

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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|------------------------------------|---|-------------------------------|
| In re: |) | |
| |) | AWA Docket No. 07-0166 |
| Judy Sarson, an individual, |) | |
| |) | Decision and Order |
| Respondent |) | by Reason of Default |

PROCEDURAL HISTORY

1. The Complaint, filed on August 2, 2007, alleged violations of the Animal Welfare Act, as amended (7 U.S.C. §§ 2131 - 2159) (herein frequently the “AWA” or “Act”), and the regulations and standards issued pursuant to the Act (9 C.F.R. §§ 1.1 - 3.142) (the “Regulations”).
2. The Complaint alleged that Judy Sarson, an individual, the respondent (herein frequently “Respondent Sarson” or “Respondent”), sold dogs in commerce without being licensed, repeatedly, thereby willfully violating the Animal Welfare Act and the Regulations, particularly 7 U.S.C. §§ 2131-2134 and the Regulations, particularly 9 C.F.R. § 2.1.
3. The Complainant, the Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (herein frequently “APHIS” or “Complainant”), is represented by Babak A. Rastgoufard, Esq., Office of the General Counsel (Marketing Division), United States Department of Agriculture, 1400 Independence Avenue, S.W., Washington D.C. 20250-1417.

4. On August 3, 2007, the Hearing Clerk mailed a copy of the Complaint to Respondent Sarson by certified mail. The Complaint (together with the Hearing Clerk's notice letter dated August 3, 2007 and a copy of the Rules of Practice) was delivered and signed for by Respondent Sarson on August 7, 2007. [See Domestic Return Receipt for Article Number 7004 2510 0003 7022 9187.] No answer to the Complaint has been received. The time for filing an answer expired on August 27, 2007.

5. The Complainant's Motion for Adoption of Proposed Decision and Order, filed November 27, 2007, is before me. A copy of the Motion and the proposed Decision and Order was delivered and signed for by Respondent Sarson on December 3, 2007; she failed to respond. [See Domestic Return Receipt for Article Number 7004 2510 0003 7022 9859.]

6. The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. §1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139.

7. Accordingly, the material allegations in the Complaint, which are admitted by Respondent Sarson's default, are adopted and set forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139. See 7 C.F.R. §1.130 *et seq.*, especially 7 C.F.R. § 1.139.

FINDINGS OF FACT

8. Respondent Judy Sarson is an individual whose mailing address is in Diamond, Missouri 64840.

9. Respondent Judy Sarson, at all times material herein, was operating as a dealer as defined in the Act and the Regulations.

10. In or about April 2001, Respondent submitted an “Application for License” for an Animal Welfare Act license.

11. On or about July 25, 2001, APHIS conducted a pre-license inspection of Respondent’s facility, at which time APHIS identified noncompliant items, and informed Respondent that “No regulated activities can legally occur without first obtaining a USDA (United States Department of Agriculture) license.”

12. On or about August 9, 2001, APHIS issued to Respondent AWA license number 43-A-3393.

13. On or about August 20, 2002, Respondent submitted to APHIS an “Application for License” License Renewal form for Animal Welfare Act license number 43-A-3393, issued to Judy Sarson.

14. Respondent included a check for \$130.00 with her License Renewal form.

15. On or about September 13, 2002, APHIS notified Respondent that the check referred to above in paragraph 14 above (¶ 14) “was returned by the bank for non-sufficient funds.”

16. Additionally, on or about September 13, 2002, APHIS notified Respondent that “[a]ccordingly, your license to conduct regulated business activities has been terminated...if you are currently conducting regulated activities without a valid USDA license, you will be considered in violation of the AWA and subject to legal action.”

17. Sometime thereafter, Respondent purportedly submitted to APHIS a money order to cover the amount of the check referred to above in paragraph 14 above (¶ 14), plus a return check fee, imposed by APHIS.

18. The purported money order referred to above in paragraph 17 (¶ 17), was never received by APHIS.

19. Subsequently, sometime after January 28, 2003, APHIS again informed Respondent that she does not hold a valid USDA license and that engaging in or conducting regulated activities without a valid USDA license would be a violation of the AWA and subject Respondent to legal action.

20. Respondent, nevertheless, continued to engage in activities regulated under the Act and Regulations.

21. On or about March 12, 2003, Respondent, without being licensed, sold, in commerce, seven border collie puppies to H & H Pets.

22. H & H Pets is a division of the Hunte Corporation, which is a licensed dealer (AWA license number 43-B-0123) [hereinafter “H & H Pets” or “The Hunte Corporation”].

