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**Via Electronic Mail**

March 9, 2006

Docket Clerk  
U. S. Department of Agriculture  
Food Safety and Inspection Service  
300 12<sup>th</sup> Street, S. W.  
Room 102 Cotton Annex  
Washington, D.C. 20250

Re: Food Safety and Inspection Service Docket No. 05-0361F

To Whom It May Concern:

These comments are submitted on behalf of the American Horse Defense Fund (AHDF) and its members.

**Interest of AHDF**

AHDF is a non-profit, membership organization whose mission is to facilitate the protection, conservation, and humane treatment of members of all Equid species. AHDF works to address inhumane treatment of horses, ponies, donkeys, mules and burros, both wild and domestic through education, advocacy and litigation when necessary in the state, federal and international arena. AHDF is composed of members throughout the United States who rely on AHDF to voice their concerns about the inhumane treatment afforded domestic and wild horses to Congress, the United States Department of Agriculture (USDA) and the Bureau of Land Management (BLM), the two primary federal agencies responsible for the care of domestic and wild horses, respectively. Since 2000, AHDF has worked to end the slaughter of America's domestic and wild horses for shipment to and consumption abroad.

Since 1980, over 3,850,690 horses and ponies have been slaughtered in the United States, by foreign-owned plants that purchase and slaughter equids to satisfy a taste for an item considered a delicacy overseas. Thus, to this end, roughly 440 horses have been slaughtered in this country every day for the last 24 years.

AHDF is the only organization which has directed its efforts to educate the public of the many alternatives to slaughter that are available to persons and organizations who are no longer able to care for their horses. In 2004, AHDF published a 300 plus page book entitled, "Alternatives to Auction and Slaughter: A Guide for Equine Owners (A Better Way)." This book was intended to serve as a practical resource for horse owners so they may plan for and find safe, humane alternatives to selling any horse through a livestock auction or horse sale, because these options often result in the eventual slaughter of the horse at one of America's three foreign-owned horse slaughterhouses. The book was also intended to assist in setting up a new infrastructure to support the humane treatment and kinder fate for this nation's horses, ponies and burros.

AHDF has also worked for passage of national legislation that would prevent horses from being slaughtered in the United States. AHDF's efforts on this subject, as well as those of other humane organizations, in addition to a broad-based coalition of horse-breeding, showing and racing organizations, resulted in Congress' passage of an Amendment to the FY2006 Agriculture Appropriations Act.

### The Amendment to the FY 2006 Agriculture Appropriations Act

The amendment to the FY 2006 Agriculture Appropriations Act, which addresses inspection of horses before slaughter (hereinafter "amendment"), provides:

Effective 120 days after the date of enactment of this Act, none of the funds made available in this Act may be used to pay the salaries or expenses of personnel to inspect horses under section 3 of the Federal Meat Inspection Act (21 U.S.C. § 603) or under the guidelines issued under section 903 of the Federal Agricultural Improvement and Reform Act of 1996.

This amendment is to be effective tomorrow, March 10, 2006.

Both of the provisions referred to in the Amendment address inspection of horses *before slaughter*. Regulations implementing the Federal Meat Inspection Act (FMIA) (21 U.S.C. § 603) and governing inspection of horses, and other livestock, before slaughter, are referred to as *ante-mortem inspection*. See 9 C.F.R. § 309 et seq. Section 903 of the Federal Agricultural Improvement and Reform Act of 1996 (FAIR) requires USDA inspectors to inspect horses during their transportation to slaughter, i.e. before slaughter. In conclusion, both of the provisions in the Amendment address inspection of horses while they are still alive. And Congress provided that none of funds appropriated for inspection of horses under the FMIA or the FAIR are to be expended after March 9, 2006.

