

HORSE SLAUGHTER ISSUES IN THE UNITED STATES

BY: FAHRAN K.J. ROBB

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Domestic horse slaughter has been a particularly contentious issue for the better part of a decade. Congress passed various laws in an attempt to address some stakeholders' concerns over the inhumaneness and immoral disposition of horse slaughter. Campaigning efforts eventually led to the elimination of funds for horse slaughter inspection services that resulted in a cessation of domestic horse slaughter for the past five years. A June 2011 report issued by the United States Government Accountability Office created at the direction of the United States Congress, "Horse Welfare: Action Needed to Address Unintended Consequences from Cessation of Domestic Slaughter," facilitated the support needed to delete the language contained in previous agricultural appropriations bills that had effectively banned horse slaughter in the United States over the five-year period.¹ This bill, Consolidated and Further Continuing Appropriations Act, was signed by President Barack Obama on November 18, 2011. No horse slaughter plants have opened as of yet, but some investors have begun discussion of possible horse slaughter operations.

I. BACKGROUND INFORMATION

A. Overview of United States Horse Industry

In June 2011, the United States government estimated that there were 9 million horses living in the United States.² A June 2005 study commissioned by the American Horse Council Foundation gives insight into the status of the U.S. horse industry prior to the cessation of domestic horse slaughter and the economic downturn of the U.S. economy. The study found that there are approximately two million horse owners in the

¹ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 1 (2011).

² *Id.* at 2.

United States. The economic, social, and geographic makeup of horse owners was found to vary greatly. Forty-six percent of horse owners were found to have an annual household income between \$25,000 to \$75,000, 34 percent of horse owners were found to have an annual household income that is less than \$50,000, and 28 percent of horse owners were found to have an annual household income that is over \$100,000. Over 70 percent of these horse owners live in communities with a population of 50,000 or less. Horse owners live in every state and 45 states are home to at least 20,000 horses each. The study found that, on average, one out of every 63 U.S. citizens are involved in some way, shape, or form with horses.³

The 2005 study found that there are 4.6 million horse owners, service providers, employees, and volunteers active in the U.S. horse industry. Of the two million that are horse owners, 481,000 are engaged in competing, 238,000 are active in breeding, and 1.1 million are involved in other activities. There are approximately 119,000 service providers, 702,000 full and part-time employees, and 2 million family members and volunteers. The study found that the U.S. horse industry contributes nearly 460,000 direct full-time equivalent jobs to the U.S. economy. Of the nearly 460,000 direct full-time equivalent jobs in the U.S. horse industry, 146,625 individuals are employed in the racing sector, 99,051 individuals are employed in the showing sector, 128,324 individuals are employed in the recreation sector, and 79,612 individuals are employed in other sectors. When a multiplier effect of spending by suppliers and employees in the U.S. horse industry is taken into account, the study found that the total number of jobs the U.S. horse industry creates is estimated at 1.4 million full-time equivalent jobs. Of the indirect

³ Deloitte Consulting LLP, *National Economic Impact of the U.S. Horse Industry*. Study commissioned by the American Horse Council Foundation (Jun. 28, 2005), <http://www.horsecouncil.org/national-economic-impact-us-horse-industry> (last visited Apr. 10, 2012).

1.4 million full-time equivalent jobs, 383,826 individuals are employed in the racing sector, 380,416 individuals are employed in the showing sector, 435,082 individuals are employed in the recreation sector, and 212,010 individuals are employed in other sectors.⁴

The 2005 study found that the direct economic effect of the horse industry in the United States is \$38.8 billion annually. Racing, showing, and recreation each directly contribute between \$10.5 and \$12 billion to the U.S. Gross Domestic Product annually. When the multiplier effect of spending by suppliers and employees in the horse industry is taken into account, the study found that the total impact on the United States' Gross Domestic Product is estimated at \$101.5 billion. The study also reported that the horse industry as a whole contributes approximately \$1.9 billion in taxes each year to all levels of government; roughly, \$588 million in taxes is paid to the federal government, \$1.017 billion in taxes is paid to state governments, and \$275 million in taxes is paid to local governments.⁵ Since the 2005 study, the president of United Horsemen, David Duquette, has noted that the value of the horse industry as a whole has declined since the cessation of domestic horse slaughter. He commented that, "horses used to be a \$102 billion a year industry, with at least 500,000 direct jobs in the horse industry. That's been cut in half."⁶

The 2005 study also examined the various activities the 9.2 million horses in the United States are engaged in. It found that, roughly, 3,906,923 horses are engaged in recreation, 2,718,954 horses are engaged in showing, 844,531 horses are engaged in

⁴ *See id.*

⁵ *See id.*

⁶ Colleen Curry, *Horse Slaughterhouses May Reopen After Five Year Ban*, ABC NEWS (Nov. 30 2011), <http://abcnews.go.com/blogs/headlines/2011/11/horse-slaughterhouses-may-reopen-after-five-year-ban/> (last visited Apr. 10, 2012).

racing, and 1,752,439 horses are engaged in other activities. “Other” activities includes, but is not limited to, farm and/or ranch work, rodeos, carriage horses, polo, police work, and informal competitions. The study did not examine horse slaughter.⁷

B. Overview of Horse Consumption in the United States and France

Horses are not and have never been raised for slaughter for human consumption in the United States.⁸ The 2011 GAO report acknowledged that “many countries consider horsemeat an appropriate part of the human diet,” and that “horsemeat was consumed in the United States as recently as the mid-1940s.”⁹ A 2007 U.S. Court of Appeals decision included that “horsemeat was until recently an accepted part of the American diet” as “the Harvard Faculty Club served horsemeat steaks until the 1970s.”¹⁰ That comment referenced a New York Times article, “We Eat Horses, Don’t We?.” The article was written to debunk a statement made by an American Horse Defense Fund official who declared, “the foreign-owned slaughter industry needs to understand that Americans will never view horses as dinner.”¹¹

The article recounted that throughout U.S. history, “Americans have made periodic forays into horse country” consuming it as a traditional hardship food.¹² During World War II and in the postwar years, beef and pork were scarce and priced at an

⁷ *See id.*

⁸ The Humane Society of the United States, *The Facts on Horse Slaughter*, (Feb. 6, 2012), http://www.humanesociety.org/issues/horse_slaughter/facts/facts_horse_slaughter.html#horses (last visited Apr. 11, 2012).

⁹ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-11-228, HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER I (2011).

¹⁰ *Cavel Int’l, Inc. v. Madigan*, 500 F.3d 551, 552 (7th Cir. 2007).

¹¹ Christa Weil, *We Eat Horses, Don’t We?*, N.Y. TIMES (Mar. 5, 2007), <http://www.nytimes.com/2007/03/05/opinion/05weil.html> (last visited Apr. 12, 2012).

¹² *See id.*

amount above the finances of most U.S. consumers. A 1951 article in Times magazine, reported from Portland, Oregon, provided tips on how to cook pot roasts and fillets from horsemeat.¹³ It accounted that, “horsemeat, hitherto eaten as a stunt or only as a last resort, was becoming an important item on Portland tables. Now there were three times as many butchers, selling three times as much meat...people who used to pretend it was for the dog now came right out and said it was going on the table.”¹⁴ Again, in 1973, when inflation soared, horsemeat found itself on the dinner table. An article in Time magazine reported from Westbrook, Connecticut, said that a local butcher shop, Carlson’s, “recently converted to horsemeat exclusively, [and] now sells about 6,000 pounds of the stuff a day,” including a 28-page horsemeat cook book. The article concluded that implying that horse slaughter is un-American is not a true statement because “Americans have eaten it, even enjoyed it, though never so much to keep it coming in times of plenty, except at Harvard” where “professors still recall the dish fondly,” a dish that was only abandoned in 1973 when the truck could no longer make back door deliveries to the Harvard Faculty Club due to rerouting of Harvard Square Traffic.¹⁵ Another article stated that the chef took horsemeat off the Harvard Faculty Club menu in 1983 when frozen horsemeat in lieu of fresh horsemeat could only be delivered.¹⁶ A letter to the editor added that the late Charles Coulson, general manager of the Harvard Faculty Club for over 25 years, said that horsemeat had been on the menu for over 100 years and the faculty would not allow him to remove it from the menu although

¹³ *See id.*

¹⁴ *See id.*

¹⁵ *See id.*

¹⁶ Mary Jacoby, *Why Belgians Shoot Horses in Texas For Dining in Europe*, WALL STREET JOURNAL (Sept. 21, 2005), <http://online.wsj.com/article/SB112726478131246913.html> (last visited Apr. 12, 2012).

not much was sold. When he once asked the delivery man who pulled up in an 18-wheeler to deliver the Club's monthly purchase of 10 pounds of horsemeat who the other Boston area customers were, he was told that the only other customers were the zoo and dog-racing track.¹⁷ Although some feel that the consumption of horsemeat by humans in the United States is no longer appropriate, it is still consumed by animals in the zoos of the United States.¹⁸

Zoos have long been the largest consumer of horsemeat in the United States.¹⁹ Prior to the cessation of domestic horse slaughter, the horsemeat produced was consumed by either humans or zoo animals.²⁰ Since the cessation of domestic horse slaughter, zoos now purchase horsemeat from Canada or Mexico that is derived from U.S.-origin horses.²¹ There are currently three facilities in Colorado, Nebraska, and New Jersey that import horsemeat and repackage it for sale to zoos and circuses in the United States. The production of products such as pet food and glue from horse carcasses sent to rendering plants are not covered by the Federal Meat Inspection Act and have not been impacted.²²

¹⁷ Letter from Tom McCann, Boston, to Mary Jacoby. *The Pros and Cons of Eating Horses*, WALL STREET JOURNAL (Oct. 1, 2005), <http://online.wsj.com/article/SB112812616763357437.html> (last visited Apr. 11, 2012).

