

Protecting Equine Welfare and International Consumers of Horse Meat: A Proposal for the Renewal of Horse Slaughter in the United States

NATALIE ANDERSON*

TABLE OF CONTENTS

I.	INTRODUCTION	126
II.	THE HISTORY OF HORSE SLAUGHTER LEGISLATION	129
III.	REGULATIONS FOR THE HUMANE TRANSPORTATION, HANDLING AND SLAUGHTER OF EQUINES IN THE UNITED STATES, CANADA AND MEXICO	133
	<i>A. The Domestic Transport Program</i>	134
	<i>B. Transport of Slaughter Horses Across the Border and Abroad</i>	140
	<i>C. Methods of Slaughter in the United States, Canada and Mexico</i>	145
IV.	INTERNATIONAL FOOD SAFETY IMPLICATIONS OF THE CESSATION OF HORSE SLAUGHTER IN THE UNITED STATES	150
V.	DOMESTIC IMPLICATIONS OF THE CLOSURE OF HORSE SLAUGHTER FACILITIES IN THE UNITED STATES	156
VI.	PROPOSAL FOR THE RENEWAL OF HORSE SLAUGHTER IN THE UNITED STATES	159

* © 2015 Natalie Anderson. J.D. Candidate 2016, University of San Diego School of Law.

I. INTRODUCTION

In July 2011, Silky Shark, and five other American standardbred racehorses, were slaughtered at Les Viandes de la Petite-Nation slaughterhouse in St-André-Avellin, Quebec.¹ Silky Shark was not the horse that many would picture when they imagine horse slaughter.² Silky Shark was a horse of distinguished bloodlines.³ He earned \$122,646 through his racing career in 81 racing starts that spanned over five years.⁴ The investigation report by the Canadian Horse Defence Coalition, which revealed that Silky Shark and other American racehorses had met their fate in a Canadian slaughterhouse, came as an astounding shock to many, including Silky Shark's original owner Ken Terpenning.⁵ Terpenning had been forced to sell Silky Shark to a friend when the horse began losing races because of medical problems, and he could no longer afford to keep him.⁶ The horse was passed through the hands of multiple owners and Terpenning did not hear of the horse again until he learned that Silky Shark had been slaughtered.⁷

The story of the "Slaughterhouse Six" caused a public outcry from animal welfare groups, raising awareness of the reality that once successful and beloved American racehorses, with no life-threatening injuries, could wind up facing slaughter in another country.⁸ Although the story is shocking, it is not uncommon.⁹ Ferdinand, the 1986 Kentucky Derby Winner, was slaughtered in Japan and his carcass was likely used to make pet food.¹⁰ Each year, over 10,000 American thoroughbreds from the racing industry are shipped to Mexico and Canada for slaughter.¹¹ What is most alarming

1. *The Slaughterhouse Six*, CANADIAN HORSE DEFENCE COALITION 1 (May 1, 2012), <http://defendhorsescanada.org/wordpress/wp-content/uploads/sh6.pdf>.

2. See Julie Hauserman, *Stop Horse Slaughter: Our Country's Dark Secret*, HUMANE SOC'Y OF THE U.S., (Aug. 12, 2014), http://www.humanesociety.org/issues/horse_slaughter/facts/horse_slaughter.html.

3. CANADIAN HORSE DEFENCE COALITION, *supra* note 1, at 7.

4. *Id.*

5. Jack Rodolico, *The shady trade in American horsemeat*, LATITUDE NEWS, <http://www.latitudenews.com/story/the-shady-trade-in-american-horsemeat> (last visited Feb. 17, 2015).

6. *Id.*

7. *Id.*

8. *See id.*

9. See Vickery Eckhoff, *Racing Industry Silent on Slaughtered Thoroughbreds*, FORBES (Nov. 29, 2011, 12:52 PM), <http://www.forbes.com/sites/vickeryeckhoff/2011/11/29/racing-industry-silent-about-slaughtered-thoroughbreds>.

10. See Ray Paulick, *Death of a Derby Winner: Slaughterhouse Likely Fate for Ferdinand*, BLOOD HORSE (July 25, 2003 at 8:19 AM), <http://www.bloodhorse.com/horse-racing/articles/17051/death-of-a-derby-winner-slaughterhouse-likely-fate-for-ferdinand>.

11. Eckhoff, *supra* note 9.

about the story of Silky Shark, and many other racehorses that have met the same fate, is that he was slaughtered for human consumption.¹²

Silky Shark underwent two surgeries while owned by Terpenning, and each time he was administered phenylbutazone, or “bute.”¹³ Bute, often referred to as horse aspirin, is the most commonly administered anti-inflammatory drug in horses.¹⁴ Bute is also a human carcinogen that can cause potentially fatal disorders of the blood and immune system.¹⁵ Because there is no safe threshold level or withdrawal period for the drug, Canadian and European Union regulations require that horses that have been administered bute be permanently excluded from the food chain.¹⁶ The Canadian Food Inspection Agency (CFIA), the organization responsible for testing horse meat for drug residue, made no findings of bute in horsemeat during the month that Silky Shark was slaughtered, and no meat was recalled in the months following.¹⁷ The drug-tainted meat from Silky Shark entered the food chain for human consumption.¹⁸ The story of Silky Shark is an illustration of the failure of the United States, and countries that continue to slaughter and consume American horses, to create a coherent and effective policy on horse slaughter to safeguard the food chain.¹⁹

When the last horse slaughter facility in the United States closed in 2007, animal welfare advocates celebrated the decision as a step toward reaching their goal of a permanent ban on horse slaughter in North America to

12. Rodolico, *supra* note 5.

13. *Id.*

14. Nicholas Dodman et al., *Association of Phenylbutazone Usage with Horses Bought for Slaughter: A Public Health Risk*, 48 FOOD & CHEM. TOXICOLOGY, 1270 (2010), available at <http://www.eenvandaag.nl/uploads/doc/Food-and-Chemical-Toxicology-bute-paper1.pdf>.

15. *Id.*

16. Canadian Food Inspection Agency, *Safety of Horsemeat*, <http://www.inspection.gc.ca/food/information-for-consumers/fact-sheets/specific-products-and-risks/meat-and-poultry-products/horse-meat/eng/1331217628360/1331225704619>; EUROPEAN FOOD SAFETY AUTHORITY, JOINT STATEMENT OF EFSA AND EMA ON THE PRESENCE OF PHENYLBUTAZONE IN HORSES, (2013), available at <http://www.efsa.europa.eu/en/efsajournal/doc/3190.pdf>.

17. See Canadian Food Inspection Agency, *Food Recall Warnings*, <http://www.inspection.gc.ca/about-the-cfia/newsroom/food-recall-warnings/eng/1299076382077/1299076493846>.

18. Rodolico, *supra* note 5.

19. *See id.*

protect horses from inhumane treatment.²⁰ Yet, today the slaughter of American horses continues in even higher numbers than before the domestic cessation of horse slaughter, across borders in Canada and Mexico because of a legislative loophole.²¹ In 2005, Congress passed H.R. 2744-45, an Agricultural Appropriations Bill that removed funding for United States Department of Agriculture (USDA) inspections of horse slaughter facilities in the United States.²² While this bill created a de facto ban on horse slaughter in the United States, it did not prevent the shipment of horses for slaughter abroad.²³ Within three years of the closing of slaughter facilities in the United States, exports of horses had increased by 660% to slaughter operations in Mexico and 148% to operations in Canada.²⁴ “This poorly framed legislation may in fact have created more suffering among animals than the alleged problems intended to be solved,”²⁵ and put international consumers of horse meat at risk.²⁶

This comment will address how the de facto ban on horse slaughter and the shift in destination of American horses bound for harvesting has had unintended negative consequences for equine welfare²⁷ and for the safety of international consumers of horse meat.²⁸ Part II analyzes the role of the horse in American history, and how this has shaped horse slaughter legislation

20. See Jayson Lusk, *Oklahoma State Professor: Horsemeat Burgers Not Likely in America*, NEWSOK (Mar. 1, 2013), <http://newsok.com/oklahoma-state-professor-horsemeat-burgers-not-likely-in-america/article/3759939/?page=1>.

21. Stephanie Strom, *Shipping U.S. Horses For Slaughter*, N.Y. TIMES (Feb. 25, 2013), <http://www.nytimes.com/interactive/2013/02/26/business/shipping-us-horses-for-slaughter.html>.

22. See Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-97, 119 Stat. 2120, available at <http://www.gpo.gov/fdsys/pkg/PLAW-109pub197/html/PLAW-109pub197.htm>.

23. See *id.*

24. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-228, ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER, at 12 (June 2011) [hereinafter GAO Report]. USDA officials believe the actual number of horses exported for slaughter may be even higher than this. The total number of horses exported from the United States for purposes other than slaughter also increased from 21,111 horses in 2007 (the year the last horse slaughter plant closed in the United States), to 55,077 in 2008. United States Department of Agriculture officials suspect that some of these horses were exported to Canada and Mexico as “feeder” horses, first sent to feed lots, and then slaughtered at a later date.

25. Patricia A. Evans et al., *The State of the Horse Industry Since the Closing of the Horse Harvesting Facilities*, UTAH STATE UNIVERSITY EXTENSION, <http://extension.usu.edu/equine/files/uploads/horse%20harvesting%20paper%20ext.pdf> (last visited Feb. 18, 2015).

26. Ben Bouckley, *Tainted US Horse Meat Puts World consumers at risk*, FOOD PRODUCTION DAILY (Oct. 4, 2011, 3:59 PM), <http://www.foodproductiondaily.com/Safety-Regulation/Tainted-US-horse-meat-puts-world-consumers-at-risk-welfare-body>.

27. See GAO Report, *supra* note 24, at 21.

28. See generally Bouckley, *supra* note 26.

and the international trade of American horse meat.²⁹ Part III examines regulations and guidelines for the humane transportation, handling, and slaughter of horses in the United States, Canada and Mexico, and demonstrates how poorly-framed legislation, a lack of formal agreements for procedure, and lack of unified standards have compromised equine welfare and traceability of exported horses.³⁰ Part IV addresses the potential health risks to international consumers of horse meat as a result of insufficient procedures for tracking medications and treatments administered to horses in the United States, and the failure of Canadian and Mexican agencies to properly test horse meat for contamination.³¹

Part V then explores the domestic implications of horse slaughter bans on the horse industry in the United States and presents evidence of increases in abuse, abandonment, and neglect of horses since the cessation.³² Part VI proposes a statute that would renew horse slaughter operations in the United States with heightened regulatory standards for the transportation, handling, and slaughter of equines. In addition, this section illustrates why previously proposed legislation to ban the export of American horses for slaughter, such as the Safeguard American Food Exports Act (SAFE),³³ would fail to improve equine welfare and be economically and procedurally unfeasible.³⁴

II. THE HISTORY OF HORSE SLAUGHTER LEGISLATION

The history of slaughtering horses for human consumption is complex and legislation is ever-changing, due in part to strong cultural and emotional opinions regarding the morality of consuming horses, an animal that many

29. See generally Christen Wiser, *Detailed Discussion of Horse Slaughter for Human Consumption*, MICH. ST. U. C. L. ANIMAL LEGAL & HIST. CTR. (2013), <https://www.animallaw.info/article/detailed-discussion-horse-slaughter-human-consumption>.

30. See GAO Report, *supra* note 24, at 27.

31. Joe Drape, *Racetrack Drugs Put Europe Off U.S. Horse Meat*, N.Y. TIMES (Dec. 8, 2012), <http://www.nytimes.com/2012/12/09/sports/drugs-injected-at-the-racetrack-put-europe-off-us-horse-meat.html>.

32. GAO Report, *supra* note 24 at 21; see also Katie Zezima, *Surge in Abandoned Horses Renews Debate Over Slaughterhouses*, N.Y. TIMES (Apr. 6, 2009), http://www.nytimes.com/2009/04/07/us/07horses.html?_r=1&.

