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## DO NOT USE IN HORSES INTENDED FOR HUMAN CONSUMPTION:

### HORSE MEAT AND ITS PUBLIC HEALTH DANGER

**By Jessica Sutcliffe**

#### **INTRODUCTION**

In 2005, Congress passed a bill that ended the funding for federal food safety inspections at equine slaughterhouses in the United States. The funding removal forced slaughterhouses in the United States to close. As a result, the export of American horses for slaughter to countries such as Canada and Mexico became more popular. In 2011, the funding for inspection of equine slaughterhouses was reinstated, resulting in applications for new slaughterhouses being submitted to the United States Department of Agriculture (“USDA”). Although these applications are still being reviewed, it has yet to be recognized that American horsemeat, and its consumption, is dangerous to the public. Equines are given many harmful drugs, chemicals, and substances throughout their lifetimes that have been found to be dangerous to human health. Many, if not most, are banned by the Food and Drug Administration (“FDA”) for use in horses intended for human consumption. Despite this problem, there has been no clear move by the USDA, the FDA, or the Food Safety Inspection Service (“FSIS”), a sub agency of the USDA, to ensure that the consumption of horsemeat is safe for humans. Legislative action, such as the passing of bans on horse slaughter, or the institution of an equine passport system similar to the system instituted in the European Union, would significantly lower the risk of horsemeat consumption by weeding out any horse that has a dangerous substance in its system.

This Note focuses on the health risk posed by human consumption of American horsemeat. Specifically, this Note concentrates on the harmful substances that horses are given throughout their lifetime, and the weaknesses that exist in current USDA and FSIS regulation of

the meat industry. The Note will first identify the various harmful substances that are contained in a horse's system and, second, the Note will propose two methods of remedying the health problem that exists because of American horsemeat consumption both in the United States and abroad.

Part I of the Note will discuss the history of horsemeat consumption, specifically in the United States and in many foreign countries where horsemeat is considered a delicacy, as well as provide an analysis of legislative attempts at addressing horse slaughter in the United States. Part II will discuss federal regulations on the slaughter and meat industry, specifically the rules set in place by the USDA for slaughterhouses and how meat is produced and how those rules have come up short in recent years. Part III will discuss the public health issue that horsemeat poses to the human population, highlighting various dangerous chemicals, drugs, and substances that horses are given including the health effects those chemicals can have on humans if they are ingested via horsemeat. Part IV will focus on potential remedies for the health problem posed by horsemeat consumption including an analysis of a potential legislative response, as well as the implementation of an equine passport system similar to that enacted by the European Union in 2009.

## **I. HORSE SLAUGHTER THROUGHOUT TIME**

### *A. A Brief History of Horse Meat Consumption*

Different populations throughout history have consumed horsemeat. Around 5,500 years ago, horses were domesticated in Kazakhstan.<sup>1</sup> The Kazakhstan culture also viewed horses as a source of food.<sup>2</sup> In other countries, such as France, horsemeat was primarily consumed during

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<sup>1</sup> *Horse Domestication in the Botai Culture, Eneolithic Kazakhstan*, Dept. of Archaeology, The University of Exeter, Oct. 12, 2009, available at <http://huss.exeter.ac.uk/archaeology/research/rhorsebotai.shtml>.

<sup>2</sup> *Id.*

ancient times.<sup>3</sup> In 1866, French government legalized horsemeat consumption, and it has remained so to this day.<sup>4</sup> Horsemeat is now considered a delicacy in France.<sup>5</sup>

Horsemeat is eaten in many other European countries, as well as in Asia, South America, and francophone Canada.<sup>6</sup> Horsemeat outsells mutton and lamb combined in Sweden, and Italians consume more horsemeat than anyone else in Europe.<sup>7</sup> There are many popular French restaurants in Canada that serve horsemeat, touting it as healthy and safe to consume.<sup>8</sup> The Japanese consider horsemeat to be a delicacy and a staple, with its uses including as sushi and an ingredient in ice cream.<sup>9</sup>

The European Union has member stated that breed horses solely for horsemeat.<sup>10</sup> Overall, in the European Union, over 200,000 horses per year are slaughtered locally for human

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<sup>3</sup> Christa Weil, *Meanwhile: We Eat Horses, Don't We?*, N.Y. TIMES (March 5, 2007), [http://www.nytimes.com/2007/03/05/opinion/05iht-edweil.4799607.html?\\_r=1](http://www.nytimes.com/2007/03/05/opinion/05iht-edweil.4799607.html?_r=1).

<sup>4</sup> Eryn Maria Pearson, *Horse Slaughter: A Conflict of Ethics, Economics, & Welfare*, 4 J. ANIMAL L. & ETH. 205, 207 (2011) (quoting Kari Weil, *They Eat Horses, Don't They? Hippophagy and Frenchness*, *Gastronomica* Spring 2007, Vol. 7, No. 2, 44-51, available at <http://www.caliber.ucpress.net/doi/abs/10.1525/gfc.2007.7.2.44>).

<sup>5</sup> *Id.*

<sup>6</sup> *The History of Horse Meat*, A MILLION HORSES, <http://amillionhorses.com/horsemeat.htm> (last updated June 8, 2011). Some of the countries include China, Mexico, Mongolia, Italy, Argentina, Brazil, Kyrgyzstan, Japan, Belgium, Austria, Chili, Germany, Iceland, Indonesia, Malta, The Netherlands, Norway, Poland, Slovenia, Switzerland, the United Kingdom, and Sweden. *Id.*

<sup>7</sup> *The History of Horse Meat*, *supra* note 6. Horsemeat is used in pasta sauce, and it can be served in tartare and steak form. It is especially popular because of its protein value. Colman Andrews, *Museum "Dinette" Considers Serving Horsemeat: Will diners say neigh to raw horsemeat in Queens?*, THE DAILY MEAL (Sep. 28, 2012 3:00 PM), <http://www.thedailymeal.com/museum-dinette-threatens-put-horsemeat-menu>.

<sup>8</sup> *Protestors want horse meat off bistro's menu*, CBC NEWS (Feb. 20, 2012 3:11 PM), <http://www.cbc.ca/news/canada/toronto/story/2012/02/20/horse-meat-protest.html>.

<sup>9</sup> *The History of Horse Meat*, *supra* note 6; Carl Pettit, *10 Strange Ice Cream Flavors for Summer*, THEFW.COM, <http://thefw.com/10-weird-ice-cream-flavors-for-summer/> (last visited Oct. 24, 2012); *Horse Meat Sushi?*, THE CHOW BLOG (July 5, 2007), <http://www.chow.com/food-news/3123/horse-meat-sushi/>.

<sup>10</sup> D.P. Leadon, *Unwanted and slaughter horses: A European and Irish Perspective*, 2 *Animal Frontier* 72, available at <http://www.animalfrontiers.org/content/2/3/72.full>.

consumption.<sup>11</sup> Italy has the highest slaughter rate, and Poland, Spain, France, and Germany are also significant producers of horsemeat.<sup>12</sup> Aside from local production of horsemeat, the European Union imports much of its horsemeat from slaughterhouses in Canada and Mexico.<sup>13</sup> The majority of horses slaughtered in Canada and Mexico are imported from the United States, and fifty percent of that meat is then exported to various European Union member states.<sup>14</sup>

### *B. Horse Meat Consumption in the United States*

Although most people believe that Americans do not consume horsemeat, this is not entirely true.<sup>15</sup> During World War II and afterwards, horsemeat consumption was common due to shortages of other types of meat such as beef.<sup>16</sup> In 1973, inflation caused more traditional meats to be more expensive.<sup>17</sup> Additionally, through the 1970s and until 1985, the Harvard Faculty Club served both horse steaks and chicken-fried horsemeat.<sup>18</sup>

The true beginning of the American horsemeat industry was in the 1970s, and by the 1990s there were at least sixteen equine slaughterhouses operating in the United States.<sup>19</sup> The industry itself was very secretive, and horse slaughter for human consumption was something

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<sup>11</sup> *Facts and figures on the EU horsemeat trade*, Humane Society International, [http://www.hsi.org/assets/pdfs/horses\\_EU\\_facts\\_figures\\_EU-horsemeat\\_trade.pdf](http://www.hsi.org/assets/pdfs/horses_EU_facts_figures_EU-horsemeat_trade.pdf) (last accessed Feb. 23, 2013), at 1.

