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July 26, 2011

Docket No. APHIS-2011-0030
Regulatory Analysis and Development
PPD, APHIS, Station 3A-03.8
4700 River Road, Unit 118
Riverdale, MD 20737-1238

Re: Horse Protection Act; Requiring Horse Industry Organizations to Assess and Enforce Minimum Penalties for Violations

Dear Dr. Cezar:

We appreciate the opportunity to comment on Docket No. APHIS-2011-0030 in which USDA-APHIS proposes to amend the horse protection regulations to require Horse Industry Organizations (HIO) or associations that license Designated Qualified Persons (DQP) to assess and enforce minimum penalties for violations of the Horse Protection Act and the regulations. In preparing our comments we have reviewed the information provided in the *Federal Register* notice requesting comments, the current statute and regulations, the roles of HIOs and DQPs, and the findings of the Office of the Inspector General as described in its report assessing APHIS's administration of the Horse Protection Program.

General statement of support—The AVMA condemns the soring of horses and has consistently supported enhancements to the Horse Protection Program that have the potential to help eliminate this practice. Therefore, in the context of current authorities provided to HIOs and DQPs, we support the proposed amendments to 9 CFR Part 11, while providing additional recommendations.

Specifically,

Proposed §11.25, paragraph (a), responsibilities of HIO programs—We support language that would require HIOs licensing DQPs to include in their rulebooks and enforce penalties for violations that equal or exceed penalties listed in paragraph (c) of §11.25.

Proposed §11.25, paragraph (b), suspensions—We support the broad application of suspensions to those responsible for showing the horse, exhibiting the horse, entering or allowing the entry of the horse into a show or exhibition, selling the horse, auctioning the horse, or offering the horse for sale or auction (paragraph [b][1]), as well as to transporters (paragraph [b][2]) when it can be shown that the transporter had reason to believe that the sore horse was to be shown, exhibited, entered into a show for those purposes, sold, auctioned or offered for sale. To prevent prohibited activities from continuing under the auspices of another interested party, we also support the American Association of Equine Practitioners' recommendation that proposed §11.25,

paragraph (b)(1) be modified to read “For the violations listed in paragraph (c) of this section that require a suspension, all individuals including, but limited to...”

Further, the AVMA supports the proposed changes in §11.25, paragraph (b)(3) requiring that a person who is suspended not be permitted to show or exhibit any horse or judge or manage any horse show, horse exhibition, or horse sale or auction for the duration of the suspension, and in paragraph (b)(4) that multiple suspensions be served consecutively rather than concurrently. In lieu of continuing to apply fines and suspensions, we would also support a stronger deterrent of permanently prohibiting individuals from participation in related activities after a pre-determined number of offenses (number to be determined based on APHIS experience and enforcement statistics).

Proposed §11.25, paragraph (c), minimum penalties—Relative to proposed minimum penalties in paragraphs (c)(1) and (c)(2), AVMA questions the appropriateness of applying different penalties for horses that are unilaterally or bilaterally sore. Both situations represent an unacceptable practice adversely affecting the welfare of the horse and should be penalized aggressively and consistently.

In addition, while we understand from the background provided with the proposed rule that the minimum penalties in proposed §11.25 paragraph (c) are based on civil and criminal penalties set forth in the Act, penalty structures applied historically, rulings of USDA Administrative Law Judges and the Judicial Officer, and input from industry stakeholders, we are concerned that the minimum suspensions provided in paragraphs (c) (1) through (c) (9) are substantially less than the minimum suspensions set forth in the Act and that no fines are included as part of the prescribed minimum penalties. To be effective penalties must substantively impact those being regulated. In this case, the penalties must substantively impact participation of the offender(s) in related competitions as well as the benefits (including financial gain) derived from participation.

Proposed §11.25, paragraph (d), appeals—Our assumption in reviewing this section is that data supporting the decision of the HIO regarding violators must be provided along with the decision. If this is not the case, we recommend the proposed rule be amended accordingly.

Proposed §11.25, paragraph (e), Departmental prosecution—The AVMA supports giving USDA-APHIS final enforcement authority.

Need for independent veterinary inspection—While we recognize the limited resources and latitude afforded APHIS, applaud the agency’s efforts to control costs associated with enforcement of the HPA, and acknowledge APHIS’s efforts to certify and monitor DQPs supported by HIO programs, we continue to be concerned that the DQP program presents an inherent and direct conflict of interest in that individuals active in the industry are evaluating horses for evidence of soring. Our concerns appear to be well-founded in that (as indicated in the background of the proposed rule) soring has not been eliminated, nor has its frequency been reduced substantially, since the DQP program was established in 1979. Rather than continuing to invest resources in a program that appears to be ineffective at achieving its goal, we recommend agency efforts and resources be directed toward increasing independent veterinary inspections. The AVMA is happy to assist APHIS in its efforts to obtain sufficient funding from Congress to effectively enforce the Horse Protection Act.

The objective of the AVMA is to advance the science and art of veterinary medicine, and the Association has a long-term concern for, and commitment to, the good welfare and humane treatment of animals. The AVMA represents more than 81,500 veterinarians and is the recognized voice for the profession in presenting its views to government, academia, agriculture, animal owners, the media, and other concerned members of the public. Again, we appreciate the opportunity to offer comments.

Sincerely,

A handwritten signature in black ink, appearing to read "W. R. DeHaven". The signature is fluid and cursive, with a large initial "W" and "R".

W. Ron DeHaven, DVM, MBA
Executive Vice President and Chief Executive Officer

AWC/GCG