¹⁸ *Cavel Int'l, Inc.*, 500 F.3d at 553.

¹⁹ Brad Haynes, *Zoos in a Pickle over Horsemeat*, SEATTLE TIMES (Aug. 14, 2007), http://seattletimes.nwsourc.com/html/localnews/2003835227_horsemeat14m.html (last visited Apr. 11, 2012).

²⁰ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 11 (2011).

²¹ Charles Stenholm, *Restore the Horsemeat Industry to Create Jobs*, HILL (Jun. 14, 2011), <http://thehill.com/blogs/congress-blog/campaign/166269-restore-the-horsemeat-industry-to-create-jobs> (last visited Apr. 11, 2012).

²² U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 11 (2011).

Horsemeat derived from U.S.-origin horses is shipped to many European and Asian countries including France, Belgium, Switzerland, Italy, Japan, and Mexico.²³ In some countries, horsemeat is considered a delicacy.²⁴ In a 2005 Wall Street Journal article, “Why Belgians Shoot Horses in Texas For Dining in Europe,” it was stated that horsemeat derived from U.S.-origin horses are especially prized because the flavor of its meat is enhanced due to eating natural grasses on the ample grazing land found in the United States.²⁵ The article quoted a French butcher who said, “I love America. The horsemeat from the U.S. is the best in the world.”²⁶ Traditionally, Europe has associated horsemeat with poverty and desperation similar to the United States.²⁷ Horsemeat was consumed by cave dwellers in France during Paleolithic times. Marco Polo wrote of living off of only horse blood during some travels when provisions ran out.²⁸ Consumption of horsemeat is believed to have begun by the French when Napoleon’s troops ran low on supplies and ate their horses while fighting the Russians in Poland during the Battle of Eylau in 1807.²⁹ Consumption of horsemeat increased in 1853 when the French government decreed that each citizen should consume 3.5 ounces of meat per day in hopes to have the labor force the Industrial Revolution demanded. Citizens chose

²³ TADLOCK COWAN, CONG. RESEARCH SERV., RS21842, HORSE SLAUGHTER PREVENTION BILLS AND ISSUES 1 (2010).

²⁴ *Cavel Int’l, Inc.*, 500 F.3d at 552.

²⁵ *See id.*

²⁶ Mary Jacoby, *Why Belgians Shoot Horses in Texas For Dining in Europe*, WALL STREET JOURNAL (Sept. 21, 2005), <http://online.wsj.com/article/SB112726478131246913.html> (last visited Apr. 12, 2012).

²⁷ *See id.*

²⁸ Christa Weil, *We Eat Horses, Don’t We?*, N.Y. TIMES (Mar. 5, 2007), <http://www.nytimes.com/2007/03/05/opinion/05weil.html> (last visited Apr. 12, 2012).

²⁹ Mary Jacoby, *Why Belgians Shoot Horses in Texas For Dining in Europe*, WALL STREET JOURNAL (Sept. 21, 2005), <http://online.wsj.com/article/SB112726478131246913.html> (last visited Apr. 12, 2012).

to purchase horsemeat because its price was half that of beef. The 1870 Franco-Prussian War, which caused some Parisians to eat rats and zoo animals, reinforced horsemeat's stature as a "food of the people." While its cheap price often renders it a food of the working class in France, horsemeat has found itself as a delicacy there, too.³⁰ In Belgium, it is not unheard of to pay \$25 to \$40 for a horsemeat dinner.³¹

C. Overview of United States Horse Slaughter

In 1990, 345,900 horses were slaughtered in the United States.³² Today, each year over 100,000 U.S.-origin horses, or around one percent of the total U.S. horse population, are slaughtered for human consumption.³³ Horse slaughter for human consumption began in the United States as early as the 1970s.³⁴ In the 1980s, there were at least 16 horse slaughter plants in operation. In 1994, there were seven horse slaughter plants in operation.³⁵ In July 2003, it was discovered that the life of Ferdinand, the 1986 Kentucky Derby winner, ended in a slaughter plant in Japan. This discovery added much

³⁰ Christa Weil, *We Eat Horses, Don't We?*, N.Y. TIMES (Mar. 5, 2007), <http://www.nytimes.com/2007/03/05/opinion/05weil.html> (last visited Apr. 12, 2012).

³¹ Zachary Coile, *Horses Still Can Be Killed For Food—Meatpackers Got Rules Changed*, S.F. CHRON. (Apr. 3, 2006), <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/04/03/MNGN8I2DKN1.DTL&ao=all> (last visited Apr. 12, 2012).

³² U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 10 (2011).

³³ The Humane Society of the United States, *The Facts on Horse Slaughter*, (Feb. 6, 2012), http://www.humanesociety.org/issues/horse_slaughter/facts/facts_horse_slaughter.html#horses (last visited Apr. 11, 2012).
Animal and Plant Health Inspection Service, *Overview of Horse Slaughter in the United States*, USDA (2011), http://www.aphis.usda.gov/animal_health/vet_accreditation/nvap_modules/HST/hst0030.htm (last visited Apr. 13, 2012).

³⁴ Equine Advocates, *Horse Slaughter*, (Mar. 31 2012), <http://www.equineadvocates.org/issueDetail.php?recordID=2> (last visited Apr. 12, 2012).

³⁵ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 10 (2011).

momentum to the anti-slaughter movement.³⁶ Olivier Kemseke, whose family owned one of the Belgian slaughterhouses in Texas, said, “toss in Mr. Ed and Black Beauty, and we have a real public-relations problem.”³⁷ In 2006, only three foreign-owned facilities remained in operation.³⁸ Two were located in Texas (Beltex, Belgian, and Dallas Crown, French) and one plant was located in Illinois (Cavel International, Belgian).³⁹ As of September 2007, successful lobbying efforts to state and federal-elected officials resulted in all domestic horse slaughter operations ceasing.⁴⁰

In 2006, almost 105,000 horses were slaughtered at those three locations in the United States during what became the slaughter plants last full year of operations. This amounted to over 17,000 metric tons of horsemeat being exported, a \$65 million value. Additionally, around 33,000 horses were exported for slaughter that year, so a grand total of 138,000 U.S.-origin horses were slaughtered in 2006.⁴¹ Mr. Jim Bradshaw, a lobbyist for the Texas slaughter plants, said that the two Texas plants spent \$6 million annually to export horsemeat daily from Dallas/Fort Worth International Airport to Charles DeGaulle Airport in France.⁴²

³⁶ Mary Jacoby, *Why Belgians Shoot Horses in Texas For Dining in Europe*, WALL STREET JOURNAL (Sept. 21, 2005), <http://online.wsj.com/article/SB112726478131246913.html> (last visited Apr. 12, 2012).

³⁷ *See id.*

³⁸ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 8 (2011).

³⁹ Just Say Whoa!! To Horse Slaughter, *Slaughterhouse Info*, (2012), <http://www.justsaywhoa.org/slaughterhouses.asp> (last visited Apr. 13, 2012).

⁴⁰ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 8 (2011).

⁴¹ *See id.*

⁴² Mary Jacoby, *Why Belgians Shoot Horses in Texas For Dining in Europe*, WALL STREET JOURNAL (Sept. 21, 2005), <http://online.wsj.com/article/SB112726478131246913.html> (last visited Apr. 12, 2012).

In 2007, during the last year of domestic horse slaughter operations, approximately 30,000 horses were slaughtered in the United States, 44,000 horses were shipped to Mexico for slaughter, and 35,000 horses were shipped to Canada for slaughter for a grand total of 109,000 U.S.-origin horses being slaughtered that year.⁴³ Around 99,000 horses were exported for slaughter in 2008, and around 109,000 horses were exported for slaughter in 2009. By 2010, nearly 138,000 horses were transported to Canada and Mexico to be slaughtered, around the same amount that had previously been slaughtered in 2006 before domestic horse slaughter operations ceased (See Figure 1, p. 11). From 2006 to 2010, horses exported for slaughter increased by 148 percent in Canada, and by 660 percent in Mexico.⁴⁴

Horses can be bought at auctions for 40 cents a pound and can earn \$15 per pound in the retail market.⁴⁵ Former U.S. Representative Charlie Stenholm (D-TX) framed horse slaughter as an owner's rights issue advocating that "horse owners deserve a humane end of life option for their horses that has monetary value" as compared to forcing owners to chemically euthanize and dispose of carcasses of unwanted horses which can cost anywhere from \$500 to \$2,000.⁴⁶ On the other hand, U.S. Representative John Sweeney (R-NY) wanted the slaughter plants to close down. He said that

⁴³ SUSAN A. SCHNEIDER, *FOOD, FARMING, AND SUSTAINABILITY: READINGS IN AGRICULTURAL LAW* 534 (Carolina Academic Press 2011).

