



**THE HUMANE SOCIETY
OF THE UNITED STATES**

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HUMANE SOCIETY
VETERINARY MEDICAL
ASSOCIATION



HUMANE SOCIETY
LEGISLATIVE FUND™

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Submitted via www.regulations.gov

Dr. Aaron Rhyner, DVM
Assistant Director, USDA-APHIS-Animal Care
2150 Centre Ave, Building B, Mailstop 3W11
Fort Collins, CO 80526-8117

Re: Horse Protection; Amendments to the Horse Protection Regulations [Docket No. APHIS-2022-0004], RIN: 0579-AE70

Dear Dr. Rhyner,

The Humane Society of the United States (HSUS), Humane Society Veterinary Medical Association (HSVMA), and Humane Society Legislative Fund (HSLF) (together, the Humane Societies) submit these comments in response to the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service's (APHIS) proposed rule entitled, "Horse Protection" (Proposed Rule).¹ We are generally supportive of the Proposed Rule, as we agree with APHIS that these proposed amendments are necessary to ensure efficient and effective enforcement of the Horse Protection Act (HPA), 15 U.S.C. § 1821, *et seq.* We have outlined our suggested changes and additions below, including covering Spotted Saddle Horses, prohibiting weighted shoes, having APHIS assign HPis rather than show management choosing them, eliminating the option for show management to request a "variance," and immediately implementing the prohibition on pads, wedges, toe extensions, and weighted shoes.

As detailed below, the existing regulatory regime must be modified to achieve the HPA's purpose of ending the soring of horses. As such, we urge the USDA to swiftly finalize the Proposed Rule and implement it, incorporating the additions and adjustments we request below, well in advance of the 2024 show season.

I. Introduction

HSUS is a non-profit organization devoted to the welfare and protection of all animals. As part of that mission, HSUS actively campaigns to end the abusive practice of soring and promote the humane treatment of walking horses.² Through various actions including public education, investigations, and engagement with APHIS and law enforcement agencies, HSUS aims to eliminate the longstanding abuse of horses in the walking horse industry.

HSLF is a non-profit organization that works to ensure that all animals, including horses, have a voice throughout the halls of Congress and state legislatures. HSLF works to pass laws to address the suffering and abuse of animals at the federal and state levels, to educate the public about animal protection issues, and to support humane candidates for office. HSLF strongly advocates for horse welfare legislation, including through federal bans on horse soring and horse slaughter.

¹ Horse Protection, 88 Fed. Reg. 56, 924 (Aug. 21, 2023).

² The Humane Societies use the term "walking horses" to collectively refer to the three related breeds of horses that are most frequently subjected to soring practices throughout the industry: Tennessee Walking Horses, Spotted Saddle Horses, and racking horses.

HSVMA is a non-profit organization comprised of veterinary professionals who want to engage in direct care programs for animals in need and educate the public and others in the profession about animal welfare issues. HSVMA protects and advocates for all animals while providing leadership and service opportunities that support a humane veterinary profession. HSVMA specifically fights to protect walking horses by advocating for federal legislation and regulatory reforms to ban the use of action devices and performance packages, eliminate the failed system of industry self-policing, and strengthen penalties in the Horse Protection Act.

On October 25, 2016, the Humane Societies submitted comments in support of APHIS' proposed rule, "Horse Protection; Licensing of Designated Qualified Persons and Other Amendments," which was finalized in 2017 (hereinafter, the 2017 Rule).³ Our sentiments in the 2016 comments and in support of the 2017 Rule remain relevant and applicable; therefore, we incorporate our previous comments herein.⁴

The 2017 Rule provided vital solutions and safeguards to end industry self-policing and protect horses as the HPA intended. Such safeguards included the prohibition of all action devices, or any device that strikes the horse's foot, except for soft rubber or leather bell boots and quarter boots that are used as protective devices, on any Tennessee Walking Horse or racking horse (henceforth referred to as "walking horses") at any horse show, exhibition, sale, or auction.⁵

The 2017 Rule also included a prohibition of all pads and wedges on walking horses at any horse show, exhibition, sale, or auction.⁶ The sole exception to this prohibition was the use of these pads and wedges on such horse as prescribed by a licensed in-state veterinarian for therapeutic treatment by or under the supervision of such veterinarian.⁷

³ See APHIS, 2017 HPA Final Rule (Jan. 11, 2017) [hereinafter, 2017 Rule], <https://www.regulations.gov/document/APHIS-2011-0009-11191>. Notably, the Office of the Federal Register filed the 2017 Rule for public inspection on January 19, 2017. However, on January 23, 2017, in accordance with a Presidential memorandum, APHIS withdrew the 2017 Rule without undertaking notice and comment procedures. Following an HSUS lawsuit and an appellate court finding that this withdrawal was deficient, APHIS attempted to remedy this deficiency by undertaking notice and comment procedures on the proposed withdrawal. The 2017 Rule is therefore publicly accessible only as "Supporting & Related Material" on APHIS' rulemaking docket concerning "Amendments to the Horse Protection Act Regulations." The proposed rule underlying the 2017 Rule, dated July 26, 2016, remains accessible via the Federal Register. See *Horse Protection; Licensing of Designated Qualified Persons and Other Amendments*, 81 Fed. Reg. 49,112 (July 26, 2016) [hereinafter, the 2016 Proposed Rule].

⁴ See The Humane Society of the United States, Humane Society Legislative Fund, and Humane Society Veterinary Medical Association, Comment on Proposed Rule "Horse Protection; Licensing of Designated Qualified Persons and Other Amendments" (Oct. 25, 2016), <https://www.regulations.gov/comment/APHIS-2011-0009-10536> [hereinafter *HSUS HSLF HSVMA 2016 Comments*]. The Humane Societies also reiterate the concerns described and requests made in the rulemaking petition HSUS submitted to APHIS on February 18, 2015. That rulemaking petition requested amendments to key HPA regulations to ensure that the inhumane practice of soring is no longer widespread within the walking horse industry and is also incorporated herein, See HSUS, Supplemental Petition for Rulemaking (Feb. 18, 2015) (attached to HSUS HSLF HSVMA 2016 Comments as Exhibit A) [hereinafter, "HSUS Petition"].

⁵ See 2017 Rule at 119 (defining "action device" as "any boot, collar, chain, beads, bangles, roller, or other device which encircles or is placed upon the lower extremity of the leg of a horse in such a manner that it can either rotate around the leg, or slide up and down the leg so as to cause friction, or which can strike the hoof, coronet band, or fetlock joint"); *id.* at 131 (prohibiting "any action device" fitting that definition, except for protective rubber or leather bell boots).

⁶ See 2017 Rule at 126.

⁷ See 2017 Rule at 126 (explicitly providing for this exception); *id.* at 122 (defining a "sore" horse to exclude horses sporting devices or substances applied in connection with an in-state veterinarian's prescribed therapeutic treatment and applied by or under the supervision of such veterinarian).

We support the similar provisions that are proposed in this new Proposed Rule, have concerns and questions about other provisions, and have recommendations for additional provisions to strengthen the rule and enforcement of the Act, as discussed below.

