

## ***Horse Protection Act (HPA): Major Changes Coming!***

By, Mary Westman, Esq.

### **Introduction**

The Horse Protection Act (HPA), enacted in 1970 and amended in 1976, is a federal law designed to prevent the soring of horses, a practice that involves intentionally inflicting pain on a horse's legs or hooves to produce an exaggerated, high-stepping gait [1, 2, 3]. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is responsible for administering and enforcing the HPA [1, 2]. The HPA prohibits the showing, sale, auction, exhibition, or transport of sored horses to and/or from such events [1, 2, 3].

### **Background of the HPA**

The HPA was created to address the cruel practice of soring, which was prevalent in some competitive show circuits, particularly for breeds such as Tennessee Walking Horses and racking horses [1, 2, 3]. Soring involves the use of chemicals, devices, or other harmful methods to cause pain, which results in the horse lifting its legs quickly to relieve the pain, creating a distinctive high-stepping gait [1, 2, 3].

Initially, the HPA was enforced by APHIS Veterinary Medical Officers (VMOs) [2]. In 1976, the Act was amended to allow for third-party inspectors, known as Designated Qualified Persons (DQPs), who were licensed by Horse Industry Organizations (HIOs) certified by the USDA [1, 2]. APHIS provided oversight to these HIOs and DQPs to ensure the effective identification of sored horses [2]. However, over time, concerns arose about the effectiveness of the DQP system, including conflicts of interest and inadequate training [1].

### **Rationale for the Changes**

The changes to the HPA regulations are based on findings from the USDA's Office of Inspector General (OIG) and a 2021 study by the National Academy of Sciences (NAS) [1]. These reports highlighted issues with the existing DQP system, including conflicts of interest, inadequate training, and inconsistent enforcement [1].

- **Conflicts of Interest:** The NAS study and OIG audit found that the DQP system had inherent conflicts of interest because DQPs were often connected to the horse industry, leading to less stringent inspections [1]. The new regulations aim to address this by having APHIS directly authorize HPIs, who must adhere to a code of conduct and are subject to screening for conflicts of interest [1].
- **Inadequate Training:** The NAS study also found that DQPs often lacked adequate training, leading to missed cases of soring [1]. APHIS will provide formal training to all HPIs using science-based approaches [1].
- **Pads and Action Devices:** The prohibition of pads and action devices on Tennessee Walking Horses and racking horses is based on years of data indicating a correlation between these devices and increased instances of soring [1]. The data shows a disproportionately higher rate of soring in the performance division of these

breeds, where pads and action devices are commonly used [1]. It is important to note that exceptions for therapeutic use must be documented with records from a licensed veterinarian, as defined by APHIS guidelines [1].

### **Covered Breeds and/or Horses**

While **all horse breeds are subject to the provisions of the Act** [1], the regulations include specific prohibitions for Tennessee Walking Horses and racking horses [1]. These breeds have been the focus of the regulations due to a history of soring practices [1]. The regulations also state that the term "horse" means any member of the species *Equus caballus* [1].

### **Covered Events**

Under the new HPA regulations, all horses at equine competitions or events covered by the Act have been, and continue to be, covered by the Act [1, 2, 5]. Moreover, transportation to and from covered events also falls under the purview of the HPA. [1, 2]. This includes competitions regardless of whether they are licensed, sanctioned by, or affiliated with USEF or any other organization [5].

Events covered by the HPA include:

- Horse shows [1, 2].
- Horse exhibitions [1, 2].
- Horse sales [1, 2].
- Horse auctions [1, 2].

However, the HPA does not cover all equine events. Specifically, events where speed is the predominant factor, such as horse racing, are not considered covered events under the HPA [2, 5]. Additionally, rodeo events, parades, and trail rides are also not covered under the HPA [2, 5].