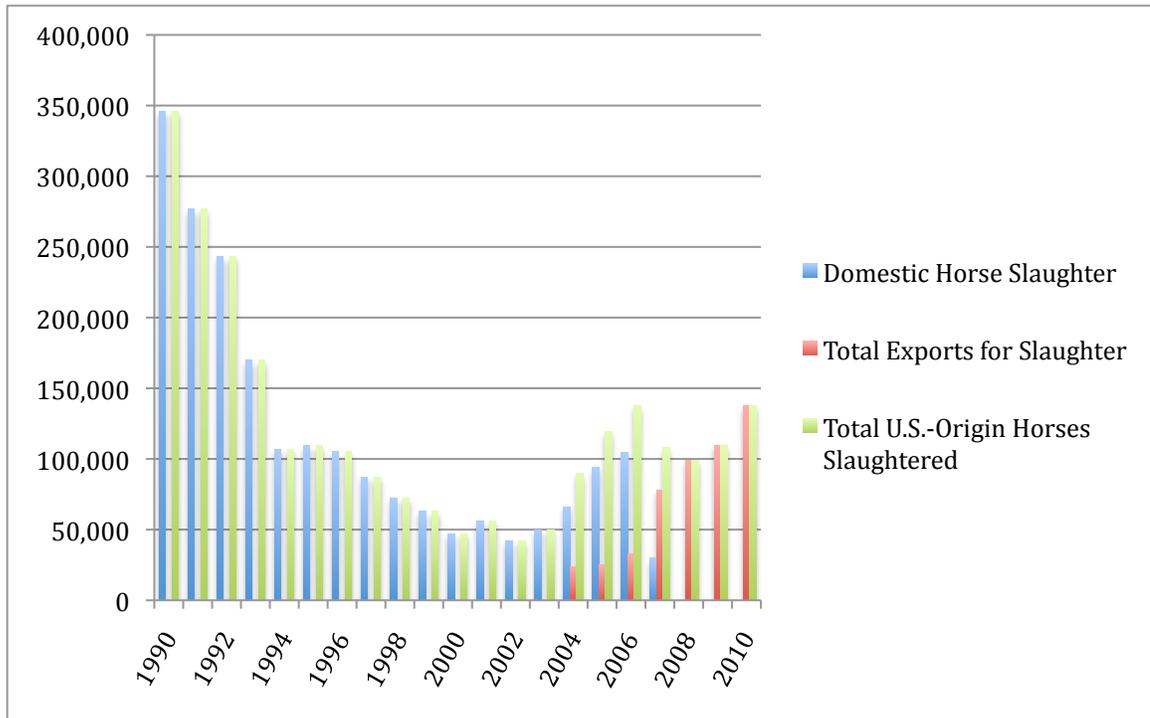
U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, *HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER* 11 (2011).

⁴⁴ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, *HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER* 12 (2011).

⁴⁵ Charles Stenholm, *Restore the Horsemeat Industry to Create Jobs*, HILL (Jun. 14, 2011), <http://thehill.com/blogs/congress-blog/campaign/166269-restore-the-horsemeat-industry-to-create-jobs> (last visited Apr. 11, 2012).

⁴⁶ *See id.*

FIGURE 1: NUMBER OF U.S. ORIGIN HORSES SLAUGHTERED, 1990-2010⁴⁷



“Americans do not profit from slaughtering horses...Foreigners eat our horses, and foreign companies make money off the sale of meat.”⁴⁸ In a hearing on July 25, 2006, before the Subcommittee on Commerce, Trade, and Consumer Protection of the House Committee on Energy and Commerce, Mr. Dick Koehler, Vice President of Beltex Corporation of Fort Worth, TX, said the horse slaughter industry was a legitimate, taxpaying business.⁴⁹ Later in the same hearing, T. Boone Pickens testified that the mayor of Kaufman, TX, home of the foreign-owned Dallas Crown slaughter plant, told

⁴⁷ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 11-12 (2011).

⁴⁸ Mary Jacoby, *Why Belgians Shoot Horses in Texas For Dining in Europe*, WALL STREET JOURNAL (Sept. 21, 2005), <http://online.wsj.com/article/SB112726478131246913.html> (last visited Apr. 12, 2012).

⁴⁹ *A Bill to Amend the Horse Protection Act: Hearing on H.R. 503 Before the Subcomm. on Commerce, Trade, and Consumer Protection of the H. Comm. on Energy and Commerce*, 109th Cong. 134 (2006) (statement of Dick Koehler, Vice President, Beltex Corporation).

him that the plant made \$12 million in revenue last year and paid only \$5 in taxes to Kaufman. Pickens added that taxpayer dollars fund the USDA inspection of horsemeat of which it and its profits are shipped overseas.⁵⁰

II. FEDERAL MEAT INSPECTION ACT

Horse slaughter plants that slaughter horses destined for human consumption in the United States are subject to inspections under the Federal Meat Inspection Act (FMIA) of 1906, as amended (21 U.S.C. § 601 *et seq.*). This Act is administered by USDA's Food Safety and Inspection Service (FSIS).⁵¹ The annual salary costs for the mandated FSIS inspections, requiring six inspectors at three slaughter plants, was estimated to be \$400,000.⁵² FSIS's inspection responsibilities begin at the time the horses arrive at the slaughter plant, and typically, do not end until the products depart from the processing plants.⁵³ Slaughter plants must undergo a sanitary inspection, and horses must undergo an inspection both before and after slaughter.⁵⁴

In passing the FMIA, Congress found that meat and meat food products were “an important source of the Nation's total supply of food.”⁵⁵ The Act defined “meat food product” as “any product capable of use as human food which is made wholly or in part

⁵⁰ *A Bill to Amend the Horse Protection Act: Hearing on H.R. 503 Before the Subcomm. on Commerce, Trade, and Consumer Protection of the H. Comm. on Energy and Commerce*, 109th Cong. 35, 150 (2006) (statement of T. Boone Pickens, Chief Executive Officer, BP Capital).

⁵¹ TADLOCK COWAN, CONG. RESEARCH SERV., RS21842, HORSE SLAUGHTER PREVENTION BILLS AND ISSUES 1 (2010).

⁵² *Id.* at 3.

⁵³ SUSAN A. SCHNEIDER, *FOOD, FARMING, AND SUSTAINABILITY: READINGS IN AGRICULTURAL LAW* 628 (Carolina Academic Press 2011).

⁵⁴ *Id.* at 628-629.

⁵⁵ Federal Meat Inspection Act of 1906, 21 U.S.C. § 602 (2008).

from any meat or other portion of the carcass of any cattle, sheep, swine, or goats... This term as applied to food products of equines shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.”⁵⁶ In passing the Act, Congress stated that it is essential that the “health and welfare of consumers be protected” and that “meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged.”⁵⁷ Congress found that “unwholesome, adulterated, or misbranded meat or meat food products impair the effective regulation of meat and meat food products in interstate or foreign commerce, are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers.”⁵⁸

Congress stated that meat and meat products that are “either in interstate or foreign commerce or substantially affect such commerce” are subject to the Act’s regulations.⁵⁹ Steven Cohen, spokesman for USDA’s Food Safety and Inspection Service, commented regarding horsemeat inspections, “it is our obligation to see that the meat is safe – period – regardless of where it’s destined.”⁶⁰ In other words, inspections are required for both interstate and international transportation of horsemeat before it

⁵⁶ *See id.* at § 601.

⁵⁷ *See id.* at § 602.

⁵⁸ *See id.*

⁵⁹ *See id.*

⁶⁰ Zachary Coile, *Horses Still Can Be Killed For Food—Meatpackers Got Rules Changed*, S.F. CHRON. (Apr. 3, 2006), <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/04/03/MNGN8I2DKN1.DTL&ao=all> (last visited Apr. 12, 2012).

enters into the stream of commerce for human consumption.⁶¹ 21 U.S.C. § 615 specifically mandates inspection of meat and carcasses intended for export.⁶² Both ante-mortem and post-mortem inspections by FSIS are required.⁶³ Ante-mortem inspections are required by 21 U.S.C. § 603(a), “examination of animals before slaughtering; diseased animals slaughtered separately and carcasses examined,” which provides:

For the purpose of preventing the use in commerce of meat and meat food products which are adulterated, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all amenable species *before they shall be allowed to enter* into any slaughtering, packing, meat-canning, rendering, or similar establishment, in which they are to be slaughtered and the meat and meat food products thereof are to be used in commerce; and all amenable species found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other amenable species, and when so slaughtered the carcasses of said amenable species shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Secretary, as provided for in this subchapter.⁶⁴

Horses are to be inspected on a continuing basis before they enter into the slaughter plant; in other words, no horse may be slaughtered without first being inspected.⁶⁵ Any horses that show symptoms of disease are to be slaughtered separately from the rest and carefully examined after slaughter. Post-mortem inspections are required by 21 U.S.C. §

⁶¹ Animal and Plant Health Inspection Service, *Overview of Horse Slaughter in the United States*, USDA (2011), http://www.aphis.usda.gov/animal_health/vet_accreditation/nvap_modules/HST/hst0030.htm (last visited Apr. 13, 2012).

⁶² Federal Meat Inspection Act of 1906, 21 U.S.C. § 615 (2008).

⁶³ SUSAN A. SCHNEIDER, *FOOD, FARMING, AND SUSTAINABILITY: READINGS IN AGRICULTURAL LAW* 629 (Carolina Academic Press 2011).

⁶⁴ Federal Meat Inspection Act of 1906, 21 U.S.C. § 603(a) (2008) (emphasis added).

⁶⁵ SUSAN A. SCHNEIDER, *FOOD, FARMING, AND SUSTAINABILITY: READINGS IN AGRICULTURAL LAW* 629 (Carolina Academic Press 2011).

