

Before the
U.S. DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE

Petition of

THE HUMANE SOCIETY OF THE UNITED STATES)
)
THE AMERICAN SOCIETY FOR THE PREVENTION)
OF CRUELTY TO ANIMALS)
)
THE AMERICAN HORSE PROTECTION)
ASSOCIATION, INC.)
)
FRIENDS OF SOUND HORSES, INC.)
)
SENATOR JOSEPH D. TYDINGS)

RM No. _____

PETITION FOR RULEMAKING

Eric L. Bernthal
Sara K. Orr
Danielle A. Lackey
Joyce M. Wang
Latham & Watkins LLP
555 Eleventh Street, NW
Washington, DC 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201

I. INTRODUCTION

This petition is submitted on behalf of the Humane Society of the United States (“The HSUS”), the American Society for the Prevention of Cruelty to Animals (“The ASPCA”), the American Horse Protection Association, Inc. (“The AHPA”), Friends of Sound Horses, Inc. (“FOSH”) and former Senator Joseph D. Tydings to request changes to regulations and policies that have failed to prevent the grotesque, inhumane and illegal treatment of Tennessee Walking Horses. The action sought in this petition seeks to correct forty years of well-intentioned but ineffective efforts to protect Walking Horses. The Horse Protection Act (“HPA” or “Act”) was enacted in 1970 in response to public outcry over widespread horse soring practices.¹ Shortly thereafter, the U.S. Department of Agriculture (“USDA”) delegated enforcement of the Act to the industry itself, but provided insufficient oversight and failed to vigorously pursue violations. The Tennessee Walking Horse industry has consistently failed – and in some cases flagrantly refused – to comply with the Horse Protection Act, which outlaws the abusive treatment of these magnificent animals. Moreover, the USDA has failed to adequately enforce the HPA, as required by Congress.

Tennessee Walking Horses are prized for their distinctive high-stepping gait, known as the “big lick.” Sadly, a cruel and illegal technique known as “soring” is all too frequently used to elicit the big lick from these horses in order to win prizes at shows rewarding this gait. Soring involves chemical and mechanical injury to the horse’s front limbs with the goal of causing such intense pain that any contact with the ground causes the horse to instantly jerk its leg up to relieve pressure on the injured areas. The HPA was specifically enacted to prohibit this practice,

¹ 15 U.S.C. § 1821 et. seq.

yet it continues to dominate the industry. Unethical trainers go to great lengths to illegally remove or conceal soring scars in order to avoid being charged with an HPA violation, such as applying salicylic acid to the horse's pasterns until scarred skin sloughs off the leg. Horses are also subjected to stewarding practices, in which trainers inflict other cruelties designed to prevent any outward reactions when inspectors place pressure on sensitive hoof and pastern areas. Trainers try to distract the horse from the pain in its legs by affixing objects such as metal alligator clips and zip ties to a horse's tongue, gums, anus, and vagina just prior to inspection. All of these insidious practices are illegal under the Act, but widely practiced nonetheless.

As discussed below, USDA has ample authority and a statutory mandate to prohibit abusive soring as well as the cruel practices used to conceal the soring. Yet current regulations undermine the humane intent of the Act by imposing wholly inadequate restrictions, penalties, and enforcement regimes. We commend the USDA for its recent actions to improve the situation for Walking Horses, including the recently released "2010 Points of Emphasis"² and the "2010 Penalty Protocol."³ These documents clarify the applicability of HPA Regulations⁴ and establish a recommended schedule of penalties to be applied by Horse Industry Organizations ("HIOs") for instances of certain HPA violations respectively. However, USDA can and should go further and must adopt zero-tolerance policies towards soring violations. As discussed in detail below, there are several actions that USDA should undertake to ensure uniform and effective enforcement of the Act, including establishment of a minimum penalty structure that HIOs must impose; implementation of certain items from the 2010 Points of Emphasis into the

² Attached as Exhibit A; also available at http://www.aphis.usda.gov/animal_welfare/hp/downloads/emphasis_to_hp_prog_2010.pdf (last visited July 23, 2010).

³ Attached as Exhibit B; also available at http://www.aphis.usda.gov/animal_welfare/hp/downloads/2010_hp_penalty_prot.pdf (last visited July 23, 2010).

⁴ 9 C.F.R. § 11.1 et. seq.

Horse Protection Regulations; decertification of non-compliant horse industry organizations; and permanent disqualification of individuals who have repeatedly violated the Act. The Petitioners also ask that USDA permanently disqualify all scarred horses from participation in shows.

USDA's track record of enforcement of the Act has been spotty at best, and we believe its current management of the HPA programs violates the plain language of the HPA, which confers regulatory and enforcement authority on the Secretary of Agriculture. USDA attends less than 7% of all Tennessee Walking Horse shows⁵ and has delegated regulation of the HPA to the industry itself – an industry that perpetuates the illegal abuse of horses, is known to obfuscate inspection results, violently acts out against USDA inspectors, and even closes down official horse shows when USDA shows up to conduct inspections. After forty years of rampant cruelty and abuse in plain violation of the HPA, USDA has not yet met its Congressional charge to enforce the Act. Changes must be made to the Regulations and current enforcement practices. The time has come for USDA to “stop, once and for all, the inhumane and absolutely unnecessary practice of soring,” and fulfill its statutory mandates under the HPA.⁶

Congress has given USDA authority to carry out the provisions of the HPA. The HPA requires the Secretary of Agriculture to use Department resources to the maximum extent practicable for administration and enforcement of the Act, and up to \$500,000 per year is appropriated for these purposes.⁷ The HPA also specifically authorizes the Secretary to issue

⁵ *Infra* note 27.

