

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) A.Q. Docket No. 08-0074
)
Leroy H. Baker, Jr., d/b/a)
Sugarcreek Livestock Auction,)
Inc.; Larry L. Anderson; and)
James Gadberry,)
) **Decision and Order as to**
Respondents) **Leroy H. Baker, Jr.**

PROCEDURAL HISTORY

Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Acting Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on March 11, 2008. The Acting Administrator instituted the proceeding under sections 901-905 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. § 1901 note) [hereinafter the Commercial Transportation of Equine for Slaughter Act]; the regulations issued under the Commercial Transportation of Equine for Slaughter Act (9 C.F.R. pt. 88) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings

Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].¹

The Acting Administrator alleges that, during the period from on or about March 26, 2003, through on or about January 7, 2007, Leroy H. Baker, Jr., d/b/a Sugarcreek Livestock Auction, Inc.; Larry L. Anderson; and James Gadberry, shipped horses in commercial transportation from Sugarcreek Livestock Auction., Inc., Sugarcreek, Ohio, to Texas, for slaughter, in violation of the Commercial Transportation of Equine for Slaughter Act and the Regulations.²

The Hearing Clerk served Mr. Baker with the Complaint, the Rules of Practice, and a service letter on March 17, 2008.³ Mr. Baker failed to file an answer to the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). The Hearing Clerk sent Mr. Baker a letter dated April 8, 2008, stating Mr. Baker had not filed a timely response to the Complaint. Mr. Baker failed to file a response to the Hearing Clerk's April 8, 2008, letter.

On July 2, 2008, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the Acting Administrator filed a Motion for Adoption of Proposed

¹The Acting Administrator states the Rules of Practice applicable to this proceeding are codified in 7 C.F.R. §§ 1.130-.151, 380.1-.10 (Compl. at 1). I do not find 7 C.F.R. §§ 380.1-.10 applicable to the instant proceeding.

²Compl. ¶¶ IV-XXXVIII.

³United States Postal Service Domestic Return Receipt for article number 7004 2510 0003 7023 1197.

Default Decision and Order [hereinafter Motion for Default Decision] and a Proposed Default Decision and Order. The Hearing Clerk served Mr. Baker with the Acting Administrator's Motion for Default Decision and the Acting Administrator's Proposed Default Decision and Order on July 5, 2008.⁴ Mr. Baker failed to file objections to the Acting Administrator's Motion for Default Decision and the Acting Administrator's Proposed Default Decision and Order within 20 days after service, as required by section 1.139 of the Rules of Practice (7 C.F.R. § 1.139). The Hearing Clerk sent Mr. Baker a letter dated July 28, 2008, stating Mr. Baker had not filed a timely objection to the Acting Administrator's Motion for Default Decision. Mr. Baker failed to file a response to the Hearing Clerk's July 28, 2008, letter.

On October 1, 2008, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ], in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), issued a Decision and Order as to Leroy H. Baker, Jr., by Reason of Default [hereinafter Initial Decision as to Leroy H. Baker, Jr.]: (1) concluding Mr. Baker violated the Commercial Transportation of Equine for Slaughter Act and the Regulations, as alleged in the Complaint; (2) ordering Mr. Baker to cease and desist from violating the Commercial Transportation of Equine for Slaughter Act and the Regulations; and (3) assessing Mr. Baker a \$162,800 civil penalty.

⁴United States Postal Service Domestic Return Receipt for article number 7007 0710 0001 3858 7901.

On November 5, 2008, Mr. Baker filed a timely appeal petition. On November 7, 2008, the Acting Administrator filed a response to Mr. Baker's appeal petition. On November 10, 2008, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. Based upon a careful review of the record, I affirm the ALJ's Initial Decision as to Leroy H. Baker, Jr.; except that, for the reasons discussed in this Decision and Order as to Leroy H. Baker, Jr., *infra*, I do not adopt the ALJ's cease and desist order.

DECISION

Statement of the Case

Mr. Baker failed to file an answer to the Complaint within the time prescribed in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides the failure to file an answer within the time provided in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the failure to file an answer or the admission by the answer of all the material allegations of fact contained in the complaint, constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as findings of fact. I issue this Decision and Order as to Leroy H. Baker, Jr., pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact and Conclusions of Law

1. Leroy H. Baker, Jr., d/b/a Sugarcreek Livestock Auction, Inc., was, at all times material to this Decision and Order as to Leroy H. Baker, Jr., a commercial buyer and seller of slaughter horses who commercially transported horses for slaughter.

