



APPEARANCES:

On Behalf of the Complainant, USDA

THOMAS N. BOLICK, ESQ.

U.S. Department of Agriculture  
Office of the General Counsel  
Room 2319-South Building  
14th and Independence Avenue, S.W.  
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10 I find that Respondent, Howard  
11 Overholt, committed four very serious  
12 violations of the Commercial Transportation of  
13 Equine for Slaughter Act along with two  
14 moderate violations of the Act. I also find  
15 that Respondent committed paperwork  
16 violations regarding many loads of horses and  
17 I am imposing civil penalties in the amount of  
18 \$19,500 for these violations.

19 This administrative proceeding was  
20 instituted by the Complaint filed on May 16th,  
21 2008, by the Administrator of the Animal and  
22 Plant Health Inspection Service, United States

1 Department of Agriculture, hereinafter APHIS,  
2 for Complainant.

3           The Complainant alleged that the  
4 Respondent violated the Commercial  
5 Transportation of Equine for Slaughter Act, 7  
6 USC, Section 1901 Note (the Act) which is how  
7 I will refer to it generally and the  
8 regulations promulgated thereunder 9 CFR  
9 Section 88.

10           It's important to point out that 9  
11 CFR 88.6(a) authorizes the Secretary of  
12 Agriculture to assess civil penalties up to  
13 \$5,000 per violation or any violations of the  
14 regulation in this part.

15           9 CFR 88.6(b) states that each  
16 equine transported in violation of the  
17 regulation of this part will be considered a  
18 separate violation.

19           In the Complaint civil penalties are  
20 authorized by Section 903(c)(3) of the Act, 7  
21 USC 1901 Note and 9 CFR 88.6 and 88.6.

22           I conducted an Oral Hearing

1 beginning June 4th, 2009, via audio/visual  
2 telephone links and teleconference links  
3 between the U.S. Attorney's Office in Lansing,  
4 Michigan, the U.S. Attorney's Office in  
5 Central Islip, New York, and USDA Headquarters  
6 in Washington, D.C.

8           Complainant was represented by  
9 Thomas Neil Bolick, Esq., Office of the  
10 General Counsel, USDA, Washington, D.C.  
11 20250, and Respondent did not appear at the  
12 hearing. Complainant presented six witnesses  
13 and introduced approximately 88 exhibits.

14           The Complaint alleged that between  
15 early October 2004 to mid-July 2005,  
16 Respondent commercially transported 18  
17 shipments of horses to slaughter in the course  
18 of which he committed approximately 23  
19 violations of the Act and its accompanying  
20 regulations.

21           Specifically, the Complaint  
22 alleged that on three occasions the Respondent

1 failed to handle horses as carefully and  
2 expeditiously as possible in a manner that did  
3 not cause them unnecessary discomfort, stress,  
4 physical harm or trauma during commercial  
5 transportation to slaughter in violation of 9  
6 CFR Section 88.4(c).

7           On another occasion, Respondent  
8 also either failed to obtain immediate  
9 veterinary assistance from an equine  
10 veterinarian for a horse that was in obvious  
11 physical distress during commercial  
12 transportation to slaughter or failed to  
13 notify the nearest APHIS office about a horse  
14 that died in route in violation of 9 CFR  
15 Section 88.4(b)(2).

16           The Complaint also alleged that on  
17 two occasions Respondent or his drivers  
18 delivered horses to a horse slaughter plant  
19 outside of the plant's normal working hours  
20 and failed to remain at the plant until a  
21 USDA representative had inspected the horses  
22 or to return to the slaughter plant to meet

1 the USDA representative upon his arrival in  
2 violation of 9 CFR Section 88.5(b).

3 Finally, the Complaint alleged  
4 that Respondent failed to prepare complete and  
5 accurate owner/shipper certificates,  
6 Veterinary Services Form 10-13 for 17  
7 shipments of horses being commercially  
8 transported for slaughter in violation of 9  
9 CFR Section 88.4(a)(3).