604, “post-mortem examination of carcasses and marking or labeling; destruction of carcasses condemned; reinspection,” which provides:

For the purposes hereinbefore set forth the Secretary shall cause to be made by inspectors appointed for that purpose a post mortem examination and inspection of the carcasses and parts thereof of all amenable species to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in any State, Territory, or the District of Columbia as *articles of commerce which are capable of use as human food*; and the carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled as “Inspected and passed”; and said inspectors shall label, mark, stamp, or tag as “Inspected and condemned” all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Secretary may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection, shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated, and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Secretary may remove inspectors from any establishment which fails to so destroy any such condemned carcass or part thereof.⁶⁶

This section of the Act requires that each horse carcass that was slaughtered and capable for consumption by humans be inspected and marked as “inspected and passed” if found to not be adulterated. If the horse carcass is found to be adulterated, it must be marked as “inspected and condemned” and be destroyed at the facility in the presence of an inspector. 21 U.S.C. § 601(m) defines the word “adulterated” which essentially includes “any carcass, part thereof, meat or meat food product” capable of use as human food that

⁶⁶ Federal Meat Inspection Act of 1906, 21 U.S.C. § 604 (2008) (emphasis added).

is “filthy, putrid, or decomposed,” contains a “poisonous or deleterious substance which render it injurious to human health,” was in an unsanitary location (i.e. slaughter plant or packaging), or “for any reason unsound, unhealthful, unwholesome, or otherwise unfit for human food.”⁶⁷

21 U.S.C. § 608, “sanitary inspection and regulation of slaughtering and packing establishments; rejection of adulterated meat or meat food products,” requires that horse slaughter plants undergo a sanitary inspection. Specifically, the section provides:

The Secretary shall cause to be made, by experts in sanitation or by other competent inspectors, such inspection of all slaughtering, meat canning, salting, packing, rendering, or similar establishments in which amenable species are slaughtered and the meat and meat food products thereof are prepared for commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and to prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, he shall refuse to allow said meat or meat food products to be labeled, marked, stamped or tagged as “inspected and passed.”⁶⁸

FSIS must approve plans and specifications, equipment, and operating procedures for horse slaughter or processing plants producing products for human consumption prior to the commencement of operations. After the commencement of operations, horse slaughter and processing plants must abide by sanitary-related rules covering topics such as “proper lighting, ventilation, and water supply; cleanliness of equipment and structural features; and employee sanitation procedures.”⁶⁹

⁶⁷ *See id.* at § 601(m).

⁶⁸ *See id.* at § 608.

⁶⁹ SUSAN A. SCHNEIDER, *FOOD, FARMING, AND SUSTAINABILITY: READINGS IN AGRICULTURAL LAW* 628 (Carolina Academic Press 2011).

Last, but not least, 21 U.S.C. § 603(b) requires that FSIS meat inspectors enforce the Humane Methods of Slaughter Act (7 U.S.C. § 1901 *et seq.*) that mandates livestock are rendered unconscious prior to slaughter.⁷⁰ The statute requires that inspectors must examine and inspect the method by which the horses are slaughtered and handled in connection to slaughter at the slaughter plants in order to ensure that the horses are slaughtered in compliance with the Humane Methods of Slaughter Act. The statute gives authority to FSIS inspectors to refuse or temporarily suspend inspection services if a slaughter plant is found in noncompliance with the Humane Methods of Slaughter Act.⁷¹

III. FEDERAL APPROPRIATIONS BANNED DOMESTIC HORSE SLAUGHTER

A. Initial Attempt to Ban Domestic Horse Slaughter via Appropriations Measure

The United States Congress has never passed a statute to outright ban horse slaughter; however, Congress did effectively ban domestic horse slaughter for the past five years through appropriations measures designed to de-fund FSIS inspections. The first measure was adopted in the FY 2006 agricultural appropriations bill, specifically, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, which was signed into law on November 10, 2005.⁷² On June 8, 2005, the U.S. House of Representatives approved an amendment to the bill, in a 269-

⁷⁰ TADLOCK COWAN, CONG. RESEARCH SERV., RS21842, HORSE SLAUGHTER PREVENTION BILLS AND ISSUES 1 (2010).

⁷¹ Federal Meat Inspection Act of 1906, 21 U.S.C. § 603(b) (2008).

⁷² THOMAS (Library of Congress), *Bill Summary and Status: 109th Congress (2005-2006): H.R. 2744, Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006*, P.L. 109-097, <http://thomas.loc.gov> (last visited Apr. 14, 2012).

158 vote, sponsored by Representative John Sweeney (R-NY) that added the measure.⁷³ The purpose of the amendment, H.AMDT.236, was “to prohibit use of funds in the bill to pay salaries and expenses of personnel to inspect horses under the Federal Meat Inspection Act or under the guidelines issued under the Federal Agriculture Improvement and Reform Act of 1996.”⁷⁴ Senator John Ensign (R-NV) sponsored an identical amendment, S.AMDT.1753, with nine co-sponsors that was introduced on September 20, 2005, and passed that same day in a 69-28 vote.⁷⁵ The final conference report, H.Rept. 109-255, kept the language and was cleared through both chambers of Congress as of November 3, 2005. The amendment language was inserted in Title VII, “General Provisions,” § 794, which provided:

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 the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901 note; Public Law 104–127).⁷⁶

The language of the bill banned the use of funds to pay for salaries or expenses of personnel to carry out duties established under FMIA § 603, which required ante-mortem inspections of horses prior to entrance into slaughter plants. The supporters of the passed amendment thought that, since the FMIA required FSIS to inspect all horses slaughtered

⁷³ THOMAS (Library of Congress), *Bill Summary and Status: 109th Congress (2005-2006): H.AMDT.236*, Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, P.L. 109-097, <http://thomas.loc.gov> (last visited on Apr. 14, 2012).

⁷⁴ *See id.*

⁷⁵ THOMAS (Library of Congress), *Bill Summary and Status: 109th Congress (2005-2006): S.AMDT.1753*, Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, P.L. 109-097, <http://thomas.loc.gov> (last visited on Apr. 14, 2012).

⁷⁶ Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-097, 119 Stat. 2164 (2005).

for human consumption before the horsemeat enters commerce, a ban on the use of appropriated funds to perform those required inspections would effectively prohibit the plants from slaughtering horses for human consumption.⁷⁷ The Conference Report, H. Rept. 109-255, indicated otherwise, stating:

It is the understanding of the conferees that the Department is obliged under existing statutes to provide for the inspection of meat intended for human consumption (domestic and exported). The conferees recognize that the funding limitation in Section 794 prohibits the use of appropriated funds only for payment of salaries or expenses of personnel to inspect horses.⁷⁸

The language of the bill also banned the use of funds to pay for salaries or expenses of personnel to carry out duties established under § 903, “Regulation of Commercial Transportation of Equine for Slaughter,” of the Federal Agriculture Improvement and Reform Act (FAIR) of 1996 (1996 Farm Bill). FAIR of 1996 § 903(a) and (c)(2) provided USDA’s Animal and Plant Health Inspection Service authority to “issue guidelines for the regulation of the commercial transportation of equine for slaughter by persons regularly engaged in that activity” and to “conduct such investigations and inspections as the Secretary considers necessary.”⁷⁹ The prohibition meant that USDA employees could not inspect horses in transport to slaughter plants for compliance with the Slaughter Horse Transport Program regulations promulgated in 2001.⁸⁰

⁷⁷ TADLOCK COWAN, CONG. RESEARCH SERV., RS21842, HORSE SLAUGHTER PREVENTION BILLS AND ISSUES 2 (2010).

⁷⁸ H.R. REP. NO. 109-255, at 107 (2005).

⁷⁹ Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, 110 Stat. 1184 (1996).

⁸⁰ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-11-228, HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 5,8 (2011).

B. Agricultural Marketing Act of 1946 Provided a Loophole

The Agricultural Marketing Act (AMA) of 1946 as amended, 7 U.S.C. § 1621 *et seq.*, authorizes a voluntary inspection service on a fee-for-service basis for agricultural products. Under the Act, slaughter plants can request for graders from USDA's Agricultural Marketing Service to assign official grades based on quality traits and yield on the products produced in the plants so long as the plants agree to pay user fees for the services rendered.⁸¹ On November 23, 2005, a mere thirteen days after the agricultural appropriations bill was passed, the three remaining horse slaughter plants petitioned USDA to use its emergency rulemaking powers to create a voluntary, user fee-funded ante-mortem inspection services under the AMA of 1946. The plants cited the narrow wording of the prohibition contained in the Sweeney-Ensign amendment that only banned the use of appropriated funds for ante-mortem inspections as well as the language in the conference report that said that USDA was still obliged to inspect horsemeat under existing statutes.⁸²

On February 8, 2006, USDA published an Interim Final Rule in the Federal Register that amended existing regulations that covered voluntary inspections of exotic species, such as reindeer, elk, deer, antelope, bison, and water buffalo, by adding a subpart on horses.⁸³ Title 9, Code of Federal Regulations, part 352.19, provided that “an official establishment that wishes to slaughter horses can apply for voluntary ante-

⁸¹ TADLOCK COWAN, CONG. RESEARCH SERV., RS21842, HORSE SLAUGHTER PREVENTION BILLS AND ISSUES 1 (2010).

⁸² *Id.* at 2.
Humane Soc’y of U.S. v. Johanns, 520 F. Supp. 2d 8, 13 (D.D.C. 2007).