2. Mr. Baker was, at all times material to this Decision and Order as to Leroy H. Baker, Jr., an “owner/shipper” of horses within the meaning of 9 C.F.R. § 88.1.

3. Mr. Baker has a business mailing address of P.O. Box 452, 102 Buckeye Street SW, Sugarcreek, Ohio 44681, and, at all times material to this Decision and Order as to Leroy H. Baker, Jr., Mr. Baker owned and operated Sugarcreek Livestock Auction, Inc., in the State of Ohio. Mr. Baker had been in the business of buying and selling horses since 1985 and regularly shipped over 1,000 horses per year to horse slaughter plants in Texas.

4. The Secretary of Agriculture has jurisdiction in this matter.

5. Mr. Baker is responsible not only for what he himself did or failed to do in violation of the Commercial Transportation of Equine for Slaughter Act and the Regulations, but also, for what others did or failed to do on his behalf in the commercial transportation of horses for slaughter, as his agents, in violation of the Commercial Transportation of Equine for Slaughter Act and the Regulations. Mr. Baker is responsible for errors and omissions of those who acted as agents on his behalf in the commercial transportation of horses for slaughter, such as truck drivers.

6. On or about March 26, 2003, Mr. Baker shipped 36 horses in commercial transportation from Sugarcreek Livestock Auction, Inc., in Sugarcreek, Ohio [hereinafter Sugarcreek], to BelTex Corporation in Fort Worth, Texas [hereinafter BelTex], for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: the prefix for each horse's United States Department of Agriculture [hereinafter USDA] backtag number was not recorded properly, in violation of 9 C.F.R. § 88.4(a)(3)(vi).

7. On or about March 30, 2003, Mr. Baker shipped 70 horses in commercial transportation from Sugarcreek to BelTex for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: the prefix for each horse's USDA backtag number was not recorded properly, in violation of 9 C.F.R. § 88.4(a)(3)(vi).

8. On or about March 31, 2003, Mr. Baker shipped 85 horses in commercial transportation from Sugarcreek to BelTex for slaughter:

(a) One of the horses in the shipment, a dark bay/brown horse with no backtag, died while en route to the slaughter plant, yet Mr. Baker and/or his driver did not contact the nearest Animal and Plant Health Inspection Service [hereinafter APHIS] office as soon as possible and allow an APHIS veterinarian to examine the dead horse, in violation of 9 C.F.R. § 88.4(b)(2).

(b) One of the horses in the shipment, a dark bay horse with no backtag, was blind in both eyes, yet Mr. Baker shipped it with the other horses. Mr. Baker and/or his driver thus failed to handle the blind horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c).

(c) Mr. Baker was responsible for maintaining a copy of the owner-shipper certificate, VS Form 10-13, for 1 year following the date of signature, but he threw it away less than 3 months after the date of signature, in violation of 9 C.F.R. § 88.4(f).

9. On or about July 16, 2003, Mr. Baker shipped 31 horses in commercial transportation from Sugarcreek to Dallas Crown, Inc., in Kaufman, Texas [hereinafter Dallas Crown], for slaughter and did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) the receiver's address and telephone number were not properly completed, in violation of 9 C.F.R. § 88.4(a)(3)(ii); (2) the form incorrectly listed a chestnut gelding draft horse, bearing USDA backtag number USAU 5539, as a draft mare, in violation of 9 C.F.R. § 88.4(a)(3)(v); (3) the prefix for each horse's USDA backtag number was not recorded properly, in violation of 9 C.F.R. § 88.4(a)(3)(vi); and (4) the time when the horses were loaded onto the conveyance was not listed properly, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

10. On or about January 30, 2004, Mr. Baker shipped 34 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) the boxes indicating the fitness of the horses to travel at the time of loading were not checked off, in violation of 9 C.F.R. § 88.4(a)(3)(vii); (2) the form did not contain a description of pre-existing injuries or other unusual conditions that may have caused some of the horses to have special handling needs, even though the shipment included a bay gelding, USDA backtag number USAH 7676, that was blind in both eyes, in violation of 9 C.F.R. § 88.4(a)(3)(viii); and (3) the date and time when the horses were loaded onto the conveyance were not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

(b) One of the horses in the shipment, a bay gelding, bearing USDA backtag number USAH 7676, was blind in both eyes, yet Mr. Baker shipped it with the other horses. Mr. Baker and/or his driver thus failed to handle the blind horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c).