33. Safeguard American Food Exports Act of 2013, H.R. 1094, 113th Cong. (2013).

34. See generally James J. Ahern et al., *The Unintended Consequences of a Ban on the Humane Slaughter (Processing) of Horses in The United States*, ANIMAL WELFARE COUNCIL, INC. 2 (May 15, 2006), http://www.naiaonline.org/uploads/WhitePapers/AWC_UnintendedConsequences_51.16.06.pdf.

consider a companion animal.³⁵ Horses are not typically bred or raised for the purpose of slaughter, but instead slaughtered when their monetary value is low.³⁶ The availability of a slaughter market provides a salvage value for horses that no longer have sufficient work or recreational value.³⁷ However, because horses are not considered a traditional food source, legislation regulating their slaughter has developed more slowly.³⁸

Although Americans have never widely embraced eating horse meat,³⁹ because of its surplus of horses, the United States has historically been an exporter of horsemeat to a variety of different countries.⁴⁰ Until 1979, horses were shipped alive on boats to Europe, but due to concerns regarding high mortality during transportation, the United States passed legislation to prohibit the international shipment of horses to Europe for processing.⁴¹ In response, foreign investors opened horse slaughter plants in the United States and Canada. Animals were processed in North America and then the meat was shipped overseas.⁴² There were 16 facilities operating in the United States by the end of the 1980's, which slaughtered over 320,000 horses annually.⁴³ Over 90 percent of this meat was exported to markets for human consumption in European and Asian countries, and the remaining 10 percent went to zoos and other institutions housing large carnivores.⁴⁴

35. See Frank Morris, *Pets or Livestock? A Moral Divide Over Horse Slaughter*, NPR (Sept. 11, 2013), <http://www.npr.org/sections/thesalt/2013/09/11/221371617/pets-or-livestock-a-moral-divide-over-horse-slaughter>; see also Wiser, *supra* note 29 (“The debate over horse slaughter is a composite of agricultural industry, animal welfare, constitutional, environmental, health, and regulatory concerns.”).

36. Mykel Taylor & Elizabeth Sieverkropp, *The Impacts of Policy and Macroeconomic Conditions on Horse Markets*, KAN. ST. U. DEP'T OF AGRIC. AND ECON. 1, 1 (Dec. 2011).

37. *Id.*

38. See Wiser, *supra* note 29.

39. See Christa Weil, *We Eat Horses, Don't We?*, N.Y. TIMES (Mar. 5, 2007), <http://www.nytimes.com/2007/03/05/opinion/05weil.html>. Small factions of Americans have eaten horse meat at different periods during history. During WWII and the years following, horse meat was sold in butcher shops because it was less expensive and more readily available than beef and pork. Into the late 1970's, the Harvard Faculty club served horse steaks as a regular menu item. They only abandoned the practice when delivery of the meat became difficult. See also Josh Sanburn, *Legal or Not, Will Americans Ever Buy Horse Meat?*, TIME (Mar. 1, 2013), <http://business.time.com/2013/03/01/legal-or-not-will-americans-ever-buy-horse-meat>.

40. Taylor & Sieverkropp, *supra* note 36, at 2.

41. Carolyn L. Stull, *The journey to slaughter for North American horses*, 2 ANIMAL FRONTIERS 68 (July 2012), available at <https://www.animalsciencepublications.org/publications/af/articles/2/3/68.pdf> [hereinafter ANIMAL FRONTIERS].

42. *Id.*

43. *Id.*

44. *Id.*; see also *Fact Sheet*, TEXAS HUMANE LEGISLATION NETWORK, <http://www.kaufmanzoning.net/thlhorseslaughterfactsheet.pdf> (last visited Feb. 21, 2015); Evans et. al., *supra* note 25, at 2. Horsemeat is a popular alternative to other meat sources among

During the 1990's, public concern grew in the United States regarding the alleged mistreatment of horses intended for slaughter during transport and processing.⁴⁵ Societal pressure influenced the promulgation of federal regulations on the safe and humane commercial transportation of equines to slaughter, and the creation of a variety of state statutes banning the slaughter of horses and sale of horsemeat.⁴⁶ In 2005, Congress approved the Fiscal Year 2006 Agricultural Appropriations Bill, which prohibited funding for USDA inspections at domestic horse slaughter facilities.⁴⁷ Without funding for these inspections, slaughter plants could not legally continue to operate in the United States.⁴⁸ By the end of 2006, only three horse slaughter facilities remained in the United States. These three remaining facilities petitioned the government to stay open by paying for USDA inspections under a voluntary fee-for-service program.⁴⁹ The USDA amended the federal meat inspection regulations, and these plants were permitted to continue to operate.⁵⁰ However, in 2007, these slaughterhouses were forced to shut down operations when state legislation banning horse slaughter was passed in Texas and Illinois, and a federal district court held that the fee-for-service program was illegal.⁵¹

In June 2011, the United States Government Accountability Office (GAO) issued a report to Congressional Committees on Horse Welfare addressing the unintended consequences of the cessation of domestic slaughter.⁵² In

developing countries because of its dietary value. When compared to ground beef it has 55% more protein, 25% less fat, 30% less cholesterol, and 27% less sodium. Horsemeat is also attractive to international consumers because, unlike beef, it does not carry bovine spongiform encephalopathy (BSE), commonly known as mad cow disease.

45. Stull, ANIMAL FRONTIERS, *supra* note 41, at 68.

46. *Id.* at 69; *see e.g.*, Commercial Transport of Equines to Slaughter, 9 C.F.R. § 88 (2001) (amending regulations for horses transported for slaughter to ensure humane handling and safe conditions); *see e.g.*, CAL. PEN. CODE § 598c (West 2011) (banning the import or export of horses for slaughter in California if any part of that horse will be used for human consumption).

47. Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-97, 119 Stat. 2120 (2005).

48. *Id.*; GAO report, *supra* note 24, at 2.

49. *Id.* at 8-9. These slaughterhouses were Dallas Crown, Inc. in Kaufman, Texas, Beltex Corporation in Fort Worth, Texas, and Cavel International, Inc. in DeKalb, Illinois.

50. *Id.* at 8; *see also* Ante-mortem inspection and applicable requirements, 9 C.F.R. § 352.19 (2006).

51. TEX. AGRIC. CODE ANN. § 149.002 (West 2004); Illinois Horse Meat Act, 225 ILL. COMP. STAT. 635/1.5 (2007); Humane Soc'y of the U.S. v. Johanns, 520 F. Supp. 2d 8, 12 (D.D.C. 2007).

52. GAO Report, *supra* note 24.

the report, the GAO suggested that Congress “reconsider restrictions on the use of federal funds to inspect horses for slaughter, or instead, consider a permanent ban on horse slaughter.”⁵³ The GAO recommended, “that the USDA issue a final rule to protect horses through more of the transportation chain to slaughter and consider ways to better leverage resources for compliance activities.”⁵⁴ In 2012, Congress responded by removing the prohibition on the use of federal funds to inspect horse slaughter facilities for fiscal year 2012, opening the door for slaughter facilities to re-open in the United States.⁵⁵

When the ban was lifted on domestic horse slaughter in 2012, companies in Iowa, New Mexico, Missouri, and Oregon, applied for federal inspection of horse slaughter facilities.⁵⁶ The USDA issued a grant of inspection to a slaughterhouse in New Mexico, and announced plans to approve grants for two other facilities.⁵⁷ In response, animal rights groups brought suits based on potential negative environmental externalities such as water contamination and inadequate disease control, which successfully delayed inspections.⁵⁸ Before the federal district courts made a decision, Congress approved the Fiscal Year 2014 Agricultural Appropriations Bill and again eliminated federal funding for horse slaughter inspections.⁵⁹ This prohibition was renewed for fiscal year 2015, continuing the de facto ban on domestic horse slaughter through September 30, 2015.⁶⁰

Attempts have been made by animal welfare groups since 2005 to pass permanent legislation on horse slaughter, like the SAFE Act, which would prohibit the slaughter of horses in the United States for human consumption,

53. *Id.* at 1.

54. *Id.*

55. Consolidated and Further Continuing Appropriations Act, H.R. 2112, 112th Cong. § 4 (2012).

56. Charles Abbott, *Iowa Horse Slaughterhouse Approved by U.S. Government*, HUFFINGTON POST (Sept. 1, 2013), http://www.huffingtonpost.com/2013/07/02/iowa-horse-slaughterhouse_n_3535096.html; Katherine Bindley, *New Mexico Horse Slaughterhouse May Be Approved by USDA*, HUFFINGTON POST (Mar. 1, 2013), http://www.huffingtonpost.com/2013/03/01/new-mexico-horse-slaughterhouse-may-be-approved-usda_n_2788856.html; Deirdre Shesgreen, *Missouri horse slaughter plant close to getting permit*, KSDK (July 8, 2013), <http://www.ksdk.com/news/article/387292/3/Permit-near-for-Missouri-horse-slaughter-plant->; Richard Cockle, *Horse Slaughter Plant Planned for Eastern Oregon After Change in National Rules*, THE OREGONIAN (Mar. 9, 2012), http://www.oregonlive.com/pacific-north-westnews/index.ssf/2012/03/horse_slaughter_plant_planned.html.

57. *Equine Slaughter*, FOOD SAFETY AND INSPECTION SERVICE, U.S. DEP. OF AGRIC., 15 FSIS CONSTITUENT UPDATE 15, 25 (June 28, 2013), http://www.fsis.usda.gov/horses/Const_Update_062813.pdf.

58. *Front Range Equine Rescue v. Vilsack*, 782 F.3d 565 (10th Cir. 2015).

59. H.R. 2410, 113th Cong. (2013); S. 1244, 113th Cong. (2013).

60. S. 2389, 114th Cong. (2014).

as well as the export of live horses for the same purpose.⁶¹ Alternately, members of the horse slaughter industry, the American Veterinary Medical Association (AVMA), and welfare groups have taken a public stance against the cessation of domestic horse slaughter.⁶² These groups cite the unintended negative consequences of the domestic ban on horse slaughter.⁶³ They argue that humane horse slaughter in the United States is preferable to owners abandoning their horses when they can no longer afford to feed or care for them, or horses being shipped to Mexico for slaughter, where regulations are not as stringent.⁶⁴ No permanent federal legislation has been adopted regulating horse slaughter or the export of horses from the United States to be slaughtered abroad.⁶⁵ With the yearly renewal of provisions in the federal budget that do not allow for domestic horse slaughter, the issue has been pushed out of the minds and off the plates of Americans. The failure of the United States to create formal agreements with Canada and Mexico, or a coherent policy on horse slaughter, has resulted in the ban on horse slaughter causing more harm than protection for equine welfare and international consumers of horse meat.⁶⁶

III. REGULATIONS FOR THE HUMANE TRANSPORTATION, HANDLING AND SLAUGHTER OF EQUINES IN THE UNITED STATES, CANADA AND MEXICO

Because of the de facto ban on horse slaughter in the United States, horses that were once slaughtered domestically now travel, on average, over 200 miles farther to be slaughtered in facilities in Canada and Mexico, where regulations protecting horse welfare during transport and slaughtering are less stringent and poorly enforced.⁶⁷ Budget cuts, poorly-framed legislation,

61. Safeguard American Food Exports Act of 2013, H.R. 1094, 113th Cong. (2013).

62. *Unwanted Horses and Horse Slaughter FAQ*, AM. MED. VETERINARY ASS'N, <https://www.avma.org/KB/Resources/FAQs/Pages/Frequently-asked-questions-about-unwanted-horses-and-horse-slaughter.aspx> (last visited Feb. 1, 2012).

63. *Id.*

64. TADLOCK COWAN, CONG. RESEARCH SERV., RS21482, HORSE SLAUGHTER PREVENTION BILLS AND ISSUES at 5 (June 28, 2013), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/RS21842.pdf>.

65. *Id.* at 1.