10 Respondent filed an answer on June  
11 19th, 2008. In his answer, Respondent stated  
12 that "he did not know he was not doing right"  
13 and asked why he had not been "informed the  
14 first time?"

15 He also stated that he has  
16 "stopped hauling horses" and "has not hauled  
17 horses for a long time."

18 The witness testimony and  
19 documentary photographic and videographic  
20 evidence presented at the hearing clearly  
21 establishes that the Respondent was the  
22 owner/shipper of all of the commercial

1 shipments of horses to slaughter that are  
2 listed in the Complaint.

3           The evidence clearly establishes  
4 that on three different occasions, Respondent  
5 or his driver failed to commercially transport  
6 dying, injured or blind horses to slaughter as  
7 carefully and expeditiously as possible in a  
8 manner that did not cause these horses  
9 unnecessary discomfort, stress, physical harm  
10 or trauma. It also clearly establishes that  
11 on another occasion Respondent or his driver  
12 was aware that a horse was in obvious physical  
13 distress during commercial transportation to  
14 slaughter and that this horse died during said  
15 transportation but Respondent or his driver  
16 failed to obtain veterinary assistance as soon  
17 as possible from an equine veterinarian or to  
18 notify the nearest APHIS office about the dead  
19 horse.

20           The evidence presented at the  
21 hearing further establishes that on two  
22 occasions Respondent or the driver delivered

1 shipments of horses to a horse slaughter plant  
2 outside of normal business hours but did not  
3 remain at the plant until a USDA  
4 representative examined the horses or returned  
5 to the plant to meet with a USDA  
6 representative upon his arrival.

7           Finally, the evidence clearly  
8 establishes that Respondent routinely failed  
9 to prepare a complete and accurate  
10 owner/shipper certificate for each shipment of  
11 horses. Therefore, pursuant to Section  
12 1.142(c) of the Rules of Practice applicable  
13 to this proceeding [7 CFR Section 1.142(c)] I  
14 make the following finds of fact and  
15 conclusions of law and issue the following  
16 order.

17           Findings of Fact.

18           1. Respondent, Howard Overholt, is a  
19 commercial slaughter horse buyer with a  
20 mailing address of 547 St. Joseph Road, Burr  
21 Oak, Michigan 49030.

22           2. On or about October 8, 2004,

1 Respondent shipped 39 horses from Shipshewana,  
2 Indiana, to Beltex Corporation in Ft. Worth,  
3 Texas, hereinafter referred to as Beltex, for  
4 slaughter but did not properly fill out the  
5 required owner/shipper certificate, VS Form  
6 10-13. The filling of the form was deficient  
7 in that the time when the horses were loaded  
8 onto the conveyance was not listed in  
9 violation of 9 CFR Section 88.4(a)(3)(ix).

10 3. On our about October 27, 2004,  
11 Respondent shipped 38 horses from Shipshewana,  
12 Indiana, to Beltex for slaughter but did not  
13 properly fill out the required owner/shipper  
14 certificate, VS Form 10-13.

15 The form had the following  
16 deficiencies.

17 (1) There was no description of  
18 the conveyance used to transport the horses  
19 and the license plate number of the conveyance  
20 was not listed in violation of 9 CFR  
21 88.4(a)(3)(iv), and

22 (2) The time when the horses

1 were loaded onto the conveyance was not listed  
2 in violation of 9 CFR 88.4(a)(3)(ix).

3 4. On or about October 30th, 2004,  
4 Respondent shipped 37 horses from Shipshewana,  
5 indiana, to Beltex for slaughter but did not  
6 properly fill out the required owner/shipper  
7 certificate, VS Form 10-13.

8 The form had the following  
9 deficiency.

10 The time when the horses were  
11 loaded onto the conveyance was not listed in  
12 violation of 9 CFR Section 88.4(a)(3)(ix).

13 5. On or about November 2nd, 2004,  
14 Respondent shipped 36 horses from Shipshewana,  
15 Indiana, to Beltex for slaughter but did not  
16 properly fill out the required owner/shipper  
17 certificate, VS Form 10-13.