<sup>12</sup> *Id.* at 2-3.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Id.* at 4. USDA statistics show that the export of American horses to Canada and Mexico may actually be higher than what is reported by European agencies. Additionally, the latest and most complete statistics available from the European Union are from 2007. *Id.* at n.2.

<sup>15</sup> Pearson, *supra* note 4.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Christa Weil, *Meanwhile: We Eat Horses, Don't We?*, N.Y. TIMES (March 5, 2007), [http://www.nytimes.com/2007/03/05/opinion/05iht-edweil.4799607.html?\\_r=1](http://www.nytimes.com/2007/03/05/opinion/05iht-edweil.4799607.html?_r=1); See also Ted Burnham, *Plan to Slaughter Horses For Human Consumption Is Met With Distaste*, THE SALT - NPR'S FOOD BLOG (April 18, 2012 9:50 AM), <http://www.npr.org/blogs/thesalt/2012/04/17/150833468/plan-to-slaughter-horses-for-human-consumption-is-met-with-distaste>.

<sup>19</sup> *Horse Slaughter: An American Disgrace*, EQUINE ADVOCATES, <http://equineadvocates.org/issues/slaughter/slaughter.html> (last visited Oct. 5, 2012).

most Americans did not know was occurring inside the country.<sup>20</sup> The horse slaughter industry operates primarily through “killer buyers” who are considered to be middlemen for the slaughterhouses.<sup>21</sup> Horse dealers and “meat men” were also involved and paid cash for racehorses that had become injured or were no longer able to compete.<sup>22</sup> Additionally, overbreeding was occurring, and slaughter was seen as a cost-effective way of getting rid of unwanted horses.<sup>23</sup> Although there are no slaughterhouses open in the United States currently, there have been allegations of illegal equine slaughterhouse operations in southern Florida.<sup>24</sup>

### *C. Slaughterhouses: How They Function and How They Acquire Horses*

In the United States, there are about nine million domestic horses and tens of thousands of wild horses.<sup>25</sup> In 2005, of the nine million domestic horses in the United States, about four million were used for recreational purposes, three million were used for showing purposes, 800 for racing purposes, and two million for activities that range from farm work, ranch work, police work, and rodeos.<sup>26</sup> In 2007, forty-six percent of horses were used for pleasure purposes, twenty five percent were used for farming and ranch work, sixteen percent were used for breeding purposes, and ten percent were used for showing and other competitive purposes.<sup>27</sup> All of these horses have the chance of ending up at an auction where they can be acquired for slaughter

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* For example, over 140,000 Quarter Horses are born each year. Ones that do not have the right physical conformation or color are often sent to slaughter rather than being humanely euthanized or placed in another home. *Id.*

<sup>24</sup> *Horse slaughter allegations at Florida farms; residents complain of disturbing sounds, supra* note 21.

<sup>25</sup> Petition from Humane Soc’y of the United States & Front Range Equine Rescue to United States Food Safety Inspection Service to Create Rules and Regulations Governing the Sale, Transport and Processing of Horses and Horse Meat Intended for Human Consumption 8 (Apr. 9, 2012), *available at* [http://www.fsis.usda.gov/PDF/Petition\\_SchiffHardin\\_040612.pdf](http://www.fsis.usda.gov/PDF/Petition_SchiffHardin_040612.pdf)

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

purposes.<sup>28</sup> These horses come from racetracks, riding stables, farms, and private owners.<sup>29</sup> Horses have also been stolen out of their pastures and barns to be sold for slaughter.<sup>30</sup> This is a common way of acquiring horses for slaughter.<sup>31</sup> Horses are also taken from the wild during government round-ups.<sup>32</sup> Regardless of where the horses come from, they fit in “two large categories.”<sup>33</sup> One category is the “carefully-maintained and cared-for privately owned horses.”<sup>34</sup> The other category is “wild horses, who then often become privately-maintained horses for some time before their sale at auction that sends them on to slaughter.”<sup>35</sup>

Horses destined for slaughter are often subject to cruelty starting from their transportation to the slaughter establishment.<sup>36</sup> Because there are no legally permitted horse slaughter facilities operating in the United States, all of the horses destined for slaughter for human consumption are exported to Canada and Mexico.<sup>37</sup> The horses are cramped into trucks that are often too small for

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<sup>28</sup> *Horse Slaughter: The Facts*, ANIMALS’ ANGELS, <http://www.animalsangels.org/the-issues/horse-slaughter.html> (last accessed Oct. 5, 2012).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* In 1998, California banned horse slaughter, and the rate of horse theft experienced a drop of 34%. *Id.*

<sup>32</sup> See Petition, Humane Soc’y of the United States, *supra* note 26, at 11.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 23. This is often the case with other animals being brought to slaughter. Undercover investigation of horse slaughter practices has led to “shocking” discoveries. Live horses were observed being dragged, whipped, and crammed into trucks that have interior temperatures reaching 110 degrees. Horses are also shipped for more than 24 hours at a time without necessary food, water, or rest. Pregnant mares, young foals, injured horses (whether already injured or injured at the time of transport), and blind horses are transported in these conditions. *Id.*

<sup>37</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-11-28, ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 11 (2011), *available at* <http://www.gao.gov/new.items/d11228.pdf#page15>. Pet food and other products, such as glue, can still be obtained from horse corpses that are brought to render plants for disposal. Because the production of these types of products is not governed by the USDA, FDA, or the Federal Meat Inspection Act, they are not subject to any stringent requirements and do not need to be inspected by federal inspectors. There are currently three U.S. facilities in the United States, in Colorado, Nebraska, and New Jersey, that import horsemeat to be repackaged and distributed to entities that feed the meat to animals at zoos and circuses. *Id.*

the number of horses being transported at one particular time.<sup>38</sup> Oftentimes, the horses arrive at the slaughterhouse injured.<sup>39</sup> As of 2010, Canada had four horse slaughter facilities and Mexico had three.<sup>40</sup> Between 2006 and 2010, the rate of export of American horses destined for slaughter increased from 33,000 in 2006 to 138,000 in 2010.<sup>41</sup> Approximately 168,000 horses were exported for “other purposes,” but ultimately ended up at slaughter facilities.<sup>42</sup>

#### *D. Federal Legislative Responses to Horse Slaughter*

Congress made attempts to regulate horse slaughter starting in the late 1950s. In 1959, Congress passed the Wild Horse Annie Act that prohibited hunters from using motor vehicles and aircraft to hunt wild horses on public land.<sup>43</sup> Later, in 1971, Congress passed the Wild Free-Roaming Horses and Burros Act because the first act had been ineffective.<sup>44</sup> This Act criminalized the capture and sale of a wild horse.<sup>45</sup> In 2004, Republican Senator Conrad Burns of Montana introduced a proposal that would lift the ban against selling wild horses for slaughter.<sup>46</sup> This proposal was included in a spending bill that, among other things, allowed the government to sell older and unwanted horses for slaughter purposes.<sup>47</sup> However, in 2005, Congress passed an agricultural appropriations bill that placed a one-year moratorium on federal funding for the

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<sup>38</sup> *Id.*

<sup>39</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-28, ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 11 (2011), *available at* <http://www.gao.gov/new.items/d11228.pdf>, at 24. A study conducted in 1999 of sixty horses being transported for slaughter found that one horse had to be removed after traveling for twelve hours, and it died two days later. Out of the remaining fifty-nine that made it to the final destination, there were a total of eighty-one injuries. *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 12. The rate of export in 2006 was 33,000 horses. *Id.*

<sup>42</sup> *Id.* at 12. The “other purposes” included “feeder” horses that were sent to Canadian or Mexican feedlots in order to be fattened. After this, they were sent to a slaughter facility in that country. *Id.*

<sup>43</sup> 18 U.S.C. § 47 (2006).

<sup>44</sup> 16 U.S.C. §§ 1331 – 40 (2006).

