COMMENTS OF THE
AMERICAN HORSE PROTECTION ASSOCIATION, INC.
IN RESPONSE TO DOCKET APHIS-2022-0004
October 20, 2023

The American Horse Protection Association, Inc. (AHPA), is pleased to submit comments in support of the final rule that was filed for public inspection by the Office of the Federal Register (OFR) on August 17, 2023. This rule will give the Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) the tools to significantly strengthen the Horse Protection Act regulations (9 C.F.R. Part 11) by 1) eliminating the HIO system of self-enforcement; 2) prohibiting the use of action devices and non-therapeutic pads and wedges; and 3) clarifying the scar rule language.

Introduction

AHPA is a nonprofit humane organization dedicated to the welfare of equines. Its members include persons who own, train and show Tennessee Walking Horses. These members, and AHPA's membership generally, oppose the soring of Tennessee Walking Horses and related breeds that have a history of soring abuse and support the effective enforcement of the Horse Protection Act, 15 U.S.C. § 1821 *et seq*. (HPA), by the Department of Agriculture.

AHPA has been an active participant in issues relating to the enforcement of the HPA since it was enacted in 1970, commenting on rulemakings proposed by the Department and participating in an extensive series of meetings among Walking Horse organizations, other breed and horse show organizations, veterinarians and farriers that led to a major revision of the HPA regulations in 1988. AHPA was also a major participant in meetings of interested horse and humane organizations conducted by USDA in connection with its development of a Horse Protection Strategic Plan in the late 1990s.[1] It participated actively in USDA efforts to develop effective, uniform and consistent Horse Industry Organization enforcement rules and practices, including in particular those implemented in the Horse Protection Operating Plans that were negotiated and agreed to by HIOs and the USDA during 1999 – 2009

AHPA has been a proponent of the regulatory changes recommended by the Department of Agriculture's Office of Inspector General in Audit Report No. 33601-2-KC, issued on September 30, 2010, as well as the National Academy of Sciences, Engineering, and Medicine (NASEM) study, "A Review of Methods for Detecting Soreness in Horses (2020)." In December 2013, AHPA, along with Friends of Sound

[1] The Strategic Plan, published at 62 Fed. Reg. 63510 (Dec. 1, 1997), identified and proposed solutions to a number of weaknesses in the enforcement of the HPA that had contributed to the persistence of soring practices. Notably, these included a finding that the horse industry penalties for soring were inadequate and inconsistent, and that a credible and uniform industry-based penalty system was needed.

Horses, Inc., and Donna Preston Moore, D.V.M., M.S., submitted for APHIS's consideration draft regulations to implement the OIG recommendations and to eliminate actions devices, "show stacks" and other abusive practices. AHPA was pleased to see that APHIS submitted a final rule to that effect on January 11, 2017, only to be withdrawn from the Office of Federal Regulations (OFR) on instructions from the new administration's Chief of Staff which ultimately resulted in APHIS withdrawing the rule altogether. With the announcement of this proposed rule, six years later, AHPA is once again cautiously optimistic that APHIS will move forward with improvements in enforcement of the HPA, and soring will become a thing of the past.

AHPA agrees with APHIS's assessment that a fundamental change in the regulatory approach to enforcement of the Horse Protection Act is warranted. The premise of the HPA regulations adopted in 1979 – that horse industry self-policing by Designated Qualified Persons would effectively identify and punish violators of the HPA, and that soring could be eliminated even though action devices and "show stacks" were permitted – has been proven wrong. Furthermore, APHIS's longstanding but ultimately unsuccessful efforts to engage the Walking Horse industry constructively to develop consensus to end abusive practices has demonstrated that soring is intrinsic to the way "big lick" Walking Horses are trained and shown. There is no longer any justification for the view that the Walking Horse industry can or will stop soring. Change in the way the HPA is enforced in the field is long overdue.

APHIS's current regulations allow a variety of devices, shoeing techniques and abusive practices that are known to sore horses or to conceal the evidence of soring. The evidence accumulated over 35 years of enforcement under the 1979 regulations establishes unequivocally that chemical and mechanical soring persists and that devices, practices and techniques permitted by those regulations are used to sore horses. The horse industry organization-based DQP inspection process has been both ineffective at detecting soring and punishing and deterring violators. Therefore, AHPA wholeheartedly supports the proposed rule and urges that it be adopted promptly.