⁶ 1973 Commerce Committee, Senator Tunney statement.

⁷ 15 U.S.C. §§ 1827(a), 1831. The proposed 2011 USDA budget includes a \$400,000 increase for HPA enforcement purposes which has yet to be approved. *See* USDA FY 2011 Budget Summary and Annual Performance Plan, available at <http://www.obpa.usda.gov/budsum/FY11budsum.pdf> (last visited July 23, 2010). USDA should be commended for their efforts to support more rigorous enforcement of the Act.

“such rules and regulations as he deems necessary to carry out the provisions of the Act.”⁸ Thus, USDA possesses the authority and obligation to adjust the regulations and policies in order to carry out its administration and enforcement duties under the Act. Within USDA, the Animal and Plant Health Inspection Service (APHIS) bears responsibility for carrying out the Department’s responsibilities under the Act. In fact, the USDA Horse Protection Strategic Plan states that APHIS is tasked with the initiation and review of regulatory changes.⁹

Accordingly, the Petitioners respectfully request that the USDA Animal and Plant Health Inspection Service (APHIS) modify certain implementing regulations and policies, including: establishment of a minimum penalty structure that HIOs must impose; implementation of certain items from the 2010 Points of Emphasis into the Horse Protection Regulations; decertification of non-compliant horse industry organizations; and permanent disqualification of individuals who have repeatedly violated the Act. The Petitioners also ask that USDA permanently disqualify all scarred horses from participation in shows.

II. INTERESTS OF THE PETITIONERS

Petitioner, The HSUS, is a non-profit organization headquartered in Washington, DC and is the largest animal protection organization in the U.S., with more than eleven million members and constituents. The HSUS actively advocates against abusive practices in the horse industry and promotes the humane treatment of Tennessee Walking Horses. The HSUS offers information to the public regarding inhumane treatment of animals on a wide spectrum of topics,

⁸ 15 U.S.C. § 1828.

⁹ The USDA Horse Protection Advisory Team, which is comprised of APHIS employees who are knowledgeable about the Horse Protection Program, “initiates and reviews programs projects (training and research), policy, and regulatory changes.” See USDA Horse Protection Strategic Plan, issued April 1998 (and accompanying definitions in Appendix B to the plan), *available at* <http://www.aphis.usda.gov/lpa/pubs/hpa.html> (last visited July 23, 2010).

including the injurious effects of soring, pressure shoeing, and illegal action devices used on horses.

Petitioner, The ASPCA, is a non-profit organization headquartered in New York and the first humane organization established in the Americas and one of the largest humane societies in the world, with over one million supporters.¹⁰ The ASPCA provides local and national services directed at the elimination of cruelty to animals, community outreach and animal health services. The ASPCA has also been authorized to investigate and enforce animal cruelty laws in New York City and provides training to law enforcement and animal protection groups across the country.

Petitioner, The AHPA, is a national non-profit organization devoted exclusively to equine welfare since 1966. The AHPA advocates proper horse care and the humane treatment of all equines, including America's wild horses, equine athletes in competitive sport, and horses used in service and for recreational purposes.

Petitioner, FOSH, is a non-profit organization in St. Louis, Missouri that is dedicated to providing information to the public about the humane care, treatment and training of gaited horses, with a special emphasis on the Tennessee Walking Horse.¹¹ FOSH participates heavily in public education and outreach events and organizes the Sound Horse Conference held annually. FOSH also conducts USDA-certified inspections for horse shows in order to ensure compliance with the Horse Protection Act.

¹⁰ For more information, see <http://www.aspc.org/about-us/about-the-aspc.html> (last visited July 23, 2010).

¹¹ For more information, see <http://www.fosh.info/about.html> (last visited July 23, 2010).

Petitioner Joseph D. Tydings is a former U.S. Senator who represented the state of Maryland from 1965 to 1971 and legislated heavily in support of environmental protection issues, receiving several awards for his humanitarian activities during his term. He sponsored the Horse Protection Act in 1970 and fought for its passage in Congress. After leaving office, Mr. Tydings served on the Board of Regents of the University System of Maryland for over thirty years. Mr. Tydings currently serves on the governing board of the University of Maryland Medical System and is senior counsel in the law firm of Dickstein Shapiro LLP in Washington, DC.

III. ACTION REQUESTED

The Petitioners submit this rulemaking petition¹² under the Horse Protection Act requesting that the Secretary take action to comply with Congress' express intent for the Agency to protect horses from "the cruel and inhumane" soring practices and eliminate the competitive advantage enjoyed by their abusers.¹³ Specifically, the Petitioners request that USDA:

Enhance restrictions on inhumane practices and ensure uniform enforcement of the Act via the following immediate regulatory changes:

¹² This submission is made pursuant to the Right to Petition Government Clause contained in the First Amendment of the U.S. Constitution, the Administrative Procedure Act, and USDA's implementing regulations. U.S. Const. amend. I; 5 U.S.C. § 553(e) and 7 C.F.R. § 1.28.

