

New USDA Horse Protection Rule - Executive Summary

On April 29, 2024, the U.S. Department of Agriculture (“USDA” or “Agency”) published on its website a Notice of Final Rule (“Rule”) amending the Agency’s current regulations enforcing the Horse Protection Act. The Rule largely tracked an earlier proposed version of the rule that USDA issued in August 2023 (“Proposed Rule”) with a few significant changes.

Timing. The Rule will largely take effect on February 1, 2025. Only one provision, relating to the training of new Horse Protection Inspectors (“HPIs”) will take effect earlier, within 30-days after the Rule is published in the Federal Register. Because this is a final rule adopted after notice and comment, even if there were a change in administrations after the election this fall, the rule could be withdrawn only if the new Secretary or Administration directs its withdrawal and after another round of notice and comment proceedings. If Trump wins, he cannot put a hold on an already published Rule.

Due Process. The Proposed Rule permitted horse owners, trainers, exhibitors, custodians, or transporters to appeal an inspection report to the Agency within 21 days contesting the findings in the report. The Final Rule makes two changes to this provision. First, the Final Rule permits appeals for *disqualifications*, not simply for the findings in an inspection report. Second, the Final Rule provides that individual horse owners must be provided with a copy of the inspection report leading to the disqualification at the show in which the disqualification occurs.

Ban on Action Devices and Pads. The Final Rule completely bans the use of action devices and pads by Tennessee Walking Horses and racking horses during competition. USDA acknowledges that action devices and pads do not, in themselves, cause soring. But USDA argues that there is a “disproportionately high incidence of soring” in Tennessee Walking Horses who compete using action devices and pads. In response to concerns raised by TWHNCA that these provisions would devastate the industry, USDA reiterates its belief that horses currently competing in the performance divisions could be retrained to compete in the flat-shod division. Weighted shoes and bands are allowed.

Ban on Substances. The Final Rule completely bans the use of all substances on the extremities above the hoof of any Tennessee Walking Horse or racking horse during competition. USDA notes that the only change from existing limitations on the use of substances is that the new ban includes lubricants. While USDA acknowledges that lubricants do not cause soring, it believes that they can be used to mask soring. It also states that there is no longer a need for lubricants given the ban on action devices.

Scar Rule. In seeking to modify the Scar Rule, the Proposed Rule provided a non-exhaustive list of “dermatologic conditions that are indicative of soring” which, if found by an inspector, would *require* the horse to be deemed sore. The Agency acknowledges that the list of conditions may or may not be evidence of actual soring. Thus, USDA modified the language of the new Scar Rule to indicate that a horse may or may not be disqualified based on the presence of any one such condition. The new rule leaves it entirely to the subjective judgment of the inspector, based on his or her experience, to decide whether a particular dermatologic condition is

evidence that warrants finding a horse to be sore. Also no grandfathering was provided; all horses are subject to the new scar rule language.

Abolition of the DQP Program. The Final Rule adopts the language from the Proposed Rule eliminating the DQP Program and any role of HIOs under the regulations. Under the Final Rule, USDA-authorized Horse Protection Inspectors (“HPIs”), along with USDA’s own VMOs, would be responsible for inspections. The Agency eliminated a requirement in the Proposed Rule requiring HPIs to be licensed veterinarians, acknowledging that (i) the requirement was inconsistent with what USDA required of its own VMOs and (ii) there is currently a shortage of veterinarians.

Economic Analysis. USDA’s economic analysis supporting the rule largely tracks that from the Proposed Rule. USDA provides estimates for the expected costs that would be required by horse trainers to retrain their horses and horse management to implement necessary changes. USDA believes that the estimated costs to be borne by the industry are reasonable. USDA also notes that horse shows could potentially save money by utilizing USDA VMOs instead of having to pay out of pocket for a new HPI.