II. Analysis of proposed regulatory changes

A. Desirable proposed regulatory changes

(1) Prohibition of action devices

The 2017 Rule contained strong provisions that must be carried over into any new HPA regulatory regime. These provisions include the prohibition of all action devices that strike the foot of a horse in walking horses at any horse show, exhibition, sale, or auction.⁸ The new Proposed Rule at §11.6 contains such a prohibition on all such devices, which we fully support.⁹ However, if in the final rule APHIS decides to allow any devices, only soft rubber or soft leather bell boots that are used as protective devices should be allowed.

(2) Prohibition of pads and wedges

The 2017 Rule also included a prohibition of all pads and wedges on walking horses at any horse show, exhibition, sale, or auction, unless use of these pads on such horse has been prescribed by a licensed veterinarian and the animal is receiving therapeutic, veterinary treatment using pads or wedges.¹⁰ This prohibition is included in the Proposed Rule which we also fully support.¹¹ This prohibition must be included in the final rule.

(3) Ending the Horse Industry Organization's system of self-policing

As did the 2017 Rule, the Proposed Rule would end the Horse Industry Organization (HIO) system of self-policing using industry inspectors to detect violations, which in the 2010 USDA Inspector General's audit was deemed a failure for its inherent conflicts of interest.¹² In its place, just as with the 2017 Rule, under the Proposed Rule, inspectors are licensed, trained, and overseen directly by USDA.¹³ The Proposed Rule would create a system in which inspectors are veterinarians, or alternatively veterinary technicians or persons employed by State government agencies and local government agencies to enforce laws or regulations pertaining to animal welfare.¹⁴ We fully support this proposal; the final rule must eliminate and replace the current HIO system of self-policing.

(4) Establishing licensing eligibility requirements designed to reduce conflicts of interest

The final rule must also specify that APHIS will establish licensing eligibility requirements designed to reduce conflicts of interest. Such provisions, included in both the 2017 Rule and the Proposed Rule, prohibit the licensing of any person as an HPI if the applicant has been convicted or found to have violated any provision of the Act or the regulations, or has been assessed any fine or civil penalty, or been

⁸ See 2017 Rule at 119, 131.

⁹ See Horse Protection, 88 Fed. Reg. at 956-57.

¹⁰ See 2017 Rule at 126, 122.

¹¹ See Horse Protection, 88 Fed. Reg. at 957.

¹² See USDA Office of Inspector Gen., Audit Rep. 33601-2-KC, Animal and Plant Health Inspection Service Administration of the Horse Protection Program and the Slaughter Horse Transport Program 2, 10-11 (2010) [hereinafter, USDA OIG Audit], <http://www.usda.gov/oig/webdocs/33601-02-KC.pdf>.

¹³ See 2017 Rule at 140 ("APHIS will train and license HPIs"); Horse Protection, 88 Fed. Reg. at 961 ("APHIS will authorize HPIs after successful completion of training by APHIS").

¹⁴ See Horse Protection, 88 Fed. Reg. at 961.

the subject of a disqualification order.¹⁵ Under the Proposed Rule, the HPI applicant will not be licensed if the HPI applicant, the HPI applicant's immediate family, and any person from whom the applicant receives a financial benefit participates in the showing, exhibition, sale, or auction of horses; acts as a judge or farrier; or is an agent of management.¹⁶ Further, under the Proposed Rule, an applicant will not be licensed if they have ever been disqualified from performing detection, diagnosis, or inspection, or if the applicant has acted in a manner calling into question their honesty, professional integrity, reputation, practices, and reliability.¹⁷ We support these provisions.

(5) Removal of requirement of bilateral violations

Given the ability of violators to obscure signs of soring on at least one limb, the Proposed Rule proposes that the requirement that violations be bilateral in nature be removed, and that a horse can be considered sored based on evidence of unilateral soring.¹⁸ We fully support this proposal.

(6) Revisions to the "scar rule"

A committee commissioned by the National Academies of Science, Engineering and Medicine (NASEM) to study methods of detecting soring recommended in its 2021 report a revision to the scar rule contained in the current regulations.¹⁹ The language in the Proposed Rule replacing the "scar rule," regarding dermatologic conditions that constitute soring, is satisfactory to us.

B. Proposed regulatory changes of concern

(1) Delayed implementation of prohibitions of pads, wedges, and packages

APHIS is proposing to delay the implementation of the prohibition on pads, wedges and toe extensions on walking horses for 270 days following the rule's finalization. There is no scientific evidence to support the claim that transitioning the horse from padded to flat shod takes six months, eight months or 270 days (which is an arbitrary number, as proposed by APHIS).

Tennessee Walking Horses sometimes have their pads/wedges ("packages") removed at the conclusion of show season with no negative ramifications to the horse. The transition from pads to flat shod can be and sometimes is accomplished in a day, as long as the hoof is trimmed to maintain the same proportions. The horse's welfare is improved immediately without the weight of the package.

In the supplementary information section of the Proposed Rule, the agency states that "[p]ads that cause a horse's foot to strike the ground at an unnatural angle can also induce pain and soring over time, as can heavy pads and horseshoes."²⁰ The prohibition on pads/wedges (other than those prescribed for therapeutic purposes) should begin immediately upon the rule's effective date, as should the prohibition

¹⁵ See 2017 Rule at 141-42; Horse Protection, 88 Fed. Reg. at 961.

¹⁶ See Horse Protection, 88 Fed. Reg. at 961.

¹⁷ See *id.*

¹⁸ Compare 2016 Proposed Rule at 131 (describing the "scar rule," which requires that horses present with bilateral granulomas or other bilateral pathological evidence in order to be considered "sore") with Horse Protection, 88 Fed. Reg. at 956 (the new Proposed Rule) (replacing the "scar rule" and its bilateral requirement; requiring instead that a horses "forelimbs and hindlimbs... be free of dermatologic conditions that are indicative of soring;" and creating a presumption of soreness where a horse presents with one or more of the dermatologic conditions listed within this subsection). APHIS, within the supplementary section of the new Proposed Rule, explains at length the reasons justifying removal of the "scar rule." See Horse Protection, 88 Fed. Reg. at 939-41.

¹⁹ NAT'L ACAD. OF SCIENCES, ENGINEERING, AND MEDICINE, A REVIEW OF METHODS FOR DETECTING SORING IN HORSES, 74-68 (2021) [hereinafter, NASEM Report], <https://doi.org/10.17226/25949>.

²⁰ See Horse Protection, 88 Fed. Reg. at 936.

on artificial toe extensions. These extensions artificially lengthen the toe, and toe length is a major contributor to abnormal hoof mechanics (as a shorter toe is generally better for the hoof and foot). Given this, APHIS should not allow horses that have likely already been subjected to pain to continue to suffer for 270 more days while pads continue to be allowed. APHIS should also explicitly prohibit the use of heavy horseshoes as they can induce pain. These prohibitions should become effective on the effective date of the final rule.

(2) Designation of inspector

The regulatory text in the Proposed Rule offers management at covered events a clear choice between two pathways to detecting soring violations: (1) to appoint and utilize an APHIS representative or an APHIS-authorized HPI, or (2) do it themselves.²¹ Each of these pathways imposes different responsibilities and affords management different options for managing risk.