### **New Amendments to the HPA**

On May 8, 2024, APHIS published a new Horse Protection Final Rule in the *Federal Register* [1, 2]. The new regulations, which will take effect on February 1, 2025, introduce significant changes to the enforcement of the HPA [1, 2, 5]. Key changes include:

- **Elimination of DQPs and HIOs:** The new rule eliminates the role of DQPs and the regulatory responsibilities of HIOs [1, 2]. Instead, APHIS will directly screen, train, and authorize individuals as Horse Protection Inspectors (HPIs) [1, 2].
- **Horse Protection Inspectors (HPIs):** HPIs will be authorized by APHIS and function as third-party inspectors [1, 2]. Event managers can appoint HPIs to conduct inspections at their events [1, 2]. APHIS will provide a list of authorized HPIs, and HPIs will be required to adhere to a code of conduct to avoid conflicts of interest [1, 2].
- **APHIS Representatives:** Alternatively, event managers may request an APHIS VMO to conduct inspections at their event [2]. Event managers are not required to appoint an HPI or request an APHIS VMO but doing so limits their liability if a horse is found to have been shown, exhibited, sold, or auctioned while sore [2].
- **Prohibition of Certain Devices and Practices:** The new regulations prohibit all action devices, artificial toe extensions, pads, wedges, and lubricants on the limbs or

feet of Tennessee Walking Horses and racking horses, except for therapeutic purposes documented by a licensed veterinarian [1]. An action device is defined as any device that 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 [1].

- **Dermatologic Conditions Indicative of Soring (DCIS):** The "scar rule" is replaced with language that more accurately describes visible dermatologic changes indicative of soring, with a non-exhaustive list of examples of conditions that an HPI or APHIS representative will consider in evaluating whether the horse is sore [1].

- **Reporting and Recordkeeping:** Event management must notify APHIS at least 30 days before an event, stating whether they will utilize an HPI or request an APHIS VMO [1, 2]. Event management is required to maintain records for 90 days, and in some cases longer, for horses found to be sore [1].

- **Therapeutic Treatment:** Therapeutic treatment is an exception to the prohibitions on devices and substances if the treatment is prescribed by a licensed veterinarian, and records are kept [1, 2].

### **Consequences for Noncompliance with HPA**

The HPA aims to prevent the soring of horses and ensure their humane treatment in competitions and sales [1, 2]. Non-compliance with the HPA carries a range of consequences for those involved in showing, exhibiting, selling, or transporting horses, as well as for those responsible for managing equine events [1, 2]. Violations of the HPA can result in penalties such as disqualification of horses, civil penalties, disqualification of individuals, criminal charges, and liability for event management [1, 2]. The regulations also address the use of prohibited devices and substances, interference with inspections, and non-compliance with reporting and recordkeeping requirements [1, 2]. These consequences aim to ensure compliance with the HPA and prevent the soring of horses [1].

### **Consequences for Showing, Exhibiting, Selling, or Transporting Sored Horses**

- **Prohibition:** It is unlawful to show, exhibit, sell, or transport sore horses to and/or from such covered events, or to use prohibited equipment, devices, or substances at horse shows, exhibitions, sales, or auctions [1].

- **Disqualification of Sored Horses:** Sored horses will be disqualified from participating in events [1]. Management is responsible for disqualifying horses identified as sore by an inspector [1]. If a horse is found to be sore during a show or exhibition, it must be immediately removed from further participation [1].

- **Liability of Management:** If management does not utilize an APHIS representative or Horse Protection Inspector (HPI), they are responsible for identifying and disqualifying sored horses. Failure to do so can result in liability [1]. Even when management utilizes an APHIS representative or HPI, they are still responsible for disqualifying a horse reported as sore by the inspector [1].

- **Civil Penalties:** Violators may face civil penalties of up to \$2,000 for each violation [2].

- **Disqualification of Persons:** Individuals who violate the HPA may be disqualified from showing, exhibiting, or participating in any horse event (except as a spectator)

[1, 2]. Disqualification periods are determined on a case-by-case basis but must be no less than one year for the first violation and no less than five years for any subsequent violations [2].

- **Civil Penalties for Violating Disqualification Order:** Civil penalties of up to \$3,000 can be assessed for violating a disqualification order [2].
- **Criminal Charges:** APHIS may bring criminal complaints against alleged violators of the HPA [2]. Criminal penalties include fines of up to \$3,000 and 1 year in prison for a first violations, and each subsequent violation may result in fines of up to \$5,000 and imprisonment for up to 2 years. [2]

### **Consequences for Interfering with Inspections**

- **Prohibition:** It is unlawful to assault, resist, oppose, impede, intimidate, threaten, or interfere with APHIS representatives or HPIs, or influence others to do so [1].
- **Criminal Liability:** Persons who interfere with inspections may be held criminally liable and referred to the U.S. Department of Justice for prosecution [1].

