



## **Animal and Plant Health Inspection Service**

### **9 CFR Part 11**

**[Docket No. APHIS-2022-0004]**

**RIN 0579-AE70**

### **Horse Protection Amendments; Postponement of Regulations**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule; postponement of regulations.

**SUMMARY:** On May 8, 2024, we published a final rule amending the horse protection regulations to provide, among other provisions, that the Animal and Plant Health Inspection Service will screen, train, and authorize qualified persons for appointment by the management of any horse show, horse exhibition, or horse sale or auction to detect and diagnose soring at such events for the purposes of enforcing the Horse Protection Act. With the exception of § 11.19, which went into effect on June 7, 2024, the remainder of the rule was scheduled to go into effect on February 1, 2025. In this document, we are issuing a temporary postponement of the effective date of those regulations for 60 days, from February 1, 2025 to April 2, 2025.

**DATES:** The effective date of 9 CFR 11.1 through 11.18, published at 89 FR 39194-39251, May 8, 2024, is delayed until April 2, 2025.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sarah Helming, Deputy Administrator, Animal Care, 4700 River Road, Riverdale, MD 20737-1234; (970) 494-7478; [sarah.j.helming@usda.gov](mailto:sarah.j.helming@usda.gov).

**SUPPLEMENTARY INFORMATION:** On May 8, 2024, we published a final rule (89 FR 39194-39251) (“the rule”) amending the horse protection regulations to provide, among other provisions, that the Animal and Plant Health Inspection Service (“APHIS”) will screen, train, and authorize qualified persons for appointment by the management of any horse show, horse exhibition, or horse sale or auction to detect and diagnose soring at such events for the purposes

of enforcing the Horse Protection Act. With the exception of § 11.19 of the rule (“Authorization and training of Horse Protection Inspectors”) which went into effect on June 7, 2024, the remainder of the rule was scheduled to go into effect on February 1, 2025.

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.<sup>1</sup> The amended complaint alleges, in part, that the rule exceeds APHIS’s statutory authority, would have a significant economic impact on the Tennessee Walking Horse industry altogether, and requests vacatur of the rule. The parties completed briefing on their cross-motions for summary judgment on December 20, 2024. The parties have notified the court of the rule’s February 1, 2025 effective date, and are currently awaiting a decision on the merits from the court.

Under Section 705 of the Administrative Procedure Act, “[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review.” 5 U.S.C. 705. In light of the pending litigation, and for the following reasons, APHIS has determined that justice requires postponement of the effective date of the remainder of the rule—i.e., all provisions except for § 11.19—for 60 days, to April 2, 2025.<sup>2</sup> The postponement will temporarily preserve the regulatory status quo while the litigation is pending. The plaintiffs have raised serious questions concerning the validity of certain provisions of the rule, including the prohibitions of action devices and substances, and the provision on dermatological conditions indicative of soring. Specifically, plaintiffs allege that: APHIS’s data supporting the rule is unreliable because it overstates the rate of soring violations in Tennessee Walking Horses; APHIS’s ban on action devices, pads and substances exceeds its statutory authority because those items, by themselves, do not cause soring; APHIS’s “dermatologic conditions indicative of

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<sup>1</sup> *The Tennessee Walking Horse National Celebration Association, et al. v. United States Department of Agriculture, et al.*, 2:24-cv-00143 (N.D. Tex.).

<sup>2</sup> We do not, through this action, postpone the effective date of § 11.19 because, as courts have held, “[5 U.S.C. ] 705 permits an agency to ‘postpone the effective date’ of a rule that has not yet taken effect, but does not permit an agency to suspend, without notice and comment, a rule that is already in effect.” *Ctr. for Biological Diversity v. Regan*, 691 F. Supp. 3d 1, 8 (D.D.C. 2023)

soring” provision is unconstitutionally vague and will permit arbitrary disqualifications; APHIS’s inspection process does not provide owners and trainers due process in that there is no mechanism for a pre-deprivation review of either a pre- or post-show disqualification; APHIS’s abolition of Designated Qualified Persons is unsupported by the evidence before the Agency, is contrary to the statutory intent of having the industry work with APHIS to police itself, and arbitrarily limits the ability of professional horse trainers or farriers to participate; APHIS’s economic analysis is deficient in that it relies on outdated data and inadequately addresses the rule’s impact on industry and the larger U.S. economy; and APHIS failed to comply with the Regulatory Flexibility Act, in that it did not address the rule’s significant impact on small entities.