<sup>45</sup> 16 U.S.C. §§ 1331 – 40 (2006).

<sup>46</sup> Mary W. Craig, *Just Say Neigh: A Call for Federal Regulation of By-Product Disposal by the Equine Industry*, 12 ANIMAL L. 193, 198 (2006).

<sup>47</sup> *Id.* This was used as a way of reducing the wild horse and burro population in the country. *Id.*

inspection of horsemeat, among other things contained in the bill.<sup>48</sup> Because inspections of slaughter facilities are required under the Federal Meat Inspection Act, and any meat that is not inspected is also not marketable in the United States, those who sponsored the provision believed horse slaughter for human consumption would be discontinued due to the lack of funding for equine slaughterhouse federal inspectors.<sup>49</sup> In response to the measure, equine slaughterhouses petitioned the United States Department of Agriculture, offering to pay for inspections in exchange for permission to continue operations.<sup>50</sup> The USDA obliged, and as a result, equine slaughterhouses were allowed to continue with operations, as long as those slaughterhouses paid for the requisite inspections.<sup>51</sup> In 2007, only three horse slaughter facilities remained in the United States. The states in which those slaughterhouses remained, Texas and Illinois, passed laws that would force the closure of those facilities.<sup>52</sup> After Texas and Illinois courts upheld the laws, the last remaining slaughterhouses closed.<sup>53</sup>

Members of Congress introduced bills that would ban slaughter completely in the United States. In 2003, New York Republican Rep. John Sweeney introduced one such bill.<sup>54</sup> Congress took no action on it.<sup>55</sup> In February 2005, a subsequent bill, H.R. 503, was introduced.<sup>56</sup> H.R. 503 added an amendment to the already enacted Horse Protection Act of 1970.<sup>57</sup> The Committee of Agriculture recommended the bill not pass; however the House of Representatives passed the bill

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<sup>48</sup> Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2006, Pub. L. No. 109-97, 119 Stat. 2120 (2005).

<sup>49</sup> Federal Meat Inspection Act 21 U.S.C.A. § 601 (West); 151 Cong. Rec. S10218 (Sept. 20, 2005).

<sup>50</sup> 2005 – 2006 Legislative Review, 12 Animal L. 277, 281 (2006).

<sup>51</sup> 2005 – 2006 Legislative Review, 12 Animal L. 277, 281 (2006).

<sup>52</sup> Catrin Einhorn, *Horses Spared in U.S. Face Death Across the Border*, 157 N.Y. TIMES A10 (Jan. 11, 2008), available at [www.nytimes.com/2008/01/11/us/11horse.html](http://www.nytimes.com/2008/01/11/us/11horse.html) (last accessed Mar. 30, 2013).

<sup>53</sup> *Cavel Int'l., Inc. v. Madigan*, 500 F.3d 551 (7th Cir. 2007), cert. denied, 128 S. Ct. 2950 (2008); *Empacadora de Carnes de Fresnillo, S.A. de C.V. v. Curry*, 476 F.3d 326 (5th Cir. 2007), cert. denied, 550 U.S. 957 (2007). The cases were appealed to the Supreme Court, but both were denied review. *Id.*

<sup>54</sup> H.R. 857, 108th Cong. (2003).

<sup>55</sup> H.R. 857, 108th Cong. (2003).

<sup>56</sup> H.R. 503, 109th Cong. (2005).

<sup>57</sup> 15 U.S.C.A. § 1821 (2006).; H.R. 503, 109th Cong. (2005).

on September 7, 2006.<sup>58</sup> Despite this, the bill expired before it was put before the Senate for a vote.<sup>59</sup>

In 2009, the introduction of H.R. 6598, or the Prevention of Equine Cruelty Act, signified another attempt.<sup>60</sup> This Act imposed criminal sanctions on anyone who

knowingly possesses, ships, transports, purchases, sells, delivers, or receives, in or affecting interstate or foreign commerce, any horse with the intent that it is to be slaughtered for human consumption; or possesses, ships, transports, purchases, sells, delivers, or receives, in or affecting interstate commerce or foreign commerce, any horse flesh or carcass or part of a carcass, with the intent that it is to be used for human consumption.<sup>61</sup>

The ban on funding for equine slaughterhouse inspections imposed by the 2005 appropriations act continued until 2010.<sup>62</sup> On November 18, 2011, President Barack Obama signed an appropriations bill into law that reinstated funding for USDA inspections of horse slaughter facilities in the United States, which effectively ended the lack-of-funding-imposed ban on horse slaughter in the United States.<sup>63</sup> However, as of the time of this publication, there have been no equine slaughterhouses approved for operation.

After, additional bills were introduced to ban horse slaughter. On June 9, 2011, the American Horse Slaughter Prevention Act was introduced in the Senate, and on September 19, 2011, it was introduced in the House.<sup>64</sup> The House bill was referred to the House Subcommittee on Livestock, Dairy, and Poultry, and the Senate bill was referred to the Senate Committee on

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<sup>58</sup> H.R. REP. NO. 109-746 (2007).

<sup>59</sup> *Id.*

<sup>60</sup> H.R. 503, 111th Cong. (2009).

<sup>61</sup> *Id.* at § 50(a)(1)-(2). The act imposed a fine, imprisonment not more than three years, or both on the perpetrator. A lesser sentence of a fine, imprisonment for not more than a year, or both, is imposed on those whose “conduct involves less than 5 horses or less than 2,000 pounds of horse flesh or carcass or part of a carcass.” *Id.* at § 50(a), (b)(1)-(3).

<sup>62</sup> Pub. L. No. 110-161, § 741, 121 Stat. 1844 (2008); Pub. L. No. 111-8, § 739, 123 Stat. 524 (2009).

<sup>63</sup> Pub. L. No. 112-55, 125 Stat. 552 (2011).

<sup>64</sup> H.R. 2966, 112th Cong. (2011); S. 1176, 112th Cong. (2011).

Commerce and Transportation.<sup>65</sup> The committees to which they were referred have not reported on the respective bills.<sup>66</sup> Each bill would have prohibited horse slaughter for human consumption.<sup>67</sup>

#### E. State Legislative Responses to Horse Slaughter

Currently, only four states have direct bans on the slaughter of horses for human consumption: California, Illinois, Texas, and most recently, New Jersey. California's law became effective on October 1, 2011.<sup>68</sup> The statute makes it "unlawful for any person to possess, to import into or export from the state, or to sell, buy, give away, hold, or accept any horse with the intent of killing, or having another kill, that horse, if that persons knows or should have known that any part of that horse will be used for human consumption."<sup>69</sup> Illinois also has its own ban on horse slaughter for human consumption.<sup>70</sup> The law, effective May 24, 2007, makes it "unlawful for any person to slaughter a horse if that person knows or should know that any of the horse meat [sic] will be used for human consumption."<sup>71</sup> Additionally, the law makes it unlawful "for any person to possess, to import into or export from this State, or to sell, buy, give away, hold, or accept any horse meat if that person knows or should know that the horse meat will be used for human consumption."<sup>72</sup> The Texas law is the oldest, enacted in 1949.<sup>73</sup> However, this law only makes it an offense if "the person sells, offers for sale, or exhibits for sale horsemeat as

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<sup>65</sup> *Bill Summary & Status 112th Congress (2011-2012) H.R. 2966*, THOMAS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:hr2966>: (last accessed Mar. 30, 2013)

<sup>66</sup> *American Horse Slaughter Prevention Act of 2011 (S. 1176)*, GOVTRACK.US, <http://www.govtrack.us/congress/bills/112/s1176> (last accessed Oct. 18, 2012); *American Horse Slaughter Prevention Act of 2011 (H.R. 2966)*, GOVTRACK.US, <http://www.govtrack.us/congress/bills/112/hr2966> (last accessed Oct. 18, 2012).

<sup>67</sup> S. 1176; H.R. 2966.

<sup>68</sup> CAL. PENAL CODE § 598c (West 2011).

