

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

In re:	)	
	)	
Mitchell B. Stanley,	)	<b>A.Q. Docket No. 07-0023</b>
	)	
Respondent	)	<b>Decision and Order</b>

**Decision Summary**

1. I decide that Mitchell B. Stanley, Respondent, an owner/shipper of horses (9 C.F.R. § 88.1) who commercially transported horses for slaughter to BelTex Corporation in Ft. Worth, Texas during May and June 2005, failed to comply with the Commercial Transportation of Equine for Slaughter Act (7 U.S.C. § 1901 note) and the Regulations promulgated thereunder. I decide further that Respondent Stanley 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 Robert Estelle and truck drivers. I decide further that \$10,550 in civil penalties (9 C.F.R. § 88.6) for remedial purposes is reasonable, appropriate, justified, necessary, proportionate, and not excessive.

**Procedural History**

2. The Complainant is the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (frequently herein “APHIS” or “Complainant”). The Complaint, filed on November 14, 2006, alleged that the Respondent, Mitchell B. Stanley, violated the Commercial Transportation of Equine for Slaughter Act, 7

U.S.C. § 1901 note (frequently herein “the Act”), and the regulations promulgated thereunder (9 C.F.R. § 88 *et seq.*) (frequently herein the “Regulations”).

3. APHIS is represented by Thomas Neil Bolick, Esq., Office of the General Counsel, Regulatory Division, United States Department of Agriculture, South Building, 1400 Independence Ave. SW, Washington, D.C. 20250.

4. The Respondent, Mitchell B. Stanley (frequently herein “Respondent Stanley” or the “Respondent”), did not appear at the hearing. Respondent Stanley did file an Answer, on November 30, 2006. In his Answer, Respondent Stanley did not deny the allegations in the Complaint. Instead, he apologized. Further, Respondent Stanley claimed that the violations alleged in the Complaint had been committed by his “buyer,” Robert Estell [*sic*] (true spelling “Estelle”), who had been told that there were to be no blind horses delivered and who knew the rules and how to complete the paperwork and all the tasks required. Respondent Stanley stated further in his Answer that he had released (dismissed) Mr. Estelle; and that he, Respondent Stanley, had had no more violations.

5. The hearing was conducted on April 23, 2008, by audio-visual telecommunication<sup>1</sup> between the Little Rock, Arkansas site and the Washington, D.C. site, Administrative Law Judge Jill S. Clifton presiding. The transcript will be prepared by Neal R. Gross & Co., Inc., Court Reporters. I issue this Decision and Order without waiting for the transcript.

6. Three witnesses testified, each an APHIS employee: Joseph Thomas Astling, David

---

<sup>1</sup> See section 1.141 of the Rules of Practice (7 C.F.R. § 1.141) regarding using **audio-visual** telecommunication.

B. Head, and Dr. Timothy Cordes (D.V.M.).

7. Fifteen exhibits (Complainant's exhibits) were admitted into evidence: CX 1, CX 2, CX 6, CX 10 through CX 13, CX 15 through CX 17, CX 21, CX 22, and CX 27 through CX 29.

8. APHIS sought civil penalties authorized by section 903(c)(3) of the Act (7 U.S.C. § 1901 note) and 9 C.F.R. § 88.6.<sup>2</sup> The Rules of Practice applicable to this proceeding are 7 C.F.R. § 380.1 *et seq.* and 7 C.F.R. § 1.130 *et seq.*

### **Introduction**

9. Four shipments of horses are addressed here, all in 2005, in May and in June, all to BelTex Corporation in Ft. Worth, Texas. These four shipments were commercial transportation of horses for slaughter between May 7, 2005, and June 26, 2005, and there were violations of 9 C.F.R. § 88 during each of the four shipments.

10. The most serious allegation (for which APHIS recommended a \$5,000 civil penalty) involved a horse that was blind in both eyes and never should have been loaded in the first place. Commercially transporting to slaughter a horse that was blind in both eyes was in violation of 9 C.F.R. § 88.4(c). That horse (CX 11) was transported on or about May 7, 2005 to BelTex Corporation.

