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September 22, 2016

BY HAND & U.S. MAIL

The Honorable Kevin Shea
Administrator, Animal & Plant Health Inspection Service
United States Department of Agriculture
1400 Independence Ave., S.W.
Washington DC 20250

**Re: “Clarification” to Proposed Rule re Horse Protection, et al.,
Dkt. No. APHIS-2011-0009, RIN N 0579-AE19**

Dear Administrator Shea:

This law firm represents the Tennessee Walking Horse National Celebration Association (the “Association”), on whose behalf I am writing.

As you know, on July 26, 2016, APHIS announced a proposed rule that would amend the current horse protection regulations. The proposed rule is currently pending, with comments due in response to it by October 26, 2016. APHIS published a notice in today’s Federal Register that describes what APHIS purports to be a “clarification” to § 11.2(a)(3) of the proposed rule. See 81 Fed. Reg. at 65307. That “clarification” changes proposed § 11.2(a)(3) from reading “The use of any weight on horses up to 2 years old, except a keg or similar conventional horseshoe is prohibited, as is the use of a horseshoe on horses up to 2 years old that weighs more than 16 ounces” to reading “The use of any weight on horses, except a keg or similar conventional horseshoe, is prohibited.”

That is no “clarification” – that is a significant change to the substance of the Proposed Rule. As changed, the proposed provision would prohibit the use of any kind of horseshoe, other than a keg or conventional horseshoe, on any Tennessee Walking Horse (“TWH”), Racking Horse, or related breed that performs with an accentuated gait that raises concerns about sorring at any horse show, horse exhibition, horse sale, or horse auction.

What APHIS calls a “clarification” would eliminate a substantial number of classes in a typical TWH show, including several flat shod classes. Elimination of these classes, in turn, would eliminate about 80% of the entrants in such a show. All of this would devastate the TWH show industry, including the owners of TWH shows and trainers and owners of TWH show horses, and others who benefit from this industry, such as, for example, the local governments in the communities that host TWH shows.¹

¹ This letter does not attempt to recite all of the Association’s concerns with the version of proposed § 11.2(a)(3) that is set out in today’s notice in the Federal Register.

Hon. Kevin Shea
September 22, 2016
Page Two

It is unfair for APHIS to introduce such a significant change to the proposed rule at this juncture of the rulemaking proceeding given the significant impact that the proposed provision would have, and because APHIS has not even explained its basis for introducing this proposed provision, including, for example, whether and how it would help to eliminate sorling.

Furthermore, introduction of this proposed provision at this juncture means that APHIS has sidestepped various rulemaking procedures. APHIS could not have considered this provision as part of its analysis required by Executive Orders 12866 and 13563. Nor could you, the APHIS Administrator, have considered it in providing your certification pursuant to the Regulatory Flexibility Act that the proposed rule would not have a significant impact on a substantial number of small entities. Introducing this proposed provision now renders meaningless that analysis and your certification. And, by introducing this provision now, it appears that APHIS has shielded the provision from the review that the Office of Information and Regulatory Affairs (“OIRA”) does of proposed rules before public notice of them is issued.

Accordingly, APHIS should rescind this proposed “clarification” forthwith, and the Association respectfully requests that APHIS do that. If APHIS wishes to propose this new provision, it can do so through a separate rulemaking proceeding in the future. That would give APHIS the ability to provide the public with its basis for this proposed provision, assure that compliance with Executive Order 12866 and 13563 is met, and that OIRA has an opportunity to review the proposed provision.

At a minimum, given the significance of the proposed provision, it would only be fair for APHIS to extend the comment period by sixty days (*i.e.*, another thirty days) from the time that APHIS provides its basis for this proposed provision, states the effect that the proposed provision has on its analysis under Executive Orders 12866 and 13563 and its Regulatory Flexibility Act certification, and OIRA has reviewed the proposed provision.

Thank you for your time and consideration. You may contact me should you have any questions or wish to discuss the above matters in greater detail.

Sincerely,

[/s/ Joseph D. Wilson](#)

Joseph D. Wilson
*Counsel To The Tennessee Walking Horse National Celebration
Association*

ccs (by Federal Express):

Thomas Vilsack,
Secretary of Agriculture, USDA

Kay Carter-Corker
Assistant Deputy Administrator
Animal Care Program, APHIS