

**UNITED STATES DEPARTMENT OF AGRICULTURE**

**BEFORE THE SECRETARY OF AGRICULTURE**

In re: ) A.Q. Docket No. 07-0103  
 )  
Roy Joseph Simon d/b/a )  
Joe Simon Enterprises, Inc., )  
 )  
Respondent )

**Decision**

In this decision, I find that Roy Joseph Simon committed numerous serious and other lesser violations of the Commercial Transportation of Equines for Slaughter Act and the regulations thereunder. I impose a civil penalty of \$36,500.

**Procedural Background**

On May 4, 2007, Kevin Shea, Acting Administrator of the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) issued a complaint alleging that Roy Joseph Simon d/b/a Joe Simon Enterprises, Inc., committed numerous violations of the Commercial Transportation of Equines for Slaughter Act between August 2003 and October 2005. On June 7, 2007, Mr. Simon and his wife, Sharon Simon, filed an answer to the complaint. On October 16, 2007, Complainant moved that a hearing be scheduled in this matter, and on March 7, 2008 I conducted a telephone conference with the parties, wherein I set the matter for a hearing in Minneapolis, Minnesota.

I conducted a hearing in Minneapolis on October 21-22, 2008. Mr. Thomas N. Bolick, Esq. represented Complainant, while Ms. Sharon Simon, a non-attorney, represented Respondent

Roy Joseph Simon. Complainant called four witnesses: Joseph Astling, David Green, Leslie Vissage, and Dr. Timothy Cordes. Respondent testified on his own behalf, and also called Dr. J. Robert Davison and Jack Shirley as witnesses. I received over 100 exhibits from Complainant and 20 exhibits from Respondent.

Following the hearing, Complainant submitted an opening brief, with proposed findings of facts and conclusions of law, Respondent submitted a responsive brief, and Complainant submitted a reply brief.

### **Statutory and Regulatory Background**

The Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note et seq.), part of the 1996 Farm Bill, is intended to assure that equines (horses) being transported for slaughter not be subject to unsafe and inhumane conditions. Congress directed the Secretary of Agriculture to issue guidelines to accomplish this purpose. The Secretary delegated this rulemaking authority to the Animal Plant and Health Inspection Service (APHIS) which ultimately published a final rule at 9 C.F.R. Part 88 in December, 2001, with an effective date of April, 2002.

Among other things, the final rule defined an “owner/shipper” as someone who commercially transports more than 20 equines a year to slaughtering facilities. 9 C.F.R. § 88.1. An owner/shipper is subject to a number of regulations designed to prevent horses from suffering unduly while being transported to the slaughterhouse. Regulations include standards for constructing conveyances, so that horses can be safely loaded, unloaded, and transported, and rules for the care of horses before and during shipment. The regulations, which are generally performance standards, seek to assure that equines being transported to the slaughterhouse are fit

to travel, in that they must be weight-bearing on all four legs, must not be blind in both eyes, must be able to walk unassisted, are older than six months of age, and are not about to give birth. They are to be transported in a manner so as not to cause injury, must be checked at least once every six hours while being transported, and must be offloaded and fed and watered on trips lasting over 28 hours.

The final regulation also provides a number of what might be termed paperwork requirements. Each horse must be supplied with a backtag—literally a tag supplied by USDA that sticks to the back of the horse. In addition, each horse being shipped must be accompanied by an owner/shipper certificate which contains pertinent information about the owner/shipper, the receiver (the slaughterhouse), the shipping vehicle, and the horse, including a statement of fitness to travel.

### **Facts and Discussion**

At the time of the events cited in the complaint, Respondent Roy Joseph Simon d/b/a Joe Simon Enterprises, Inc., was engaged in the business of purchasing unwanted horses and shipping them to the BelTex Corporation Processing Plant in Fort Worth, Texas for slaughter. Mr. Simon, who operates from a mailing address in Lakeville, Minnesota, has been in this business for over 30 years. CX 15, Tr. 517. He estimated that he or his business transports 3600 horses a year for slaughter. Id. Respondent buys horses at sales in his general geographic area. Tr. 696. He testified that with respect to the horses involved in the complaint, he was just the middleman for BelTex, and that BelTex would reimburse him for the cost of each horse that was delivered alive to their facility, and pay him a commission of \$20 per horse. Tr. 659-661, 690-698. He stated that he did not directly employ most of the drivers of these loads, and that BelTex

generally paid the drivers directly. Tr. 661. He contended that he was not truly an “owner/shipper” under the Act.

On the other hand, Respondent essentially stipulated that he was the owner/shipper of all the horses in question. Tr. 17-18. He stated that he bought the horses at auctions in the area, and that he made decisions as to which driver transported which horses to BelTex. Mrs. Simon, who did not testify directly but who was an employee of her husband’s company, indicated in a number of affidavits that the horses sold for slaughter were purchased by Respondent and did not belong to BelTex until they were transported and successfully offloaded at BelTex. Further, the documents that accompanied each of the shipments of horses to BelTex that are the subject of this case uniformly list Respondent as the owner/shipper of the horses<sup>1</sup>.

Thus, Respondent’s own stipulations and admissions, as well as the overwhelming weight of the evidence, establishes that he is an “owner/shipper” as defined in the regulations.

Generally, Complainant has demonstrated that Respondent committed numerous violations of the Act, ranging from extremely serious to fairly mundane paperwork violations.