The Proposed Rule clearly envisions that APHIS will designate an APHIS representative for appointment by management to conduct inspections. While management may not choose which APHIS representative is designated, management retains the option to appoint the designated representative once APHIS' designation has been made.

However, within the supplementary section of the Proposed Rule (and not in the proposed regulatory text), APHIS inexplicably suggests a different process for management's appointment of an HPI. APHIS suggests that, instead of APHIS designating an HPI for management to choose to appoint (or not to appoint), management will instead be permitted to choose which HPI it will use for inspections. APHIS also suggested that this list of APHIS-authorized HPIS will be accessible via the agency's website.

The Humane Societies do not support this proposition. Management should not be permitted to choose or request which inspector is designated, regardless of whether that inspector is an APHIS representative or an APHIS-authorized HPI. Just as APHIS designates APHIS representatives for appointment by management, so too should APHIS—not management—determine which HPIS will be available for any covered events.

To support its creation of a separate process for the appointment of HPIS, APHIS cites section 4 (15 U.S.C.1823) of the HPA, which provides for “the appointment by the management of any horse show, horse exhibition, or horse sale or auction of persons qualified to detect and diagnose a horse which is sore...”²² APHIS suggests that this section precludes assigning APHIS-authorized HPIS to covered events because such assignment would “eliminat[e] any element of choice for event management.”²³ However, to the extent section 4 of the HPA requires an element of choice, that requirement is satisfied by the choices already presented to management: the choice to appoint an inspector in the first place and, if so, the choice to request an APHIS representative or an APHIS-authorized inspector (HPI). The HPA does not require that management be granted the choice of which inspector to utilize.

Granting management such authority to choose which HPI to conduct inspections at covered events could certainly perpetuate conflict of interest problems that have plagued past and current efforts to enforce the HPA. Under current regulations, management may choose a Designated Qualified Person (DQP) licensed as an inspector under a USDA-certified HIO. This situation has led to conflicts of interest (recognized as far back as 2010 in the USDA Inspector General's audit report), with inspectors turning a blind eye to

²¹ See *id.* at 959.

²² See *id.* at 953.

²³ See *id.*

violations, in part in order to be favored by management and therefore be chosen more often for inspection assignments.²⁴

One might hope that HPIs would not be tempted to overlook violations and would instead be vigilant in the execution of their duties. However, allowing management to choose which HPI simply invites such conflicts of interest (and the public perception thereof). Both would prove significant and unnecessary impediments to HPA enforcement. This is a problem that can easily be avoided by having APHIS assign which HPI will be available to management.

(3) Variances

APHIS proposes that if event management requests an APHIS representative be appointed to conduct inspections on a certain date and no such representative is available, event management could instead choose and appoint an HPI to inspect horses.²⁵ If management determines that no HPIs are available on the desired date, management could request that APHIS consider granting a variance to proceed with the show or sale without an inspector.²⁶ Neither the supplementary section of the Proposed Rule nor the text of proposed new regulation at §11.16(6) specify what the variance is for: “If neither an APHIS representative nor an HPI is available on the date of the event, event management may request a variance.”²⁷

Under the HPA, APHIS does not have authority to relieve management from liability for allowing a sore horse to be shown. Thus, to the extent APHIS intended this proposed section for that purpose, APHIS cannot allow such a variance.²⁸ APHIS has the responsibility to ensure that inspectors (whether APHIS representatives or HPIs) are available to attend horse shows, and in fact envisions that they will be able to do so: “By considering veterinary technicians and qualified State and local animal control officials as conditions dictate, we would maintain a sufficient number of trained HPIs to meet demand without compromising the levels of inspection accuracy and integrity we hope to achieve.”²⁹

In no situation should there be any need for management to be relieved of their legal obligation to ensure that sore horses are not shown. No variance is granted under current regulations if a DQP is not available. We urge APHIS not to attempt to create such a variance now in contradiction to the statute.

(4) Permitting appeals from inspection reports

At Proposed Rule §11.5, APHIS is proposing to allow individuals to appeal an inspection report if a horse was found in violation of the Act.³⁰ We strongly oppose this provision. Appeals should only apply to adjudicated cases, not inspection reports. The current regulations require HIOs to provide a process to appeal penalties resulting from inspections—not the results of the inspections themselves.³¹ If a horse is found sore under the proposed regulations and disqualified but there is no other prosecution or penalty, there should be no appeal. The presumption that a horse was found sore or otherwise in violation by a

²⁴ See USDA OIG Audit at 10-11.

²⁵ See Horse Protection, 88 Fed. Reg. at 960.

²⁶ See *id.*

²⁷ See *id.*

²⁸ See 15 U.S.C. §§ 1824(2)-(5), (7) (describing acts which are unlawful under the HPA regardless of whether an APHIS representative or HPI is present, including the “showing or exhibiting... of any horse which is sore”); see *id.* at § 1825(a)-(b) (violations and penalties for those unlawful acts).

²⁹ See Horse Protection, 88 Fed. Reg. at 949.

³⁰ See *id.* at 956.

³¹ See 9 C.F.R. § 11.25(e).

qualified inspector cannot and should not be controverted/challenged. There will be no reliable way to determine long after the inspection that the horse was not actually sore or otherwise in violation.

(5) Re-inspection

At §11.8(h) of the Proposed Rule, the owner, trainer, exhibitor, or other person having custody of or responsibility for any horse allegedly found to be in violation of the Act or regulations, and who has been informed of such alleged violation by an APHIS representative or HPI appointed by management, may request re-inspection and testing of said horse within a 24-hour period if an APHIS representative determines that sufficient cause for re-inspection and testing exists.³² We question the value of a re-inspection as late as 24 hours after the initial inspection. The horse's condition can change during that time, and the results of the re-inspection may be different. Any re-inspection should take place before the horse leaves the inspection area, after an initial finding that the horse is not in compliance.

(6) Inconsistent language concerning therapeutic treatment

At §11.14(b) the Proposed Rule requires management of any horse show, horse exhibition, horse sale, or horse auction that allows any horse to be shown, exhibited or sold with devices, pads, substances, applications, or other items restricted under §11.6 for therapeutic treatment to maintain information for each horse receiving the therapeutic treatment for a period of at least 90 days following the closing date of a show, exhibition, sale, or auction.³³ However, there are no devices, substances or applications restricted in §11.6 for therapeutic treatment.³⁴ §11.14(b) should be amended to remove the reference to “devices, substances or applications” and to add “wedges” since those are allowed in §11.6 for therapeutic treatment.

C. Proposed regulatory changes needing clarification

(1) Circumstances requiring farrier oversight

At §11.13(b)(3) of the Proposed Rule, management of any event that utilizes APHIS representatives or HPIS to inspect horses is required to have a farrier physically present at any event where more than 100 horses are entered (and a farrier on call within the local area to be present, if requested by an APHIS representative or HPI appointed by management, for shows with 100 horses or fewer entered).³⁵ The rationale provided is that the farrier may be needed to assist the inspector in the inspection of horses wearing pads/wedges. However, in §11.16(a)(7) management is required to inform APHIS if they plan to allow horses to wear pads/wedges. Using the stated rationale, if a show is not planning to allow pads/wedges, then a farrier should not be required.³⁶ However, heavy shoes can nearly if not completely cover the surface of the sole of the horse's hoof, which could create a need for a farrier to be present to assist with inspections, and is a further reason for APHIS not to continue allowing heavy shoes. If USDA allows heavy shoes, it should require management to inform APHIS if heavy shoes will be allowed at a show (extending §11.16(a)(7) accordingly). Whether or not management plans to allow horses to wear pads/wedges, if management plans to allow the use of heavy shoes on horses, a farrier should be required to be present or on call (depending on the number of horses entered).

