



September 7, 2016

VIA ELECTRONIC SUBMISSION

Dr. Kay Carter-Corker
Assistant Deputy Administrator, Animal Care
Animal & Plant Health Inspection Service
4700 River Road
Unit 84
Riverdale, MD 20737

**Re: Horse Protection; Licensing of Designated Qualified Persons and Other Amendments
(81 Fed. Reg. 49112)**

Dear Dr. Carter-Corker:

The U.S. Small Business Administration's Office of Advocacy (Advocacy) submits the following comments in response to the Animal & Plant Health Inspection Service's (APHIS) proposed rule, "Horse Protection; Licensing of Designated Qualified Persons and Other Amendments."¹ Advocacy urges APHIS to extend the public comment period for an additional 60 days to allow small businesses and their representatives to fully and meaningfully participate in this important rulemaking.

The Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),² as

¹ 81 Fed. Reg. 49112 (July 26, 2016).

² 5 U.S.C. §601 et seq.



amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁴ The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

Background

On July 27, 2016, APHIS published a notice of proposed rulemaking in the Federal Register, describing its intent to amend regulations implementing the Horse Protection Act of 1970.⁶ APHIS promulgated this rulemaking in response to the "clear conflicts of interest" between Designated Qualified Persons ("DQPs") and the industry that were identified in the U.S. Department of Agriculture's Office of the Inspector General's September 2010 Report.⁷

The Horse Protection Act ("the Act") was enacted by Congress to eliminate the practice of *soring*⁸ in the horse industry by prohibiting the showing, exhibiting, selling, or auctioning of any horse that has been *sored*.⁹ In implementing the Act, APHIS established requirements for eligibility, training, licensing, and monitoring of third-party, independent inspectors to enforce compliance at horse shows, exhibitions, sales, and auctions.

Under current regulations, veterinarians, veterinary technicians, farriers, horse trainers, and "other knowledgeable horsemen whose past experience and training would qualify them as horse industry organization or association stewards or judges"¹⁰ are eligible to be one of these inspectors, known as DQPs. Horse industry organizations (HIOs) are responsible for training and monitoring DQPs through APHIS-certified programs that conform to the eligibility, training, licensing, recordkeeping, reporting, and standards of conduct prescribed by APHIS in 9 CFR § 11.7.¹¹ HIOs are also responsible for licensing DQPs to inspect horses at shows, exhibitions, sales, and auctions. For events comprising more than 150 horses, HIOs must provide at least two DQPs for these inspections. Notably, events management is encouraged to retain DQPs

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

⁴ Small Business Jobs Act of 2010 (PL. 111-240) §1601.

⁵ *Id.*

⁶ See 15 U.S.C. § 1821 *et seq.*

⁷ APHIS ADMINISTRATION OF THE HORSE PROTECTION PROGRAM AND SLAUGHTER HOUSE TRANSPORT PROGRAM: OFFICE OF THE INSPECTOR GENERAL AUDIT REPORT, *available at* <http://www.usda.gov/oig/webdocs/33601-02-KC.pdf> (September 30, 2010).

⁸ See 15 U.S.C. § 1821(3) (defining "sore" under the Horse Protection Act).

⁹ 15 U.S.C. § 1823.

¹⁰ 9 C.F.R. § 11.7(a).

¹¹ 9 C.F.R. § 11.7.

under the Act, as its potential liability is limited to failure to exclude a sore horse from the event after being notified by a DQP or APHIS.¹²

The proposed rule would transfer responsibility for training, licensing, and monitoring DQPs to APHIS, and would limit DQP eligibility to veterinarians and veterinary technicians.¹³ The proposed rule would also increase DQPs' presence, by requiring at least two DQPs for events with fewer than or equal to 150 horses and at least three DQPs for events with greater than 150 horses.¹⁴ In addition, the proposed rule would assign additional responsibilities to management of horse shows, exhibitions, sales, and auctions. These include: (1) providing a farrier at all horse shows, exhibitions, sales, and auctions; (2) notifying the Department of Agriculture at least 30 days before of any horse show, exhibition, sale, or auction involving Tennessee Walking Horses, Racking Horses, and related breeds; (3) screening individuals entering horses in a show, exhibition, sale, or auction; and (4) instituting an identification methodology for individual horses using descriptions, electronic identification, equine passports, or digital photographs.¹⁵

Request for Extension of the Public Comment Period

Since publication of this proposed rule, Advocacy has spoken to many small business stakeholders that would be directly impacted by this rulemaking and believes a 60-day extension of the public comment period is necessary. Veterinarians, trainers, breeders, boarders, farriers, small horse shows, small municipalities, current DQPs, and small business representatives have expressed serious concerns about the potential negative impacts of this rulemaking. An extension of 60 days ensures these groups have sufficient time to discuss the provisions of the proposed rule and develop meaningful comments for APHIS to consider, including regulatory alternatives. Moreover, this rule was published at the peak of the industry's competitive season and a 60-day extension of the public comment period would allow for greater industry participation.

Further, APHIS should provide sufficient time to compile information and economic data regarding the potential impacts of this rulemaking. APHIS specifically requested "public comments, supported by scientific data or other information"¹⁶ on particular issues including action devices, pads, and substances. APHIS would also benefit from additional economic information as APHIS' Regulatory Impact Analysis is scant of economic data on the affected industries and the potential negative impacts of this rule.

Conclusions

For these reasons, Advocacy urges APHIS to extend the public comment period for an additional 60 days to allow small businesses and their representatives to meaningfully participate in this important rulemaking.

¹² 15 U.S.C. § 1824.

¹³ 81 Fed. Reg. 49113.

¹⁴ *Id.*

¹⁵ *Id.* at 49114, 49124.

¹⁶ 81 Fed. Reg. 49120.

If you have any questions or require additional information please contact me or Assistant Chief Counsel Daniel T. Kane at (202) 205-7144 or by email at Daniel.Kane@sba.gov.

Respectfully,



The Honorable Darryl L. DePriest
Chief Counsel
Office of Advocacy
U.S. Small Business Administration



Daniel T. Kane
Assistant Chief Counsel
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Copy to: The Honorable Howard Shelanski
 Administrator
 Office of Information and Regulatory Affairs
 Office of Management and Budget