¹³ 15 U.S.C. §§ 1822(1)-(3). Congress characterized the problem as one of unfair competition and distorted incentives, which ultimately placed burdens upon interstate commerce because those choosing not to sore their horses "are faced with a difficult dilemma; either they must forego most opportunities to successfully compete in horse shows, or they must devote their attentions to a different breed of horse." Congress also recognized that soring posed long-term dangers to the health of the breed and also threatened the integrity of the horse breeding and showing industries. Because show champions are valuable as studs, an industry that permits soring and rewards sore horses creates a genetically weaker breed than an industry that rewards naturally talented, sound horses. H.R. REP. NO. 91-1597 at 4871.

1. Permanently disqualify scarred horses from participation in all horse showing activities;
2. Require HIOs to adopt a minimum penalty structure for HPA violations;
3. Incorporate certain Points of Emphasis into the Horse Protection Regulations;
4. Permanently disqualify individuals who have repeatedly violated the Act from participation in all horse showing activities; and
5. Decertify HIOs after their failure or refusal to correct instances of non-compliance.

IV. LEGAL BACKGROUND

In response to public outcry over soring practices, Congress enacted the HPA in 1970 to “end the inhumane practice of deliberately making sore the feet of Tennessee Walking Horses in order to alter their natural gait.”¹⁴ The HPA makes it unlawful to show, exhibit, or sell a sore horse, or for a horse owner to allow such activities to occur.¹⁵ The Act defines “sore” to mean: “(A) an irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse; (B) any burn, cut, or laceration has been inflicted by a person on any limb of a horse; (C) any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse, or (D) any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse, and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be

¹⁴ H.R. REP. NO. 91-1597 at 4871.

¹⁵ 15 U.S.C. § 1824.

expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving.”¹⁶ Soring also includes any of the foregoing activities that cause a horse to suffer physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving.¹⁷

Scarring of the pasterns is considered irrefutable evidence of illegal soring. When the HPA was first passed, the industry promised to regulate scarring according to its own rules, but Congress found such enforcement so “lax or nonexistent” that USDA promulgated the “scar rule” in 1979.¹⁸ The scar rule requires the front and sides of the front pasterns to be free of lesions (which are inflammatory reactions to biological and chemical agents).¹⁹ Pasterns may not show pathological evidence of soring, such as hair loss, lesions, irritation, moisture, edema (swelling), or inflammation. Sadly, the scar rule induces virtually no compliance: over 47% of all HPA violations in 2009 were based on scar rule violations.²⁰

The Act anticipates that violators will try to elude detection of soring and scarring by using caustic chemicals to remove scars and by using topical anesthetics and cooling agents to mask pain, and accordingly prohibits the use of such foreign substances.²¹ The HPA regulations also prohibit the use of certain “action devices” used to artificially and painfully accentuate gait, such as excessive artificial toe length extensions, rigid pads, rocker bars on the bottom of

¹⁶ *Id.* at § 1821(3). The law explicitly also excludes the use of the listed practices for therapeutic purposes from the definition of soring. *Id.*

¹⁷ 15 U.S.C. §§ 1821(2), 1824(2).

¹⁸ 44 Fed. Reg. 25, 176 (April 27, 1979). Horses foaled after October 1, 1975 that do not meet the rule’s criteria are presumed to be sore. 9 C.F.R. § 11.3.

¹⁹ 9 C.F.R. §§ 11.3(a)-(b).

²⁰ See Shows attended by USDA, *infra* note 27. See also USDA DQP Annual Show Report, available at http://www.aphis.usda.gov/animal_welfare/hp/downloads/reports/dqp_report_08.pdf (last visited July 23, 2010).

²¹ 15 U.S.C. § 1824(7) references the Horse Protection Regulations found in 9 C.F.R. § 11 to prohibit the use of substances deemed illegal under the Regulations; §11.2(c) specifically enumerates the permissible substances – which cannot sore or be used to remove scars – that may be applied to horses.

horseshoes, beads, bangles, rollers, and chains weighing more than six ounces, chains with irregular links, and devices that abrade a horse's legs.²² Further, it is illegal to attach weights inside a hollowed-out shoe, or to trim hooves in a manner that would cause pain, distress, or inflammation.²³

As noted, enforcement of the Act has been largely delegated to the industry itself, even though USDA has an affirmative legal obligation to enforce the Act.²⁴ USDA recently released the 2010 Horse Protection Penalty Protocol, which sets forth recommended penalties for HIOs to apply to HPA violations.²⁵ HIOs are permitted to create and enforce their own penalty schemes, and if USDA believes those effectuate the purpose of the Act and regulations, it will not initiate a Federal case against the violator.²⁶ In theory, USDA retains primary enforcement jurisdiction at all shows, but budget shortfalls have allowed the industry to call the shots. For example, USDA attended less than 7% of all Tennessee Walking Horse shows in 2009.²⁷ *This means that a staggering 93% of shows lacked any USDA oversight whatsoever.*

The Act provides for a criminal and civil penalty scheme that is inconsistently enforced. Under the Act, criminal penalties of up to \$3,000 and/or one year imprisonment may be imposed

²² "Action devices" are defined as any "boot, collar, chain, roller, or other device which encircles or is placed upon the lower extremity of the leg of a horse in such a manner that it can either rotate around the leg, or slide up and down the leg so as to cause friction, or which can strike the hoof, coronet band or fetlock joint." 9 C.F.R. §11.2(7). The Agency's regulations also forbid the use of certain action devices or other methods that can reasonably be expected to cause a horse to be sore. *Id.* at §§ 11.1; 11.2(a).