11. The next most serious allegations were the failures, twice, after delivering the loads of horses to the slaughtering facility outside normal business hours, to stay for inspection by

---

<sup>2</sup> The Secretary of Agriculture is authorized to assess civil penalties of up to \$5,000 per violation of the regulations, and each equine transported in violation of the regulations will be considered a separate violation.

the USDA representative during normal business hours or to return during normal business hours for inspection by the USDA representative, in violation of 9 C.F.R. § 88.5(b). APHIS recommended \$2,000 in civil penalties for these two violations, being \$1,000 for each. One occurred on or about May 8, 2005; the other occurred on or about June 11, 2005.

12. For noncompliant paperwork regarding three shipments with a total of 47 horses, APHIS recommended \$3,550 in civil penalties. The owner-shipper certificates, Veterinary Services (VS) Form 10-13, for three shipments of horses being commercially transported for slaughter, were prepared improperly, in violation of 9 C.F.R. § 88.4(a)(3).

13. Respondent Stanley was the owner/shipper of all four commercial shipments of horses to slaughter, on or about May 7, June 10, June 24, and June 26, 2005, and responsible for the violations more fully described below in Findings of Fact and Conclusions.

14. Two counts involving a blind pinto stallion were dismissed.<sup>3</sup>

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

15. Paragraphs 16 through 28 contain intertwined Findings of Fact and Conclusions.

16. The Secretary of Agriculture has jurisdiction over Respondent Mitchell B. Stanley and the subject matter involved herein.

---

<sup>3</sup> At the opening of the hearing, counsel for the Complainant amended the Complaint to dismiss count IV(b), which alleges that on or about June 10, 2005, respondent commercially transported to BelTex Corporation for slaughter 14 horses, including a stallion, USDA back tag # USCE 0055, that was blind in both eyes but was not loaded 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). Counsel for the Complainant also dismissed count IV(c), which alleges that on or about June 10, 2005, respondent commercially transported to BelTex Corporation for slaughter 14 horses, including a stallion, USDA back tag # USCE 0055, that was blind in both eyes and thus was not handled 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).

17. The testimony was credible and persuasive, that being the testimony of Joseph Thomas Astling, David B. Head, and Dr. Timothy Cordes.

18. Respondent Mitchell B. Stanley is an individual with a mailing address of **156** Stanley Road, Hamburg, Arkansas 71646 (as shown in his Answer) **or** **154** Stanley Road, Hamburg, Arkansas 71646 (as shown in the Complaint).

19. Respondent Stanley is now and was at all times material herein, a commercial buyer and seller of slaughter horses who commercially transported horses for slaughter. He was and is an owner/shipper of horses within the meaning of 9 C.F.R. § 88.1.

20. Respondent Stanley is responsible not only for what he himself did or failed to do in violation of the Commercial Transportation of Equine for Slaughter Act and Regulations, but also for what others did or failed to do on his behalf, as his agents, in violation of the Act and Regulations.

21. Respondent Stanley's agents include not only his business partner Robert Estelle acting in furtherance of partnership activities, but also others acting as agents on behalf of Respondent Stanley or his business partner or the partnership, including truck drivers. Thus, actions described below as having been done by Respondent Stanley may have been done by such agents.

22. Respondent Stanley is responsible for errors and omissions of those who acted as agents on his behalf in the commercial transportation of horses for slaughter.

23. On or about May 7, 2005, Respondent Stanley shipped 13 horses in commercial transportation to BelTex Corporation in Ft. Worth, Texas (hereinafter, BelTex), for

slaughter. One horse in the shipment, a sorrel mare bearing USDA back tag # USCE 0101 (CX 11), was blind in both eyes such that she walked into fences unless she was being led, yet Respondent Stanley or his agents shipped her with the other horses. This horse's blindness was likely due to anterior uveitis, an inflammation of the eye causing greater than 70% of the eye problems in horses, called moon blindness by the ancients. The horse had probably been blind for at least the better part of a year. During commercial transportation as was done here, the horse was a liability to herself, the other horses and the handlers. By transporting her commercially, Respondent Stanley or his agents failed to handle the blind horse as expeditiously and carefully as possible in a manner that did not cause her unnecessary discomfort, stress, physical harm or trauma, in violation of 9 C.F.R. § 88.4(c). CX 10, CX 11.

24. On or about May 7, 2005, Respondent Stanley shipped 13 horses in commercial transportation to BelTex for slaughter. Respondent Stanley or his agent(s) delivered the horses outside of BelTex's normal business hours, at approximately 3:50 a.m. on May 8, 2005, and left the slaughtering facility and did not remain at BelTex for a USDA representative to inspect the horses and did not return to BelTex to meet the USDA representative upon his arrival, in violation of 9 C.F.R. § 88.5(b). CX 2.

