



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 28, 2009

The Honorable Collin C. Peterson
Chairman
Committee on Agriculture
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter of February 27, 2009, to the Attorney General concerning H.R. 503, the "Prevention of Equine Cruelty Act of 2009". Your letter asked the Department of Justice (the Department) for information in five specific areas. Our responses appear below.

1. Identify the agency or officers within the Department who would be responsible for enforcing H.R. 503, if enacted.

Ultimately, the way in which any such case would be investigated and prosecuted would be at the discretion of the Attorney General. *See generally*, 28 U.S.C. Chaps. 31 and 33; *see also*, 28 U.S.C. § 533 ("[t]he Attorney General may appoint officials . . . to detect and prosecute crimes against the United States. . ."). The Federal Bureau of Investigation (FBI) has plenary jurisdiction to investigate all offenses committed against the United States. *See* 18 U.S.C. § 3052 ("Powers of Federal Bureau of Investigation"). As is the case with the vast majority of criminal offenses committed against the United States, the prosecutions of such cases would be conducted by the United States Attorneys' offices throughout the country and supervised, where necessary, by the Department. If the Committee elects to proceed with this legislation, it might be advisable to confer concurrent investigative authority upon appropriate officials of the U.S. Department of Agriculture.

2. Explain how the Department would handle and dispose of horses involved in a violation of H.R. 503, if enacted.

The bill currently confers no forfeiture authority, so any property involved in a violation of the proposed law could not be seized for forfeiture. If forfeiture authority was added, the United States Marshals Service (USMS) would usually take custody of animals seized for forfeiture by Department agencies, or other agencies participating in the Department's Asset Forfeiture Fund (AFF). Agencies participating in the AFF are generally encouraged to avoid seizing and forfeiting animals, but the USMS makes exceptions where there is a compelling law enforcement purpose to be served.

The USMS procedures relating to cases involving live animals are set forth in its General Guidelines for Handling Animals Seized for Forfeiture, as follows:

Pre-Seizure/Seizure:

When an animal is targeted for seizure, the first step is to determine the estimated net equity of the animal, taking into account the cost to transport the animal to a proper storage location, the monthly costs associated with the upkeep, maintenance and health care required by the animal, and any costs associated with registration and association memberships for the animal.

During the pre-seizure phase, a veterinarian assessment shall occur. If the veterinarian's assessment identifies a potential or current health problem, all parties involved will make an informed decision on whether or not to proceed with the seizure.

The USMS must identify readily available commercial sources during this stage, conducting diligent research to identify proper storage locations which can provide care, management, medical care, breeding needs (if any) and disposal avenues. A subsequent procurement action would follow. However, finding housing for such animals would be difficult as many such facilities are currently crowded with unwanted horses.

It is especially important during this phase for all parties involved to communicate as much as possible and to provide as much identification and specific information regarding the animal. This would include information such as animal identification systems (i.e. microchip locaters, tattoos), association membership numbers and registry information.

A seizure warrant or warrant of arrest in rem should be issued accurately identifying the specific animal to be seized (names and or unique identifiers), stating that any possible offspring of the seized animal is also subject to forfeiture, and allowing the USMS to take the necessary steps to care for the animal so as to maintain value/health.

This stage requires the most amount of information sharing - accuracy of the information at this stage is critical to making an informed decision as to prepare for the possibility of long term custody of the animal.

Custody:

Upon custody receipt of the animal by the USMS, the USMS should notify the appropriate animal registries of the animal in custody. This will facilitate a potential line of communication that may help during the disposal phase. The USMS will also attempt to locate any registration paperwork, inoculation forms, pedigrees, and other related documentation pertinent to the animal and breed.

All health care records will be housed in the case file for the animal (asset). If the pre-seizure veterinarian's assessment identified a potential or current health problem, the USMS district office will contact USMS Asset Forfeiture Division headquarters to authorize further testing and/or treatment to care for the animal.

The USMS will obtain an independent appraiser who has experience with the specific animal breed to conduct an appraisal.

The USMS will arrange and ensure proper placement of the animal in an appropriate facility (e.g., kennel, farm, ranch). The facility may also provide related services such as breeding, showing and non-race training. Again, however, finding housing for such animals would be difficult as many such facilities are currently crowded with unwanted horses.

Randomly, and at regular, defined intervals, the USMS will conduct a full scale inspection of the animal and storage provider.

Disposal:

Interlocutory sale is recommended to dispose of the animal in the most expeditious manner. If an interlocutory sale can not be executed, then upon forfeiture, the animals are generally sold at auction or via sealed bid sale. However, oftentimes there is minimal commercial value for the horses. Therefore, the sale of the animals is not usually an expeditious method of disposal.

3. Estimate the funding that would be required for the Department to successfully enforce the requirements in H.R. 503

Much would depend on how many, if any, cases under proposed new 18 U.S.C. § 50 are brought to the attention of the FBI for investigation, how many, if any, of those cases are referred to the appropriate United States Attorney for prosecution, and how many, if any, of those cases are accepted for prosecution. Of course, there would be additional costs incurred in connection with the incarceration of any persons convicted under the proposed statute (as well as any costs incurred in connection with any post-release procedures).

We have been advised that the United States Department of Agriculture does not have a sense of the potential magnitude, if any, of the problem that H.R. 503 seeks to address.

If the bill is to be favorably considered, we would also urge that it be amended to include forfeiture authority for more than just the animals or horseflesh at issue in the crime. The recommended forfeiture provisions confer authority to forfeit other property either facilitating the crime or as proceeds of the crime. Forfeiture of these other properties would help defray the cost to the Assets Forfeiture Fund of custody and disposal of the live animals, if seized for

forfeiture by a participating agency, as well as providing a serious deterrent to those tempted to commit these crimes. We would be pleased to assist the Committee in drafting appropriate language.

4. Identify any current law under which the Department is authorized to seize or take possession of live animals, and, if such a law exists, identify the regulations that the Department has promulgated to ensure the humane handling of such animals.

There are several federal statutes that permit the seizing and forfeiture of live animals. The animals are forfeitable property if they are derived from proceeds of a crime or facilitating the crime, depending on the existing forfeiture authority. Aside from the above USMS internal procedure for these special circumstances, live animals are subject to the same Department regulations as any other seized property. There are also many forfeiture statutes in Title 16 of the United States Code that authorize the Department of the Interior and other agencies to seize animals or animal parts specifically, although those seizures and forfeitures are limited to "wild" animals. See, e.g., 16 U.S.C. § 668b (Protection of Bald and Golden Eagles), 16 U.S.C. §1376 (Marine Mammal Protection).

5. Identify an agency or office within the Department that has experience with the humane handling of animals, including feeding, watering, caring for, and transporting such animals.

Within the Department, the USMS has handled several cases dealing with live animals, although it is not routine. We are not aware of any office within the Department that has significant experience of the kind described above.

Thank you for your attention to this matter. If we may be of additional assistance, we trust that you will not hesitate to call upon us. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this letter.

Sincerely,



M. Faith Burton
Acting Assistant Attorney General

cc: The Honorable Frank D. Lucas
The Honorable John Conyers, Jr.
The Honorable Lamar Smith