

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	
Leroy H. Baker, Jr., d/b/a	)	<b>A.Q. Docket No. 08-0074</b>
Sugarcreek Livestock Auction, Inc.,	)	
Larry L. Anderson, and	)	
James Gadberry,	)	<b>Decision and Order as to</b>
	)	<b>only LEROY H. BAKER, JR.</b>
Respondents.	)	<b>by Reason of Default</b>

The Complaint, filed on March 11, 2008, alleged that the Respondent Leroy H. Baker, Jr., doing business as Sugarcreek Livestock Auction, Inc., an owner/shipper of horses (9 C.F.R. § 88.1), failed to comply with the Commercial Transportation of Equines for Slaughter Act (7 U.S.C. § 1901 note) and the regulations promulgated thereunder (9 C.F.R. § 88 *et seq.*). The Complainant seeks \$162,800 in civil penalties for Leroy H. Baker, Jr.’s failures to comply (9 C.F.R. § 88.6).

Parties and Counsel

The Complainant is the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (frequently herein “APHIS” or “Complainant”). APHIS is represented by Thomas N. Bolick, Esq., Office of the General Counsel, Regulatory Division, United States Department of Agriculture, South Building, 1400 Independence Ave. SW, Washington, D.C. 20250.

The Respondent, Leroy H. Baker, Jr., d/b/a Sugarcreek Livestock Auction, Inc., (frequently herein “Respondent Baker” or “Respondent”) has failed to appear.

Procedural History

APHIS' Motion for Adoption of Proposed Default Decision and Order (as to only Respondent Leroy H. Baker, Jr., d/b/a Sugarcreek Livestock Auction, Inc.), filed July 2, 2008, is before me. Respondent Baker was served on July 5, 2008 with a copy of that Motion and a copy of the Proposed Default Decision and Order and has failed to respond.

The Hearing Clerk mailed a copy of the Complaint to Respondent Baker by certified mail on March 12, 2008, together with a copy of the Hearing Clerk's notice letter and a copy of the Rules of Practice. *See* 7 C.F.R. §1.130 *et seq.* Respondent Baker was served on March 17, 2008 with the copy of the Complaint and failed to answer. The Respondent's answer was due to be filed within 20 days after service, according to section 1.136(a) of the Rules of Practice. 7 C.F.R. § 1.136(a). The time for filing an answer to the Complaint expired on April 7, 2008. The Hearing Clerk mailed Respondent Baker a "No Answer" letter on April 8, 2008. Respondent Baker is in default, pursuant to section 1.136(c) of the Rules of Practice. 7 C.F.R. § 1.136(c).

Respondent Baker was informed in the Complaint and the letter accompanying the Complaint that an answer should be filed with the Hearing Clerk within 20 days after service of the complaint, and that failure to file an answer within 20 days after service of the complaint constitutes an admission of the allegations in the complaint and waiver of a hearing. Respondent Baker never did file an answer to the Complaint. 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). Failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139. Accordingly, the material facts alleged in the

Complaint, which are admitted by the Respondent'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.

#### Findings of Fact and Conclusions

1. Respondent Leroy H. Baker, Jr., doing business as Sugarcreek Livestock Auction, Inc., was at all times material to this Decision a commercial buyer and seller of slaughter horses who commercially transported horses for slaughter. Respondent Baker was an owner/shipper of horses within the meaning of 9 C.F.R. § 88.1. The Secretary of Agriculture has jurisdiction over Respondent Baker and the subject matter involved herein.

2. Respondent 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 he owned and operated Sugarcreek Livestock Auction, Inc., in the State of Ohio. Respondent 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.

3. Respondent Baker is responsible not only for what he himself did or failed to do in violation of the Commercial Transportation of Equines for Slaughter Act and 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 Act and Regulations. Respondent 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.

4. On or about March 26, 2003, Respondent Baker shipped 36 horses in commercial transportation from Sugarcreek Livestock Auction, Inc., in Sugarcreek, Ohio (hereinafter

referred to as Sugarcreek), to BelTex Corporation in Fort Worth, Texas (hereinafter referred to as 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 back tag number was not recorded properly, in violation of 9 C.F.R. § 88.4(a)(3)(vi).

5. On or about March 30, 2003, Respondent 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 back tag number was not recorded properly, in violation of 9 C.F.R. § 88.4(a)(3)(vi).

6. On or about March 31, 2003, Respondent 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 back tag, died while en route to the slaughter plant, yet Respondent 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).

(b) One of the horses in the shipment, a dark bay horse with no back tag, was blind in both eyes, yet Respondent Baker shipped it with the other horses. Respondent 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) Respondent Baker was responsible for maintaining a copy of the owner/shipper certificate, VS Form 10-13, for one year following the date of signature, but he threw it away less than three months later, in violation of 9 C.F.R. § 88.4(f).