³² See Horse Protection, 88 Fed. Reg. at 958.

³³ See *id.* at 960.

³⁴ See *id.* at 956-57.

³⁵ See *id.* at 949.

³⁶ See *id.* at 960.

(2) Both HPIs and APHIS representatives should be authorized to detain horses.

We note that, under the Proposed Rule, only APHIS representatives—and not HPIs—are empowered to: detain horses; supervise and maintain custody of detained horses; supervise the feeding, watering, grooming, walking, etc., of a detained horse; approve and supervise the provision of non-emergency veterinary care to detained horses; release horses from detention prior to the automatic expiration of the 24-hour detention period; and determine whether sufficient cause for re-inspection exists.³⁷ However, show management, seeking to avoid horses being detained, might elect to utilize only HPIs if they lack the power to detain horses. We therefore recommend that, just as under the 2016 Proposed Rule, the final rule provides that such authority is held by both APHIS representatives and HPIs.

(3) Both APHIS representatives' and HPIs' indications of intent to inspect a horse should trigger requirement that such horse remains present at covered event.

We also draw specific attention to proposed §11.8(a), which requires that each horse owner, exhibitor, trainer, or other person having custody of, or responsibility for, any horse at any horse show, horse exhibition, horse sale, or horse auction, shall allow any APHIS representative or HPI appointed by management to inspect such horse at all reasonable times and places the APHIS representative or HPI may designate.³⁸ However, §11.8(b) only requires that the horse not be moved from the horse show, horse exhibition, horse sale or horse auction when APHIS (not the HPI) desires to inspect such horse, until such inspection has been completed and the horse has been released by an APHIS representative.³⁹ The horse should be required to remain at the covered event until the HPI, likewise, has inspected and released the horse. Otherwise, where an HPI indicates their intention to inspect the horse, the owner, exhibitor, trainer, or other person having custody of, or responsibility for, the horse could evade inspection by simply removing the horse from the event.

(4) Requiring only APHIS-authorized inspectors is inconsistent with management's overarching legal obligation to prevent sore horses at covered events

At §11.18(c) APHIS proposes that the management of any horse show, exhibition, sale, or auction must not utilize any person to detect and diagnose horses which are sore or to otherwise inspect horses for the purpose of determining compliance with the Act and regulations, if that person has not been authorized by APHIS.⁴⁰ However, management is statutorily responsible for ensuring that no sore horses are allowed to participate in covered events.⁴¹ The rule should make clear that management choosing not to appoint an

³⁷ See *id.* at 957-58. The specific proposed sections at issue include §§ 11.8(c) (detention of a horse); 11.8(d) (supervising and maintaining custody of detained horses); 11.8(d)(1)(supervising the feeding, watering grooming, and other ordinary maintenance of a detained horse); 11.8(d)(2)(approving and supervising the provision of non-emergency vet care to detained horses); 11.8(f)(releasing horses from detention prior to the automatic expiration of the 24-hour detention period); and 11.8(h)(2) (determining whether sufficient cause for re-inspection exists). *Id.* We also note that, where our requested substantive changes are made in these proposed sections, changes must also be made to proposed §§ 11.8(g) and 11.8(h)(3), which reference the exclusive powers of APHIS representatives within the detention process. See *id.* at 958.

³⁸ See *id.* at 957-58.

³⁹ See *id.* at 958.

⁴⁰ See *id.* at 961.

⁴¹ See 15 U.S.C. § 1823(b) ("the management of any horse sale or auction shall prohibit the sale or auction or exhibition for the purpose of sale of any horse (1) which is sore or (2) if the management has been notified by a person appointed in accordance with regulations under subsection (c) or by the Secretary that the horse is sore"). See also *id.* at § 1824 (unlawful acts).

authorized person (APHIS representative or HPI) must still ensure that no sore horses are allowed to participate, and they will not be shielded from liability if soring is found by USDA.

(5) Determining when and how many additional inspectors are required at covered events

The Proposed Rule does not clearly address whether the agency will send two representatives if more than 100 horses are entered in a covered event and if management chooses to appoint an APHIS representative. If management chooses to request an APHIS representative be designated for them to appoint and APHIS is already planning to send a representative to monitor the inspection activities at the show, will APHIS send a different representative for that purpose than the one designated for appointment by management? This should be clarified in the final rule.

(6) Unclear re-inspection procedures

The Proposed Rule states that a request for re-inspection must be made to an APHIS representative immediately after the horse has been inspected by an APHIS representative or HPI appointed by management and before such horse has been removed from the inspection facilities.⁴² If no APHIS representative is present at the event, then can no re-inspection be requested? Or should this be amended to say that the request must be made to either an APHIS representative or HPI?

(7) APHIS' projected cost increase

APHIS states that it expects its costs would increase by approximately \$6.4 million.⁴³ If this is a projected *annual* increase, rather than a multi-year total, we disagree with this estimate, which we believe is too high. APHIS bases this expectation on the assumption that APHIS inspectors would attend approximately 300 shows per year. Over the last five years, HIOs have organized an average of 226 shows per year.⁴⁴ APHIS' estimate therefore seems high. Notably, the Congressional Budget Office November 2022 report on the Prevent All Soring Tactics Act (which proposes a similar enforcement mechanism to that set forth in the Proposed Rule) estimated the cost of such enforcement mechanism of only \$8 million over a five-year period.⁴⁵

III. Recommendations for further inclusion in the final rule

(1) Prohibitions against weighting and banding

To build upon the 2017 Rule when considering provisions for the new HPA regime, weighted shoes, hoof bands and any weight attached to the hoof or horseshoe (other than a keg or similar conventional horseshoe itself, including the allowable caulk and any studs or material used on the bottom of the shoe for traction) weighing more than 16 ounces should be prohibited on horses of any age in the three breeds known to be subjected to soring (Tennessee Walking Horses, racking horses, and Spotted Saddle Horses). In the Proposed Rule, APHIS says "Elevating the foot using stacked hoof pads, or "performance packages" can also cause an increase in tension in the tendons leading to inflammation, as can **extra weight on the horse's foot.**"⁴⁶ According to the current regulation and the text of the proposed regulation within the Proposed Rule, a horse suffering from inflammation caused by "[a]ny other substance or device [that] has been used by a person on any limb of a horse or a person [who] has engaged in a practice

⁴² See Horse Protection, 88 Fed. Reg. at 958.

⁴³ See *id.* at 952-53.

⁴⁴ See *id.* at 953.

⁴⁵ U.S. CONG. BUDGET OFF., 117TH CONG., ESTIMATED BUDGETARY EFFECTS AND MANDATES INFORMATION (2021), <https://www.cbo.gov/publication/58791>.