AHPA offers the following specific comments for the purpose of clarifying certain aspects of the rule and suggesting revisions to better accomplish its objectives.

§ 11.1 Definitions

Although not specifically defined, the current regulations refer to "Tennessee Walking Horses and racking horses." However, the Racking Horse is a specific breed and should not be confused with other gaited breeds that perform a rack. Hence, AHPA recommends that the term 'racking horse' be changed to "Racking Horse," in order to avoid confusion between the specific breed and other breeds that perform a rack.

Additionally, AHPA strongly recommends that the Spotted Saddle Horse be specifically included along with Tennessee Walking Horses and Racking Horses as the former historically has also been subjected to soring abuses.

Further, § 11.1 does not include a definition of "pressure shoeing," an abusive practice that has been clearly documented through APHIS enforcement. Sections 11.6(b)(14) and (19) refers to inserting "objects or materials between the pad and the hoof" and "shoeing a horse, or trimming a horse's hoof in a manner that will cause a horse to suffer…" Even though §11.6(c)(3) will prohibit the use of non-therapeutic pads on any Tennessee Walking Horse or Racking Horse [or Spotted Saddle Horse] at any horse show, horse exhibition, horse sale, or horse auction, if therapeutic treatment is pursued and utilizes a pad or wedge, there is potential for pressure shoeing. To improve enforcement in this area AHPA recommends that "pressure shoeing" be defined clearly in § 11.1 to prevent uncertainty or ambiguity in § 11.6(c)(3).

§ 11.5 Appeal of inspection reports

AHPA recommends that this section be clarified by adding language making it clear that inspection reports may not be appealed as the regulations only allow for the horse to be disqualified. With the elimination of the HIO system of self-enforcement there would be no penalty or prosecution. Appeals should be only for cases that are adjudicated.

§ 11.6 Prohibitions concerning exhibitors

AHPA believes that the intent and substance of the proposed revision of current § 11.2 is excellent. However, per its previous comments, several provisions of the draft rule lack clarity, and in the past, have raised concerns about the scope of some of the revisions. Again, AHPA recommends these problems be addressed in the final rule.

The HPA is not breed-specific. As a result, the "Specific prohibitions" in § 11.6(b) of the current regulations apply to all horses in covered shows, exhibitions and sales. While these prohibitions have particular applicability to the Tennessee Walking Horse, Racking Horse and Spotted Saddle Horse, many of the current prohibitions also have relevance to horse breeds that show under United States Equestrian Federation rules.[2] These include restrictions on the weight and characteristics of action devices, boots and collars; restrictions on the use of pads; and restrictions on shoeing practices. To date this has not been controversial, because the USEF breed-specific rules (*e.g.,* for American Saddlebreds, Morgans and Arabians) relating to action devices, shoeing practices and pads are consistent with, and in most cases more restrictive than, the HPA rules.

The proposed rule changes the current regulatory approach by creating a new body of "Specific prohibitions" that would <u>not</u> apply to all breeds, but would be limited to Tennessee Walking Horses, Racking Horses [and Spotted Saddle Horses]. These

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[2] USEF General Rule 839, Cruelty and Abuse of a Horse, prohibits a wide range of cruel or abusive practices. Even though Tennessee Walking Horses, Racking Horses and Spotted Saddle Horses are not recognized USEF breeds, USEF General Rule 839.4.n prohibits the soring of Tennessee Walking Horses, Racking Horses and Spotted Saddle Horses at USEF licensed shows, consistent with the requirements of the HPA.

include, in particular, proposed §§ 11.6(c) (1) (prohibiting action devices); (2) (prohibiting artificial extensions of the toe); and (3) (prohibiting the use of non-therapeutic pads and wedges).

Although APHIS's intention appears to be clear, comments during the previous proposed rule in 2017 indicate that there was significant confusion among some USEF-governed show horse breeds about whether and how the new blanket prohibitions on action devices, and especially on pads and wedges, will apply to them, particularly if they are required for protection or therapeutic purposes.[3]

Accordingly, per the language of the HPA and the existing regulations, AHPA believes that the final rulemaking should reaffirm, once again, that the HPA applies to all horse show breeds as provided in §§ 11.6(a) and (b), and that the new restrictions provided in § 11.6(c) that are specific to Tennessee Walking Horses, Racking Horse, and Spotted Saddle Horses are not intended to negate the continuing obligation of other breeds and shows to comply with the law.