23. Respondent sold these puppies to H & H Pets for resale for use as pets or breeding purposes.

24. On or about March 12, 2003, Respondent received a check made payable to “Judy Sarson, 12638 Birch Dr, Diamond, MO 64840-8256” in the amount of \$973.00 from “The Hunte Corporation” for the sale of the dogs referred to in paragraph 21 above (¶ 21). This check was received and endorsed by “Judy Sarson.”

25. On or about March 12, 2003, Respondent, without being licensed, sold, in commerce, two west highland white terrier puppies to H & H Pets.

26. Respondent sold these puppies to H & H Pets for resale for use as pets or breeding purposes.

27. On or about March 12, 2003, Respondent received a check made payable to “Judy Sarson, 12638 Birch Dr, Diamond, MO 64840-8256” in the amount of \$483.00 from “The Hunte Corporation” for the sale of the dogs referred to in paragraph 25 above (¶ 25). This check was received and endorsed by “Judy Sarson.”

28. On or about March 13, 2003, Respondent, without being licensed, sold, in commerce, five Australian Sheppard (also known as Australian Shepherd) puppies to H & H Pets.

29. Respondent sold these puppies to H & H Pets for resale for use as pets or breeding purposes.

30. On or about March 18, 2003, Respondent received a check made payable to “Judy Sarson, 12638 Birch Dr, Diamond, MO 64840-8256” in the amount of \$745.00 from “The Hunte Corporation” for the sale of the dogs referred to in paragraph 28 above (¶ 28). This check was received and endorsed by “Judy Sarson.”

31. On or about April 3, 2003, Respondent, without being licensed, sold, in commerce, two welsh corgi puppies to David Demery, Big 8 Kennel.

32. David Demery, Big 8 Kennel is a licensed breeder (AWA license number 43-A-3850) [hereinafter “Big 8 Kennel”].

33. Respondent sold these puppies to Big 8 Kennel for breeding purposes or for resale for use as pets.

34. On or about September 12, 2003, Respondent, without being licensed, sold, in commerce, one west highland white terrier puppy and one welsh corgi puppy to Joyce Walters, Select Pets.

35. Joyce Walters, Select Pets is a licensed dealer (AWA license number 43-B-0178) [hereinafter “Select Pets”].

36. Respondent sold these puppies to Select Pets for resale for use as pets or breeding purposes.

37. On or about October 3, 2003, Respondent, without being licensed, sold, in commerce, one welsh corgi puppy to Select Pets.

38. Respondent sold this puppy to Select Pets for resale for use as a pet or breeding purposes.

39. On or about September 12, 2003 and October 3, 2003, Respondent received two checks made payable to “Judy Sarson” in the amounts of \$185.00 and \$335.00, respectively, from “Select Pets, Garland or Joyce Walters” for the sale of the dogs referred to in paragraphs 34 and 37 above (¶¶ 34, 37).

40. On or about October 29, 2003, Respondent, without being licensed, sold, in commerce, one welsh corgi puppy to Select Pets.

41. Respondent sold this puppy to Select Pets for resale for use as a pet or breeding purposes.

42. On or about October 29, 2003, Respondent received a check made payable to “Judy Sarson” in the amount of \$160.00 from “Select Pets, Garland or Joyce Walters” for the sale of the dog referred to in paragraphs 40 above (¶ 40).

43. On or about October 29, 2003, Respondent, without being licensed, sold, in commerce, five Pembroke west corgi puppies to H & H Pets.

44. Respondent sold these puppies to H & H Pets for resale for use as pets or breeding purposes.

45. Thereafter, in or about 2003, Respondent received a check made payable to “Judy Sarson, 12638 Birch Dr, Diamond, MO 64840-8256” in the amount of \$835.00 from “The Hunte Corporation” for the sale of the dogs referred to in paragraph 43 above (¶ 43). This check was received and endorsed by “Judy Sarson.”

46. On or about December 19, 2003, Respondent, without being licensed, sold, in commerce, three Pembroke west corgi puppies to Jerry & Brenda Puckett, Pucketts Perfect Pets.

47. Jerry & Brenda Puckett, Pucketts Perfect Pets are a licensed breeder (AWA license number 43-A-2903) [hereinafter “Pucketts Perfect Pets”].