⁴⁶ See Horse Protection, 88 Fed. Reg. at 938 (emphasis added).

involving a horse” is by definition sore.⁴⁷ And, “[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.⁴⁸

At a U.S. District Court sentencing hearing for Barney Davis, who was successfully prosecuted for soring horses, Davis described mechanical devices and chemical irritants used to sore horses including eight-pound tungsten shoes used to cause a gaited horse to adopt an exaggerated gait for the show ring.⁴⁹ It is also known that weighted shoes can elevate the metabolic effort in performance horses, potentially heightening the risk of tissue damage or muscle overexertion.⁵⁰ Therefore, since weighted shoes are known to be used to sore horses and weighted shoes or any devices or materials attached to the horse’s foot adding extra weight can lead to inflammation, and especially since APHIS has already acknowledged this causal connection, weighted shoes or any devices or materials adding extra weight to a horse’s foot should be explicitly prohibited. (All emphasis added.)

A September 2016 clarification of the first version of the 2017 Rule contained this prohibition, although it was not included in the final 2017 Rule.⁵¹ We believe this clarification should be retained in the new final rule.

(2) Explicit reference to Spotted Saddle Horses

The same prohibitions on shoes, pads, wedges, and action devices that APHIS proposes to apply to Tennessee Walking Horses and racking horses and the further prohibitions mentioned above should also be applied to Spotted Saddle Horses.⁵² This breed has also been victimized by soring by some of the devices that would be prohibited by the Proposed Rule. The 2016 Proposed Rule extended the prohibitions to any “related breed that performs with an accentuated gait that raises concerns about soring,” which could have included Spotted Saddle Horses.⁵³ Unfortunately, the Proposed Rule included only Tennessee Walking Horses and racking horses.⁵⁴ The final rule should apply the prohibitions to Spotted Saddle Horses as well.

(3) Extended disqualification periods for repeat violators

The rule does not include the imposition of extended disqualification periods, up to and including lifetime disqualification, for offenders with multiple HPA violations or extended disqualification periods for

⁴⁷ See 9 C.F.R. §11.1 (definition of “sore”); Horse Protection, 88 Fed. Reg. at 956.

⁴⁸ See Horse Protection, 88 Fed. Reg. at 957 (proposed § 11.6(b)(19)).

⁴⁹ See Press Release, U.S. Dep’t of Just., Three More Sentenced for Horse Soring Violations (Feb. 27, 2012) [hereinafter, U.S. D.O.J. 2012 Press Release]

<https://www.justice.gov/archive/usao/tne/news/2012/February/022712%20Davis,%20et.%20al.%20Sentencing%20Horse%20Soring.html>.

⁵⁰ See Steven J. Wickler et al., *Energetic and kinematic consequences of weighting the distal limb*, 36 Equine Vet J. 772, 772-777 (2004); Jack Murphy, *Weighted boots influence performance in show-jumping horses*, 181 Vet. J. 74, 74-76 (2009).

⁵¹ See 2016 Proposed Rule at 307 (Sept. 22, 2016) (“In our proposed changes..., we included provisions... stating that the use of any weight on horses up to 2 years old, except a keg or similar conventional horseshoe is prohibited, as is the use of a horseshoe on horses up to 2 years old that weighs more than 16 ounces. In keeping with the intent of our other proposed changes, we are considering [revising that section] to read ‘The use of any weight on horses, except a keg or similar conventional horseshoe, is prohibited’”).

⁵² See discussion, *supra* Section II(B)(1).

⁵³ See 2016 Proposed Rule at 131 (proposed § 11.2(a)).

⁵⁴ See Horse Protection, 88 Fed. Reg. at 957 (proposed § 11.6(c)(3)).

horses found to be sore. We requested these in our rulemaking petition in 2015.⁵⁵ We again raised the need for extended disqualification periods in our comments on the 2017 Rule, which also did not include such provisions.⁵⁶ We urge the agency to consider including extended disqualification periods in the new final rule.

(4) Circumscribing the “therapeutic use” exception

APHIS is proposing to allow the use of pads, wedges and artificial toe extensions on walking horses for therapeutic purposes, if prescribed by a veterinarian.⁵⁷ The prescribed therapeutic use of these should have a time limit, i.e., it should not be long term or permanent. The prescription for their use should be submitted by the prescribing veterinarian to APHIS (preferably electronically, or by U.S. mail) and be received before the horse is allowed to be shown wearing those devices. An online database of verified, currently valid prescriptions should be maintained by USDA for instant verification by inspectors. Otherwise, prescriptions could be forged, the custodian presenting the horse for inspection could claim that they forgot or lost the prescription, etc., leading to potential confrontations between inspectors and custodians or lax enforcement.

(5) Requiring retention of entry forms for Tennessee Walking Horses, racking horses, and Spotted Saddle Horses

Management of any horse show, exhibition, sale, or auction that contains Tennessee Walking Horses or racking horses (and Spotted Saddle Horses, as we request) would be required to maintain records required under proposed §11.14 for a minimum of 90 days following the closing date of the show, exhibition, sale, or auction, and send those records to APHIS within 5 days following the conclusion of the event.⁵⁸ One record that is not required in the proposed regulations is the entry form for the horse. APHIS should also require management to maintain this record for a minimum of 90 days⁵⁹ and send it to APHIS within five days following the conclusion of the event, as these forms may contain information otherwise not provided by management, accurately or at all.

(6) APHIS should require 6-year, rather than 90-day, record retention periods.

Ninety-day retention periods for sets of critical records as well as records relating to therapeutic treatment are far too short.⁶⁰ The Proposed Rule does require many of the records to be sent to APHIS. However, a 90-day retention would make it difficult for APHIS to verify the accuracy of the data reported. Most horse shows (even small ones) have electronic databases that store this information. Therefore, retention of these records would not be burdensome.

⁵⁵ See HSUS Petition, at 3, 34-35 (requesting that APHIS establish a policy to impose extended disqualification periods; explaining the need for a stricter penalty scheme and APHIS authority to create such scheme, including by disqualifying repeat offenders permanently or for extended periods); *id.* at 4, 36-38 (requesting that APHIS establish a policy to impose extended disqualification periods for horses found to be sore; explaining the need for and APHIS authority to impose and implement such policy; and emphasizing that such policy works hand-in-hand with extended disqualifications for repeat offenders)(“[i]f only offenders are disqualified, and not the sore horse, it is very likely that the same horse will simply be entered in subsequent shows by the same person”).

⁵⁶ See HSUS HSLF HSVMA 2016 Comments, at 2-3.

⁵⁷ See Horse Protection, 88 Fed. Reg. at 957 (proposed §11.6(3)).

⁵⁸ See 2016 Proposed Rule at 960.

⁵⁹ We argue below in favor of the retention of *all* records—with this addition of this entry form—for a 6-year period, in accordance with the logic and proposal APHIS outlined in its 2017 Rule. See discussion *infra* Section III.5.

⁶⁰ See Horse Protection, 88 Fed. Reg. at 960 (proposed § 11.14(a)-(b)).

