



UNITED STATES EQUESTRIAN FEDERATION
THE NATIONAL GOVERNING BODY FOR EQUESTRIAN SPORT

October 3, 2016

Submitted electronically

Docket No. APHIS–2011–0009
Regulatory Analysis and Development, PPD, APHIS
Station 3A–03.8
4700 River Road Unit 118
Riverdale, MD 20737–1238

Re: Comment on USDA's Recommended Amendments to the Horse Protection Act's regulations

Dear Sir or Madam:

This comment is submitted on behalf of the United States Equestrian Federation, Inc. (the "Federation") in response to the USDA's call for comment on the proposed rule of the Animal and Plant Health Inspection Service ("APHIS"), USDA, titled Horse Protection; Licensing of Designated Qualified Persons and Other Amendments, 9 CFR Part 11.

OVERVIEW

The Federation is the regulatory body for equestrian sport in the United States and governs 29 breeds and disciplines (See Exhibit 1, Federation Bylaws). It derives its power from Congress through the Ted Stevens Olympic and Amateur Sports Act of 1978 (the "Sports Act"), 36 U.S. Code §220501 et seq. (See Exhibit 2, Ted Stevens Olympic and Amateur Sports Act of 1978). As such, the Federation is Congressionally mandated to govern equestrian sport under the United States Olympic Committee's purview. The United States Olympic Committee recognizes the Federation as the sole National Governing Body ("NGB") for equestrian sport.

One primary responsibility under the Sports Act is a Congressional mandate for the Federation to manage the competition calendar. The Federation sanctions approximately 2,500 competitions in the United States, over which we have jurisdiction under the Sports Act (See, <https://www.usef.org/IFrames/competitions/calendar/calendar.aspx>). We have strict rules that govern horse welfare and an enforcement program that includes a model Equine Drugs and Medications program that we have run effectively for over 46 years (See Exhibit 3, Federation Rulebook). We have zero tolerance for horse abuse or maltreatment of any kind.



The Federation commends the USDA in its efforts to strengthen the existing requirements of the Horse Protection Act regulations ("Regulations") and further protect horses from the heinous practice of soring. The Regulations are fully aligned with the purposes of the Federation, including the overall protection of horse welfare. The Federation supports the USDA in its effort to protect horses by taking additional measures to eliminate soring notwithstanding the following comments and concerns.

The proposed revisions to the Regulation raise three major concerns for the Federation. The three areas of major concern include:

- 1) The Regulations' application to any "related breed that performs with an accentuated gait that raises concerns about soring;"
- 2) The overly broad definition of substances; and
- 3) The total prohibition of the use of pads, which will include pads used for rehabilitative and therapeutic purposes.

Unless the proposed language is amended, the Federation believes the enforceability of the Regulation is vulnerable to a court finding that the issuance of this rule is arbitrary and capricious and thus in violation of the Administrative Procedure Act.

In an effort to alleviate that risk, the Federation provides comments and recommended language that would significantly reduce the unintended duplicative administrative burden imposed on the USDA to regulate an industry, e.g. Federation licensed/endorsed competitions, that are already effectively regulated through Congressional mandate. Specifically, the USDA has a clear mandate to consider the costs and benefit impact of the proposed amendments to the Regulations. A clearly more efficient and at least equally effective way to achieve the USDA's aim among the Federation's 29 breeds and disciplines, that has not been considered, is to provide an exception from APHIS enforcement for Federation licensed/endorsed competitions thereby permitting the Federation to continue to self-regulate its membership as it has successfully done since its inception in 1917. The Federation's effective self-regulation has been publicly commended by the USDA when it stated that it intends to bring the Regulations into alignment "with existing standards established by the [Federation]" (See Exhibit 4, excerpt from USDA website). More specific and appropriate language is also included on the proposed rules regarding substances and pads.

I. THE FEDERATION'S CONGRESSIONAL AUTHORITY TO REGULATE EQUESTRIAN COMPETITIONS

The Federation is a member-driven organization comprised of more than 84,000 individual members, who participate in any number of the Federation's recognized 11 breeds and 18 disciplines, each represented by an Affiliate Organization. The Federation's mission is to provide access to and increase participation in equestrian

sports at all levels by ensuring fairness, safety, and enjoyment (See Exhibit 5, Federation's Mission and Vision Statements). The Federation trains, selects, and funds the United States' teams in the three Olympic equestrian disciplines, dressage, eventing, and show jumping, which compete at the highest level of international competition. Most recently, the United States teams competed successfully in the summer Olympics held in Rio de Janeiro this August, bringing home team silver medal in show jumping, team bronze medal in dressage, and an individual bronze medal in eventing (See Exhibit 6, Federation's *USEF Network* articles of 2016 Summer Olympics).

