

HORSE PROTECTION OPERATING PLAN

2004 – 2006

I. PURPOSE AND AUTHORITY

Congress has delegated to the Department of Agriculture (the “Department” or “USDA”) the authority to administer and enforce the Horse Protection Act (“HPA” or “Act”). 15 U.S.C. § 1821 *et seq.* Interpretation of the Act and the Horse Protection Regulations (“Regulations”) promulgated thereunder is a necessary function of that administration and enforcement, and is one that is given to all federal departments and agencies with similar authority. 9 C.F.R. §11.1 *et seq.*

The purpose of this document is to set forth the USDA Animal and Plant Health Inspection Service’s (“APHIS”) plan (“Operating Plan” or “Plan”) for implementation and enforcement of the Act for the 2004 - 2006 horse show seasons. Those Horse Industry Organizations (“HIOs”) who, through the signature of a legally authorized HIO official, have voluntarily agreed to the duties and responsibilities described in this Plan. Signatory HIOs have also agreed to voluntarily adhere to and enforce certain industry rules, which are included herein as a courtesy to the HIOs.

It is not the purpose or intent of this Operating Plan to limit in any way the USDA’s authority. It is clearly understood that the Secretary has the ultimate administrative authority in the interpretation and enforcement of the Act and the Regulations. This authority can only be curtailed or removed by an act of Congress, and not by this Plan.

Under the terms of this Operating Plan, APHIS will sub-delegate to the signatory HIOs the initial enforcement responsibility for affiliated horse shows, exhibitions, sales, and auctions. The use of the term “initial enforcement responsibility” means that the Department (1) has allowed the signatory HIOs, in a manner consistent with the terms of this Plan, to employ uniform and effective inspection procedures and to penalize conduct violative of the HPA and Regulations; and (2) has decided that it will not institute enforcement proceedings under the Act if, in its sole judgment, a signatory HIO’s initial enforcement actions against violators satisfy the requirements of this Plan and fulfill the purposes of the HPA.

APHIS will monitor closely the HIO’s identification of violations and the assessment of penalties, and will take appropriate steps to address cases of HIO noncompliance with the Act, Regulations or the terms of this Plan. Nothing in this Operating Plan is intended to limit APHIS’s enforcement authority under the Act and the Regulations. The Department expressly retains the authority to initiate enforcement proceedings against any HPA violator when it feels such action is necessary to fulfill the purposes of the HPA.

Finally, the Department retains final reviewing authority over the HIO’s implementation and enforcement of the Plan. Accordingly, it will engage in an independent review of the HIO’s implementation and enforcement of the Plan and it retains the authority to impose sanctions authorized by the Act, Regulations or the Plan against an HIO that fails to perform its obligations.

II. CONFLICTING PROVISIONS

This Plan incorporates by reference the Act and the Regulations. Any conflict between the provisions of this Operating Plan and the Act or Regulations shall be resolved by relying on the terms contained in the Act and/or Regulations as the more authoritative documents.

III. TERM

This Operating Plan will become effective on the date it is signed and remain in effect for three horse show seasons, until December 31, 2006. The Plan will undergo periodic review by APHIS and the HIOs. If changes are requested under this review process and APHIS determines that changes are necessary in order for the Plan to achieve its intended purpose, they will be made at the appropriate time. The Plan may be renewed beyond this date as determined by APHIS.

IV. DEFINITIONS

This Plan uses words and phrases defined in the HPA and the Regulations. The terms “Horse Industry Organization” (“HIO”) and “Designated Qualified Person” (“DQP”) are defined separately in the Regulations. However, where HIO is used in this document, it refers to an HIO with a DQP program certified under the terms found in the Regulations. In this document, words not defined in the HPA or the Regulations shall be defined as set forth herein, or if not defined herein, by their common usage.

V. APHIS ENFORCEMENT RESPONSIBILITIES

Nothing in this Operating Plan is intended to indicate that APHIS has relinquished any of its authority under the Act or Regulations. Under the terms of this Operating Plan, APHIS is placing initial enforcement responsibility on the certified DQP programs sponsored by HIOs that have signed the Plan for affiliated horse shows, exhibitions, sales, and auctions. APHIS Veterinary Medical Officers (“VMOs”) will inspect horse shows, exhibitions, sales and auctions affiliated or sanctioned by signatory HIOs in order to determine whether or not the DQP programs are successful in the detection of sore horses and individual DQPs are properly trained and competent for that purpose. This does not mean that VMOs will refrain from examining horses for compliance with the Act and Regulations

APHIS shall enforce the standards of conduct for APHIS VMOs and other APHIS personnel as contained in 5 C.F.R. §2635 and §8301. Additionally, the responsibilities of VMO performance are included in this Plan and will be part of the annual DQP/VMO training program.

A. APHIS Deputy Administrator for Animal Care. The responsibilities of the APHIS Deputy Administrator for Animal Care (“Deputy Administrator”) shall include, but are not limited to:

1. Certifying and decertifying DQP programs pursuant to the Regulations;
2. Allocating funds for HPA enforcement;
3. Annually reviewing for approval those provisions in HIO Rule Books directly related to compliance with the HPA and Regulations;

4. Reviewing for approval HIO Rule Book amendments directly related to HPA enforcement;
5. Initiating and reviewing HPA program projects (including training and research), APHIS HPA policies, and other regulatory activities;
6. Coordinating APHIS-DQP program regulatory activities, including the scheduling of meetings with DQP program representatives to address current issues; and
7. Responding to HIO comments and concerns regarding HPA enforcement issues.