66. See GAO Report, *supra* note 24; Dodman et. al., *supra* note 14, at 1270.

67. GAO Report, *supra* note 24, at 40. According to the report, the actual average distance that horses travel is probably even greater than this because of the tendency of shippers to designate the destination of these horses near the border, rather than designating their ultimate destinations.

the Animal and Plant Health Inspection Service's (APHIS) limited authority and the lack of formal agreements with foreign and domestic officials have inhibited the Slaughter Horse Transport Program from fulfilling its intended purpose of protecting horses destined for slaughter while they are being transported in the United States.⁶⁸ Once across borders, horses are no longer under United States jurisdiction and are not protected by the transport program.⁶⁹ Canadian and Mexican laws allow horses to be transported longer distances and under less humane conditions than are permitted in the United States.⁷⁰ Horses may be sent to feedlots in Canada and Mexico, or directly to slaughter facilities in these countries,⁷¹ where slaughter methods often result in painful and traumatic deaths.⁷²

A. The Domestic Transport Program

Although horses are no longer slaughtered in the United States, American horses intended for slaughter are still protected under United States regulations that provide for the safe and humane transport of horses being transported to slaughter facilities while they are within the United States.⁷³ The 1996 Farm Bill authorized the United States Department of Agriculture to regulate the commercial transportation of equines to slaughter, and directed the Secretary of Agriculture to develop specific regulations and guidelines for the safe and humane shipment of horses.⁷⁴

The USDA funded research on the impact of trailer design, loading and handling management, and transportation duration, on equine welfare.⁷⁵ Researchers compared single-tier trailers with double-deck trailers, and found that horses were three and a half times more likely to be injured if transported in a double-deck trailer.⁷⁶ Double-deck trailers, which are designed to transport cattle and shorter species, have limited ceiling space and thereby prevent horses from holding their head in an upright position.⁷⁷ When

68. *Id.* at 27.

69. AM. MED. VETERINARY ASS'N., *supra* note 62.

70. *Id.*

71. GAO Report, *supra* note 24, at 12.

72. Catrin Einhorn, *Horses Spared in U.S. Face Death Across the Border*, N.Y. TIMES (Jan. 11, 2008), <http://www.nytimes.com/2008/01/11/us/11horse.html>.

73. *See generally* Commercial Transport of Equines to Slaughter, 9 C.F.R. § 88 (2001).

74. Federal Agriculture Improvement Reform Act of 1996, Pub. L. No. 104-127, § 903, 110 Stat. 888, 1185 (1996).

75. Carolyn L. Stull, *Engineering and Performance Standards Parameters for Long Distance Road Transport in the United States: The Special Case of Horses*, 44 VETERINARIA ITALIANA 223, 225 (2008) [hereinafter *Engineering and Performance Standards*].

76. *Id.* at 227.

77. *Id.*

transported in this manner, horses often sustain injuries to their faces and necks, and easily lose their balance and fall down, where they may remain trapped for the remainder of the trip.⁷⁸ The weight of horses also makes double-deck trailers top-heavy and prone to flipping over.⁷⁹ The incidence of falls and injuries are also greater where horses are provided less floor space and higher stocking density.⁸⁰ Finally, researchers studied the relationship between dehydration, the duration of transport, and weather conditions.⁸¹ They found that in summer conditions, after 27 hours of transit, muscle fatigue and dehydration became major concerns.⁸²

In 2001, in light of this carefully conducted research, the USDA issued the Slaughter Horse Transport Program (“Transport Program”), designed to protect equine safety and welfare from shipment to slaughter.⁸³ The transport regulation requires that animal cargo spaces are constructed and maintained to protect the health and wellbeing of horses in transport, provide adequate ventilation and contain no sharp protrusions.⁸⁴ Additionally, the Transport Program requires that stallions and aggressive equines be separated from contact with other horses and that horses have enough floor space so that they are not crowded in a way likely to cause injury or discomfort.⁸⁵ Doors and ramps must be of sufficient size and location to provide safe loading and unloading.⁸⁶ Double-deck trailers are prohibited, and conveyances must have “sufficient interior height” to allow each horse

78. *Id.*

79. Tara Malone, *Bill Would Outlaw Double-Deck Trailers for Transporting Horses*, CHI. TRIB. (Sept. 9, 2008), http://articles.chicagotribune.com/2008-09-09/news/0809080606_1_double-deck-horses-trailers. In 2006, a double-decker truck hauling 41 horses in Missouri crashed, killing 16 horses. In 2007, a trailer carrying more than 50 young Belgian draft horses overturned on an Illinois highway. The horses were tangled and trapped inside the trailer until a five-hour rescue could be conducted. Nineteen of the horses were killed and dozens more were severely injured. One farm owner called double deck trailers “an accident waiting to happen.”

80. Stull, *Engineering and Performance Standards*, *supra* note 75, at 228. Injuries may also be attributed to road conditions and the skill of the driver.

81. Carolyn L. Stull, *Responses of Horses to Trailer Design, Duration, and Floor Area During Commercial Transportation to Slaughter*, 77 J. ANIM. SCI. 2925, 2926 (1999) [hereinafter *Responses of Horses to Trailer Design*].

82. *Id.* at 2932.

83. Commercial Transport of Equines to Slaughter, 9 C.F.R. § 88 (2001), *supra* note 73.

84. *Id.*

85. *Id.*

86. *Id.*

to “stand with its head extended to the fullest normal postural height.”⁸⁷ Horses must be given food, water, and the opportunity to rest for six hours immediately prior to transport.⁸⁸ Additionally, horses must be: (1) older than six months of age; (2) able to bear weight on all four limbs; (3) able to see out of at least one eye; (4) unlikely to give birth during the trip; and (5) capable of withstanding 28 hours in transit without food or water.⁸⁹ Furthermore, owners and shippers must drive trailers in a manner that avoids causing injury to the horses and may not use electric prods for any purpose unless human safety is threatened.⁹⁰

The transport program also includes requirements intended to ensure horses crossing the borders for slaughter are correctly recorded.⁹¹ The owner/shipper must apply a USDA backtag to each horse, and complete and sign an owner/shipper certificate that includes, the destination, the shipper’s information, a description of every equine’s physical characteristics, the number of their USDA backtag, a statement of fitness to travel, and a description of any pre-existing injuries.⁹² The certificates must contain a signed affidavit by the previous owner or shipper declaring that the horse has not been administered any prohibited substances, such as bute, within the last six months.⁹³ The certificates are collected at slaughter facilities in Canada or at the Mexican border to verify compliance with the federal transport program and act as a trace back tool for any possible welfare or food safety violations.⁹⁴

Although domestic horse slaughter was effectively banned in 2007, the USDA’s Transport Program continues to operate and regulate the transportation of horses destined for slaughter in Mexico and Canada while they are within the United States.⁹⁵ However, because of funding deficits, poorly framed legislation, and a lack of formal agreements with Mexico and Canada, the Transport Program, which is intended to assure that horses intended for slaughter are transported safely and humanely, is ineffective.⁹⁶

APHIS’s limited budget and lack of reliable means of collecting, tracking, and analyzing owner/shipper certificates has prohibited effective management

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *See id.*

95. Animal and Plant Health Inspection Service Administration of the Horse Protection Program and the Slaughter Horse Transport Program, Audit Report 33601-2-KC 26 (U.S.D.A. 2010), available at <http://www.usda.gov/oig/webdocs/33601-02-KC.pdf> [hereinafter Audit Report].

96. *See generally* GAO Report, *supra* note 24, at 27.

and enforcement of the Transport Program.⁹⁷ In 2010, the budget for the Transport Program was \$204,000, enough to cover the salaries and expenses of two staff members, who were responsible for enforcing the humane transport of 138,000 horses and inspecting conveyances and owner/shipper agreements at all 12 northern and southern border crossings.⁹⁸ The staff members stated that the program's limited funding, particularly for travel, significantly reduced their ability to provide coverage at border crossings and ability to work with shippers and inspectors in foreign slaughtering facilities to ensure compliance with the transport regulation.⁹⁹ In 2014, the budget was decreased again to \$54,273.¹⁰⁰ APHIS was forced to stop entering information from owner/shipper certificates into an automated database in 2005 because of these budget constraints.¹⁰¹ Today, no official trade data exists on horses exported from the United States for slaughter.¹⁰² The USDA pieces together data from their Canadian and Mexican counterparts and extrapolates information to estimate how many horses from the United States are exported for slaughter.¹⁰³ The lack of traceability for horses exported outside the United States for slaughter greatly inhibits the USDA's ability to track potential violations of equine welfare regulations.¹⁰⁴

The domestic ban on horse slaughter has also hindered the functionality of the Transport Program by limiting the authority of compliance officers to oversee horses being transported to slaughter.¹⁰⁵ The legislation that has effectively banned horse slaughter in the United States contains provisions that prohibit the USDA's use of federal funds to inspect horses being transported for slaughter and to inspect horses in slaughtering facilities intended for human consumption.¹⁰⁶ Because of this, although the Transport Program still exists, the compliance officer charged with ensuring the welfare of horses being transported to slaughter may only inspect the owner/shipper

97. *Id.* at 32.

98. *Id.* at 29–30.

99. *Id.* at 30.

100. *USDA Slaughter Horse Transport Program 2014 Budget*, ANIMALS ANGELS <http://www.animalsangels.org/files/images/stories/pdf/FOIA%2014-4417%20USDA%20Slaughter%20Horse%20Transport%20Program%20Info.pdf> (last visited Feb. 21, 2015).

101. GAO Report, *supra* note 24, at 31.

102. *Id.* at 32.

103. *Id.*

104. Audit Report, *supra* note 95, at 31.

105. GAO Report, *supra* note 24, at 37.

106. Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-97, 119 Stat. 2120 (2005).

certificates associated with the shipment of horses and the conveyance on which the horses are transported.¹⁰⁷ The compliance officer may not inspect the physical condition of horses themselves while they are in transit to slaughter, and may only cite welfare violations if he incidentally observes them while inspecting the shipping documents or the trailer.¹⁰⁸

Since the cessation of domestic horse slaughter, compliance among shippers has also declined. Shippers are aware that the Transport Program can no longer leverage the assistance of USDA personnel in domestic slaughtering facilities to ensure the completion of shipping paperwork or to note the condition of individual horses for shipment.¹⁰⁹ Even though the number of horses transported for slaughter has increased, the number of cases investigated for potential transport violations has decreased dramatically since 2006 because shippers have little incentive to comply with regulations protecting equine safety and welfare, and APHIS has limited authority and resources.¹¹⁰ Transport officials feel that compliance with the program has suffered as a result of the domestic ban on horse slaughter, and animal welfare groups have documented numerous violations of the Transport Program.¹¹¹

Although APHIS has the power to prosecute violations of the transport program and fine owner/shippers up to \$5,000 per horse for each violation, APHIS does not have the statutory authority to prohibit individuals with a record of inhumanely transporting horses to ship other loads of horses, even if unpaid fines are pending.¹¹² Owner/shippers have little incentive to comply with regulations, pay their penalties, and handle horses humanely.¹¹³

107. *See id.*

108. *See id.*; GAO Report, *supra* note 24, at 37. This makes it almost impossible for the compliance officer to ensure that horses are transported humanely. For example, while inspecting a conveyance being used to transport horses intended for slaughter in 2010, the compliance officer discovered that a mare had given birth to a foal. The transport program requires that shippers verify that horses are not likely to give birth during shipment, and the birth of this foal was a potential violation and serious danger to the mare and foal. However, because of the prohibition on using funds to inspect horses, the officer was unable to inspect the horses to determine which mare had given birth, and therefore could not document a violation. The USDA also does not have subpoena authority to access the records of alleged violators or to compel persons to testify in administrative hearings and to produce documentary evidence for such hearings, even though USDA has this authority under several other APHIS-administered statutes.

109. GAO Report, *supra* note 24, at 37–38.

110. *Id.* at 38–39.

111. *Id.* at 39. *See, e.g., Brutality of Horse Slaughter Exposed*, HUMANE SOCIETY OF THE U.S. (Feb. 6, 2009), http://www.humanesociety.org/news/news/2009/02/brutality_horse_slaughter_exposed_020609.html?credit=web_id84833907.

112. Audit Report, *supra* note 95, at 26–27; 9 C.F.R. § 88 (2001).

113. *See generally* Audit Report, *supra* note 95, at 27 (describing reasons why owners/shippers have little incentive to comply with regulations, pay their penalties, and handle horses humanely).