²³ *Id.* at §§ 11.2(b)(18)-(19).

²⁴ *Id.* at 7-8.

²⁵ *Supra* note 3.

²⁶ *See* 2010 Penalty Protocol, *supra* note 3.

²⁷ USDA reports how many gaited horse shows its staff attend for the purpose of HPA enforcement; in 2009, that number was 36. USDA also typically reports on the number of shows affiliated with one of its certified HIOs; the USDA attendance rate is calculated by dividing the former number by the latter. However, USDA has yet to report the latter number for 2009. Assuming that the number of affiliated shows in 2009 was the same as in 2008 (532), then the percent of shows USDA attended was 36/532, or 6.77%. *See Shows attended by USDA, available at* http://www.aphis.usda.gov/animal_welfare/hp/downloads/reports/USDAHP1209.pdf (last visited July 23, 2010).

for intentional HPA violations (\$5,000 and/or five years for subsequent offenses), and civil penalties of up to \$2,200 per violation may be imposed after a hearing and written assessment by the Secretary.²⁸

V. **FACTUAL BACKGROUND**

A. **Current Regulations Continue to Permit Inhumane and Abusive Practices**

As USDA is aware, soring practices continue to be rampant due to wholly inadequate self-regulating enforcement system (discussed below). Soring is done by applying a chemical irritant – such as mustard oil, diesel fuel, and kerosene – to the front pasterns (the area just above the hoof) until the skin blisters or breaks.²⁹ The legs are “marinated” with plastic that is wrapped around the area for several days to maximize the caustic effects of the chemicals. Metal chains are then fastened to this sore area when the horse is ridden, causing the horse to lift his legs higher to achieve the desired extreme, artificial gait. This painful process often causes trauma, edema and even bleeding, and leaves the tissue scarred, calloused and void of hair – telltale signs of abuse. Soring persists despite USDA’s affirmative duty to administer and enforce the Act in a manner that eliminates abusive soring practices.

The HPA not only outlaws the actual scarring of a horse’s pasterns, but it also prohibits practices that contribute to the soring of the horse. Action devices such as chains, boots, and

²⁸ 15 U.S.C. §§ 1825(a)(2),1825(b)(1); 7 C.F.R. § 3.91(b)(2)(vii). A person may appeal a fine and request a hearing, and the Secretary must make a written assessment that takes into account the nature, circumstances, extent and gravity of the conduct, the violator’s degree of culpability, and prior offenses. The Secretary may disqualify a person from showing or participating in shows. 15 U.S.C. §§ 1825(b)(1)-(2).

²⁹ See deposition testimony from Martin v. Oliver, Kentucky Circuit Court Civil Action No. 04-CI-00178, *available at* http://media.kentucky.com/smedia/2008/09/04/12/oliverdepoexerpts002.source.prod_affiliate.79.pdf (last visited July 23, 2010).

collars weighing no more than six ounces are permitted during exhibition,³⁰ but trainers commonly use these devices in conjunction with other soring techniques – such as chemical burns – so that the chains, boots, and collars cause extreme pain when rubbing against inflamed areas. They also use overweight chains (which have been shown to sore a horse) in training, which are illegal in the show ring. Pads are also used to conceal soring mechanisms, such as tacks, screws or hardened acrylic that are inserted between the hoof and a tightly attached stack of pads.³¹ The use of such action devices to perpetuate soring persists because the Regulations permit the stacks which conceal the illegal devices. USDA has an obligation to effectuate the humane purposes of the Act, yet current Regulations still tolerate the use of otherwise innocuous devices that can be used for cruel purposes.

Scarring and the removal and concealment of scars also continue to persist in the industry. Those who sore their horses go to great lengths to conceal soring scars in order to pass inspections, often using colored powders, tattoo ink, and dyes to mask redness caused by inflammation and to provide color to skin that has been depigmented or denuded of hair.³²

Because these unscrupulous individuals have become so adept at hiding scars, USDA has

³⁰ 9 C.F.R. §§ 11.2(b)(2), 11.2(b)(7)(ii). USDA's decision to adopt a six-ounce weight limit on action devices, based on conclusions in the Auburn study that action devices weighing less than six ounces were "not likely" to sore horses, was upheld by the District of Columbia Court of Appeals in 1990. *American Horse Protection Assn. v. Yeutter*, 917 F.2d 594 at 598 (D.C.Cir. 1990). The court stated, "We continue to believe that properly conducted inspections are an effective means of detecting a horse with sore pasterns." *Id.*

³¹ See Joanne Meszoly, *EQUUS Special Report: Why Soring Persists*, EQUUS Magazine, November 2005, available at http://equisearch.com/horses_care/health/lameness/soring_030706 (last visited July 23, 2010); see also Vickey Marie Hollingsworth, *Big Lick Tennessee Walking Horses: The Greatest Freak Show on Earth*, available at <http://hphoofcare.com/lick.html> (last visited July 23, 2010).