§ 11.6(c) Specific prohibitions for Tennessee Walking Horses, Racking Horses [and Spotted Saddle Horses]

AHPA supports the new restrictions contained in § 11.6(c) regarding the elimination of action devices, artificial toe extensions, and non-therapeutic pads and wedges, and believes that by eliminating these practices, the ability to sore horses will be greatly minimized. Again, AHPA strongly recommends include Spotted Saddle Horses along with Tennessee Walking Horses and Racking Horses.

With regard to §§ 11.6(c)(2) and (3), specifically the exemption relating to therapeutic treatment as approved in writing by a licensed veterinarian, it appears that APHIS has made a policy decision that the "therapeutic treatment" exception will not be allowed to trump the provisions of proposed §§ 11.6(a) and (b)and specifically, §§ 11.6(c)(2) and (3) with respect to Tennessee Walking Horses, Racking Horses [and Spotted Saddle Horses]. AHPA believes that if horses require pads, wedges or artificial toe extensions for therapeutic purposes, they should not be shown or exhibited. However, if APHIS allows horses to be shown or exhibited with therapeutic pads, such treatment, should be prescribed in writing by a licensed veterinarian in the state in which treatment is given, or a veterinary technician eligible for licensing as an HPI licensed under the laws of one or more states. *See, e.g.*, Tenn. Code Ann. § 63-12-135; Ky. Rev. Stat. § 321.441 (licensure of veterinary technicians).

Most importantly, information on horses receiving therapeutic treatment approved by a licensed veterinarian or veterinary technician must be kept in an up-to-date online database in order to verify the horse's status *prior* to inspection and showing in order to

[3] The comments of the USEF submitted to APHIS on October 3, 2016, reflect these concerns.

avoid any confusion or confrontation. AHPA believes the final rule and rulemaking notice should discuss this issue explicitly to avoid any ambiguity.

Further, if therapeutic treatment involves the use of pads and wedges, or artificial length of toe, or any combination thereof, APHIS should be mindful that, no matter how unlikely, pressure shoeing can still occur, and gives more credence for including a definition of pressure shoeing/soring in § 11.1, as previously suggested.

Finally, with regard to this section, AHPA notes three issues relating to the proposed specific prohibitions that should be addressed in the final rule, especially given that the proposed rule eliminates the use of action devices, pads and wedges, and artificial toe extensions, all of which historically are used to accentuate the gaits in in the Tennessee Walking Horse, Racking Horse, and the Spotted Saddle Horse. AHPA believes that APHIS must anticipate how the Industry may attempt to recreate the exaggerated gaits previously achieved through the use of devices by specifically addressing 1) shoe weight and size; 2) toe length, and 3) pressure soring in order to ensure that new methods of soring do not emerge.

§ 11.6(a)(10) -- Shoe weight and size

AHPA supports the extension of the current prohibition on the use of additional weight and the current shoe weight limitation (§ 11.2(b)(9)) to horses up to two years old (proposed § 11.2(a)(3)). However, the phrase "keg or similar conventional horseshoe" is not defined, and, as stated in its previous comments, AHPA is not aware of a commonly accepted, clearly understood meaning attributed to these terms. For example, can a "keg or similar conventional horseshoe" have calks? Toe or side clips? A rolled toe? Does a "keg or similar conventional horseshoe" have defined limits regarding its thickness and/or width? Or does the phrase refer to any commercially available horseshoe that is not custom-fabricated by a farrier?" Admittedly, developing a regulatory definition that clearly distinguishes between permitted shoes and prohibited "non-conventional" shoes may be challenging. However, AHPA recommends as an alternative, APHIS include other specific types of abusive shoes that APHIS wants to ban in order to prevent soring, in § 11.6(b)(15).

AHPA agrees that no weight other than a horseshoe should be affixed to a horse's leg or hoof. This issue appears to be addressed by proposed §§ 11.6(b)(14) (prohibiting any material from being inserted into the hoof) and (20) (prohibiting weights affixed to the hoof wall or shoe, as well as hollow shoes that can be weighted with mercury or other substances), and proposed § 11.6(c)(3) (prohibiting pads, and therefore any weight affixed to a pad). If APHIS is also concerned with the weight of the shoe itself, AHPA believes that this is best addressed by setting a shoe weight limit for all horses rather than relying on undefined concepts such as a "keg" or "conventional" shoe.