⁸³ *Id.* at 2.
Horses, 71 Fed. Reg. 6337, 6341 (Feb. 8, 2006) (to be codified at 9 C.F.R. pt. 352).

mortem inspection” so long as the establishments “pay the applicable base time, overtime, and holiday rates for ante-mortem inspection.”⁸⁴ USDA agreed to provide the voluntary fee-for service ante-mortem inspection services under the AMA of 1946 to the remaining three slaughter plants and post-mortem inspections resumed under the FMIA with the use of appropriated funds.⁸⁵ Some members of Congress strongly objected to the USDA Interim Final Rule. U.S. Representative Edward Whitfield (R-KY) stated, “they thwarted the will of Congress. They were intent on going against what was very clearly the purpose of passing the amendment...to end horse slaughter.”⁸⁶

C. 2006 Fee-for-Service Interim Rule Created in Violation of NEPA and APA

The Humane Society of the United States (HSUS) brought suit against the Secretary of Agriculture, Mike Johanns, claiming that USDA and FSIS violated the National Environmental Policy Act (NEPA) by abusing its discretion and the Administrative Procedure Act (APA) by acting arbitrarily and capriciously through its implementation of the voluntary fee-for-service ante-mortem horse inspection program. All three remaining horse slaughter plants, Beltex Corporation, Cavel International, Inc., and Dallas Crown, Inc., moved to intervene as defendant-intervenors.⁸⁷ HSUS did file a motion for a temporary restraining order and a preliminary injunction to enjoin the

⁸⁴ Ante-Mortem Inspection and Applicable Requirements, 71 Fed. Reg. 6337, 6341 (Feb. 8, 2006) (to be codified at 9 C.F.R. pt. 352.19).

⁸⁵ TADLOCK COWAN, CONG. RESEARCH SERV., RS21842, HORSE SLAUGHTER PREVENTION BILLS AND ISSUES 2 (2010).

⁸⁶ Zachary Coile, *Horses Still Can Be Killed For Food—Meatpackers Got Rules Changed*, S.F. CHRON. (Apr. 3, 2006), <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/04/03/MNGN8I2DKN1.DTL&ao=all> (last visited Apr. 12, 2012).

⁸⁷ *Humane Soc’y of U.S.*, 520 F. Supp. 2d at 11.

program which had an effective date of March 10, 2006, but that motion was denied by the court on March 14, 2006.⁸⁸

One of HSUS's claims was that the USDA did not give advance public notice or opportunity for the public to comment when the USDA created the voluntary fee-for-service ante-mortem horse inspection program by publishing an Interim Final Rule.⁸⁹ The court rendered this issue moot and did not decide if USDA violated the APA notice-and-comment provisions in light of finding a NEPA violation.⁹⁰ NEPA requires that an Environmental Impact Statement (EIS) be prepared for "major federal actions significantly affecting the quality of the human environment."⁹¹ Before an agency commits to a particular major federal action, the federal agency is supposed to take a "hard look" at the potential environmental implications of their project.⁹² A "major federal action" includes "actions with effects that may be major and which are potentially subject to federal control and responsibility. Major reinforces but does not have a meaning independent of significantly."⁹³ The court held that the issuance of the Interim Final Rule was a "major federal action," finding that it was an overt action and was a final, rather than proposed, determination on how the FSIS ante-mortem inspections were

⁸⁸ *See id.* at 11, 13.

⁸⁹ *See id.* at 11.

⁹⁰ *See id.* at 12.

⁹¹ *See id.* at 16.

⁹² *See id.*

⁹³ *See id.* at 19.

to be conducted. The court also found that the Interim Final Rule permits action that may affect the quality of the environment, thus putting it under the rubric of NEPA.⁹⁴

The court next had to decide if the now-determined major federal action simply perpetuated the “status quo,” thus exempting it from NEPA review.⁹⁵ The court defined status quo as a legal or regulatory status quo, not whether an action, even if it has a different legal basis, perpetuates the same effects.⁹⁶ “The duty to prepare an EIS normally is triggered when there is a proposal to change the status quo.”⁹⁷ The Plaintiffs argued that it was not because

(1) *but for* USDA's discretionary decision to grant the petition for rulemaking, *the horse slaughter operations*—and hence all of the environmental impacts associated with them—would have ceased on March 10, 2006, by operation of the FY 2006 Amendment”; (2) “federal defendants have *never previously analyzed the environmental effects* associated with the horse slaughter facilities in any NEPA document”; and (3) “USDA has never previously adopted, or otherwise authorized, a fee-for-inspection funding system for the slaughter of animals covered by the FMIA.”⁹⁸

The court agreed finding that FSIS had created an entirely new regulatory ante-mortem inspection framework. The court found that the voluntary fee-for-service ante-mortem horse inspection program was a “new activity” under NEPA and does not perpetuate the regulatory status quo, and as such is not exempt from NEPA review.⁹⁹

⁹⁴ *See id.* at 22.

⁹⁵ *See id.* at 29.

⁹⁶ *See id.*

⁹⁷ *See id.*

⁹⁸ *See id.* at 28.

⁹⁹ *See id.*

The court lastly determined that a “categorically excluded” agency, FSIS, may not ignore NEPA entirely, holding that 7 C.F.R. § 1b.4 does not permit FSIS to avoid consideration of whether “the Interim Final Rule invoked ‘extraordinary circumstances’ such that it ‘may have a significant environmental effect’” which would render the activity as not categorically excluded.¹⁰⁰ The court found that because FSIS had a duty to environmentally assess the Interim Final Rule, and because FSIS did not make any assessment whatsoever, that the Defendants violated NEPA.¹⁰¹ Based on the case filings, case history, administrative record, and relevant statutes and case law, in an opinion issued on March 28, 2007, the District Court granted Plaintiff’s motion for summary judgment, and vacated the Interim Final Rule finding that it was issued in violation of APA and NEPA, and permanently enjoined FSIS from implementing the Interim Final Rule.¹⁰² To date, it appears that no environmental assessment has occurred since.

D. Second Attempt to Ban Domestic Horse Slaughter via Appropriations Measure

Notwithstanding that ruling, Congress decided to take this voluntary fee-for-service ante-mortem horse inspection program matter into their own hands as well. A second appropriations measure was adopted on December 26, 2007, in the FY 2008 agricultural appropriations bill, specifically, Division A of the Continuing Appropriations Act, 2008. This second attempt to effectively ban horse slaughter included an additional measure that prohibited the use of appropriated funds to implement or enforce 9 C.F.R. pt. 352.19, the voluntary fee-for-service ante-mortem inspection program available for

¹⁰⁰ *See id.* at 32, 34.

¹⁰¹ *See id.* at 35-36.

¹⁰² *See id.* at 12.

horse slaughter plants created in 2006 under the authority of the AMA of 1946.¹⁰³ This new language was inserted in Division A, Title VII, “General Provisions,” § 741, which provided:

None of the funds made available in this Act may be used to pay the salaries or expenses of personnel to—

- (1) inspect horses under section 3 of the Federal Meat Inspection Act (21 U.S.C. 603);
- (2) inspect horses under section 903 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901 note; Public Law 104–127); or
- (3) implement or enforce section 352.19 of title 9, Code of Federal Regulations.¹⁰⁴

This language containing the prohibition effectively banning domestic horse slaughter was included in subsequent agricultural appropriations bills. The Omnibus Appropriations Act, 2009, P.L. 111-8, included the language in Division A, Title VII, “General Provisions,” § 739.¹⁰⁵ The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010, P.L. 111-80, included the language in § 744.¹⁰⁶

E. Language in Appropriations Bill Deleted

Representative Jim Moran (D-VA) introduced an amendment in the House of Representatives containing the language effectively banning domestic horse slaughter that made it into the House version of the FY 2012 agricultural appropriations bill. The Senate version of the bill did not contain this language. Behind closed doors in a

¹⁰³ TADLOCK COWAN, CONG. RESEARCH SERV., RS21842, HORSE SLAUGHTER PREVENTION BILLS AND ISSUES 3 (2010).

¹⁰⁴ Continuing Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1881 (2007).

¹⁰⁵ Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, 123 Stat. 559 (2008).

¹⁰⁶ Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-80, 123 Stat. 2129 (2009).

Conference Committee meeting on the bill, Chairman Senator Herb Kohl (D-WI), Representative Jack Kingston (R-GA), and Senator Roy Blunt (R-MO) voted to reject the language that prohibited USDA from using the appropriated funds to inspect horses slaughtered for human consumption. Representative Sam Farr (D-CA) was the lone vote in support of continuing the inclusion of the de-funding language.¹⁰⁷ On November 18, 2011, President Obama signed the Consolidated and Further Continuing Appropriations Act, 2012, which contained the approved conference version of the FY 2012 agriculture appropriations bill.¹⁰⁸ The language containing the prohibition on the use of appropriated funds for horse slaughter inspection services was quietly deleted. While the language effectively banning domestic horse slaughter was deleted, no funds were allocated or earmarked to resume inspection services.¹⁰⁹ As one writer put it, “this Trojan horse rode in on the budget bill.”¹¹⁰ PETA took a position unpopular to many animal rights activists; it supported lifting the ban on domestic horse slaughter, stating, “the amount of suffering the ban created exceeded the amount of suffering it was designed to stop.”¹¹¹ The June 2011 GAO report on the status of horse welfare since the cessation of domestic horse slaughter is said to have provided the substantiation needed to lift the slaughter ban.

¹⁰⁷ Animal Law Coalition, *U.S. Equine Slaughter Legal Again*, (Nov. 18, 2011), <http://www.animallawcoalition.com/horse-slaughter/article/1887> (last visited Apr. 15, 2012).