18 The form had the following  
19 deficiencies.

20 (1) The prefix for each horse's  
21 USDA back tag number was not recorded properly  
22 in violation of 9 CFR Section 88.4(a)(3)(vi),

1 and

2 (2) The date on which the horses  
3 were loaded onto the conveyance was not listed  
4 properly in violation of 9 CFR Section  
5 88.4(a)(3)(ix).

6 6. On or about November 3rd, 2004,  
7 Respondent shipped 88 horses from Shipshewana,  
8 Indiana, to Beltex for slaughter but did not  
9 properly fill out the required owner/shipper  
10 certificate, VS Form 10-13.

11 The form had the following  
12 deficiencies.

13 (1) There was no description of  
14 the conveyance used to transport the horses  
15 and the license plate number of the conveyance  
16 was not listed in violation of 9 CFR Section  
17 88.4(a)(3)(iv), and

18 (2) The time when the horses were  
19 loaded onto the conveyance was not listed in  
20 violation of 9 CFR Section 88.4(a)(3)(ix).

21 7. On or about November 7, 2004,  
22 Respondent shipped 42 horse from Shipshewana,

1 Indiana, to Beltex for slaughter but did not  
2 properly fill ut the required owner/shipper  
3 certificate, VS Form 10-13.

4 The form had the following  
5 deficiency.

6 The time when the horses were  
7 loaded onto the conveyance was not listed in  
8 violation of 9 CFR Section 88.4(a)(3)(ix).

9 8. On or about November 14th, 2004,  
10 Respondent shipped 43 horses from Shipshewana,  
11 Indiana, to Beltex for slaughter but did not  
12 properly fill out the required owner/shipper  
13 certificate, VS Form 10-13.

14 The form had the following  
15 deficiencies.

16 (1) The time when the horses were  
17 loaded onto the conveyance was not listed in  
18 violation of 9 CFR Section 88.4(a)(3)(ix), and

19 (2) There was no statement that  
20 the horses had been rested, watered and fed  
21 for at least six consecutive hours prior to  
22 being loaded for the commercial transportation

1 in violation of 9 CFR Section 88.4(a)(3)(x).

2 9 (a) On or about November 14th, 2004,  
3 Respondent shipped a second load of 38 horses  
4 from Shipshewana, Indiana, to Beltex for  
5 slaughter. One of the horses in the shipment  
6 with USDA back tag number USDA 0848 went down  
7 during transportation and it became apparent  
8 that it was in obvious physical distress and  
9 died on route to the slaughter plant. The  
10 Respondent and/or his driver did not obtain  
11 veterinary assistance as soon as possible from  
12 an equine veterinarian nor did they contact  
13 the nearest APHIS office as soon as possible  
14 and allow an APHIS veterinarian to examine the  
15 dead horse in violation of 9 CFR Section  
16 88.4(b)(2).

17 (b) On or about November 14th, 2004,  
18 Respondent shipped a second load of 38 horses  
19 from Shipshewana, Indiana, to Beltex for  
20 slaughter. One of the horses in this shipment with  
21 USDA back tag number 0848 went down during  
22 transportation indicating it was in obvious

1 distress and died in route to the slaughter  
2 plant. Respondent and/or his driver thus  
3 failed to handle this horse as expeditiously  
4 and carefully as possible in a manner that did  
5 not cause it unnecessary discomfort, stress,  
6 physical harm or trauma in violation of 9 CFR  
7 Section 88.4(c).

8 10. On or about November 20th, 2004,  
9 Respondent shipped 37 horses from Shipshewana,  
10 Indiana, to Beltex for slaughter but did not  
11 properly fill out the required owner/shipper  
12 certificate, VS Form 10-13.

13 The form had the following  
14 deficiencies.

15 (1) There was no description of  
16 the conveyance used to transport the horses  
17 and the license plate number of the conveyance  
18 was not listed in violation of 9 CFR Section  
19 88.4(a)(3)(iv).

