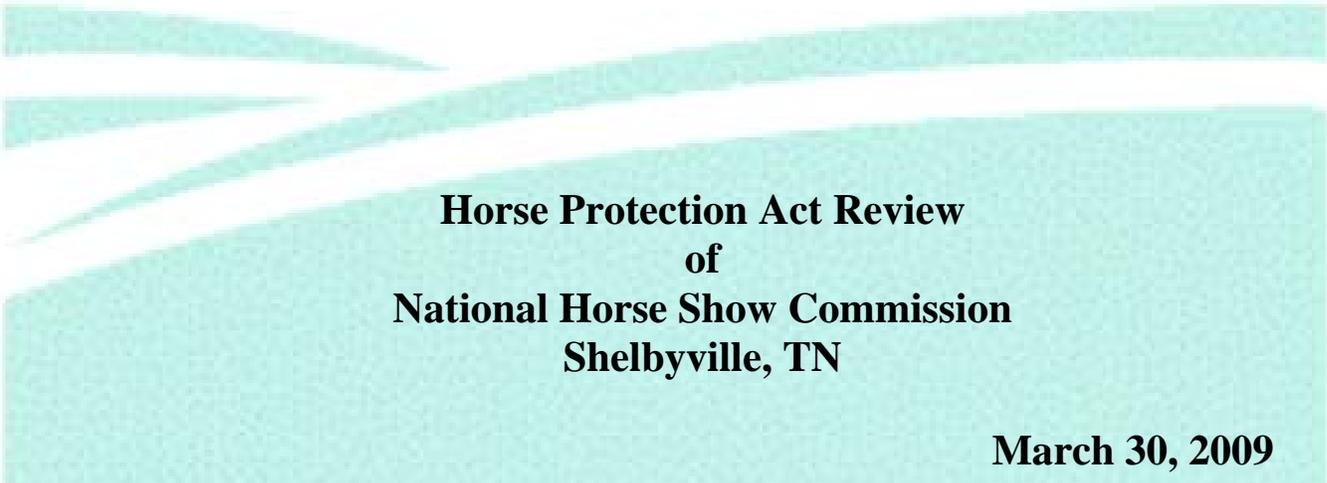


USDA



**Horse Protection Act Review
of
National Horse Show Commission
Shelbyville, TN**

March 30, 2009



U.S. Department of Agriculture, Animal and Plant Health Inspection Service

Marketing & Regulatory Programs - Business Services

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APHIS — Protecting American Agriculture

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
BACKGROUND	2
PURPOSE	2
REVIEW TEAM.....	2
METHODOLOGY	2
AREAS OF REVIEW	
NHSC Rule Book	2
NHSC Committee Structure	3
DQP Reports	4
Conflict Resolutions	4
Show Records.....	4
DQP Qualifications.....	5
DQP Personnel Files.....	5
Violations	6
DQP Yearly Performance.....	6
Appeals Process	7
Suspension List	8

Executive Summary

The Review and Analysis Branch (RAB) in conjunction with Animal Care (AC) performed a review of the 2008 show records of the National Horse Show Commission (NHSC) on March 30, 2009. The review covered the NHSC rule book, the NHSC organizational structure, Designated Qualified Person (DQP) personnel files, DQP training requirements and qualifications, DQP violation and penalty reports, and show records. NHSC is not a signatory Horse Industry Organization (HIO); this means NHSC did not create any additional rules or regulations to ensure the enforcement of the Horse Protection Act¹ (HPA). All tickets written in violation of the HPA become automatic federal cases bypassing the HPA Coordinator.

NHSC conducted 252 Affiliated/Sanctioned shows during the 2008 show season and wrote 477 violations.