B. APHIS Horse Protection Coordinator. The responsibilities of the APHIS Horse Protection Coordinator (“HP Coordinator”) shall include, but are not limited to:

1. Coordinating VMOs and allocating necessary enforcement resources to both affiliated and unaffiliated shows, exhibitions, sales, and auctions;
2. Receiving reports or data from DQP programs or show management, (including HPA violation documentation submitted by DQPs, show reports, and HPA suspension lists);
3. Recommending the issuance of Letters of Warning to individual DQPs;
4. Communicating directly with DQP program representatives regarding training, daily operations, conflict resolution, and requests for assistance; and
5. Facilitating unannounced or scheduled audits of HIO records with APHIS personnel during ordinary business hours which are further defined as the hours between 8:00a.m. to 5:00p.m., Monday through Friday, except for legal Federal holidays.

C. APHIS Veterinary Medical Officers. The responsibilities of the APHIS Veterinary Medical Officers (“VMOs”) shall include, but are not limited to:

1. Participating in and providing instruction in training courses for DQPs and VMOs.

Further, where appropriate and feasible, VMOs will jointly train with DQPs from certified DQP programs;

2. Observing and evaluating DQPs in the performance of their duties at shows, exhibitions, sales and auctions; utilizing currently accepted APHIS reports;

3. Inspecting horses and, in cases where a DQP has apparently failed to detect a violation of the Act or the Regulations, documenting that violation. The documentation by VMOs of cases of noncompliance is not limited solely to cases where the DQP has failed to detect a violation.

D. Resolution of Complaints About VMOs An HIO may submit to APHIS a written complaint regarding a VMO’s performance of duties at a show, exhibition, sale or auction. If the person making the complaint is a DQP or HIO official, that person must inform the VMO of the complaint at the end of the particular show, exhibition, sale or auction. Within ten (10) days of the event, the observing HIO official or DQP shall forward the complaint with specific detailed evidence and any supporting documentation to his/her DQP Coordinator who shall immediately forward the same to the HP Coordinator. The HP Coordinator, in consultation with the Regional Director and Deputy Administrator as appropriate, shall review the complaint, and, if necessary, investigate the allegations contained in it. Within thirty (30) days of receipt of the complaint the HP coordinator shall send a written response to the HIO.

VI. HIO RESPONSIBILITIES

The DQP programs must demonstrate the ability to properly identify sore horses and apply the appropriate penalties as outlined in Section X.E. of this Plan. Each HIO shall develop performance standards by which its DQP program can be evaluated, and shall be responsible for ensuring that it and its DQP program perform in accordance with the Act, the Regulations, and this Operating Plan. As set forth in 9 C.F.R. § 11.7(g), an HIO that fails to comply with the requirements in the Regulations is subject to decertification. If an HIO fails to comply with the provisions of this Plan, it shall be given notice of such noncompliance and an opportunity to correct the deficiencies. If the HIO fails to correct the deficiencies within a reasonable time, not to exceed 60 days, unless an extension is granted by APHIS, APHIS will cease to honor the HIO's signature on the Plan for the duration of that show season, and continuing until APHIS is satisfied the deficient areas have been corrected.

A. Rule Book. Each HIO shall prepare and publish a Rule Book that is in accordance with the HPA, the Regulations, and this Operating Plan, and shall annually submit the Rule Book for APHIS review as required by 9 C.F.R. §11.41. APHIS shall review and approve or require modification of those sections of the Rule Book directly related to compliance with and enforcement of the HPA, the Regulations, and this Operating Plan.

B. Standards of Conduct. Each HIO shall enforce the standards of conduct for DQPs contained in 9 C.F.R. §11.7(d)(7), and shall develop and enforce, at a minimum, regulatory conflict of interest standards of conduct for HIO officers.

C. DQP Licensing, Training, Discipline and Evaluation.

1. Evaluation of DQPs. Each HIO shall evaluate each DQP's performance and shall take appropriate administrative action in accordance with 9 C.F.R. § 11.7.

2. Licensing and Training. Each HIO is authorized to issue DQP licenses to qualified candidates and shall develop and provide uniform, consistent training in accordance with 9 C.F.R. §11.7.

3. Letter of Warning. The standards for satisfactory DQP performance are to be in writing and included as part of the annual DQP/VMO training program. A Letter of Warning ("LOW") is an official notice of unsatisfactory DQP performance. An HIO shall issue a LOW to any of its DQPs who are found to have failed to perform in a satisfactory manner.

A LOW request may be initiated by a VMO or by another APHIS official when any one of them has reason to believe that a DQP has failed to perform in a satisfactory manner. By the end of the event at which the alleged failure has occurred, the VMO/APHIS official shall personally inform the DQP of the alleged performance failure and their intent to recommend that a LOW be issued. Within ten (10) days of the event, the VMO/APHIS official shall forward a written recommendation with specific detailed evidence and any supporting documentation to the HP Coordinator.

Immediately upon receipt of a recommendation, the HP Coordinator shall forward a courtesy copy to the DQP Coordinator. Within thirty (30) days of receipt, the HP Coordinator shall review the LOW recommendation, together with any information or documentation that may be forwarded by the DQP Coordinator, and conduct such investigation as is necessary. If deemed appropriate, the HP Coordinator shall forward a LOW request to the DQP Coordinator for further action in accordance with 9 C.F.R. § 11.7(f). Upon receipt of the request from the HP Coordinator, the DQP Coordinator shall schedule a hearing and provide the DQP a notice of an opportunity to be heard. The hearing shall be completed within thirty (30) days of the receipt of the request and the results shall be forwarded to the HP Coordinator. If a DQP is found to have performed unsatisfactorily, a LOW shall be issued.