³² The top three winning horses in the 2009 Celebration World Grand Championship class were found in violation of the scar rule upon post-show VMO inspection, despite having passed inspections prior to being entered for competition. USDA has cited the possibility that the horses' pasterns may have been treated with foreign substances prior to showing, in order to camouflage the scars. See Declaration of Keith Dane, Director of Equine Protection for The Humane Society of the United States, attached as Exhibit E, §§ 2-3. See also Journal of the American Veterinary Medical Association, *The Horse Protection Act – a case study in industry self-regulation* by W. Ron DeHaven, D.V.M. (April 15, 2000).

resorted to using sophisticated Gas Chromatography and Mass Spectrometry testing (“GC/MS tests”)³³ to detect irritants, numbing, and other masking agents surreptitiously used by trainers.³⁴ Scar rule violations are still commonplace, which necessarily means that soring and scarring continues to occur. Unfortunately, the existing regulations and enforcement policies permit sored, scarred horses to continue to be sored, scarred and subjected to cruel scar removal techniques repeatedly.

Trainers also use illegal “pressure shoeing” techniques. For padded horses, pressure shoeing involves cutting the hooves excessively close to the quick (often until they are bleeding), making the hooves extremely sensitive. Hard objects (such as tacks, screws or hardened acrylic) are inserted between the tender hoof sole and heavy “stacks” of pads and the horseshoe, causing unbearable pain every time weight is placed on the forelegs. For flat shod horses, pressure shoeing involves nailing a heavy shoe to an overtrimmed and sensitized hoof to inflict pain. Pressure shoeing may also involve forcing the horse to stand on concrete with hard wooden blocks or bolts affixed to the bottom of its hooves prior to a show, to create intense pain. Thus, detection of pressure shoeing requires a variety of methods, depending on how the horse is shod. Despite the illegality of all these practices, pressure shoeing of both padded and flat shod horses remains widespread.

³³ USDA has used thermography during inspections with positive results, and this practice should continue to be used in regular inspection procedures by USDA VMOs.

³⁴ See USDA Foreign Substance Penalty Protocol, *available at* http://www.aphis.usda.gov/animal_welfare/hp/downloads/gcms_protocol08.pdf (last visited July 23, 2010). USDA began conducting random swab tests in 2008, which are sent to an APHIS lab for analysis by Gas Chromatography/Mass Spectrometry. GC/MS is considered the “gold standard” technique, since it is able to ascertain the presence or absence of a given substance, rather than determining only that a substance falls within a category of substances. See also USDA’s Responses to HIO Comments on Foreign Substances, *available at* http://www-mirror.aphis.usda.gov/animal_welfare/hp/downloads/response_hio_comments_fsp.pdf (last visited July 23, 2010).

Stewarding practices, which are tactics to distract horses from pain in their legs during inspection to prevent reactions to digital palpation, are commonplace. The “distraction” method is simply creating a new source of intense pain. Stewarding often includes affixing metal alligator clips and zip ties to a horse’s tongue, gums, anus, and vagina just prior to inspection. It is well-known that trainers also administer mock inspections, accompanied by beatings or burnings prior to a show, so that the horse will not react to pain during actual inspections. Despite their obvious cruelty, these mock “training” inspections and the accompanying abuse are not prohibited under the Regulations.³⁵ USDA has the authority and obligation to implement Regulations and policy changes that would prohibit circumvention of the Act through inhumane stewarding – and should do so immediately.

B. Self-Enforcement Through the HIO Program is Inconsistent and Virtually Nonexistent

The showing of sore horses occurs overwhelmingly in the Southeast. In the last 18 years, the highest number of HPA-related suspensions occurred in Tennessee (2,898), Kentucky (1,113), and Alabama (638).³⁶ During the 2009 show season, over 53% of documented HPA violations and 61% of scar rule violations occurred at the Tennessee Walking Horse Celebration Show (“Celebration Show”), the industry’s premiere Tennessee Walking Horse show.³⁷ At this event, over 55% of the exhibitors of first-place horses from 59 classes had past HPA violations;

³⁵ The Regulations limit the definition of “sore” to practices which affect a horse’s limbs or cause discomfort while moving (rather than standing still during inspection). 9 C.F.R. § 11.1.

³⁶ See Declaration of Lori Northrup, President of Friends of Sound Horses, Inc., attached as Exhibit G, § 4(a).

³⁷ During the 2009 show season, a total of 761 HPA violations were documented by USDA VMOs at USDA-attended shows, which included 361 scar rule violations. Of these totals, 405 violations (53%) were documented at the 2009 Celebration Show, and 223 of these were scar rule violations. See Shows attended by USDA, *supra* note 27. See also Exhibit G, § 4(b).

over 50% of these trainers had *two or more* past violations.³⁸ Yet even with known violations of Federal law under their belt, USDA allows these trainers to continue showing abused horses and reap lucrative prize money.

The industry has a long history of refusal to self-regulate. The HIO/DQP program is a prime example of a woefully inadequate self-regulation scheme. HIO-trained Designated Qualified Persons (DQPs) are charged with inspection and enforcement when USDA is not present, and in many cases have consistently, intentionally, and egregiously failed to enforce the Act. Violation rates documented by some of the largest HIOs in the absence of USDA oversight are drastically lower than shows at which USDA is present.³⁹ For example, violations issued at the 2008 shows held by the Heart of America Walking Horse Association fell by 269% when USDA was not present.⁴⁰ Similarly, violations were issued 79% less frequently at 2008 Kentucky Walking Horse Association shows without USDA presence.⁴¹

C. Significant Conflicts of Interest Plague the Industry and Prevent Enforcement of the Act

Conflicts of interest are rampant throughout all levels in the industry and ultimately facilitate soring. Many DQPs have particularly acute interests that conflict with enforcement of the Act. In addition to performing inspections at shows, many DQPs maintain ongoing veterinary practices (often specializing in equine care), farrier businesses, and breeding

³⁸ See Exhibit G, § 4(c).