Year	Total Shows	Number of Shows when Animal Care Present	Percent of Shows when Animal Care Present	Total Violations Reported by NHSC	Number of Violations when Animal Care Present	Percent of Violations when Animal Care Present
2005	280	20	7%	662	398	60%
2006	285	22	8%	983	285	29%
2007	280	20	7%	480	229	48%
2008	252	16	6%	477	280	59%

There was one prior review finding addressed in the 2007 report. The Review Team recommended NHSC work more closely with their DQPs, as there was a large disparity in the number of tickets written while AC is present versus when AC is not present. The report noted: "If this current degree of disparity continues it will be recommended to Animal Care that further action be taken." Based on current year findings and the support of the Horse Protection Regulations (HPR) sections 11.7(b) and (g), RAB will recommend that AC send a department notification for decertification citing non compliance with the regulations.

In addition, the Review Team identified processes that could be improved regarding HIO operation.

Significant Issues:

- Exhibitor and Trainer have no space on entry form to list addresses
- Show management has failed to follow show entry procedures

¹ USDA, Horse Protection Act (1970), (Pub. L. 91-540)

- Debatable ticket writing practice by DQP
- No penalty issued for a conflict resolution case
- No documentation exists to support Board members' overturn of Hearing Committee ruling
- Suspensions are not issued for full time period
- A number of violators are missing from the suspension list

Background

The HPA was enacted by Congress in 1970 in response to public concerns about soreing of horses. As a Federal law (15 U.S.C. §1821 et seq.), the HPA prohibits sore horses from participating in exhibitions, sales, shows, or auctions. The HPA also prohibits persons from transporting sore horses to compete in shows. APHIS is responsible for enforcing the HPA. RAB is responsible for evaluating APHIS programs and activities for overall effectiveness and efficiency in meeting their objectives. RAB conducts regular reviews of all nine HIOs.

Purpose

The objective of this review is to ensure all NHSC policies and procedures for the 2008 show season are in compliance with the HPA, as amended by the HPA Amendments of 1976 (Pub. L. 94-360), 15 U.S.C. §1821 et seq., and any legislation amendatory thereof.

Methodology

The Review Team met with the NHSC records secretary, Penny Issacs, in Shelbyville, TN to analyze the NHSC show documents for January 2008 through December 2008. The documents analyzed included compliance with the NHSC rule book, the NHSC organizational structure, Designated Qualified Person (DQP) personnel files, DQP training requirements and qualifications, DQP violation and penalty reports, and show records. The Review Team conducted an exit conference which ended the HIO review.

AREAS OF REVIEW

NHSC Rule Book

NHSC provided an up-to-date copy of their rule book. The rule book had previously been approved by AC. According to the NHSC rule book (Show Rules and Regulations) (B). Entries cites that "In order for the DQP to inspect horses, all class sheets must contain the following information: (a) Tennessee Walking Horse Classes: Horse's official name and registration number. Trainer's name, address and license number. Owner's name and address. Amateur name and card number. Youth exhibitor name and card number."

Upon analysis of the Celebration² entry sheets and the NHSC³ entry sheets, the review team determined that NHSC entry sheet and data collection procedures during registration were insufficient. Owner(s), trainer(s), and exhibitor(s) name(s) were present; however, the entry sheet did not have trainer or exhibitor complete address, and amateur card numbers were missing for the random sample. For the Celebration and many other shows, the class sheets did not designate the trainer's name and address; in some cases, there is no name at all. A ticket can be based on a phone call to the stables/owner to ask who the trainer of the horse was. This clearly does not meet the requirement for show management to provide names and addresses of trainer, owner, and rider and location of barn where the horse is stabled, nor does it meet the requirement of the DQPs to list the names and addresses of these persons on the ticket. Sometimes a DQP asks for the name of trainer and write this on the ticket, but there was at least one instance where NHSC changed the name of the trainer on the ticket, based on a phone call to stables. All this contributes to a major problem in penalizing the correct person. Often times the assistant trainer takes the ticket, when in fact, the head trainer is their employer and directs them in what to do. As it stands, most head trainers are escaping penalties for many horses. David Landrum Stables had many suspensions taken by employees.