<sup>69</sup> *Id.* The law makes a violation a felony with a punishment in state prison for sixteen months, or two-three years. *Id.*

<sup>70</sup> 225 ILL. COMP. STAT. § 635 / 1.5 (2007).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> TEX. AGRIC. CODE ANN. § 149.002 (West 1991).

food for human consumption; or the person possesses horsemeat with the intent to sell the horsemeat as food for human consumption.”<sup>74</sup> The Texas law only addresses horsemeat and has nothing to do with live horses. As a result, this law is weaker than the laws in Illinois and California, which have provisions for both horsemeat and live horses.

On September 21, 2012, Governor Chris Christie of New Jersey signed a bill banning horse slaughter in the state.<sup>75</sup> The bill prohibits slaughter of horses and the sale of horseflesh for human consumption.<sup>76</sup> The bill makes the knowing slaughter of a horse for human consumption a disorderly persons offense.<sup>77</sup> Anyone who violates the law is subject to a fine of “not less than \$100 and a term of imprisonment of not less than thirty days.”<sup>78</sup> Additionally, a civil fine of \$500 to \$1,000 for each horse slaughtered for human consumption is imposed on the individual violating the law.<sup>79</sup>

Much of the reasoning for passing laws such as the ones in New Jersey, California, Illinois, and Texas has not surrounded the potential health issues inherent in consuming horsemeat. Rather, it has focused on the horse’s status in society in the United States. For example, New Jersey Republican Assemblyman Ronald Dancer in speaking about the bill stated that “the horse is New Jersey’s state animal” and a “magnificent animal[]” appreciated for its “grace and beauty.”<sup>80</sup> When California’s law prohibiting horse slaughter and sale of horsemeat for human consumption went to voters in 1998, the “Findings and Declarations” section stated that horses are a part of California’s heritage and played a “major role” in the state’s “historical

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<sup>74</sup> *Id.*

<sup>75</sup> N.J.S.A. 4:22-25.5 (2012); Don E. Woods, *Gov. Christie signs bill banning horse slaughter for human consumption*, SOUTH JERSEY TIMES (Sept. 21, 2012 4:18 PM), available at [http://www.nj.com/cumberland/index.ssf/2012/09/gov\\_chris\\_christie\\_signs\\_bill.html](http://www.nj.com/cumberland/index.ssf/2012/09/gov_chris_christie_signs_bill.html).

<sup>76</sup> N.J.S.A. 4:22-25.5 (2012).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> N.J.S.A. 4:22-26 (2012).

<sup>80</sup> See Woods, *supra* note 77.

growth and development.”<sup>81</sup> Further, the findings cited horse slaughter’s contribution to crime and consumer fraud because “horses can be stolen, or purchased without disclosure or under false pretenses, to be slaughtered or shipped for slaughter.”<sup>82</sup> The Illinois law mirrors some of the California legislature’s findings, and adds that the horse is a “living symbol of the spirit, rugged independence, and tireless energy of our pioneer heritage” and that horses have served people in war as well as assisted in the migration west and been a partner to man “for thousands of years.”<sup>83</sup> Finally, the General Assembly declared that the prohibition of horse slaughter enacts into law a premise that has been “widely accepted for generations” in Illinois: “it is immoral and unlawful to slaughter horses in this State to be used for food for human consumption.”<sup>84</sup> The Texas law is the oldest one of the four laws banning horse slaughter in the United States, but the Texas Senate is reconsidering the law now that horse slaughter may begin again domestically.<sup>85</sup> The legislatures in New Jersey, California, Illinois, and Texas placed a high value on horses because of their place in society, but none of the legislatures focused on the health effects consuming horsemeat could have on those who eat it.

## **II. FEDERAL REGULATIONS REGARDING THE SLAUGHTER AND DISTRIBUTION OF MEAT FOR HUMAN CONSUMPTION**

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<sup>81</sup> Vote98 – Text of Proposition 6, California Secretary of State, *available at* <http://vote98.sos.ca.gov/VoterGuide/Propositions/6text.htm> (last accessed Feb. 7, 2013). Part of the law’s purpose is “to recognize horses as an important part of California’s heritage that deserve protection from those who would slaughter them for food for human consumption.” *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Full Text of HB1171, Illinois General Assembly, *available at* <http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=50&GA=94&DocTypeId=HB&DocNum=1171&GAID=8&LegID=15911&SpecSess=&Session=> (last accessed Feb. 7, 2013).

<sup>84</sup> *Id.*

<sup>85</sup> Jordan Smith, *No Country for Old Horses? Senate Consider Horse Slaughter*, THE AUSTIN CHRONICLE (July 16, 2012 12:42 PM), *available at* <http://www.austinchronicle.com/blogs/news/2012-07-16/no-country-for-old-horses/>.

### A. *USDA Regulations*

Before an animal is allowed to enter slaughter, packing, meat canning, or other similar facilities in the United States, USDA inspectors must inspect the animal.<sup>86</sup> Any animals that are found to be diseased will be slaughtered separately from those that are considered to be ‘amenable.’<sup>87</sup> Any animal that has been slaughtered already and is considered to be amenable is also subject to examination and inspection.<sup>88</sup> In addition to inspecting animals and carcasses, inspectors must also examine “the method by which amenable species are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected . . .”<sup>89</sup> The Humane Methods of Livestock Slaughter Act, enacted in 1958, states that slaughtering and handling in connection with the slaughter is compliant with U.S. public policy only if it is humane.<sup>90</sup> Under this Act, there are only two acceptable methods of slaughter.<sup>91</sup> For horses and mules, “all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is [sic] rapid and effective, before being shackled, hoisted, thrown, cast, or cut.”<sup>92</sup> If any inhumane treatment is discovered, the Secretary of Agriculture may refused to provide inspection to a new slaughterhouse or cause inspection to be “temporarily suspended” at an existing slaughterhouse.<sup>93</sup> Once the slaughter establishment is in compliance with regulations again, inspection may be reinstated.<sup>94</sup>

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<sup>86</sup> 21 U.S.C.A. § 603(a) (West); 21 U.S.C.A. § 601(a) (West).

<sup>87</sup> 21 U.S.C.A. § 603(a) (West). An amenable species is one that is allowed to be slaughtered and is subject to 21 U.S.C.A. §601 et seq. 21 U.S.C.A. §601(w)(West).

<sup>88</sup> *Id.*

<sup>89</sup> 21 U.S.C.A. § 603(b) (West).

<sup>90</sup> 7 U.S.C.A. § 1902 (West).

<sup>91</sup> *Id.*

<sup>92</sup> 7 U.S.C.A. § 1902(a) (West). This method of slaughter also applies to cattle, calves, sheep, swine, and other livestock. *Id.*

<sup>93</sup> 21 U.S.C.A. § 603(b).

<sup>94</sup> *Id.*

A post-mortem examination is conducted, and any “carcasses and parts thereof of all such animals found not to be adulterated shall be marked, stamped, tagged, or labeled as ‘Inspected and passed.’”<sup>95</sup> Meat is adulterated “if it bears or contains any such poisonous or deleterious substance which may render it injurious to health” or “if it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance.”<sup>96</sup> Any carcasses or parts of carcasses that do not meet this standard, or that have been adulterated, must be labeled, marked, stamped, or tagged as “[i]nspected and condemned.”<sup>97</sup> The condemned carcasses must be destroyed for food purposes in the presence of a federal inspector.<sup>98</sup> Carcasses that have been acquired elsewhere can be brought into a slaughter establishment, but they are subject to an exam and inspection before they are able to enter that establishment to be treated and prepared for meat food products.<sup>99</sup> The same procedures hold for meat that will be exported.<sup>100</sup> In this circumstance, an inspector gives an official certificate that states the condition of the meat to be exported.<sup>101</sup> This provision applies to “horses, mules, and other equines,” cattle, sheep, swine, and goats.<sup>102</sup> This procedure does not apply to individuals that slaughter an animal he or she has raised on his or her own if it is “exclusively for use by him and members of his household and his nonpaying guests and employees.”<sup>103</sup>

Post-slaughter and preparation, the USDA Food Safety and Inspection Service (“FSIS”) administers a national residue program through which meat processed through slaughterhouses is

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<sup>95</sup> 21 U.S.C.A. § 604.