4. License Cancellation. The HIO shall cancel the license of any DQP who receives two LOWs, and shall not reissue a license to that individual for three (3) years. A DQP may appeal a license cancellation as provided in 9 C.F.R. § 11.7(f). As set forth above, a DQP whose license has previously been canceled may only become relicensed after three (3) years. If a relicensed DQP receives another LOW within two (2) years of relicensing, his or her license will immediately be revoked, and he or she will be permanently barred from becoming relicensed.

D. Event Schedules. Each HIO shall submit event schedules to the HP Coordinator at least thirty (30) days prior to the event, if available, and proposed DQP assignment(s) within five (5) days of the event.

E. Records. HIOs are required to document and report all violations of the HPA (including violations concerning foreign substances and the “Other Violations” described in this Plan) and all horses disqualified or excused for any reason. This requirement applies regardless of the number of violations or the penalties. APHIS needs this information to ensure that HIOs are in compliance with the reporting requirements in the Regulations. The Regulations require the DQP to inform the custodian of each horse allegedly found in violation of the Act or its regulations, or disqualified or excused for any other reason, of such action and the specific reason for such action.

Each HIO shall make records available for APHIS in accordance with 9 C.F.R. § 11.23(b). Such records include, without limitation, class sheets, DQP HPA violation tickets and penalty assessments, DQP assignments and show schedules, recorded transcripts or minutes of HPA violation hearings, DQP resumes, video tapes, and DQP evaluations by the HIOs. Such records shall be voluntarily retained by each HIO for three calendar years. If an HIO chooses to document its hearings with minutes rather than recorded transcripts, those minutes shall contain sufficient and accurate details of the proceedings so that APHIS may have a clear understanding of what transpired, and the basis for the decisions rendered.

F. Notice of Hearing. The Hearing Committee for each HIO shall give the HP Coordinator at least seven (7) days notice of any DQP disciplinary proceeding or HPA violation hearing.

G. Suspensions. HIOs shall issue suspension notices within ten (10) days of the end of the event where the violation occurred, by sending the notice to the violator by certified and regular mail. All suspensions shall begin twenty (20) days from the date the notification is mailed, unless a bona fide written request for an appeal is received by the HIO within the twenty (20) day period.

A violator may file an appeal of the suspension notice in writing within twenty (20) days of the date of the service of the notice, and the HIO must make a decision on the appeal promptly, normally within two (2) months, unless written and justifiable circumstances warrant a longer time and those circumstances are documented and available for APHIS review. If an HIO hearing committee determines that the appeal is frivolous or made for the purpose of postponing the suspension, the HIO may assess further penalties. Every month each HIO shall provide to the HP Coordinator a current list of HPA suspensions as set forth in 9 C.F.R. § 11.7(d)(3). Each HIO shall enforce the USDA Disqualification list and the HPA suspension list of the other HIOs. Each HIO will (1) honor and enforce all HPA violations and minimum suspension penalties as outlined in this Operating Plan, i.e., bilateral sore, pressure shod, scar rule, and unilateral sore; (2) follow similar due process procedures before issuing any suspension penalty for an HPA violation which is to be recognized by other HIOs; and (3) provide to each certified DQP program a current list of all suspensions in a timely manner, but not less than monthly, to assure each DQP program has the appropriate information to monitor HPA violators on suspension.

VII. CERTIFICATION OF HIO DQP PROGRAMS

APHIS shall review, evaluate and certify the DQP programs of the various HIOs, if such programs meet the requirements set forth in the Regulations. APHIS may certify an HIO DQP program as set forth below and in the Regulations.

A. Certification. To become certified, an HIO must have:

1. Developed a program to select, train, license and discipline DQPs in accordance with 9 C.F.R. § 11.7;
2. Submitted to the Deputy Administrator a written request for certification of its DQP program, a detailed outline of the program, and current financial statements or other documents that demonstrate its financial solvency;
3. Established an organizational structure that enables the HIO to fulfill its responsibilities under the HPA, the Regulations, and this Plan;
4. Published a Rule Book that contains, at a minimum: show rules and uniform inspection procedures that conform to the HPA, the Regulations and this Operating Plan; standards of ethical conduct for officers, employees, DQPs, and judges; a schedule of penalties for HPA violations that meet the minimal penalties set forth in this Operating Plan; and a mission statement.

5. Established a Hearing Committee to review and adjudicate violations of the HPA and the Regulations, with written procedures that provide due process to persons who are charged with violations;

6. Hired a DQP Program Manager or Coordinator (“DQP Coordinator”) who holds a DQP license; and

7. Demonstrated the ability to keep and maintain records in accordance with 9 C.F.R. §§ 11.7(d) and 11.22 and this Plan.

B. Decertification. An HIO that fails to comply with the requirements of the Regulations will receive written notification of such noncompliance from APHIS. The HIO must take immediate action to rectify such failure to comply and take appropriate steps to prevent a recurrence of such noncompliance within the time period specified in the APHIS notification. If the HIO fails to correct any deficiency within the prescribed period, APHIS will decertify the HIO’s DQP program. An HIO may appeal decertification as outlined in 9 C.F.R. § 11.7(g).

VIII. INSPECTIONS

Inspections conducted under the HPA must be conducted in accordance with the Regulations and this Operating Plan. The inspection guidelines contained in this Plan are designed to help VMOs

and DQPs examine horses under the HPA and are not intended to supersede the HPA or the Regulations.