1. The serious violations—Respondent committed a total of five serious violations of the Act.<sup>2</sup>

First, on November 2, 2004, Respondent committed two violations in that he transported horses in a conveyance that was not suitable for hauling horses, and that as a result at least one horse suffered severe injury while being transported. In particular, Respondent’s driver, Sam Eveslage, told Leslie Vissage, an investigator with APHIS’ Investigative and Enforcement

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<sup>1</sup> Respondent either signed as owner/shipper or had his wife or employee or driver sign on his behalf.

<sup>2</sup> While Complainant categorizes the violations of the regulation requiring segregation of stallions as “serious” I classify those violations as “moderate.”

Services, that this shipment of 47 horses “was the most non-sturdy load of horses he had transported for quite some time.” Tr. 522-523, CX 82. The driver told Ms. Vissage that he had to stop twice in the first twenty miles and four times in the first 150 miles of his trip to BelTex because the horses were acting up, and that he noticed blood in the trailer while he was 100 miles from BelTex. Id. Animal Health Technician (AHT) Joseph Astling indicated that the trailer was designed for hauling hogs, not horses, and had “large holes towards the bottom.” Tr. 38-39; CX 75, 81. One of the horses transported on this load, bearing USDA backtag # 9326, suffered severe cuts on its right hind leg. Tr. 37. Dr. Cordes testified that photographs of the wounded leg indicated active arterial bleeding over a six hour period and that the horse needed prompt veterinary assistance because it could have bled to death. Tr. 128-129. Dr. Cordes testified that the horse had a severe cut which could have been caused by the horse putting his leg through one of the holes in the bottom trailer and jerking it back. Tr. 129-130. AHT Astling’s photographs vividly demonstrate the severity of the wounds suffered by this horse. CX 81.

By shipping a large load of horses in a trailer not-designed for the shipment of horses, and for taking no corrective action even though it was evident to the driver that there were significant problems in the ability of the trailer to safely contain the load, and by failing to take any corrective action even when blood was evident in the trailer, Respondent, on his own and through the actions of his driver, failed to handle the injured horse, and for that matter, all the horses in that shipment, as expeditiously and carefully as possible in a manner that did not cause them unnecessary discomfort, stress, physical harm or trauma as required by the regulations.

The regulations also require that when, during the course of transport, an equine is in obvious physical distress, an equine veterinarian must be contacted. Even though the driver observed blood in the trailer, he did not make any attempt to contact a veterinarian as required by

the regulations. Respondent appears to contend that the driver did not see the horse's injured leg because the trailer was so crowded, but given that the driver stopped more frequently than usual and observed blood in the trailer, this is hardly a valid excuse. Similarly, Respondent unpersuasively contended that his drivers did not know about the regulations, or how to contact a veterinarian when they were on the road. However, he admitted that he had received the guidebook issued by USDA, but did not recall whether he had ever looked at it. Tr. 700-701. He also said that BelTex generally kept him informed of the rules, and that he had called AHT Astling a few times and that Astling was always very helpful. Id.

Respondent also committed a serious violation of the Act and regulations on November 7, 2004, when a horse apparently died while in transit to BelTex. While the death of a horse enroute to a slaughter house is not in itself a violation, the regulations require that when a death occurs during transit, the driver must notify the nearest APHIS veterinarian and allow the veterinarian to examine the dead horse. While the driver variously told a number of people at different times that the horse died in Oklahoma, Kansas and Missouri, it was clear that when the driver arrived and AHT Astling inspected the dead horse, that rigor mortis had already set in. Tr. 43, 46-47, CX 75. Astling testified that he palpated the dead horse's outer extremities and based on the degree of rigor, he believed that the horse had been dead for about six hours. Tr. 47-49. CX 75. Dr. Cordes, based on Astling's testimony and photographs, concurred with this estimate. Tr. 132-133. Dr. J. Robert Davison, a veterinarian called by Respondent, disagreed with Dr. Cordes on the amount of time that would transpire before rigor would set in, stating that it could occur between one and eight hours after death, Tr. 733, 738-739, while Dr. Cordes stated that it begins within two to three hours after death and may peak as late as twelve hours after death. Tr. 132-133. However, resolution of this point is not necessary, as it is undisputed that the horse

died well before it reached what was to be its final destination, and that the driver did not call an APHIS veterinarian, as required by the regulations.

On February 15-16, 2005, another serious violation was committed when Respondent's driver was fully aware that a horse was in distress as early as Missouri, and continued to drive to BelTex rather than calling an equine veterinarian, as required by the regulations. In particular, the driver told AHT Astling that he noticed that the horse went down in Missouri, and then got back up, and then went down again in Oklahoma and did not get up again. Tr. 52-54, CX 119. This horse, a grey mare with USDA backtag number ASAS 3522, was euthanized by BelTex employees on the trailer in which it was transported. Tr. 58. As AHT Astling's photographs indicate, he was able to hold the horse's leg at an angle that was "unnatural." Tr. 62-63, CX 129. Dr. Cordes, upon looking at the photographs taken by Astling, stated that the injured horse had a compounded fracture, with "multiple fractures somewhere between the stifle and fetlock and perhaps even above. It's difficult to say, but that's a nasty fracture." Tr. 135. Given that the driver was aware that he was transporting a severely injured horse, Respondent has violated both the provisions regarding humane transport of equines for slaughter, and the requirement to call an APHIS veterinarian when he knew he had an injured horse, in violation of the act and the regulations, with regard to this load.