25. On or about June 10, 2005, Respondent Stanley shipped 14 horses in commercial transportation to BelTex for slaughter but did not properly fill out the required ownership certificate, VS Form 10-13. The form had the following deficiencies: (1) the license plate number of the conveyance was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(iv) (CX

16, CX 21); and (2) not all the boxes indicating the fitness of the horses to travel at the time of loading were checked off, in violation of 9 C.F.R. § 88.4(a)(3)(vii). CX 21.

26. On or about June 10, 2005, Respondent Stanley shipped 14 horses in commercial transportation to BelTex for slaughter. Respondent Stanley or his agent(s) delivered the horses outside of BelTex's normal business hours, at approximately 12:12 a.m. on June 11, 2005, and left the slaughtering facility and did not remain at BelTex for a USDA representative to inspect the horses and did not return to BelTex to meet the USDA representative upon his arrival, in violation of 9 C.F.R. § 88.5(b). CX 17, CX 22.

27. On or about June 24, 2005, Respondent Stanley shipped 10 horses in commercial transportation 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) the name of the auction/market was not listed, in violation of 9 C.F.R. § 88.4(a)(3)(iii); (3) 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 (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). CX 28.

28. On or about June 26, 2005, Respondent Stanley shipped 23 horses in commercial transportation 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) the

form did not indicate the breed/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 (3) 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). CX 29.

### **Discussion**

29. As a businessman, as an owner/shipper, Respondent Mitchell B. Stanley is responsible to control the work being done in connection with transporting horses to slaughter.

30. Respondent Stanley remains responsible for noncompliance when others, while working on behalf of Respondent Stanley (Robert Estelle, for example, and truck drivers working for Respondent Stanley or Robert Estelle), failed to maintain compliance with the Commercial Transportation of Equine for Slaughter Act and the Regulations. 9 C.F.R. § 88 *et seq.*

31. Respondent Stanley is responsible for the noncompliance of such agents acting on his behalf, even when Respondent Stanley had instructed them properly.

32. Robert Estelle attempted fraud with regard to a paint/pinto stallion, backtag USCE 0055, shipped to BelTex Corporation on June 10, 2005. CX 21. Robert Estelle's Affidavit states, "Mitch Stanley and I are full partners in the horse business." CX 13.

33. Robert Estelle asked a woman who worked for him, Trenia Martin, maiden name Thurman, to show on an Owner/Shipper Certificate (CX 21) that she, Trenia Thurman, was the owner of a paint/pinto stallion, backtag USCE 0055, when she was not the owner, "to



keep Mitch Stanley out of trouble.” CX 27. Sr. Investigator David Head, USDA APHIS Investigative and Enforcement Services, obtained Trena Martin’s statement in Affidavit form. CX 27.

34. Robert Estelle’s Affidavit confirms what Ms. Martin stated and makes clear that he, Robert Estelle, not Trena Martin, was the owner of the paint/pinto stallion. CX 13. Robert Estelle’s Affidavit makes clear that he, Robert Estelle, was trying to avoid trouble in case the paint/pinto stallion was called blind at BelTex. CX 21.

35. Neither Trena Martin nor Robert Estelle suggested that Respondent Stanley knew about Robert Estelle’s attempted fraud with regard to the June 10, 2005 shipment of the paint/pinto stallion, backtag USCE 0055.

36. Robert Estelle also tried to avoid trouble with regard to the sorrel mare that was blind in both eyes, backtag USCE 0101 (CX 11) that was shipped on or about May 7, 2005. CX 6. Whereas Mitch Stanley was shown as the owner/shipper for 12 of the 13 horses in the load, Kevin Martin was shown as the owner/shipper for the double-blind horse. Kevin Martin’s Affidavit (CX 12) indicates that he, Kevin Martin, was the double-blind horse’s owner, and that Robert Estelle shipped the horse to BelTex for him using backtag USCE 0101 which “came from Mitch Stanley as Robert Estelle and Mitch have some type of agreement allowing Robert Estelle to sell horses at Bel Tex.” CX 12.

37. Robert Estelle confirmed that he included Kevin Martin’s double-blind horse, back tag USCE 0101, in the load. CX 13. Respondent Stanley is liable as the owner/shipper under these circumstances. (Kevin Martin is not a commercial shipper; Robert Estelle was

Respondent Stanley's business partner in the commercial shipping.)

