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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. APHIS-2022-0004]

RIN 0579-AE70

Horse Protection Amendments; Further Delay of Effective Date, and Request for Comment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; further delay of effective date and request for comment.

SUMMARY: On May 8, 2024, we published a final rule amending the horse protection regulations. The amendments to the final rule initially scheduled to go into effect on February 1, 2025, were delayed until April 2, 2025. In this document, we are further delaying the effective date of the amendments effective April 2, 2025, to February 1, 2026. We are also seeking comment on whether the length of this postponement should be extended and soliciting any supplemental information that may help inform a decision regarding an appropriate length of postponement.

DATES: As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the amendments to 9 CFR 11.1 through 11.18 effective February 1, 2025, (89 FR 39194), delayed until April 2, 2025, (90 FR 8253), are further delayed until February 1, 2026. We will consider all comments that we receive on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov. Enter APHIS-2022-0004 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2022-0004, Regulatory Analysis and Development, PPD, APHIS, Station 2C-10.16, 4700 River Road Unit 25, Riverdale, MD 20737-1238.

Any comments we receive on this docket may be viewed at Regulations.gov or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Louis DiVincenti, Acting Animal Welfare Operations Director, 2150 Centre Ave. Bldg. B, Mailstop 3W11, Fort Collins, CO 80526; (585) 549-0570; louis.divincenti@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the Horse Protection Act (HPA, or the Act, 15 U.S.C. 1821 *et seq.*), the Secretary of Agriculture is authorized to promulgate regulations to prohibit the movement, showing, exhibition, or sale of sore horses. The Secretary has delegated responsibility for administering the Act to the Administrator of the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the Act has been delegated to the Deputy Administrator for Animal Care. Regulations and standards established under the Act are contained in 9 CFR part 11 (referred to below as the Horse

Protection regulations or just the regulations), and 9 CFR part 12 lists the rules of practice governing administrative proceedings.

On May 8, 2024, APHIS published in the *Federal Register* (89 FR 39194-39251, APHIS-2022-0004)¹, a final rule titled “Horse Protection Amendments” (2024 Horse Protection final rule) that was to be effective on February 1, 2025, except for § 11.19, which had an effective date of June 7, 2024.

On January 28, 2025, APHIS published in the *Federal Register* (90 FR 8253-8254, APHIS-2022-0004)², a postponement of the regulations in the 2024 Horse Protection final rule, delaying the effective date of all provisions other than those in § 11.19 until April 2, 2025.

In the postponement, we noted that, on July 1, 2024, a complaint was filed in the U.S. District Court for the Northern District of Texas and amended on September 23, 2024.³ The amended complaint alleged, in part, that the 2024 Horse Protection final rule exceeded APHIS’s statutory authority and would have a significant economic impact on the Tennessee Walking Horse industry altogether. The amended complaint requested vacatur of the final rule. The parties completed briefing on their cross motions for summary judgment on December 20, 2024.

In the postponement, we explained that we were taking the action pursuant to section 705 of the Administrative Procedure Act in order to temporarily preserve the regulatory status quo during the pendency of the litigation. We noted that if the Court were to vacate, enjoin, or modify the final rule shortly before or after it would otherwise have been effective, there would

¹ To view the final rule, go to <https://www.regulations.gov/document/APHIS-2022-0004-8793>.

² To view the postponement, go to <https://www.regulations.gov/document/APHIS-2022-0004-8797>.

³ *The Tennessee Walking Horse National Celebration Association, et al. v. United States Department of Agriculture, et al.*, 2:24-cv-00143 (N.D. Tex.).

be costs associated with reverting back to the previous regulatory regime on short notice. We also cited possible disruptive consequences to horse owners and trainers.

We concluded that, due to the approaching effective date, a postponement would preserve the existing status quo—a legal and regulatory regime that has applied for years prior to the effective date—and eliminate uncertainty for the duration of the postponement, providing predictability to the regulated industry for at least the beginning of the 2025 show season, which started on or about February 28, 2025, and continues to November.