A. Inspection Areas.

1. DQP/VMO Inspection Area. All horses shall be inspected in a specific area that meets the requirements as set forth in 9 C.F.R. §11.6. Only the horse and custodian of

the horse shall be allowed in the DQP/VMO inspection area except as described (in Section VIII.A.3.) below.

2. Designated Holding/Warm-up Area. Inspected horses shall be held in a designated holding/warm-up area that is under observation by the DQP. Only the horse, the rider, the groom, the trainer, the DQP(s) and APHIS representatives shall be allowed in this designated area. No horse may leave the designated area before showing without the permission of the DQP. Any horse leaving the designated area before showing must be reinspected by the DQP before being allowed into the show ring.

3. Visitors to Designated Inspection and Holding/Warm-up Areas. Visitors shall only be allowed in these areas while under direct escort of either an HIO or APHIS representative. APHIS and HIO personnel shall be notified when visitors are present and who will be their escort.

B. Stewarding and Unruly Horses. No person shall act in any manner that may cause a false examination result, or use any signal or device (including without limitation whips or cigarette

smoke), to distract or steward a horse during examination. If either the DQP or VMO observes such behavior, the DQP shall be responsible for immediately excusing the horse and shall report the incident to show management and the HIO. DQPs shall excuse any horse that is unruly or exhibits an unwillingness to submit to examination.

C. Inspection Authority. The DQP or VMO may inspect any horse at any horse show, exhibition, sale or auction. DQPs may also inspect horses for the purpose of ensuring compliance with breed-specific rules and regulations adopted and published by the HIO as long

as such inspections do not interfere with enforcement of the HPA. The DQP or VMO may carry out additional inspection procedures or conduct additional tests, such as examining rear limbs or using hoof testers or fluoroscopy, as deemed necessary, to determine whether or not a horse is in compliance with the HPA. If more than one inspector (DQP or VMO) examines the same horse, then each inspection shall be conducted in accordance with section VIII.E. of this Plan.

D. Prohibited Practices The HPA and the Regulations prohibit shoeing, trimming or using any method or device on a horse's limb in a manner that causes such horse to suffer, or can reasonably be expected to cause such horse to suffer pain, distress, inflammation or lameness when walking, trotting or otherwise moving. This includes, but is not limited to, inserting a tack, screw, nail or other device or substance, other than acceptable hoof packing, between the horse's hoof and its shoe or pad. If a DQP or VMO suspects that a horse's hoof has been subjected to any such practice, the

DQP or VMO may require the horse's custodian to remove the shoes, pads, or both, to allow further examination.

E. Inspection of Horses. The inspection of horses for purposes of determining compliance with the Act involves an evaluation of the horse's appearance, locomotion, and the physical examination described below. Each inspection shall include all three components, with documentation by the DQP and VMO of any observable and physical findings in the case of a violation of the HPA or the Regulations. Although the examination for compliance with the Act requires all three components, the determination by the DQP or VMO as to whether there is a violation may be based upon findings within any one of the three components alone. Any DQP or VMO who is inspecting a horse shall complete all three components of the inspection protocol before rendering any findings based on such inspection. He/she shall also document any physical and observable findings on which he/she bases a determination to disqualify a horse from an event because it is fractious or unruly.

1. Appearance. At all times during the inspection, the DQP or VMO shall observe the entire horse's appearance to determine whether the horse suffers, or can reasonably be expected to suffer physical pain or distress, inflammation, or lameness, when walking, trotting or otherwise moving. Observable indications of pain may appear while the horse is at rest, during locomotion, and/or during physical examination. Observable indications of pain include, but are not limited to, changes in depth and rate of respirations, excessive perspiration on the skin and hair coat, abnormal reactions of the eyes and ears, abnormal stance, tucking of flanks and flexing of abdominal muscles, stepping forward with the rear limbs while the front limbs remain lightly planted, tossing of the

head to maintain balance and the overall demeanor and temperament of the horse. The DQP or VMO also shall look for evidence of prohibited substances, and prohibited or non-compliant paraphernalia or devices.

2. Locomotion. During the inspection, the DQP or VMO shall direct the custodian of the horse to lead, walk, and turn the horse in a manner that allows the DQP or VMO to determine whether the horse suffers, or can reasonable be expected to suffer physical pain or distress, inflammation, or lameness, when walking, trotting or otherwise moving. During the locomotion component of the inspection, the DQP or VMO shall observe the horse's appearance for indications of pain, as noted in paragraph E.1 above.

3. Physical Examination. The DQP or VMO shall conduct a physical examination of the horse as required by the applicable Regulations. This examination shall include, but not be limited to, digital palpation procedure, examination for evidence of scar rule violations, evidence of prohibited substances, and prohibited or non-compliant paraphernalia or devices. The DQP or VMO shall digitally palpate the front limbs of the horse from knee to hoof, with particular emphasis on the pasterns and fetlocks, as described in the applicable Regulations. During the digital palpation procedure, the DQP or VMO shall describe and document any consistent and reproducible (non-random) limb withdrawal.

F. Conflicting Examination Results. If the VMO and DQP disagree about whether a horse is in violation of the Act or the Regulations, then the horse will be excused from showing in the

class and the dispute will be resolved in accordance with the conflict resolution procedures contained in Section XI of this Operating Plan.