<sup>96</sup> 9 C.F.R. § 301.2.

<sup>97</sup> 21 U.S.C.A. § 604.

<sup>98</sup> *Id.*

<sup>99</sup> 21 U.S.C.A. § 605.

<sup>100</sup> 21 U.S.C.A. § 615.

<sup>101</sup> 21 U.S.C.A. § 616.

<sup>102</sup> *Id.*

<sup>103</sup> 21 U.S.C.A. § 623(a).

sampled for residue.<sup>104</sup> The samples from the meat are then compared with established FDA and Environmental Protection Agency (“EPA”) tolerance guidelines to determine if the amounts of residue present in the sample are prohibitive.<sup>105</sup>

### B. *Problems with the Residue Sampling Program*

In a 2010 report the Inspector General found that the USDA was not doing enough to keep harmful drug and chemical residues out of beef products.<sup>106</sup> Before the new program was established, tests were conducted for only one or a small handful of compounds in a meat sample.<sup>107</sup> The Inspector General’s report stated that the USDA was “not accomplishing its mission of monitoring the food supply for harmful residues.”<sup>108</sup> Additionally, the FSIS was not even attempting to recall any contaminated meat even when the meat had an “excessive presence of veterinary drugs.”<sup>109</sup> The FSIS and outside contractors that perform quality control reviews also disagreed on the amount of meat that should be sampled.<sup>110</sup> FSIS laboratory personnel believed they should test more than 300 samples per slaughterhouse; however, quality control review personnel believed FSIS personnel could test fewer samples “without a significant loss in

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<sup>104</sup> U.S. DEP’T OF AGRIC. OFFICE OF INSPECTOR GEN., 24601-08-KC, FSIS NATIONAL RESIDUE PROGRAM FOR CATTLE 1 (2010), *available at* <http://www.usda.gov/oig/webdocs/24601-08-KC.pdf>. Residue is “any substance . . . remaining in livestock at time of slaughter or in any of its tissues after slaughter as the result of treatment or exposure of the livestock to a pesticide, organic or inorganic compound, hormone, hormone-like substance, growth promoter, antibiotic, . . . tranquilizer, or other therapeutic or prophylactic agent.” 9 C.F.R. § 301.2

<sup>105</sup> *Id.*

<sup>106</sup> U.S. DEP’T OF AGRIC. OFFICE OF INSPECTOR GEN., 24601-08-KC, FSIS NATIONAL RESIDUE PROGRAM FOR CATTLE 1 (2010), *available at* <http://www.usda.gov/oig/webdocs/24601-08-KC.pdf>; Helena Bottemiller, *Audit Finds Tainted Meat Reaching Consumers*, FOOD SAFETY NEWS (April 14, 2010), <http://www.foodsafetynews.com/2010/04/audit-finds-tainted-meat-making-it-to-market/#.UGtEy7R9ndk>.

<sup>107</sup> *See* Bottemiller, *supra* note 109.

<sup>108</sup> U.S. DEP’T OF AGRIC. OFFICE OF INSPECTOR GEN., 24601-08-KC, FSIS NATIONAL RESIDUE PROGRAM FOR CATTLE 1 (2010), *available at* <http://www.usda.gov/oig/webdocs/24601-08-KC.pdf>.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 2.

precision.”<sup>111</sup> The frequency of the sampling was also disputed in the report.<sup>112</sup> When the FSIS tests meat samples, the methodologies used are considered “antiquated” because the FDA approved those particular methods at the time the drugs allowed for use in food product animals were approved.<sup>113</sup> Additionally, when a particular meat sample failed lab tests, the FSIS inspectors did not recall the adulterated meat.<sup>114</sup> The meat was allowed to enter commerce despite its potentially harmful effects on those who consumed it.<sup>115</sup>

As of July 2012, the USDA decided to increase testing for veterinary drug residues in the domestically distributed meat supply.<sup>116</sup> This new testing system will allow the USDA to test for dozens of drugs, insecticides, and other harmful compounds all at the same time.<sup>117</sup> The new methods allow FSIS to “test for fifty-five pesticide chemicals, nine kinds of antibiotics, various metals, and eventually more than fifty other chemicals.”<sup>118</sup> Additionally, the number of annual samples FSIS takes per type of animal slaughtered will be increased from 300 to 800.<sup>119</sup> As of the time of this publication, the USDA has not announced what specific chemicals will be tested for in the new system nor have they been specific as to when it will be fully implemented.

### III. HORSE MEAT DISTRIBUTION AND CONSUMPTION: A PUBLIC HEALTH ISSUE

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<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 3.

<sup>114</sup> U.S. DEP’T OF AGRIC. OFFICE OF INSPECTOR GEN., 24601-08-KC, FSIS NATIONAL RESIDUE PROGRAM FOR CATTLE 1 (2010), available at <http://www.usda.gov/oig/webdocs/24601-08-KC.pdf>, at 4. Between July 2007 and March 2008, FSIS found four adulterated carcasses that had “violative levels of veterinary drugs and . . . the plants involved had released the meat into the food supply.” The drugs involved in the adulterated carcasses had the potential to cause stomach, nerve, and/or skin problems in consumers. *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> Helena Bottemiller, *USDA to Ramp Up Drug Residue Testing for Meat and Poultry*, FOOD SAFETY NEWS (July 2, 2012), <http://www.foodsafetynews.com/2012/07/usda-to-ramp-up-drug-residue-testing-for-meat-and-poultry/#.UGr8ZLR9ndk>.

<sup>117</sup> See Bottemiller, *supra* note 109.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

*The Problem with American Horsemeat*

Horses are often well cared for, usually under private ownership.<sup>120</sup> Currently, horses are not considered “commodities” within the meaning of any regulation that would apply to the slaughter industry for meat production.<sup>121</sup> Horses see various types of professionals on a regular basis, such as veterinarians and equine dentists, who may prescribe medications and substances to the animals that are dangerous to humans.<sup>122</sup> According to various studies, more than 110 substances given to horses are banned in food animals as per FDA regulations.<sup>123</sup> Currently, there are no methods in place to monitor and assess the drug risks associated with consuming horsemeat.<sup>124</sup> Because horses are generally not raised as food animals, the veterinarians treating them are “not constrained by the possibility of the meat being consumed by humans as with . . . other farm animals.”<sup>125</sup> There is a “greater problem of drug residue” in equines than in animals traditionally raised for food.<sup>126</sup> Animals raised for food are subject to FDA and USDA constraints when it comes to treating those animals for health issues; horses, not food animals, are not subject to those constraints.<sup>127</sup> Horsemeat poses a severe public health threat because of the drug residues present in the meat that are banned by the FDA in food producing animals.

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<sup>120</sup> See Petition, Humane Soc’y of the United States, *supra* note 26, at 11.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> 20 C.F.R. § 520 (2012); *Humane groups ask FDA to declare horse meat ‘unqualified’ for human consumption*, DVM NEWSMAGAZINE (May 1, 2012), <http://veterinarynews.dvm360.com/dvm/article/articleDetail.jsp?id=766241>.

<sup>124</sup> *Humane groups ask FDA to declare horse meat ‘unqualified’ for human consumption*, *supra* note 115.