Gaited horses often wear somewhat heavier shoes. While shoe weight may be used to influence performance, it does not appear that modest increases above the plain "keg" shoe weights noted above will, in itself, have any significant potential to sore horses, as long as action devices, pads, extra weight, pressure shoeing and other abusive practices are prohibited. Therefore, AHPA recommends that the maximum shoe weight for horses two years and older be 18 ounces, per its previous submissions.

§ 11.6(b)(11) Artificial extension of toe length

As the use of toe extension has non-soring uses in other breeds, AHPA agrees that the current provision contained in § 11.2(b)(11) to allow artificial extensions on horses other than Tennessee Walking Horses or Racking Horse [or Spotted Saddle Horses] should be retained.

AHPA agrees with the new provision § 11.6(c)(2); however, the proposed rule does not include a maximum toe length for Tennessee Walking Horse or Racking Horses or Spotted Saddle Horses. The rules for most USEF-governed breeds that have animated show gaits include such limits. In light of the enforcement history of the Act, and as it recommended in its previous submissions, AHPA believes that a toe-length rule is entirely appropriate for Tennessee Walking Horses, Racking Horses, and Spotted Saddle Horses, especially given the fact that action devices and pads will no longer be allowed, pending approval of the final rule. Therefore, as noted in previous comments, AHPA recommends that the maximum toe length be 4 ½ inches, including the thickness of the shoe, measured as specified in USEF General Rule 510.

§ 11.6(b)(14) – Object or material inserted between the pad and the hoof

The elimination of non-therapeutic pads and wedges in proposed § 11.6(c)(3) means that proposed § 11.6(b)(14) should be revised to prohibit <u>all</u> objects or materials inserted into the hoof. Most hoof-packing materials require a pad to hold them in place. Furthermore, most of the commercial hoof-packing products that can be used without a pad (*e.g.,* pour-in polyurethane products) harden after application and are prohibited in any event by proposed § 11.6(b)(14) (prohibiting "[a]crylic and other hardening substances"). AHPA is aware that there are a limited number of pour-in polyurethane products that retain their flexibility after application (*e.g.*, Equipac). However, given well-documented enforcement concerns relating to pressure shoeing of Tennessee Walking Horses and Racking Horses [and Spotted Saddle Horses], AHPA believes that even these materials should be prohibited except in case of therapeutic treatment involving products such as Easy's Slipper® or other similar glue on shoes.

APHIS has asked for input as to the appropriateness of deferring the prohibition of pads for 270 days after promulgation of a final rule in order for horses to acclimate to

being flat shod. Horses with aligned pastern axis should have no issue with adapting to being flat shod. While AHPA acknowledges that some horses, particularly those with any degree of laminitis, underground heels or overgrown toes that adversely affect the deep digital flexor tendon may need more time to acclimate and need therapeutic treatment, horses with those afflictions are better suited to not being shown at all until the issue(s) are resolved. Further, as APHIS has aptly pointed out, that the use of non-therapeutic pads and wedges can result in swollen flexor tendons and signs of inflammation. With the above-mentioned exceptions, delaying the effective date serves only to subject horses to further stress and discomfort.

§ 11.6(c)(4) Foreign Substances

Given the substantial number of horses testing positive for foreign substance(s) by APHIS, AHPA agrees that all substances on the extremities above the hoof of any Tennessee Walking Horse or Racking Horse [or Spotted Saddle Horse] entered for the purposes of being shown or exhibited, sold, auctioned or offered for sale in or on the grounds of any horse show, exhibition, sale or auction regardless of the substance's composition as proposed in section 11.6(c)(4).

§ 11.6(b)(22) Scar rule

The NASEM study has concluded the scar rule needs to be re-written, a point the Association highlighted the need for in its written comments back in 2016. It is encouraging that the new rule will clarify the scar rule by modifying the description of visible dermatologic changes that indicate soring.

The need to revise the scar rule is justified by the well-documented, increasingly common presence of unusual patterns of skin folds or corrugations, hair loss and other abnormal tissue on the rear of the fore pasterns of Tennessee Walking Horses, Racking Horses and Spotted Saddle Horses. APHIS has consistently taken the position that this tissue violates the scar rule. Replacing the scar rule with language that more accurately describes visible dermatologic changes indicative of soring such as 'irritation, moisture, edema, swelling, redness, epidermal thickening, loss of hair (patchy or diffuse) or other evidence of inflammation," and removing the provision that such changes be bilateral are fundamental to eliminating the practice of soring.

