

H-2B WORKFORCE COALITION Working Together

Below is a copy of the letter we agreed to be supportive of, and which went to the offices below:

Dear Secretary Nielsen and Secretary Acosta:

As representatives of small and seasonal employers throughout the country, the H-2B Workforce Coalition urges you to immediately resume processing H-2B visas up to the full number of visas authorized by the Fiscal 2018 Omnibus Appropriations Act. Without immediate action, many employers across the country will be without the critical workforce they need to operate this spring and summer. These businesses may not be able to fulfill contracts. They could be forced to turn away customers, lay off American workers whose jobs are supported by H-2B workers, and in some cases shut down their operations entirely.

In a strong economy with record-low unemployment, the program's arbitrary cap of 66,000 visas established in 1992 is inadequate to meet the bona fide seasonal labor needs of many businesses. For FY 2018, the 33,000 first half cap was met on December 15, 2017 and the 33,000 second half cap was met on February 27, 2018. Since the beginning of the fiscal year, the Department of Labor (DOL) has certified petitions for 133,815 H-2B workers, including 80,744 positions for workers beginning on April 1. DOL only issues final labor certification when it concludes that:

- There are not sufficient U.S. workers who are qualified and who will be available to perform the temporary services or labor for which an employer desires to hire foreign workers; and that*
- The employment of H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.*

DOL's final certifications clearly demonstrate, in concurrence with the Fiscal 2018 Omnibus Appropriations Act statutory requirement, that there are not a sufficient number of U.S. workers who are willing, qualified and able to fill over 80,000 positions so desperately needed by seasonal employers. In almost every situation where the DOL has already certified the insufficiency of US workers on an employer by employer basis, the failure to issue additional visas will cause irreparable harm to the business and its American workers, thereby meeting the Congressionally mandated standard for the discretionary release of additional visas. We, therefore, urge the Department of Homeland Security (DHS) to immediately resume processing H-2B visas up to the full number of visas authorized by the recent law.

DHS needs no further consultation with DOL to immediately resume visa processing. The same language was included in the FY17 Omnibus appropriations bill. DHS and DOL conducted public notice and public outreach in July of 2017 and DHS, issued an Exercise of Time-Limited Authority to Increase the Fiscal Year 2017 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program on July 19, 2017. 82 Fed. Reg. 32987 ("Temporary Rule"). That rulemaking need not be reinvented now, only 8 months after the Departments last reviewed and completed a rulemaking process on this exact issue. This is not a situation where the agencies would be reviewing new legislative authority or new technical facts that might lead to a different conclusion.¹ No substantive legal difference exists between last year's agency action and the enactment of the FY18 omnibus. Given the significant harm seasonal businesses and their American workers face, we urge you to reinstate the rule immediately and resume processing H-2B visas up to the full number visas authorized by the Fiscal 2018 Omnibus Appropriations Act.

It is clear that without immediate action by DHS and DOL, nearly 70% of seasonal positions for the second half of fiscal 2018 will go unfulfilled due to cap limitations. The lack of H-2B workers jeopardizes the survival of seasonal businesses and puts their American workers at risk of losing their jobs.

The H-2B program is essential to employers who cannot find local temporary workers to fill jobs in seafood processing, horse training, hospitality and amusement parks, forestry, landscaping, circuses, carnivals, food concessionaires, swimming pool maintenance, golf courses, stone quarries and other seasonal industries. These seasonal businesses need H-2B workers to supplement their American workforce.

The H-2B program relies on well-vetted returning workers who come to the U.S. for seasonal employment and then go home. These workers are not immigrants. They provide an opportunity for U.S. businesses to operate at a greater capacity, retain their full-time workers and contribute to their local economies. Seasonal workers help support many upstream and downstream jobs. Every H-2B worker is estimated to create and sustain 4.64 American jobs.

Relief for seasonal businesses that use the H-2B program is desperately needed. We urge you to immediately resume processing H-2B visa petitions up to the full number of H-2B visas authorized by the Fiscal 2018 Omnibus Appropriations Act.

Sincerely,

National Organizations, including NHBPA, NTRA and AHC

We Encourage You to Join the AHC for our 2nd Quarter Webinar

The AHC is pleased to announce that the topic for its 2nd quarter webinar for 2018 will be Microchipping. The webinar will take place on Monday, May 14th at 3:00 pm ET.



Presenting will be Angela Pelzel-McCluskey, DVM, MS from the U.S. Department of Agriculture (USDA), TC Lane from the United States Trotting Association (USTA), and Ashley Furst, Director of the Unwanted Horse Coalition (UHC).

Dr. McCluskey is an Equine Epidemiologist for USDA-APHIS-Veterinary Services, and will present on the "Traceability of Equine Microchips" and demonstrate some of the successes and challenges encountered when a horse with a chip is found and efforts are made to try to trace that chip to figure out who the horse is.

TC Lane is the Director of Registry and Member Services for the USTA, and will be presenting a new microchipping requirement that the USTA will be putting into place where in 2019 all foals will be required to be implanted with a microchip. The microchips would replace freeze brands and lip tattoos as means of identification for Standardbreds.

