



United States
Department of
Agriculture

Animal and
Plant Health
Inspection
Service

Marketing &
Regulatory
Programs Business
Services

4700 River Road
Riverdale, MD
20737

MAY 17 2010
CERTIFIED MAIL-RETURN
RECEIPT REQUESTED

Douglas Smiley
3412 S FM 548
Royse City, TX 75189-4782

Dear Mr. Smiley:

The Animal and Plant Health Inspection Service (APHIS) enforces the Horse Protection Act (HPA) (15 U.S.C. § 1821 et seq.) and its implementing regulations. The HPA prohibits horses that are "sore" from participating in auctions, exhibitions, sales, or shows. The HPA also prohibits the transportation of horses that are "sore" to or from these events. Violations of the HPA jeopardize APHIS efforts to eliminate soring in horses.

APHIS is issuing the enclosed APHIS Form 7060, "Official Warning, Violation of Federal Regulations" to notify you of the [alleged] HPA violations documented in case number TX10433-AC.

Please know that if you fail to comply with applicable APHIS laws and regulations in the future, this Official Warning and any other documented violations will be used to take appropriate action against you in accordance with the USDA Horse Protection Program Foreign Substance Penalty Protocol (see enclosure).

If you have questions regarding this citation please contact IES Enforcement Specialist Edmund Grant at the address above or at (301) 734-0865.

Sincerely,

16M 4/28/10
Bernadette Juarez
Deputy Director
Investigative and Enforcement Services

Enclosure

cc: R. Cezar, AC, HP
J. Kinsella, IES, ER
W. Harris, IES, ER

APHIS:IES:EAGrant:EAG:734-0865:04/28/2010:i:DCS:7060:TX10433-AC Smiley 7060 Cover Ltr.doc



Safeguarding American Agriculture
APHIS is an agency of USDA's Marketing and Regulatory Program
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UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE

CASE NO.
TX10433-AC

VIOLATOR
Douglas Smiley

ADDRESS (Street, City, State, Zip Code)

Douglas Smiley
3412 S FM 548
Royse City, TX 75189-4782

OFFICIAL WARNING
VIOLATION OF FEDERAL REGULATIONS

The Department of Agriculture has evidence that on or about May 3, 2009, you or your organization committed the following violation of Federal Regulations:

Entered, for the purpose of showing or exhibiting, the horse "I'm Dizzy Gillespie," at the Big D Charity Horse Show which tested positive for Isopropyl palmitate.

The Horse Protection Act prohibits the following conduct:

15 U.S.C. § 1824(7) – Unlawful Acts

The showing or exhibiting at a horse show or horse exhibition; the selling or auctioning at a horse sale or auction; the allowing to be shown, exhibited, or sold at a horse show, horse exhibition, or horse sale or auction; the entering for the purpose of showing or exhibiting in any horse show or horse exhibition; or offering for sale at a horse sale or auction, any horse which is wearing or bearing any equipment, device, paraphernalia, or substance which the Secretary by regulation under Section 1828 of this title prohibits to prevent the soring of horses.

*** See Continuation Page ***

Titles 7 & 9 Code of Federal Regulations were promulgated to help prevent the spread of animal and plant pests and diseases and assure the humane treatment of animals. Since the violations of the regulations can have serious and costly impact detrimental to the public interest, you are warned of this violation. Any further violation of these regulations may result in the assessment of a civil penalty or criminal prosecution. If you have any questions concerning this warning or violation, please contact the listed APHIS official.

APHIS OFFICIAL (Name, Title)

Bernadette Juarez, Deputy Director
Investigative and Enforcement Services

OFFICE ADDRESS:

4700 River Road, Unit 85
Riverdale, MD 20737

SIGNATURE

lm

DATE ISSUED

4/28/10

TELEPHONE NO.

301-734-8684

FOR PERSONAL SERVICE - RECEIVED BY: (Name and signature)

DATE RECEIVED:

FOR CERTIFIED MAIL - RECEIPT NO:

The Horse Protection Regulations restrict foreign substances as follows:

9 C.F.R. § 11.2(c) Prohibition concerning exhibitors – Substances

c) Substances. All substances are prohibited on the extremities above the hoof of any Tennessee Walking Horse or racking horse while being shown, exhibited, or offered for sale at any horse show, horse exhibition, or horse sale or auction, except lubricants such as glycerine, petrolatum, and mineral oil, or mixtures thereof: Provided, that:

- (1) The horse show, horse exhibition, or horse sale or auction management agrees to furnish all such lubricants and to maintain control over them when used at the horse show, horse exhibition, or horse sale or auction.
- (2) Any such lubricants shall be applied only after the horse has been inspected by management or by a DQP and shall only be applied under the supervision of the horse show, horse exhibition, or horse sale, or auction management.
- (3) Horse show, horse exhibition, or horse sale or auction management makes such lubricants available to Department personnel for inspection and sampling as they deem necessary.

Protocol for Foreign Substance Penalty

Beginning June 1, 2008, USDA will take the following actions in response to a foreign substance violation detected by a USDA inspector through use of the Gas Chromatography/Mass Spectrometry (GC/MS) Test:

1st offense: Issue official USDA warning (Form 7060) for violation of Federal Regulations to all parties involved.

2nd offense: Issue official USDA warning (Form 7060) for violation of Federal Regulations to all parties involved.

3rd offense: Offer a stipulation to the alleged violator in accordance with the Horse Protection Act Regulations (9 C.F.R. § 12.10). If the alleged violator does not accept the stipulation, USDA will initiate an administrative enforcement action (commonly known as a "Federal case").

4th offense: USDA will initiate an administrative enforcement action (commonly known as a "Federal case").

Additional Information

- Samples for the GC/MS test will be randomly collected by USDA officials only.
- Tests will be conducted by USDA APHIS National Veterinary Services Laboratories in Ames, IA.
- Turnaround time of results may vary. To ensure that alleged violators have adequate notice to adjust their practices after learning of a violation, USDA will not consider a second offense to have occurred for any foreign substance detected by a GC/MS test from the time of the first offense to the time the alleged violator has received notice of the first offense.
- USDA will notify the alleged violator of the specific foreign substance or substances detected concurrently with the notification of the penalty.
- If multiple horses of an alleged violator are tested at one show competition, only one penalty will be applied.

USDA will focus its prosecutorial discretion on foreign substances that are considered irritants, numbing, and masking agents.

Definition of Foreign Substance

As stated in the Horse Protection Regulations, Sec. 11.2 (c):

(c) Substances. All substances are prohibited on the extremities above the hoof of any Tennessee Walking Horse or racking horse while being shown, exhibited, or offered for sale at any horse show, horse exhibition, or horse sale or auction, except lubricants such as glycerine, petrolatum, and mineral oil, or mixtures thereof. Provided, That:

(1) The horse show, horse exhibition, or horse sale or auction management agrees to furnish all such lubricants and to maintain control over them when used at the horse show, horse exhibition, or horse sale or auction.

(2) Any such lubricants shall be applied only after the horse has been inspected by management or by a DQP and shall only be applied under the supervision of the horse show, horse exhibition, or horse sale, or auction management.

(3) Horse show, horse exhibition, or horse sale or auction management makes such lubricants available to Department personnel for inspection and sampling as they deem necessary.