Finally, in the postponement, we noted that the postponement was in accordance with the Presidential Memorandum titled “Regulatory Freeze Pending Review”⁴ and issued on January 20, 2025 (the “Regulatory Freeze memorandum”), which orders all agencies to consider postponing for 60 days the effective date of any rule that has not taken effect, for the purpose of reviewing any question of fact, law or policy that the rule raises.

On January 31, 2025, the United States District Court for the Northern District of Texas issued its decision. The Court held that APHIS had exceeded its statutory authority in the 2024 Horse Protection final rule by issuing a blanket prohibition of the use of pads, action devices, and substances on Tennessee Walking Horses and racking horses; that a Dermatologic Conditions Indicative of Soring provision intended to replace the “scar rule” failed to provide due process; and that the pre- and post-deprivation reviews in the rule had failed to provide due process. In the order, the Court vacated the above provisions, found in §§ 11.5, 11.6(c), 11.7, and 11.8(h) of the 2024 Horse Protection final rule.

⁴ To view the memorandum, go to <https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/>.

With those provisions in the 2024 Horse Protection final rule vacated, the final rule will now only amend a patchwork of several portions of the existing regulations. The final rule, as partially upheld by the district court, removes the requirement that Designated Qualified Persons (DQPs) be trained and licensed by horse industry organizations (HIOs) and removes the term DQPs from the regulations. The final rule requires the use of “Horse Protection Inspectors,” or HPIs. The regulation specifies that APHIS will authorize these applicants, preferably licensed veterinarians, as HPIs after screening them for potential conflicts of interest and conducting training. The agency adopted this regulatory change to bring inspectors directly under APHIS oversight and ensure that they are sufficiently screened for conflicts of interest. After the effective date of the other provisions of the final rule, only APHIS representatives and HPIs may be utilized by management to detect and identify horses which are sore or otherwise inspect horses for compliance with the Act or regulations. Any DQPs seeking to continue inspecting or other persons wishing to become inspectors after the effective date of the final rule must apply to APHIS to become an HPI and meet eligibility qualifications for authorization included in § 11.19. While the requirements in § 11.19 for training and authorizing HPIs became effective June 7, 2024, the requirement in § 11.18 that management pivot from electing to utilize DQPs to electing to utilize HPIs is not scheduled to become effective until April 2, 2025, or, by this document, February 1, 2026.

Additionally, the final rule will amend reporting requirements, expanding the number of entities subject to its applicability to include shows, exhibitions, sales and auctions of all breeds of horses, not just Tennessee Walking Horses or racking horses, as well as imposing earlier timeframes for reporting. In particular, new § 11.16 requires that at least 30 days before *any* horse show, horse exhibition, horse sale, or horse auction is scheduled to begin, management

must notify the Administrator of such event, and at least 15 days prior thereto, the Administrator must be notified of any changes. We estimate that thousands of events will be newly subject to these reporting requirements.

In light of the Court's decision, we are further postponing the effective date of the portions of the final rule that have not been vacated by the district court and otherwise would go into effect on April 2, 2025. We are postponing that effective date to February 1, 2026. APHIS is taking this action, effective immediately, based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Moreover, to the extent that extending the effective date of this final rule would grant an exception or relieve a restriction, an exception also applies under 5 U.S.C. 553(d)(1). APHIS has determined that it would be impracticable and contrary to the public interest to delay this postponement until a full public notice-and-comment process is completed. It is impracticable because there is not enough time to receive and review comments before the current effective date of April 2, 2025. It would be contrary to the public interest because allowing the partially vacated 2024 Horse Protection final rule to go into effect on April 2, 2025, or at any other point in the middle of the current show season, would have disruptive consequences and result in "regulatory whiplash" to the regulated industry, as described below.