A few of the Federation's Congressionally mandated responsibilities include the sanctioning of licensed/endorsed competitions held in accordance with Federation rules, the licensure of Federation officials to ensure compliance with Federation rules at all licensed/endorsed competitions, and the promulgation and enforcement of Federation rules across all breeds and disciplines, most notably horse welfare rules.

Sanctioning Competitions: Under the Sports Act, 36 U.S. Code §220524, one of the purposes of the Federation as a NGB is the advancement of equestrian competition throughout the United States. In an effort to do so, the Federation manages a calendar of national and international competitions hosted in the United States, providing athletes a forum to prepare to represent the United States abroad in international competition, culminating in the World Equestrian Games and the Olympic Games. Annually, the Federation sanctions approximately 2,500 competitions. The calendar of competitions may be found here,

<https://www.usef.org/IFrames/competitions/calendar/calendar.aspx>.

Licensing Officials: At all Federation licensed/endorsed competitions, enforcement of Federation rules is of the utmost importance. Federation rules guarantee fairness, safety, and enjoyment of all participants and equine athletes. In order to ensure compliance with Federation rules at all licensed/endorsed competitions, the Federation trains and licenses approximately 2,300 officials, including Stewards and Technical Delegates (See, <https://www.usef.org/IFrames/LicensedOfficials/locSearch.aspx>). Every one of the Federation's approximately 2,500 competitions has officials present on the grounds to enforce Federation rules. The Federation's licensed officials have a strong foundation in the Federation rules, are employed at licensed/endorsed competitions, and produce written reports back to the Federation, which include any rule violations. (See Exhibit 3, Federation Rulebook).

Promulgation and Enforcement: The Federation's Rulebook, encompassing more than 1,200 pages (See Exhibit 3, Federation Rulebook), includes rules on forbidden and restricted substances, prohibited training techniques and tools, and horse welfare. Since

its inception, the Federation has self-regulated effectively under its Rulebook, as publicly acknowledged by the USDA.

It is the responsibility of every member, both individuals and Affiliate Organizations, to abide by the Federation's rules. There is no place in the Federation for misconduct. For example, no Tennessee Walking Horse member organization has been permitted to join the Federation as an Affiliate Organization as a result of the rampant issue of soring within the breed. Due to similar concerns on the part of the Federation, Big Lick classes are not permitted to be held at any Federation licensed/endorsed competition. The Humane Society of the United States has publicly applauded the Federation for its regulation of soring-related devices and the prohibition of Tennessee Walking Horse Classes and Big Lick classes (See Exhibit 7, excerpt from Humane Society of the United States website).

The Federation rules apply to all participants in Federation licensed/endorsed competitions. In addition to the Federation rules, athletes competing in the any of the Olympic disciplines are protected by the Sports Act. Therefore, the Federation is especially careful when enforcing the rules in its Olympic disciplines. After years of service as the NGB, the Federation has the expertise to ensure all the protections of the Sports Act are maintained so as to guarantee that its efforts to enforce rules are not compromised.

II. THE FEDERATION IS A LEADER IN SELF-REGULATION.

As described above, the Federation has developed a proven method of rule enforcement. The APHIS relies on a comment made during a 1979 rulemaking, where it stated, "if the horse industry makes no effort to establish a workable self-regulatory program for the elimination of sore horses, or if such program is established but does not succeed in eliminating the sore horse within a reasonable length of time, the Department will give serious consideration to the prohibition of all action devices and pads," in its rationale of the absolute ban of all substances and pads (See Exhibit 8, Horse Protection; Licensing of Designated Qualified Persons and Other Amendments, 81 Fed. Reg. 143 (July 26, 2016) (to be codified at 9 C.F.R. pt. 11)). While the Federation does not disagree that the issue of soring still exists within certain areas of equestrian sport, and it is abhorrent, it would argue that the Federation's regulatory process has been exceptionally successful in assuring a safe and fair competition environment for all of the Federation's recognized 11 breeds and 18 disciplines, particularly in the protection of horse welfare.

A. The Federation's Model Equine Drugs and Medications Program

The protection of horses against the use of forbidden substances, with the potential to be used for soring purposes, falls under the Equine Drugs and Medications program of the Federation (See, <https://www.usef.org/IFrames/Drugs/Default.aspx>). This is one strategy employed by the Federation to ensure the welfare of the horses competing in Federation licensed/endorsed competitions. The Federation derives its regulatory power of drugs and medications from the World Anti-Doping Agency and the Fédération Equestre Internationale ("FEI") (See Exhibit 9, World Anti-Doping Agency Code, Article 16). The Federation's Equine Drugs and Medications program, which tests approximately 18,000 samples a year, includes over 150 contracted equine veterinarians across the nation who collect blood and urine samples at licensed/endorsed competitions and a state of the art laboratory, which has been recognized as one of only five reference laboratories world-wide by the international governing body of equestrian sport, the FEI. In addition to the testing of samples collected at Federation licensed/endorsed competitions, the Federation is the only National Federation in the world that provides collection and testing services for the FEI. Other well-known and well respected associations, i.e. the American Quarter Horse Association and the United States Polo Association among others, engage the Federation to collect and test samples from their sanctioned events.