¹⁰⁸ Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-055, 125 Stat. 552 (2011).

¹⁰⁹ Stephen Dinan, *Obama, Congress Restore horse-Slaughter Industry*, WASHINGTON TIMES (Nov. 30, 2011), <http://www.washingtontimes.com/news/2011/nov/30/obama-congress-restore-us-horse-slaughter-industry/?page=all> (last visited Apr. 15, 2012).

¹¹⁰ Elayne Boosler, *Mr. Ed, It's What's for Dinner*, HUFF POST GREEN (Dec. 1, 2011), http://www.huffingtonpost.com/elayne-boosler/post_2701_b_1122906.html (last visited Apr. 15, 2012).

¹¹¹ Patrik Jonsson, *Lifting Horse Slaughter Ban: Why PETA says it's a good idea*, CHRISTIAN SCIENCE MONITOR (Nov. 30, 2011), <http://www.csmonitor.com/USA/2011/1130/Lifting-horse-slaughter-ban-Why-PETA-says-it-s-a-good-idea> (last visited Apr. 15, 2012).

IV. FINDINGS OF THE JUNE 2011 GAO REPORT

Through the FY 2010 agricultural appropriations senate bill, Senator Max Baucus (D-MT) requested the Government Accountability Office (GAO) to study how the cessation of horse slaughter has impacted the current status of horse welfare in the United States. The directive was proposed through the U.S. Senate Appropriations Committee Report 111-39 issued on July 7, 2009.¹¹² It was kept in the final version of the FY 2010 agricultural appropriations bill, H.R. 2997, through Conference Report 111-279 issued on September 30, 2009.¹¹³ Congress directed GAO to study

how the horse industry has responded to the closure of U.S. horse slaughter facilities in terms of both the numbers of horse sales, exports, adoptions, or abandonments; the implications these changes have had on farm income and trade; the extent to which horses in the United States are slaughtered for any purpose; any impacts to State and local governments and animal protection organizations; how the Department oversees the transport of horses destined for slaughter in foreign countries, particularly Canada and Mexico; the manner in which the Department coordinates with the Department of the Interior and State governments to assist them in identifying, holding and transporting unwanted horses for foreign export; and general conclusions regarding the welfare of horses as a result of a ban on horse slaughter for human consumption.¹¹⁴

The GAO was supposed to issue a report to the committee by March 1, 2010, but completion was delayed until June 2011.¹¹⁵

Specifically, the June 2011 GAO report examined “(1) the effect on the U.S. horse market, if any, since domestic slaughter for food ceased in 2007; (2) the impact, if any, of market changes on horse welfare and on states, local governments, tribes, and

¹¹² S. REP. NO. 111-39, at 44-45 (2009).

¹¹³ H.R. REP. NO. 111-279, at 66 (2009) (Conf. Rep.).

¹¹⁴ S. REP. NO. 111-39, at 44-45 (2009).

¹¹⁵ *Id.* at 45.

animal welfare organizations; and (3) challenges, if any, to USDA's oversight of the transport and welfare of U.S. horses exported for slaughter."¹¹⁶ The GAO report identified a number of horse welfare issues including concern that slaughter horses are now traveling significantly greater distances, possibly inhumanely, to slaughter plants; horses slaughtered, possibly inhumanely, in Canada and Mexico are not subject to the Humane Methods of Slaughter Act; and the cessation of domestic horse slaughter has caused increases in horse abuse, neglect, and abandonment, and a decline in horse value.¹¹⁷

The GAO report found that since the cessation of domestic horse slaughter, horses are being transported greater distances, sometimes inhumanely, to non-U.S.-regulated slaughter plants, and that the volume of U.S.-origin horses slaughtered has not changed as the slaughter market for horses has merely shifted to Canada and Mexico where inhumane slaughter methods might be used. From 2006 to 2010, GAO found that U.S.-origin horses imported for slaughter increased by 148 percent in Canada, and by 660 percent in Mexico. The report additionally showed that the amount of U.S. origin horses being slaughtered in 2010 is roughly the same amount of total U.S.-origin horses slaughtered in 2006—138,000.¹¹⁸ In 2006, 105,000 horses were slaughtered domestically and 33,000 horses were exported for slaughter for a grand total of 138,000 U.S.-origin horses slaughtered in 2006.¹¹⁹ In 2007, roughly 30,000 horses were slaughtered

¹¹⁶ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 3 (2011).

¹¹⁷ *Id.* at i.

¹¹⁸ *See id.*

¹¹⁹ *Id.* at 10, 12.

domestically, 44,000 horses were exported to Mexico for slaughter, and 35,000 horses were exported to Canada for slaughter for a grand total of 109,000 U.S.-origin horses slaughtered in 2007.¹²⁰ Around 99,000 horses were exported for slaughter in 2008, 109,000 horses were exported for slaughter in 2009, and 138,000 horses were exported for slaughter in 2010.¹²¹ The same volume of horses slaughtered in 2006 were slaughtered in 2010, but those horses were now being transported longer distances to slaughter plants in sometimes uncomfortable double-decker trailers without adequate access to food, water, or rest. This current practice also increases the food miles attributed to the produced horsemeat and, consequently, a higher carbon footprint and an inefficient use of transportation and fuel resources have resulted.

The GAO report indicated that state and local government, and animal welfare organizations have found that horse abuse, neglect, and abandonment have increased since the cessation of domestic horse slaughter in 2007. Data in Colorado showed that investigations relating to horse abuse and neglect have increased more than 60 percent from 975 investigations in 2005 to 1,588 investigations in 2009. California, Texas, and Florida have reported more instances of horses being abandoned on private and state land since the cessation of domestic horse slaughter 2007. In general, state and local government, tribal, and horse industry officials attribute these increases to the cessation of domestic horse slaughter and the economic downturn. Some animal welfare

¹²⁰ SUSAN A. SCHNEIDER, *FOOD, FARMING, AND SUSTAINABILITY: READINGS IN AGRICULTURAL LAW* 534 (Carolina Academic Press 2011).

U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, *HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER* 11 (2011).

¹²¹ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, *HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER* 12 (2011).

organizations and animal rights activists question the relevance of blaming these increases on the cessation of domestic horse slaughter.¹²²

The GAO report additionally found that horse prices have declined since 2007. The cessation of domestic horse slaughter has been attributed to an 8 to 21 percent decline in the value of lower-to-medium priced horses. The economic downturn has been attributed to a 4 to 5 percent decline in the price of all horses. The value of higher-priced horses has appeared to not change.¹²³

The findings of the study led GAO to recommend that Congress consider adopting one of two policy options. The first option listed was that Congress “may wish to reconsider restrictions on the use of federal funds to inspect horses for slaughter.”¹²⁴ The second option listed was that Congress may wish to “consider a permanent ban on horse slaughter.”¹²⁵ GAO additionally recommended that USDA issue a more encompassing final rule that would protect the transport of horses to slaughter along the entire transportation chain, and that USDA find ways to better utilize resources for compliance with regulations. The report also indicated that USDA agreed with GAO’s findings and recommendations.¹²⁶

V. FEDERAL CASE LAW

While the United States Congress did eventually effectively ban domestic horse slaughter by de-funding inspections through appropriations measures for a five-year

¹²² *Id.* at i.

¹²³ *See id.*

¹²⁴ *See id.*

¹²⁵ *See id.*

¹²⁶ *See id.*

period, it was actually two United States Court of Appeals decisions upholding state laws in Texas and Illinois that shut down the last three remaining horse slaughter inspection facilities in the United States. There are currently seven states, California, Texas, Illinois, Oklahoma, Florida, Mississippi, and Montana, which have statutes banning the consumption of horsemeat, commerce in horsemeat, or horse slaughter (See Appendix A).¹²⁷ California was the first state to pass a law outright banning the slaughter of horses for human consumption.¹²⁸ There is currently no federal ban on horse slaughter.

A. Closure of Texas Horse Slaughter Plants

In 1949, Texas passed a law banning commerce in horsemeat which was codified in 1991 as Chapter 149, which reads: “A person commits an offense if: (1) the person sells, offers for sale, or exhibits for sale horsemeat as food for human consumption; or (2) the person possesses horsemeat with the intent to sell the horsemeat as food for human consumption.”¹²⁹ The law also made it an offense “to transfer horsemeat to a person one knows or should know intends to do those prohibited activities.”¹³⁰ It was long thought that this statute was not enforceable due to being federally preempted. In 2002, at the request of Texas State Representative Tony Goolsby, the Texas Attorney General issued an opinion stating that Chapter 149 was not preempted by Federal law,

¹²⁷ Animal Legal and Historical Center, *Horse Slaughter-Related Statutes*, MICHIGAN STATE UNIV. COLLEGE OF LAW (2012), <http://www.animallaw.info/statutes/topicstatutes/sttohorsl.htm> (last visited Apr. 22, 2012).

¹²⁸ Zachary Coile, *Horses Still Can Be Killed For Food—Meatpackers Got Rules Changed*, S.F. CHRON. (Apr. 3, 2006), <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/04/03/MNGN8I2DKN1.DTL&ao=all> (last visited Apr. 12, 2012).

¹²⁹ *Empacadora de Carnes de Fresno, S.A. de C.C. v. Curry*, 476 F.3d 326, 330 (5th Cir. 2007). TEX. AGRIC. CODE ANN. § 149.002 (West 1949).

