributed to the employees by September 30, 2010.

Recommendation 3: Implement a process to ensure that APHIS personnel determine the cause of dangerous animal escapes or attacks, document the corrective actions taken, and ensure that this information is readily available to all Animal Care inspectors when evaluating similar facilities in their respective jurisdictions.

Modified APHIS Response: APHIS agrees with this recommendation. We recognize that improved information sharing regarding escapes and attacks is needed. AC determines and/or documents the cause of all known escapes and attacks reported to us or in the media. A 2-tiered approach to incident reporting to AC employees has been implemented. Tier 1 involves disseminating initial information of the escape/attack immediately after AC is notified, usually in the form of email updates. Tier 2 involves disseminating follow-up information once the situation has been investigated and/or evaluated, corrective action determined and lessons learned in the form of a formal update from the appropriate Field Specialist. Employees will also receive reminders on other training issues that may need to be re-emphasized. Inspection and follow-up SOPs would be used to make sure corrective actions are documented. We began implementing this notification process on May 20, 2010.

Recommendation 4: Implement procedures requiring periodic onsite supervisory visits to ensure that inspections of exhibitor facilities meet APHIS standards in a consistent manner.

APHIS Response: APHIS agrees with this recommendation. We have developed processes and changes are already underway to address this issue based on the OIG Audit of Problematic Dog Dealers (2010). AC will increase our field supervisory capabilities and oversight of inspectors, allowing amplified supervisory presence on more inspections by September 30, 2010.

Recommendation 5: Obtain and document advice from the OGC to determine whether APHIS can deny an individual's request for a USDA exhibitor's license renewal if that individual cannot prove he or she had exhibited animals to the public. If so, implement procedures for Animal Care inspectors to verify licensees' exhibiting activities in cases where this is considered questionable at the time of license renewal.

APHIS Response: APHIS agrees with this recommendation. By June 30, 2010, APHIS will formally ask for an opinion from OGC on the current interpretation of the AWA regulations and standards and what changes would be needed to support the intent of this recommendation. Based on the response, APHIS will implement the action needed to establish this requirement and/or policy by December 31, 2010.

Recommendation 6: If OGC issues an opinion that regulatory changes would be required, implement regulations to require that licensees provide verifiable documentation of exhibiting activities, if requested, before renewing an existing license.

APHIS Response: APHIS agrees with this recommendation. Based on the response from OGC, APHIS will implement the action needed to establish this requirement and/or policy by December 31, 2010.

Recommendation 7: Establish a timeframe for implementing the proposed regulations that would require traveling exhibitors to submit and maintain current travel itineraries.

APHIS Response: APHIS agrees with this recommendation. The Itinerary by Traveling Exhibitors Docket (APHIS-2006-0023) has been published as a proposed rule, and public comments have been collected. The comments have been summarized and we are currently developing our responses to the comments. We anticipate a final rule docket for Departmental clearance by August 2010. If OMB maintains the “not significant” designation for this rule, only Departmental clearance will be needed prior to publication and implementation. This process would take approximately 2 months, to clear OGC and allow the administration thorough review the docket. Given this scenario, APHIS anticipates that the final rule can be published by December 31, 2010. It would be implemented 30 days after publication.