B. The Federation's Hearing Process is exemplary.

The Drugs and Medications rules are driven by a mission to protect equine welfare and to maintain fairness at all licensed/endorsed competitions, while recognizing and accommodating the varied needs of each of the Federation's recognized breeds and disciplines. The Federation rules strictly limit the use of substances to those that are therapeutic and used in accordance with their intended purpose. Should a violation be found of any of the Federation's rules, including the Equine Drugs and Medications rules, the Federation affords offenders rights. These include a fair and impartial hearing scheduled before the Federation's Hearing Committee, representation by counsel, the ability to present witnesses and evidence, and ample opportunity to cross-examine witnesses.

Through its Rulebook, the Federation is empowered to temporarily suspend members from participating in any manner or attending any licensed/endorsed competition. Matters that are presented for hearing are scheduled before the Federation's Hearing Committee. The Hearing Committee is comprised of a group of independent Federation members who represent a cross-section of the Federation's recognized breeds and disciplines. The Hearing Committee members volunteer their time and afford the Federation's membership fair, impartial, and efficient hearings. Hearing Committee

panels are populated approximately six times a year in an effort to adjudicate cases in an expeditious manner. In addition, the Federation schedules special hearings outside of the scheduled panels, as necessary (See Exhibit 10, Guide to Federation Rule Enforcement and Hearing Process).

In a recent case, the Federation found a trainer in violation of the Equine Drugs and Medications rules. This trainer was banned from attending any national or international competition for 7 months. A suspension of this type imposed by the Federation not only prevents the offender from competing during the time period imposed but also prohibits him from being present on the competition grounds. In challenging this sanction, the trainer brought suit against the Federation in the Supreme Court of New York. The Federation's defense of the Hearing Committee's ruling was upheld. This success in the Supreme Court of New York was the first of three recent challenges in court (See Exhibit 11, New York Supreme Court decisions). The Federation, through its vigorous defense of the Hearing Committee's diligence in rendering its decisions, stands undefeated in challenges.

As evidenced by the above, the Federation has developed, what is now, an impeccable process of self-regulation. The sanctions imposed by the Hearing Committee are harsh, yet appropriately reflect the Federation's zero tolerance of abusive training techniques and violations of the Equine Drugs and Medications rules. The Federation's membership is bound by the Federation rules and any violations of such are adjudicated appropriately. This success has been applauded by the USDA as a standard of excellence within the equestrian sport community.

I. MAJOR CONCERNS OF VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT THAT COULD LEAD TO AN ADVERSE RULING

While the Federation is in full support of the aim surrounding the amendments to the Regulation, specifically the changes to the training and licensure of inspectors and the banning of substances and pads linked to soring; there are three areas of major concern for the Federation. These areas of concern stem from proposed language that is overly broad and has far reaching consequences outside of the intended prohibition of soring. Moreover, it is likely that a court would deem the proposed amendments unenforceable due to the arbitrary and capricious nature of the rulemaking.

Firstly, the expansion of horses covered under the Regulations to include any "related breed that performs with an accentuated gait that raises concerns about soring" would touch breeds and disciplines unintended to be captured by the Regulations, whose use of substances and pads do not cause soring and may have therapeutic and beneficial purposes in the sport. Secondly, the USDA's recommended change to the definition of

irritants to cover all substances, including “any agent applied to a horse’s limbs while a horse is shown, exhibited, or offered for sale, or otherwise present on the grounds at any horse show, exhibition, sale, or auction,” would inadvertently include substances used for truly therapeutic purposes. Finally, the expanded ban of all pads, under Section 11.2(a)(2), would have similarly inadvertent consequences of banning pads used for non-soring and proper medical purposes. Therefore, some of the language proposed by the USDA, if approved, would have unintended consequences in equestrian sport and without sound justification, is arbitrary and capricious.

The Federation makes the following recommendations after careful consideration of the costs and benefits, proposed amendments to the Regulations, and the cooperative history between the USDA and the Federation.

A. The proposed change does not satisfy a cost/benefit analysis and there is an alternative that accomplishes the legislative purpose.