³⁹ See USDA Horse Protection Strategic Plan, *supra* note 9. DQPs are far less effective when performing inspections without USDA presence at a show. The number of horses entered in non-USDA attended shows is also dramatically larger than the attended shows. Even as the USDA has become more strategic in making surprise appearances, it is common practice for trainers to simply pack up and leave once the USDA arrives.

⁴⁰ See Exhibit G, § 4(f).

⁴¹ *Id.* at § 4(g).

operations – often in cities near show locations. Many owners and trainers at shows may also be clients of a DQP’s private veterinary practice or other businesses. Such DQPs are hesitant to issue tickets and impose penalties on their own clients, as this would risk personal financial losses. Therefore, in order to avoid jeopardizing his or her relationship with existing or potential clients, DQPs have an incentive to “look the other way” even when there are obvious HPA violations.

DQPs themselves are often caught personally violating the Act. Three DQPs *currently* working for the SHOW HIO are documented to have a history of HPA violations, and one has been subject to at least four separate HPA-related suspensions.⁴² Personal abuse of horses not only contradicts a DQP’s ethical obligations of humane treatment, but also renders enforcement of the HPA provisions highly unlikely.

Rampant violations also infect the judges of Tennessee Walking Horse shows. One of the 2009 Celebration Show judges (who has judged six past Celebration Shows) has five documented HPA violations, three of which were scar rule violations.⁴³ This particular judge is inextricably invested in the Tennessee Walking Horse industry, as entries from his personal stables have been shown throughout the Southeast and have earned many top ties, including six World Championships.⁴⁴ Employing judges who violate the HPA is clearly problematic; as violators themselves, these judges have an incentive to continue awarding cash prizes and prestige to those who show sore horses.

⁴² *Id.* at § 5(e).

⁴³ *Id.* at § 5(f).

⁴⁴ See Shelbyville Times-Gazette: “Celebration Judges Announced,” July 17, 2009, *available at* <http://www.t-g.com/story/1555421.html> (last visited July 23, 2010).

Finally, industry organizations themselves are often comprised of HPA violators. SHOW – an HIO whose acronym ironically stands for “Sound Horses, Honest Judging, Objective Inspections, Winning Fairly” – currently employs 17 committee members who have personally violated the HPA, a vast majority of which violated the HPA within the past five years.⁴⁵ Even more disturbing is that at least two members of SHOW’s Sound Horse Task Force have been personally suspended three or more times for scar rule violations.⁴⁶ Other HIO members with suspensions include 100% of the recipients for these Walking Horse Trainers’ Association’s “Trainer of the Year” award.⁴⁷ The top three honorees at the 2009 Riders’ Cup shared a history of 26 HPA violations; the 46 individuals listed in the Riders’ Cup 2009 standings shared a total of 204 HPA violations.⁴⁸ Even the former vice president of the Kentucky Walking Horse Association (“KWA”), which owns and operates the Kentucky Horse Industry Organization, was found civilly liable for soring one of his client’s horses in 2007.⁴⁹ Despite the widespread publicity surrounding this case, this individual continues to be actively involved in the industry and is currently serving a two-year board seat position for the KWA.⁵⁰

⁴⁵ See Exhibit G, § 5(a).

⁴⁶ *Id.* at § 5(b).

⁴⁷ *Id.* at § 5(c).

⁴⁸ The Riders’ Cup is a prestigious high-points award program, and is a joint venture between the Walking Horse Trainers’ Association and the Walking Horse Report. Winnings from the Riders’ Cup competitions have paid out over \$300,000 since its inception in 2005. See Walking Horse Trainers’ Association announcements for the 2010 Riders’ Cup, *available at*

http://www.walkinghorsetrainers.com/index.php?option=com_content&view=article&id=36:riders-cup-program-announces-changes-for-2010&catid=12:news--press-releases&Itemid=27 (last visited July 23, 2010). See also Exhibit G, § 5(d).

⁴⁹ See Judgment from *Martin v. Oliver*, Kentucky Circuit Court Civil Action No. 04-CI-00178, *available at* http://media.kentucky.com/smedia/2008/09/04/12/soringjudgment004.source.prod_affiliate.79.pdf (last visited July 23, 2010). See also Lexington Herald-Leader: “Banned but not Banished,” August 31, 2008, *available at* <http://www.kentucky.com/2008/08/31/508645/banned-but-not-banished.html> (complaint and deposition testimony also found here) (last visited July 23, 2010).

⁵⁰ See List of 2010 Kentucky Walking Horse Association officers, *available at* <http://www.kywha.com/officersboard.htm> (last visited July 23, 2010).

In sum, the current system of delegating the enforcement of the HPA to the industry itself permits open non-compliance and a system whereby the foxes guarding the henhouse have severe conflicts of interest and are repeat violators of a Federal animal cruelty law.

VI. REQUESTED ACTIONS

The plain language of the Act directs the Secretary to prescribe regulatory requirements to carry out the purposes of the HPA.⁵¹ USDA's delegation of regulation to the Tennessee Walking Horse industry—which blatantly refuses to self-regulate—improperly allows illegal soring and non-enforcement to permeate the industry. In order to banish soring, USDA should aggressively utilize its statutory and regulatory powers under the HPA, as mandated by Congress. Although USDA has recently taken laudable steps to discourage inhumane practices via its issuance of the 2010 Points of Emphasis and 2010 Penalty Protocol, the Petitioners respectfully request that USDA promulgate the following modifications to the Regulations and implement appropriate policies in order to ensure effective implementation and enforcement of the Act.