On May 11, 2005, a horse broke its leg while being off-loaded from a conveyance at the Bel-Tex facility. The horse, which bore USDA backtag # 5304, apparently stepped into a gap between the trailer and the incline ramp as it was being transferred for unloading. Tr. 76-78. As the photographs by AHT Astling gruesomely illustrate, the horse's left hind leg was completely severed between the ankle and the hock. CX 146. David Green, a senior investigator with APHIS' Investigative and Enforcement Services, interviewed Danny Starnes, an employee of

BelTex, who described how the horse's leg was wedged, and how he had to use a pipe to pry the leg out. Tr. 493-494, CX 147. When Astling saw the horse it was still alive but down in the pen. Tr. 77, CX 131. Astling testified, and his photographs support his testimony, that there was a gap at the side of the ramp that was unprotected in that a horse's leg could fit through. Tr. 76-78. Accordingly, APHIS contends that the existence of this gap was an unsafe condition that resulted in the horse suffering unnecessary physical harm or trauma.

While there is no argument from Respondent that the horse did not get injured as described, Respondent characterizes the incident as an accident and that the mere fact of an accident cannot establish liability for this regulatory violation. Respondent contended that this trailer had been used numerous times to haul horses without incident and that it was generally a safe trailer. Tr. 666. However, Respondent's driver acknowledged to AHT Astling that the conditions that caused the gap to exist were fixable, and it is self-evident that the existence of such a gap would be a danger to any horse being unloaded. Tr. 78-79. Accordingly, I find that a violation of the regulation was committed although, as I will discuss in the sanctions section of this decision, there is far less degree of knowledge for this violation than some of the other serious violations, which will be reflected in the penalty assessment.

On May 30, 2005, Respondent committed another serious violation of the Act by transporting a blind horse for slaughter. On May 31, AHT Astling was alerted to the presence of the blind horse by BelTex personnel, who noticed that they could not lead it to the scales unless it was closely following another horse. Tr. 90-92, 95, CX 151, 152. AHT Astling had the horse, which wore backtag # 5922, placed in a pen by itself and observed and examined the horse. *Id.* He videotaped the horse's actions. CX 136. The videotape, which was shown at the hearing, shows the horse bumping into the fence and banging its head and the horse appeared agitated and

disoriented when left alone. Astling testified that the horse had numerous scratches, scars and lacerations around his head and eyes, of varying age, that would further indicate that the horse was blind. Tr. 95. He also shined a pen light in the horse's eyes, and could not see a pupil in either eye, stating that each eye had a bluish haze and had no reaction to light. Tr. 95-97. He concluded that the horse was blind. Dr. Cordes confirmed the conclusion of Astling, confirming that the video demonstrated that the horse was blind in both eyes, and stating that a horse that could see would not repeatedly bang its head against the walls of the corral. Tr. 141-147. Dr. Davison, while indicating that a formal conclusion that a horse was blind could not be made unless a veterinarian gave the horse an ophthalmologic examination, essentially agreed with the conclusions of Astling and Dr. Cordes. He stated that "It's obvious that the horse cannot see correctly" and suggested that it might be 90-95% blind. Tr. 164-169. I conclude that the video and photographs amply demonstrate that this horse was blind within the meaning of the regulations and that its transport to BelTex was prohibited under the regulations.

On August 15, 2005, AHT Astling inspected a load of 41 horses delivered by one of Respondent's drivers. One of the horses was down in the trailer. Tr. 202-204, CX 169. Astling inspected the horse and determined that it was dead, had a broken right hind leg, and that based on the degree of rigor mortis, it had to have been dead for at least six hours. Id. The driver indicated to Astling that the horse had been up only around 60 miles before reaching its final destination, but Dr. Cordes indicated that the degree of rigor mortis discovered by Astling was inconsistent with that statement. Tr. 132-133, 203-204, CX 169, 170. There is no specific allegation concerning Respondent's responsibility for the death of this horse. While there is no specific evidence to support the time of death of this horse, I cannot make the connection, as suggested by Complainant, that the evidence demonstrates that Respondent failed to make the

required checks on the condition of the horses every six hours, or that Respondent failed to contact an APHIS veterinarian when he had a dead horse in his shipment. There is simply not sufficient evidence, let alone a preponderance of evidence to support any conclusion that Respondent violated the regulations with respect to this horse.

On October 5, 2005, AHT Astling inspected a load of 48 horses shipped by Respondent. He observed a horse with USDA backtag # 2246 which he determined could not bear weight on its left front leg. Tr. 108-115, CX 179, 180. Astling saw no evidence of any obvious physical injury, and believed that there was a pre-existing injury that rendered the horse lame. Tr. 109. Astling videotaped and photographed this horse and, based on these observations, Dr. Cordes concluded that the horse suffered from a paralysis of the radial nerve of the left front leg. Tr. 154-157, 770-773.. Dr. Cordes agreed with AHT Astling that there was no fresh injury evident, but noted several injuries that appeared to be more than two days old. He testified that any trauma which would have caused this paralysis had to have occurred “at least a couple of days” before the paralysis would have manifested itself. Tr. 770-773. Dr. Davison agreed that the horse was suffering from a radial paralysis, but differed as to when the injury causing the paralysis could have occurred. Tr. 174-179, 779-780. He testified that such an injury can occur spontaneously, and that such an injury could have occurred during the normal transportation of the horses to BelTex. Tr. 176. He also noted that the horse’s mane bore evidence of a bridal path, indicating that some time in the not too distant past, the horse had been ridden (although the mane appeared to have been allowed to grow back for over a month). Tr. 177.

I find that, with respect to this particular count, Complainant has not sustained its burden of proving, by a preponderance of the evidence, that Respondent transported a horse that had a pre-existing injury that rendered it unable to be fully weight bearing on all four legs. Dr. Cordes

speculated that the wounds causing the paralysis were “at least a couple of days old,” and nearly two full days had elapsed between the time the horse was loaded and the time the injury was discovered. Although it is likely that the horse was injured before loading, I find it just as likely that the converse was true, and so I find no violation for this particular allegation.