48. Respondent sold these puppies to Pucketts Perfect Pets for breeding purposes or for resale for use as pets.

49. On or about January 13, 2004, Respondent purchased one Pembroke west corgi dog from Pucketts Perfect Pets.

50. On or about February 10, 2004, Respondent submitted an “Application for License” for an Animal Welfare Act license.

51. On or about March 3, 2004, APHIS notified Respondent that it had received Respondent’s Application for License and that APHIS “will issue you a license to conduct AWA regulated activities when you have completed the licensing process by passing a pre-licensing inspection and fulfilling all other applicable requirements.”

52. On or about March 22, 2004, APHIS conducted a pre-license inspection of Respondent’s facility, at which time APHIS identified several noncompliant items, and informed

Respondent that “NO REGULATED ACTIVITIES MAY TAKE PLACE UNTIL LICNESE [sic] IS RECEIVED.”

53. On or about March 22, 2004, Respondent held on her premises 59 animals.

54. On or about April 19, 2004, Respondent, without being licensed, sold, in commerce, one bichon frise puppy to Big 8 Kennel.

55. Respondent sold this puppy to Big 8 Kennel for breeding purposes or for resale for use as a pet.

56. On or about June 14, 2004, Respondent purchased four Pembroke west corgi dogs from Pucketts Perfect Pets.

57. On or about June 25, 2004, Respondent, without being licensed, sold, in commerce, several west highland white terrier puppies to Connie Dozier, Spring Chateau Ranch Kennels.

58. Connie Dozier, Spring Chateau Ranch Kennels is a licensed breeder (AWA license number 48-A-1762) [hereinafter “Spring Chateau Ranch Kennels”].

59. Respondent sold these puppies to Spring Chateau Ranch Kennels for breeding purposes or for resale for use as pets.

60. On or about September 1, 2004, Respondent, without being licensed, sold, in commerce, one Pembroke west corgi dog to Pucketts Perfect Pets.

61. Respondent sold this puppy to Pucketts Perfect Pets for breeding purposes or for resale for use as a pet.

62. On or about August 13, 2005, purchased two Pembroke west corgi dogs from Alan and Karen Sims.

63. Alan and Karen Sims are a licensed breeder (AWA license number 43-A-3621).

64. On or about September 2006, Respondent, without being licensed, sold, in commerce, seven welsh corgi puppies to Robert D. Cline.
65. Robert D. Cline is a licensed breeder (AWA license number 43-A-4737).
66. Respondent sold these puppies to Robert D. Cline for breeding purposes or for resale for use as pets.
67. On or about September 15, 2006, Respondent purchased three Pembroke west corgi dogs from Pucketts Perfect Pets.
68. In or about November 2006, Respondent, without being licensed, sold, in commerce, one welsh corgi puppy to Robert D. Cline.
69. Respondent sold this puppy to Robert D. Cline for breeding purposes or for resale for use as a pet.
70. On or about January 11, 2007, Respondent purchased five Pembroke west corgi dogs from Pucketts Perfect Pets.
71. On or about February 5, 2007 Respondent purchased six Pembroke west corgi dogs from Pucketts Perfect Pets.
72. Since in or about early 2003, and continuing to date, Respondent has purchased and sold dogs, including to and from licensed dealers, without holding a valid AWA license.
73. Since in or about early 2003, and continuing to date, Respondent has maintained more than three breeding female dogs.
74. Between February 10, 2003 and February 10, 2004, Respondent sold 75 animals and purchased 30 animals, and Respondent grossed at least \$10,500.00 from the sales of those

animals. Respondent provided this information in her annual Animal Welfare Act license application.

75. Between April 1, 2001 and April 1, 2002, Respondent sold 75 animals and purchased 35 animals, and Respondent grossed at least \$9,375.00 from the sales of those animals.

Respondent provided this information in her annual Animal Welfare Act license application.

76. Between April 1, 2002 and April 1, 2003, Respondent sold 62 animals and purchased 25 animals, and Respondent grossed at least \$9,345.00 from the sales of those animals, according to Respondent's annual Animal Welfare Act license renewal.

DISCUSSION

77. Respondent Sarson's violations include repeated instances in which she operated as a dealer without being licensed. The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149.

78. The Act and the Regulations authorize the Secretary of Agriculture to, among other things, impose civil penalties. 7 U.S.C. § 2149(b). In imposing a civil penalty, the Secretary is required to give due consideration to the appropriateness of the penalty with respect to: (1) the gravity of the violations; (2) the size of the business of the person involved; (3) the person's good faith; (4) and the person's history of previous violations. *Id.*

The Gravity of the Violations

79. Respondent Sarson's violations are serious: enforcement of the Act and Regulations depends upon the identification of persons operating as dealers. *See* 7 U.S.C. § 2131; *see* the opinion of the Judicial Officer of the United States Department of Agriculture ("USDA": "[T]he failure to obtain an Animal Welfare Act license before operating as a dealer is a

serious violation because enforcement of the Animal Welfare Act and the Regulations and Standards depends upon the identification of persons operating as dealers.” *In re: J. Wayne Shaffer*, 60 Agric. Dec. 444, 478, 2001 WL 1143410, at *23 (U.S.D.A. Sept. 26, 2001).

