



Animal Welfare Institute

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Assistant Director, USDA-APHIS-Animal Care
United States Department of Agriculture
Animal and Plant Health Inspection Service
4700 River Road
Riverdale, MD 20737
Submitted via www.regulations.gov

RE: Horse Protection Proposed Rule (Docket No. APHIS-2022-0004)

Dear Dr. Rhyner,

Thank you for the opportunity to provide public comments on behalf of the Animal Welfare Institute (AWI) to the United States Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) regarding the proposed Horse Protection Act (HPA) rule that was published in the Federal Register on August 21, 2023.

Founded in 1951, AWI is a national, nonprofit charitable organization dedicated to alleviating the suffering inflicted on animals by humans. AWI engages policymakers, scientists, industry professionals, non-governmental organizations, farmers, veterinarians, teachers, and the public in its broad animal protection mission. For decades, AWI has advocated for the protection of Tennessee Walking Horses and related breeds from the myriad abuses associated with horse soring, as well as for stronger enforcement of the 1970 Horse Protection Act (15 U.S.C. §§ 1821-1831). In August, AWI submitted comments on USDA's proposed withdrawal of the 2017 HPA rule (Docket No. APHIS-2011-0009). Given the longstanding efforts to issue new HPA regulations, we were gratified to see APHIS release this new rulemaking for public comment. Our hope is that a final HPA rule will be finalized and implemented as expeditiously as possible given that the current regulatory structure has left Tennessee Walking Horses and related breeds uniquely vulnerable to abuse.

Background and Context

The HPA was passed to protect horses from the barbaric practices associated with soring – a specific kind of equine abuse that has remained a problem for decades. Tennessee Walking Horses in particular – prized for their gentle disposition and their distinctive gait – fall victim to unscrupulous trainers who use soring methods to elicit an unnatural high-stepping gait for competition known as the “Big Lick.”

Soring methods include applying diesel fuel and kerosene to burn the skin, grinding down hooves to expose sensitive tissues, and applying sharp or abrasive objects to tender areas to maximize

pain. Horses are also forced to wear extremely large and heavy platform-like shoes, which can conceal hard objects jammed into the soles, as well as chains designed to strike repeatedly against inflamed tissue (i.e., deliberately irritating the pastern and fetlock area).

Although USDA is charged with enforcement of the HPA, for decades, it has primarily outsourced enforcement to the groups that put on shows and competitions – an industry self-policing scheme, effectively. USDA does send its own inspectors to a small portion of these events and when it does, the difference is stark. According to USDA’s own review of 2021 data, for example, industry inspectors found an overall compliance rate of 99% (meaning virtually no problems or violations were identified) versus a 69% compliance rate when USDA was present to inspect for evidence of soring.¹ Designated Qualified Persons (DQPs), the “inspectors employed and compensated by the industry” (56924), frequently fail to properly examine horses for evidence of soring and conflicts of interest abound. As the proposed rulemaking succinctly states: “The evidence in the [National Academy of Sciences] and [Office of Inspector General] reports and the Horse Protection program inspection data indicate that many DQPs lack either the correct training or the willingness, or both, to diagnose sored horses, with one outcome – soring persists as an incentive to gain competitive advantage and sored horses continue to appear at shows, exhibitions, sales, and auctions” (56932).

Indeed, soring remains rampant (in part due to novel methods and technologies that allow sorers to hide the abuse). According to APHIS’s 2022 Impact Report, the agency “attended 41 horse events...and identified 323 instances of [HPA] noncompliance.” Additionally, 1578 horses were sampled for prohibited substance testing and “nearly half the samples tested positive for prohibited numbing agents.”² In fiscal year 2021, for horses wearing “performance packages” (padded horses), “APHIS officials detected 158 instances of noncompliance with the HPA out of the 398 horses APHIS inspected at the 17 events attended, resulting in a close to 40 percent rate of noncompliance...In contrast, of the 207 events attended and inspected by DQPs during the same period, DQPs detected just 321 instances of noncompliance with the HPA out of the 11,825 performance horses they inspected, recording only a 1.9 percent rate of noncompliance when APHIS officials were not present” (56928).