7. On or about July 16, 2003, Respondent Baker shipped 31 horses in commercial transportation from Sugarcreek to Dallas Crown, Inc., in Kaufman, Texas (hereinafter referred to as 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 with USDA back tag # 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 back tag 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).

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

(a) Respondent 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) 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, USDA back tag # 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 with USDA back tag # USAH 7676, was blind in both eyes, yet Respondent Baker shipped it with the other horses.

Respondent 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).

9. On or about March 17, 2004, Respondent Baker shipped 29 horses 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 back tag 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).

10. On or about July 26, 2004, Respondent Baker shipped 43 horses from Sugarcreek to BelTex for slaughter. Records obtained from BelTex indicate that two (2) of the horses in the shipment died while en route to the slaughter plant, and Respondent Baker's driver acknowledged that at least one of the dead horses had been down during transit from Oklahoma City, Oklahoma, to Ft. Worth, yet Respondent 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).

11. On or about September 10, 2004, Respondent Baker shipped 42 horses 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 six consecutive hours prior being loaded for the commercial transportation, in violation of 9 C.F.R. § 88.4(a)(3)(x).

12. On or about September 29, 2004, Respondent Baker shipped 40 horses 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).

13. On or about November 17, 2004, Respondent 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 six consecutive hours prior being loaded for the commercial transportation, in violation of 9 C.F.R. § 88.4(a)(3)(x).

14. On or about November 27, 2004, Respondent 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).

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

(a) Respondent 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) Respondent 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).

16. On or about January 28, 2005, Respondent 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 deficiencies: 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).

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



(a) Respondent Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: 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 (3) of the horses in the shipment, two bearing USDA back tag #s USBQ 7939 and 7942 and one bearing sale barn tag # 31HA3541, died while en route to the slaughter plant, yet Respondent Baker and/or his driver did not check the physical condition of the horses at least once every six (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) Respondent 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).

18. On or about March 20, 2005, Respondent 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).

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

(a) Respondent 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 back tag number was not recorded properly, in violation of 9 C.F.R. § 88.4(a)(3)(vi).

(b) Respondent 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 May 2, 2005, Respondent Baker shipped 38 horses in commercial transportation from Sugarcreek to BelTex for slaughter:

(a) Respondent Baker 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 back tag number was not recorded properly, in violation of 9 C.F.R. § 88.4(a)(3)(vi).

(b) Respondent 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).

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

(a) Respondent Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: 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 back tag # 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 back tag # USBQ 8786, had a severe cut on its left rear leg such that it was unable to bear weight on all four limbs, yet Respondent Baker shipped it with the other horses. Respondent 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).

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

(a) Respondent 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 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 # 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 only sale barn tag # 31HA0505, was blind in both eyes, yet Respondent Baker shipped it with the other horses. Respondent 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) Respondent 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 June 18, 2005, Respondent Baker shipped 7 horses in commercial transportation from Sugarcreek to BelTex for slaughter:

(a) Respondent 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) Respondent 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).

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

(a) Respondent 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 back tag # 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, back tag # USBQ 8898, died en route to the slaughter plant, yet Respondent Baker and/or his driver did not check the physical condition

of the horse at least once every six (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) Respondent 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).

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

(a) Respondent 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 back tag # 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 back tag # USBQ 5105, had old, severe cuts on its left hind leg such that it could not bear weight on all four limbs, yet Respondent Baker shipped it with the other horses. Respondent 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).

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

(a) Respondent 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 back tag number was not recorded properly, in violation of 9 C.F.R. § 88.4(a)(3)(vi); (3) the shipment contained two (2) stallions bearing USDA back tag #s 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 back tag # USBQ 5169, went down at least three (3) times during transportation, indicating that it was in obvious physical distress, and died en route to the slaughter plant, yet Respondent 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 back tag # USBQ 5169, went down at least three (3) times during transportation, indicating that it was in obvious

physical distress. Respondent 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).

27. On or about July 25, 2005, Respondent 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 back tag number was not recorded, in violation of 9 C.F.R. § 88.4(a)(3)(vi); and (4) the time and date when the horses were loaded onto the conveyance were not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

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

(a) Respondent Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: 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 back tag # USBQ 5832, died en route to the slaughter plant, and Baker's driver stated that he had observed one or more horses in the shipment kicking the bay mare in the ribs four to five hours before the shipment arrived at Dallas Crown. The bay mare thus was in obvious physical distress, yet Respondent 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) Respondent Baker and/or his driver delivered the horses outside of Dallas Crown's normal business hours and left the slaughter facility, and did not return to Dallas Crown to meet the USDA representative upon his arrival, in violation of 9 C.F.R. § 88.5(b).

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

(a) Respondent Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: five (5) stallions bearing USDA back tag #s 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 (5) stallions bearing USDA back tag #s USBQ 5940, 5938, 5937, 5908, and 5905, but Respondent Baker did not load the five (5) 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).