11. On or about March 17, 2004, Mr. Baker shipped 29 horses in commercial transportation from Sugarcreek to BelTex for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) the prefix for each horse's USDA backtag number was not recorded

properly, in violation of 9 C.F.R. § 88.4(a)(3)(vi); and (2) the boxes indicating the fitness of the horses to travel at the time of loading were not checked off, in violation of 9 C.F.R. § 88.4(a)(3)(vii).

12. On or about July 26, 2004, Mr. Baker shipped 43 horses in commercial transportation from Sugarcreek to BelTex for slaughter. Records obtained from BelTex indicate that two horses in the shipment died while en route to the slaughter plant, and Mr. Baker's driver acknowledged that at least one of the dead horses had been down during transit from Oklahoma City, Oklahoma, to Ft. Worth, Texas, yet Mr. Baker and/or his driver did not contact the nearest APHIS office as soon as possible and allow an APHIS veterinarian to examine the dead horses, in violation of 9 C.F.R. § 88.4(b)(2).

13. On or about September 10, 2004, Mr. Baker shipped 42 horses in commercial transportation from Sugarcreek to BelTex for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) the boxes indicating the fitness of the horses to travel at the time of loading were not checked off, in violation of 9 C.F.R. § 88.4(a)(3)(vii); and (2) there was no statement that the horses had been rested, watered, and fed for at least 6 consecutive hours prior to being loaded for the commercial transportation, in violation of 9 C.F.R. § 88.4(a)(3)(x).

14. On or about September 29, 2004, Mr. Baker shipped 40 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter but did not

properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) the owner/shipper did not sign the owner-shipper certificate, in violation of 9 C.F.R. § 88.4(a)(3); and (2) the boxes indicating the fitness of the horses to travel at the time of loading were not checked off, in violation of 9 C.F.R. § 88.4(a)(3)(vii).

15. On or about November 17, 2004, Mr. Baker shipped 43 horses in commercial transportation from Sugarcreek to BelTex for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) the receiver's telephone number was not properly listed, in violation of 9 C.F.R. § 88.4(a)(3)(ii); (2) the boxes indicating the fitness of the horses to travel at the time of loading were not checked off, in violation of 9 C.F.R. § 88.4(a)(3)(vii); and (3) there was no statement that the horses had been rested, watered, and fed for at least 6 consecutive hours prior to being loaded for the commercial transportation, in violation of 9 C.F.R. § 88.4(a)(3)(x).

16. On or about November 27, 2004, Mr. Baker shipped 37 horses in commercial transportation from Sugarcreek to BelTex for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: the receiver's address and telephone number were not properly listed, in violation of 9 C.F.R. § 88.4(a)(3)(ii).

17. On or about January 15, 2005, Mr. Baker shipped 43 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) the owner/shipper did not sign the owner-shipper certificate, in violation of 9 C.F.R. § 88.4(a)(3); and (2) the boxes indicating the fitness of the horses to travel at the time of loading were not checked off, in violation of 9 C.F.R. § 88.4(a)(3)(vii).

(b) Mr. Baker and/or his driver delivered the horses outside of Dallas Crown's normal business hours, at approximately 1:30 a.m., and left the slaughter facility, but did not return to Dallas Crown to meet the USDA representative upon his arrival, in violation of 9 C.F.R. § 88.5(b).

18. On or about January 28, 2005, Mr. Baker shipped 28 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiency: the time when the horses were loaded onto the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

19. On or about February 4, 2005, Mr. Baker shipped 42 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiency: the time when the

horses were loaded onto the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

(b) Records obtained from Dallas Crown indicate that three horses in the shipment, two bearing USDA backtag numbers USBQ 7939 and 7942 and one bearing sale barn tag number 31HA3541, died while en route to the slaughter plant, yet Mr. Baker and/or his driver did not check the physical condition of the horses at least once every 6 hours or, in the alternative, did not contact the nearest APHIS office as soon as possible and allow an APHIS veterinarian to examine the dead horses, in violation of 9 C.F.R. § 88.4(b)(2).