From 2005 to 2009, 43 owner/shippers violated the transport regulation and were cited for failure to safely transport horses, incurring almost \$174,000 in unpaid fines, yet they were permitted to continue shipping horses.¹¹⁴

Budget cuts and the inability of officials to inspect horses intended for slaughter or prevent owner/shippers with previous violations from continuing to ship horses have caused APHIS to rely on the cooperation of officials from Canada, Mexico, and states where horses cross the border, such as Texas.¹¹⁵ APHIS has no formal written agreements with foreign or state officials to define this cooperation or ensure continuity over time.¹¹⁶ CIFA signed a letter of intent in 2002, pledging to help APHIS enforce regulations by ensuring that copies of all relevant documents, such as owner/shipper certificates, were properly completed and returned to APHIS each month.¹¹⁷ However, the GAO reviewed a sample of certificates returned by CIFA from 2005 through 2006 and found that 48 percent of the certificates were missing key information that should have been filled out by the shipper or CIFA officials.¹¹⁸ In the two years after the cessation of domestic slaughter (2007 and 2008), 60 percent of certificates were missing key information, suggesting that the ban on domestic slaughter and increase of horse exports from the United States created problems with owner/shipper certificates needed by APHIS to ensure that horses are transported safely and humanely.¹¹⁹

In 2002, APHIS officials also attempted to form an agreement with Mexico's Secretaria de Agricultura, Ganaderia, Desarrollo Rural, Pesca y Alimentacion (SAGARPA), but the Mexican agency did not respond.¹²⁰ APHIS also does not have official cooperation from Texas officials.¹²¹ APHIS transport program officials have not received any owner/shipper certificates from Texas border crossings since before March of 2010.¹²² The lack of agreements and cooperation from foreign and state officials has been compounded by the increase of American horse exports since the

114. *Id.*

115. *See* GAO Report, *supra* note 24, at 32.

116. *See id.*

117. *See id.* at 33 (outlining what the CIFA agreed to ensure regarding shipments of U.S. horses to Canada for slaughter).

118. *Id.* at 35.

119. *Id.*

120. *Id.* at 35–36.

121. *Id.*

122. *See id.*

domestic ban on horse slaughter and has hindered APHIS' ability to collect, track or analyze data with owner/shipper certificates.¹²³

B. Transport of Slaughter Horses Across the Border and Abroad

The increased duration of travel for horses from the United States to slaughter facilities in other countries is one of the unintended consequences of the cessation of domestic slaughter that has negatively affected equine welfare.¹²⁴ Horses have an increased potential to incur injuries as a result of becoming stressed, dehydrated, and fatigued.¹²⁵ Horses travel, on average, 200 miles more to slaughter facilities abroad, and various inspections and administrative procedures that occur at each border further increase the duration of the journey to slaughter facilities.¹²⁶

While shippers on the northern border can drive their conveyances directly into Canada, United States shippers generally are not insured to travel into Mexico.¹²⁷ Horses from the United States destined for slaughter in Canada are inspected at the border crossing without any unloading procedures and continue to slaughterhouses.¹²⁸ At either the points of entry into the country, or at the slaughterhouse, CIFA officials inspect the animals for fitness to travel and any observable signs of diseases.¹²⁹ After the inspection, the truck is sealed, and a permit for entry and a certificate of inspection is issued.¹³⁰ The slaughter of the horses is then reported back to the Canadian border veterinarian.¹³¹

Shippers at the Mexican border must unload their horses into pens at the border on American soil, where SAGARPA officials inspect the horses.¹³² Horses destined for Mexico are required to have six hours of rest, food, and water before being re-loaded onto a Mexican conveyance, but investigations by animal welfare groups have documented horses at these export pens in Texas and New Mexico without shelter from the

123. *See id.* at 36.

124. *See* AM. VETERINARY MED. ASS'N, *supra* note 62.

125. Stull, *Responses of Horses to Trailer Design*, *supra* note 81, at 2931–32.

126. *See* GAO Report, *supra* note 24, at 40 (explaining that USDA officials believe horses may travel even farther than this on average because of the tendency of shippers to designate the destination of horses intended for slaughter close to the border, when they actually may travel much farther into Canada or Mexico).

127. *Id.* at 36.

128. *Id.*

129. *Id.* at 33, 36.

130. GAO Report, *supra* note 24, at 36.

131. Audit Report, *supra* note 95, at 30.

132. European Commission: Health and Consumers Directorate-General, *Final Report of a Mission Carried out in Mexico from 22 November to 03 December 2010*, 6, 2010-8524, DG SANCO (Apr. 20, 2011). There are eight Mexican border inspections offices authorized to import horses to Mexico, but only six are in operation as of 2010.

desert sun or sufficient access to food and water.¹³³ They have also documented these horses being immediately reloaded without sufficient rest, water, or feed.¹³⁴

Although horses exported from the United States for slaughter are accompanied by owner/shipper certificates declaring that horses are fit for transport and have not been administered prohibited substances, these documents are often falsified, and the USDA does not take any responsibility with regard to the origin of animals or the authenticity and validity of owner/shipper certificates.¹³⁵ SAGARPA officials in Mexico reject a large portion of horses from the United States at the border because they are unfit for transport, or the accompanying documentation filled out by owner/shippers is inaccurate and does not match the backtag number or description of the horse.¹³⁶

As part of an evaluation of horse meat production in Mexico, members from the European Commission visited a border inspection agency and observed 30 horses from a consignment in inspection pens.¹³⁷ SAGARPA officials rejected forty percent of the horses examined because they were in advanced pregnancy, had injuries, or had health problems.¹³⁸ In the report, the Commission revealed that between January and October of 2010, Mexican officials rejected 5,336 of 62,560 horses from the United States at the border.¹³⁹ Because of the failure of the Transport Program in the United States to function properly, these horses had been shipped to the border, even though they were unfit for transport or slaughter.¹⁴⁰

Pen operators in the United States must report every horse that arrives in a condition that qualifies as a cruelty case under Texas law, and report to APHIS every horse that arrives in a condition that qualifies as a violation of the Transport Program.¹⁴¹ Despite the fact that 5,336 horses

133. Commercial Transportation of Equines for Slaughter, 9 C.F.R. § 88.4(a)(1) (U.S.D.A. 2008); 7.2 *Summary of Investigations in Mexico & USA*, ANIMAL WELFARE FOUNDATION 109, 112 (2014), http://animal-welfare-foundation.org/fileadmin/DATIEIN/awf/Download/EU_Kampagne_Horsemeat/Summaries/EU-Summary_of_investigations_in_Mexico_USA.pdf [hereinafter ANIMAL WELFARE FOUNDATION].

134. ANIMAL WELFARE FOUNDATION, *supra* note 133, at 117, 134.

135. *See generally* European Commission, *supra* note 132, at 7.

136. *See generally id.*

137. *Id.* at 6.

138. *Id.*

139. *Id.* at 7.

140. *See* GAO Report, *supra* note 24, at 38.

141. Commercial Transport of Equines to Slaughter, 9 C.F.R. § 88 (2001); Straight from the Horse's Heart, *Inspected and Rejected: Animals' Angels Investigation Confirms*

were rejected at the Mexican border in 2010, there were no records of the export pen officials or feedlot owners reporting cases of unfit horses to APHIS or to local law enforcement.¹⁴² The rejected horses are not monitored or linked to their shipper, as APHIS does not maintain a database to trace slaughter tags of individual horses.¹⁴³ When APHIS was asked what happens to horses rejected at the Mexican border, they responded, “they fall out of the system.”¹⁴⁴

Over 5,000 of these horses that are rejected each year at the Mexican border are then abandoned in the vast stretches of isolated land north of the Mexican border.¹⁴⁵ Others are taken to remote feedlots, where they are left to die.¹⁴⁶ In August 2011, 300 horses were spotted from the air and found starving and dead in a remote feedlot near Presidio, Texas, just north of the border.¹⁴⁷ This feedlot was operated by a company that purchases horses from auctions and individuals in the United States for slaughter in Mexico.¹⁴⁸ Some rejected horses are kept in border inspection pens, where they are given a new backtag and owner/shipper certificate. They are then presented to SAGARPA officials for inspection again, sometimes multiple times, in an attempt to convince the officials to accept the horse. On average, 35 horses die while waiting at the export pens in Presidio, Texas, each month, and are then buried in a nearby landfill.¹⁴⁹ Horses in these border pens are left in limbo—they are not under Mexican jurisdiction, yet the USDA takes no responsibility for them and they cannot be shipped back to the auctions or individual owners who have already sold them.¹⁵⁰

Following the check at the Mexican border, an official Mexican veterinarian at the border inspection office issues an internal movement certificate for horses that have passed the physical examination and have proper documentation.¹⁵¹ However, the internal movement certificate

EU Report, ANIMALS’ ANGELS (June 18, 2011), <http://rtfitchauthor.com/2011/06/18/inspected-rejected-animals-angels-investigation-confirms-eu-report/> [hereinafter *ANIMALS ANGELS*].

142. *ANIMALS ANGELS’*, *supra* note 141.

143. *Id.*; see GAO Report, *supra* note 24, at 32.

144. Laura Allen, *Mystery Surrounding Abandoned Horses Finally Solved*, *ANIMAL LAW COALITION* (Dec. 20, 2011), <https://animallawcoalition.com/mystery-surrounding-abandoned-horses-finally-solved/>.

145. *Id.*

146. *See id.*

147. *Id.*

148. *Id.*

149. *The Export of American Horses to Mexico for Slaughter August-November 2013*, *ANIMALS ANGELS’*, <http://www.animalsangels.org/files/images/The%20%20export%20of%20US%20horses%20to%20Mexico%20for%20slaughter%202014-%20Part%20II%20Export%20Pens%20-%20Mexico.pdf> (last visited Feb. 22, 2015).

150. *See* Allen, *supra* note 144.

151. European Commission, *supra* note 132, at 7.

reports only the total number of animals, and not their individual identification, which makes it difficult to identify which animals are currently present in the consignment, and which were rejected at the border.¹⁵² The authorities in Mexico do not have a system to verify or guarantee the authenticity or reliability of the sworn statements on veterinary medical treatments made by owner/shippers, even though they are aware that owner/shipper certificates are often falsified.¹⁵³ The lack of traceability of the identity and medical record of horses originating from the United States hinders the ability of officials to trace welfare violations and ensure contaminated meat does not enter the food chain.¹⁵⁴

In an attempt to resolve the lack of traceability of horses exported from the United States, SENASICA, the Mexican equivalent of APHIS, began a program in 2009 requiring identification by microchip of all horses imported from the United States before authorizing them to enter Mexican territory.¹⁵⁵ “This rule theoretically addresses the shortcomings regarding identification and traceability of U.S. horses imported for slaughter.”¹⁵⁶ However, these microchips are designed to be linked to lifetime health records of horses.¹⁵⁷ Because horses are not raised for human consumption in the United States, they do not have lifetime health records.¹⁵⁸ Horses exported for slaughter are only required to have a certificate from the owner or shipper identifying the backtag number the horse has been given and verifying that they have been drug free for six months.¹⁵⁹ The microchips do not ensure that these horses have not been treated with prohibited drugs

152. *Id.*

153. European Commission, *supra* note 132, at 9.

154. *See* Drape, *supra* note 31.

155. *Horse Slaughter: Revealing the Truth, Part Four—The Arguments*, HABITAT FOR HORSES (Aug. 14, 2012, 12:24 AM), <http://www.habitatforhorses.org/horse-slaughter-revealing-the-truth-part-four-the-arguments/>.

156. *Id.*

157. Dr. Elena Ares & Emma Downing, *Horse Meat: Controls and Regulations*, HOUSE OF COMMONS LIBRARY 1 (Feb. 27, 2013), <http://researchbriefings.files.parliament.uk/documents/SN06534/SN06534.pdf>. This requirement is meant to ensure that horses that have been administered prohibited and dangerous substances do not enter the food chain for human consumption.

158. *The Facts About Horse Slaughter*, HUMANE SOC'Y OF THE UNITED STATES (Mar. 17, 2014), http://www.humanesociety.org/issues/horse_slaughter/facts/facts_horse_slaughter.html.