The USDA has not engaged in a proper cost-benefit analysis when proposing the amendments to the Regulations. Thus, APHIS’s budget and reach is not sufficient to ensure extensive and consistent enforcement of the Regulations, in particular as proposed to be amended. The APHIS’s annual budget for the Horse Protection Program, as published by the USDA, was set by Congress and in the past two years has been \$697,000 annually (See Exhibit 8, Horse Protection; Licensing of Designated Qualified Persons and Other Amendments, 81 Fed. Reg. 143 (July 26, 2016) (to be codified at 9 C.F.R. pt. 11)). On the other hand, an estimated \$18,000,000¹ annually is spent on the enforcement of Federation rules, including horse welfare rules, through the enforcement of its Equine Drugs and Medications rules, the Federation licensed officials program, and the hearing process. Due to the size of the APHIS’s annual budget, it would be both inefficient and ineffective for the USDA to duplicate efforts by allocating its already limited resources to the regulation of Federation licensed/endorsed competitions. The USDA is mandated to use its funds judiciously. The USDA must focus its funds on the protection of horses at competitions held outside of the Federation’s sanctioning, notably Tennessee Walking Horse, Racking Horse, and Spotted Saddle Horse competitions, allowing a Congressionally designated body, the Federation, to continue to protect the welfare of horses at Federation licensed/endorsed competitions.

¹ This annual estimate is derived from the estimated \$15,000,000 spent annually on Licensed Officials at Federation licensed/endorsed competitions, as well as the annual budget of the Federation’s Equine Drugs and Medications, Licensed Officials, and Regulation Programs.

In the 2015 fiscal year, Designated Qualified Persons attended a total of 278 shows (See Exhibit 8, Horse Protection; Licensing of Designated Qualified Persons and Other Amendments, 81 Fed. Reg. 143 (July 26, 2016) (to be codified at 9 C.F.R. pt. 11)). In contrast, the Federation, as mentioned above, has Stewards and Technical Delegates assigned to every one of its approximately 2,500 licensed/endorsed competitions. This 100% coverage in comparison to the USDA's 6% coverage of competitions under the current Regulations, places the Federation in an ideal position of enforcement within its licensed/endorsed competitions. In order to avoid duplicative efforts, the Federation urges the USDA to expand upon the 278 competitions attended by Designated Qualified Persons to competitions that fall outside of Federation licensed/endorsed competitions. While the Federation would continue to have Stewards and Technical Delegates present at all licensed/endorsed competitions, the Designated Qualified Persons would be freed up to focus on competitions where soreing poses a real threat to the welfare of horses, such as the Tennessee Walking, Racking, and Spotted Saddle horses. This would maximize the total number of competitions at which horse welfare is safeguarded.

According to Executive Orders 12866 and 13563, the APHIS must utilize the least costly regulatory option in achieving the objectives of the Regulations (See Exhibit 8, Horse Protection; Licensing of Designated Qualified Persons and Other Amendments, 81 Fed. Reg. 143 (July 26, 2016) (to be codified at 9 C.F.R. pt. 11)). It follows that the Federation's exception should be utilized in order to maximize the APHIS's resources. The Federation's exception would avoid any duplicative enforcement of having both Designated Qualified Persons and Federation Stewards and Technical Delegates at licensed/endorsed competitions. It would also permit the USDA to focus its resources on enforcement at unlicensed/unendorsed competitions, such as Tennessee Walking Horse, Racking Horse, and Spotted Saddle Horse competitions, where regulation is most needed. The Federation's recommended exception prevents and eliminates redundancy and provides the most effective and efficient solution.

B. USDA Proposed Amendments

Overall, the proposed amendments to the Regulations are aligned with the mission of the Federation and are steadfastly supported by the Federation. The Federation's major concerns focus on a few very specific areas, leaving the purpose of the Regulations intact.

In its justification of the total prohibition of all substances and pads, the USDA relies on a comment from a 1979 rulemaking. The APHIS stated that "if the horse industry makes no effort to establish a workable self-regulatory program for the elimination of sore horses, or if such program is established but does not succeed in eliminating the sore horse within a reasonable length of time, the Department will give serious consideration

to the prohibition of all action devices and pads” (See Exhibit 8, Horse Protection; Licensing of Designated Qualified Persons and Other Amendments, 81 Fed. Reg. 143 (July 26, 2016) (to be codified at 9 C.F.R. pt. 11)). It follows by stating that the total prohibition is necessary in order to “successfully and significantly reduce the number of sored horses” (See Exhibit 8, Horse Protection; Licensing of Designated Qualified Persons and Other Amendments, 81 Fed. Reg. 143 (July 26, 2016) (to be codified at 9 C.F.R. pt. 11)). The Federation would argue that a total ban of all substances and pads is unjustified. As previously noted, the Federation has a long-standing history of successful regulation. With the beneficial use of substances and pads by Federation breeds and disciplines, the Federation finds the proposed absolute ban of all substances and pads to be arbitrary and capricious, which threatens the enforceability of the Regulations.