<sup>125</sup> Dan Flynn, *Horse Slaughter Sides Agree on Food Safety Problem*, FOOD SAFETY NEWS (July 2, 2012), <http://www.foodsafetynews.com/2012/07/horse-slaughter-sides-agree-on-food-safety-problem/#.UGr7-rR9ndk>.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

For example, Phenylbutazone, also known as Bute, is the most commonly cited example of a dangerous drug used in horses.<sup>128</sup> Bute is a non-steroidal, anti-inflammatory drug much like aspirin or Advil.<sup>129</sup> However, this drug can produce much more serious health consequences in humans.<sup>130</sup> In 1949, phenylbutazone was introduced in the United States for the treatment of rheumatoid arthritis and gout in humans.<sup>131</sup> It was found, however, that within three years of use, serious and often fatal adverse consequences occurred.<sup>132</sup> Blood dyscrasias was commonly induced.<sup>133</sup> This included complications such as aplastic anemia, agranulocytosis, leukopenia, thrombocytopenia, and most severely, death.<sup>134</sup> The National Toxicology Program has also found that phenylbutazone is a carcinogen.<sup>135</sup> As a result of these findings, the FDA banned the use of phenylbutazone in humans.<sup>136</sup> The medication is currently permitted for use in dogs “for inflammatory conditions associated with the musculoskeletal system.”<sup>137</sup> The medication is approved for use in horses for the same purpose, but the FDA placed limitations on its use stating “[d]o not use in horses intended for human consumption.”<sup>138</sup>

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<sup>128</sup> See, e.g., Nicholas Dodman, Nicolas Blondell, Ann M. Marini, “Association of phenylbutazone usage with horses bought for slaughter: A public health risk,” FOOD AND CHEMICAL TOXICOLOGY 48 (2010) 1270-74, available at

[http://www.equinewelfarealliance.org/uploads/Food\\_and\\_Chemical\\_Toxicology\\_FINAL.pdf](http://www.equinewelfarealliance.org/uploads/Food_and_Chemical_Toxicology_FINAL.pdf).

<sup>129</sup> *Id.* at 1.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*; U.S. Food and Drug Admin., “FDA Order Prohibits Extralabel Use of Phenylbutazone in Certain Dairy Cattle,” available at

<http://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm124078.htm>.

<sup>132</sup> Dodman and Blondell, *supra* note 120, at 1.

<sup>133</sup> *Id.*; FDA Order Prohibits Extralabel Use of Phenylbutazone in Certain Dairy Cattle, *supra* note 134.

<sup>134</sup> FDA Order Prohibits Extralabel Use of Phenylbutazone in Certain Dairy Cattle, *supra* note 134.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> 21 C.F.R. § 520.1720a (2011).

<sup>138</sup> 21 C.F.R. § 520.1720a (c)(2)(iii) (2011).

Other banned substances are also used in horses. Parasitism is the most common disease affecting equines.<sup>139</sup> As a result, horses are often dewormed on a schedule that will help in eliminating parasites in the equine's system and preventing the reoccurrence of those parasites.<sup>140</sup> There are various rotation and dosing schedules followed when administering dewormer.<sup>141</sup> The ingredient contained in dewormers, Ivermectin, is dangerous to humans.<sup>142</sup> Ivermectin is administered orally either in paste or solid form, such as a pellet, and any dewormer containing that compound is labeled "[d]o not use in horses intended for human consumption."<sup>143</sup> For external pest control, horses are sprayed with fly spray. Feed-through supplements, given with the horse's daily food, are also available.<sup>144</sup> Many fly sprays contain deodorized kerosene.<sup>145</sup> If ingested, pulmonary edema, convulsions, and central nervous system depression can all occur in humans.<sup>146</sup> Additionally, an insecticide called Prallethrin is contained in other fly sprays.<sup>147</sup> Prallethrin can cause serious problems such as irritability to sound or touch, prickling sensation, numbness, fluid in the lungs and muscle twitching, and an occurrence

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<sup>139</sup> Drs. Foster & Smith Educational Staff, *Deworming Schedule for Horses*, DOCTORS FOSTER AND SMITH, <http://www.drsofostersmith.com/pic/article.cfm?aid=1569> (last visited Oct. 23, 2012).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*; *Horse Deworming Rotation Schedule and Worm Facts*, VALLEYVET.COM, [http://www.valleyvet.com/si\\_worm\\_facts.html](http://www.valleyvet.com/si_worm_facts.html) (last visited Oct. 23, 2012). Schedules vary from only in the fall and spring, to all four seasons, to six times a year, to the dewormer being fed in the equine's food every day. *Id.*

<sup>142</sup> 21 C.F.R. § 520.1192 (e)(1)(ii) (2009).

<sup>143</sup> 21 C.F.R. § 520.1192 (e)(1)(iii) (2009).

<sup>144</sup> The supplement is in powder or pellet form and added to the horse's daily feed so that it gets the same amount of fly control chemical each day. *Feed Through Fly Control Supplements & More*, SCIENCESTUFF.COM, <http://www.horse.com/pest-control/feed-through-fly-control/562/> (last visited Feb. 7, 2013).

<sup>145</sup> See Petition, Humane Soc'y of the United States, *supra* note 26, at 17

<sup>146</sup> *Material Safety Data Sheet: Kerosene, Deodorized*, SCIENCESTUFF.COM, <http://www.sciencestuff.com/msds/C1955.html> (last visited Oct. 24, 2012).

<sup>147</sup> *Prallethrin – toxicity, ecological toxicity and regulatory information*, PESTICIDEINFO.ORG, [http://www.pesticideinfo.org/Detail\\_Chemical.jsp?Rec\\_Id=PC35755#Toxicity](http://www.pesticideinfo.org/Detail_Chemical.jsp?Rec_Id=PC35755#Toxicity) (last visited Oct. 22, 2012).

of seizures.<sup>148</sup> The chemicals described *supra* are a mere handful of the chemical compounds used in or on horses that are harmful to humans and recommended not for use for horses for human consumption by the FDA.<sup>149</sup>

#### IV. REMEDIES ARE AVAILABLE

There are remedies to the horsemeat health problem that would remove the health risk altogether. Legislative action would assist in completely removing the risk by making it a criminal offense for horses to be slaughtered in the United States. This could be done via federal ban, but it could also be accomplished with legislation passed on a state-by-state basis in all fifty states that makes horse slaughter for human consumption a crime. Some states have already passed bans on horse slaughter for human consumption.<sup>150</sup> Another possibility is instituting a passport system similar to the system the European Union put into effect in July of 2009.<sup>151</sup>

##### A. Legislative Action: Federal or Fifty-State Ban on Horse Slaughter

Congress has repeatedly introduced attempts at passing a complete federal ban on horse slaughter. In 2006, The American Horse Slaughter Prevention Act (H. 503 / S. 1915) passed, but it stalled in the Senate during its review by the Committee on Commerce, Science, and

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<sup>148</sup> *Id.*

<sup>149</sup> Copper naphthenate used to treat hoof ailments; Cupric sulfate used in flesh wound treatments; Enrofloxacin for bacterial infections; hormonal treatments for broodmares that contain chemicals which can cause abortion and bronchiospasms in humans. *See generally*, 21 C.F.R. 524.463 (c)(1) – (3) (2006); *Material Safety Data Sheet: Copper Naphthenate, 8% Cu MSDS*, SCIENCELAB.COM, <http://www.sciencelab.com/msds.php?msdsId=9923553> (last visited Oct. 4, 2012); *Material Safety Data Sheet: Cupric Sulfate, anhydrous MSDS*, SCIENCELAB.COM, <http://www.sciencelab.com/msds.php?msdsId=9923598> (last visited Oct. 4, 2012); 21 C.F.R. §§ 522.812, 520.812, 524.802; 21 C.F.R. § 522.1290(c) (2009).

<sup>150</sup> *See* discussion *supra* Part I.E.

<sup>151</sup> Press Release, European Commission, Commission adopts single passport and matching chip for horses and other equidae (Sept. 6, 2008), *available at* [http://europa.eu/rapid/press-release\\_IP-08-905\\_en.htm](http://europa.eu/rapid/press-release_IP-08-905_en.htm).

Transportation.<sup>152</sup> The bill again failed during the 110<sup>th</sup> Congress.<sup>153</sup> Currently, Congress is considering the American Horse Slaughter Prevention Act, which would prevent horse slaughter plants from opening in the United States and completely stop the export of American horses for the purpose of slaughter to Canada and Mexico.<sup>154</sup> The Act would amend the Horse Protection Act,<sup>155</sup> adding language prohibiting “the shipping, transporting, moving, delivering, receiving, possessing, purchasing, selling, or donation of any horse or other equine to be slaughtered for human consumption.”<sup>156</sup>

The passage of this bill would ultimately prevent the slaughter of American horses for human consumption both in the United States and abroad. Additionally, this bill would also completely prohibit any horses from being exported to other countries that slaughter horses for meat, stopping killer buyers from circumventing domestic law by bringing horses to slaughterhouses in other countries that allow horse slaughter. As a result, this would effectively prevent those countries from exporting the horsemeat to foreign countries in which there is a large market for horsemeat. As evidenced from the past success of bills prohibiting horse slaughter that have been introduced in the House and Senate, a federal ban option is not likely; all previous bills have stalled upon review by various House and Senate Committees.