As described above, perhaps the most significant provisions of the 2024 Horse Protection final rule that remain after the Court's vacatur are the provisions that replace the industry-overseen DQPs with HPis. Therefore, the practical impact of an April 2, 2025, effective date of the vacated rule is that management that elects to utilize an inspector will be required to appoint either an HPI or an APHIS representative at any shows occurring April 2, 2025, or later. The agency explained that it considered the HPI-specific provisions of the rule capable of operating independently irrespective of the implementation of the other provisions, and if a court were to

vacate the rule’s prohibitions, “HPIs could still be trained and authorized regarding the remaining provisions of the rule, as well as the Act itself, and the Agency would still have jurisdiction over such training and authorization.” (89 FR 39194, 39234, May 8, 2024). APHIS has identified 67 applicants to be HPIs and trained 17 prospective HPIs in accordance with § 11.19. However, due to the vacatur of the provisions governing prohibited items at shows and criteria for identifying soring —i.e. the provisions that the HPIs have received training under-- APHIS must redevelop its HPI training program and re-train each of the 17 prospective HPIs in accordance with the surviving regulations. APHIS intends to ensure that HPI training includes workshops, classroom and virtual instruction, and hands-on training, with evaluations to confirm mastery of subject matter. APHIS requires additional time to redevelop this training program and retrain each prospective HPI. Additionally, APHIS has received numerous inquiries regarding the new reporting requirement at § 11.16, indicating that there is general confusion as to which entities need to comply and how they do so. These developments—most centrally the court’s partial vacatur—have placed both the agency and industry in an untenable position: only 17 HPIs are available to inspect horses and those HPIs must be re-trained to inspect under the prior inspection regime, rather than the now-vacated regime on which they were trained. Additionally, many stakeholders are concerned that the new reporting requirement is overly burdensome. For these reasons, good cause exists to delay the effective date to February 1, 2026.

This new effective date falls after the conclusion of the current show season, and before the start of the 2026 show season. Postponing until February 1, 2026, will ensure that Agency officials have the opportunity to fully evaluate the court’s decision, evaluate the program as a

whole, and assess whether it wishes to proceed with the final rule, as vacated, or take other action, without disrupting the 2025 show season.

Further postponing the effective date will allow APHIS the necessary time to identify appropriate next steps to ensure that the 2024 Horse Protection final rule goes into effect with clarity to the regulated industry regarding its application and enforcement.

In the intervening time, the regulated industry and APHIS will continue to operate under the legal and regulatory regime that has applied for years prior to the effective date of the 2024 Horse Protection final rule—except for the HPI training provisions of § 11.19, which were effective on June 7, 2024—providing predictability to the regulated industry.

The Regulatory Freeze memorandum instructs Agencies to consider further delaying effective dates of final rules beyond the initial 60-day period, where necessary to continue to review questions of fact, law, and policy. The memorandum further instructs Agencies to, “where appropriate and consistent with applicable law, consider opening a comment period to allow interested parties to provide comments about issues of fact, law, and policy” raised by a rule subject to a delay of effective date based on the memorandum. One of our priorities is ensuring policy is in alignment with the President’s objectives. Another priority is providing clarity for the regulated public. Accordingly, the further postponement of the effective date of the final rule, with the exception of § 11.19, will allow for stakeholder input and for further examination of the horse protection program, especially in light of the Court’s decision. In the event that policy preferences within our purview shift in response to additional examination or stakeholder feedback, and we determine that future rulemaking is desired, preserving the status quo until February 1, 2026, will insulate the public from any would-be “regulatory whiplash” resulting from any shifts in policy decisions. The postponement will provide the regulated

public with clarity and stability, as opposed to allowing the rule to go into effect at the risk of a subsequent determination that the aims of the rule are not in alignment with the policy of this Administration.

In connection with this action, we specifically request comment regarding whether this extension provides a sufficient period of time, or whether the delay should be extended for a second season. We therefore solicit any supplemental information regarding Horse Protection Act authorities, standards, recordkeeping, or other matters that may help inform a decision regarding an appropriate length of postponement.

(Authority: 5 U.S.C. 553; 15 U.S.C. 1823-1825 and 1828; 7 CFR 2.22, 2.80, and 371.7.)

Done in Washington, DC, this 17th day of March 2025.

Michael Watson,

Administrator,

Animal and Plant Health Inspection Service, USDA.

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