2. The moderate violations—there were two types of violations that Complainant characterizes as serious, but for which he request significantly lesser penalties be assessed. Since the penalties sought, and assessed, are significantly less than those violations classified as serious, I consider these moderate violations.

First, on seven different occasions, Respondent shipped stallions for slaughter without properly segregating them from either each other or from the rest of the equines in the shipment. Respondent indicated, through affidavits of Mrs. Simon, that he instructed drivers to separate stallions as required by the regulations. E.g., CX 118. Rather than denying that the stallions in these shipments were not separated, Respondent suggested that the stallions might have been mistaken for geldings because stallions sometimes suck their testicles into their body cavity when excited. Tr. 327, 329. This possibility was confirmed by Dr. Davison, who indicated that “it would not be difficult” to mistake a young stallion for a gelding “if somebody was in a hurry.” Tr. 734-735. However, the likelihood of this happening with dozens of stallions spread over eight shipments is quite remote. Dr. Davison indicated that missing all eight stallions in one load would be unlikely. Tr. 744. Further, Respondent filled out the owner shipper form in four of the shipments indicating that stallions were present in the shipment, so it is obvious that he knew of the presence of the stallions. AHT Astling inspected the horses in each of the seven shipments and found stallions in each shipment—in five of these shipments he specifically noticed that stallions were present and were not segregated from each other or the other horses,

and in two of the shipments he noted that the documentation indicated seven and eight stallions respectively and the conveyances used to ship the horses would not accommodate separation for that number of stallions.

Second, on two occasions cited in the complaint, Respondent delivered horses to BelTex outside of normal business hours, but neither waited for a USDA representative to examine the horses, nor returned to the premises to meet with the USDA representative<sup>3</sup>. On one of these occasions, after the May 11, 2005 delivery—the same delivery where a horse was severely injured during unloading from the trailer—AHT Astling was able to locate the driver when he realized that he had passed the trailer on the way to BelTex and was able to catch up with him and conduct an examination of the trailer. On the other occasion, July 13, 2005, Astling never did get an opportunity to talk with the driver or inspect the transport.

Respondent contends that no violation exists for either of the two remaining allegations. Respondent contends that since Astling was able to locate the driver on May 11, there was no violation, while Complainant contends that the fact that the driver left the premises and stopped at a business near the facility establishes a violation. The regulation states that when delivery is made during normal business hours, the driver must wait for the USDA inspector to examine the horses. Here, however, the inspector was not on the premises at the time of the unloading of the horses. The regulations presume that an inspector will be available during normal business hours, and if the inspector was not there when such a delivery was made, it is not unreasonable for the driver to briefly leave the premises—the regulations do not seem to require a driver who delivers horses during normal working hours to remain at the facility if no inspector is present. There is no evidence here that the driver was doing anything other than visiting a nearby

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<sup>3</sup> In Complainant's reply brief, he drops a third count concerning the October 3, 2005 delivery.

business—AHT Astling indicated that the drivers was having some repairs made to his vehicle, Tr. 83—and there is no basis to conclude that he was not going to return to BelTex. The burden of proof is on Complainant, and given the fact that there was no inspector on site when the horses were unloaded during normal business hours, and that the driver had stopped close by and the inspector was able to examine the trailer, I find no violation on May 11, 2005.

With respect to the July 13, 2005 allegation, there appears to be no dispute that the facts are as alleged—that the driver dropped off a load of horses for slaughter and was not available to AHT Astling. Thus I find one violation of the failure to remain regulation.

### 3. The minor or paperwork violations.

There are numerous allegations concerning the paperwork required to be completed regarding the shipment of horses for slaughter. Every such shipment must be accompanied by an owner shipper certificate, VS Form 10-13. This form requires the input of a good deal of information which is critical to the management of an effective program. In nearly three dozen instances cited in the complaint, Respondent left pertinent information off the forms, including descriptions of the horses being shipped, the time horses were loaded onto the conveyance, information about the conveyance, etc. None of these violations were seriously disputed, although, consistent with my decision in In re: Overholt (bench decision, June 5, 2009) I am vacating those counts where the only violation was the failure to give the complete phone number or address of BelTex, since BelTex was clearly identified in each of the forms as the recipient of the horses.

## **Findings of Fact and Conclusions of Law**

1. Respondent Roy Joseph Simon d/b/a Joe Simon Enterprises, Inc., is a resident of the State of Minnesota with a mailing address of 9724 267<sup>th</sup> Street West, Lakeville, Minnesota 55044. Respondent is a knowledgeable horseman who has been buying slaughter horses for 30 years. At the time of the hearing, Respondent had been shipping approximately 300 horses to slaughter each month.

2. Respondent was the owner/shipper of horses being transported for slaughter for each of the shipments that are the subject of the complaint in this case. Each of the following findings involves horses that were shipped by Respondent to BelTex for slaughter.

3. On or about November 2, 2004, Respondent shipped a load of horses in a trailer that had been designed to haul hogs and had large holes in the bottom such that horses were in potential physical distress and one of the horses, USDA backtag # USAY 9326, developed severe cuts on its hind legs during transportation. Respondent thus failed to transport the horses in a conveyance that was designed, constructed, and maintained in a manner that at all times protected the well-being of the horses being transported, in violation of 9 C.F.R. § 88.3(a)(1). Respondent's driver was aware that the horses were in physical distress early in the transportation and observed blood in the trailer while in transit, yet Respondent and/or his driver failed to obtain veterinary assistance as soon as possible from an equine veterinarian, in violation of 9 C.F.R. § 88.4(b)(2).