IX. COMPLIANCE WITH SCAR RULE

The following information and procedures have been developed to promote consistency in the detection of non-compliance with the scar rule. The scar rule reads:

The scar rule applies to all horses born on or after October 1, 1975. Horses subject to this rule that do not meet the following scar rule criteria shall be considered to be “sore” and are subject to all prohibitions of Section 5 of the Act. The scar rule criteria are as follows:

(a) The anterior and anterior-lateral surfaces of the fore pasterns (extensor surface) must be free of bilateral granulomas, other bilateral pathological evidence of inflammation, and other bilateral evidence of abuse indicative of soring including, but not limited to, excessive loss of hair.

(b) The posterior surfaces of the pasterns (flexor surface), including the sulcus or “pocket” may show bilateral areas of uniformly thickened epithelial tissue if such areas are free of proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation.

9 C.F.R. § 11.3.

The scar rule allows for uniformly thickened epithelium on the posterior portion of the pastern.

The scar rule is not intended to, and will not, penalize a horse that bears a scar or scars resulting from accidental injury.

A. Definitions. For purposes of the scar rule, the following definitions are used:

1. Anterior. The anterior surface is bounded by two parallel lines that extend downward from the bony prominences on either side of the end of the cannon bone at the fetlock joint to the foot, as divided equally into quarters. The anterior area covers the front 25 percent of the pastern.

2. Bilateral granuloma. Any one of a rather large group of fairly distinctive focal lesions existing on both limbs that are formed as a result of inflammatory reactions caused by biological, chemical, or physical agents.

3. Bilateral evidence of abuse indicative of soring. Evidence of intentional or malicious injury inflicted to both front and/or rear pasterns.

4. Edema. Collection of fluid within tissue. Localized edema is considered a violation. Localized edema is the collection of fluids within tissue causing swelling, pain, and/or loss of function in or near the areas where chemical or physical trauma has occurred. In contrast, generalized edema is not considered a violation. Generalized edema involves a greater portion of the extremity caused by such items as tight bandages or injuries above the pastern resulting in fluids gravitating to the pastern area.

5. Excessive loss of hair. Unsightly areas of thinned hair and/or bare skin resulting from the permanent injury inflicted upon hair follicles by repetitive friction and/or pressure.

6. Irritation. The precursor to inflammation resulting from a reaction of the skin to abnormal chemical or physical applications.

7. Lateral. The outer surface located between the boundaries of the anterior and posterior surfaces as defined in this section. The lateral area covers 25 percent of the pastern.

8. Medial. The inner surface located between the boundaries of the anterior and posterior surfaces as defined in this section. The medial area covers 25 percent of the pastern.

9. Moisture. Includes serum, pus or blood. This can be a direct flow of moisture and/or oozing of moisture out through the skin.

10. Neurovascular Groove. The anatomical lines of demarcation between the medial or lateral and posterior surfaces of the pastern are those parallel lines extending downward in front of the flexor tendon bundle along the depression or groove occupied by the neurovascular bundle which intersects with the angles of the hoof wall and includes the bulbs of the hoof. This neurovascular groove is anatomically located totally within the medial and lateral surfaces.

11. Other bilateral pathological evidence of inflammation. Pain, heat, redness, swelling, serum or pus, or loss of function in both front pasterns are indications of inflammation.

Inflammation results when, in response to an injury or destruction of tissue, the body attempts to dilute or “wall off” the injurious agent and the injured tissue. Inflammation can be acute or chronic and may result in permanent tissue damage (e.g., scarring).

12. Other evidence of inflammation. These may include without limitation pain, heat, redness, swelling, ulceration and/or excessive loss of hair.

13. Pastern. The part of the leg of a horse that lies between the fetlock joint and the hoof.

14. Posterior. The posterior surface is bounded by two parallel lines that extend downward along the palpable borders in front of the flexor tendon bundle to intersect with the angles of the hoof wall and includes the bulbs of the hoof. The posterior area covers the rear 25 percent of the pastern. In order to differentiate the posterior area from the lateral and medial, for purposes of enforcing the HPA pursuant to this Plan, the posterior area is deemed to include the rear 35 percent of the pastern.

15. Proliferating granuloma tissue. Growth of proud flesh that is usually the result of the body's unsuccessful attempts to repair tissues that are injured and/or infected. The proliferating granuloma can create wart-like growths and/or abnormal thickening where the skin is corrugated, ridged or thrown into clusters of exuberant (proud flesh) growth.

16. Uniformly thickened epithelial tissue. A uniform or even thickening of skin that retains its smoothness, such as a callous or corn, and is free of proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation.

B. Anterior, medial and lateral surfaces: The anterior, medial and lateral surfaces of the fore pasterns (extensor surface) must be free of bilateral granulomas, other bilateral pathological evidence of inflammation, and other bilateral abuse indicative of soring including, but not limited to, excessive loss of hair.

C. Posterior surfaces: The posterior surfaces of the pasterns (flexor surface), including the sulcus or “pocket” may show bilateral areas of uniformly thickened epithelial tissue if such areas are free of proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation.

1. Determining the Boundaries of Posterior Area. There is no major anatomical landmark on the pastern that easily defines the demarcation of the posterior surfaces from the medial and lateral surfaces. This section of the Plan explains how APHIS and the HIOs will determine the demarcation of the posterior surface for purposes of the HPA. The pastern is a three-dimensional anatomical structure. It is divided into four (4) equal quarters: the front (anterior), the inside (medial) the outside (lateral), and the back (posterior). Each of these four surfaces comprises one-quarter, or twenty-five (25) percent, of the circumference.