¹³⁰ *Empacadora de Carnes de Fresno, S.A. de C.C.*, 476 F.3d at 330. TEX. AGRIC. CODE ANN. § 149.003 (West 1949).

was enforceable, and was applicable to the two horse slaughter plants in Texas, Beltex and Dallas Crown, which had been in operation since the mid-1970's.¹³¹ The slaughter plants, along with Empacadora, a horse slaughter plant in Mexico that sells or transfers its horsemeat to Beltex who owns a controlling interest in it, filed suit seeking a declaration of legal rights and responsibilities after learning of that opinion. The district court ruled in favor of the horse slaughter plants and permanently enjoined Tim Curry, Tarrant County District Attorney, from prosecuting them under Chapter 149.¹³² "The court held that Chapter 149 (1) was repealed, (2) was preempted by the Federal Meat Inspection Act, and (3) violated the dormant Commerce Clause."¹³³

In an opinion issued on January 19, 2007, the appellate court found to the contrary in all respects. The court found that Chapter 149 was more recently codified, and as such, was controlling over the Texas Meat and Poultry Act and had not been repealed.¹³⁴ The court also found that no congressional intent existed, either expressly or implicitly, in the FMIA to preempt legislation such as the 1949 Texas law, finding that it was not physically impossible to comply with both the FMIA and Chapter 149 and that the Texas law did not impede the achievement of FMIA's federal objective of ensuring a safe food supply.¹³⁵ Lastly, the court found that the dormant Commerce Clause was not violated because the 1949 Texas act does not place excessive burdens on out-of-state industry; it is not a form of economic protectionism; it does not favor in-state over out-of-state

¹³¹ *Empacadora de Carnes de Fresnillo, S.A. de C.C.*, 476 F.3d at 329, 330.

¹³² *See id.* at 329.

¹³³ *See id.* at 330.

¹³⁴ *See id.* at 330, 332.

¹³⁵ *See id.* at 335.

industry, but rather it is a blanket prohibition that treats intrastate and interstate horsemeat commerce equally; and “no alternative measures could advance Texas's interests as effectively.”¹³⁶ The appellate court held that the 1949 Texas law was enforceable and applied to the two horse slaughter plants in Texas. The appellate court vacated the district court’s permanent injunction and remanded.¹³⁷ This decision led to the eventual closure of the two facilities in Texas in May 2007.¹³⁸

B. Closure of Illinois Horse Slaughter Plant

At the time this case was argued on August 16, 2007, Cavel International, Inc. of Illinois was the sole remaining horse slaughter plant in the United States. Beltex and Dallas Crown had since ceased slaughtering horses by court order, and shut down operations entirely as indicated in court that they would have to do in the case of an unfavorable ruling. However, the shutdown was quite brief, because the slaughter plants had already reopened and were slaughtering cattle in addition to the bison and ostrich they had previously slaughtered alongside horses.¹³⁹

This case arose after an amendment of the Illinois Horse Meat Act was passed on May 24, 2007. The act initially required horse slaughter plants to obtain a license to slaughter horses and it imposed various regulatory requirements on licensees regarding inspection and labeling among other things.¹⁴⁰ The amendment made it unlawful for a person in Illinois “to slaughter a horse if that person knows or should know that any of

¹³⁶ *See id.* at 335, 336-337.

¹³⁷ *See id.* at 337.

¹³⁸ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-11-228, HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 8 (2011).

¹³⁹ *Cavel Int’l, Inc.*, 500 F.3d at 552.

¹⁴⁰ *See id.* at 553.

the horse meat will be used for human consumption,” or “to import into or export from this State, or to sell, buy, give away, hold, or accept any horse meat if that person knows or should know that the horse meat will be used for human consumption.”¹⁴¹ Cavel claimed the act violated both the FMIA and the Commerce Clause and filed a motion for a preliminary injunction against enforcing that amendment. The district court declined to issue the injunction and the appellate court affirmed.¹⁴²

The appellate court found that the FMIA’s preemption clause did not preempt the Illinois law. The court found that the FMIA’s purpose was to regulate the production of horsemeat destined for human consumption when it is produced, but that it did not require or mandate that such production occur or attempt to preserve the production of any particular type of meat for human consumption.¹⁴³ The appellate court also found that the statute did not violate the Commerce Clause. The court found that it was an even-handed regulation in that there was no discrimination present and that local interests did not benefit from the outright ban on horse slaughter.¹⁴⁴ The court examined the statute in light of the Pike balancing test, “Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is *clearly* excessive in relation to the putative local benefits.”¹⁴⁵ The court found that “states have a legitimate interest in prolonging the lives of animals that their population happens to

¹⁴¹ *Cavel Int’l, Inc.*, 500 F.3d at 553.
225 ILL. COMP. STAT. 635/1.5(a)-(b) (2007).

¹⁴² *Cavel Int’l, Inc.*, 500 F.3d at 553.

¹⁴³ *See id.* at 553-554.

¹⁴⁴ *See id.* at 555.

¹⁴⁵ *See id.*

like.”¹⁴⁶ The court found no basis to invalidate the statute that was facially nondiscriminatory, had a legitimate, rational interest, and curtailed interstate and foreign commerce minimally.¹⁴⁷ In its opinion issued on September 21, 2007, the court affirmed that neither the FMIA nor Commerce Clause were violated. The Illinois horse slaughter plant closed in September 2007 at which time domestic horse slaughter ceased.¹⁴⁸ The U.S. Supreme Court declined a petition to review the case in June 2008.¹⁴⁹

C. What Can States do about Horse Slaughter?

The case law above indicated that states may pass a law prohibiting horse slaughter from occurring in their states without it being preempted by the FMIA; however, it was not made clear in the fifth and seventh circuits what precisely a state may do in terms of other measures. A U.S. Supreme Court decision from earlier this year reflects on that question. In response to a 2008 undercover video released by the Humane Society that revealed workers dragging, kicking, and electro-shocking non-ambulatory cattle that were later slaughtered, the largest beef recall in U.S. history occurred in an effort to prevent human consumption of potentially diseased animals, and California amended a statute regulating treatment of non-ambulatory animals and made it applicable to FMIA-regulated slaughter plants.¹⁵⁰ The statute was amended to read

(a) No slaughterhouse, stockyard, auction, market agency, or dealer shall buy, sell, or receive a nonambulatory animal.

¹⁴⁶ *See id.* at 557.

¹⁴⁷ *See id.* at 557-559.

¹⁴⁸ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 8 (2011).

¹⁴⁹ SUSAN A. SCHNEIDER, FOOD, FARMING, AND SUSTAINABILITY: READINGS IN AGRICULTURAL LAW 533 (Carolina Academic Press 2011).

¹⁵⁰ Nat'l Meat Ass'n v. Harris, 132 S. Ct. 965, 969 (2012).

- (b) No slaughterhouse shall process, butcher, or sell meat or products of nonambulatory animals for human consumption.
- (c) No slaughterhouse shall hold a nonambulatory animal without taking immediate action to humanely euthanize the animal.¹⁵¹

The National Meat Association, a trade association representing cattle and swine meatpackers and processors, filed suit to enjoin the enforcement of the California statute against the slaughterhouses on the ground that the FMIA preempts the California law.¹⁵²

The Supreme Court agreed finding that “FMIA’s preemption clause sweeps widely” and blocks the enforcement of the California law.¹⁵³ Additionally, the FMIA regulates the handling and slaughtering of ambulatory and non-ambulatory animals alike “from the moment a delivery truck pulls up to the gate” at slaughter plants and its scope encompasses both animals that are slaughtered on premises and those animals that arrive on the premises of a slaughter plant but are never slaughtered.¹⁵⁴ The Supreme Court noted that the California law attempts to replace the FMIA regulatory scheme with its own and found that the preemption clause “prevents a state from imposing any additional or different-even if non-conflicting-requirements that fall within the scope of the act and concern a slaughterhouse’s facilities or operations.”¹⁵⁵ Of particular note, the Supreme Court said:

A ban on butchering horses for human consumption works at a remove from the sites and activities that the FMIA most directly governs. When such a ban is in effect, no horses will be delivered to, inspected at, or handled by a slaughterhouse, because no horses

¹⁵¹ *Nat’l Meat Ass’n v. Harris*, 132 S. Ct. at 970.
CAL. PENAL CODE § 599f (West 2010).

¹⁵² *Nat’l Meat Ass’n v. Harris*, 132 S. Ct. at 970.

¹⁵³ *See id.*

¹⁵⁴ *See id.* at 971, 974.

¹⁵⁵ *See id.* at 970.

will be ordered for purchase in the first instance. But § 599f does not and cannot work in that way... § 599f tell slaughterhouses what to do with those [non-ambulatory] animals. Unlike a slaughtering ban, *the statute thus reaches into the slaughterhouse's facilities and affects its daily activities*... § 599f imposes requirements within—and indeed at the very heart of—the FMIA's scope.¹⁵⁶

The U.S. Supreme Court held that the FMIA regulates the handling and treatment of non-ambulatory animals from the moment of delivery at federally-regulated slaughter plants until the end of the meat production process, and that the California law which attempts to regulate “the same thing, at the same time, in the same place—except imposing different requirements” is expressly preempted by the FMIA.¹⁵⁷ Basically, what can be inferred from this decision is that states may outright ban horse slaughter in their state, but they may not pass statutes affecting the daily activities of horse slaughter plants, whether it be the handling, processing, or treatment of horses, upon the horses arrival at federally-regulated slaughter plants. In addition to banning horse slaughter, some states have chosen to ban the consumption of horsemeat or to ban commerce in horsemeat.

