

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0491

In re: James P. Marek,
Respondent

Default Decision and Order

Preliminary Statement

This proceeding was instituted under the Animal Health Protection Act, as amended (7 U.S.C. § 8301 et seq.) (Act) and the regulations, (9 C.F.R. §§ 71.18, 71.22, 78.9, 79.2 and 79.3), promulgated thereunder, by a complaint filed on June 20, 2012, by the Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent violated the Act and the regulations.

On June 26, 2012, a copy of the Complaint and the Rules of Practice were served on the Respondent by certified mail. Pursuant to section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), the Respondent was informed in the Complaint and the letter accompanying the complaint that an answer should be filed with the Hearing Clerk within twenty (20) days after service of the complaint. Respondent's answer was due on July 16, 2012, twenty days after the service of the complaint (7 C.F.R. § 1.136(a)).

As Respondent failed to file an answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent James P. Marek is a person with a mailing address in White Bird, Idaho.
2. On or about January 17, 2008 and March 1, 2008, Respondent moved cattle, 2 years of age or over, in interstate commerce from Oregon to Idaho without the cattle being accompanied by the required owner's statement or other documentation, in violation of 9 C.F.R. § 71.18(a)(1)(iii).
3. On or about January 17, 2008 and March 1, 2008, Respondent moved test eligible cattle in interstate commerce from a farm in Oregon to a farm in Idaho, in violation of 9 C.F.R. § 78.9(a)(3)(iii), because the cattle, which were from a herd not known to be affected with brucellosis were moved other than to a quarantine feedlot or recognized slaughtering establishment and were not accompanied during the movement by a certificate, that inter alia, showed the individual identification for the animals, number of animals being moved, the purpose for which the animals were moving, the points of origin and destination, the consignor and consignee, and statement that the cattle originated in a Class Free State or area.
4. In May 2008, Respondent purchased and transported sheep in interstate commerce from Oregon to Idaho, in violation of 9 C.F.R. § 79.2(d), because respondent failed to keep records relating to the transfer of ownership, shipment, or handling of the sheep as required by the regulations.
5. In May 2008, Respondent moved low risk commercial sheep in interstate commerce from Oregon, a consistent state, to Idaho, a consistent state in violation of 9 C.F.R. § 79.3(a)(7), in that the low risk commercial sheep were not accompanied by the required brand inspection certificate, owner statement, and statement from an accredited veterinarian.

6. On or about April 22, 2011, Respondent removed the official identification device from two head of cattle in violation of 9 C.F.R. §§ 71.18(a)(4) and 71.22. The removal of such devices is prohibited, except at the time of slaughter and the animals were not going to slaughter at the time the devices were removed.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent willfully violated the Act (7 U.S.C. § 8301et seq.) and the regulations issued under the Act (9 C.F.R. §§ 71.18, 71.22, 78.9, 79.2 and 79.3).

Order

1. Respondent is hereby assessed a civil penalty of twenty-five thousand dollars (\$25,000.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

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

Respondent shall indicate that payment is in reference to A.Q. Docket No. 12-0491.

2. This order shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless appealed to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

September 24, 2012

Peter M. Davenport
Chief Administrative Law Judge