20 (2) The time when the horses  
21 were loaded onto the conveyance was not listed  
22 in violation of 9 CFR Section 88.4(a)(3)(ix).

1           11.    On or about November 20th, 2004,  
2 Respondent shipped a second load of 39 horses  
3 from Shipshewana, Indiana to Beltex for  
4 slaughter but did not properly fill out the  
5 required owner/shipper certificate, VS Form  
6 10-13.

7                   The form had the following  
8 deficiencies.

9                   (1) There was no description of  
10 the conveyance used to transport the horses  
11 and the license plate number of the conveyance  
12 was not listed in violation of 9 CFR Section  
13 88.4(a)(3)(iv).

14                   (2) The time when the horses were  
15 loaded onto the conveyance was not listed in  
16 violation of 9 CFR Section 88.4(a)(3)(ix).

17           12.    On or about November 27th, 2004,  
18 Respondent shipped a load of 42 horses from  
19 Shipshewana, Indiana to Beltex for slaughter  
20 but did not properly fill out the required  
21 owner/shipper certificate, VS Form 10-13.

22                   The form had the following

1 deficiencies.

2 (1) There was no description of  
3 the conveyance used to transport the horses  
4 and the license plate number of the conveyance  
5 was not listed in violation of 9 CFR Section  
6 88.4(a)(3)(iv).

7 (2) The time that the horses were  
8 loaded onto the conveyance was not listed in  
9 violation of 9 CFR Section 88.4(a)(3)(ix).

10 13. On or about November 27th, 2004,  
11 Respondent shipped a second load of 45 horses  
12 from Shipshewana, Indiana, to Beltex for  
13 slaughter but did not properly fill ut the  
14 required owner/shipper certificate, VS Form  
15 10-13.

16 The form had the following  
17 deficiencies.

18 (1) There was no description of  
19 the conveyance used to transport the horses  
20 and the license plate number of the conveyance  
21 was not listed in violation of 9 CFR Section  
22 88.4(a)(3)(iv).

1           (2) The time when the horses were  
2 loaded onto the conveyance was not listed in  
3 violation of 9 CFR 88.4(a)(3)(ix).

4           14. On or about December 11th, 2004,  
5 Respondent shipped a load of 29 horses from  
6 Shipshewana, Indiana, to Beltex for slaughter  
7 but did not properly fill out the required  
8 owner/shipper certificate, VS Form 10-13.

9           The form had the following  
10 deficiencies.

11           (1) There was no description of  
12 the conveyance used to transport the horses  
13 and the license plate number of the conveyance  
14 was not listed in violation of 9 CFR Section  
15 88.4(a)(3)(iv).

16           (2) The boxes indicating the  
17 fitness of the horses that traveled at the  
18 time of loading were not checked off in  
19 violation of 9 CFR Section 88.4(a)(3)(vii).

20           (3) The time when the horses were  
21 loaded onto the conveyance was not listed in  
22 violation of 9 CFR Section 88.4(a)(3)(ix).

1           15(a) On or about June the 4th, 2005,  
2 Respondent shipped a load of 39 horses from  
3 Shipshewana, Indiana, to Beltex for slaughter  
4 but did not properly fill out the required  
5 owner/shipped certificate, VS Form 10-13.

6           The form had the following  
7 deficiencies.

8           (1) The form did not indicate the  
9 breed, type and/or sex of the horses, physical  
10 characteristics that could be used to identify  
11 those horses in violation of 9 CFR Section  
12 88.4(a)(3)(v), and

13           (2) There was no statement that  
14 the horses had been rested, watered and fed  
15 for at least six consecutive hours prior to  
16 being loaded on the conveyance for removal in  
17 violation of 9 CFR Section 88.4(a)(3)(x).

18           (b) On or about June 4th, 2005,  
19 Respondent shipped a load of 39 horses from  
20 Shipshewana, Indiana, to Beltex for slaughter.  
21 One of the horses in the shipment, a quarter  
22 horse mare with bag tag number USDA 3287 had

1 a severe gash on top of its left hip that  
2 appeared to have occurred during loading,  
3 transit or unloading.