The prohibition of the use of all “substances” and “pads” on any “related breed that performs with an accentuated gait that raises concerns about soring” raises alarm within the Federation. This terminology used by the USDA is overly broad as stated by many professionals in equestrian sport (See, <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/horse-protection-amendments>). “Related breed[s]” is arbitrary by definition. The USDA provides no parameters to limit “related,” leaving the definition open to include horses that are trained to accentuate their gait, as well as other high-stepping breeds. As described below, while the Federation recognizes that the use of substances and pads at Tennessee Walking Horse competitions has the potential to be used to sore horses, the Federation must balance this improper use of substances and pads with the overall therapeutic use of many substances and pads in the majority of its recognized affiliated breeds. Thus, the Federation argues that an exception for all licensed/endorsed competitions is required in the best interest of the horse.

C. Cooperative History between the Federation and the USDA

The Federation and the USDA have worked in tandem for many years. At the outset of the Horse Protection Act (“HPA”), in 1970, there existed no NGB of equestrian sport. This is reflected in the original language of the HPA.

However, since its inception as the NGB of equestrian sport, the Federation has worked closely with the USDA in its partnership to ensure horse welfare across many breeds and disciplines. In fact, the partnership between the USDA and the Federation has been recognized by the USDA for its success.

This proven partnership between the USDA and the Federation, offers great promise for the future of horse protection. The history of success illustrates the likelihood of future

success should the USDA create an exception for all Federation licensed/endorsed competitions, as recommended below.

1. First Major Concern: Ambiguous Terminology “related breeds”

The Federation’s first major concern is related to the USDA’s introduction of the overly broad term “related breed with accentuated gait that raises concerns about soring,” expanding on the specific listing of breeds used in the past. The application of the Regulations to any “related breed that performs with an accentuated gait that raises concerns about soring” is arbitrary on its face. The USDA’s use of “related” without defining the bounds of the term leaves open the possibility of boundless inclusion. The USDA’s use of arbitrary terms in its proposed amendments to the Regulations threatens the very foundation on which it stands, the strength of the enforcement of horse welfare. The Federation urges the USDA to amend the Regulations to include an exception that would permit the Federation to continue to self-regulate its licensed/endorsed competitions and continue the ongoing partnership between the USDA and the Federation.

In the past, the USDA referenced specific breeds of concern. As currently written, all portions of the Regulations apply to “Tennessee Walking Horses and Racking Horses” (See, 7 C.F.R. § 11). The proposed amendments would apply to any “related breed that performs with an accentuated gait that raises concerns about soring.” This language is ambiguous at best and risks severe unintended consequences in interpretation. The proposed expansion in application would include many of the breeds and disciplines governed by the Federation. The breeds and disciplines that risk inclusion are not those that need regulation from the USDA. The proposed amendments are simply improper for many breeds and disciplines where soring is not a common practice.

The USDA, itself, makes clear that the benefits of the proposed amendments fall solely in the Tennessee Walking Horse, Racking Horse, and Spotted Saddle Horse breeds. “The proposed changes to the horse protection regulations would promote the humane treatment of walking and Racking horses by more effectively ensuring that those horses that participate in exhibitions, sales, shows or auctions are not sored” (See Exhibit 8, Horse Protection; Licensing of Designated Qualified Persons and Other Amendments, 81 Fed. Reg. 143 (July 26, 2016) (to be codified at 9 C.F.R. pt. 11)). Clearly, the USDA is intending to maintain the limited applicability of the Regulations to Tennessee Walking Horses, Racking Horses, and Spotted Saddle Horses. The USDA’s intent is expressly contradicted with the addition of “related breed that performs with an accentuated gait that raises concerns about soring” to the Regulations. In fact, with this arbitrary and capricious addition, the USDA threatens the enforceability of the Regulations as a whole.

As noted above, the Federation governs many breeds and disciplines that would be adversely affected by several of the proposed amendments to the Regulations. Should the proposed amendments be applied to the Federation recognized breeds and disciplines, the vast majority of equestrian sport participants will suffer the unintended consequence of losing the therapeutic and beneficial use of pads and substances.

Recommended Language

The Federation's solution to the ambiguous inclusion of any "related breed that performs with an accentuated gait that raises concerns about soring" is simple. The Federation proposes that the breeds competing in Federation licensed/endorsed competition be exempt from the Regulations and the responsibility of preventing any threat to horse welfare be delegated to the Federation, as is the current practice. The Federation will continue to demonstrate its commitment to the protection of the horses and horse welfare, as it has for decades. As mentioned above, with approximately \$18 million spent annually toward regulation, the Federation can ensure that no abusive training practice occur inside its approximately 2,500 licensed/endorsed competitions where there are always present Federation licensed officials to enforce Federation rules.

