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October 20, 2023

Dr. Aaron Rhyner, DVM
Assistant Director
USDA APHIS Animal Care
Regulatory Analysis and Development
PPD, APHIS, Station 3A-03.8
4700 River Road, Unit 118
Riverdale, MD 20737-1238

Re: Docket No. APHIS-2022-0004. Horse Protection Act: Proposed Rules and Amendments

Dear Dr. Rhyner:

The American Association of Equine Practitioners (AAEP) condemn the practice of sorning to accentuate a horse's gait for training or show purposes and support the Animal and Plant Health Inspection Service's ongoing efforts to enforce the Horse Protection Act (HPA). We applaud the U.S. Department of Agriculture moving forward with this Proposed Rule to amend the HPA regulations in ways that are necessary to protect the welfare of horses. The AAEP appreciates the opportunity to submit these comments to the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) on the proposed changes to the Horse Protection Act (HPA) regulations.

General Comments on the Proposed Rule

The AAEP fully supports taking action to end the sorning of the Tennessee Walking Horse, Racking Horse, and Spotted Saddle Horse breeds as quickly as possible. The AAEP have always opposed sorning and supported the enforcement of the HPA. There is no question that sorning is an abusive practice that should not be tolerated or allowed to continue. Various efforts initiated since the enactment of the HPA 53 years ago to stop the sorning of so-called "big lick" walking horses have not accomplished the purpose of the 1970 Act: to end sorning. Improvements to the HPA enforcement program are clearly needed and justified.

It has become increasingly obvious that a primary focus of regulatory change should be to prohibit the use—wherever the Horse Protection Act is in force—of equipment that has been proven to be associated with sorning in the breeds most often sored: Tennessee Walking Horses, Racking Horses, and Spotted Saddle Horses. In 2012, the AVMA and AAEP called for an end to the use of "action devices" (including chains, ankle rings, collars, rollers and bracelets of wood or aluminum beads) and "performance packages" (also called "stacks" and "pads"). These devices, still in widespread use, can make it possible to mask the underlying causes of sorning while increasing the pain felt by these animals. They exacerbate the pain of chemical irritants applied to the legs; facilitate concealment of other objects that produce pain; cause the hoof to strike the ground at an

abnormal angle and with excessive force; and damage the hoof, all for the purpose of producing an unnatural, exaggerated gait.

Additionally, **the AAEP supports** the regulatory changes that would eliminate the horse show industry's failed self-policing system that is rife with conflicts of interest and unable to ensure compliance. The current system of utilizing Designated Qualified Person (DQP) licensing programs, sponsored by Horse Industry Organizations (HIOs), has never worked, and must be replaced. The AAEP, and the veterinary profession support creating a structure where only USDA-licensed, trained, and supervised inspectors, held accountable by the agency, are made available for hire by show management, but not selected by show management, to inspect horses for compliance with the HPA. The USDA Inspector General concurs with this assessment, having made a recommendation in its 2010 audit to replace the HIO/DQP model with a system of inspectors licensed and supervised directly by the Department.

However, it is equally important that any new regulations be focused on addressing the problem of soring and specifically the Tennessee Walking Horse, Racking Horse, and Spotted Saddle Horse breeds, which have a long history of soring abuse and violations. Soring is a problem that is recognized in a specific segment of the horse industry. We strongly recommend that Spotted Saddle Horses should be included along with Tennessee Walking Horses and Racking Horses anywhere in the rule that those two breeds are mentioned, because they too are victims of soring. The Spotted Saddle Horse breed and the Racking Horse breed are both breeds that are recognized for their soring practices, however, the use of a lower case 'r' in the term 'racking horse' fails to identify the specific breed that has been previously recognized by USDA and APHIS as a breed with a history of soring. As such, the AAEP urges USDA to modify the regulations to change "racking horse" to "Racking Horse Breed."

The AAEP does not believe that this regulation will prohibit or intends to prohibit the use of supportive pads or shoeing practices in breeds or disciplines outside the Tennessee Walking Horse, Racking Horse, or Spotted Saddle Horse breeds, as they do not result in, nor are they purposely used as part of, efforts to sore horses.