The 2017 HPA rulemaking was the culmination of many years of input and analysis. Over 100,000 public comments were submitted in support of the 2017 rule; hundreds of members of Congress voiced their support as well. Major veterinary groups such as the American Association of Equine Practitioners and the American Veterinary Medical Association were supportive of these long-overdue reforms as well. We are pleased to see that this new rulemaking retains key elements of the 2017 rulemaking – principally, the shift away from the industry self-inspection regime that has proven woefully inadequate so that only USDA trained and licensed inspectors (such as APHIS Veterinary Medical Officers and Horse Protection Inspectors (HPIs) with relevant veterinary

¹ USDA Tennessee Walking Horse Industry Letter. February 25, 2022. Available: <https://twhbea.com/wp-content/uploads/2022/02/USDA-TWH-Industry-Letter-2.25.22.pdf>

² U.S. Department of Agriculture Animal Plant Health Inspection Service 2022 Impact Report. Available: https://www.aphis.usda.gov/publications/aphis_general/2022-impact-report.pdf

expertise) would conduct inspections.^{3,4} We were also pleased to see the agency take new and information into account, specifically the technical advancements that have “improved violators’ ability to evade detection of scarring during inspections...making it difficult to disqualify a horse under the scar rule as currently written” – namely, the “current bilateral requirement of the scar rule” (56940). Considering a horse to be sored upon finding evidence of unilateral soring will greatly enhance APHIS’s ability to protect horses. This rulemaking has the potential to represent the most significant upgrade to the HPA in over fifty years and could finally eliminate the inherent conflicts of interest that have allowed countless instances of soring to go undetected and violators to go unpunished.

Lackluster enforcement has been a longstanding and well-known problem. In 2010, USDA’s Office of Inspector General detailed how the current inspection model is failing and recommended that it be abolished; as the audit stated, DQPs have a “clear conflict of interest” and consequently, “did not always inspect horses according to the requirements of the Horse Protection Act.” Far more recently, the National Academies of Sciences, Engineering, and Medicine report – A Review of Methods for Detecting Soreness in Horses – again affirmed the need to end the current industry self-policing scheme given the severe shortcomings to this approach.⁵ And Congress has repeatedly included directives in annual appropriations legislation noting that USDA bears primary responsibility for HPA enforcement – in addition to language directing USDA to expeditiously issue the HPA rulemaking.⁶

According to the notice of the proposed withdrawal that was published over the summer, “APHIS will not be able to promulgate a new HPA rule within 6 months.” While we were heartened to see the agency release a new rule (which had been with the Office of Management and Budget for nearly a year) and recognize that the agency will need to carefully weigh input received during the public comment period, we remain concerned – particularly given the history surrounding the 2017 rulemaking – that USDA may continue to kick the proverbial can down the road, prolonging the implementation of critical reforms that have been decades in the making. It is important to underscore that continuing with the status quo for any length of time means perpetuating a grossly inadequate inspection model that has left Tennessee Walking Horses and related breeds at greater (and sustained) risk of abuse.

³ See proposed rulemaking published in the Federal Register (81 FR 49112–49137, Docket No. APHIS–2011–0009): “APHIS will train and license [Horse Protection Inspectors]... *Basic qualifications of HPI applicants*. Persons licensed as HPIs under this part shall be veterinarians or veterinary technicians.” Available: <https://www.federalregister.gov/documents/2016/07/26/2016-17648/horse-protection-licensing-of-designated-qualified-persons-and-other-amendments>

⁴ As the proposed rulemaking notes, “Of the 59 persons licensed as DQPs in fiscal year 2022, only one is a veterinarian” (56925).

⁵ National Academies of Sciences, Engineering, and Medicine. A Review of Methods for Detecting Soreness in Horses. 2021. Available: <https://nap.nationalacademies.org/catalog/25949/a-review-of-methods-for-detecting-soreness-in-horses>

⁶ The FY22 and FY23 consolidated appropriations acts included House report language deemed adopted in the final package strongly urging USDA to publish a final rule on horse protection (H. Rept. 117-82 and H. Rept. 117-392) and “remind[ing] the Secretary that Congress granted the agency primary responsibility to enforce this law, *including the training of all inspectors*” (emphasis added; this clause was included in FY23).

Improvements to the Proposed Rulemaking

USDA has full authority under the HPA to ban all devices that raise concerns about soring. Section 1824(7) prohibits commercial activities involving “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” (15 U.S.C. § 1824(7)). As such, we support a broad prohibition on action devices, pads, hoof bands, wedges, and other soring paraphernalia. We strongly encourage USDA to eliminate the use of weighted shoes, which cause a hyper-extension of the foot. This is one key way that the proposed rule can and should be strengthened as use of weighted shoes has become notorious (and to some extent synonymous) with soring methods.

In the rule, APHIS states that “extra weight on the horse’s foot” can “cause an increase in tension in the tendons leading to inflammation” (56938). Moreover, “[s]hoeing a horse, trimming a horse’s hoof, or paring the frog or sole in a manner that will cause such horse to suffer, or can reasonably be expected to cause such horse to suffer pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving” is prohibited. It logically follows – and indeed would be more consistent with the HPA and its implementing regulations – that weighted shoes should be explicitly prohibited as well.