The Federation recommends that the USDA rely upon the Federation to self-regulate at all licensed/endorsed competitions. The Federation has both the resources and the infrastructure to effectively regulate horse welfare at licensed/endorsed competitions through its licensed officials, who are present at every licensed/endorsed competition, and its robust rule promulgation and enforcement structure.

The Regulations should incorporate the following language in order to effectuate the delegation of this responsibility in Section 11.1 to the definition of "Horse Show":

"Horse Show means a public display of any horse, in competition. The term does not include events where speed is the prime factor, rodeo events, parades, or trail rider, ***or any competitions licensed or endorsed by the National Governing Body for equestrian sport under the Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. 2205.***"

In the event that the USDA implements the recommended language above, the Federation's second and third major concerns would no longer be at issue.

2. Second Major Concern: Prohibition of all substances

As mentioned above, the Federation echoes the concerns of the USDA and the necessity for a prohibition on the use of substances used to sore horses or mask the

pain in limbs of show horses. However, the Federation recognizes the acceptable use of therapeutic substances for the treatment of certain ailments. If the USDA's proposed language is an effort to be more in line "with existing standards established by the [Federation]" (See Exhibit 4, excerpt from USDA website), the Federation should be permitted to continue to self-regulate while the USDA focuses its attention on regulating the three breeds which have historically raised concerns of soring. The proposed language expansion to Section 11.2 of the Regulations is overly broad. The barring of therapeutic substances would be an inadvertent negative consequence of the overly broad proposed language, which would make the Regulations virtually unenforceable. Due to its applicability to all horses, including "related breed that performs with an accentuated gait that raises concerns about soring," and in contrast to the Federation's approved list of therapeutic substances, the Federation argues this expansion of the statutory definition is arbitrary and capricious.

Risks

As the Regulations are currently written, "substance", referred to in Section 11.1 under the definition of "sore," specifically denotes any agent "used by a person on any limb of a horse or a person 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" (See, 7 C.F.R. § 11). Currently there exists an exception for agents used "in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed/endorsed to practice veterinary medicine in the State in which such treatment was given" (See, 7 C.F.R. § 11).

Under the proposed definition of "substance", the category of substances is so broad as to encompass and prohibit the use of fly-spray, liniments, and therapeutic medications that are recognized as beneficial to horse welfare. While the Federation recognizes the intended purpose of this proposed amendment as an effort to aid in the enforcement of the Horse Protection Act, the unintended consequences include potential threats to horse welfare and the safety of owners, trainers, and competitors.

The proposed amendment to the definition of "substance" has the potential to aid in the enforcement of the Horse Protection Act, as it relates to soring. However, this language has the potential to detrimentally impact the welfare of horses competing outside of the Tennessee Walking Horse, Racking Horse, and Spotted Saddle Horse breeds that are considered a "related breed." While the Federation can certainly appreciate the potential for abuse when substances are applied to the legs of a horse at a Tennessee Walking Horse, Racking Horse, or Spotted Saddle Horse show, this potential for abuse is not a commonality at Federation licensed/endorsed competitions. Unlike at Tennessee

Walking Horse, Racking Horse, and Spotted Saddle Horse competitions, presenting a “sore” horse for competition is not advantageous at Federation licensed/endorsed competitions. Federation members run the risk of disqualification when presenting a “sore” horse because of the associated lameness at the trot. Therefore, the application of substances to the limbs of horses for the purposes of soring the horse is far less rampant at Federation licensed/endorsed competitions than at Tennessee Walking Horse, Racking Horse, and Spotted Saddle Horse competitions.

In addition to the potential disqualification that could occur should a sore horse be presented for competition, the Federation has in place a proven process of rule enforcement, as previously noted. Soring or blistering of a horse is prohibited under the Federation’s welfare rules. The Federation’s Equine Drugs and Medications program rigorously regulates all substances used at Federation licensed/endorsed competitions. The substances forbidden and restricted are closely monitored to ensure that competitors are afforded a fair and level playing field and horse welfare remains paramount. When a substance is detected that has potential for abuse and has the potential to compromise the fairness of the playing field and welfare of the horse, the rules are amended to prohibit its use. Therefore, the Federation urges the USDA to permit the Federation to continue to promulgate rules and enforce the use of substances permitted at all Federation licensed/endorsed competitions.

By imposing a total prohibition of all substances on limbs of horses, the USDA is barring the use of all potentially therapeutic substances. This goes against the purpose of horse welfare. Below are several examples of substances with potentially beneficial uses that would be banned under the proposed language.

