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April 30, 2008

Dr. Rachel Cezar
Horse Protection Coordinator
USDA-APHIS-Animal Care
4700 River Road, Suite 6D03
Riverdale, MD 20737

Dear Dr. Cezar:

On behalf of the Humane Society of the United States and its 10.5 million members and constituents, I am writing to outline our position on APHIS' proposed Protocol for Foreign Substance Penalty under the Horse Protection Program.

While we fully support the implementation this 2008 show season of the APHIS program to detect prohibited foreign substances by use (by APHIS staff) of the Gas Chromatography/Mass Spectrometry (GC/MS) test, and the implementation of penalties based on a positive finding, we object to some elements of the proposed penalty protocol.

Specifically, we object to the penalty provision for a second offense, as stated in APHIS' protocol proposal dated 2/25/2008:

2nd offense: Initiate federal case unless HIO signatory to the Operating Plan applies the post-show foreign substance penalty specified by the plan. USDA will notify the affiliated HIO that this is the 2nd offense of the violator. If Operating Plan penalty is applied, USDA will require documentation from HIO showing that the penalty was given to all parties involved. If documentation is not provided, a federal case will be initiated.

We object to the application of penalties by the HIOs for foreign substance violations detected through this testing procedure for the following reasons, some of which I understand were also shared with the Department by several of the HIOs:

- This foreign substance inspection is not conducted by the HIO inspectors (DQPs).
- The samples are not taken by HIO inspectors.
- The HIO does not maintain any control over the chain of custody of the evidence.
- The HIO has no involvement in selecting the laboratory conducting the testing.
- The HIO does not submit the samples to the laboratory for testing.
- The HIO does not receive the results directly from the laboratory conducting the testing.
- The suggested enforcement would be based upon a letter from the Department whose inspectors and other employees conducted the inspections, collected, tested and analyzed the samples, and maintained all the controls.
- The lack of HIO involvement and controls in the foreign substance inspection means the hearing and appeals process might not be sustainable, and violators could have their violations overturned.

It is our position that a USDA-certified HIO has no authority to enforce the proposed protocol and that it constitutes an inappropriate delegation of USDA's authority and responsibility. We believe this penalty should be handled in the same way as any other VMO findings which result in a federal penalty (such as a conflict resolution case)

Promoting the protection of all animals

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For these reasons, we believe the proposed penalty for a second offense is inappropriate and is unenforceable by any HIO and therefore we object to any HIO assessing any penalties. We recommend that the USDA enforce their own findings, and that the Department proceed with federal cases or other penalties. We would support the issuance of a form 7060 to all parties involved in a first offense of this violation, and the initiation of a federal case or penalties against all parties involved in second and subsequent offenses.

Thank you for your taking our position into consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Dane". The signature is written in a cursive style with a large, prominent "D" and a long horizontal stroke at the end.

Keith Dane
Director of Equine Protection
The Humane Society of the United States

cc: Dr. Chester Gipson, Deputy Administrator, APHIS