§ 11.8 Inspection and detention of horses

Section 11.8(a) allows any APHIS representative or HPI appointed by management to inspect a horse. Sections 11.8(c) and (d), provide that only an APHIS representative may detain and keep under supervision a horse which is sore or which an APHIS representative has probable cause to believe is sore. In its rulemaking, APHIS states "HPIs would not be considered to be APHIS representatives…because they are not employees of APHIS…" In the event that management declines to utilize an APHIS

representative, who will be responsible for detaining the horse? Conversely, for events utilizing only a HPI, who will be responsible for detaining the horse?

Section 11.8(h) provides for a custodian to request re-inspection and testing of said horse within a 24-hour period providing that the request is made of an APHIS representative or HPI, that an APHIS representative determines sufficient cause exists for re-inspection, and the horse is maintained under APHIS supervisory custody. In conjunction with § 11.10(a)(5) which requires event management to provide an area to be used for detention of horses, it appears that APHIS's intent is for the horse to remain in a designated holding area under the supervision of an APHIS representative and to not return to its stall, trailer or to leave the event grounds, a requirement that AHPA fully supports.

With regard to this section, APHIS has invited additional comment regarding possible disputes between custodians and either APHIS representatives or HPIs. As APHIS has stated in its rulemaking, both the Act {15 U.S.C. 1883(a)} and its regulations {9 C.F.R. 11.23(b)(1)} "require management to (among other acts) disqualify a horse that is sore in instances where (1) the horse is sore or (2) or management is notified by a DQP or APHIS representative that the horse is sore." By using veterinarians and veterinary technicians who have completed a formal training program and have demonstrated professional integrity and reliability, APHIS has ensured that inspectors have the authority to determine whether a horse is sore and should be disqualified from showing in a class. It is unreasonable to assume a custodian would have more knowledge than an APHIS representative or a HPI to challenge such a decision. APHIS is absolutely correct; to challenge the decision of personnel specifically trained to detect soring is to undermine the very intent of the Act itself. There should be no opportunity to second guess an inspector's decision.

§ 11.13 Responsibilities and liabilities of management

Neither §§ 11.13 or 11.18, nor any other provision in the proposed rule, discuss how the management of horse shows, exhibitions, sales and auctions will appoint and compensate HPIs. The final rule should address this issue.

AHPA recognizes that the entirety of this process may not be appropriate for regulatory treatment, and that APHIS may need flexibility to develop and revise the process over time without triggering the requirement of a rule amendment. However, the final rule should make clear that the process is subject to APHIS's oversight and control. Under no circumstances should any existing or future HIO – especially one that sponsored a DQP program under the current HPA rules – be allowed to manage or participate in the process. The proposed rule is expressly intended to divorce HIOs and DQPs from the process of enforcing the HPA due to serious identified conflicts of interest.

APHIS's authorization, training, and supervision of HPIs will go a long way to eliminate these conflicts of interest. But the potential for conflicts to recur increases materially if HIOs effectively become the agents of HPIs for appointment by horse show

management. By assembling a group of HPIs believed to be sympathetic to "big lick" proponents and/or lenient in their inspection practices, and then controlling the process by which those HPIs are assigned to and paid by horse shows affiliated with the HIO, the HIOs can undermine the independence of the inspection process that
the proposed rule is intended to restore. Furthermore, there is the potential that such "captive" HPIs (like some DQPs today) will develop distrustful or hostile relationships with APHIS representatives, thereby undermining the effectiveness of APHIS's own enforcement efforts.

Therefore, AHPA recommends that the final rule provide that APHIS, not event management, control the designation and assignment of HPIs to horse shows, exhibitions, sales and auctions with cost of contracting services left to event management. Since proposed § 11.16(a) already requires that event management notify APHIS at least 30 days in advance of the event, there will be ample time for APHIS to do this.

Also, § 11.13(b)(3) provides that if more than 100 horses are entered in an event utilizing an APHIS representative or a HPI to inspect horses, event management shall have at least one farrier physically present in order to assist an inspector in the inspection of a horse wearing a pad and/or wedge for therapeutic purposes. AHPA reiterates that even with events at which no horses are wearing pads and/or wedges, shoes may be thrown or need adjustment, and recommends that a farrier be on the grounds anytime an event has more than 100 horses.