Examples

FLY-SPRAY: The proposed amendment to the definition of substance would cover the use of fly-spray. The prohibition of fly-spray eliminates the ability for competitors to prevent the irritation that flies cause to horses. Without the use of fly-spray competitors, owners, and trainer are put at risk due to horses’ potentially dangerous reactions to intense fly biting.

LINIMENT: The proposed amendment to the definition of substance would include the use of liniment on the limbs of horses after competition. This proposed amendment prohibits the use of any agent on the limbs of a horse, while on the grounds of any horse show, exhibition, sale or auction, which includes the time following competition. This prohibition of the use of liniment on the legs of a horse is both excessive and contrary to the best interest of the horse.

The elimination of the use of liniments could be considered a welfare issue. Most liniments are not applied until after a horse has completed its competition for the day. There are many liniments that do not contain capsaicin and are used responsibly by Federation members competing at licensed/endorsed competitions. The Federation acknowledges that substances containing capsaicin have the potential to be used as an irritant and as a result may be used as a soring agent. It is for this reason that the Federation currently prohibits the use of capsaicin and actively tests for it. However, the proposed expansion of the definition of substance would eliminate all acceptable uses of liniment.

THERAPEUTIC MEDICATIONS: The proposed amendment to the definition of substance would eliminate the use of topical therapeutic medications on the limbs of horses.

Topical therapeutic medications include all topical antibiotic creams and topical non-steroidal anti-inflammatory drugs ("NSAIDs"), which are strictly regulated by the Federation through its Equine Drugs and Medications Program and Equine Drug Testing (See, <https://issuu.com/equestrian/docs/nsaidandyourhorseweb?mode=embed&layout=http://www.usef.org/issuu/nsaids/layout.xml&showFlipBtn=true>). Specifically, the Federation has published a maximum permitted plasma concentration for diclofenac ("Surpass®"), a topical NSAID. Any overage of this drug in the plasma sample of a horse constitutes a violation of the Drugs and Medications rules and would lead to a hearing. The level permitted under the Federation rule was set after drug administration studies conducted by the Federation, as well as with the use of manufacturer data. The drug administration studies were completed at a great cost to the Federation. However, the Federation deemed it important to recognize the legitimacy of this drug while establishing regulatory control over its use. The Federation provides a recommendation to its members as to the proper dose and time of application to prevent any excessive plasma level being detected. Currently, the Federation recommends the application of a 5" strip that is no more than ½" wide to be applied to the horse's skin in a single location. The drug should be administered no more than twice daily, with 12 hours between administration (See Exhibit 12, Guidelines for Drugs and Medications).

As evidence by the above, topical therapeutic medications should be strictly controlled as to avoid any misuse. Yet when correctly used, topical therapeutic medications have the potential to benefit horses and should be permitted to be used properly. The prohibition of topical therapeutic medications runs counter to the purpose of the Regulations and threatens horse welfare. Therefore, the exception for therapeutic treatment in the definition of sore, 7 C.F.R. § 11.1, should be included in the definition of substances in the proposed amendments to 7 C.F.R. § 11.2.

3. Third Major Concern: Prohibition of the use of all pads.

The Federation recognizes the potential for misuse of pads and its connection to soring in the Tennessee Walking Horse community, notably the use of stacks and performance kits. The Federation appreciates the USDA's efforts to successfully and significantly reduce instances of soring through a prohibition of the use of pads. However, the proposed amendment to the language in §11.2 is overly broad. Due to its applicability to all horses, including any "related breed that performs with an accentuated gait that raises concerns about soring," and in consideration of those pads used by Federation breeds and disciplines within the intended and beneficial purposes, the Federation argues this ban is arbitrary and capricious.

Risks

Dr. Tracy Turner, a specialist in equine lameness, navicular disease, orthopedics, podiatry, and back issues, has provided the Federation his expert opinion on the therapeutic use of pads. Dr. Turner received his DVM degree from Colorado State University in 1978, after which he was able to pursue his interest in equine medicine and surgery. He is board certified in Veterinary Surgery ("Dipl.ACVS") and Equine Sports Medicine and Rehabilitation ("Dipl.ACVS MR"). He served on the faculty of the University of Illinois, University of Florida and the University of Minnesota. He started his own practice in 2016 dedicated strictly to Sports Medicine, Lameness, and Surgery. Dr. Turner consults for the USDA Horse Protection, FEI, and the Federation. Dr. Turner has worked at 3 Pan America Games, 2 Olympic Games, including the most recent 2016 Summer Olympics in Rio de Janeiro, and 1 World Equestrian Games. Dr. Turner is one of 3 veterinarians inducted into the International Equine Veterinarians Hall of Fame (See Exhibit 13, Dr. Tracy Turner Curriculum Vitae).

