

RESPONSE FROM: MARLY IRBY
PRESIDENT, FWHBEA

RESPONSES TO USDA LISTENING SESSION QUESTIONS

1. Congress passed the Horse Protection Act in 1970 to eliminate the cruel and inhumane practice of soring horses. How close are we to achieving the goal?

RESPONSE:

For the five (5) predominate certified HIOs which inspect both performance and pleasure horses (PRIDE, WHOA, SHOW, KY AND HOA), the average compliance rate was 98.56%. In 2011 alone, there were a total of 53,783 horses inspected by these five (5) HIOs with a total of 955 violations found. In light of the fact that the USDA is able to attend only 6% of affiliated events, HPA self-regulation through these and other certified HIOs has provided massive strides in effectuating the Act and its regulations since the Act was passed in 1970. Additionally, the HIO system has provided for immediate disqualification from competition of horses found to be non-compliant as well as industry-imposed penalties for violators.

This question posed by the APHIS begs the question "by what standard do you measure success in 'eliminating the cruel and inhumane practice of soring horses'"? 'In considering this question as it relates to the HPA enforcement, it must be kept in mind that the enforcement process involves not one (1), but two (2), levels of subjectivity. HPA enforcement pursuant to its regulations involves the inspection of large animals by unfamiliar humans who conduct manual palpation in an environment that is unfamiliar to the animal being examined, *i.e.*, large, crowded, dusty and noise horse shows. The OIG Audit of 2011 recognized that "Because inspections are performed by hand their quality and results can vary greatly."

TWHBEA IS THE BREED REGISTRY THAT WAS ESTABLISHED IN 1935. IT IS THE OLDEST & LARGEST ORGANIZATION WITHIN OUR INDUSTRY WITH 10,100+ MEMBERS WORLDWIDE.

TWHBEA CURRENTLY HAS 1,078 MEMBERS IN KY & TWHBEA RECOGNIZES KY AS THE SECOND LARGEST STATE FOR MEMBERSHIP.

THERE ARE CURRENTLY 35,079 TWH'S THAT HAVE BEEN REGISTERED IN THE STATE OF KY.

Response From:

MARTY IRBY
PRESIDENT, TWHBEA
350 N. ELLINGTON PKWY.
LEWISBURG, TN 37091
PHONE - 615-796-5334

martyirby@msu.co

* 26 PAGES *

By way of example, based on publicly reported numbers generated by the USDA, its Food Safety and Inspection Service (FSIS) branch reports an approximately 98% compliance rate for 2010 and 2011. The inspections performed by FSIS are to ensure the nation's commercial supply of meat, poultry and egg production is safe in order to protect human health and safety. FSIS inspections are based upon objective standards enforced by USDA FSIS inspectors yet the USDA is only able to report an approximately 98% compliance rate on these issues directly affecting human health and safety.

* **2. Can the industry achieve a consensus on how to carry out a self-regulatory program to enforce the Horse Protection Act in a consistent way?**

In November 2011 the industry formed a "Unity Committee" with the goal of achieving consensus on industry issues, including HPA enforcement. The Unity Committee is comprised of representatives from the four (4) major industry organizations: The Walking Horse Trainers Association, The Walking Horse Owners Association, The Tennessee Walking Horse Breeders and Exhibitors Association and the Tennessee Walking Horse National Celebration. The Unity Committee has also involved certified HIOs in their process to best address HPA enforcement. Pursuant to recommendations flowing from the Unity Committee effort, the HIOs have begun work to standardize rulebooks, shoeing and showing standards, and are considering

other items such as common inspection protocols, common DQP training and others.

Consistency in self-regulation is a function of the strength of the relationship between industry regulators and its regulators, in this case, the USDA. Consistency in training and application of procedures by VMOs, HIOs and DQPs is necessary in order to best effectuate the purposes of the Act and to ensure the best interest of the horse. One of the goals of the Unity Committee is to further strengthen this public/private partnership in order to achieve consistency between all HIOs.

However, there is a segment of our industry which chooses to participate in events which are unaffiliated with any HIO, thereby rendering the industry incapable of regulating these events because it lacks any legal authority to do so. Consequently, all horses shown at these events are completely unregulated and the industry has no mechanism to ensure these horses are shown in accordance with the HPA. The industry is faced with issues associated with unaffiliated events over which it has no control, but must instead rely upon the USDA to take steps to ensure HPA compliance at such events which, to date, has not occurred.

The USDA has long-recognized that this unregulated segment of the breed constitutes a significant number of events at which a significant number of horses compete. USDA statistics associated with the 1976 HPA Amendments estimate that 75% of all shows are in fact unaffiliated. Additionally the USDA has rarely attended any of these events. As long as non-compliant individuals are given the option of showing at events which are virtually ensured to be unregulated, the breed as a

whole can never achieve complete consistency regarding HPA compliance due to the industry's lack of authority.

3. What responsibilities should USDA-certified Horse Industry Organizations (HIOs) have within the industry?

USDA-certified Horse Industry Organizations should, and do, have the responsibility of the consistent enforcement of rules which are consistent with the HPA and its regulations to ensure the welfare of the horse and the integrity of the events they affiliate. Given the number of horse events annually and the budgetary restraints of the USDA, HIOs provide an invaluable ability to ensure compliance with the Act where, otherwise, there would be absolutely no oversight. Since, according to the OIG Audit of 2011, APHIS was able to attend only six (6)% of horse shows between 2005 - 2008, HIOs are able to fill what otherwise would be a huge void in HPA enforcement. Simply stated, HIOs allow the Act and its regulations to be effectuated on a scale which would otherwise be unachievable through USDA enforcement alone.