Recommendation

It is recommended that NHSC revise its show card application to include space for the complete address of the trainer and exhibitor as stated in the NHSC rule book page 10, Section 12.B and HPR 9 C.F.R. § 11.7 (d)(ii)(iii)(iv)(v). In so doing, the resolution of this problem will positively affect the accuracy of the DQP report and any violation written by the DQP.

NHSC Committee Structure

There were no changes to the NHSC Board of Directors. The Board of Directors' directory lists the board members, their titles, and contact information; all of which are located in the NHSC website. NHSC will officially dissolve on April 1, 2009 and the new organization, Sound horses, Honest judging, Objective inspections, Winning fairly (SHOW), will be transitioned into ownership changing the entire Board of Directors.

DQP Reports

NHSC had 16 licensed DQPs who inspected horse shows as assigned by the HIO. The Review Team examined the DQP reports submitted to AC. The reports were received in accordance with the rules and regulations established by the USDA HPA.

² Walking Horse National Celebration[®], which takes place each year in late summer for the 11 days ending on the Saturday night before Labor Day.

³ National Horse Show Commission's show season starts in January and ends in October.

Conflict Resolutions

There were two conflict cases that were not issued penalties. Both were for the same horse (NYNY) at the Celebration. One was on 8/21 for Joel Weaver, the other on 8/27 for Brad Davis (8/21 – Class 30A, #2027- No appeal, no penalty) (8/27 – Class 129, #2027 – Trainer took 30 day suspension for unilateral sore – Veterinary Medical Officer found bilateral).

Recommendation

It is recommended that NHSC adhere to fulfilling the penalties process as set forth in sections X and XI of the HPA Operating Plan revision July 20, 2007. "...If and when the Department determines that the HIO has properly applied and enforced the penalties under the Operating Plan, it will close its files on the case."

Show Records

NHSC has 16 licensed DQPs who inspected horse shows as assigned by the HIO. The review team analyzed a random number of DQP reports submitted to AC and concluded that NHSC reports were incomplete as a result of the breakdown in the show entry process. Records were not filled out in their entirety by show management. When show management fails to comply with the rule book regarding show entries every document thereafter is inadvertently affected. The show entry form is not used solely for horse shows the entry form is used by APHIS Investigative Enforcement Services (IES) and AC Inspectors. DQPs use this form to write tickets⁴ and violations⁵ of the HPA. IES uses this form to file court cases while AC Inspectors use this form to gather pertinent information to be added to the APHIS 7077⁶ in support to the Veterinarian Medical Officer.

Recommendation

It is imperative that NHSC obtain accurate information when filling in the mandatory information for a ticket or any other document used during the show season in accordance with the Horse Protection Regulation *Section 11.7(d) (1) (iii) – “Any licensed DQP...shall keep and maintain the following information...concerning any horse which said DQP recommends be disqualified or excused for any reason.... (iii) The name and address...of the horse trainer.”* In addition, *Section 11.7(d)(1) (vii) – “Any licensed DQP...shall keep and maintain the following information...concerning any horse which said DQP recommends be disqualified or excused for any reason... (vii). A detailed description of all the DQP’s findings and the nature of the alleged violation, or other*

⁴ A ticket is written when a rulebook violation occurs.

⁵ A violation is a ticket written for violating the HPA.

⁶ APHIS 7077, Summary of Alleged Violation form.

reason for disqualifying or excusing the horse, including said DQP's statement regarding the evidence or facts upon which the decision...was based."

DQPs are not reporting post-show violators to show management. NHSC only reports those found guilty after appeal hearings. This creates a problem in that NHSC can not follow its rule book which states violators will forfeit winnings. Winnings are not being forfeited and classes not retied since show management is unaware of the violations.

Recommendation

NHSC should present all post-show violations to show management in accordance with the Horse Protection Regulation *Section 11.20(b) (3)* – *"The DQP shall immediately report to the management of any horse show...any horse which, in his opinion, is sore or otherwise in violation of the Act or regulations."*

DQP Qualifications

NHSC stated all DQPs completed their required training held during the NHSC Annual Meeting on January 25-26, 2008. NHSC could not provide a signature for three DQPs who appeared to have not received training for the 2008 show season. Annual training sessions are part of the HPA and is required for each qualified DQP, failure to attend the annual training session could lead to a failure to comply with changing protocols and/or procedures for the HIO.