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

(a) Respondent 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 six consecutive hours prior being loaded for the commercial transportation, in violation of 9 C.F.R. § 88.4(a)(3)(x).

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

31. On or about May 3, 2006, Respondent 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 time and date when the horses were loaded onto the conveyance were not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

32. On or about May 4, 2006, Respondent 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 time and date when the horses were loaded onto the conveyance were not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

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

(a) Respondent 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 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 back tag # 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 back tag # USDB 6853, had a severe, pre-existing cut on its right shoulder that was badly infected, yet Respondent Baker shipped it with the other horses. Respondent 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 Respondent Baker's drivers "began to get nervous upon my arrival and left quickly after the horses were unloaded." Respondent 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).

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

(a) Respondent Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: at least six (6) stallions bearing USDA back tag #s 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 (6) stallions bearing USDA back tag #s USDB 7052, 7045, 7061, 7063, 7065, and 7066, but Respondent Baker did not load the six (6) 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 Respondent 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." Respondent 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).

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

(a) Respondent Baker shipped the horses in a conveyance that had large holes in its roof. Respondent 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) Respondent 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 back tag # USBQ 7128 and another bearing no USDA back tag, 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 back tag 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 (2) stallions, one bearing USDA back tag # USBQ 7128 and another bearing no USDA back tag, but Respondent Baker did not load the two (2) 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 back tag # USBQ 6643, had a pre-existing injury to its left hind foot such that it could not bear weight on all four limbs, yet Respondent Baker shipped it with the other horses. Respondent 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).

36. On or about August 7, 2006, Respondent Baker shipped 36 horses in commercial transportation from Sugarcreek to Dallas Crown for slaughter. Respondent 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).

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

(a) Respondent Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: at least two (2) stallions bearing plant tag #s 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 (2) stallions bearing plant tag #s 127985 and 128011, but Respondent 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) Respondent 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).

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

(a) Respondent Baker did not properly fill out the required owner-shipper certificate, VS Form 10-13. The form had the following deficiencies: (1) at least one stallion bearing USDA back tag 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 back tag # USCU 6770 and plant tag # 128577, but Respondent 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 back tag # USCU 6782 and white back tag # 31HA6205, went down near Little Rock, Arkansas and died en route, but Respondent 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 (2) horses in the shipment bearing USDA back tag #s 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 (2) horses became nonambulatory en route indicated that they were in obvious physical distress, yet Respondent 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 (2) horses in the shipment bearing USDA back tag #s 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. Respondent Baker and/or his driver thus failed to handle these two (2) 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).

39. On the numerous occasions detailed in paragraphs 4 through 38, Respondent Leroy H. Baker, Jr., doing business as Sugarcreek Livestock Auction, Inc., failed to comply with the Commercial Transportation of Equines for Slaughter Act (7 U.S.C. § 1901 note) and the regulations promulgated thereunder (9 C.F.R. § 88 *et seq.*). Many of Respondent Baker's violations described in paragraphs 4 through 38 are so serious and Respondent Baker's culpability so great as to warrant the \$5,000 maximum civil penalty per violation. Consequently, in accordance with 9 C.F.R. § 88.6 and based on APHIS's unopposed Motion filed July 2, 2008, I issue the following Order.

#### Order

40. The **cease and desist** provisions of this Order (paragraph 41) shall be effective on the first day after this Decision and Order becomes final. The remaining provisions of this Order shall be effective on the tenth day after this Decision and Order becomes final. *See* paragraph 44 to determine when this Decision and Order becomes final.

41. Respondent Leroy H. Baker, Jr., d/b/a Sugarcreek Livestock Auction, Inc., and his agents and employees, successors and assigns, directly or indirectly, or through any corporate or other device or person, shall cease and desist from violating the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. § 1901 note, and the Regulations promulgated thereunder (9 C.F.R. § 88 *et seq.*).

42. Respondent Baker is assessed a civil penalty of **\$162,800.00** (one hundred sixty two thousand eight hundred dollars), which he shall pay by certified check(s), cashier's

check(s), or money order(s), made payable to the order of “**Treasurer of the United States.**” Respondent Baker shall include with his payments any change in mailing address (from that shown in paragraph 2), or other contact information.

43. Respondent Baker shall reference **A.Q. Docket No. 08-0074** on his certified check(s), cashier’s check(s), or money order(s). Payments of the civil penalties shall be sent to, and received by, APHIS, at the following address:

United States Department of Agriculture  
APHIS, Accounts Receivable  
P.O. Box 3334  
Minneapolis, Minnesota 55403

within sixty (60) days from the effective date of this Order. [See paragraph 40 regarding effective dates of the Order.]

#### Finality

44. 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 (including the respondents who are not in default).

Done at Washington, D.C.  
this 1<sup>st</sup> day of October 2008

Jill S. Clifton  
Administrative Law Judge



Hearing Clerk's Office  
U.S. Department of Agriculture  
South Bldg Room 1031  
1400 Independence Ave 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