VII. CONCLUSION

The horse slaughter saga is a prime example of Congress creating shortsighted public policy. It may also illuminate consequences that can arise when Congress attempts to create public policy through appropriations measures. When establishing public policy, it is important to have clear goals or objectives in mind. It is critical to scrutinize the dynamics of the broader system as a whole that the policy is to affect in order to hopefully mitigate unintended consequences and barriers to the achievement of policy objectives. Doing so may have prevented the unintended consequences identified

¹⁵⁶ *See id.* at 974 (emphasis added).

¹⁵⁷ *See id.* at 975.

in the GAO report that have arisen in the case of horse slaughter-related policy. These unintended consequences are an increase in horse abuse, neglect, and abandonment; decrease in horse value; increase in the distance horses are transported, possibly inhumanely, to slaughter plants; and increase in the volume of horses exported for slaughter to plants where inhumane slaughter methods might be used and the United States is powerless to control. By creating policies as an integrated part of a dynamic system, rather than in a piecemeal fashion, basic economic principles that might result in policy resistance could be identified ahead of time such as the fact that an oversupply of horses would, dependent on other factors of course, depress the market price for horses which would, in turn, cause the margin between the cost of caring for a horse and its value to tighten. This, in turn, may result in horses being treated with lower quality care or an increase in neglect or abandonment, which it did end up doing. If the policy goal is to ban slaughter of all U.S.-origin horses, then there are several factors that must be considered. Such factors include banning transportation of horses across borders to slaughter plants, feedlots, assembly points, or stockyards; availability of affordable and humane options to free horse owners from unwanted horses; and affordable and safe disposal options of carcasses of what were once 1,000+ pound horses.

In November 2011, the language effectively banning domestic horse slaughter for the past five years was deleted, thus opening the doors for the possibility of domestic horse slaughter operations to begin again in states that have not banned horse slaughter or horsemeat commerce via state law. However, no funds were allocated or earmarked to resume the required inspection services for horsemeat that is destined for human consumption. If horse slaughter plants wish to try to utilize the voluntary fee-for-service

ante-mortem horse inspection program again, currently, the slaughter plants cannot because the D.C. District Court in Humane Soc’y of U.S. v. Johanns (2007) permanently enjoined FSIS from implementing the Interim Final Rule because FSIS had failed to environmentally assess the Interim Final Rule in any way, shape, or form. FSIS has yet to perform any environmental assessment to date.

If horse slaughter operations are to begin again in the United States, there is one further obstacle that needs to be overcome. Since horse slaughter operations in the United States ceased, regulations changed overseas in the European Union, one of the largest markets for U.S.-origin horsemeat. In 1996, the European Union first required residue control plans regarding veterinary medicines, some pesticides, and contaminants for animals and food products derived from animals for both EU producers and other countries.¹⁵⁸ This is because certain residues can be unsafe for human consumption. In 2009, the European Union passed Regulation No 470/2009 which outlined procedures to create residue limits on the amount of pharmacologically active substances that can be present in food products, including horsemeat, originating from EU producers and other countries.¹⁵⁹ This new regulation requires action plans, in addition to the residue control plans, to be created by countries wishing to export meat into the European Union that specify how those countries will meet the various new requirements. Such requirements include documentation of all substances a horse has been treated with in its lifetime, export country’s guaranteed compliance with veterinary medicine withdrawal periods prior to slaughter, a prohibition on horsemeat derived from horses that have been treated with anabolic steroids, an identification system for horses intended for human

¹⁵⁸ Council Directive 96/23/EC (1996).

¹⁵⁹ Regulation (EC) No 470/2009 (2009).

consumption, and creation of a risk-based program to control horsemeat exports to the EU derived from horses treated with EU-banned veterinary medicines or other substances.¹⁶⁰ The U.S. horse industry does not currently keep such stringent records documenting veterinary treatments nor has the U.S. taken any measures to comply with those new EU regulations.

In conclusion, horse slaughter is no longer banned in the United States by the United States Congress through an appropriations measure. However, states may ban horse slaughter, horsemeat commerce, or horsemeat consumption, and the FSIS has never performed an environmental assessment of its voluntary fee-for-service ante-mortem horse inspection program. Domestically-produced horsemeat has traditionally not been consumed in the United States by humans and has instead been shipped to Europe and Asian countries for human consumption. This export practice may continue again; however, the European Union has implemented new regulations that the United States cannot currently meet. Although horse slaughter-related legislative actions were the origin of many unintended consequences negatively affecting the welfare of horses in the United States; hopefully, it illuminated important lessons and in the future legislators will more carefully examine and debate their policy preferences prior to enactment.

¹⁶⁰ European Commission, *Residues of Veterinary Medicinal products – Third Countries*, European Union (May 4, 2011), http://ec.europa.eu/food/food/chemicalsafety/residues/third_countries_en.htm (last visited May 6, 2012).

APPENDIX A: STATE HORSE SLAUGHTER-RELATED STATUTES¹⁶¹

Statute Name	Citation	Summary
CA - Burro - Killing or capturing undomesticated burro; prima facie evidence	<u>CA FISH & G § 4600</u>	This section makes it unlawful to kill, wound, capture, or have in possession any undomesticated burro. An undomesticated burro is a wild burro or a burro which has not been tamed or domesticated for a period of three years after its capture.
CA - Horse slaughter - § 597o. Humane transportation of equine to slaughter; vehicle requirements; segregation of animals; violations	<u>CA PENAL § 597o</u>	This statute outlines the requirements for transporting equine to slaughter, including, but limited to, proper ventilation, sufficient space for equine to stand, and the use of ramps and floors with nonskid surfaces.
CA - Horse slaughter - § 598c. Horse slaughter for human consumption	<u>CA PENAL § 598c</u>	This statute makes it unlawful to possess, to import into or export from the state, or to sell, buy, give away, hold, or accept any equine with the intent of killing it for the purpose of human consumption. Violations could result in a felony conviction with a prison sentence of up to three years.
FL - Horse Slaughter - 828.125 Killing or aggravated abuse of horses or cattle; offenses; penalties	<u>FL ST § 828.125</u>	Florida Governor Charlie Crist signed this amendment into law on May 17, 2010 making it a second-degree felony for any person to willfully and unlawfully, by any means whatsoever, kill, maim, mutilate, or cause great bodily harm or permanent breeding disability to any animal of the genus Equus (horse). Any person who commits a violation of this subsection shall be sentenced to a minimum mandatory fine of \$3,500 and a minimum mandatory period of incarceration of 1 year.
IL - Horse - Slaughter (Act 635. Illinois Horse Meat Act)	<u>225 ILCS 635/1 - 1.5</u>	This Act prohibits the slaughter of horses for human consumption as well as importing, exporting, selling, giving, or even possessing horse meat if a person knows or should know that it will be used for human consumption. Violation of this section of the Act is a Class C misdemeanor. The Act does contain several exceptions. Notably, it does not apply to any commonly accepted noncommercial, recreational, or sporting activities.

¹⁶¹ Animal Legal and Historical Center, *Horse Slaughter-Related Statutes*, MICHIGAN STATE UNIV. COLLEGE OF LAW (2012), <http://www.animallaw.info/statutes/topicstatutes/sttohorsl.htm> (last visited Apr. 22, 2012). NOTE: This chart was taken verbatim from the website.

MS - Horses - Slaughter (Chapter 33. Meat, Meat-Food and Poultry Regulation and Inspection. Article 1. Meat, Meat-Food and Poultry Regulation and Inspection Law of 1960)	<u>Miss. Code Ann. § 75-33-3</u>	Construes the phrase "unfit for human consumption" in the very broad Mississippi Meat Inspection Act of 1960 to apply to horse meat and meat-food products.
MT - Horse Slaughter - 81-9-240. Equine slaughter or processing facilities--no injunction to stop--damages allowed for delay	<u>MT ST 81-9-240</u>	This Montana statute limits the ability of a court to issue an injunction aimed at delaying or stopping the construction of an equine slaughter or processing facility. Additionally, the law provides that if a person files an action against the operation of an equine slaughter or processing facility and does not prevail, the person is liable for all financial losses the facility suffers if the court issues an injunction that halts operations while the action is pending.
OK - Horse - Slaughter (Public Health Code. Article 11. Food. D. Horsemeat)	<u>63 Okl.St. Ann. § 1-1135 - 1139</u>	It is unlawful to sell horsemeat for human consumption or to possess horsemeat with the intent to sell it for human consumption. It is also unlawful to transfer horsemeat when the person transferring the horsemeat knows or reasonably should know that the person receiving the meat intends to sell the meat for human consumption. The statute also identifies certain circumstances, such as the presence of horsemeat in a restaurant or cafe, as prima facie evidence of an intent to sell horsemeat for human consumption.
TX - Horse - Sale of Horsemeat (Chapter 149. Sale of Horsemeat for Human Consumption)	<u>TX AGRIC § 149.001 - 007</u>	These statutes prohibit the sale of horsemeat, the possession of horsemeat with the intent to sell, and the knowing transfer of horsemeat to a person who intends to sell it for human consumption. Horsemeat is defined as the flesh of an animal of the genus equus. Prima facie evidence of an offense is prescribed by these statutes and includes, for example, the presence of horsemeat in a restaurant or cafe. The penalty for an offense may be a fine of up to a \$1,000, confinement for not less than 30 days and not more than two years, or both a fine and confinement.