4 Respondent and/or his driver thus  
5 failed to handle this horse as expeditiously  
6 and careful as possible in a manner that  
7 did not cause it unnecessary discomfort,  
8 stress, physical harm or trauma in violation  
9 of 9 CFR Section 88.4(c).

10 On or about June 4th, 2005,  
11 Respondent shipped a load of 39 horses from  
12 Shipshewana, Indiana, to Beltex for slaughter.  
13 Respondent and/or his driver did not remain at  
14 Beltex until the horses had been examined by  
15 a USDA representative or in the alternative  
16 had delivered the horses out of Beltex' normal  
17 business hours and left the slaughter facility  
18 but they did not return to Beltex to meet the  
19 USDA representative upon his arrival in  
20 violation of 9 CFR Section 88.5(b).

21 16(a) On or about June 18th, 2005,  
22 Respondent shipped a load of 39 horses From

1     Shipshewana, Indiana, to Beltex for slaughter.  
2     One of the horses in the shipment, USDA Bag  
3     Tag USDA 3287 was blind in both eyes. The  
4     Respondent shipped it with the other horses.  
5     Respondent and/or his driver should have been aware  
   that this horse was blind, and that it was unlawful  
   to transport this horse.

11           (b) On or about June 18th, 2005,  
12     Respondent shipped a load of 39 horses from  
13     Shipshewana, Indiana, to Beltex for slaughter.  
14     Respondent, and/or his driver did not remain  
15     at Beltex until the horses had been examined  
16     by a USDA representative or in the alternative  
17     they delivered the horses outside of Beltex'  
18     normal business hours and left the slaughter  
19     facility, but they did not return to Beltex to  
20     meet the USDA representative upon his arrival  
21     in violation of 9 CFR Section 88.5(b).

22           17. On or about July 15th, 2005,

1 Respondent shipped a load of 45 horses from  
2 Shipshewana, Indiana, to Beltex for slaughter  
3 but did not properly fill out the required  
4 owner/shipper certificate, VS Form 10-13.

5 The form had the following  
6 deficiencies.

7 The form did not indicate the  
8 breed type and/or sex of a horse bearing USDA  
9 Bag Tag No. 3766 - physical characteristics  
10 that could be used to identify that horse in  
11 violation of 9 CFR Section 88.4(a)(3)(v).

12 Discussion

13 1(a) The most serious violations.

14 Complainant seeks the imposition  
15 of two \$5,000 penalties with respect to the  
16 November 14th, 2004, loading and shipment of  
17 the clearly distressed mare who laid down at  
18 the time of loading, was urged to stand and  
19 was loaded onto the conveyance and who laid  
20 down again in route and who eventually died  
21 before arriving at Beltex.

22 Dr. Timothy Cordes, DVM, the

1 national coordinator of equine programs at  
2 USDA convincingly testified that an adult  
3 horse that lays down is a sick horse and that  
4 the horse never should have been loaded under  
5 the Act and the regulations.

6 Dr. Cordes also stated that the  
7 failure of the driver to contact the equine  
8 veterinarian or the nearest APHIS office as  
9 soon as possible after the distressed horse  
10 died, was also in violation.

11 While I have previously found in  
12 the William Richardson case that only one  
13 civil penalty can be imposed for violations  
14 committed in regard to a single horse, the  
15 Judicial Officer ruled that multiple  
16 violations can be assessed.

17 Accordingly, I find that by  
18 loading a horse in obvious physical distress  
19 and transporting that horse, the Respondent  
20 violated the provisions of 9 CFR Section  
21 88.4(c) by failing to transport this horse to  
22 slaughter as carefully and expeditiously as

1 possible in a manner that did not cause it  
2 unnecessary discomfort, stress, physical harm  
3 or trauma. This is one of the most  
4 significant violations that can occur under  
5 the Act and I impose the maximum penalty of  
6 \$5,000.