§ 11.14 Records required and disposition thereof

Section 11.14(a) requires that event management shall maintain for a minimum of 90 days following the closed date of the event records detailing the specifics of the event, e.g., date, venue, class sheets, etc. However, it does not include the entry form for each horse, which may provide additional information otherwise not provided by management. Accordingly, AHPA recommends that entry forms be included in this section.

§ 11.16 Reporting by management

Section 11.16(a)(6) provides that if neither an APHIS representative nor an HPI is available on the date of the event, event management may request a variance. In what context does APHIS consider a variance? Relieving liability of event management in neither an APHIS representative nor a HPI is available, is not a legal option. Further, APHIS has stated in its rulemaking that by relying on veterinarians and veterinary technicians it will maintain a level of "sufficient number of HPIs to meet [the] demand…" Consequently, there should be no instance in which event management should be denied either an APHIS representative or an HPI. **I**f management chooses to forego having an APHIS representative or a HPI present at its event it should be made clear that management is responsible for ensuring that no sore horses be present, and if a sore horse is found by APHIS, it will be held liable.

§ 11.19 Authorization and training of Horse Protection Inspectors (HPIs)

In its final rule filed for public inspection in 2017 but ultimately withdrawn, APHIS proposed to discontinue third-party training and oversight of DQPs and proposed all inspectors be trained and licensed by APHIS. When the final rule was pulled, business continued as usual, to no one's surprise. Six more years have since passed, and the devices, practices and techniques (chemical and mechanical) permitted by the current regulations are still being used to sore horses. Quite clearly, the horse industry organization-based DQP inspection process has been both ineffective at detecting soring and punishing and deterring violators.

AHPA supports APHIS's decision to replace the current system of Designated Qualified Persons (DQPs) trained and licensed by Horse Industry Organizations (HIOs) with Horse Protection Inspectors (HPIs) authorized and trained by APHIS. As history has shown, Industry self-enforcement has been ineffective, fraught with conflicts of interest and inadequate training, resulting in more than 40 years of "looking the other way." As far back as the 1997 Strategic Plan, and the 2010 USDA's Office of Inspector General (OIG) report, evidence showed significant defects in the DQP system. Most recently, the NASEM study, published in 2020, concluded: 1) that veterinarians, not DQPs, needed to conduct inspections; and 2) the detection of pain should be left to veterinarians.

AHPA recommends the following revisions to the proposed rule to clarify several of its provisions.

§ 11.19(a)(2)(v): This subsection should be expanded to make any conviction under state or federal law for animal cruelty or neglect, or any administrative penalty or suspension imposed for violating professional licensure requirements, a disqualifying factor for authorization as an HPI. Proposed § 11.19(2)(v) touch on these issues, but is inadequate as currently drafted because they are more narrowly focused and emphasize matters relating to honesty, integrity and reliability. Language more clearly related to violations of animal humane laws and professional licensure requirements should be added.

§ 11.19(a)(2)(iii): APHIS should acknowledge that even if veterinarians and veterinary technicians (or their employers) do not themselves participate in showing horses, judging or managing Walking Horse shows, exhibitions, sales and auctions, their family members and the clientele that they serve certainly may. Family conflicts are obvious. Furthermore, because veterinarians and veterinary technicians are dependent on their clientele (or the clientele of their employers) for their livelihoods, it is clear that serving as an HPI at a show at which a client's horses are entered presents serious potential challenges to an HPI's objectivity, and subjects the HPI to obvious and predictable client pressure to "pass" the client's horse.

AHPA agrees that the fact that a veterinarian's or veterinary technician's family member or client participates in showing horses, judging or managing Walking Horse shows exhibitions, sales and auctions should not disqualify the applicant

from being authorized as an HPI. However, an authorized HPI should not be permitted to inspect a horse if family or business relationships could impair the HPI's objectivity. At a minimum, therefore, the proposed rule should include: (1) a recusal requirement if an HPI is presented with a horse owned, trained, or exhibited by or in the custody of a family member, co-worker or client; and (2) a requirement that show management provide a copy of show entries to HPIs at least two (2) business days prior to the show so that HPIs can identify potential recusal situations in advance.

As an alternative, APHIS should consider whether to require applicants for HPI authorization to provide information identifying family members, co-workers and clients that participate in showing horses, judging or managing Walking Horse shows, exhibitions, sales and auctions. This "conflict of interest" disclosure should be required annually. APHIS should eliminate from consideration those applicants whose family relationships or livelihood are heavily dependent on persons who participate in the Walking Horse show industry. APHIS should also provide a copy of the "conflict of interest" statement to the management of horse shows, exhibitions, sales and auctions that use the HPI's services at the time the HPI is assigned or selected to work the event.