### **Consequences for Non-Compliance with Reporting and Recordkeeping**

- **Notification of Events:** Event management must notify APHIS at least 30 days before an event, stating whether they will utilize an HPI or request an APHIS Veterinary Medical Officer (VMO) [1, 2].
- **Recordkeeping:** Event management is required to maintain records for 90 days, and in some cases longer, for horses found to be sore [1].
- **Post-Event Reporting:** Event management must submit a report within five days after the event for each horse prohibited from being shown, exhibited, sold, or auctioned because it was found to be sore or otherwise in violation of the HPA [1, 2].
- **Reporting Therapeutic Treatment:** Event management must document the use of any therapeutic treatment and provide this to APHIS [2].
- **Failure to Provide Information:** Failure to provide requested information to inspectors may result in termination of the event responsibilities and imposition of liabilities on event management [1].

### **Consequences Related to Inspectors**

- **HPI Disqualification:** APHIS may permanently disqualify any HPI who fails to inspect horses according to APHIS procedures or otherwise fails to perform their duties [1].
- **Use of Unauthorized Inspectors:** After February 1, 2025, only APHIS representatives and authorized HPIs may be utilized by management to inspect horses for compliance [1].

### **Additional Considerations**

- **Due Process:** A Party has the right to appeal a disqualification within 21 days of the date the Party received the disqualification, and APHIS representatives or HPIs are required to document noncompliant conditions in the inspection report [1].
- **Re-inspection:** A re-inspection of a horse may be requested to be conducted within 24 hours if the request is made immediately after the initial inspection, the horse has not been removed from the inspection facilities; an APHIS representative determines there is sufficient cause for the re-inspection; and the horse is maintained under APHIS supervisory custody [1].

## Implementation, Impact and Industry Concerns

The new regulations will take effect on February 1, 2025, except for the training and authorization of HPIs, which began on June 7, 2024 [1, 2]. The USDA is providing resources and tools to help the industry comply with the new requirements [2].

However, there are concerns within the equine community, with some industry participants and groups believing that the new rules will have devastating effects on the industry [3]. Some of the concerns include:

- **Economic Impact:** Some are concerned that the new regulations will have a negative economic impact on the equine community, particularly breeders, trainers, and horse owners [3].
- **Enforceability:** There are concerns regarding the enforceability of the new rules and whether the USDA is ready to implement and enforce them consistently [3, 4].
- **Clarity:** Confusion exists regarding what constitutes a covered event, the scope of the regulation, qualifications and training of inspectors, and the inspection process [4, 5].
- **Fair Competition:** There are concerns that the ban on pads and action devices will undermine fair competition by imposing collateral punishments on members of the industry who do not sore their horses [1].

## Conclusion

The new amendments to the Horse Protection Act represent a significant shift in the enforcement of the law. By eliminating DQPs and HIOs, and by implementing stricter regulations, APHIS aims to create a more effective and unbiased system for preventing the soring of horses [1, 2]. While there are concerns about the impact of these changes, the USDA believes they are necessary to achieve the goal of eliminating soring in the equine industry [1].

This white paper provides a **high-level overview** of the Horse Protection Act (HPA) and the recent changes to its regulations. The new amendments to the HPA, which take effect on February 1, 2025, introduce significant changes to the enforcement of the law, including the elimination of Designated Qualified Persons (DQPs) and Horse Industry Organizations (HIOs), and the implementation of a new system of Horse Protection Inspectors (HPIs) [2].

It is **essential** for those impacted by the HPA changes, including event managers, horse owners, exhibitors, trainers, and transporters to **carefully review the detailed regulations** and not rely solely on this overview. The new regulations are complex and introduce specific requirements and prohibitions [1]. APHIS has published the new Horse Protection Final Rule in the Federal Register, which provides comprehensive details regarding the changes to the HPA [1]. The USDA website also offers additional resources and information about the HPA and the recent changes to the Act [2].

***This article does not constitute legal advice and is intended to be used for educational purposes only. Due to the complexity of the regulations and potential consequences of non-compliance, stakeholders should not rely on this overview, and instead should seek out and consult the full text of the regulations, any guidance provided by APHIS and/or advice of competent legal counsel.***

#### About the Author

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