The PAST Act (HR 3091), which is supported by most major horse show organizations, the American Horse Council, every state veterinary medical association in the United States and a majority of members of Congress, includes prohibitions like the proposed rule. The PAST Act, however, explicitly limits such prohibitions to the Tennessee Walking Horse, Racking Horse, and Spotted Saddle Horse breeds. We understand there may be practical limitations to enforcement of the regulation as USDA Animal Care will need support in the form of resources and finances and trust that every effort will be made to focus on the horses at greatest risk of being sored.

The mandate of the Horse Protection Act and its detailed regulations have not yet fully prevented the illegal and inhumane treatment of horses. The delegated responsibility for ensuring compliance has fallen short. These proposed changes are positive and necessary steps toward ensuring that the Congressional mandate, clearly spelled out in the Act, is effectively enforced.

Our comments are focused on the substantive changes proposed by APHIS to certain aspects of the enforcement process and, more generally, whether these changes in the rule will help the agency more effectively enforce the HPA to do its job of immediately protecting horses.

Specific Comments on the Proposed Rule:

Prohibited Actions, Practices, Devices, and Substances

The AAEP strongly supports a ban on action devices and practices (including boots, collars, chains, beads, and bangles, and other devices), weighted shoes, stacks, and performance packages on the Tennessee Walking Horse, Racking Horse, and Spotted Saddle Horse breeds.

AAEP additionally supports a ban on all chemical agents and substances on the extremities above the hoof on Tennessee Walking Horses, Racking Horses, and Spotted Saddle Horse and of pads and wedges on those breeds, other than for therapeutic purposes.

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) should be prohibited on the three above-named breeds. In the rule, APHIS says “Elevating the foot using stacked hoof pads, or “performance packages,” can also cause an increase in tension in the tendons and ligaments leading to inflammation, as can extra weight on the horse’s foot.” According to the current and proposed regulations, 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 involving a horse, and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving...” is by definition sore. 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. Therefore, since weighted shoes or any devices or materials attached to the horse’s foot adding extra weight can lead to inflammation, they should be prohibited.

The AAEP is concerned that the proposed rule lacks a ban on weighted horseshoes for the Tennessee Walking Horse, Racking Horse, and Spotted Saddle Horse breeds. Omitting such a ban from the final rule would open the door for the use of excessively heavy shoes that in conjunction with other practices could be used to sore walking horses. It has been shown that the use of weighted shoes disproportionately increases the metabolic effort of performance horses and may also increase the potential for injury,¹ most likely in the form of tissue damage or overexertion of the musculature.²

APHIS is proposing to allow the use of pads and wedges on Tennessee Walking Horses and racking horses for therapeutic purposes, if prescribed by a veterinarian. The

¹ Wickler SJ, Hoyt DF, Clayton HM, et al. Energetic and kinematic consequences of weighting the distal limb. *Equine Vet J.* 2004;36(8):772-777.

² Murphy J. Weighted boots influence performance in show-jumping horses. *Vet. J.* 2009;181:74.76.

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.

The AAEP also recommends that the shoes for horses of all ages must be made completely of rubber, plastic, aluminum, or steel, and that the dimensions cannot exceed 1 1/2 inches wide by 1/2 inch thick and the shoe cannot obstruct the use of hoof testers on the sole and frog.

The AAEP is not in favor of artificially lengthening the hoof but if APHIS allows this then we recommend toe extensions within the limit of 50 percent of the natural hoof length as measured from the hairline of the hoof capsule at the center of the front pastern along the front of the hoof wall to the distal portion of the hoof wall at the tip of the toe. Toe extensions may be used to treat flexural issues of the distal interphalangeal joint by increasing the load on the deep digital flexor tendon thus leading to tendon elongation.³

Scar Rule

The AAEP supports language in the proposed rule replacing the “scar rule,” regarding dermatologic conditions that constitute soring; however, we ask that APHIS consider including this additional information, included in the NASEM study regarding – a trained inspector should examine skin of the front limb of the horse from the knee (carpus) to the hoof with particular attention to skin of pastern and fetlock and the coronary band. All areas of skin from carpus to hoof of both limbs should be free of any foreign substances, especially substances such as dyes, hair fillers, ointments, and other substances designed to camouflage scar rule violations during pre- and post- show inspections. There should be no chemical smell emanating from the skin and no substance present that can be rubbed off onto the hands or a cloth. Skin should be haired with no areas of loss of hair, patchy or diffuse. There can be no swelling, redness, excoriation, erosions, ulcers, seeping of fluids, or signs of a response to chronic injury such as epidermal thickening or presence of scales. Photo documentation of lesions, identifying information about the horse, and a date should be provided for any horse determined to be or suspected of being in violation of the scar rule.