80. The purposes of the Act are “(1) to insure that animals intended...for 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.” 7 U.S.C. § 2131.

81. Respondent Sarson’s violations are serious: by operating as an unlicensed dealer and buying and selling, in commerce, beginning in March 2003, at least 40 dogs and puppies, of various breeds, including to licensed dealers, Respondent Sarson undercut the Secretary’s ability to carry out the purposes of the Act and ensure that animals intended for use in commerce “are provided humane care and treatment.”

The Size of the Business of the Person Involved

82. Respondent Sarson maintained a small- to medium-sized business. Respondent’s violations of the Animal Welfare Act described herein involve her sale of at least 40 dogs of about 6 different breeds during March 2003 – November 2006. Further, Respondent grossed at least:

\$10,500 from selling 75 animals between February 10, 2003 and February 10, 2004;

\$9,345 from selling 62 animals between April 2002 and April 2003; and

\$9,375 from selling 75 animals between April 2001 and April 2002.

The Person's Good Faith; and the Person's History of Previous Violations

83. Respondent Sarson has not previously been found to have violated the Animal Welfare Act. Nevertheless, Respondent's conduct over the period described herein reveals a disregard for, or unwillingness to abide by, the requirements of the Act and the Regulations. Despite knowing that her AWA license had expired, and that she needed to obtain an AWA license prior to engaging in activities regulated under the Act and Regulations, Respondent continued to engage in regulated activity and sold numerous dogs, including to licensed dealers, without holding an AWA license. Such an ongoing pattern of violations demonstrates a lack of good faith and establishes a "history of previous violations" for the purposes of section 2149(b) of the Act, 7 U.S.C. § 2149(b). The Judicial Officer of USDA wrote: "I have consistently held under the Animal Welfare Act that an ongoing pattern of violations over a period of time establishes a violator's 'history of previous violations.'" *In re William Richardson*, 66 Agric. Dec. ___, ___, 2007 WL 1723728, at *13 (U.S.D.A. June 13, 2007) (footnote omitted).

84. Despite having been informed on repeated occasions that she does not hold a valid USDA license and that engaging in or conducting regulated activities without a valid USDA license would be a violation of the Act and would subject Respondent to legal action, Respondent Sarson continued to engage in regulated activity without a license and sold numerous dogs and puppies, of various breeds, including to licensed dealers.

CONCLUSIONS

85. The Secretary of Agriculture has jurisdiction.

86. Respondent Judy Sarson is an individual whose mailing address is in Diamond, Missouri 64840.

87. Respondent Judy Sarson was, at all times material herein, operating as a dealer as defined in the Animal Welfare Act and the Regulations.

88. From about March 2003 through about November 2006, Respondent Sarson operated as a dealer without having obtained an Animal Welfare Act license and sold at least 40 dogs in commerce, as specified below, in violation of 7 U.S.C. §§ 2131-2134 and the Regulations, particularly 9 C.F.R. § 2.1. The sale of each dog is a separate violation. 7 U.S.C. § 2149(b).

89. On or about March 12, 2003, Respondent, without being licensed, sold, in commerce, seven border collie puppies to H & H Pets, a licensed dealer (AWA license number 43-B-0123) (“H & H Pets”), for resale for use as pets or breeding purposes, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1).

90. On or about March 12, 2003, Respondent without being licensed, sold, in commerce, two west highland white terrier puppies to H & H Pets, a licensed dealer (AWA license number 43-B-0123), for resale for use as pets or breeding purposes, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1).

91. On or about March 13, 2003, Respondent without being licensed, sold, in commerce, five Australian Sheppard (also known as Australian Shepherd) puppies to H & H Pets, a licensed dealer (AWA license number 43-B-0123), for resale for use as pets or breeding purposes, in

willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations.

7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1).

92. On or about April 3, 2003, Respondent without being licensed, sold, in commerce, two welsh corgi puppies to David Demery, Big 8 Kennel, a licensed dealer (AWA license number 43-A-3850) (“Big 8 Kennel”), for breeding purposes or for resale for use as pets, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations.

7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1).