(c) Mr. Baker and/or his driver delivered the horses outside of Dallas Crown's normal business hours and left the slaughter facility, but did not return to Dallas Crown to meet the USDA representative upon his arrival, in violation of 9 C.F.R. § 88.5(b).

20. On or about March 20, 2005, Mr. Baker shipped 38 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: the owner/shipper's name, address, and telephone number were not listed, in violation of 9 C.F.R. § 88.4(a)(3)(i).

21. On or about April 3, 2005, Mr. Baker shipped 43 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) the receiver's telephone number was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ii); (2) the form did not indicate the breed and/or sex of several horses, physical characteristics that could be used to identify those horses, in violation of 9 C.F.R. § 88.4(a)(3)(v); and (3) the prefix for each horse's USDA backtag number was not recorded properly, in violation of 9 C.F.R. § 88.4(a)(3)(vi).

(b) Mr. Baker and/or his driver delivered the horses outside of Dallas Crown's normal business hours and left the slaughter facility, but did not return to Dallas Crown to meet the USDA representative upon his arrival, in violation of 9 C.F.R. § 88.5(b).

22. On or about May 2, 2005, Mr. Baker shipped 38 horses in commercial transportation from Sugarcreek to BelTex for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiency: the prefix for each horse's USDA backtag number was not recorded properly, in violation of 9 C.F.R. § 88.4(a)(3)(vi).

(b) Mr. Baker and/or his driver delivered the horses outside of BelTex's normal business hours and left the slaughter facility, but did not return to BelTex to meet the USDA representative upon his arrival, in violation of 9 C.F.R. § 88.5(b).

23. On or about May 22, 2005, Mr. Baker shipped 37 horses in commercial transportation from Sugarcreek to BelTex for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiency: there was no description of pre-existing injuries or other unusual conditions that may have caused some of the horses to have special handling needs, even though the shipment included a gelding with USDA backtag number USBQ 8786 that had a severe cut on its left rear leg, in violation of 9 C.F.R. § 88.4(a)(3)(viii).

(b) One of the horses in the shipment, a gelding with USDA backtag number USBQ 8786, had a severe cut on its left rear leg such that it was unable to bear weight on all four limbs, yet Mr. Baker shipped it with the other horses. Mr. Baker and/or his driver thus failed to handle the injured horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c).

24. On or about May 29, 2005, Mr. Baker shipped 44 horses in commercial transportation from Sugarcreek to BelTex for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiency: there was no description of pre-existing injuries or other unusual conditions that may have caused some of the horses to have special handling needs, even though the shipment included a

bay gelding, bearing sale barn tag number 31HA0505, that was blind in both eyes, in violation of 9 C.F.R. § 88.4(a)(3)(viii).

(b) One of the horses in the shipment, a bay gelding, bearing sale barn tag number 31HA0505, was blind in both eyes, yet Mr. Baker shipped it with the other horses. Mr. Baker and/or his driver thus failed to handle the blind horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c).

(c) Mr. Baker and/or his driver delivered the horses outside of BelTex's normal business hours and left the slaughter facility, but did not return to BelTex to meet the USDA representative upon his arrival, in violation of 9 C.F.R. § 88.5(b).

25. On or about June 18, 2005, Mr. Baker shipped 7 horses in commercial transportation from Sugarcreek to BelTex for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) there was no description of the conveyance used to transport the horses and the license plate number of the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(iv); and (2) the date and time when the horses were loaded onto the conveyance were not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

(b) Mr. Baker and/or his driver delivered the horses outside of BelTex's normal business hours and left the slaughter facility, but did not return to BelTex to meet the USDA representative upon his arrival, in violation of 9 C.F.R. § 88.5(b).

26. On or about June 18, 2005, Mr. Baker shipped 28 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) there was no description of the conveyance used to transport the horses and the license plate number of the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(iv); (2) the form incorrectly listed a stallion in the shipment, USDA backtag number USBQ 8891, as a gelding, in violation of 9 C.F.R. § 88.4(a)(3)(v); and (3) the date and time when the horses were loaded onto the conveyance were not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

(b) One of the horses in the shipment, backtag number USBQ 8898, died en route to the slaughter plant, yet Mr. Baker and/or his driver did not check the physical condition of the horse at least once every 6 hours or, in the alternative, did not contact the nearest APHIS office as soon as possible and allow an APHIS veterinarian to examine the dead horse, in violation of 9 C.F.R. § 88.4(b)(2).