Finally, UHC Director Ashley Furst will discuss the new program "Operation Chip" introduced in January 2018. The program currently provides free microchips and registration of that microchip to stallions getting gelded through the Operation Gelding program.

The webinar is open to both AHC members and non-members—we encourage everyone to attend! To register for the webinar, please [click here](#). The webinar lasts approximately one hour, and will allow for Q&A at the end of each speaker's presentation. If you have any questions, please contact Ashley Furst at afurst@horsecouncil.org. We look forward to having you join us for our 2nd quarter webinar!

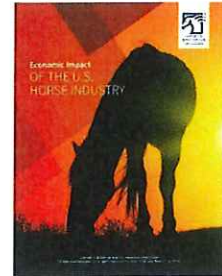
State Breakout Economic Impact Studies Now Available

The American Horse Council Foundation (AHC) is pleased to announce that the state breakouts for the 2017 Economic Impact Study are now available for purchase.

Fourteen states received breakouts: California, Colorado, Florida, Illinois, Kentucky, Maryland, Michigan, Minnesota, New York, North Carolina, Oklahoma, Pennsylvania, Virginia, and Wisconsin.

In the process of putting the study together, the AHC reached out to all states that had received breakouts in the 2005 Study, as well as other large equine states to see if they were interested in receiving a breakout. The majority of the large equine states elected to receive a breakout of their respective state, further helping demonstrate how important our diverse industry is.

The state breakouts, along with the National Economic Impact Study, can be purchased on the AHC's website here: <http://www.horsecouncil.org/horsecouncil-publications/>. If you have any questions, please contact the AHC.



KY Proposals Aim for Fairness Following Drug Positives

Reprinted with Permission given By Frank Angst, Bloodhorse

Kentucky Horse Racing Commission committee April 9 moved forward on rule changes that would allow horsemen freedom to argue their case if one of their horses fails a drug test and allow stewards to assess penalties below the minimum recommendations in cases with mitigating circumstances.

BLOODHORSE

The KHRC Rules Committee asked general counsel John Forgy to write up suggested rule changes that address these issues. The proposals will allow public comment before final suggested changes are presented to the full commission in an anticipated special meeting in May.

The recommended Kentucky rule changes follow post-race drug positives against high-profile trainers Graham Motion, Rusty Arnold, and Joe Sharp. Last August, a Kentucky circuit court overturned a methocarbamol positive against Motion, and in doing so determined that the state's absolute insurer rule deprives horsemen of due process by not allowing them a chance, as Franklin (Ky.) Circuit Court Judge Thomas Wingate said, "to present evidence to rebut their liability (for a) violation."

In February, the KHRC rescinded ractopamine positives initially called at the 2016 **Kentucky Downs** meeting against trainers Arnold and Sharp. KHRC executive director Marc Guilfoil said the positives were rescinded after the KHRC's lab, LGC Science in Lexington, reversed its ruling.

Rules committee chairman Mark Simendinger said Monday's committee recommendations aim for fairness.

"We have an obligation to make sure that cheaters don't break our rules, but we also have to make sure that we don't take away the livelihood of innocent trainers," Simendinger said.

Forgy said the changes would allow horsemen who have a horse test positive a chance to contest the drug positive by presenting "substantial evidence" in contradiction of the finding. **Forgy, committee member and attorney John Roach, and National Horsemen's Benevolent and Protective Association general counsel Peter Ecabert all agreed that it's still a substantial legal hurdle for any horseman.**

It does give an accused trainer or owner some ability to defend themselves, which was one of Motion's biggest points of frustration in his case.

Allowing horsemen to make such arguments following a drug positive actually is more in line with the Association of Racing Medication International model rule than the current Kentucky rule. The model rule says the trainer is responsible for the condition of the horse unless there is "substantial evidence to the contrary."

Roach encouraged Forgy to model Kentucky's rule after the current Indiana standard, which includes the substantial evidence to the contrary provision, but also notes that this does not allow a trainer to argue that an assistant trainer or stable employee is responsible for a positive.

"It sounds as if we're taking a drastic step and maybe letting trainers off the hook; that's not the case," Ecabert said. "Trainers are still responsible for the condition of the horse and everything that flows from that. The fact of the matter is it gives a trainer a chance to explain that he's done everything correctly and because of either the advances in testing, or contamination issues that he's not responsible for (the horse failing the drug test). It gives him some opportunity to show that."

Forgy also was asked to update a rule that calls for minimum fines and suspensions for the trainer based on the drug class of the finding. The change would allow the stewards to impose sanctions below the minimum recommendation if mitigating circumstances are presented to warrant lighter penalties. Chief state steward Barbara Borden acknowledged that there have been cases where the stewards would have preferred to have such latitude.

Forgy noted that the penalty recommendations in the ARCI Uniform Classification Guidelines for Foreign Substances and Recommended Penalties call for minimum sanctions "absent mitigating circumstances." He believes if Kentucky allows for mitigating circumstances that could move penalties below the minimums called for in each penalty class, such a change would move the state more in line with the model rule.