Another legislative option would be for all fifty states to pass their own laws that prohibit the slaughter of horses for human consumption. If all states were to consider the health ramifications horsemeat consumption would have on humans and pass laws banning horse slaughter, this would have an effect similar to that of a complete federal ban. Many of the laws, such as the one recently passed in New Jersey, ban the transportation of horses for slaughter for

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<sup>152</sup> <http://thomas.loc.gov/home/LegislativeData.php?&n=BSSC&c=109>.

<sup>153</sup> <http://thomas.loc.gov/home/LegislativeData.php?&n=BSSC&c=110>.

<sup>154</sup> S. 1176, 112th Cong. (2011).

<sup>155</sup> 15 U.S.C.A. § 1824 (1970).

<sup>156</sup> S. 1176.

human consumption.<sup>157</sup> If all states were to do this, it would create an inability for any horse to be transported from state to state or from one state to a different country because the transportation of that horse would be a criminal offense. The individual doing the buying, selling, or transportation of the horse for slaughter would also be subject to fines and imprisonment.

Three states that have bans, New Jersey, California, and Illinois remain committed to the horse slaughter ban. The laws of each state are quite similar in terms of the acts prohibited and the punishments imposed. Those laws provide a model after which other states could form their own legal prohibition on horse slaughter. However, the legislatures of each state should also acknowledge the health risks consumption of horsemeat poses to those who eat it. While New Jersey, California, and Illinois recognize the horse's valued status in society as a companion and animal that has helped the growth and history of this country, there are other reasons involving drugs and chemicals that are in or on a horse that pose a health risk separate to its societal and historical value to this country. These health reasons are important to recognize, and they would also bolster the passage of laws banning horse slaughter.

Using the already enacted laws as a model, other states' laws should make the knowing slaughter of a horse for human consumption an offense. Additionally, it should also make the sale, barter, or offer for sale or barter of horse flesh for human consumption an offense if the person "knew or reasonably should have known the flesh was from a horse."<sup>158</sup> It is also important to address situations where an individual would attempt to circumvent state law. For example, if an individual could not slaughter a horse for human consumption or sell its flesh for human consumption in a particular state, that individual could transport the horse or its meat to a

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<sup>157</sup> See discussion *supra* Part I.E.

<sup>158</sup> See N.J.S.A. 4:22-25.5 (2012).

jurisdiction that does not have prohibitions in place. To address this, there should be a provision in a prohibition statute that makes an offense the knowing transport of a horse for the purpose of slaughter for human consumption or the knowing transport of horsemeat for the purpose of human consumption.

As punishment for violating the statute, jail time and a fine are appropriate means of deterring this activity. The Illinois law also makes a second or subsequent violation of its horse slaughter law a felony rather than a misdemeanor.<sup>159</sup> Making subsequent violations of the law a more serious crime would serve as a greater deterrent. Finally, New Jersey has a provision that imposes a fine for each horse slaughtered in violation of the law.<sup>160</sup> A provision such as this along with a fine and jail time for the actual violation of the law by the perpetrator are necessary provisions to include in a law prohibiting the slaughter, sale, or transport of a horse or horsemeat for human consumption. More often than not, killer buyers buy, sell, and transport many horses for slaughter. As a result, the fines for violating a horse slaughter prohibition would be quite large in the end and serve as a deterrent.

*B. May I See Its Passport? Emulation of the European Equine Passport System*

Another possible solution is for the United States to emulate the European Passport System that the European Union uses to ensure that the horses being sent to slaughter for human consumption are not contaminated with drugs and other chemicals that would be harmful to humans if ingested. Implementing this type of system in the United States would be extremely beneficial in eradicating the health problem of consuming horsemeat. Because horses are used for such varied purposes in the United States, and because they are not raised solely for food purposes, unlike in other areas of

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<sup>159</sup> 225 ILL. COMP. STAT. § 635 / 1.5 (2007). New Jersey's law does not have a felony classification in its law for subsequent violations. N.J.S.A. 4:22-25.5 (2012).

<sup>160</sup> N.J.S.A. 4:22-26 (2012).

the world, including Europe, this system would be able to weed out the “contaminated” horses from the “non-contaminated” horses.

The European Union enacted its passport system in 2009.<sup>161</sup> The system requires all equines within the Union to have a microchip and passport.<sup>162</sup> The new regulation aims to create a better identification system by requiring all equidae to acquire an individual passport within six months after their birth.<sup>163</sup> When the passport is issued to the equine, the equine is also tagged with an electronic microchip, or “smart card.”<sup>164</sup> This chip is injected into the animal’s neck, which matches the passport issued to it.<sup>165</sup>

The system for identification requires one lifetime identification document, a method to ensure an “unequivocal link between the identification document and the equine animal,” and a database recording “under a unique identification number the identification details relating to the animal for which an identification document was issued to a person recorded in that database.”<sup>166</sup> For animals that are being used for slaughter, the identification document that was issued to the animal must accompany the animal while it is being transported to the slaughterhouse.<sup>167</sup> Whenever the equine receives medical treatment, the treating veterinarian must determine the equine’s status as “either intended for slaughter for human consumption or not intended for slaughter

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<sup>161</sup> Press Release, European Commission, Commission adopts single passport and matching chip for horses and other equidae (June 9, 2008), available at [http://europa.eu/rapid/press-release\\_IP-08-905\\_en.htm](http://europa.eu/rapid/press-release_IP-08-905_en.htm).

<sup>162</sup> *Id.*; Commission Regulation 504/2008, 2008 O.J. (149).

<sup>163</sup> See Press Release, European Commission, *supra* note 177.

<sup>164</sup> *Id.* at 5, 13, 32. The ‘smart card’ is a “plastic device with an embedded computer chip capable of storing data and transmitting them electronically to compatible computer systems.” *Id.* at 8.

<sup>165</sup> See Press Release, European Commission, *supra* note 177.

<sup>166</sup> Commission Regulation 504/2008, 2008 O.J. (149) 9.

<sup>167</sup> *Id.* at 13.

for human consumption” prior to the actual treatment.<sup>168</sup> If the treatment being given to the equine is not permitted for an animal intended for human consumption, the veterinarian must ensure that the animal is “irreversibly declared as not intended for slaughter for human consumption.”<sup>169</sup> In order to do this, the veterinarian must sign and invalidate a portion of the identification section of the passport document.<sup>170</sup> Any medications given to the animal must be recorded on the passport document as well.<sup>171</sup>

This system allows the European Union to ensure that any equines slaughtered for human consumption do not contain any prohibited medications harmful to human health. Any animals that are given medications prohibited for use in horses for human consumption are invalidated and unable to be brought to a slaughterhouse. As a result, a potentially serious public health problem is prevented. In contrast, there is no system comparable to this in the United States, which causes a problem, especially when horses are brought to auctions where kill buyers often acquire them and bring them to slaughterhouses to be used as meat for human consumption. Since there is no system in place that will allow an individual to effectively and accurately ascertain what a horse has been given over its lifetime before it arrived at the slaughter facility, there is no way to know whether the horsemeat is suitable for human consumption. Although there are testing procedures in place to see whether the meat contains excessive amounts of veterinary medicine residue, these systems are not entirely effective.<sup>172</sup>

Further motivation to enact a similar passport system is that the European Union has enacted more stringent requirements for its passport system in relation to third party

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<sup>168</sup> *Id.* at 16.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 16.