By transporting the horses in this manner, Respondent and/or his driver failed to handle them 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).

4. On or about November 7, 2004, Respondent's driver became aware that one of the horses he was transporting, a stallion with USDA backtag # USBL 5013, died during transportation to the slaughter plant, yet Respondent and/or his driver did not contact the nearest APHIS office as soon as possible or allow an APHIS veterinarian to examine the dead equine. This constitutes a violation of 9 C.F.R. § 88.4(b)(2).

5. On or about February 15, 2005, Respondent's driver became aware that a grey mare with USDA backtag # USAS 3522, had gone down twice during transportation. This horse had a broken left hind leg above the hock. Even though this horse was in obvious physical distress, neither Respondent and/or his driver failed to obtain veterinary assistance as soon as possible from an equine veterinarian, in violation of 9 C.F.R. § 88.4(b)(2). Likewise, by transporting the injured horse in this manner, Respondent and/or his driver failed to handle it as expeditiously and carefully as possible in a manner that did not cause the injured horse unnecessary discomfort, stress, physical harm or trauma, in violation of 9 C.F.R. § 88.4(c).

6. On or about May 11, 2005, Respondent shipped a load of horses in a trailer that was not equipped with doors and ramps of sufficient size to allow the horses to be safely loaded and unloaded. As a result, one of the horses, a chestnut-colored horse with USDA backtag # USBL 5304, broke its left rear leg between the ankle and the hock as it was being unloaded at BelTex. Respondent thus failed to transport the horses in a conveyance that was designed, constructed, and maintained in a manner that at all times protected the well-being of the horses being transported, in violation of 9 C.F.R. § 88.3(a)(1). This conduct also constituted a failure to handle the 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).

7. On or about May 30, 2005, Respondent shipped a bay gelding quarterhorse with USDA backtag # USBM 5922, which was blind in both eyes such that it could not walk unless being led by another horse. By transporting a horse that was blind in both eyes, Respondent 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).

8. On or about August 15, 2005, Respondent shipped a bay quarterhorse gelding with USDA backtag # USBT 1997. The horse broke its right rear leg and died en route, but there is insufficient evidence to allow me to conclude that Respondent through his driver failed to check on the horses every six hours, or that he failed to timely contact an equine veterinarian.

9. On or about October 3, 2005, Respondent shipped a chestnut-colored quarterhorse gelding with USDA backtag # USBT 2246, which on arrival had an injury that rendered it lame in its left front leg and unable to bear weight on all four limbs. The preponderance of the evidence does not establish that this horse had a pre-existing injury which Respondent should have noticed before loading the horse.

10. On seven occasions: on or about October 10, 2004, on or about November 2, 2004, on or about November 7, 2004, on or about February 15, 2005, on or about March 13, 2005, on or about July 13, 2005 and on or about September 26, 2005, Respondent shipped loads of horses containing one or more stallions, but Respondent did not load the horses on the conveyance so that each stallion 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).

11. On or about July 13, 2005, Respondent and/or his driver delivered a load of horses outside of BelTex's normal business hours and left the slaughtering 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).

12. Respondent committed the following paperwork violations:

(a). On an unknown date, Respondent did not sign or date the owner-shipper certificate for a shipment of 27 horses, in violation of 9 C.F.R. § 88.4(a)(3) the name of the auction/market where the horses were sold was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(iii); 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); 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); and there was no statement that the horses had been rested, watered, and fed prior to the commercial transportation, in violation of 9 C.F.R. § 88.4(a)(3)(x).

(b). On or about August 24, 2003, Respondent did not sign the owner-shipper certificate for a shipment of 38 horses, in violation of 9 C.F.R. § 88.4(a)(3); Respondent's address and telephone number were not listed, in violation of 9 C.F.R. § 88.4(a)(3)(i); the form did not indicate the color, breed or type, and sex of any of the horses, in violation of 9 C.F.R. § 88.4(a)(3)(v); the prefix for each horse's USDA backtag number was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(vi); and 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). Additionally, Respondent was responsible for maintaining a copy of the owner/shipper certificate, VS Form

10-13, for one year following the date of signature, but was unable to locate it less than nine months later, in violation of 9 C.F.R. § 88.4(f).

(c). On or about September 14, 2003, Respondent did not indicate the name of the auction/market where a shipment of 31 horses were sold to him, in violation of 9 C.F.R. § 88.4(a)(3)(iii); and 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).

(d). On or about October 11, 2003, Respondent did not sign the owner-shipper certificate for a shipment of 20 horses, in violation of 9 C.F.R. § 88.4(a)(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); and (4) there was no statement that the horses had been rested, watered, and fed prior to the commercial transportation, in violation of 9 C.F.R. § 88.4(a)(3)(x). Additionally, Respondent was responsible for maintaining a copy of the owner/shipper certificate, VS Form 10-13, for one year following the date of signature, but was unable to locate it less than seven months later, in violation of 9 C.F.R. § 88.4(f).

(e). On or about October 12, 2003, Respondent did not record the prefix for the backtag numbers for a shipment of 28 horses, in violation of 9 C.F.R. § 88.4(a)(3)(vi), nor did he maintain a copy of the owner/shipper certificate, VS Form 10-13, for one year following the date of signature of 9 C.F.R. § 88.4(f).