While we appreciate that the proposed rulemaking will cover Tennessee Walking Horses and Racking Horses, Spotted Saddle Horses are a related gaited breed that has also been subjected to soring and should likewise be included. In the proposed rule, APHIS claims that “soring in breeds other than Tennessee Walking Horses and racking horses confers no significant performance advantage and is therefore rarely if ever practiced” (56937); but this blanket assumption (which glosses over the longstanding problems with the current inspection model) ignores that Spotted Saddle horses have been targeted as well. In one particularly well-known example, the Department of Justice successfully prosecuted Barney Davis, a Spotted Saddle Horse trainer, and two of his employees for various violations of the Horse Protection Act after a USDA investigation.⁷

Despite the startling statistics regarding the use of performance packages noted earlier, APHIS is proposing to delay the ban on hoof pads, wedges, and toe extensions for 270 days after finalizing the regulations – a perplexing and unnecessary delay that the agency should reevaluate and revise so that the prohibition takes effect on the effective date of the final rule. As the proposed rule states, pads can induce pain by “caus[ing] a horse’s foot to strike the ground at an unnatural angle” (56936). And USDA “inspections at flat-shod events in which horses do not wear pads and action devices rarely find soring violations,” further underscoring the importance of implementing this ban without delay. Simply put, there is no reason to keep horses suffering for almost nine more months past the finalization of the rule.

APHIS is “seek[ing] additional public comment on potential ways to resolve disputes arising from a determination of soring following inspection, including possible options for resolving such disputes before a show takes place” (56935). The reality is that if a horse is suspected to be sore, the animal should not be shown. As stated in the proposed rule, the principal aims of the Horse

⁷ “Barney Davis Pleads Guilty to Violating the HPA.” Available: <https://www.walkinghorsereport.com/news/barney-davis-pleads-guilty-violating-hpa-6600>

Protection Act are to “eliminate the cruel and inhumane practice of horse soring and to ensure fair competition at horse shows and exhibitions by not permitting sore horses to unfairly compete with horses that are not sore” (56935). More to the point, Section 1823 of the HPA requires that “[t]he management of any horse show or horse exhibition shall disqualify any horse from being shown or exhibited (1) which is sore or (2) if the management has been notified by [an inspector] that the horse is sore.”

It is hard to conceive of any feasible or practical way to adjudicate in the limited timeframe that exists (and must exist so as not to render the inspections worthless) between examining a horse and competition. Enforcement action may be pursued and ultimately adjudicated at a later date – that is distinct from the issue in question here. The entire point is to have qualified unbiased inspectors present at shows and undertaking examinations (rather than finding ways to override their findings if there’s cause for concern).

The proposed rulemaking rightly seeks to better ensure that disqualified individuals are not able to “continue participating in events...either directly or indirectly through the aid of other identities or persons” (56935). In this vein, we would recommend that APHIS strongly consider imposing lifetime disqualifications for offenders with multiple HPA violations (in the past, we have seen disqualification periods that serve as meager deterrents – such as disqualification periods that span mostly over the off-season, allow violators to participate at the Tennessee Walking Horse National Celebration, or begin far into the future).

Finally, the proposed rule appears to allow show management to select which USDA-authorized inspector(s) will examine horses; further clarity is needed concerning this point and how it will work in practice. Ideally, the department should directly assign USDA-licensed-and-trained inspectors to shows. Allowing management to choose their inspectors possibly opens the door to the types of conflicts of interest that this rulemaking is seeking to abolish. Another potentially troubling element in the proposed rule related to the designation of inspectors is the notion that show management could “request a variance” if “neither an APHIS representative nor an HPI is available on the date of the event” (56954). Further explanation regarding the proposed use of variances is essential, and the agency must clarify whether a variance would relieve management from liability for allowing a sore horse to be shown.

Conclusion

A robust and comprehensive rulemaking is integral to targeting and ultimately stamping out soring practices. The current ineffective framework – which is predicated on the failed DQP system – must be replaced by a system whereby USDA licenses, trains, and oversees inspectors with veterinary and equine expertise. Removing blatant conflicts of interest (which have perpetuated a look-the-other-way mindset) so that independent inspectors can assume these duties, will do much to ensure that violations are identified, and that the agency can more effectively pursue enforcement cases. USDA has invested significant time and resources in developing new regulations; hopefully the implementation of much-needed reforms is at last on the horizon. We look forward to continuing to engage with USDA on the proposed changes. Stronger HPA regulations are not only long-overdue, but are paramount to the welfare and safety of these horses.

Thank you for your consideration of these comments.

Sincerely,

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