The VMO or DQP may use either the “Flattened Hand” or the “Neurovascular Groove” method (described below) to measure the posterior surface of the pastern. If, by using one or the other of these methods, the VMO and DQP are able to easily determine, and agree, whether the horse is or is not in compliance with the scar rule criteria, then they may proceed to document their findings. If, by using these screening methods, the VMO and the DQP cannot easily determine the boundaries of the posterior surface, or if a dispute arises as to whether the horse is in compliance with the scar rule, then the VMO (or the DQP if there is no VMO at the event) shall measure the circumference of the horse’s pastern, and determine the location of the boundary between the posterior and the medial and the posterior and the lateral areas using the chart set forth below. For purposes of this Plan, APHIS will

consider the posterior area of the pastern to include 35 percent of the circumference of the pastern. This will allow for any margin of error.

(a) Flattened Hand Method. Place the flattened hand on the posterior aspect of the pastern. The area covered by the hand is the posterior surface, and the area visible on the sides of the pastern will be considered the medial and lateral surfaces.

(b) Neurovascular Groove Method. The neurovascular groove is anatomically located totally within the medial and lateral surfaces. Since the palpation of the neurovascular groove is difficult in practice, the area's proper anatomical limits shall be defined for purposes of determining the anterior edge of the posterior surface by using the palpable posterior of the two pastern bones (long and short) and the adjacent palpable border of the flexor tendon bundle. This is done by placing the tip of the finger against the pastern bone with the fingernail against the bone. The opposite side of the finger (non-fingernail side) in most horses will be in close proximity to the anterior edge of the flexor tendon bundle, i.e., line of demarcation for the posterior surface. Any scar tissue covered by the finger is in violation.

(c) Measuring the Posterior Method. The posterior surface is determined by measuring the circumference of the pastern where the affected area is located. Using the midline of the posterior surface, which is half the distance between the bulbs of the heel, the actual posterior surface extends 12.5 percent of the circumference on either side of this the midline. To allow for a margin of error, APHIS will use 17.5 percent from the midline. The circumference measurement is multiplied by

.175 to obtain the distance from the posterior midline to the edge of the medial or lateral surfaces.

Exhibit 1 can be used as a quick reference to determine this measurement.

X. HIO SANCTIONS FOR HPA VIOLATIONS

A. General. At shows, exhibitions, sales and auctions affiliated with or sanctioned by a signatory HIO, violations of the HPA and the Regulations shall be subject to the jurisdiction of the Hearing Committee of the HIO. The HIO shall develop written procedures for all disciplinary proceedings before the Hearing Committee. The presiding officer of the Hearing Committee shall ensure that all disciplinary proceedings are conducted in accordance with the due process procedures adopted by each HIO. The Hearing Committee shall act as a jury of majority rule and all findings shall be in writing. Upon a finding of guilt, the Hearing Committee shall enforce the schedule of minimum penalties in this document for violations of the HPA or the Regulations. Suspensions shall begin on the first day after a decision is issued by the Hearing Committee.

B. Prohibited Conduct. The HPA, the Regulations and this Plan set forth the conduct that violates the Act and subjects individuals to disqualification, suspension, and, in some instances, monetary penalties. The following are examples of such prohibited conduct: (1) shipping, transporting, moving, delivering, or receiving any horse which is sore with reason to believe that such horse while it is sore may be entered, shown, exhibited, auctioned, or offered for sale, in any horse show, horse exhibition, or horse sale or auction; (2) showing or exhibiting a sore horse; (3) entering, for the purpose

of showing or exhibiting, a sore horse; (4) selling, auctioning, or offering for sale, a sore horse; and (5) allowing any activity described in clauses (2), (3) or (4) above.

C. Limited Exemption from Liability. Section 1824(2)(D) of the Act contains a limited exemption from liability for a horse owner who demonstrates that he or she did not “allow” the horse to be entered or exhibited in a show while sore. This exemption applies only to those owners who themselves did not participate in the entry, exhibition, sale, or auction of a sore horse. An owner, to avoid liability for “allowing” his or her horse to be shown or exhibited, entered, sold, auctioned, or offered for sale while sore, must first present credible evidence that he or she did not participate in the entry, transportation, preparation for showing, exhibiting, sale, or auction. Second, the owner must show that he or she took affirmative steps: (1) to select a trainer whom the owner would not reasonably expect would sore the horse; (2) to ensure that the trainer understands what soring is as defined in the HPA, understands that the owner does not want the trainer to sore the horse and understands the consequences of soring the horse; and (3) to periodically check the condition of the horse. Examples of such affirmative action by an owner include without limitation the following:

1. Written Instructions and Acknowledgment. The owner has previously given the trainer written instructions not to sore the horse or to engage in practices or use devices that could be expected to result in soring, i.e., chains over the permitted weight, prohibited boots, collars, and rollers, caustic chemicals, overuse of permissible devices; and has informed the trainer in writing that failure to comply with the owner’s instructions will result in the trainer’s immediate termination. The owner has obtained the trainer’s written acknowledgment that he or

she understands and agrees to comply with such terms, and has read, understands and agrees to comply with the HPA and the Regulations.

2. Consideration of Trainer's History. The owner determines whether or not the trainer has previously violated the HPA. For example, if an owner hires a trainer whom the USDA, in a litigated HPA enforcement proceeding, has found to have violated the Act on or after March 1, 1999, then the hiring of such trainer by an owner means that the owner is aware that the trainer has previously exhibited, shown, entered, sold or transported a sore horse in violation of the HPA, and has accepted the risk that such trainer may do so again. Such an owner would have to present evidence to show that he or she acted reasonably in knowingly hiring that trainer.