159. *See* 9 C.F.R. § 88 (2001).

because the aforementioned documents are often falsified or incomplete, and because they only require a six-month drug history.¹⁶⁰

Horses that have been accepted at the border, once outside of the United States, are no longer protected by the Transport Program, and the Mexican and Canadian laws regulating transportation do not offer comparable protection for horses.¹⁶¹ Under Canadian law, horses can be transported for up to 36 hours without food, water, or rest in double-deck trailers, which are permitted for transporting equines for slaughter in both Canada and Mexico.¹⁶² Electric prods may not be applied to the anal, genital, or facial region of horses in Canada, but are permitted to be used in any other area of a horse's body.¹⁶³ Electric prods are permitted in Mexico without restriction.¹⁶⁴

Horses that travel to Mexico and Canada for slaughter are also subject to greater travel duration and distance.¹⁶⁵ After being re-loaded at the Mexican border, horses might be shipped to slaughter facilities in nearby Juarez, Mexico, or be shipped over 700 miles south to one of two large plants in the city of Zacatecas.¹⁶⁶ Horses exported to both Canada and Mexico may also be shipped to intermediary points, such as feedlots, instead of directly to slaughter, where they can remain as long as six months or more.¹⁶⁷ Bouvry Exports, Canada's largest horse slaughter plant, operates numerous feedlots in close proximity to the plant where horses, including mares with foals, are kept without shelter from the elements and have limited space to move around.¹⁶⁸ One investigation of this feedlot documented horses with severely neglected hooves, as well as sick and dying horses that were not provided veterinary care.¹⁶⁹ In Mexico, these collection centers and feedlots are not required to keep a record of treatments or medications

160. HABITAT FOR HORSES, *supra* note 155.

161. GAO Report, *supra* note 24, at 43.

162. Kevin Levenson, Twyla Francois, Stephanie Brown, Liz White, & Sinikka Crosland, A Report on Canada's Inadequate Transport of Animals Regulations, THE NEED FOR CHANGE (last visited Sept. 24, 2015), <http://www.animalalliance.ca/wp-content/uploads/2011/07/AN-OVERVIEW-OF-REGULATIONS-FOR-THE-TRANSPORT-OF-FARM-ANIMALS-IN-CANADA.pdf>).

163. See Meat Inspection Regulations, SOR/90-288 (1990).

164. See Temple Grandin, *Answering Questions About Animal Welfare During Horse Slaughter* (2012), <http://www.grandin.com/humane/questions.answers.horse.slaughter.html>.

165. GAO Report, *supra* note 24, at 40.

166. Lisa Sandberg, *Horse Slaughter Ban Has Some Gruesome Results*, HOUSTON CHRON. (Sept. 30, 2007), <http://www.chron.com/news/houston-texas/article/Horse-slaughter-ban-has-gruesome-results-1817383.php>.

167. *Summary of Investigations in Canada & USA*, ANIMALS' ANGELS 86 (2014), http://animal-welfare-foundation.org/fileadmin/DATEIEN/awf/Download/EU_Kampagne_Horsemeat/Summaries/EU-Summary_of_investigations_in_Canada_USA.pdf.

168. *Id.* at 86–87.

169. *Id.* at 88.

administered.¹⁷⁰ Horses may be treated with prohibited substances, and then immediately transported from the feedlot and slaughtered for human consumption.¹⁷¹

The agricultural appropriations bill that forced slaughterhouses in the United States to close shifted the destination of horses bound for slaughter without making formal agreements with Canadian and Mexican governments or creating regulations to monitor and protect these horses.¹⁷² APHIS does not have sufficient authority or resources to ensure that the Transport Program is effectively enforced within the United States, meaning that horses that are unfit for travel or slaughter are often shipped to the border.¹⁷³ Horses that are rejected at the border face an unknown fate. Horses that are transported for slaughter abroad are subject to longer journeys under less stringent foreign laws.¹⁷⁴ The lack of traceability of horses exported from the United States and frequency of falsification of shipping documents has also undermined the ability of processing facilities to ensure that contaminated meat does not enter the food chain, putting consumers of horse meat at risk.¹⁷⁵

C. *Methods of Slaughter in the United States, Canada and Mexico*

Horses from the United States that are shipped for slaughter in Mexico and Canada often also face more traumatic and painful deaths.¹⁷⁶ When horse slaughter facilities operated in the United States, the captive bolt method was used for euthanasia.¹⁷⁷ If performed correctly, with properly maintained equipment, this technique can provide a humane method of slaughter.¹⁷⁸ The AVMA lists two accepted methods of euthanasia for

170. Wayne Pacelle, *Danger on Europe's Dinner Plate*, N.Y. TIMES (Mar. 11, 2013), http://www.nytimes.com/2013/03/12/opinion/global/questions-for-the-global-horse-meat-industry.html?_r=0.

171. *Id.*

172. See GAO REPORT, *supra* note 24, at 8.

173. *Id.* at 9.

174. Animals Angels USA, *Animals' Angels Investigation of the Texas Export Facilities for horses slaughtered in Mexico Areas of Concern*, ANIMALS ANGELS INC., <http://www.animalsangels.org/files/images/stories/pdf/texas%20slaughter%20horse%20export%20investigations%202010-2011.pdf> (last visited Sept. 24, 2015).

175. See Pacelle, *supra* note 170.

176. See Einhorn, *supra* note 72, at 1.

177. Evans et. al., *supra* note 25, at 1.

178. *Id.*

horses.¹⁷⁹ First is euthanasia by overdose of barbiturate anesthesia.¹⁸⁰ Second are physical methods of euthanasia from a gunshot or the penetrating captive bolt.¹⁸¹ In the United States, under the Humane Slaughter Act of 1958, horses are required to be rendered unconscious prior to slaughter.¹⁸² The captive bolt method, used in slaughterhouses in the United States, penetrates the brain and severs the connection between the cerebral hemisphere and the brainstem, causing unconsciousness.¹⁸³ Horses are then suspended from the ground by a rear leg and exsanguinated.¹⁸⁴

The AVMA states that “when properly used by a skilled personnel with well-maintained equipment, physical methods of euthanasia may result in less fear and anxiety, and be more rapid, painless, humane, and practical than other forms of euthanasia.”¹⁸⁵ Dr. Mark Lutschaunig of the AVMA stated that horse processing facilities in the United States were highly regulated, plant personnel were highly trained in utilizing the captive bolt, and a veterinarian was present at all times to record any inhumane treatment.¹⁸⁶

However, if equipment is not maintained, cleaned daily, or used properly, the captive bolt may fail to provide a humane death.¹⁸⁷ Equine slaughterhouses use the same techniques and equipment as cattle slaughterhouses.¹⁸⁸ The kill chutes, designed for cattle, are too wide for the slimmer equine body and leave horses room to thrash and potentially slip and fall if they are wearing metal shoes.¹⁸⁹ The Humane Slaughter Act requires head restraint to ensure proper placement of captive bolts,¹⁹⁰ but currently the captive bolt is applied while horses’ heads are not restrained.¹⁹¹ This makes it difficult for workers to deliver a properly placed blow, and they may have to repeatedly use the captive bolt, increasing the pain, trauma and suffering that horses endure.¹⁹² Furthermore, “horse brains are located further back in their

179. *Id.*

180. *Id.*

181. *Id.*

182. Humane Methods of Livestock Slaughter Act, 7 U.S.C. § 1902 (1958).

183. *See AVMA Guidelines for the Euthanasia of Animals: 2013 Edition*, AVMA 35 (2013), available at <https://www.avma.org/KB/Policies/Documents/euthanasia.pdf>.

184. *See id.*

185. Evans et. al., *supra* note 25, at 1.

186. *Id.* at 2.

187. *See AVMA, supra* note 183.

188. *See Eryn Maria Pearson, Horse Slaughter: A Conflict of Ethics, Economics & Welfare*, 4 J. ANIMAL L. & ETHICS 205, 228 (2011).

189. *See id.*

190. § 1902.

191. *See Pearson, supra* note 188, at 228.

192. *Id.* (explaining how horses may regain consciousness and remain conscious while being hoisted and slaughtered).

skulls than cattle and other species, making them harder to knock unconscious, even when a clean shot is delivered.”¹⁹³

According to Dr. Temple Grandin, a world-renowned expert on animal welfare and humane slaughter, if horse slaughter is revived in the United States, the shortcomings of the captive bolt method can be overcome.¹⁹⁴ Dr. Grandin asserts that the addition of a non-slip floor and the creation of a stun box designed for the slimmer equine body, with solid sides to prevent the horse from looking out to the slaughter floor would ensure that horses are humanely slaughtered.¹⁹⁵

Some horses that are exported to Mexico are slaughtered in plants that export meat to the European Union.¹⁹⁶ These plants are inspected to ensure compliance with the laws of the European Union regarding humane treatment of animals and food safety, and the captive bolt method is used for euthanasia.¹⁹⁷ However, many horses exported to Mexico are slaughtered in local slaughterhouses that are not regulated by the European Union, where horses are killed with the “puntilla” method, which is not permitted under United States or European Union law.¹⁹⁸ Workers use a puntilla knife and stab horses repeatedly at the base of the neck to sever the spinal cord.¹⁹⁹ Horses are paralyzed but remain fully conscious at the start of the slaughter process, during which they are hung by a hind leg and then have their throat slit and body butchered.²⁰⁰ According to Dr. Grandin, “from an animal welfare perspective, the worst outcome for a horse is going to a local Mexican [slaughterhouse].”²⁰¹

Canadian law offers more protection than local slaughter houses in Mexico, and requires that horses are rendered insensible to pain with the first application of a stunning device, before being shackled, hoisted, or cut, and the two acceptable methods of euthanasia for horses in Canadian slaughterhouses are use of firearms, gunshot, and penetrating captive bolt

193. Eckhoff, *supra* note 9.

194. AM. MED. VETERINARY ASS'N, *supra* note 62.

195. *Id.*

196. *See* Grandin, *supra* note 164.

197. *See* Sandberg, *supra* note 166.

198. Grandin, *supra* note 164.

199. *See* Sandberg, *supra* note 166.

200. *Id.* (explaining that the puntilla method is protracted, traumatic, and excruciatingly painful for horses as they feel everything).

201. Grandin, *supra* note 164; Meat Inspection Regulations, SOR/90-288, s. 78.

gun.²⁰² According to the AVMA, a properly placed gunshot can cause immediate insensibility and a humane death, but the penetrating captive bolt is safer than a gunshot because it does not release a projectile.²⁰³ Video evidence from various welfare investigations shows ineffective stunning, with horses being shot multiple times with the captive bolt gun.²⁰⁴ At the Natural Valley Farms slaughter facility in Canada, thirty percent of hits with the captive bolt gun are inaccurate and do not result in the horses losing consciousness.²⁰⁵ According to CIFA, around five percent of horses that are slaughtered in Canada regain consciousness during the slaughter process.²⁰⁶

Animal welfare is not the only area where there are deficiencies in foreign horse slaughter facilities. During an audit of Mexican facilities, the European Commission, which regulates all slaughter facilities that export horse meat to the European Union, also found major flaws in compliance with environmental, hygienic, and food safety regulations.²⁰⁷

The European Commission visited five Mexican slaughterhouses that were exporting horse meat to the European Union and found that two were not in compliance with standards for exporting horsemeat.²⁰⁸ They visited a newly approved facility that had recently begun exporting horsemeat and found deficiencies in the cutting room layout and equipment, untraceable and unmarked carcasses, and deficiencies in slaughter hygiene.²⁰⁹ They also concluded that the facility did not meet national standards for water quality and environmental impact testing.²¹⁰ At another facility that the Commission team visited, which has been exporting meat to the European Union since 1999, the Commission found that the official veterinarian had no knowledge of European Union requirements for food safety certification or what export documents to use.²¹¹

202. CAN. FOOD INSPECTION AGENCY, MEAT HYGIENE MANUEL OF PROCEDURES CHAPTER 12 ANNEX A—SPECIES-SPECIFIC STUNNING GUIDELINES—RED MEAT SPECIES (Mar. 21, 2014), <http://www.inspection.gc.ca/food/meat-and-poultry-products/manual-of-procedures/chapter-12/annex-a/eng/1374358238209/1374358242162?chap=0#c5>.

203. AM. MED. VETERINARY ASS'N, *supra* note 62.

204. Lynn Curwin, *Journey to Death for Unwanted Horses in Canada*, DIGITAL JOURNAL (Nov. 6, 2009), <http://www.digitaljournal.com/article/281716> (explaining that the Canadian Horse Defense Coalition examined bodies of horses from slaughter plants in Canada after slaughter and found no evidence of bolt or gun wounds, raising questions about whether horses were still alive or even conscious when butchered).

205. *Id.*

206. *Id.*

207. European Commission, *supra* note 132, at 14.

208. *Id.* at 10.