(c) Mr. Baker and/or his driver delivered the horses outside of Dallas Crown's normal business hours and left the slaughter facility, but did not return to Dallas

Crown to meet the USDA representative upon his arrival, in violation of 9 C.F.R. § 88.5(b).

27. On or about July 16, 2005, Mr. Baker shipped 12 horses in commercial transportation from Sugarcreek to BelTex for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) there was no description of the conveyance used to transport the horses and the license plate number of the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(iv); (2) there was no description of pre-existing injuries or other unusual conditions that may have caused some of the horses to have special handling needs, even though the shipment included a bay mare with USDA backtag number USBQ 5105 that had old, severe cuts on its left hind leg, in violation of 9 C.F.R. § 88.4(a)(3)(viii); and (3) the date and time when the horses were loaded onto the conveyance were not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

(b) One of the horses in the shipment, a bay mare with USDA backtag number USBQ 5105, had old, severe cuts on its left hind leg such that it could not bear weight on all four limbs, yet Mr. Baker shipped it with the other horses. Mr. Baker and/or his driver thus failed to handle the injured horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c).

28. On or about July 22, 2005, Mr. Baker shipped 43 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) the receiver's address and telephone number were not listed correctly, in violation of 9 C.F.R. § 88.4(a)(3)(ii); (2) the prefix for each horse's USDA backtag number was not recorded properly, in violation of 9 C.F.R. § 88.4(a)(3)(vi); (3) the shipment contained two stallions, bearing USDA backtag numbers USBQ 5159 and 5169, that were incorrectly identified as geldings, in violation of 9 C.F.R. § 88.4(a)(3)(v); (4) one of the boxes indicating the fitness of the horses to travel at the time of loading was not checked off, in violation of 9 C.F.R. § 88.4(a)(3)(vii); and (5) the month in which the horses were loaded onto the conveyance was incorrectly listed as February, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

(b) One of the horses in the shipment, a stallion with USDA backtag number USBQ 5169, went down at least three times during transportation, indicating that it was in obvious physical distress, and died en route to the slaughter plant, yet Mr. Baker and/or his driver neither obtained veterinary assistance as soon as possible from an equine veterinarian, nor contacted the nearest APHIS office as soon as possible to allow an APHIS veterinarian to examine the dead horse, in violation of 9 C.F.R. § 88.4(b)(2).

(c) One of the horses in the shipment, a stallion with USDA backtag number USBQ 5169, went down at least three times during transportation, indicating that it was in obvious physical distress. Mr. Baker and/or his driver thus failed to handle this horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c).

29. On or about July 25, 2005, Mr. Baker shipped 41 horses in commercial transportation from Sugarcreek to BelTex for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) the receiver's telephone number was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ii); (2) there was no description of the conveyance used to transport the horses and the license plate number of the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(iv); (3) the prefix for each horse's USDA backtag number was not recorded, in violation of 9 C.F.R. § 88.4(a)(3)(vi); and (4) the date and time when the horses were loaded onto the conveyance were not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

30. On or about October 24, 2005, Mr. Baker shipped 43 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiency: the date that the

horses were loaded onto the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

(b) One of the horses in the shipment, a bay mare with USDA backtag number USBQ 5832, died en route to the slaughter plant, and Mr. Baker's driver stated that he had observed one or more horses in the shipment kicking the bay mare in the ribs 4 to 5 hours before the shipment arrived at Dallas Crown. The bay mare thus was in obvious physical distress, yet Mr. Baker and/or his driver neither obtained veterinary assistance as soon as possible from an equine veterinarian nor contacted the nearest APHIS office as soon as possible to allow an APHIS veterinarian to examine the dead horse, in violation of 9 C.F.R. § 88.4(b)(2).

(c) Mr. Baker and/or his driver delivered the horses outside of Dallas Crown's normal business hours and left the slaughter facility, but did not return to Dallas Crown to meet the USDA representative upon his arrival, in violation of 9 C.F.R. § 88.5(b).

31. On or about November 6, 2005, Mr. Baker shipped 42 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: five stallions, bearing USDA backtag numbers USBQ 5940, 5938, 5937, 5908, and 5905, were incorrectly identified as geldings, in violation of 9 C.F.R. § 88.4(a)(3)(v).