Whereas the 90-day period appears arbitrary, the 6-year period is not. First, in the 2016 Proposed Rule, APHIS offered a logical justification for the 6-year retention period. The 6-year retention period would “ensure that records remain available for verifying compliance with the Act and regulations.”⁶¹ As APHIS noted, a 6-year retention period would “greatly aid these investigations”—“investigations of suspected cases of soring often take greater than 90 days”—while placing “minimal burden on show managers.”⁶² Second, the 6-year period “accounts for the statute of limitations plus an additional year” because “investigations and case development on cases involving the HPA can be difficult.”⁶³ Explaining this difficulty and the need for a 6-year retention period, APHIS observed that “[o]ften times, when attorneys review investigative files, they request additional information related to the alleged violation(s) that may have not been collected as part of the initial investigation. We want to ensure the records are preserved so long as the investigation remains open and active, which is the case until APHIS receives a final legal decision on the matter.”⁶⁴ We support that logic, which applies just as much today as it did in 2016. Therefore, we request that the 90-day retention period be extended to 6 years.

IV. Response to APHIS request for comment

(1) Resolving disputes arising from a determination of soring following inspection

APHIS seeks 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.⁶⁵ This whole concept is infeasible. Horses must be examined immediately prior to being shown, to ensure they are not in violation. There is no time or mechanism in which to conduct a hearing following inspection and prior to showing. The determination that a horse is in violation and therefore should be disqualified from showing cannot be challenged and adjudicated at the show. Only if there is an enforcement action initiated should there be a hearing.

It is unacceptable to propose that the findings of a qualified, unbiased professional inspector should be challenged and somehow overridden in the moment at an event. This would fly in the face of both the NASEM recommendations regarding requests for a re-inspection of a horse found in violation and the agency's response to those recommendations in this rule.⁶⁶ Such requests may only be honored if the APHIS representative believes there is sufficient cause for re-inspection; if so, and the re-inspection results in a finding that the horse is in violation, there should be no further recourse, and the horse should be prohibited from showing. If the re-inspection finds that the horse is not in violation, then the horse should be allowed to show.

As APHIS states in the Proposed Rule, the HPA requires that a horse that is found in violation must be prohibited from being shown.⁶⁷ Any delay in or failure to invoke this prohibition would be in violation of the Act. National and international horse show sanctioning bodies have rules and provisions to prevent

⁶¹ See 2016 Proposed Rule at 125.

⁶² See *id.* at 125-26.

⁶³ See *id.*

⁶⁴ See *id.* at 126.

⁶⁵ See Horse Protection, 88 Fed. Reg. at 935.

⁶⁶ See NASEM Report at 21-26 (describing and analyzing the inspection and re-inspection process); see *id.* at 33-34 (offering findings and conclusions gleaned from such analysis); see Horse Protection, 88 Fed. Reg. at 951.

⁶⁷ See Horse Protection, 88 Fed. Reg. at 924.

horses that are found in violation and deemed ineligible to compete from doing so, with no hearing provided prior to the competition.⁶⁸

(2) Scientific data and other evidence on the effects of action devices used alone or in combination with other training methods.

APHIS welcomes public comment, supported with scientific data or other rigorous evidence, on the effects of action devices used alone or in combination with other training methods.⁶⁹ HSUS has conducted investigations (Jackie McConnell/Whitter Stables, ThorSport Farm) as has USDA (Larry Wheelon) during which most if not all horses in those training barns were being or had been sored with caustic chemicals, action devices (both within and above the weight limit allowed at covered events under APHIS regulations) or a combination thereof – all to produce pain with the goal of forcing the horse to perform the “big lick.”⁷⁰ USDA investigated and the Department of Justice successfully prosecuted Barney Davis for pressure shoeing Spotted Saddle Horses—proof that this breed is victimized by soring.⁷¹

(3) Prioritizing covered events

APHIS invites comments on which horse events covered under the HPA APHIS should focus with respect to compliance risks, particularly events that choose to forego an inspector.⁷² APHIS should focus on events that allow horses to wear pads and/or wedges (or heavy shoes, hoof bands or any weight attached to the hoof or horseshoe if these are not prohibited in the final rule as we are requesting).

V. Additional Evidence of Soring Continuing

Just as was the case prior to the Agency finalizing the 2017 Rule, industry inspectors still are not detecting ongoing soring and other violations of the HPA. The problem has not resolved itself in the interim, highlighting the urgent and ongoing need for the new regulations. Under the current regulations, industry-run horse industry organizations or associations (HIOs) are authorized to license, train, and

⁶⁸ See, e.g., U.S. EQUESTRIAN FED’N, RULEBOOK GR8-16-17 (2023) (general rules concerning conduct of licensed competitions includes prohibition against soring for Tennessee Walking Horses, Racking Horses, and Spotted Saddle Horses), https://www.usef.org/forms-pubs/34VQYitZ_Zk/gr8-conduct-of-licensed-competitions#page=16; FEDERATION EQUESTRE INTERNATIONALE, 2023 VETERINARY REGULATIONS 41 (15th ed., 2023) (stating that “any evidence of soreness... must be recorded. If participation in or continuation of the Competition is likely to aggravate any such soreness... or in any way endangers (or risks endangering) the welfare of the Horse, the Horse will not be allowed to continue and will be designated ‘Failed to Qualify-minor injury’”), https://inside.fei.org/sites/default/files/2023%20Veterinary%20Regulations%20-%20Clean_0.pdf.

⁶⁹ See Horse Protection, 88 Fed. Reg. at 938.

⁷⁰ See HSUS, *Undercover; Horses Abused at Top Training Barn*, YOUTUBE (Aug. 25, 2015)(summarizing HSUS’ undercover investigation into ThorSport Farm), <https://www.youtube.com/watch?v=yDygeHVZ6qw>; HSUS, *Tennessee Walking Horse Investigation Exposes Cruelty*, YOUTUBE (May 16, 2012) (summarizing HSUS’ undercover investigation into Jackie McConnell and Whitter Stables), https://www.youtube.com/watch?v=gxVlxT_x-f0; HSUS, *USDA inspections find horse soring cruelty*, YOUTUBE (Sept. 2, 2016) (summarizing the USDA inspector’s investigations), <https://www.youtube.com/watch?v=84Sd0GNWZJs>; see also Holly Meyer, *Murfreesboro farm target of horse soring investigation*, THE TENNESSEAN (Aug., 25, 2015)(reporting on the HSUS investigation into ThorSport Farm), <https://www.tennessean.com/story/news/2015/08/25/murfreesboro-farm-target-horse-soring-investigation/32331377/>; Wayne Pacelle, *Horses Are Tortured With Chemicals And Their Abuser Gets Off Scot Free*, THE DODO (May 21, 2015) (former HSUS CEO discusses investigation of Larry Wheelon and other abusers, and its outcome), <https://www.thedodo.com/larry-wheelon-soring-horse-abuse-1415416523.html>.

⁷¹ See HSUS, *Tennessee Walking Horse Abuse*, YOUTUBE (Aug. 28, 2012) (interview between Keith Dane and Barney Davis), <https://www.youtube.com/watch?v=vZTIbwaibOE&t=6s>; see U.S. D.O.J. 2012 Press Release.