AHPA believes that § 11.19 of the proposed rule should become effective as soon as possible following APHIS's consideration of public comments and development of final prohibited actions, practices, devices and substances. This could, and should, if at all possible, be accomplished by late 2023 or early 2024, well in advance of the 2024 horse show season. However, the process of identifying candidates and training, authorizing and fielding HPIs pursuant to § 11.19 is likely to require substantially longer lead time. In addition, Additionally, AHPA recognizes that APHIS will need to ensure that the infrastructure for additional personnel, equipment, recordkeeping and IT requirements are in place in order to maximize a seamless approach to enforcement. AHPA is concerned that this lead time will delay the effective date of the final rule, thereby postponing the implementation of new § 11.6.

The Association believes that § 11.6(c) will have an enormously important impact in deterring soring practices, and the benefit of early implementation of this provision far outweighs any potential detriment associated with having the rule enforced preliminarily by DQPs (subject, of course, to monitoring and oversight by APHIS representatives). Accordingly, it requests that APHIS clarify the final rule to prohibit HIOs from licensing new DQPs, but to permit currently-licensed DQPs in good standing to continue to inspect horses for compliance with new § 11.6(c) provisions following the effective date, until the HPI program is fully implemented.

In the alternative, AHPA recommends that APHIS establish two effective dates: the earlier date to apply to all provisions of the rule except those relating to HPIs and a later date to implement the HPI-specific provisions.

Finally, with regard to the APHIS formal training program as well as the inspection procedures, AHPA recommends that training be expanded to include a more

comprehensive, veterinary-based curriculum, given that HPIs must now meet the authorization process criteria as set forth § 11.19(a).

Scientific data supporting the elimination of action devices and pads

AHPA believes that APHIS has sufficient, existing scientific data to support the elimination of action devices and pads now. While AHPA encourages APHIS to pursue future studies to add to its growing bank of scientific data, the amount of evidence already out there clearly supports APHIS's decision to eliminate action devices and pads for Tennessee Walking Horses, Racking Horses, and Spotted Saddle Horses.

Which horse events covered under the Act should APHIS focus on?

As APHIS has pointed out in its rulemaking, both the 2010 USDA-OIG audit and inspection data compiled by APHIS as recently as FY 2017 – 2022 showed that DQPs are less likely to issue violations and more likely to allow sored horses to perform when APHIS is not present to confirm the outcome of inspections. Accordingly, AHPA recommends APHIS prioritize random checks at events that management has declined to engage both an APHIS representative or an HPI.

Conclusion

The 1979 HPA regulations were based on APHIS's policy decisions to allow the Tennessee Walking Horse industry to eliminate soring practices through a system predominantly based on industry self-regulation, and to allow the use of certain action devices and showing practices that were – at the time – believed to be unlikely to cause a horse to become sore. The experience of over 40 years under this regulatory structure has proven, without doubt, that these decisions have failed to satisfy the requirements of the HPA.

Soring has continued. It remains an essential tool to produce the "big lick" show gait. Tennessee Walking Horse, Racking Horse and Spotted Saddle Horse industry leaders, breed organizations and HIOs have failed to fulfill their obligation to stop abusive training and showing practices. Instead, these practices -- and the owners and trainers who employ them -- have flourished and are as ingrained a feature of the Walking and Racking Horse show world as they were in 1970 and 1976. If anything, industry resistance to APHIS's efforts to perform its statutory mandate has increased in the last twenty-five years.

This cannot be allowed to continue. As we have stated countless times before, the Agriculture Department generally, and APHIS specifically, must take full responsibility to change the face of history and eliminate, once and for all, the heinous, totally unacceptable and illegal practice of soring. AHPA fully supports that effort, and believes that to accomplish the directive of the HPA the proposed rules must be adopted and implemented promptly and effectively.

AHPA therefore urges APHIS to expedite its consideration of public comments on the proposed rule, and (subject to the foregoing discussion relating to HPI-specific provisions) promulgate a final rule no later than April 1, 2024, to be effective immediately.

Thank you for considering AHPA's suggestions for improving the proposed rule as set out in these comments. If AHPA can provide any further information, please do not hesitate to contact us.