(f). On or about October 21, 2003, Respondent, for a shipment of 42 horses, did not describe the conveyance used to transport the horses and did not provide the license plate number of the conveyance, in violation of 9 C.F.R. § 88.4(a)(3)(iv); 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). Additionally, Respondent was responsible for maintaining a copy of the owner/shipper certificate, VS Form 10-13, for one year following the date of signature, but was unable to locate it less than seven months later, in violation of 9 C.F.R. § 88.4(f).

(g). On or about October 27, 2003, Respondent, for a shipment of 21 horses, did not describe the conveyance used to transport the horses and did not provide the license plate number of the conveyance, in violation of 9 C.F.R. § 88.4(a)(3)(iv); and 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).

(h). On or about November 2, 2003, Respondent, for a shipment of 44 horses, did not describe the conveyance used to transport the horses and did not provide the license plate number of the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(iv); and 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). Additionally, Respondent was responsible for maintaining a copy of the owner/shipper certificate, VS Form 10-13, for one year following the date of signature, but was unable to locate it less than six months later, in violation of 9 C.F.R. § 88.4(f).

(i). On or about December 2, 2003, Respondent, for a shipment of 36 horses, did not provide the name of the auction/market where the horses were sold, in violation of 9 C.F.R. § 88.4(a)(3)(iii), and the prefix for each horse's USDA backtag number was incorrectly recorded, in violation of 9 C.F.R. § 88.4(a)(3)(vi). Additionally, Respondent was responsible for maintaining a copy of the owner/shipper certificate, VS Form 10-13, for one year following the date of signature, but was unable to locate it less than five months later, in violation of 9 C.F.R. § 88.4(f).

(j). On or about December 6, 2003, Respondent, for a shipment of 38 horses did not provide a description of the conveyance used to transport the horses and did not provide the license plate number of the conveyance, in violation of 9 C.F.R. § 88.4(a)(3)(iv). Additionally, Respondent was responsible for maintaining a copy of the owner/shipper certificate, VS Form 10-13, for one year following the date of signature, but was unable to locate it less than five months later, in violation of 9 C.F.R. § 88.4(f).

(k). On or about January 20, 2004, Respondent shipped 31 horses without applying a USDA backtag to each horse in the shipment, in violation of 9 C.F.R. § 88.4(a)(2). The prefix and tag number for each horse's USDA backtag number were not recorded, in violation of 9 C.F.R. § 88.4(a)(3)(vi). Additionally, Respondent was responsible for maintaining a copy of the owner/shipper certificate, VS Form 10-13, for one year following the date of signature, but was unable to locate it less than six months later, in violation of 9 C.F.R. § 88.4(f).

(l). On or about March 21, 2004, Respondent shipped 18 horses for which he was responsible for maintaining a copy of the owner/shipper certificate, VS Form 10-13, for one year following the date of signature. Less than two months later, he was unable to locate the form, in violation of 9 C.F.R. § 88.4(f).

(m). On or about March 28, 2004, Respondent shipped 20 horses but neglected to indicate on the form the color, breed or type, and sex of each horse, physical characteristics that could be used to identify the horses, in violation of 9 C.F.R. § 88.4(a)(3)(v). Additionally, Respondent was responsible for maintaining a copy of the owner/shipper certificate, VS Form 10-13, for one year following the date of signature, but was unable to locate it less than two months later, in violation of 9 C.F.R. § 88.4(f).

(n). On or about April 18, 2004, Respondent shipped 36 horses in commercial transportation to BelTex for slaughter but did not indicate on the form either the name of the auction/market where the horses were sold, in violation of 9 C.F.R. § 88.4(a)(3)(iii); or the time when the horses were loaded onto the conveyance, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

(o). On or about April 25, 2004, Respondent shipped 48 horses but omitted both the name of the auction/market where the horses were sold, in violation of 9 C.F.R. § 88.4(a)(3)(iii); and the time when the horses were loaded onto the conveyance, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

(p). On or about May 26, 2004, Respondent shipped 27 horses without recording the prefix for each horse's USDA backtag number, in violation of 9 C.F.R. § 88.4(a)(3)(vi).

(q). On or about July 11, 2004, Respondent shipped 42 horses without listing the time that the horses were loaded onto the conveyance, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

(r). On or about July 20, 2004, Respondent shipped 41 horses without providing: the name of the auction/market where the horses were sold, in violation of 9 C.F.R. § 88.4(a)(3)(iii); the license plate number of the conveyance used to transport the horses, in violation of 9 C.F.R. § 88.4(a)(3)(iv); and the place where the horses were loaded onto the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

(s). On or about August 1, 2004, Respondent shipped 21 horses without indicating the breed or type of each horse, one of the physical characteristics that could be used to identify each horse, in violation of 9 C.F.R. § 88.4(a)(3)(v); and four of the five 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).

(t). On or about August 9, 2004, Respondent shipped 34 horses without indicating the breed or type of each horse, one of the physical characteristics that could be used to identify each horse, in violation of 9 C.F.R. § 88.4(a)(3)(v); and three of the five 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).

(u). On or about August 18, 2004, Respondent shipped 26 horses without listing the name of the auction/market where the horses were sold, in violation of 9 C.F.R. § 88.4(a)(3)(iii); and without specifying the time when the horses were loaded onto the conveyance, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

(v). On or about September 7, 2004, Respondent shipped 17 horses but the prefix for each horse's USDA backtag number was not recorded, in violation of 9 C.F.R. § 88.4(a)(3)(vi).