⁷² See Horse Protection, 88 Fed. Reg. at 946.

oversee their own inspectors (DQPs) to inspect horses for soring at shows and sales. The October 2010 USDA OIG report documented serious conflicts of interest and other significant problems with this industry self-policing process.⁷³ In response, APHIS pledged to abolish the industry self-policing performed by the DQP system and issue regulations that would replace it with USDA-licensed and trained inspectors.⁷⁴ It did so when it finalized the 2017 Rule, which it then unlawfully withdrew, and is now in the process of formally withdrawing. To stay true to its commitment to remedying the failed industry self-policing system, APHIS must expeditiously implement this new Proposed Rule.

Since the finalization of the 2017 Rule, and its subsequent unlawful withdrawal, data made available by USDA to the public regarding horses inspected at covered events from 2018-2020 by industry inspectors and by Agency veterinary medical officers confirms that soring in the industry continues unabated. The data revealed that during that 3-year period, at the shows USDA attended, USDA inspectors found violations at a rate 403% higher than did industry inspectors; industry inspectors found violations at a rate 606% higher when USDA was present than when not; and the vast majority (95%) of violations detected were found on horses that wear pads and action devices—those that would be positively impacted by the ban on pads and action devices contained in the Proposed Rule.⁷⁵ Detailed analysis of this data can be found at Appendix 1. According to USDA’s review of 2021 data (from an Agency update sent in February 2022), industry inspectors found an overall compliance rate of 99% at 209 shows, whereas USDA inspectors attending 22 events found an overall compliance rate of only 69%.⁷⁶

The NASEM committee documented in its 2021 report that there have been significant disparities between veterinary medical officer (VMO) and DQP inspection outcomes.⁷⁷ The committee stated that DQPs are known to have close ties to the industry and may have conflicts of interest that may influence decisions of DQPs in finding whether a horse is in compliance with the HPA and in issuing a ticket of violation. The committee strongly recommended that, in line with the USDA OIG’s recommendation in 2010, the use of DQPs for inspections be discontinued and that only veterinarians, preferably with equine

⁷³ See USDA OIG Audit at 10-11 (concluding that “because... DQPs are primarily hired from show industry participants, they have an inherent conflict of interest—they are reluctant to issue violations since excluding horses from the show inconveniences their employers, and makes it less likely they will be hired for other shows. They are also subject to a conflict of interest because, while they are acting as a DQP at one show, they may be an exhibitor at another show, and the exhibitor of the horse they are examining might later act as the DQP. Due to this ineffective inspection system, the Horse Protection Act is not being sufficiently enforced and the practice of abusing show horses continues”) (internal citations removed).

⁷⁴ See *id.* at 17-18 (recommending that APHIS abolish the DQP system and replace it with a system based on USDA-accredited, independent veterinarians; noting that APHIS stated that “they thought it would be a good idea for virtually all parties”; and reporting that “APHIS responded that the Agency agrees with the intent of the recommendation. APHIS will propose a regulatory change to abolish the current DQP licensing system and propose that the Agency license DQPs”).

⁷⁵ See HSUS, ANALYSIS OF HORSE PROTECTION ACT ENFORCEMENT DATA, 2018-2020 (2020), https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjmrZfCyoCCAxUfEGIAHSHxAY4QFnoECBUQAQ&url=https%3A%2F%2Fmobile.reginfo.gov%2Fpublic%2Fdo%2FDownloadDocument%3FpubId%3D%26eodoc%3Dtrue%26documentID%3D175244&usg=AOvVaw2yfvXTE-BzKj_wKEbW7bdc&opi=89978449; see Sara Amundson and Kitty Block, *The painful practice of ‘horse soring’ has no place in society*, HSLF BLOG (Oct. 1, 2021) (HSLF President and HSUS CEO, referencing the HSUS analysis of HPA enforcement data for 2018-2020, explain the need for legal reform), <https://hslf.org/blog/2021/06/painful-practice-horse-soring-has-no-place-society#:~:text=More%20recently%2C%20we%20conducted%20an,fail%20to%20detect%20these%20violations>.

⁷⁶ Editorial, *APHIS sends update regarding inspections*, The Walking Horse Report (Feb. 26, 2022), <https://www.walkinghorsereport.com/news/aphis-sends-update-regarding-inspections>.

⁷⁷ See NASEM Report at 16.

experience, be allowed to examine horses, as is done in other equine competitions. Industry inspectors are still turning a blind eye to soring and they cannot be trusted to find and cite violations of the HPA.

Soring continues to run rampant. In fact, APHIS' 2022 Impact Report states that nearly 25% of the horses inspected by USDA at 41 horse events were out of compliance, and nearly half of the horses swabbed tested positive for numbing agents used on the pastern to block pain and prevent horses from reacting positively to digital palpation during inspection.⁷⁸ The provision to eliminate DQPs' role in enforcement that was contained in the 2017 Rule and is included in the Proposed Rule is needed as urgently as before. Ending soring requires an end to industry-self policing.

Sorers have continued to circumvent HPA protections through deceitful methods, including pressure shoeing. Pressure shoeing, including tactics causing excessively thin hoof walls, sole depth and hoof rotation, the use of illegal metal pads, illegal weights and illegal substances between the hoof sole and pad (all concealed by pads/stacks that are not violations of the current regulatory regime), was discussed and documented in the NASEM Report.

APHIS notes in its Proposed Rule that pressure shoeing is a key reason for the proposed prohibition of the use of pads on Tennessee Walking Horses and racking horses for other than therapeutic purposes, and we agree that such pads must be prohibited.⁷⁹ Pressure shoeing of Tennessee Walking Horses has been a known and documented method of soring involving the use of pads and hoof bands in the breed. In fact, HIOs, DQPs, and USDA VMOs have documented pressure shoeing of padded Tennessee Walking Horses in dozens of cited cases resulting in citations. USDA even cited, fined, and disqualified an individual for pressure shoeing a flat shod horse at a South Carolina horse show in 2018.⁸⁰ The animal was found by a USDA VMO to be standing on blocks that were duct taped to his hooves in an attempt to cause the hooves to be sore.

Although the horse in that case was entered to be shown flat shod (without pads), it would be very feasible for a horse to be sored in this way, have pads and shoes applied, and then be shown in a padded class—with the damage going undetected. Unless the use of pads on walking horses is prohibited, elimination of action devices alone will not end horse soring. Inflicting pain on the sole of the hoof would become the primary method of soring using, among various methods, the one in this case – and it would be largely undetectable because pads could be nailed between the shoe and the hoof after such soring, obscuring the sole and preventing the use of hoof testers to determine whether soreness was present (the detection method used successfully in this case to make that determination). Given the difficulty in detecting pressure shoeing due to the limited availability of equipment and trained staff to conduct digital radiography and image analysis (and the considerable amount of time and effort that would be required to remove the typical “stack,” or “performance package” to examine the hoof and package for evidence of soring), it is highly likely that many incidents of pressure shoeing have gone and continue to go undetected. The American Association of Equine Practitioners and American Veterinary Medical Association also call for the prohibition on the use of shoeing performance packages.⁸¹

⁷⁸ APHIS, 2022 IMPACT REPORT: KEEPING U.S. AGRICULTURE HEALTHY FOR AMERICA AND THE WORLD 13 (2023), https://www.aphis.usda.gov/publications/aphis_general/2022-impact-report.pdf.

