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**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

Docket Nos. 15-0058 & 15-0059
16-0037 & 16-0038

In re:

DOUGLAS KEITH TERRANOVA, an individual; and
TERRANOVA ENTERPRISES, INC., a Texas corporation,

Respondents.

ORDER ON COMPLAINANT'S MOTION TO EXCLUDE AUDIO RECORDINGS

On April 4, 2016, Complainant, the Administrator of the Animal and Plant Health Inspection Service ("APHIS"), filed a motion to exclude audio recordings identified as RX 16-21 ("Motion"). On April 11, 2016, Respondents, Douglas Keith Terranova, an individual; and Terranova Enterprises, Inc., a Texas corporation, filed a memorandum in opposition to the motion to exclude audio recordings ("Opposition").

Complainant contends that Respondents' recordings, or portions thereof, should not be admitted in evidence absent an accurate, reliable transcription, objects to playing only portions of respondents' audio recordings, and requests, alternatively, that the recordings be played in their entirety during the hearing. Motion at 1-3.

Respondents contend that portions of the recordings are relevant to several issues in the proceeding, and that while they disagree that transcripts are required, agree that transcripts would be helpful and therefore will provide transcripts of recordings dated January 21, 2014, April 7, 2014, and July 23, 2014. Opposition at 1-2.

Pursuant to USDA Rules and consistent with the Administrative Procedures Act, evidence which is “immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded insofar as practicable.” 7 C.F.R. § 1.141(h)(iv), 5 U.S.C. § 556(d).

While Complainants may be correct that federal courts have long recognized the value of utilizing authenticated transcripts of recorded conversations to assist the fact finder, that does not mean that the lack of a transcript should be a reason to exclude the audio recordings from evidence. Indeed, one of the cases cited by Complainants states that “we note that the use of tape recordings obviously is acceptable as long as a proper foundation has been laid.” *United States v. Onori*, 525 F.2d 938, 947 (5th Cir. 1976). The lack of a transcript for all of the recordings is not a basis for excluding the recordings from evidence. Moreover, there is no need to play all of the recordings during the hearing.

For the above-stated reasons, Complainant’s Motion to exclude audio recordings is DENIED.

So ORDERED this 13th day of April, 2016, in Washington, D.C.



Erin M. Wirth
Administrative Law Judge