3. Unannounced Visits.

The owner or the owner's agent makes unannounced visits to the trainer's facility. The owner arranges for periodic unannounced inspections of the horse by a knowledgeable, independent licensed veterinarian (a veterinarian who is not otherwise employed by the trainer and who is competent to determine whether a horse is sore under the HPA).

D. Exhibitors. Any exhibitor, other than a minor, showing a horse in any show, exhibition, sale or auction, in violation of the HPA, shall be subject to all penalties in this plan.

E. Penalties. The violations listed in the table below are all violations of the Act and all signatory HIOs shall impose the corresponding minimum penalties after exhaustion of any appeals pursuant to Section VI. G. A violation will be a subsequent violation for enhanced penalty purposes only if it occurs at a subsequent event on a date after a violator has commenced

serving a penalty imposed by an HIO. The penalties listed do not represent the penalties that the Department may seek in an administrative or judicial enforcement case.

In all cases, when any violation is identified after a horse has shown in its class (post show), the winnings shall be forfeited and the class shall be retied. HIOs are required to use their best efforts to ensure that this post show policy is implemented by show management. Penalties assessed during the term of this Plan shall not automatically become void upon the termination of this Plan.

If there are multiple violations in connection with a single horse, HIOs must ensure that all are documented on the DQP ticket, and reported to the Department. At a minimum, the HIO must impose the single most severe of the penalties set forth in this Plan. For example, if the multiple violations involve any Soring Violation and a scar rule violation, the horse shall be suspended pursuant to the penalty schedule in Paragraph E.1. below, should the HIO determine that the Soring Violation would result in imposing the more severe penalty.

HPA Soring Violations				
	First Offense	Second Offense	Third Offense	Fourth & Subsequent Offense
Pressure Shoeing	Two (2) years	Five (5) years	Life	
Bilateral Sore	Eight (8) months	Two (2) years	Five (5) years	Life
Unilateral Sore	Two (2) weeks	Two (2) months	One (1) year	Two (2) years
Scar rule**	Two (2) weeks	Two (2) months	One (1) year	Two (2) years
Suspension Violations				
Six (6) months for each occurrence				
Other HPA Violations				
Foreign Substance - Pre Show	Disqualification from Class (non-correctable)			
Foreign Substance - Post Show	Two (2) weeks for each occurrence			
Equipment Violations - Pre Show	Disqualification from Class (non-correctable)			
Equipment Violations - Post Show	Two (2) weeks for each occurrence			
Unruly/Fractus Horse				
Disqualification from Class (non-correctable)				

****Scar Rule Violations:** In assessing penalties for the scar rule, signatory HIOs have elected voluntarily to suspend the horse involved in addition to the owner, trainer and/or exhibitor as outlined in **Exhibit 2**. The HIOs shall keep records to track violations for each horse suspended in this manner. Enhanced penalties for subsequent scar rule violations for an owner, trainer and/or exhibitor must involve the same horse, except for circumstances in which

an individual receives more than four (4) first offense violations with different horses. The signatory HIOs agree to annually review the implementation and effectiveness of this scar rule penalty framework.

F. Disqualifications and Suspensions. A person who has been suspended or disqualified as a result of an HPA violation shall not: (1) enter a horse for the purposes of showing, exhibiting or selling at auction (“Enter a horse,” as used in this section, shall mean to perform any of the activities that are required to be completed before a horse can actually be shown or exhibited.) (2) show or exhibit a horse at a horse show, public auction, or exhibition such as a college football game or parade; (3) judge a horse show; (4) enter the show ring during the course of a horse show; (5) enter the inspection area or warm-up area where previously inspected horses are allowed to await ring or sale entry, during the course of a horse show or sale; (6) coach any trainer, owner, or exhibitor anytime during the show or exhibit; (7) transport horses to shows, exhibitions or public auctions; (8) prepare a horse on the sale, show, auction or exhibition grounds; or (9) serve as a horse show official. An HIO may employ its own procedures to ensure that such suspensions are enforced. In order to deter violations, multiple suspensions are to be served consecutively, not concurrently.

Each HIO shall update and distribute its suspension list on at least a monthly basis to all its DQPs, all certified HIOs, and to the HP Coordinator. All suspension lists shall clearly indicate the violation, the nature of the violation (i.e., bilateral sore, scar rule, etc.), and the time period of the suspension.

G. Probation Period. This term means the period of time after a suspension is served in which a subsequent violation becomes cumulative according to the above table. Under this Operating Plan, HIOs will allow violators a probation period of at least one year for all HPA violations as set forth in Section X. F. above. Such probation period shall commence once a suspension has been fully served and any subsequent HPA offense received after the end of the probation period shall be considered a first offense for the offender.

XI. CONFLICT RESOLUTION

The conflict resolution process is intended to address cases in which there are differences in the inspection findings of a DQP and a VMO. If the DQP and VMO cannot reconcile the differences in their findings during the event, the matter shall be considered suitable for resolution under this Operating Plan. Notwithstanding this process, APHIS has the inherent authority to pursue a federal case whenever it determines the purposes of the HPA have not been fulfilled.

A. Resolution Procedures. VMOs and DQPs are instructed to work diligently at the event to resolve any disagreements as to inspection findings. DQPs and VMOs shall communicate the basis for their inspection findings to each other at the time the conflict occurs. If, however, a disagreement cannot be resolved, the horse will be excused from the class. At the end of the event, the VMOs shall provide the DQPs with a written list of all inspections where a disagreement could not be resolved. The list shall include the horse's entry and class number or sale number, and a description of the nature of the disagreement.