(b) The shipment contained five stallions, bearing USDA backtag numbers USBQ 5940, 5938, 5937, 5908, and 5905, but Mr. Baker did not load the five stallions on the conveyance so that each stallion was completely segregated from the other horses to prevent them from coming into contact with any other horse on the conveyance, in violation of 9 C.F.R. § 88.4(a)(4)(ii).

32. On or about November 9, 2005, Mr. Baker shipped 30 horses in commercial transportation from Sugarcreek to BelTex for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) there was no description of the conveyance used to transport the horses and the license plate number of the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(iv); (2) the date and time when the horses were loaded onto the conveyance were not listed properly, in violation of 9 C.F.R. § 88.4(a)(3)(ix); and (3) there was no statement that the horses had been rested, watered, and fed for at least 6 consecutive hours prior to being loaded for the commercial transportation, in violation of 9 C.F.R. § 88.4(a)(3)(x).

(b) Mr. Baker failed to maintain a copy of the owner-shipper certificate, VS Form 10-13, for 1 year following the date of signature, in violation of 9 C.F.R. § 88.4(f).

33. On or about May 3, 2006, Mr. Baker shipped 46 horses in commercial transportation from Sugarcreek to BelTex for slaughter but did not properly fill out the

required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) there was no description of the conveyance used to transport the horses and the license plate number of the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(iv); and (2) the date and time when the horses were loaded onto the conveyance were not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

34. On or about May 4, 2006, Mr. Baker shipped 43 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter but did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) there was no description of the conveyance used to transport the horses and the license plate number of the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(iv); and (2) the date and time when the horses were loaded onto the conveyance were not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

35. On or about June 11, 2006, Mr. Baker shipped 43 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiency: there was no description of pre-existing injuries or other unusual conditions that may have caused some of the horses to have special handling needs, even though the shipment included a bay mare with USDA backtag number USDB 6853 that had a severe, pre-existing cut on its right shoulder that was badly infected, in violation of 9 C.F.R. § 88.4(a)(3)(viii).

(b) One of the horses in the shipment, a bay mare with USDA backtag number USDB 6853, had a severe, pre-existing cut on its right shoulder that was badly infected, yet Mr. Baker shipped it with the other horses. Mr. Baker and/or his drivers thus failed to handle the injured horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c).

(c) The USDA representative at Dallas Crown reported that Mr. Baker's drivers "began to get nervous upon my arrival and left quickly after the horses were unloaded." Mr. Baker and/or his drivers thus left the premises of the slaughtering facility before the horses had been examined by the USDA representative, in violation of 9 C.F.R. § 88.5(b).

36. On or about July 3, 2006, Mr. Baker shipped 24 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: at least six stallions, bearing USDA backtag numbers USDB 7052, 7045, 7061, 7063, 7065, and 7066, were incorrectly identified as geldings, in violation of 9 C.F.R. § 88.4(a)(3)(v).

(b) The shipment contained at least six stallions, bearing USDA backtag numbers USDB 7052, 7045, 7061, 7063, 7065, and 7066, but Mr. Baker did not load the six stallions on the conveyance so that each stallion was completely segregated from the

other horses to prevent them from coming into contact with any other horse on the conveyance, in violation of 9 C.F.R. § 88.4(a)(4)(ii).

(c) The USDA representative at Dallas Crown reported that Mr. Baker's driver "seemed to become very uneasy when I arrived at the plant, he was in a hurry to finish unloading and did not waste much time leaving the plant." Mr. Baker and/or his driver thus left the premises of the slaughtering facility before the horses had been examined by the USDA representative, in violation of 9 C.F.R. § 88.5(b).

37. On or about July 16, 2006, Mr. Baker shipped 41 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter:

(a) Mr. Baker shipped the horses in a conveyance that had large holes in its roof. Mr. Baker thus failed to transport the horses to slaughter in a conveyance the animal cargo space of which was designed, constructed, and maintained in a manner that at all times protected the health and well-being of the horses being transported, in violation of 9 C.F.R. § 88.3(a)(1).