38. Kevin Martin is Robert Estelle's brother in law (CX 13). Neither Kevin Martin nor Robert Estelle suggested that Respondent Stanley knew about Robert Estelle's attempt to escape the requirements of commercial slaughter horse transportation with regard to the May 7, 2005 shipment of the sorrel mare that was blind in both eyes, backtag USCE 0101. I conclude that Respondent Stanley probably did not know until afterwards about Robert Estelle's inclusion of the double blind mare in the load, in violation of 9 C.F.R. § 88.4(c).

39. Resorting to fraud in an attempt to escape the requirements of commercial slaughter horse transportation could have been prosecuted criminally. Those involved in the May 7, 2005 shipment of the sorrel mare that was blind in both eyes, backtag USCE 0101, and the June 10, 2005 shipment of the paint/pinto stallion who was blind in one eye, backtag USCE 0055, are highly culpable.

40. Compliance Specialist<sup>4</sup> Joey Thomas Astling, USDA APHIS VS, testified that he was aware of Respondent Stanley putting horses in other people's names to keep the attention off him. Mr. Astling's Affidavit states: "in the past Mitch Stanley has tried to pass blind or cripple [*sic*] horses through inspection by putting them in someone else's name (that is not a commercial shipper) on the VS Form 10-13." CX 10.

41. Respondent Stanley gave a statement by telephone to Sr. Investigator David Head on August 11, 2005, which is consistent with Respondent Stanley's Answer filed November 30, 2006. The August 11, 2005 statement includes:

---

<sup>4</sup> formerly Animal Health Technician

[Respondent Stanley] “and Robert Estelle are partners on the horses going to BelTex” [Respondent Stanley] “has not bought any horses in the past 3-4 months and he had nothing to do with the blind horses Robert Estelle had shipped. He had been told by BelTex that Robert Estelle had shipped a blind horse and he directed Estelle not to ship blind horses. Robert Estelle makes all purchases and shipping arrangements.”

CX 15.

42. Respondent Stanley would be highly culpable if he contributed in any way to the wrongdoing that occurred in connection with the May 7, 2005 shipment of the sorrel mare that was blind in both eyes, backtag USCE 0101, and the June 10, 2005 shipment of the paint/pinto stallion who was blind in one eye, backtag USCE 0055. I conclude that Respondent Stanley’s culpability (blameworthiness, or guilt) in both these occurrences is that of a principal whose business partner Robert Estelle disappointed him.<sup>5</sup>

43. When Respondent Stanley’s shipments of slaughter horses arrived at the slaughterhouse outside normal business hours, and no effort was made to arrange inspection by a USDA representative, it appears that Respondent Stanley (and/or his agents) was making a deliberate effort to get away from or evade Mr. Astling and to try to avoid responsibilities under the Commercial Transportation of Equine for Slaughter Act and the Regulations.

---

<sup>5</sup> The definition of an owner/shipper in 9 C.F.R. § 88.1 says that an owner/shipper may be any individual or partnership, and Respondent Stanley may be held responsible for the actions of his business partner Robert Estelle both under this definition and under a theory of *respondeat superior*.

44. The shipment that arrived at BelTex at 3:50 a.m. on May 8, 2005 (CX 2) was inspected by then Animal Health Technician Joey Astling on May 9, 2005, and no one on behalf of the owner/shipper ever returned during normal business hours so that Mr. Astling could inspect the conveyance. Regarding the shipment that arrived at BelTex just after midnight (12:12 a.m. and 12:15 a.m.) on June 11, 2005 (CX 17, CX 22), Joey Astling testified that nobody met with him, and he received not as much as a phone call.

45. The Slaughter Horse Transportation Program recommended civil penalties totaling \$10,550 (ten thousand five hundred fifty dollars). The Program recommendations were presented by Dr. Timothy Cordes, D.V.M., the National Coordinator of Equine Programs within USDA APHIS Veterinary Services (VS). Dr. Cordes is a Doctor of Veterinary Medicine with post-graduate work in orthopedic surgery. Dr. Cordes' veterinary experience treating horses is impressive and included an emphasis in orthopedic, ophthalmologic, and abdominal surgery on horses during 20 years of referral practice.