A. Scarred Horses Must Be Permanently Disqualified In Order To Eliminate the Repeated Soring of Individual Horses

The fact that scarred horses are repeatedly shown and dismissed from shows irrefutably demonstrates that illegal soring continues in the Tennessee Walking Horse industry. The 2010 Points of Emphasis clarify that a horse dismissed for a scar rule violation is only dismissed from the particular show where the violation occurred. However, there is currently no prohibition

⁵¹ 15 U.S.C. § 1823.

against the immediate entry of that same disqualified horse into a different show. In theory, the same scarred and disqualified horse could be entered into every show held by any HIO during the entire season, providing little deterrent to soring and abusive scar removal.

Nor is there a mechanism under the current Regulations to permanently disqualify a horse. The penalties outlined in the 2010 Protocol establish suspension penalties for scar rule violations that range from two weeks to one year, but this suspension applies only to the trainer. The scarred horse – which the HPA is purportedly designed to protect – is thus easily subjected to repeated soring and scar removal for the purposes of entering a different show or to compete in subsequent seasons.⁵² This practice is commonplace. For example, a horse named Moody Star was dismissed for scar rule violations at the 2008 Celebration Show, yet resumed showing and placed first at the 2009 Celebration Show's Amateur World Grand Championship.⁵³ Similarly, a horse named Private Charter was disqualified *twice* for scar rule violations in 2008, but showed and placed sixth at the 2009 Celebration World Grand Championship.⁵⁴

Despite enhanced inspection and detection efforts, it is clear that soring, re-soring, and the resulting scarring of walking horses continues to be rampant. At the end of the 2008 show season, USDA compiled a presentation of several scar rule violations that provided ample

⁵² Owners and trainers have challenged scar rule soreness determinations on the grounds that a horse with a fully healed scar is not actually sore. The Sixth Circuit disagreed, finding that a previously-scarred horse, though now healed, was rightly disqualified because the evident past soring provided a market for a scarred horse in contrast with the intent of the Act. *Rowland v. USDA*, 43 F.3d 1112, 1115 (6th Cir. 1995).

⁵³ In addition to the 2007 and 2008 disqualifications, Moody Star was dismissed from Class 109 at the 2009 Celebration Show on September 1, 2009, yet later showed and won in Class 111 two nights later. See 2009 Celebration Show Results for September 3, 2009, available at <http://www.twhnc.com/results-8-28.htm> (last visited July 23, 2010). See also HPA Data website, *infra* note 65; Exhibit G, § 5(h).

⁵⁴ See 2009 Celebration Show Results for September 5, 2009, available at <http://www.twhnc.com/results-8-30.htm> (last visited July 23, 2010). See also HPA Data website, *infra* note 65; Exhibit G, § 5(i).

photographic evidence of soring practices.⁵⁵ In addition, sound horses are often swapped in for sore horses for the purposes of passing inspections,⁵⁶ which means that injured horses could be repeatedly entered (and sored) undetected. Tickets that are issued for scar rule violations are invariably missing essential identifying information, making it impossible to know whether a horse has been disqualified in the past under a different name or owner.⁵⁷ It is likely that these horses have been subjected to repeated soring, painful scar removal, and other abuse during multiple show seasons.

Permanent disqualification of scarred horses is required to eliminate repeated soring practices and to promote humane treatment of horses. Once permanently disqualified, a horse can no longer compete in shows rewarding the “big lick”, and the incentives to sore a disqualified horse are removed. A permanently disqualified horse represents a huge pecuniary loss to both trainer and owner, which should serve as an effective deterrent to soring practices. Congress recognized the great deterrent potential of permanent disqualification at the inception of the HPA, stating: “In its practical effect, [banning scarred horses] will make it impossible for persons to show sored horses in nearly all horse shows. This denial of the opportunity to win ribbons should destroy the incentive which presently exists for owners and trainers to painfully mistreat these magnificent animals.”⁵⁸ After forty years of the repeated entry and re-soring of

⁵⁵ See APHIS Animal Care Horse Protection Program Presentation on Scar Rule Violations for the 2009 Show Season (December 1, 2009), available at http://www.aphis.usda.gov/animal_welfare/hp/downloads/ScarRuleViolations2009.pdf (last visited July 23, 2010).

⁵⁶ SHOW HIO has published the names of individuals currently under suspension for “Swapping Horses” on its website, available at http://showhio.com/get_suspensions.php (last visited July 23, 2010). See also Shelbyville Times-Gazette, “SHOW Tells Public of Violations” (July 8, 2009), available at <http://www.t-g.com/story/1553030.html> (last visited July 23, 2010).

⁵⁷ Of 142 tickets issued at the 2008 Celebration Show, 139 (98%) of these were missing essential information at the time of issuance, such as horse registration numbers, owners’ addresses, exhibitors’ names, and trainer’s license number and address. In addition, 27 of the sequentially numbered tickets were completely missing. See Exhibit G, § 4(e).

⁵⁸ S. Rep. No. 91-609 at 2 (1969).

scarred and sore horses, USDA's adoption of a zero-tolerance policy towards scarred horses is long overdue.

Permanent disqualification of scarred horses will also increase inspection efficiency. Violations of the scar rule are often found to be perpetrated by repeat offenders (discussed *infra*). Permanent disqualification will prevent USDA from examining the same scarred horse repeatedly during a single show or season, or during subsequent seasons.