93. On or about September 12, 2003, Respondent without being licensed, sold, in commerce, one west highland white terrier puppy and one welsh corgi puppy to Joyce Walters, Select Pets, a licensed dealer (AWA license number 43-B-0178) (“Select Pets”), for resale for use as pets or breeding purposes, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1).

94. On or about October 3, 2003, Respondent without being licensed, sold, in commerce, one welsh corgi puppy to Select Pets, a licensed dealer (AWA license number 43-B-0178), for resale for use as a pet or breeding purposes, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1).

95. On or about October 29, 2003, Respondent without being licensed, sold, in commerce, one welsh corgi puppy to Select Pets, a licensed dealer (AWA license number 43-B-0178), for resale for use as a pet or breeding purposes, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1).

96. On or about October 29, 2003, Respondent without being licensed, sold, in commerce, five Pembroke west corgi puppies to H & H Pets, a licensed dealer (AWA license number 43-

B-0123), for resale for use as pets or breeding purposes, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1).

97. On or about December 19, 2003, Respondent without being licensed, sold, in commerce, three Pembroke west corgi puppies to Jerry & Brenda Puckett, Pucketts Perfect Pets, a licensed breeder (AWA license number 43-A-2903) (“Pucketts Perfect Pets”), for breeding purposes or for resale for use as pets, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1).

98. On or about April 19, 2004, Respondent without being licensed, sold, in commerce, one bichon frise to Big 8 Kennel, a licensed dealer (AWA license number 43-A-3850), for resale for use as a pet or breeding purposes, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1).

99. On or about June 25, 2004, Respondent, without being licensed, sold, in commerce, several west highland white terrier puppies to Connie Dozier, Spring Chateau Ranch Kennels, a licensed breeder (AWA license number 48-A-1762) (“Spring Chateau Ranch Kennels”) for breeding purposes or for resale for use as pets, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1).

100. On or about September 1, 2004, Respondent without being licensed, sold, in commerce, one Pembroke west corgi puppy to Pucketts Perfect Pets, a licensed breeder (AWA license number 43-A-2903), for breeding purposes or for resale for use as a pet, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1).

101. In or about September 2006, Respondent without being licensed, sold, in commerce, seven west corgi puppies to Robert D. Cline, a licensed breeder (AWA license number 43-A-4737), for breeding purposes or for resale for use as pets, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1).

102. In or about November 2006, Respondent without being licensed, sold, in commerce, one west corgi puppy to Robert D. Cline, a licensed breeder (AWA license number 43-A-4737), for breeding purposes or for resale for use as a pet, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1).

103. The gravity of Respondent Sarson's Animal Welfare Act violations is serious.

104. The size of Respondent Sarson's business is small to medium.

105. From March 12, 2003 continuing to date, Respondent Sarson has violated the Animal Welfare Act and the Regulations at least 40 times by being engaged in activities regulated by the Animal Welfare Act without holding a valid AWA license.

106. Since about July 2001, APHIS has repeatedly provided Respondent written and other notice of Respondent's need to hold a valid AWA license prior to engaging in activities regulated by the Animal Welfare Act, and provided Respondent the opportunity to demonstrate and achieve compliance with the Act and Regulations by obtaining and maintaining an AWA license. Respondent's failure to do so, shows a lack of good faith and a "history of previous violations" for the purposes of section 2149(b) of the Act, 7 U.S.C. § 2149(b).

107. Considering Respondent Sarson's more than 40 violations of the Animal Welfare Act, over longer than a 3-1/2 year period, \$17,462.00 is a reasonable and appropriate civil penalty. 7 U.S.C. § 2149.

ORDER

108. Respondent Sarson, her agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations issued thereunder, and, in particular, shall cease and desist from engaging in any activity for which a license is required under the Act and Regulations without being licensed as required.

109. Respondent Sarson is assessed a **\$17,462.00** civil penalty, which she shall pay by certified check(s) or cashier's check(s) or money order(s), made payable to the order of "**Treasurer of the United States**", and forwarded within forty-five (45) days from the effective date of this Order **by a commercial delivery service, such as FedEx or UPS**, to

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

Respondent Sarson shall include **AWA Docket No. 07-0166** on the certified check(s) or cashier's check(s) or money order(s).

FINALITY

110. This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30

days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

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

Done at Washington, D.C.
this 17th day of January 2008

Jill S. Clifton
Administrative Law Judge

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

APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS. . . .

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

. . .

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in

§ 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

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

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

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

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

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

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

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

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

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

7 C.F.R. § 1.145