⁷⁹ See Horse Protection, 88 Fed. Reg. at 938.

⁸⁰ See *France*, Docket No. 20-J-0045 (U.S.D.A. 2023), <https://www.aphis.usda.gov/enforcement/daphnefrance2.pdf>.

⁸¹ AM. ASS'N. OF EQUINE PRACTITIONERS TENN. WALKING HORSE TASK FORCE, PUTTING THE HORSE FIRST: VETERINARY RECOMMENDATIONS FOR ENDING SORING OF TENNESSEE WALKING

There is no question that pads/stacks/performance packages as used on Tennessee Walking Horses and racking horses have been integral to the practice of pressure shoeing in these breeds. There is also little doubt that if action devices (i.e., chains) are no longer allowed, trainers who have relied on soring of the pastern to produce the artificial big lick gait—either instead of or in conjunction with pressure shoeing—will transition to relying on pressure shoeing to cause pain, if the regulations allow them to do so by inviting continued use of pads. Therefore, we urge the Agency to include a ban on pads in the final rule.

VI. Public support for reforms

The strong provisions contained in the 2017 Rule – many of which are included in the Proposed Rule – received robust support from Congress and the public. Bipartisan letters of support were signed by 182 Representatives and 42 Senators in 2016.⁸² Additionally, in February 2017, 154 Representatives sent a bipartisan letter to President Trump urging him to reinstate the 2017 HPA rule.⁸³ In spring 2021, [114 Representatives](#)⁸⁴ and 48 Senators⁸⁵ sent bipartisan letters urging the USDA to publish and reinstate the 2017 HPA rule.

And for the past few years, via appropriations provisions requested by almost half the House and more than one-third of the Senate, Congress has urged USDA to finalize regulations to strengthen Horse Protection Act enforcement.⁸⁶

HSUS alone received and submitted 56,350 comments on the 2016 proposed rule.⁸⁷ In addition, in response to the agency’s 2023 proposal to withdraw the 2017 rule, HSUS submitted 92,036 comments urging USDA not to withdraw the rule without committing to the prompt finalization of a new, equally strong or stronger rule. For this comment period we are submitting, under separate cover, 107,257 member and supporter signatures requesting that the agency finalize this rule as quickly as possible.

VII. USDA Must Move Forward Expeditiously with the New HPA Rule to Fulfill Its Obligations Under the HPA

Following public outcry about soring and the OIG’s 2010 Audit Report, and recognizing that the existing HPA regulatory regime was “not adequately detecting soring or promoting enforcement of the Act,” as noted in earlier congressional letters urging agency action, in 2016 the USDA decided that regulatory change was necessary to “achieve the Act’s purpose of ending the soring of horses”⁸⁸ and promulgated the

HORSES 3-4 (2008), <https://aaep.org/sites/default/files/2016-11/AAEP%20White%20Paper%20on%20TWH%20Soring.pdf>.

⁸² See HSUS HSLF HSVMA Comments (Letters of support, from members of Congress, horse industry professionals, and others, are located at Exhibits D and E to the HSUS HSLF HSVMA Comments.).

⁸³ Letter from 154 Representatives to President Donald J. Trump (Feb. 9, 2017), *available at* https://drive.google.com/file/d/1scL0wwDxGBDnU0R2lAp_82zuQlJpHRSK/view?pli=1.

⁸⁴ See Letter from 114 Representatives to Secretary Thomas J. Vilsack (March 16, 2021), *available at* <https://drive.google.com/file/d/1pRS7ewUfsAcvNCjYe90sn01dWH0d-V6j/view?usp=sharing>.

⁸⁵ Letter from 48 Senators to Secretary Thomas J. Vilsack (Apr. 29, 2021), *available at* <https://drive.google.com/file/d/1kdYuOSurTq0tM4M4mIJrFur64ydgYrHx/view>.

⁸⁶ See excerpts from House and Senate committee reports accompanying the FY 2021, FY 2022, FY 2023, and FY 2024 Agriculture, Rural Development, FDA and Related Agencies bills: <https://drive.google.com/file/d/13-41P056w0MKrofQqU5I3XJwmcN-ANaZ/view?usp=sharing>.

⁸⁷ See HSUS, Supporter Comment Letter on “Horse Protection: Licensing of Designated Qualified Persons and Other Amendments” (October 24, 2016), <https://www.regulations.gov/comment/APHIS-2011-0009-11183>.

⁸⁸ See 2016 Proposed Rule at 112-13.

2017 Rule. The record underlying the current Proposed Rule, as well as the administrative record for the 2017 Rule, are replete with additional evidence of the ineffective nature of the current regulatory regime.

Accordingly, we urge the Agency to swiftly finalize the Proposed Rule and implement it, incorporating the additions and adjustments we have requests above, well in advance of the 2024 show season. This would put the Agency in compliance with the HPA and provide the horses the much needed and long-awaited protection they deserve, and which they have been waiting for since the HPA was enacted more than fifty years ago.

The Agency must expeditiously finalize and implement a new rule that is equally as or more effective than the 2017 Rule with respect to enforcing and achieving the goals of the HPA. USDA announced in December 2021 that it would be pursuing a new proposed rule expeditiously as a top regulatory priority, putting the regulated community on notice that a rule similar to, if not stronger than, the 2017 rule would be forthcoming to strengthen horse soring regulations.⁸⁹ The Proposed Rule was drafted and sat at OMB since September 2022, before finally being published on the Federal Register on August 21, 2023.⁹⁰

Review of these public comments should be completed very quickly, and the final rule issued shortly thereafter with an immediate implementation date. There would seem to be no legitimate rationale or need for an extended rulemaking timeline. And, indeed, without an expeditious finalization and implementation of a new rule, the Agency's decision to withdraw the 2017 Rule would almost certainly be arbitrary, capricious, and not in accordance with law in violation of the Administrative Procedure Act and the HPA.⁹¹ APHIS must work quickly to finalize and implement the new Proposed Rule, actions that APHIS has promised were forthcoming for over a year now.

IX. Conclusion

In conclusion, we reiterate our support for many of the provisions in the Proposed Rule. We additionally hope that APHIS will incorporate our suggested modifications to strengthen the final rule. We urge APHIS to work quickly to finalize and implement the new rule, and request that APHIS consider our recommendations to make the Proposed Rule even stronger than the 2017 Rule.

⁸⁹ See Press Release, USDA, USDA Withdraws Proposed Horse Protection Rule, Plans to Issue Strengthened Regulations (Dec. 9, 2021), https://www.aphis.usda.gov/aphis/newsroom/stakeholder-info/sa_by_date/sa-2021/sa-12/horse-protection-regulations.

⁹⁰ See Horse Protection, 88 Fed. Reg. at 924.

⁹¹ See 5 U.S.C. § 706(2)(A).

Respectfully Submitted,



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



Brianna DelDuca
Regulatory Specialist, Federal Affairs
Humane Society Legislative Fund



Lorna Grande, DMV
Program Director, Education and Outreach
Humane Society Veterinary Medical Association