46. Dr. Cordes testified that the overall number of violations by Respondent Stanley in this case was six, a relatively small number. Dr. Cordes testified that one of the six violations, the commercial transportation of a blind horse for slaughter on May 7, 2005, was so serious as to merit the imposition of a \$5,000 civil penalty, the maximum civil penalty allowable under 9 C.F.R. § 88.6(a) for a single violation.

47. Dr. Cordes testified that two of the six violations were moderately serious, both of which involved Respondent Stanley's or his agents' delivery of horses to a slaughter plant outside its normal business hours and their subsequent failure either to remain at the

slaughter plant until a USDA representative had inspected the horses or to return to the slaughter plant to meet the USDA representative upon his arrival there. Dr. Cordes recommended that a \$1,000 civil penalty be imposed for each of these two violations, for a total of \$2,000.

48. The three remaining violations involved paperwork and were the least serious violations of the six violations. For these three violations Dr. Cordes recommended a total of \$3,550, calculated as follows:

\$ 50	June 10	vehicle license no. shown as "N/A" VS Form 10-13 CX 21
\$ 50	June 10	no indication that pinto stallion USCE 0055 was "not blind in both eyes" (fitness to travel) VS Form 10-13 CX 21
\$ 50	June 24	missing name of auction/market VS Form 10-13 CX 28
\$ 50	June 24	BelTex phone no. missing VS Form 10-13 CX 28
\$ 500	June 24	\$50 x 10 horses, fitness to travel missing VS Form 10-13 CX 28
\$ 500	June 24	\$50 x 10 horses, fed/watered/rested missing VS Form 10-13 CX 28
\$ 50	June 26	BelTex telephone number missing VS Form 10-13 CX 29
\$1,150	June 26	\$50 x 23 horses, breed/type missing VS Form 10-13 CX 29
\$1,150	June 26	\$50 x 23 horses, fed/watered/rested missing VS Form 10-13 CX 29

49. Dr. Cordes testified that Respondent Stanley's culpability is greater because this is the second enforcement action brought against him under 9 C.F.R. part 88. On June 14, 2006, Administrative Law Judge Peter M. Davenport issued a Default Decision and Order against Respondent Stanley that imposed a \$12,800 (twelve thousand eight hundred dollar) civil penalty. The offenses in that earlier case occurred in October 2003, offenses charged under both the Animal Health Protection Act and the Commercial Transportation of Equine for Slaughter Act. Although the Complaint in that earlier case was filed in January 2006,

after the offenses here had already occurred, Respondent Stanley no doubt had a heightened awareness of the requirements of the Commercial Transportation of Equine for Slaughter Act during the investigation that led to that earlier Complaint being filed.

50. The civil penalty recommendation of the Slaughter Horse Transportation Program is persuasive. I conclude that \$10,550 (ten thousand five hundred fifty dollars) in civil penalties for remedial purposes is reasonable, appropriate, justified, necessary, proportionate, and not excessive. 9 C.F.R. § 88.6.

### **Order**

51. The **cease and desist** provisions of this Order (paragraph 52) shall be effective on the first day after this Decision and Order becomes final.<sup>6</sup> The remaining provisions of this Order shall be effective on the tenth day after this Decision and Order becomes final.

52. Respondent Mitchell B. Stanley, 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.*).

53. Respondent Mitchell B. Stanley is assessed a civil penalty of **\$10,550.00** (ten thousand five hundred fifty dollars),<sup>7</sup> which he shall pay by certified check(s), cashier's

---

<sup>6</sup> See paragraph 55.

<sup>7</sup> The Slaughter Horse Transport Program recommended a \$10,550 civil penalty. The Program recommendations were presented by Dr. Timothy Cordes (D.V.M.), the National Coordinator of Equine Programs within USDA APHIS Veterinary Services.

check(s), or money order(s), made payable to the order of “**Treasurer of the United States.**”

54. Respondent Stanley shall reference **A.Q. Docket No. 07-0023** 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 51 regarding effective dates of the Order.]

### **Finality**

55. This Decision and Order shall be final 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). [See paragraph 51 regarding effective dates of the Order.]

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties, with **two** mailings to Respondent Stanley, one at **156** Stanley Road, Hamburg, Arkansas 71646 (as shown in his Answer), and one at **154** Stanley Road, Hamburg, Arkansas 71646 (as shown in the Complaint).

Done at Washington, D.C.  
this 25<sup>th</sup> day of April 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]