The Tennessee Walking Horse industry also contends that the rule’s ban on action devices and pads will eliminate the Performance division of competition. A comment on the proposed rule suggested that Performance division Tennessee Walking Horses have been specifically bred and trained to compete with action devices and pads and cannot simply be retrained to compete as a flat-shod horse; however, no comment included specific evidence that Performance division horses trained to perform with the use of pads and action devices cannot perform well without them. A postponement at this time will temporarily delay the potential loss in value of horses that horse owners allege will occur when the rule’s ban on action devices and pads is implemented.

Although APHIS opposed plaintiffs’ legal arguments in summary judgment briefing, and does not through this action concede that its own arguments lack merit or are unreasonable, plaintiffs raise significant legal challenges, and there is much uncertainty as to how the Court will decide. In addition, the competition season for regulated Tennessee Walking Horses runs from February to November annually, and the industry will benefit from extension of the status quo, which will reduce the risk of shifting legal regimes and lack of clarity in the event the rule goes into effect and is later modified or altered by court order.

If the court were to vacate, enjoin or modify the rule shortly before or after it otherwise would become effective, there would be costs associated with reverting back to the previous regulatory regime on short notice. It will be disruptive for the industry to change the structure of its shows and the list of prohibitions in the event of a shifting regulatory change, e.g., if the court decides in favor of plaintiffs in any material respect. It may also be disruptive to horse owners and trainers who do not know whether to sell, relinquish, or re-train their horses to compete in the flat-shod division while the litigation is pending. A postponement will 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 starts on or about February 28, 2025.

Given this legal uncertainty and the significant issues raised in the litigation, maintaining the status quo will avoid harm to the regulated industry, including plaintiffs and similarly situated stakeholders. Setting aside plaintiffs' legal challenges to the rule, we also note that other stakeholders have requested a postponement of the effective date for related reasons arising from the impending show season and a lack of clarity as to how the rule will operate: For example, one stakeholder group has conveyed to the Agency that proceeding forward with the original implementation date will undermine confidence in the Agency, the rule, and the ability to enforce the rule in a fair and transparent manner. Among other concerns, the stakeholder cited significant confusion within the industry about the rule, and has received numerous questions and concerns on a daily basis. There are also questions regarding Agency resources and whether personnel and funding are sufficient to implement the new rule. In light of this lack of clarity, the stakeholder requested that the Agency consider a postponement of the effective date of the rule, in order to afford it an opportunity to work collaboratively with APHIS to ensure that the rule achieves its intended purpose.

Like the harm to the industry of not issuing a postponement, as discussed above, there are significant costs to the Agency associated with a change in regulatory regimes (*i.e.*, if the rule is enjoined), such as investments in training of personnel, resources required to conduct stakeholder outreach, and potentially disruptions to administrative enforcement actions. A sixty-day delay will provide the Agency additional time to assess the impact of any decision and respond accordingly.

The Agency has considered the public interest in furthering the humane treatment of horses and the effect to the regulated industry and APHIS, as described above. Considering the harms associated with regulatory uncertainty against the limited duration of the postponement of the rule, APHIS has determined that the balance of harms weighs in favor of a 60-day postponement. In accordance with law, this postponement is made without a notice-and-comment period. Notice and comment is not required when an agency delays the effective date of a rule under section 705 of the APA because such a stay is not substantive rulemaking; it merely maintains the status quo to allow for judicial review. *See Bauer v. DeVos*, 325 F. Supp. 3d 74, 106-07 (D.D.C. 2018); *Sierra Club v. Jackson*, 833 F. Supp. 2d 11, 28 (D.D.C. 2012).

This postponement likewise is in accordance with the Presidential Memorandum titled “Regulatory Freeze Pending Review” issued January 20, 2025, 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.

Authority: 5 U.S.C. 705; 15 U.S.C. 1823-1825 and 1828; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 23rd day of January 2025.

Bruce Summers,

Acting Deputy Under Secretary,  
Marketing and Regulatory Programs.  
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