Horse Identification

The AAEP recommends that APHIS require all Tennessee Walking Horses, Racking Horses, and Spotted Saddle Horses to have an International Standards Organization (“ISO”) Compliant microchip to compete. The individual identification of horses is essential to managing biosecurity concerns, but in the efforts to stop soring, it would enable APHIS to verify the identity of horses that have been disqualified due to soring. Numerous other equine breed and discipline organizations already require this, as well as many states. The requirement would bring the HPA in line with much of the equine industry.

³ Amitrano FN, Gutierrez-Nibeyro SD, Schaeffer DJ. Effect of hoof boots and toe-extension shoes on the forelimb kinetics of horses during walking. Am J Vet Res. 2016;77(5):527-33.

Horse Protection Inspectors (HPIs)

The AAEP strongly supports USDA's decision to eliminate the current Designated Qualified Person (DQP) program and remove Horse Industry Organizations (HIOs) from having a role in enforcement of the HPA. The DQP arrangement is burdened with conflicts of interest and other deficiencies. APHIS proposes a rigorous and robust training and screening plan, standard of conduct for practice, and disclosure of conflicts of interest for the HPIs.

The AAEP supports the creation of the new Horse Protection Inspector (HPI) program, who would be accredited veterinarians, with enhanced inspection training, and strong safeguards to prevent conflicts of interests and protect them.

While we support the deployment of veterinarians, especially equine veterinarians/AAEP members, and possibly licensed veterinarian technicians, especially equine veterinary technicians/American Association of Equine Veterinary Technician (AAEVT) members and believe the Principles of Veterinary Medical Ethics are exemplary, we fear there are still opportunities for conflicts of interest. It is critical to avoid situations where an HPI is inspecting a person from whom they have received compensation. In addition to the screening proposed in the rule to check for criminal and professional breaches of conduct, we recommend HPIs be restricted from servicing covered events within a 30-50-mile radius of their veterinary practice.

These recommendations apply to non-veterinary HPIs as well as other required professionals, such as farriers, e.g., a farrier or veterinary technician HPI should be prohibited from inspecting shows within a certain radius of their business and prevented from inspecting their own clients. Event managers should be prohibited from hiring any non-veterinary HPI with whom they have a client relationship.

APHIS is seeking 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. 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 the NASEM recommendations regarding requests for a re-inspection of a horse found in violation and the agency's response to that in this rule. 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 rule, the HPA requires that a horse that is found in violation must be prohibited from being shown. Any delay in or failure to invoke this prohibition would be in violation of the Act. Note: National and international horse show sanctioning bodies have rules and provisions to prevent horses that are found in violation and deemed ineligible to compete from doing so, with no hearing provided prior to the competition.

The AAEP feels show management should Not be allowed to choose or request which inspector is designated – be they an APHIS representative or HPI. Under the proposed rule (but not specified in the proposed regulatory language), management is allowed to choose which HPI/s to use for inspections from a list of APHIS-authorized HPIs on the agency's website. The rule clearly envisions that management can request that an APHIS representative be designated by the agency to be appointed by management to conduct inspections (to relieve management of liability under the Act). Just as management can request APHIS to designate a representative to be available for management to appoint to conduct inspections, APHIS should also receive requests from management for the agency to designate an HPI to be available for the event, which management can then appoint. If management can request an APHIS representative and appoint them for inspections but not choose the representative, they should not be able to choose which HPI to utilize for inspections.

Under current regulations, management may choose a DQP licensed inspector under a USDA-certified Horse Industry Organization. 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 violations, in part to be favored by management and therefore be chosen more often for inspection assignments. Although the hope is that HPIs would not be so tempted to overlook violations and would instead be vigilant in the execution of their duties, allowing management to choose their HPI invites such a conflict, and the public perception thereof. This is a problem that can easily be avoided by having APHIS designate which HPI will be available to management.