209. *Id.*

210. *Id.*

211. *Id.*

The Commission team found that antemortem inspection was “generally” carried out according to European Union and national requirements and postmortem inspection was “generally carried out satisfactorily in two out of four establishments,” but maintenance problems related to structures and equipment were noted in several establishments.²¹² None of the establishments had sufficient water controls in place.²¹³ In two facilities, non-traceable and non-health marked carcasses being slaughtered for the local market, those without back tags or microchips, were present and had come in contact with meat eligible for human consumption in the European Union.²¹⁴

The European Commission also visited four Canadian horse slaughter facilities that are approved to export horse meat to the European Union.²¹⁵ In one establishment, the Commission noted that unacceptable conditions had persisted since the last audit in 2007 with regard to structure, maintenance, and operational hygiene that did not comply with the applicable standards.²¹⁶ Horses imported into Canada must be accompanied by an owner/shipper certificate, and since 2010 must also have an Equine Information Document (EID) signed by the owner as an affidavit declaring that for at least the last six months the animal has not been treated with prohibited substances such as bute.²¹⁷ In the report, the Commission noted that although horses were accompanied by the signed EID, in many cases, the last “owner” who had verified the medical treatment of the horse over the last six months was a “horse dealer” or slaughter buyer, who likely had not had possession over the horse for six months and could not verify this information.²¹⁸ The United States does not guarantee the reliability of any documents received by Canadian officials, and the Canadian inspection agency has no way of verifying the validity of these statements, seriously hindering the ability

212. *Id.* at 11. “General problems related mainly to hygienic slaughter practices, such as de-hiding, splashing from hoses and equipment not properly connected to drains on carcasses, condensation dripping on exposed meat, carcasses touching each other before post-mortem examination, and in most cases also touching platforms and equipment, increasing the risk of cross-contamination.” *Id.*

213. *Id.*

214. *Id.* at 12.

215. European Commission: Health and Consumers Directorate-General, *Final Report of an Audit Carried out in Canada from 23 November to 06 December 2010*, 19, 2010-8522, DG SANCO (Oct. 26, 2011), available at http://ec.europa.eu/food/fvo/audit_reports/details.cfm?rep_id=2764.

216. *Id.* at 7.

217. *Id.* at 13.

218. *Id.* at 15.

of Canadian officials to trace the identity or medical records of horses originating in the United States.²¹⁹

As a result of the domestic cessation of horse slaughter, horses travel to facilities in Mexico and Canada, where there are significant animal welfare, environmental, and food safety deficiencies.²²⁰ These deficiencies are a result of less stringent foreign laws.²²¹ Even if the issue of traceability can be overcome, “the likelihood of imposing the animal welfare and slaughter standards of the United States on other countries,” particularly Mexico, “seems remote.”²²² “Humane processing conditions can only be imposed by the United States government within in the United States.”²²³ Although the United States is not a market for horse meat intended for human consumption, the only way to ensure the humane processing of horse meat is to oversee the process.²²⁴

IV. INTERNATIONAL FOOD SAFETY IMPLICATIONS OF THE CESSATION OF HORSE SLAUGHTER IN THE UNITED STATES

The poorly framed legislation that effectively banned horse slaughter in the United States has also put international consumers of horse meat at risk.²²⁵ Issues surrounding the consumption of horse meat gained international attention in 2013, when genetic tests revealed traces of horse meat in products labeled as beef in Ireland, Great Britain, Germany, Italy, Poland, and the Czech Republic.²²⁶ One of the first processors identified as a source of the mislabeled beef products was Silvercrest Foods in Ireland, who recalled 10 million burgers from stores across Europe.²²⁷ Soon after, horse meat was detected in beef products in Taco Bell outlets in Britain and meatballs from European IKEA stores, forcing both companies to pull

219. *Id.*

220. Laura Jane Dufree, *Anti-Horse Slaughter Legislation: Bad for Horses, Bad for Society*, 84 *IND. L.J.* 353, 366 (2009).

221. Aline S. de Aluja, *The Welfare of Working Equids in Mexico*, 59 *APPLIED ANIMAL BEHAV. SCI.* 19, 23 (1998).

222. Ahern et. al., *supra* note 34, at 11.

223. *Id.*

224. *Id.*

225. *See* Dodman et. al., *supra* note 14, at 1270.

226. Andrew Higgins & Stephen Castle, *Ikea Recalls Meatballs After Detection of Horse Meat*, *N.Y. TIMES* (Feb. 25, 2013), http://www.nytimes.com/2013/02/26/world/europe/ikea-recalls-its-meatballs-horse-meat-is-detected.html?pagewanted=all&_r=0.

227. Jill Lawless, *Britain Finds Horsemeat in School Meals, Hospitals and Restaurants as Scandal Spreads*, *STAR TRIB.*, <http://www.startribune.com/world/191375971.html> (last updated Feb. 15, 2013, 12:54 PM).

products from the shelves.²²⁸ The French government later categorized the far-reaching nature of the problem, announcing that the chain of fraudulent meat sales involved 28 firms in 13 countries.²²⁹

In the months following the discovery of horse meat in products labeled as beef, the European Union member states agreed to a three month program of meat testing to address concerns about food fraud and investigate how horse meat ended up in products labeled as beef.²³⁰ During this investigation, 193 of 4,144 (4.66%) samples of beef products tested positive for horsemeat.²³¹ Some food products labeled as beef were found to contain 100% horse meat.²³² Victor Ponta, the Prime Minister of Romania, echoed the sentiment of European consumers, stating, “This is a very serious European crisis . . . it affects the absolute right of European customers to trust the food, to trust products and know exactly what kind of food it is and where it comes from.”²³³ Although officials promised that those responsible for the food adulteration would face legal consequences, there had still been no arrests or prosecutions seven months after the scandal emerged, which highlights the lack of traceability in the food supply chain.²³⁴

More serious still than the mislabeling of horse meat is the underlying food safety issue implicated by the lack of traceability.²³⁵ “European beef eaters are rightly appalled that they bought beef, but got horse meat instead. They should be even more concerned that some of that horse meat may also be contaminated and unfit for consumption.”²³⁶ The member states also tested 3,115 samples for bute, and found that 16 (.51%) were positive.²³⁷

228. Tiffany Hsu, *Taco Bell Latest Brand to Be Tied to European Horse Meat Scandal*, L.A. TIMES (Mar. 1, 2013), <http://articles.latimes.com/2013/mar/01/business/la-fi-mo-horse-meat-taco-bell-20130301>.

229. Lawless, *supra* note 227.

230. *Horse Meat in 5% of EU-Tested Beef Products*, BBC (Apr. 16, 2013), <http://www.bbc.com/news/world-europe-22162872>.

231. *Id.*

232. *Q&A: Horsemeat Scandal*, BBC (Apr. 10, 2013), <http://www.bbc.com/news/uk-21335872>.

233. *Horsemeat Scandal: PM Says Criminals Will Face Law*, BBC (Feb. 14, 2013), <http://www.bbc.com/news/uk-21447847>.

234. See Christopher Hope, ‘*Staggering’ No Prosecutions over Horsemeat Scandal*, *Says Senior MP*, THE TELEGRAPH (July 16, 2013), <http://www.telegraph.co.uk/news/uknews/10181726/Staggering-no-prosecutions-over-horsemeat-scandal-says-senior-MP.html>.

235. Pacelle, *supra* note 170.

236. *Id.*

237. BBC, *supra* note 230.

In some cases, products were withdrawn but were not tested for bute immediately.²³⁸ The primary priority was testing for horse DNA, but testing for bute takes longer than DNA tests.²³⁹ In one instance, the Asda chain in Britain, owned by Walmart, withdrew Smart Price Corned Beef in March 2013 after it was found to contain horse meat; however, the product was not recalled until April 10, 2013, which meant that consumers could have unwittingly been eating the contaminated horse meat for over a month.²⁴⁰ Although the tests were not comprehensive, they were indicative of the far-reaching nature of the breakdown in procedures to trace not only where beef products originate, but also where they become combined with possibly contaminated horse meat.²⁴¹

While it is unclear whether the contaminated horse meat originated in the United States, it is certainly possible.²⁴² Twenty percent of horse meat served in the European Union originates in North America.²⁴³ It's estimated that 87 percent of horses slaughtered in European Union licensed facilities in Mexico are from the United States,²⁴⁴ and 67 percent of horses slaughtered in Canada are from the United States.²⁴⁵ After the discovery of bute in horse meat that was labeled as beef in the European Union, the European Commission's Food and Veterinary Office expressed concerns about the lack of identification of horses originating in the United States.²⁴⁶ Because American horses are not raised with the intent to be slaughtered for human consumption, there are no procedures in place in the United States to monitor or record treatments or drugs administered to horses.²⁴⁷

The European Union has strict standards that regulate the production, processing and marketing of its food products and the food products it

238. Stephen Castle, *Horsemeat Problems Resurface Across Europe*, N.Y. TIMES (Apr. 10, 2013), http://www.nytimes.com/2013/04/11/world/europe/traces-of-horse-drug-found-in-british-beef-product.html?_r=0.

239. *Id.*

240. *Id.*

241. *See id.*

242. *See* Pacelle, *supra* note 170.

243. *Call Renewed for EU Moratorium on Horsemeat from North America*, HUMANE SOCIETY INT'L (Jan. 14, 2014), http://www.hsi.org/world/europe/news/releases/2014/01/horsemeat_moratorium_call_011414.html.

244. *Final Report of the European Comm'n Food and Veterinary Office of an Audit Carried out in Mexico*, at 1 (June 24, 2014), http://ec.europa.eu/food/fvo/act_getPDF.cfm?PDF_ID=11431.

245. *Horses and Food Safety*, EQUINE WELFARE ALL., http://www.equinewelfarealliance.org/Horses_Food_Safety.html (last visited Feb. 22, 2015).

246. News Desk, *Canada's Parliament Considers Bill Limiting Horse Slaughter*, FOOD SAFETY NEWS (Apr. 16, 2014), <http://www.foodsafetynews.com/2014/04/canadas-parliament-considers-limits-to-horse-slaughter/#.VOrBHRPF8z4>.

247. Pacelle, *supra* note 170, at 2.

imports, but American horse meat does not satisfy these standards.²⁴⁸ Over 250,000 horses are slaughtered for meat in the European Union each year, predominantly in Italy, Spain, Poland and France.²⁴⁹ In order to ensure that horses slaughtered for human consumption are drug free, the European Union introduced a horse passport program in 2005.²⁵⁰ The passport is issued for the lifetime of the animal when it is born, or imported into the European Union from another country, and contains an irreversible declaration as to whether or not the horse is intended for human consumption.²⁵¹ The passport also includes a diagram of distinguishing features of the horse, which must be completed by a veterinarian or approved official.²⁵²

All foals born after 2009 in the European Union are also required to be micro-chipped.²⁵³ The horse's microchip number and the information from the passport are put in a database to verify the identity of horses when they are presented for slaughter and possibly as a trace back tool for violations of the law.²⁵⁴ If horses are designated for human consumption, then medicines that may be administered to the horse are limited, and records of all medications that are administered must be recorded in the horse's passport.²⁵⁵ The Veterinary Medicine's Directorate (VMD) outlines medicines prohibited in food producing horses and establishes mandatory withdrawal times for medicines that are permitted.²⁵⁶ Once a horse is administered a prohibited drug, such as bute, the horse must be permanently excluded from the food chain.²⁵⁷

In order to satisfy the consumer demand for horse meat, the European Union also imports horse meat from Mexico, Canada, Uruguay, Brazil,

248. *See id.* at 1.

249. *Facts and Figures on the EU Horsemeat Trade*, HUMANE SOC'Y INT'L 1-2, http://www.hsi.org/assets/pdfs/horses_EU_facts_figures_EU_horsemeat_trade.pdf (last visited Feb. 22, 2014). The remainder of horses are slaughtered in Ireland, Romania, Germany, Belgium, the United Kingdom, the Netherlands, Sweden, and other member states.

250. Ares & Downing, *supra* note 157.

251. *Id.* at 3.

252. *Id.*

253. *Id.*

254. *Id.* at 3, 6–7.

255. *Id.* at 5; VETERINARY MEDICINES DIRECTORATE, VETERINARY MEDICINE'S GUIDANCE: HORSE MEDICINES AND RECORD KEEPING REQUIREMENTS 2–3 (June 1, 2015), <https://www.gov.uk/guidance/horse-medicines-and-recording-keeping-requirements>.