In contrast with these provisions which govern inspection of equids while alive, i.e., before slaughter, USDA has implemented post-mortem inspection regulations. See 9 C.F.R. § 310 et seq. While both ante-mortem and post-mortem inspection is authorized under the FMIA, Congress' reference in the Appropriations amendment to the FMIA,

when coupled with a reference to a statutory provision in the FAIR, which applies only to inspection of horses before slaughter, indicates Congress' intent to cut funding to USDA to conduct the inspection of live horses who were intended for slaughter. And it was this inspection of live horses – which, by the express terms of the FMIA can only be conducted by USDA inspectors under 21 U.S.C. § 695 – that Congress wanted to end. When Congress passed this Amendment, it was indicating its will that the slaughter of horses in the United States should end on March 10, 2006. It did so by declaring that no federal funds should be spent to pay USDA inspectors to undertake their duties pursuant to the FMIA or the FAIR.

Congress' silence on funding of post-mortem inspection – i.e. inspection of dead horses, is logical because Congress intended that with the Amendment to the 2006 Appropriations Act, horse slaughter was going to end. In other words, Congress did not need to address the inspection of dead horses since, by the plain language of the Amendment, horse slaughtering was to cease on March 10, 2006. Thus, the agency's view, ("[a]lthough the FY 2006 Appropriations Act specifically prohibits the use of appropriated funds for ante-mortem inspection. . . , it does not preclude the use of . . . funds for post-mortem inspection) is simply silly. Why would Congress need to address the use of federal funds for the inspection of dead horses after it had just expressed its intent that horse slaughter was to end? Only an agency bent on thwarting the will of Congress could reach such an interpretation. It is notable that throughout its interim final rule USDA continually stresses what Congress did not state in the Amendment, giving short shrift to what Congress did say.

Nor can USDA obviate Congress' intent by providing that private persons shall perform those duties assigned by statute to federal inspectors. The D.C. Circuit has made quite clear that it "agrees with the general proposition that when Congress has specifically vested an agency with the authority to administer a statute, it may not shift that responsibility to a private actor." Perot v. Fed. El. Comm'n, 97 F. 3d 553 (D.C. Cir. 1996), citing, A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495, 537, 55 S.Ct. 837, 846, 79 L.Ed. 1570 (1935)

**The Amendment Does Not Reference the Agricultural Marketing Act and that Act does not apply to horses**

The Amendment fails to reference the Agricultural Marketing Act ("AMA"), 7 U.S.C. § 1621. That Act authorizes a regulatory scheme addressing the voluntary ante-mortem and post-mortem inspection of rabbits and exotic animals, such as bison, elk, water buffalo and antelope. Again, Congress' failure to reference the AMA in the Amendment cannot by any reasonable interpretation authorize ante-mortem inspection of equids. Instead, Congress' failure to reference the AMA in this provision is a clear signal to USDA that it has no authority to allow the voluntary inspection of equids, clearly non-exotic animals under any reasonable interpretation of the AMA. But, USDA has before, by a contorted regulatory definition, modified a statutory purpose, when USDA deemed it necessary to do so for purposes of cost or convenience. See Animal Legal Defense Fund

v. Espy, 781 F. Supp. 797, 801 (D.D.C. 1992), vacated on other grounds, 23 F.3d 496 (D.C. Cir. 1994) (holding that USDA's regulation defining "animal" under the Animal Welfare Act as excluding birds, rats and mice, over half the animals used in experimentation, was 'strained and unlikely.'")

**The Agency's Use of an Interim Final Rule Evinces Its Bias In Favor of Three Foreign-Owned Businesses and against the American public and the will of Congress**

While AHDF appreciates this opportunity to express its members' opposition to the interim final rule, the agency's use of this mechanism has severely prejudiced AHDF's ability to persuade the agency that it has adopted the wrong course. Thus, the comment period is of little value to AHDF and other members of the public. The agency cannot seriously consider arguments against the interim final rule, since it has, even before receiving any comments, indicated that it will pursue the course it has already chosen.

Missing from the agency's interim final rule is any explanation of why it has sided with three foreign-owned businesses operating in the United States against the will of Congress and millions of Americans, not to mention why it is bending over backwards to ensure the continued suffering and death of thousands of America's horses.

Very truly yours,

  
Valerie J. Stanley