Committee member Bret Jones said it makes sense to provide the stewards more latitude, and he noted that should the commission believe the stewards are ever becoming too lenient, it can always address such a trend. He said the change should allow for more fairness.

The committee also called for a rule on any foreign substances found in the horse to simplify regulation as to whether a substance is foreign to the horse. The change would repeal current language that considers the potential effects of a substance on a horse. Forgy said that change would address a concern of the circuit court and would be in line with California rules.

Kentucky HBPA executive director **Marty Maline** applauded the committee's willingness to hear from all parties involved before making any rule recommendations. He said it's clear that the Graham Motion case, which continues in appeals court, was important in moving the changes forward.

"I don't think there's any question that that is the 800-pound gorilla in the room," Maline said. "You have to consider the constitutionality of the rule and if it's fair to the horsemen."

"Graham just wanted to give his side of the story. I think not being able to do that bothered him as much as anything."

Guilfoil said the recommendations were in line with changes that he had hoped would take place. Forgy said it will likely take four to six months to have the rules in place and if they're approved by the full commission they will have to go to legislative committees in Frankfort.

Thoroughbred Racing Economic Indicators For March / First Quarter 2018

March 2018 vs. March 2017

Indicator	March 2018	March 2017	% Change
Wagering on U.S. Races*	\$972,396,989	\$873,283,656	+11.35%
U.S. Purses	\$81,455,057	\$71,483,359	+13.95%
U.S. Race Days	316	318	-0.63%
U.S. Races	2,736	2,744	-0.29%
U.S. Starts	21,304	21,179	+0.59%
Average Field Size	7.79	7.72	+0.88%
Average Wagering Per Race Day	\$3,077,206	\$2,746,175	+12.05%
Average Purses Per Race Day	\$257,769	\$224,790	+14.67%

1st QTR 2018 vs. 1st QTR 2017

Indicator	1st QTR 2018	1st QTR 2017	% Change
Wagering on U.S. Races*	\$2,627,307,511	\$2,473,371,860	+6.22%
U.S. Purses	\$224,977,709	\$212,676,463	+5.78%
U.S. Race Days	847	879	-3.64%
U.S. Races	7,293	7,550	-3.40%
U.S. Starts	57,785	59,261	-2.49%
Average Field Size	7.92	7.85	+0.95%
Average Wagering Per Race Day	\$3,101,898	\$2,813,847	+10.24%
Average Purses Per Race Day	\$265,617	\$241,953	+9.78%

* Includes worldwide commingled wagering on U.S. races.

The NHBPA continues to work with the AHC's Cliff Williamson on our Members Concerns Regarding the CDL and ELD Mandates.



Here is an UPDATE from the AHC – *Please download and Print this Waiver Document*

On March 13, it was announced that agricultural commodity haulers are exempted from the electronic logging device (ELD) mandate for the next 90 days (from March 18, 2018 through June 18, 2018).

These haulers must keep a copy of the waiver document in their truck to take advantage of the new 90 day delay. Many drivers already have a copy of the “old” delay waiver, which ran from December 18, 2017 to March 18, 2018, but should replace it with this new document, which can be found here: <http://www.horsecouncil.org/wp-content/uploads/2018/03/90-day-Ag-extension.pdf>.

Federal Motor Carrier Safety Administration

As a results of a meeting the AHC had with the Department of Transportation, the FMCSA has updated information on their website as it relates to the agriculture industry and exemptions for them, as well as non-business related transportation of horses:

<https://www.fmcsa.dot.gov/hours-service/elds/non-business-related-transportation-horses>

<https://www.fmcsa.dot.gov/hours-service/elds/agricultural-exceptions-and-exemptions-federal-motor-carrier-safety>

State Department of Transportation

Commercial Drivers License (CDL) requirements vary from state to state, which can be confusing to the recreational horse hauler. The AHC recommends contacting your state Department of Transportation for questions specific to your state and their CDL requirements. To view a list of state contacts, please click here: <http://cvsa.org/contactpage/contacts/law-enforcement-lead-agency-contacts/>

ELD and CDL Brochures

With the introduction of the Electronic Logging Device (ELD) Mandate in December 2017, other issues were brought to light that were of concern to the equine industry- most notably the Commercial Driver’s License (CDL) requirements. In an effort to help provide some clarity to the ELD Mandate and CDL requirements, the AHC has put together two brochures to help provide insight into this already complex issue. **Brochures (click the image to view)**

ELECTRONIC LOGGING DEVICE MANDATE

HOW WILL IT
AFFECT YOU?



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HOW DO I
KNOW IF I
NEED ONE?



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National HBPA Welcomes the BEMER Group as a New Industry Partner and 2019 Convention Sponsor

The National HBPA is pleased to welcome the BEMER Group as an industry partner. We appreciate their support of horsemen throughout the country, and we look forward to their presence at our 2019 National HBPA Convention in Florida! Until then, please visit www.veterinaryblanket.com for more info.