7           The failure to take proper action  
8 upon the death of the mare is also significant  
9 but clearly involves less harm since the  
10 damage has already been done. I impose a  
11 penalty of \$2,500 for the failure to contact  
12 a veterinarian or the nearest APHIS office  
13 after the mare died.

14           (b) A serious violation also occurred  
15 on June 4th, 2005, with respect to commercial  
16 transportation of a horse which arrived at  
17 Beltex with a severe gash on its left hip.

18           Joseph Astling, who was an animal  
19 health technician at the time of the incident,  
20 photographed the wound and testified as to its  
21 severity. He believed the wound must have  
22 been caused by contact with a sharp

1 overhanging object in transit such as would be  
2 likely found in a trailer such as the one used  
3 to transport this horse.

4           Dr. Cordes fully concurred with  
5 Mr. Astling's conclusions based on his  
6 examination of the photographs. Because this  
7 is a clear and serious violation of the  
8 requirement that a horse be transported to  
9 slaughter as carefully and expeditiously as  
10 possible in a manner that did not cause it  
11 unnecessary discomfort, stress, physical harm  
12 or trauma, but does not involve the degree of  
13 knowledge present in the previously discussed  
14 violation, I impose a \$3,000 civil penalty.

15           (c) A serious violation also occurred  
16 on June 18th, 2005, where Respondent  
17 transported a horse blind in both eyes. Video  
18 evidence was introduced, CX 82, Complaint's  
19 Exhibit 82, that establishes the fact that the  
20 horse in question with the Bag Tag No. USDA  
21 3357 was, in fact, blind.

22           The horse when not led bumped into

1 the stall or another horse, had facial scars  
2 indicating a history of bumping into objects  
3 due to blindness.

4 Dr. Cordes was able to demonstrate  
5 through examination of the video evidence that  
6 this horse had impairments to the extent that  
7 it could not see. While there was no evidence  
8 that this harm was harmed in transit, the  
9 regulations require that a horse in order to  
10 be fit for transport must not be blind in both  
11 eyes. 9 CFR 88.4(a)(3)(vii). And by  
12 definition shipping it with other horses  
13 violated the prohibitions of 9 CFR 88.4(c).

14 In addition, a horseman with  
15 Respondent's 30 years experience could not  
16 help but notice that this horse was blind.

17 I impose a civil penalty of \$4,000  
18 for this violation.

19 2. The moderately serious violations.

20 Complainant also seeks to impose a  
21 \$500 penalty for each of the two instances  
22 where Respondent or his driver dropped off

1 horse outside normal working hours and the  
2 driver did not either remain at the facility  
3 or return to meet with AHT Astling as per 9  
4 CFR 88.5(b).

5 I note that the two dates cited  
6 for these violations, June 4th, 2005, and June  
7 18th, 2005, are the same days that the injured  
8 and blind horses were delivered to Beltex.  
9 This indicates to me in the absence of any  
10 evidence to the contrary, that respondent knew  
11 the status of these two horses and directed  
12 the driver to leave the premises to avoid  
13 contact with AHT Astling.

14 I find Respondent more culpable to  
15 these violations than Complainant's suggested  
16 penalty would warrant and I impose a \$1,500  
17 penalty for each of these two violations.

18 3. The paperwork violations.

19 Finally, I impose a \$2,000 penalty  
20 for the combined paperwork violations.

21 While I did not believe it a  
22 violation to omit the full address or phone

1 number of Beltex when that facility was  
2 clearly identified, properly filling out the  
3 other information required in the VS 10-13 is  
4 pivotal to the successful operation of this  
5 program.

6 Conclusions of Law

7 1. Respondent, Howard Overholt, was  
8 the owner/shipper of each shipment of horses  
9 that are the subject of the Complaint in this  
10 matter.

11 2. Respondent has violated the  
12 Commercial Transportation of Equine to  
13 Slaughter Act by committing the violations  
14 described above.

15 3. A civil penalty totaling \$19,500  
16 is appropriate for these violations.

17 ORDER

18 Respondent, Howard Overholt, is  
19 assessed a civil penalty of \$19,500.