HIOs not only detect and disqualify non-compliant horses, they also impose penalties upon those found to be in violation. HIOs are able to accomplish this in an efficient, expedient manner which allows for almost immediate punishment of violators. In the past two (2) years, one of the industry HIOs has identified

INSPEC
ONLY

instances of serious violations, and issued immediate, harsh industry lifetime suspension penalties and the USDA has taken the information associated with those infractions and secured criminal penalties associated with same – none of which would have been possible but for the current HIO system.

4. How can the industry reconcile its inherent competition aspect with ensuring compliance with the Horse Protection Act?

Legitimate competitors, whether in sport or in for-profit businesses, all desire a level playing field upon which to compete. The role of the regulatory body, whether public or industry-driven, is to ensure that level playing field. The Tennessee Walking Horse Industry is no different from any other profit-driven industry which self-regulates.

As discussed in Section 1 hereinabove, the inspections performed by the FSIS division of the USDA based upon **objective** standards have not resulted in a 100% rate of compliance – despite the direct impact on human health and safety. In fact, the compliance rates reported by the FSIS for 2010 – 2011 are almost identical to those for the Walking Horse industry, approximately 98% compliant.

Incorrectly, the USDA seems to be focusing on the competition aspect as it relates to competitors in individual classes or shows. As stated above, such competitors should desire a level playing field each time they enter the ring. The more damaging competitive aspect as it relates to HPA compliance is the

competition which now exists between individual horse shows for entry numbers and between certified HIOs for affiliations. As addressed by Dr. DeHaven, former Deputy Administrator for APHIS, in his 2000 article, horse shows have an incentive to either not affiliate or to affiliate with less stringent HIOs in order to increase their number of entries, thereby increasing their profits. Dr. DeHaven stated the following:

“A DQP program stays in business by having horse shows affiliate with them to provide on-site inspections. Because horse show managers seek to maximize the number of entries at their respective shows, they may be less likely to affiliate with a DQP program having a reputation for stringent enforcement of the HPA.”

HIOs with a more stringent inspection process are left at a severe financial disadvantage as horses affiliate with less-stringent HIOs thereby jeopardizing the existence of the HIOs which best effectuate the purpose of the Act.

Additionally, one of the issues raised by the 2011 OIG Audit was the conflicts of interest possessed by some industry DPQs. The USDA and the industry should require that all DQPs do not operate under such conflicts of interest by requiring disclosure of any potential conflicts and oaths taken that no such conflicts exist.

5. What can the USDA do now (and in the future) to ensure compliance?

Additionally, USDA representatives have mentioned on numerous occasions the amount of “rumors” they hear concerning HPA compliance issues. Simply put, no one has the ability to fix a problem that has not been brought to their attention. The USDA and the certified HIOs should develop a system whereby an HIO is given the opportunity to investigate and address, if necessary, any legitimate issues raised through alleged “reports” made directly to the USDA. Most certified HIOs have in place a system to address such “reports”, however, the system is rarely, if ever, utilized. Instead, most such allegations are, apparently, made directly to USDA representatives. A system should be put in place to allow any HIO which is potentially involved to be made aware and given the opportunity to address issues in order to ensure compliance and to encourage a level of trust between the USDA and its certified HIOs.

6. What responsibilities should USDA have within the industry with respect to enforcement and what hinders oversight of the HIOs and/or industry?

The HIO system of industry self-regulation dictates that the USDA perform supervision and oversight at HIO-affiliated events and to attend unaffiliated events to enforce the HPA. As discussed above, the industry is required to rely solely on the USDA for HPA enforcement at unaffiliated events. The USDA’s limited resources to attend unaffiliated events and to, instead, focus on HIO affiliated events handcuffs the industry and provides a safe-haven for noncompliant individuals to function.

The lack of a true public/private relationship breeds distrust and adversarial attitudes on both sides of the fence. A true partnership between the USDA and its

HIOs with the singular goal of HPA compliance would eliminate many of the issues currently facing the industry such as competition between HIOs and the increased number of entries at unaffiliated events.

7. Should there be a prohibition of all action devices?;

8. Should there be a prohibition of pads?; and

9. Currently the Horse Protection regulations have a shoe and weight limit on yearlings. Should there now be shoe and weight limit for all aged horses?

Scientifically accepted studies and data indicate that the current regulations concerning action devices and pads do not in any way cause harm to the horse. A copy of the Auburn Study has been attached hereto. To consider amendment of the Horse Protection Act Regulations currently in place regarding the action device and pads would be to take action to address a problem which simply does not exist with no scientific proof to the contrary.

Any attempt to eliminate the pads would impact not only the Tennessee Walking Horse industry, but also those breeds which utilize similar pads in their training, showing and therapeutic treatment. For example, the Saddlebred, Morgan, Racking and others would all be affected by any attempt to eliminate the use of pads.

ECONOMIC IMPACT DATA AND CHARITABLE CONTRIBUTIONS INFO. TO BE
INSERTED