256. *Id.*

257. *Id.* at 4.

and other countries.²⁵⁸ The European Union only permits the import of horse meat that has been processed at slaughterhouses that they have approved for export, which comply with their food safety standards and laws.²⁵⁹ There are four of these approved slaughterhouses in Mexico, and four in Canada.²⁶⁰ The horse meat processed at these facilities is then shipped to the European Union, Asia and South America for human consumption.²⁶¹ The majority of horses slaughtered at these facilities originate in the United States, and they do not have lifetime medical records, as required by the European Union.²⁶² They are only accompanied by owner/shipper certificates stating that they have not been administered prohibited substances within the last six months, and even this declaration cannot be verified by Mexican or Canadian officials.²⁶³

Until 2013, when tainted horsemeat was found in products labeled as beef across Europe, this porous standard for horse meat prevailed.²⁶⁴ In July 2013, the European Union issued a new law stating that all horses slaughtered in European Union-regulated slaughterhouses outside of the European Union would also be required to have documentation commensurate with their passport program, stating that each horse had been free from certain drugs from six months of age until death.²⁶⁵ When this law was unveiled by the European Union, many animal welfare advocates predicted that the export of American horses to slaughterhouses in Canada and Mexico would be halted because the drug history of these horses is untraceable.²⁶⁶

258. HUMANE SOC'Y INT'L, *supra* note 243, at 4.

259. *Id.*

260. *Id.*; *see supra* Part III.C. (discussing how these slaughterhouses are subject to audits carried out by the European Commission's Food and Veterinary Office (FVO) to ensure compliance, and multiple welfare, food safety and environmental deficiencies have been recorded).

261. HUMANE SOC'Y INT'L, *supra* note 243, at 5–6.

262. *See* Pacelle, *supra* note 170.

263. *See supra* Part III.B, III.C (discussing why the incongruence of the requirement of a lifetime medical record and the actual six-month document is particularly troubling, and how bute has no safe withdrawal time, meaning that if a horse is ever administered bute in its lifetime, the meat is permanently be contaminated and potentially dangerous to consumers); *see also* Safeguard American Food Exports Act of 2013, H.R. 1094, 113th Cong. (2013) (stating that bute is dangerous for human consumption); *see also* ANIMAL WELFARE INSTITUTE, <https://awionline.org/content/safeguard-american-food-exports-safe-act> (last visited Sept. 21, 2015) (stating that, according to the Federal Drug Administration, there are at least 379 common equine drugs which are banned for human consumption).

264. *See* Pacelle, *supra* note 170.

265. VETERINARY MEDICINES DIRECTORATE, *supra* note 255, at 2.

266. Sara Lieser, *Equine ID Will Be Required for Horse Slaughter in Canada*, CHRONICLE OF THE HORSE (Jan. 30, 2010), <http://www.chronoffhorse.com/article/equine-id-will-be-required-horse-slaughter-canada>.

However, since July 2013, horses from the United States have continued to be exported to Canada and Mexico in roughly the same numbers.²⁶⁷

Although meat is sampled at facilities in Canada and Mexico for contamination by prohibited substances, only a small proportion of the meat is tested.²⁶⁸ “More testing and analysis would help, but it is insufficient.”²⁶⁹ Because of the nature of the testing, results are not immediate.²⁷⁰ Contaminated meat often enters the food chain before it has been identified because producers want to sell a fresh product.²⁷¹ Furthermore, some of these tests cannot be completed until the animal is already slaughtered, meaning that the contaminated meat will not be identified until it has been processed and come in contact with the equipment and other meat, potentially spreading the drug residue.²⁷²

Although recent discoveries of contaminated horse meat labeled as beef in Europe have brought international attention to the question of the safety of horse meat from the United States, the United States has neither created a system to track medications administered to horses nor taken responsibility for potentially contaminated exports.²⁷³ Similarly, the European Union has not enforced legislation intended to protect its consumers or made formal agreements with countries they import meat from to ensure their food safety standards are met. Until action is taken, the domestic ban on horse slaughter and the export of horses from the United States to Canada and Mexico will continue to endanger international consumers of horse meat.

267. See *U.S. Horses Slaughtered Yearly [Yearly 1989-2015]*, EQUINE WELFARE ALL. 1–2, http://www.equinewelfarealliance.org/uploads/00-Slaughter_Statistics.pdf (last visited Feb. 23, 2015) (showing that in 2013, 102,254 horses from the United States were slaughtered in Mexico, and in 2014, 98,854 horses were slaughtered in Mexico. In 2013, 45,547 horses from the United States were slaughtered in Canada, and, in 2014, 37,868 horses were slaughtered in Canada).

268. See Mary Ormsby, *Canadian horsemeat not drug-free, European audit finds*, THE STAR (June 28, 2015), <http://www.thestar.com/news/gta/2015/06/28/canadian-horsemeat-not-drug-free-european-audit-finds.html> (stating Canada practices sampling of meat).

269. See Pacelle, *supra* note 170.

270. See generally Dodman et al., *supra* note 14 (discussing the process of testing for contamination in horse meat).

271. See *id.*

272. See *id.*

273. See Pacelle, *supra* note 170.

V. DOMESTIC IMPLICATIONS OF THE CLOSURE OF HORSE SLAUGHTER FACILITIES IN THE UNITED STATES

The de facto ban on horse slaughter has also had unintended negative consequences domestically.²⁷⁴ The closure of horse slaughter facilities in the United States in 2007 was meant to protect horses, yet since the ban local and state governments have seen a decrease in general equine welfare, and an increase in the number of unwanted horses.²⁷⁵ The effects of the ban, compounded with the 2008 economic crisis, caused the horse market to plummet.²⁷⁶ The legislation that ended slaughter contained no provision for what would happen to horses that previously would have been humanely slaughtered in the United States; instead, it put the burden on non-profit horse rescues and law enforcement officers with already strapped budgets to provide care for these horses.²⁷⁷ This is a burden that they have not been able to carry, and abuse, neglect, and abandonment have burgeoned as a result.²⁷⁸

Today there are 9.2 million horses in the United States, half of which are owned by low to moderate-income families, compared to only 6 million in the mid-1990s.²⁷⁹ The majority of these horses are used for recreational purposes and kept as companion animals. Because horses are expensive to care for, small fluctuations in the economy can result in owners finding themselves unable to care for their horses.²⁸⁰ When horses age, become injured, or lose recreational value, owners may decide they are no longer needed or useful.²⁸¹ The subset of the horse population that falls into this category is referred to as “unwanted horses.”²⁸² There are an estimated 170,000 unwanted horses in the United States each year.²⁸³ Among these horses are 5,000 wild horses awaiting adoption in facilities operated by the Bureau of Land Management (BLM) and 10,000 wild horses that they have determined to be unwanted or unadoptable which are maintained on privately owned

274. See Zezima, *supra* note 32.

275. *Id.*

276. *What is Causing the Situation?* A MILLION HORSES, <http://amillionhorses.com/Problem.htm> (last visited Feb. 22, 2015).

277. Michael S. North et al., *The Potential Impact of a Proposed Ban on the Sale of U.S. Horses for Slaughter and Human Consumption*, 23 J. AGRIBUSINESS 1, 14 (Spring 2005).

278. GAO Report, *supra* note 24, at 19–26.

279. Paulo Prada, *Leaner Pastures: As Horses Multiply, Neglect Cases Rise*, WALL ST. J., <http://www.wsj.com/articles/SB119967115694171373> (Jan. 7, 2008, 11:59 PM).

280. Taylor & Sieverkropp, *supra* note 36, at 2.

281. Nat T. Messer, *The Plight of the Unwanted Horse: Scope of the Problem*, AMERICAN ASS’N OF EQUINE PRACTITIONERS, <http://www.aep.org/info/horse-health?publication=941> (last updated Jan. 31, 2009).

282. *Id.*

283. *Id.*

sanctuaries.²⁸⁴ There are also 20,000 pregnant mares and foals from the Premarin industry that are displaced when they are no longer profitable.²⁸⁵ The remainder of unwanted horses are privately owned by individuals.²⁸⁶

The language of the legislation that ended horse slaughter in America did not provide for what would be done with these unwanted horses—many of which were humanely slaughtered before the cessation of domestic horse slaughter—and the number of unwanted horses has compounded each year since horse slaughter facilities in the United States closed.²⁸⁷ The horse slaughter industry in the United States created a salvage value for horses that no longer had a recreational value, or otherwise would not be sold at an auction.²⁸⁸

When the horse slaughter facilities in the United States closed, the floor of the market disappeared.²⁸⁹ This was compounded by the economic crisis that began in 2008.²⁹⁰ The price of fuel, hay, and grain increased.²⁹¹ Horse owners could no longer afford to care for horses, and horse buyers were not in a position to offer as much to buy horses.²⁹² Fewer individual sales of horses occurred, and fewer auctions were held.²⁹³ Even when these auctions did occur, some small or thin horses were no longer worth the fuel costs to deliver them to slaughter facilities abroad.²⁹⁴ “For the first time in my life, I’ve seen stock that has no value,” said Devin Mullet, the owner of a sales barn in Iowa.²⁹⁵ Mr. Mullet was forced to shoot 28 horses after his auction in October 2007 when they returned with no bids, and he now turns horses away if he thinks they have no value.²⁹⁶

284. *Id.* at 165–66.

285. *Id.* at 166; Pearson, *supra* note 188 (explaining that Premarin is a hormone replacement drug used by women and is created from pregnant mare’s urine).

286. *See* Messer, *supra* note 281, at 166.

287. North et al., *supra* note 277, at 14.

288. Taylor & Sieverkropp, *supra* note 36, at 2.

289. A.G. Sulzberger, *Slaughter of Horses Goes On, Just Not in U.S.*, N.Y. TIMES (Oct. 23, 2011), <http://www.nytimes.com/2011/10/24/us/Horse-Slaughter-Stopped-in-United-States-Moves-Across-Borders.html?pagewanted=all>.

290. *See* A MILLION HORSES: DOCUMENTING ABANDONED, ABUSED & NEGLECTED HORSES, <http://amillionhorses.com> (last visited Feb. 22, 2015).

291. Prada, *supra* note 279.

292. *Id.*

293. Einhorn, *supra* note 72.

294. *Id.*

295. *Id.*

296. *Id.*

Without the option to send these horses to be humanely slaughtered in the United States, some owners are keeping horses of little or no value and allowing them to go without food, water, or veterinary care. Although no national statistics exist, some states reported a fifty percent increase in abandonment and neglect cases.²⁹⁷ In 2007, 11 horses were abandoned on state land in Nevada.²⁹⁸ The following year, after the slaughter plants closed, officials found 63 horses.²⁹⁹ That same year in Texas authorities made one of the largest seizures in history and rescued 170 horses from a single facility.³⁰⁰

The burden has been placed on state and local governments, non-profit animal welfare organizations, and Indian tribes that own land where these horses have been abandoned to care for them.³⁰¹ The United States funds community shelters for cats and dogs, but there are few publicly funded equine rescues, which means that non-profit equine rescue facilities have historically provided for abandoned, neglected, and abused horses.³⁰² Because of the high cost and additional training required for the care of horses, public and private organizations have not been able to provide for the influx of abandoned, neglected, and abused horses.³⁰³ The Society for the Prevention of Cruelty to Animals called the situation “overwhelming” after they handed out their entire year’s supply of emergency hay in the first two months of 2009.³⁰⁴ In 2010, when Montana government officials seized 804 abused and neglected horses from a ranch outside of Billings, they had to seek private donations of hay to feed the horses.³⁰⁵

Non-profit rescues and sanctuaries in the United States are similarly strained and have a limited estimated capacity of just 6,000 horses.³⁰⁶ The annual average maintenance cost of each horse at one of these facilities is \$2,340, and many of these rescues struggle because of too many horses, too little money, and no national standards.³⁰⁷ Some rescues have seen the number of requests to take in horses increase by as much as 5,000%, and horses are arriving in worse condition, increasing costs to the facilities.³⁰⁸

297. See GAO Report, *supra* note 24, at 21.

298. Zezima, *supra* note 32.

299. *Id.*

300. *Id.*

301. See GAO Report, *supra* note 24, at 21.

302. Stull, ANIMAL FRONTIERS, *supra* note 41, at 70.

303. Zezima, *supra* note 32.

304. *Id.*

305. Jan Falsted, *Hungry Horses: First Hay Drop for Starving Horses a Success*, BILLINGS GAZETTE (Jan. 27, 2011), http://billingsgazette.com/news/local/first-hay-drop-for-starving-horses-a-success/article_3bc35e9b-d8c8-5261-b282-29728c415907.html.