Within seven (7) days after the end of the event, the VMO and the DQP shall submit written documentation on each instance of disagreement to their respective coordinators. The HP Coordinator and the DQP Coordinator shall then work together to resolve the conflict

If at any time during the conflict resolution process APHIS and the HIO are able to resolve the conflict, the appropriate violation, if any, shall be cited and the procedures and penalties set forth in Section X of this Plan shall be followed.

APHIS and the HIO shall exercise the best of efforts in resolving any conflict resolution issue within sixty (60) days of the date of the initial dispute unless written and justifiable circumstances merit a longer time and those circumstances are exchanged between APHIS and the respective HIO.

APHIS will hold in abeyance any case that is timely and properly introduced into the conflict resolution process until the process terminates, and the proper penalty, if any, has been imposed. If the Department at any time determines that the HIO has not taken the steps necessary to detect HPA violations and has not imposed the appropriate penalty, as required by and in accordance with the Act, the Regulations, or this Operating Plan, the Department may institute enforcement proceedings against the violator. If and when the Department determines that the HIO has properly applied and enforced the penalties under this Operating Plan, it will close its files on the case.

Exhibit 1-- Scar Rule Chart

Measurements for Determining Violation of Scar Rule

Circumference of Foot	17.5 Percent
7 in	1 1/4 in
7 1/8 in	1 1/4 in
7 1/4 in	1 1/4 in
7 3/8 in	1 1/4 in
7 1/2 in	1 3/8 in
7 5/8 in	1 3/8 in
7 3/4 in	1 3/8 in
7 7/8 in	1 3/8 in
8 in	1 3/8 in
8 1/8 in	1 3/8 in
8 1/4 in	1 1/2 in
8 3/8 in	1 1/2 in
8 1/2 in	1 1/2 in
8 5/8 in	1 1/2 in
8 3/4 in	1 1/2 in
8 7/8 in	1 1/2 in
9 in	1 5/8 in
9 1/8 in	1 5/8 in
9 1/4 in	1 5/8 in
9 3/8 in	1 5/8 in
9 1/2 in	1 5/8 in
9 5/8 in	1 5/8 in
9 3/4 in	1 3/4 in
9 7/8 in	1 3/4 in
10 in	1 3/4 in
10 1/8 in	1 3/4 in
10 1/4 in	1 3/4 in
10 3/8 in	1 7/8 in
10 1/2 in	1 7/8 in

Circumference of Foot	17.5 Percent
10 5/8 in	1 7/8 in
10 3/4 in	1 7/8 in
10 7/8 in	1 7/8 in
11 in	1 7/8 in
11 1/8 in	2 in
11 1/4 in	2 in
11 3/8 in	2 in
11 1/2 in	2 in
11 5/8 in	2 in
11 3/4 in	2 in
11 7/8 in	2 1/8 in
12 in	2 1/8 in
12 1/8 in	2 1/8 in
12 1/4 in	2 1/8 in
12 3/8 in	2 1/8 in
12 1/2 in	2 1/4 in
12 5/8 in	2 1/4 in
12 3/4 in	2 1/4 in
12 7/8 in	2 1/4 in
13 in	2 1/4 in
13 1/8 in	2 1/4 in
13 1/4 in	2 3/8 in
13 3/8 in	2 3/8 in
13 1/2 in	2 3/8 in
13 5/8 in	2 3/8 in
13 3/4 in	2 3/8 in
13 7/8 in	2 3/8 in
14 in	2 1/2 in

Exhibit 2 -Scar Rule Penalty Examples

Owner 1 has Horses A, B, and C with Trainer 1. At Horse Show 1, Horses A and B are in violation of the scar rule. Horses A and B each get a two week suspension. Trainer 1, Owner 1 and Exhibitor 1 (if post show) each receive two - two week suspensions;

At Horse Show 2, Horse A receives its second violation. Horse A, Trainer 1, Owner 1, and Exhibitor 1 (if post show) each receives a two month suspension;

At Horse Show 3, Horse C receives its first violation. Horse C receives a two week suspension. Trainer 1, Owner 1 and Exhibitor 1 (if post show) each receives a two week suspension;

Owner 1 moves Horse A to Trainer 2. At Horse Show 4, Horse A is in violation of the scar rule. Horse A gets a 1- year suspension. Trainer 2 gets a two week violation. Owner 1 and Exhibitor 1 (if post show) each get a 1-year suspension;

At Horse Show 5, Horse A is in violation of the scar rule. Horse A gets a 2-year suspension. Owner 1 and Exhibitor 1 (if post show) each gets a two- year suspension. Trainer 2 gets a two month suspension.

	Horse A	Horse B	Horse C	Trainer 1	Owner 1	Exhibitor 1*	Trainer 2
Horse Show 1	2 weeks	2 weeks		(2) 2 weeks	(2) 2 weeks	(2) 2 weeks	
Horse Show 2	2 months			2 months	2 months	2 months	
Horse Show 3			2 weeks	2 weeks	2 weeks	2 weeks	
Horse Show 4	1 year				1 year	1 year	2 weeks
Horse Show 5	2 years				2 years	2 years	2 months

* Exhibitor is only suspended if scar rule violation is post-show.

The suspension for a trainer, owner and/or exhibitor is two weeks each for each first scar rule violation for up to four different horses. Starting with the fifth horse and continuing through the eighth different horse, the penalty for each first scar rule violation is eight weeks. An eight-week suspension is imposed for each different horse in violation of the scar rule after the eighth different horse.

The scar rule penalty provisions include references to disqualification of horses. These references are included as a courtesy to HIOs that also disqualify horses involved in violations under their own separate industry rules.