



Animal Welfare Institute

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

RE: Notice of Horse Protection; Licensing of Designated Qualified Persons and Other Amendments Proposed Rule Withdrawal (Docket No. APHIS-2011-0009)

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 withdrawal of a final Horse Protection Act (HPA) rule that was filed for public inspection by the Office of the Federal Register on January 19, 2017.

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). AWI has serious concerns with USDA's proposed withdrawal of the 2017 HPA rule as maintaining the status quo perpetuates an industry self-inspection regime that has proven woefully inadequate and leaves horses at greater (and sustained) risk of abuse. That said, we were gratified to see APHIS release a new HPA rulemaking for public review on August 17, 2023 (Docket No. APHIS-2022-0004). A final HPA rule must be issued and implemented as expeditiously as possible.

Discussion

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, it primarily outsources 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 Analysis of USDA records from 2018-2020 by the Humane Society of the United States shows the department’s inspectors found violations at a rate 403% higher than industry personnel.²

Unfortunately, we know that soring is rampant. 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.”³

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. The rule would have moved away from the industry-run self-policing scheme, ensuring that only USDA trained and licensed inspectors (such as APHIS Veterinary Medical Officers) would conduct inspections.⁴ This rulemaking would finally have eliminated the inherent conflict of interest that has 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, Designated Qualified Persons (the individuals who appoint to undertake examinations of the horses) have a “clear conflict of interest” and consequently, “did not always inspect horses according to the requirements of the Horse Protection Act.” The opening paragraph of audit’s Executive Summary of the Horse Protection Program did not mince words:

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 Humane Society of the United States Press Release. Humane Groups Denounce USDA Plan to Withdraw 2017 Rule to Protect Horses. Available: <https://www.humanesociety.org/news/humane-groups-denounce-usda-plan-withdraw-2017-rule-protect-horses>

³ 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

⁴ 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>

Concerning the treatment of show horses, we found that APHIS' program for inspecting horses for soring is not adequate to ensure that these animals are not being abused. At present, horse industry organizations hire their own inspectors (known as designated qualified persons (DQP)) to inspect horses at the shows they sponsor. However, we found that DQPs do not always inspect horses to effectively enforce the law and regulations. (pg. 1)

Indeed, in USDA's response to the audit's findings, it pledged to replace the industry self-policing with a system that relied on USDA licensed and trained inspectors.⁵ Well over a decade later, this change has yet to occur.⁶ In 2021, the National Academies of Sciences, Engineering, and Medicine (NASEM) issued a report – A Review of Methods for Detecting Soreness in Horses – which again affirmed the need to end the current industry self-policing scheme given the severe shortcomings to this approach.⁷ 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.⁸

USDA has signaled that it intends to move forward with a new HPA rulemaking (even stating that it was “top regulatory priority” in 2021), but ongoing delays have underscored the perplexingly slow rate of progress on this issue. Critically for purposes of HPA enforcement, USDA could both implement the 2017 rule now and modify the regulations as appropriate – e.g., incorporating new information from the NASEM study. In other words, implementing the 2017 rulemaking and issuing enhanced HPA regulations are not mutually exclusive. Continuing with the status quo for any length of time means perpetuating a grossly inadequate inspection model that has left Tennessee Walking Horses uniquely vulnerable to abuse.

In July of 2022, the United States Court of Appeals for the District of Columbia Circuit held that USDA unlawfully withdrew the 2017 HPA regulations, ruling that “although political transitions may provide a sound basis for a change in policy, they do not relieve agencies of their procedural obligations.” *Humane Soc'y of the U.S. v. U.S. Dep't of Agric.*, 41 F.4th 564, 575 (D.C. Cir. 2022). But rather than reissue and implement the regulations in response to the court decision, USDA opted to prolong critical reforms (necessary by USDA's own admission) further.

⁵ USDA Office of Inspector General Audit Report. Animal and Plant Health Inspection Service Administration of the Horse Protection Program and the Slaughter Horse Transport Program. 2010. Available: <https://www.animallaw.info/sites/default/files/33601-02-KC.pdf>

⁶ The 2010 audit noted the “limited resources...which APHIS regards as inadequate to send its own veterinarians to the approximately 500 horse shows that are held each year.” Annual funding for the program – as appropriated by Congress – remained stagnant at \$500,000 for many years. HPA funding was boosted to approximately \$700,000 for FY13-FY19, then Congress increased it to \$1 million in FY20, then to just over \$2 million in FY21, followed by slightly over \$3 million in FY22, and most recently over \$4 million for FY23 – the highest amount ever appropriated towards HPA enforcement.

⁷ 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>

⁸ 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).

According to the notice of the proposed withdrawal, “APHIS will not be able to promulgate a new HPA rule within 6 months.” Again, 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), we remain concerned that USDA may continue to kick the proverbial can down the road. These delays notwithstanding, we wish to stress that, at an absolute minimum, any new HPA rulemaking should contain all of the core elements of the 2017 rulemaking so that horses are better protected from soring.

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 (similar to what was included in the 2017 rule) on action devices, pads, hoof bands, wedges, and other soring paraphernalia for Tennessee Walking Horses, Racking Horses, and Spotted Saddle Horses (the latter two as related gaited breeds that are also subjected to soring). 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 2017 rule can and should be strengthened as use of weighted shoes has become notorious (and to some extent synonymous) with soring methods.

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 invested significant time and resources in developing the 2017 regulations, so a clear timeline and commitment for much-needed reforms is essential. USDA’s recent announcement that it will soon begin seeking public input on a rule to bolster HPA requirements is a welcome development. We look forward to continuing to engage with USDA on the proposed changes in the months ahead. 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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