<sup>172</sup> *See* discussion *supra* Part II.B.

exports of horsemeat into the Union. After an investigation by the European Commission's Food and Veterinary Office showing that food safety standards for imported horsemeat were lacking, that many countries "do not keep adequate veterinary pharmaceutical records, and that there are no systems in place to "differentiate those equines raised for human consumption from those that are not," the European Union, as of July 2013, will require every horse presented for slaughter at a certified plant in countries that export horsemeat to the European Union to have "a veterinary record listing *all* medication that have been given *over their* [the horse's] *lifetime*."<sup>173</sup> Canada and Mexico, where many American horses go for slaughter, are certified plants.<sup>174</sup> Additionally, if the USDA approves applications for slaughterhouses, domestic slaughterhouses may also be exporting horsemeat to foreign countries, including the European Union.<sup>175</sup> Without a system that meets the European Union's newly strict requirements, the American, Canadian, and Mexican horse slaughter industry will be unable to service the large European market.

As of 2013, the USDA has already instituted an Animal Disease Traceability Program.<sup>176</sup> The purpose of the action is to aid in preventing and controlling animal disease, but it in no way addresses any medications or substances given to livestock

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<sup>173</sup> Press Release, Humane Soc'y of the United States, New Report on Human Health Risks from Consumption of American Horse Meat (April 27, 2012), *available at* [http://www.humanesociety.org/news/press\\_releases/2012/04/report\\_details\\_horse\\_meat\\_consumption\\_risks\\_042712.html](http://www.humanesociety.org/news/press_releases/2012/04/report_details_horse_meat_consumption_risks_042712.html) (emphasis added).

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* Three states, New Mexico, Missouri, and Oklahoma, have had groups submit applications to FSIS for slaughterhouses that would be slaughtering equines. Currently, the Missouri plant is experiencing delays due to title problems on the land where the slaughter facility would be located. In contrast, plans for the Oklahoma plant have been finalized. Dan Flynn, *USDA Ready to Inspect Horse Slaughter by Year End*, FOOD SAFETY NEWS (July 30, 2012), <http://www.foodsafetynews.com/2012/07/usda-ready-to-inspect-horse-slaughter-by-year-end/>.

<sup>176</sup> Traceability for Livestock Moving Interstate, 78 Fed. Reg. 2,040 (Jan. 9 2013) (to be codified at 9 C.F.R. pts. 71, 77-78, 86).

animals.<sup>177</sup> The Program is not meant to prevent disease; rather it is supposed to help in circulating knowledge about where diseased and at-risk animals are, as well as where they have been and when they were there.<sup>178</sup> This regulation applies to all livestock, including equines.<sup>179</sup> Under the regulation, horses and other equines must be identified by a description sufficient to identify the equine, an electronic identification, digital photographs that are sufficient to identify the horse, or for horses being transported to slaughter, a USDA backtag.<sup>180</sup> The USDA could easily incorporate a passport system similar to that in the European Union that would not only address disease traceability but also what banned substances have been given to which animals.

Unless the ban on funding for equine slaughterhouse inspections is reinstated, equine slaughter is slated to begin once again in the United States once the FSIS and the USDA have approved applications for slaughterhouses. Because horses are mostly acquired through auctions where their veterinary and drug history is unknown, this will pose a problem, as tainted horsemeat will be entering the domestic market for human consumption. This meat may also be exported to countries that do not have stringent standards, such as Japan, Francophone Canada, and Mexico, which does not have a system in place like the European Union. The Food Safety and Inspection Service has been “tight-lipped” about how it will be proceeding on the requests it has received for inspection services for equine slaughterhouses that would be producing horsemeat for human consumption.<sup>181</sup> Additionally, there is speculation that safe horsemeat would be “highly unlikely” given the relatively high probability that a horse has been given

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<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 2,042.

<sup>180</sup> 9 C.F.R. § 86.4 (2013).

<sup>181</sup> *See* Flynn, *supra* note 128.

phenylbutazone over its lifetime.<sup>182</sup> Although the USDA has stated that equine inspection protocols are being “thoroughly” reviewed, the Department has remained tight-lipped about what will be happening.<sup>183</sup>

The FSIS does not seem to be prepared to handle the re-introduction of equine slaughter facilities in the United States, especially due to the recent report that the inspectors have failed to thoroughly inspect meat that was entering the food market, as well as recall meat that was tainted.<sup>184</sup> The new meat inspection system is just being implemented, and the new testing methods can only identify a handful of harmful substances and chemicals that may be in meat being inspected in slaughterhouses throughout the country.<sup>185</sup> It does not seem that the FSIS is prepared to handle an influx of new meat that will have many more harmful substances and chemicals in it.<sup>186</sup>

An equine passport system would be beneficial in ensuring that horsemeat that enters the food chain is not contaminated. The passport system would give those in the market of slaughtering horses and selling their meat assurance that the meat is safe and does not pose any health problems to domestic or foreign consumers. A lifetime passport and microchip with the requirement that the passport be updated every time a

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<sup>182</sup> James McWilliams, *Trojan Horse Meat*, SLATE (Oct. 16, 2012 11:25 AM), [http://www.slate.com/articles/health\\_and\\_science/food/2012/10/m\\_wells\\_dinette\\_horse\\_meat\\_scandal\\_w\\_hy\\_horse\\_meat\\_is\\_more\\_dangerous\\_than.html](http://www.slate.com/articles/health_and_science/food/2012/10/m_wells_dinette_horse_meat_scandal_w_hy_horse_meat_is_more_dangerous_than.html).

<sup>183</sup> *Id.*; see Flynn, *supra* note 128.

<sup>184</sup> See discussion *supra* Part II.B.

<sup>185</sup> See Bottemiller, *supra* note 109. The new methods allow FSIS to “test for 55 pesticide chemicals, 9 kinds of antibiotics, various metals, and eventually more than 50 other chemicals.” No timeframe was given for “eventually more than 50 other chemicals.” Furthermore, equine animals are given over 100 different potential drugs, most of which are not approved for use in horses intended for human consumption. *Id.*; *Humane groups ask FDA to declare horse meat ‘unqualified’ for human consumption*, DVM NEWSMAGAZINE (May 1, 2012), <http://veterinarynews.dvm360.com/dvm/article/articleDetail.jsp?id=766241>.

<sup>186</sup> See McWilliams, *supra* note 198. A *Forbes* reporter called the USDA to inquire how they would deal with phenylbutazone (“Bute”). The USDA representative who handled the inquiry said she “had never heard of the drug, and even had to ask how it was spelled.” *Id.*

veterinarian gives an equine any type of medication would allow anyone to be able to track the equine's medical history throughout its lifetime. An accurate record would be given of what has been administered to the animal, and there would be no uncertainty of whether the animal had been given any dangerous and banned drugs. Furthermore, equines that are given extremely dangerous and definitively banned drugs for food animals, such as phenylbutazone, will have their passport updated to show that they are not suitable for human consumption. This will ensure that any horse that has been given Bute, for example, will never make its way into the food chain for unknowing humans to consume. Severe and potentially fatal health issues would be prevented. For practice purposes, it is worth noting that this passport system would most likely eliminate all horses from being slaughtered for food due to the ubiquitous use of harmful drugs in horses.

## **V. CONCLUSION**

With the reinstatement of federal funding for equine slaughterhouse inspections in 2011, horsemeat can become more widespread in the United States, as well as continuing to be exported to foreign countries that consider the meat to be a delicacy or a staple part of the diet. Due to the health risks horsemeat consumption poses, especially with the amount of dangerous drugs, substances, and chemicals given to horses through their lives, those consuming horsemeat are putting themselves at risk for developing serious, and sometimes fatal, adverse reactions to the chemicals. There has not been much attention given to the health issue that is inherent in consuming horsemeat. Additionally, the USDA and FSIS have not yet instituted clear-cut regulations on how horse slaughterhouses will be regulated. Action must be taken to either remove or lower

the risk that tainted horsemeat will enter the food market. Federal legislative action, such as passing a federal ban on horse slaughter for human consumption, would ensure that American horses are unable to enter the food chain for humans. Individual state legislative action can also accomplish the same result if all fifty states choose to pass bans on horse slaughter for human consumption. Additionally, and more realistically, an equine passport system could be instituted that would ensure all equines' veterinary and drug history is known. By keeping track of what equines are given what drugs, it will ensure that humans do not consume tainted meat, thus reducing the risk of adverse health problems.