(b) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) at least two stallions, one bearing USDA backtag number USBQ 7128 and another bearing no USDA backtag, were incorrectly identified as geldings, in violation of 9 C.F.R. § 88.4(a)(3)(v); and (2) there was no description of pre-existing injuries or other unusual conditions that may have caused some of the horses to have special handling needs, even though the

shipment included a chestnut mare with USDA backtag number USBQ 6643 that had a pre-existing injury to its left hind foot, in violation of 9 C.F.R. § 88.4(a)(3)(viii).

(c) The shipment contained at least two stallions, one bearing USDA backtag number USBQ 7128 and another bearing no USDA backtag, but Mr. Baker did not load the two stallions on the conveyance so that each stallion was completely segregated from the other horses to prevent them from coming into contact with any other horse on the conveyance, in violation of 9 C.F.R. § 88.4(a)(4)(ii).

(d) One of the horses in the shipment, a chestnut mare with USDA backtag number USBQ 6643, had a pre-existing injury to its left hind foot such that it could not bear weight on all four limbs, yet Mr. Baker shipped it with the other horses. Mr. Baker and/or his driver thus failed to handle the injured horse as expeditiously and carefully as possible in a manner that did not cause it unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c).

38. On or about August 7, 2006, Mr. Baker shipped 36 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter. Mr. Baker and/or his driver delivered the horses outside of Dallas Crown's normal business hours and left the slaughter facility, but did not return to Dallas Crown to meet the USDA representative upon his arrival, in violation of 9 C.F.R. § 88.5(b).

39. On or about December 23, 2006, Mr. Baker shipped 32 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: at least two stallions, bearing plant tag numbers 127985 and 128011, were incorrectly identified as geldings, in violation of 9 C.F.R. § 88.4(a)(3)(v).

(b) The shipment contained at least two stallions, bearing plant tag numbers 127985 and 128011, but Mr. Baker did not load the stallions on the conveyance so that they were completely segregated from the other horses to prevent them from coming into contact with any other horse on the conveyance, in violation of 9 C.F.R. § 88.4(a)(4)(ii).

(c) Mr. Baker and/or his driver delivered the horses outside of Dallas Crown's normal business hours and left the slaughter facility, but did not return to Dallas Crown to meet the USDA representative upon his arrival, in violation of 9 C.F.R. § 88.5(b).

40. On or about January 7, 2007, Mr. Baker shipped 31 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter:

(a) Mr. Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiency: at least one stallion bearing USDA backtag number USCU 6770 and plant tag number 128577 was incorrectly identified as a gelding, in violation of 9 C.F.R. § 88.4(a)(3)(v).

(b) The shipment contained at least one stallion, bearing USDA backtag number USCU 6770 and plant tag number 128577, but Mr. Baker did not load the stallion on the conveyance so that it was completely segregated from the other horses to prevent it from coming into contact with any other horse on the conveyance, in violation of 9 C.F.R. § 88.4(a)(4)(ii).

(c) One horse in the shipment, a chestnut gelding bearing USDA backtag number USCU 6782 and white backtag number 31HA6205, went down near Little Rock, Arkansas, and died en route, but Mr. Baker and/or his driver did not contact the nearest APHIS office as soon as possible and allow an APHIS veterinarian to examine the dead horse, in violation of 9 C.F.R. § 88.4(b)(2).

(d) Two horses in the shipment, bearing USDA backtag numbers USCU 6782 and 6769, went down near Little Rock, Arkansas, and were not able to get up, such that one died en route and one had to be euthanized on the conveyance upon its arrival at Dallas Crown. The fact that these two horses became nonambulatory en route indicated that they were in obvious physical distress, yet Mr. Baker and/or his driver did not obtain veterinary assistance as soon as possible from an equine veterinarian, in violation of 9 C.F.R. § 88.4(b)(2).

(e) Two horses in the shipment, bearing USDA backtag numbers USCU 6782 and 6769, went down near Little Rock, Arkansas, and were not able to get up, such that one died en route and one had to be euthanized on the conveyance upon its arrival at

Dallas Crown. Mr. Baker and/or his driver thus failed to handle these two horses as expeditiously and carefully as possible in a manner that did not cause them unnecessary discomfort, stress, physical harm, or trauma, in violation of 9 C.F.R. § 88.4(c).