(w). On or about October 10, 2004, Respondent shipped 45 horses without providing: the name of the auction/market where the horses were sold, in violation of 9 C.F.R. § 88.4(a)(3)(iii); the time when the horses were loaded onto the conveyance, in violation of 9 C.F.R. § 88.4(a)(3)(ix); and a statement that the horses had been rested, watered, and fed prior to the commercial transportation, in violation of 9 C.F.R. § 88.4(a)(3)(x).

(x). On or about November 5, 2004, Respondent shipped 34 horses without listing the license plate number of the conveyance used to transport the horses, in violation of 9 C.F.R. § 88.4(a)(3)(iv).

(y). On or about November 7, 2004, Respondent shipped 46 horses in commercial transportation but failed to list a stallion with USDA backtag # USBL 5013 on the form, in violation of 9 C.F.R. § 88.4(a)(3)(v).

(z). On or about November 8, 2004, Respondent shipped 34 horses without listing the license plate number of the conveyance used to transport the horses, in violation of 9 C.F.R. § 88.4(a)(3)(iv).

(aa). On or about November 20, 2004, Respondent shipped 31 horses but did not indicate the time when the horses were loaded onto the conveyance, in violation of 9 C.F.R. § 88.4(a)(3)(ix). Additionally, Respondent was responsible for maintaining a copy of the owner/shipper certificate, VS Form 10-13, for one year following the date of signature, but was unable to locate it less than six months later, in violation of 9 C.F.R. § 88.4(f).

(bb). On or about November 23, 2004, Respondent shipped 24 but did not indicate either the license plate number of the conveyance used to transport the horses, in violation of 9 C.F.R. § 88.4(a)(3)(iv); or 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).

(cc). On or about November 25, 2004, Respondent shipped without providing the license plate number of the conveyance used to transport the horses, in violation of 9 C.F.R. § 88.4(a)(3)(iv).

(dd). On or about December 26, 2004, Respondent shipped 21 horses without providing the time when the horses were loaded onto the conveyance, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

(ee). On or about February 15, 2005, Respondent shipped 38 horses but omitted the time when the horses were loaded onto the conveyance, in violation of 9 C.F.R. § 88.4(a)(3)(ix).

(ff). On or about May 11, 2005, Respondent shipped 37 horses but omitted the name of the auction/market where the horses were sold, in violation of 9 C.F.R. § 88.4(a)(3)(iii); the form did not list any identifying physical characteristics for a chestnut-colored horse with USDA backtag # USBL 5304, in violation of 9 C.F.R. § 88.4(a)(3)(v); and there was no statement that the horses had been rested, watered, and fed prior to the commercial transportation, in violation of 9 C.F.R. § 88.4(a)(3)(x).

(gg). On or about May 30, 2005, Respondent shipped 34 horses. Respondent was responsible for maintaining a copy of the owner/shipper certificate, VS Form 10-13, for one year following the date of signature, but was unable to locate it less than two months later, in violation of 9 C.F.R. § 88.4(f).

(hh) On or about July 13, 2005, Respondent shipped 32 horses but incorrectly listed eight (8) stallions in the shipment as being geldings and thereby failed to list all of the physical characteristics that could be used to identify those horses, in violation of 9 C.F.R. § 88.4(a)(3)(v).

(ii). On or about September 24, 2005, Respondent shipped 35 horses but failed to supply the license plate number of the conveyance, in violation of 9 C.F.R. § 88.4(a)(3)(iv).

(jj). On or about September 26, 2005, Respondent shipped 43 horses but did not list 11 of the horses in the shipment, in violation of 9 C.F.R. § 88.4(a)(3); and did not correctly specify the place where the horses were loaded onto the conveyance, in violation of 9 C.F.R. § 88.4(a)(3)(x).

(kk). On or about September 27, 2005, Respondent shipped 27 horses in but omitted listing one horse with USDA backtag # USBT in violation of 9 C.F.R. § 88.4(a)(3); failed to list

the license plate number of the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(iv); incorrectly listed the color and sex of at least 13 horses, physical characteristics that could be used to identify each horse, in violation of 9 C.F.R. § 88.4(a)(3)(v); and prefixes of the USDA back tags for 23 horses were not recorded, in violation of 9 C.F.R. § 88.4(a)(3)(vi).

### **Sanctions**

While the Act only indicates that a maximum penalty of \$5,000 per violation, and that each horse transported in violation of the regulations will be considered a separate violation, Complainant appears to agree, by his categorizing of the different types of violations shown here, that the more serious violations deserve the more serious civil penalties. Thus, Complainant recommends the maximum penalties only for those violations that he believes are the most serious, with more moderate penalties proposed for the violations of the stallion segregation requirement and the requirement that a driver either stay around or return during normal business hours when he drops off a load of horses outside normal business hours. Complainant likewise proposes penalties of approximately \$25 for each violation of the paperwork requirements.

In looking at Respondent's history of violations, it is evident to me that Complainant put forth considerable effort in educating this industry on the impact of the Act and regulations, launching extensive efforts and publishing a guidebook that was widely distributed in the industry. Tr. 368-370. APHIS personnel were generally available to answer questions when issues arose. Respondent admitted to receiving at least one guidebook, although he was not sure of its whereabouts, and further admitted that whenever he called AHT Astling he was responsive to Respondent's questions. Tr. 700-701.