Clearly, Dr. Turner is an expert on the topic of the use of pads as a therapeutic treatment of lameness of competition horses. In a letter in support of the Federation's recommendation, Dr. Turner positions that pads, packing material, and roller motion shoes "are all essential items for the treatment of lameness and the continuous battle to keep our competition horses sound" (See Exhibit 14, Letter from Dr. Tracy Turner to the Federation). The use of pads, packing materials, and roller motion shoes, is individualized based on the intended purpose. For example, combinations of pads are used therapeutically only in cases of severe injury, where the injury would prevent traditional shoeing. Pad combinations or stacks of pads are used for gait enhancement in show horses, not for therapeutic purposes. There are clear differences between instruments used for beneficial purposes and those used for gait enhancement. In

closing, the complete ban of the use of these instruments in horses would be a major setback in the treatment of lameness of horses.

Examples

PADS: The proposed amendment of pads would include the use of therapeutic pads. The use of pads in many breeds and disciplines is both justified and warranted. There exist pads, such as therapeutic rim pads used to prevent bruising, that are used on horses that compete in Federation licensed/endorsed competitions and are necessary to protect the horse. These pads contribute to the overall health of the horse. A total ban of all pads would have far-reaching unintended consequences that would negatively impact the treatment of lameness in horses, specifically the use of pads known to have therapeutic uses.

PACKING MATERIALS: Packing materials come in a variety of consistencies and properties that make them extremely important for the redistribution of load and therefore relieve pain. The use of packing materials allows horses to be used pain free on a variety of surfaces. The elimination of the use of packing materials could be considered a welfare issue. A ban of packing materials would minimize the available aids available to horse professionals in the treatment of lameness and pain in their horses.

ROLLER MOTION SHOES: Roller motion shoes are described as any shoe that does not land flat and eases rollover of the hoof from stance phase to breakover. These shoes are necessary to relieve any number of issues from tendon strain to navicular strain. Under the proposed amendments to the Regulations, roller motion shoes would be banned under the absolute ban of all pads. With the referenced therapeutic uses of roller motion shoes, the ban risks causing further harm to lame horses, as it would remove a known therapeutic instrument from the list of permitted treatments available to competition horses.

Recommended Language

The Federation recommends that language exempting pads and pad-related instruments that have recognized therapeutic value and are used for their intended purpose, as outlined below, be inserted in Section 11.2(a):

The use of the following devices, equipment, or practices is specifically prohibited, ***if such use causes or can reasonably be expected to cause such horse to be sore***, with respect to any Tennessee Walking Horse, Racking Horse, or related breed that performs with an accentuated gait that raises concerns about

soring at any horse show, horse exhibition, horse sale, or horse auction.

II. CONCLUSION

The Federation shares the goal of the USDA to eradicate soring but stands firm on the belief that, as so broadly proposed, the USDA's amendments to the Regulations would ultimately slow the process and interfere with our common goal of eradicating soring and horse abuse of any kind. Importantly, the Federation's recommendations and proposed language address these concerns with the Regulations and would aid in the overall protection of horse welfare. The Federation and the USDA fall on the same side of the issue of soring. This is supported by the USDA's statement that its recommended amendments to the Regulations "would align the HPA regulations with existing equestrian standards set by the U.S. Equestrian Federation" (See Exhibit 4, excerpt from USDA website).

It is with the submission of this comments that the Federation urges the USDA to reconsider its proposed amendments to the Regulations and to insert clarifying language consistent with the Federation alternative language proposed herein. In sum, the Federation asserts that failure to do so would render the Regulation virtually unenforceable, or the Regulations enforcement would necessarily be ineffective; furthermore, as USDA proposed them, the amendments' arbitrary and capricious nature and overly broad definitions, coupled with the failure to conduct a proper cost and benefit analysis, would make the amendments vulnerable to challenges under the Administrative Procedure Act, thus delaying much needed implementation of otherwise important horse welfare protection rules by both APHIS and the Federation.

The Federation urges USDA to reissue its proposed rule with revisions consistent with the Federation's comments. The Federation is willing to work with APHIS to support USDA's efforts in connection with the next iteration of the proposed amendments to the Regulations. The Federation appreciates the opportunity to comment.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Murray Kessler", with a long horizontal flourish extending to the right.

Murray Kessler
Chair, United States Equestrian Federation Governance Committee

Exhibits Attached

cc: Chrystine J. Tauber, President

Federation Comment

October 3, 2016

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William J. Moroney, Chief Executive Officer

Sonja S. Keating, General Counsel

Dr. Stephen S. Schumacher, Chief Administrator Equine Drugs & Medications Program

Federation Recognized Affiliates

American Horse Council

Humane Society of the United States