APHIS proposes that if event management requests an APHIS representative be appointed to conduct inspections on a certain date and no such representatives are available, event management could instead choose and appoint an HPI to inspect horses. 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. Neither the rule nor the 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."

If the variance would be relieving management from liability for allowing a sore horse to be shown, that's not something the agency has authority to do, since that liability is written in the HPA. APHIS cannot allow such a variance; it has the responsibility to ensure that inspectors (either APHIS representatives or HPIs) are available to attend horse shows, and in fact envisions that they will: "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."

So, in no situation should there be any need for management to be relieved of their responsibility to ensure that sore horses are not shown. No variance is granted under current regulations, if a DQP is not available. How would APHIS confirm that management tried to hire an HPI, but no HPI was available? Should APHIS move forward with offering a variance, against our recommendation, it should make a show immune from having an APHIS representative inspector/VMO, from showing up unannounced at any show to inspect horses, if APHIS deems necessary.

Grace Period for Compliance

The AAEP Does Not support a proposed grace period of 270 days after promulgation of the rule for compliance with two specific provisions regarding the time needed for a horse to acclimate to walking and performing without pads and/or artificial toe extensions.

If APHIS truly cares about the welfare of these breeds, it must act quickly to safeguard the well-being of these impacted horses. **There is NO valid reason and NO science behind a the 270-day period** that APHIS is proposing. Why would APHIS allow horses that have likely already been subjected to pain to continue to suffer for 270 more days while pads continue to be allowed, and why would they not prohibit the use of heavy horseshoes (also immediately), as they can induce pain? These prohibitions should become effective on the effective date of the final rule. In our experience as equine veterinarians, transitioning the horse from padded to flat shod is a matter of mechanics. There is NO scientific evidence of how long this takes. These breeds frequently have their packages removed at the end of the season for the benefit of the horse's hoof. It certainly should not take 270 days, which is an arbitrary number. Theoretically, transitioning could be done in a day. It is a matter of trimming the hoof to maintain the mechanical proportions, the horse should feel better without the weight of the package immediately.

Drug Testing

The AAEP strongly supports drug testing, especially the testing for substances on the legs and systemically administered drugs, as part of the HPA and recommends it continues, is enhanced, is enforced, and is funded, like other competition breeds, to maintain the integrity of the sport and health and welfare of the equine athletes. **The AAEP recommends** that the HPA rule require the collection of blood and urine samples from inspected horses to be analyzed for the presence of local anesthetic agents and excessive amounts of non-steroidal anti-inflammatory drugs, commonly referred to as NSAIDS. Both classes of substances can be used to mask soreing but are not detected by a physical exam.

Definitions

For the definition for the term “custodian,” the AAEP supports the new definition with the addition of “any adult person, the age of 18 or older” in this definition. Teenagers or younger should not be allowed to present horses for inspection.

For the definition for “lubricant,” the AAEP supports removal of this definition with the removal of all action devices.

For the definition for the term “therapeutic treatment,” the AAEP supports the new definition but with an addition at the end (see quotes). APHIS is proposing to define this term to ensure that therapeutic practices applied to any horse covered under the regulations are administered or overseen by qualified veterinarians only... **“and that such therapeutic practices can’t supersede what is allowed within the HPA.”**
Example: You can’t place substances on the leg of a horse because it’s therapeutic.
Conclusion

The AAEP supports APHIS’ efforts to strengthen enforcement of the HPA. Changes to the HPA regulations are clearly needed and justified. We appreciate the opportunity to comment and provide needed feedback on behalf of our organizations’ membership.

About AAEP

The American Association of Equine Practitioners, headquartered in Lexington, Ky., was founded in 1954 as a non-profit organization dedicated to the health and welfare of the horse. Currently, AAEP reaches more than 5 million horse owners through its over 9,000 members worldwide and is actively involved in ethics issues, practice management, research and continuing education in the equine veterinary profession and horse industry.

If you have any questions or require additional information, please do not hesitate to contact Mr. Keith Kleine, AAEP Director of Industry Relations, at 859-233-0147 or via e-mail to kkleine@aaep.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Franklin', with a stylized flourish at the end.

Robert P. Franklin, DVM
2023 AAEP President