On the other hand, I am somewhat puzzled why Complainant let such a large number of violations accumulate before issuing a complaint against Respondent. Given the importance of the regulations, strongly emphasized by the testimony of Dr. Cordes and by Complainant's briefs, it is surprising that years elapsed between the commission of some violations and the issuance of the complaint. The earliest violations were alleged to have occurred in August 2003, with the first serious violation occurring in November 2004, yet the complaint was not issued until May 2007. Respondent testified, without dispute, that he has not been cited for any further violations since the issuance of the complaint in this case, indicating that waiting for the accumulation of 42 alleged violations before the issuance of a complaint rather than prosecuting promptly is not fully consistent with either the remedial or deterrent aims of the Agency. Thus, Dr. Cordes statement that Respondent had far more violations than any other owner/shipper who had gone to hearing, is necessarily weighed against the fact that it is highly likely that there would have been far fewer violations if APHIS had taken action when the first violations were discovered.

The most serious violations:

The November 2, 2004 violations where Respondent transported horses in a conveyance not suitable for horse transport, and where the driver was aware that a horse was in physical distress and failed to take appropriate action is extremely serious. I assess the maximum penalty of \$5,000 for the combined failure to transport the horses expeditiously and carefully as possible and for the failure to seek veterinary assistance. I also assess a penalty of \$2,000 for using a conveyance not suitable for the transporting of horses.

The November 7, 2004 violation for failure to contact a veterinarian when a dead horse was discovered is likewise a serious violation. However, as I ruled in the Overholt decision at Tr. 357, this involves less harm as the horse was already dead, and contacting the veterinarian would not have prevented any harm to the horse. Accordingly, I assess a \$2,000 penalty for this violation.

The February 15, 2005 violation where a gray mare went down twice during the transport and no veterinary attention was sought is on the high end of seriousness. The point of the Act and its regulations is to prevent needless suffering throughout this process, and the actions of Respondent, through his driver, are just the type of actions that the Act was most designed to prevent. Although the Act allows, as per the Judicial Officer in In re. William Richardson, the assessment of multiple penalties when the same horse is involved, here the failure to seek veterinary assistance and the failure to transport and handle a horse as expeditiously and carefully as possible are two acts that in my mind are inextricably intertwined. Accordingly I am assessing a combined penalty of \$5,000 for these violations.

The May 11, 2005 violation, while easily the most gruesome in this case, appeared to be more of an accident due to negligence in the unloading process than a knowledgeable act. There is no evidence of ignoring the condition of a horse or deliberate exposure of a horse to dangerous conditions. It appears that this was more of a negligent setting up of the unloading process. I impose a penalty of \$3,000 for this violation.

The May 30, 2005 shipment of a horse that was blind in both eyes was a direct and knowing violation of the regulations. An owner/shipper is required to affirmatively state that horses are fit to travel, including not being blind in both eyes. The photographs, video and

observations of Dr. Cordes and AHT Astling clearly establish that this horse was blind. A horseman with the over 30 years experience of Respondent could not help but notice that this horse was blind. I impose a civil penalty of \$4,000 for this violation.

The moderately serious violations:

Although Complainant classifies the failure to segregate stallions and the failure to remain at the BelTex after dropping horses off outside business hours as serious violations, Complainant recognized, as he must, that these violations are significantly less serious in gravity than the violations just discussed.

Complainant seeks a penalty for \$800 for each of the stallions that were not segregated as required. Respondent's defenses are particularly dubious—rather than denying that he committed these violations, he contended that his drivers could have mistaken the stallions for geldings because stallions occasion suck their external genitalia into their body cavities when excited. While this is theoretically possible, the likelihood of this happening in each of the cited incidents, particularly where a number of the owner/shipper statements (four) acknowledged the presence of stallions in the shipment<sup>4</sup>, is extremely small. There is a significant potential for harm where stallions are not segregated (and in the November 7, 2004 shipment a stallion died in transit). Complainant demonstrated that 25 stallions were transported without proper segregation over seven different shipments. I am assessing a total of \$7,500 for these violations.

I found one instance where Respondent's driver did not comply with the regulation requiring him either to wait for the USDA inspector or return during business hours. Of the 42 shipments of horses involved in this complaint, Respondent was cited for this violations of this

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<sup>4</sup> In a fifth shipment, the driver acknowledged the presence of stallions.

provision, but Complainant dropped one and I found Respondent not culpable for another. For the remaining instance, I find that the proposed civil penalty of \$500 is appropriate.

With respect to the numerous paperwork violations, it appears that Respondent had a somewhat cavalier attitude towards his obligations in this regard. He testified that the requirements were confusing but on the stand admitted that he could figure how to fill out the forms. On the other hand, perhaps Respondent would have taken his responsibilities in this area more seriously if Complainant gave him any sort of indication that he was improperly filling out the forms, rather than waiting until he accumulated a few years of violations before a complaint was issued. In any event, the alleged violations were clearly established, although I vacated the counts where the only violation was the omission of either BelTex's phone number or full address since the facility was clearly identified. In balancing the pervasive nature of these violations in the face of Respondent's personal knowledge of the regulations and the outreach program conducted by Complainant, but also factoring in the delay in notifying Respondent of his continued non-compliance, I assess a cumulative penalty of \$7,500 for the recordkeeping violations.

### **Order**

Respondent Roy Joseph Simon is assessed a civil penalty of thirty six thousand five hundred dollars (\$36,500). Respondent shall send a certified check or money order for \$36,500 payable to the Treasurer of the United States to

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

Within thirty days from the effective date of this Order. The certified check or money order should include the docket number of this proceeding.

This order shall become effective on the first day after this decision becomes final. Unless appealed pursuant to the Rules of Practice at 7 C.F.R. § 1.145(a), this decision becomes final without further proceedings 35 days after service as provided in the Rules of Practice, 7 C.F.R. 1.142(c)(4).

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.  
this 5<sup>th</sup> day of August, 2009

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**MARC R. HILLSON**  
Chief Administrative Law Judge