41. On the numerous occasions detailed in paragraphs 6 through 40 of the Findings of Fact and Conclusions of Law, Mr. Baker failed to comply with the Commercial Transportation of Equine for Slaughter Act and the Regulations. Many of Mr. Baker's violations described in paragraphs 6 through 40 are so serious and Mr. Baker's culpability so great as to justify the \$5,000 maximum civil penalty per violation. Consequently, in accordance with 9 C.F.R. § 88.6 and based on the Acting Administrator's sanction recommendation in the Motion for Default Decision, filed July 2, 2008, I assess Mr. Baker a \$162,800 civil penalty.

Mr. Baker's Appeal Petition

The Acting Administrator asserts that the Hearing Clerk served Mr. Baker with the ALJ's Initial Decision as to Leroy H. Baker, Jr., on October 6, 2008, and that, consequently, Mr. Baker was required to file his appeal petition no later than November 5, 2008.⁵ The Acting Administrator argues that Mr. Baker's appeal petition is late-filed because he did not file it until November 6, 2008.

⁵Section 1.145(a) of the Rules of Practice (7 C.F.R. § 1.145(a)) provides that a party who disagrees with an administrative law judge's written decision or any portion of that decision must file an appeal petition within 30 days after receiving service of the written decision.

I agree with the Acting Administrator's assertions that the Hearing Clerk served Mr. Baker with the ALJ's Initial Decision as to Leroy H. Baker, Jr., on October 6, 2008,⁶ and that Mr. Baker's appeal petition was required to be filed no later than November 5, 2008. However, the record before me reveals that the Hearing Clerk first received Mr. Baker's appeal petition on November 5, 2008, at 12:04 p.m. Subsequently, the Hearing Clerk received a second copy of Mr. Baker's appeal petition on November 6, 2008, at 9:04 a.m. Under these circumstances, I find Mr. Baker timely filed his appeal petition, and I reject the Acting Administrator's argument that Mr. Baker's appeal petition was late-filed.

In his appeal petition, Mr. Baker responds to the allegations in the March 11, 2008, Complaint. The Hearing Clerk served Mr. Baker with the Complaint on March 17, 2008. Mr. Baker was required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) to file a response to the Complaint within 20 days after service of the Complaint; namely, no later than April 7, 2008. Mr. Baker's response to the allegations in the Complaint in his appeal petition, filed November 5, 2008, 6 months 29 days after Mr. Baker was required to file an answer comes far too late to be considered. As Mr. Baker failed to file a timely answer, Mr. Baker is deemed to have admitted the material allegations of the Complaint, and I reject his late-filed denial of the allegations in the Complaint.

⁶See Domestic Return Receipt for article number 7007 0710 0001 3858 8106; Track & Confirm search results for label/receipt number 7007 0710 0001 3858 8106.

Modification of the ALJ's Order

The ALJ assessed Mr. Baker a \$162,800 civil penalty and ordered Mr. Baker to cease and desist from violating the Commercial Transportation of Equine for Slaughter Act and the Regulations (ALJ's Initial Decision as to Leroy H. Baker, Jr., at 23-24). Mr. Baker did not appeal the sanction imposed by the ALJ; nonetheless, I do not adopt the ALJ's cease and desist order.

The Commercial Transportation of Equine for Slaughter Act provides that the Secretary of Agriculture may "establish and enforce effective and appropriate civil penalties." (7 U.S.C. § 1901 note.) Pursuant to this authority, the Secretary of Agriculture established a maximum civil penalty of \$5,000 for each violation of the Regulations (9 C.F.R. § 88.6(a)). The Secretary of Agriculture has made no provision for the imposition of a cease and desist order for a violation of the Commercial Transportation of Equine for Slaughter Act or the Regulations. Therefore, I do not adopt the ALJ's cease and desist order.

For the foregoing reasons, the following Order is issued.

ORDER

Leroy H. Baker, Jr., d/b/a Sugarcreek Livestock Auction, Inc., is assessed a \$162,800 civil penalty. The civil penalty shall be paid by certified check or money order payable to the Treasurer of the United States and sent to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Payment of the civil penalty shall be sent to, and received by, the United States Department of Agriculture, APHIS Field Servicing Office, Accounting Section, within 60 days after service of this Order on Mr. Baker. Mr. Baker shall indicate on the certified check or money order that payment is in reference to A.Q. Docket No. 08-0074.

Done at Washington, DC

November 17, 2008

William G. Jenson
Judicial Officer