306. GAO Report, *supra* note 24, at 23.

307. *Equine Rescue Facilities Can't Handle Influx of Unwanted Horses*, AVMA (Dec. 1, 2010), <https://www.avma.org/News/JAVMANews/Pages/101215u.aspx>.

308. Evans et. al., *supra* note 25, at 3–4.

Indian tribes, which already face problems because of overpopulation of horse herds, have reported increases in the abandonment of horses on their lands.³⁰⁹ This leads to the introduction of diseases to these herds and overgrazing, which challenges the ability of tribes to restore plant species.³¹⁰ The ability of the federal government to manage horses on public lands has also been hindered by the closure of domestic horse slaughter plants.³¹¹ The BLM credited the decline in the adoption of wild horses partly to the influx of domestic horses in the market.³¹² Because the infrastructure and funding in the United States is insufficient to support the increasing number of unwanted horses, animal welfare, local governments and rescue organizations have suffered along with horses from the cessation of domestic horse slaughter.

VI. PROPOSAL FOR THE RENEWAL OF HORSE SLAUGHTER IN THE UNITED STATES

The de facto ban on horse slaughter in the United States, although well intentioned, has resulted in unintended negative consequences on equine welfare, the domestic horse industry, and the safety of international consumers of horse meat. The lack of permanent federal legislation regulating horse slaughter has perpetuated these issues, and allowed the continued export of American horses for slaughter in Canada and Mexico. Although all parties agree that the current system is flawed, they have not been able to agree on a solution.

Anti-slaughter organizations, such as the Humane Society of the United States (HSUS), support a permanent ban on horse slaughter, and the export of horses for slaughter.³¹³ They argue that horse slaughter is inherently inhumane, and that horse meat is too dangerous for human consumption because of medications that are administered to horses during their

309. GAO Report, *supra* note 24, at 22.

310. *Id.*; Fernanda Santos, *On Fate of Wild Horses, Stars and Indian Spar*, N.Y. TIMES (Aug. 10, 2013), <http://www.nytimes.com/2013/08/11/us/on-fate-of-wild-horses-stars-and-indians-spar.html?pagewanted=all> (stating that the Navajo Nation publicly endorsed horse slaughter after damages to their lands totaling \$200,000 from free roaming horses).

311. GAO Report, *supra* note 24, at 24.

312. *Id.*

313. *Safeguard American Food Exports Act (SAFE): Horsemeat Poses Serious Risks to Human Health*, ANIMAL WELFARE INSTITUTE, <https://awionline.org/content/safeguard-american-food-exports-safe-act> (last visited Feb. 23, 2015).

lifetime.³¹⁴ Pro-slaughter organizations, such as AVMA and American Association of Equine Practitioners (AAEP), support the renewal of horse slaughter in the United States.³¹⁵ They cite the inhumane conditions that horses face in Mexico and Canada, and the need for a humane method to dispose of unwanted horses that may otherwise be mistreated.³¹⁶ Ultimately, the purpose of the legislation should be to do what is best for the welfare of horses.

The arguments of anti-slaughter advocates “are emotionally charged, at the cost of foresight and ignore the consequences that are likely to follow from a slaughter ban, which does little, if anything, for equine welfare.”³¹⁷ A permanent slaughter ban would eliminate the export of horses to Canada and Mexico, magnifying the unwanted horse problem. The cost to the federal government to euthanize or care for these horses is economically unfeasible. A federal statute renewing horse slaughter in the United States would help resolve many of the unintended negative consequences of the current poorly formed legislation, and offer a humane method of disposal of unwanted horses. This statute should include (i) increased regulation of transportation and slaughter practices, (ii) revised slaughter techniques tailored to equines, and (iii) a system for tracking treatments administered to horses commensurate to the systems in place for tracking medications in livestock such as cattle.

First, the authority and resources of APHIS should be increased to ensure that the Transport Program functions effectively and protects horses being shipped to slaughter in the United States. The annual budget for APHIS should be increased from the current total of \$54,723 to an estimated \$500,000 necessary to properly function.³¹⁸ This would permit APHIS to perform inspections at domestic slaughter facilities and increase their staff from two, to six federal inspectors, increasing their ability to monitor shipments.³¹⁹ APHIS should be given the authority to prevent shippers who have been cited for previous violations from transporting horses for slaughter. Finally, the information for all horses shipped for slaughter

314. *Id.*

315. Terry L. Whiting, *The United States' Prohibition of Horsemeat for Human Consumption: Is this a good law?*, 48 (11) CAN. VETERINARY J. 1173, 1173 (2007).

316. *Id.*; Erica Strader, *The Future of Horse Slaughter: What is Best?*, 15 OR. REV. INT'L L. 293, 311 (2013).

317. Laura Jane Durfee, *Anti-Horse Slaughter Legislation: Bad for Horses, Bad for Society*, 84 IND. L.J. 353, 353 (2009).

318. See COWAN, *supra* note 64, at 3 (explaining the costs of new fees, in addition to inspectors' salaries).

319. See *id.* These figures were estimated by APHIS in 2012 when the prohibition on USDA inspections at slaughterhouses were lifted. They estimated that they would need six federal inspectors with salaries totally \$400,000, and that implementing the inspections would cost between \$68,000-\$102,000.

must be entered in a database by APHIS, to allow for the trace back of potential violations.

Second, slaughterhouses should be tailored to the unique physical characteristics of horses. After auditing horse slaughter facilities in 1996, Dr. Grandin addressed ways to improve slaughter in the United States and ensure a humane process.³²⁰ Grandin suggested that these facilities be redesigned to include level, non-slip flooring to prevent horses from falling and panicking, and solid sides to prevent the horse from seeing activity on the slaughter floor.³²¹ She also stated that it is vital that management at these facilities cares about having high standards for animal welfare and that they be required to use video monitoring by a third party auditing company.³²² Dr. Grandin created a system for measuring welfare indicators which would require that 100% of horses be insensible to pain before being hoisted for processing, that electric prods never be used, and that no acts of abuse, such as beating, slamming gates on horses, or poking in sensitive areas, be permitted.³²³ Furthermore, she suggested that any handlers slaughtering wild mustangs be trained in the principles of flight zone and point of balance to learn how to handle these horses safely.³²⁴

Third, a system must be created to track the identity and medical records of horses in the United States to ensure that horses that have been administered prohibited substances are excluded from the food chain. Horses should be required to be micro-chipped, and all treatments administered in their lifetime should be recorded. This information can then be put in a national database so that slaughter facilities can verify whether horses are intended for human consumption, and officials can trace animal welfare or food safety violations to individuals. Horses that are not intended for human consumption can be processed in separate facilities, and their meat can be marketed to zoos and other facilities that house large carnivores.

Efforts should also be made to reduce the surplus of unwanted horses. The primary issue that contributes to the unwanted horse problem is the prevalence of over breeding in the United States.³²⁵ Specifically, the horse racing industry and the American Quarter Horse Association are structured

320. Grandin, *supra* note 164.

321. *Id.*

322. *Id.*

323. *Id.*

324. *Id.*

325. *See* Pearson, *supra* note 188, at 205.

to promote the mass production of horses.³²⁶ Breeders and trainers are lured by the potential monetary reward for finding the next great race horse or successful show horse.³²⁷ This promotes reckless breeding and the need to dispose of horses quickly when they do not prove successful.³²⁸ These organizations should be restructured to encourage selective breeding to produce quality marketable horses rather than producing a large quantity of horses.³²⁹ The elimination of the Premarin industry, and the use of synthetic alternatives, would also help to decrease the number of unwanted horses.³³⁰ Discouraging overbreeding and eliminating the Premarin industry would lower the total number of horses in the market and increase their value, causing fewer unwanted horses to be slaughtered.³³¹

Anti-slaughter activists rebut the proposal to bring horse slaughter back to the United States, stating that unwanted horses should be humanely euthanized or cared for by local governments and rescues. The infrastructure and the funding simply do not exist to support this solution. Euthanasia costs range from \$100 to \$175, and the additional cost of a farm call from a veterinarian can double this number.³³² Once a horse has been euthanized, the safe and proper disposal of the carcass can cost anywhere from \$75 to \$2000, and disposal presents a significant environmental management issue.³³³ For the majority of horse owners, who are low to moderate income families, these costs can be prohibitive.³³⁴ Other anti-slaughter activists state that horses should be cared for in rescue facilities, but they do not explain who would fund this care.³³⁵ Conservative estimates state that the annual cost of caring for an unwanted horse, without veterinary expenses

326. *Id.* at 209–11.

327. *Id.* at 210.

328. *Id.* at 210.

329. *See id.* at 209–14.

330. *See id.* at 214–16. Premarin is a hormone replacement drug for women that is produced from the urine of pregnant mares. In order to obtain the urine, mares are repeatedly bred and then tethered in stalls for the majority of their pregnancy so their urine can be collected. These mares produce an estimated 40,000 foals annually. These mares are usually untrained and un-socialized, making them undesirable sale prospects. The vast majority of retired mares and male foals are sent to slaughter.

331. *See id.* at 214.

332. *See Durfee, supra* note 317, at 368.

333. Ahern et. al., *supra* note 34, at 7–8. Burial costs anywhere from \$300 to \$500, and is becoming increasingly less available because of the negative environmental externalities, such as groundwater pollution, from decomposing carcasses. Disposal at landfills and rendering are less expensive options have a very limited availability. Incinerators are a way of disposing of carcasses without environmental externalities, but costs range from \$600 to \$2000. For each of these methods, transportation of the carcass is expensive and potentially exposes the public to diseases from deceased animals.

334. *Id.*

335. *Id.*

included, is \$2,340.³³⁶ In 2013, an estimated 147,801 horses were exported for slaughter abroad.³³⁷ The cost of caring for these horses for one year, not including veterinary expenses, would be an estimated \$345,854,340.³³⁸ This estimate also does not take into account the cost of creating infrastructure to house these animals and training individuals to properly handle and care for horses.³³⁹

There are also obstacles that diminish the ability to enforce a permanent ban on horse slaughter. Even if domestic slaughter and the export of horses for slaughter to Canada and Mexico is outlawed, it is unlikely that exports for slaughter will stop.³⁴⁰ Shippers would still be able to designate horses for “breeding, riding, or pleasure,” and transport them across the border.³⁴¹ Without domestic horse slaughter, they would have a monetary incentive to do this.³⁴² Based on the increase of horses exported to Mexico and Canada for these purposes, in correlation with the domestic cessation of horse slaughter, it is believed that this is already happening, and once horses are across the border, their fate is unknown.³⁴³

Domestic slaughterhouses are the most economically viable and environmentally friendly disposal method for unwanted horses.³⁴⁴ They provide a federally regulated, humane form of euthanasia that allows owners to recover a small portion of their investment, and the meat from these animals provides a valuable food source.³⁴⁵ The domestic slaughter industry would provide roughly 150 jobs, but more importantly, it would increase the price of horses in the market and stabilize the \$112 billion horse industry.³⁴⁶ The slaughter industry in the United States would also produce meat valued at an estimated \$65 million a year.³⁴⁷ Federal legislation banning the export of horses for slaughter and domestic slaughter would keep these horses from slaughterhouses in Canada and Mexico, “but increase the

336. *Id.* at 6–7.

337. EQUINE WELFARE ALL., *supra* note 267. In 2013, 102,254 horses from the United States were slaughtered in Mexico. In 2013, 45,547 horses from the United States were slaughtered in Canada.

338. *See id.*

339. *See id.*

340. AM. VETERINARY MED. ASS'N, *supra* note 62.

341. *Id.*

342. *See id.*

343. *Id.*

344. Durfee, *supra* note 317, at 370.

345. *Id.*

346. *See Ahern et al.*, *supra* note 34.

347. Sulzberger, *supra* note 289.

number of abused, neglected, and abandoned horses in the United States, costing taxpayers millions of dollars” and ultimately hurting equine welfare.³⁴⁸ Lawmakers at the federal level should take action to remove the de facto ban on horse slaughter and create permanent legislation regulating horse slaughter for the safety of horses and international consumers of horse meat.

348. Durfee, *supra* note 317, at 370.