Recommendation

NHSC should comply with the HPR 9 C.F.R. § 11.7 in addition to the Horse Protection Operation Plan section VI, C, 2 which states that "Each HIO is authorized to issue DQP licenses to qualified candidates and shall develop and provide uniform, consistent training in accordance with 9 C.F.R. § 11.7." Those DQP that have not had the required yearly training are not eligible for work.

DQP Personnel Files

NHSC maintains individual files for each DQP. Those files contained annual test scores, performance evaluations, applications for training, and course completion records. The NHSC HIO had supervised each DQP during an event within the 2008 show season and had provided an evaluation on the performance and conduct of each DQP. The review team reviewed each DQP file and found them to be in compliance with USDA regulations.

Violations

The Review Team analyzed a random number of violations for accuracy, appropriate penalty issuance, and proper notification. All recordkeeping is done by database. The

database system seemed to work in partiality. There was no index system for each violator with a history of all their violations by any means. There was no way to track progressive penalties like pre-show scar rule.

Recommendation

NHSC should update their recordkeeping process in accordance with the HPR 9 C.F.R. § 11.7(d) and 11.22 in addition to the Horse Protection Operating Plan VII, A, Certification (7) that states “To become certified, an HIO must have: demonstrated the ability to keep and maintain records in accordance ...”

DQP Yearly Performance

Year	Total Shows	Number of Shows when Animal Care Present	Percent of Shows when Animal Care Present	Total Violations Reported by NHSC	Number of Violations when Animal Care Present	Percent of Violations when Animal Care Present
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Based on the chart above there appear to be a higher than normal percentage of violations when AC is present. NHSC should address the disparity in the number of tickets written when AC is present.

In addition, violations must be issued to a person (i.e. trainer or owner). The Review Team noted a few instances where the ticket showed the stable name instead of the trainer name. The stable name does not meet the requirement, because the ticket has to be issued to a person. Not having this information leads to difficulty in penalizing the correct trainer, since some stables have multiple trainers. The problem originates with an incorrect entry form and class sheet, as these are the documents used by DQPs to fill out tickets. As a result, the DPQ is filling out the tickets using the stable name instead of the trainer or owner name. Show management and DQPs need to insist that individual trainer’s names are listed on class sheets. It is important that the suspension be issued to the individual who actually is responsible for training the horse. Thus, stable name should not be accepted by DQPs as trainers.

Recommendation

It is recommended NHSC work more closely with their DQPs, as there is a large disparity in the number of tickets written while AC is present versus when AC is not. RAB will recommend that AC monitor more closely the HIO's identification of violations and take appropriate steps to address cases of HIO noncompliance with the Act in accordance with the Horse Protection Regulation *Section 11.7(g)*. *“Revocation of DQP program certification of horse industry organizations or associations. Any horse industry organization that otherwise fails to comply with the requirements contained in this section, may have such certification of its DQP program revoked...”*

Appeals Process

Appeal process is not working properly. There is currently a two-part appeal possible. The first appeal goes to the Hearing Committee comprised of five community members unaffiliated with the Walking Horse industry, with no particular horse experience. The Review Team was unable to determine their performance as some of the hearing tapes could not be heard, since their tape player was non-functional. Written transcripts were not available unless the case was appealed to the Board. The most common appeal was for owner exemption, based on the conditions listed in the Operating Plan. Some of these seemed justified, but some were questionable. The more important problem was that of a second appeal available for those who lost at the Hearing Committee level. They could appeal to the Board. There were no minutes or tapes of these appeals, since they are based solely on the Board's review of the written minutes of the Hearing Committee appeal. The Board overturned many of the Hearing Committee's decisions. The Review Team could find no basis for these actions, since when the Hearing Committee did find a violation founded, they did seem to have a good reason. Some of the examples of cases the Board overturned were:

- George Ann Pratt (ticket 26449 from the Spring Fun Show) – This was a conflict case where the owner (Pratt) claimed owner exemption. The Hearing Committee said the violation for Pratt was founded (vote 5-0). The owner RODE the horse and it was found sore post-show. Based on this, she should not be eligible for owner exemption but the Board found her not guilty. We should pursue a USDA case in this instance since we found the horse bilaterally sore and scarred.
- Patty Marek & Gary Smith (ticket 26618 – Celebration) – This was a bilateral sore horse pre-show where Marek and Smith were the owners and Marek was the rider. Marek was pre-billed by trainer for entry fee. After the horse was found sore, the trainer issued a credit for the entry fee. The trainer (Earnest Upton) who took the 8 month suspension never signed any statement agreeing not to sore horse as outlined in the Operation Plan. Statement was signed by owner of stables (Joe Martin).
- Robert Pollack (owner) – had two tickets overturned, one for scar and one for unilateral sore did not seem to meet owner exemption requirements.

Even for the cases the Board upheld, the second appeal process delayed the start of the suspension, so NHSC did not follow the Operating Plan which states “founded suspensions shall start the day following the Hearing Committee’s decision.”

Some appeals take too long (over 80 days). Howard Hamilton’s appeal from the Celebration was not heard by Hearing Committee until January 2009.

Examples of cases overturned by Hearing committee:

1. AL Jubilee- ticket 24864 – Scotty Brooks, trainer – Bourgeois referred for scar rule post show to DQP John Cardell – issued ticket. Overturned
2. 07 Celebration – Ticket 26268 – Travis Cotton, trainer – Hammel referred for scar post show to Curtis Pittman – ticket issued but overturned. Note on Hearing file said “Trainer seemed to be doing fine job.”
3. 08 Celebration – Ticket 26669 – Debbie Eichler, owner and exhibitor, Joe Weaver (Joel’s dad) trainer. VMO referred for post show scar to Andy Messick. Ticket issued, but overturned. Ms. Eichler is owner of Rising Star Ranch, a very big, influential stable.

Recommendation

NHSC should establish a means for documenting all levels of the hearing process this includes the proceedings of appeals to the Board level. These results should be made available for review by APHIS. The HPA states in section VI, E that “Each HIO shall make records available to APHIS in accordance with 9 C.F.R. § 11.23(b).” In addition, RAB recommends that AC monitor NHSC more closely by auditing the NHSC appeal results during or after the show season.

Suspension List

The APHIS Veterinary Medical Officer Horse Protection Show Report indicates 61 suspensions issued and 59 taken for the 2008 show season. NHSC indicted that the DQP gives all violators a copy of the ticket issued at the show. NHSC then mails suspension notices to the violators within 10 days by certified mail. The violator then has 20 days to appeal. The Review Team examined a random number of tickets for the 2008 show season and found that there were a number of suspensions not included in the suspension list distributed to all nine HIOs.

One violator (Troy Agnew) who had three bilateral sore horse tickets at one show (Magnolia Classic) was missing from current suspension list (3/27) altogether. Suspension notices were issued, but the suspension did not appear on list.

Recommendation

It is recommended NHSC re-evaluate how they create their suspension list in accordance with the Horse Protection Operating Plan section X, G which states “Each HIO shall

update and distribute its suspension list on at least a monthly basis to all its DQPs, all certified HIOs, and the HP Coordinator. All suspension lists shall clearly indicate the violation, the nature of the violation (i.e., bilateral sore, scar rule, etc.) and the time period of the suspension.”

Suspensions are not always issued for full time period. Often, two week penalties were only issued for 13 days. Eight month suspensions were often issued for 30-day periods (a total of 240 days), instead of the full eight months. There was one example (Winky Groover) where one suspension was served partially concurrent with another.

Recommendation

NHSC should implement a process to correct how a suspension period is calculated. In accordance with the Horse Protection Operating Plan section X, G which states “...In order to deter violations, multiple suspensions are to be served consecutively, not concurrently.”