B. Requiring HIOs to Impose Minimum Penalties for Violations of the Act is Necessary to Ensure Effective Implementation of the Act.

The HPA regulations mandate minimum penalties for HPA violations. While the 2010 Penalty Protocol *recommends* that HIOs impose certain minimum penalties⁵⁹ for HPA violations, the 2010 Penalty Protocol remains *optional*, assuring that the industry will remain largely under-regulated and the Act under-enforced. The Operating Plan⁶⁰ system, which was in effect until last year, clearly demonstrated that the industry is incapable of self-regulation and enforcement. The adoption of varying penalty schemes by each HIO resulted in confusion and inefficiency, and even the HIOs that opted for the Operating Plan⁶¹ were seldom bound by it. With the

⁵⁹ 9 C.F.R. § 11.21(d) gives USDA-certified HIOs the authority to enforce and effectuate the purpose of the Act.

⁶⁰ Under an Operating Plan created in 2007, USDA agrees not to institute enforcement proceedings against violators as long as the HIO penalty satisfies the purpose of the Act. Two versions of the Operating Plan were currently in effect until December 31, 2009, and HIOs could choose to sign on to one, the other, or neither. *See* Horse Protection Operating Plan 2007-2009, Sect. I.; Operating Plans *available at*

http://www.aphis.usda.gov/animal_welfare/hp/downloads/hp_2007-09_op_2-15.pdf and http://www.aphis.usda.gov/animal_welfare/hp/downloads/hp_2007-09_op_7-20.pdf (last visited July 23, 2010).

⁶¹ In 2009, eight of the fourteen total HIOs signed the version issued July 20, 2007 (which imposed increasingly enhanced penalties for repeated violations, but expunged a violator's record after twelve months); three signed the version issued February 15, 2007 (which imposed consistent penalties up to the fifth violation, but did not offer record expungement. The two largest HIOs (Kentucky Walking Horse Association and SHOW) opted out of both plans entirely, and therefore are not subject to the same penalties as other HIOs). *See* HPA Operating Plan Signatory Page List, *available at*

http://www.aphis.usda.gov/animal_welfare/hp/downloads/hp_op_signatory_list.pdf (last visited July 23, 2010).

elimination of the Operating Plan in 2010 and USDA's current position of allowing HIOs to choose whether to apply the recommended penalties (or any penalties), this situation is further exacerbated. Because USDA only inspects a small percentage of shows, HIOs can often apply relaxed enforcement and the assessment of lower penalties than would be applied by USDA. This is common knowledge in the industry, yet little federal action has been taken – likely due to the great administrative burden of dealing with multiple and varying sets of penalty rules.⁶²

In addition, there are several HPA violations and inhumane practices that are frequently documented but are not included in the 2010 Penalty Protocol. For example, there is no minimum penalty for instances of pressure shoeing, stewarding practices, or the act of swapping horses or numbers⁶³ – all of which are widespread practices in the industry.

USDA's failure to establish minimum required penalties is arguably illegal under the HPA, which authorizes the Secretary of Agriculture to “issue such rules and regulations as he

⁶² *Id.* Despite the availability of criminal penalties, there has never been a single appellate review of any criminal sentence pursuant to the Horse Protection Act. See Exhibit F, § 4. Of over 1,300 HPA violations documented in 2007-2009, judges have temporarily disqualified only *ten* of these individuals from showing horses. See USDA Veterinary Medical Officer (VMO) Horse Protection Show Report for 2007, *available at* http://www.aphis.usda.gov/animal_welfare/hp/downloads/reports/vmo_report-2007.pdf (last visited July 23, 2010); see also Administrative Law Judge Decisions, *available at* <http://www.da.usda.gov/oaljdecisions/> (last visited July 23, 2010).

⁶³ It is possible for the real trainer to avoid violation detection (and avoid the penalty when a horse is found non-compliant), receiving an accolade only when a winning horse is found to be compliant. Owners and trainers often re-register a horse under a different name for different shows, or register a horse through a corporation, groomer, spouse, friend, or even youths (who have no liability under the Act). This occurs because there is no requirement that a horse be “declared” as being under the training of a specific trainer. It is thus possible to “declare” a third-party individual as the trainer of a non-compliant horse, so that the real trainer can escape the penalty. Horse swapping, in which a horse trainer simply presents a compliant horse for inspection in place of another horse that would have been dismissed for violations of the Act, is also a common practice. Congress recognized this problem more than 30 years ago: “Names of horses can be changed and papers switched so that it is impossible to make sure that a ‘sored’ horse is not shown again.” Statement of the Department of Agriculture received for the record, Hearing Before the Subcomm. on Health and the Environment of the Comm. on Interstate and Foreign Commerce on H.R. 6155 and S. 811, 94th Cong. 32 (1976). Horses themselves are often swapped as well (where one horse stands in as the horse listed on the ticket) in order to pass inspection. *Supra* note 56.

deems necessary to carry out the provisions” of the Act.⁶⁴ The inconsistent and optional penalty structures permitted by USDA facilitate nonenforcement and repeated soring. Because USDA, through APHIS, has been tasked with the administration and enforcement of the Act, the Department is under an affirmative duty to ensure that such administration and enforcement is uniform. We request that USDA promulgate HPA regulations which require the minimum penalties set forth in Exhibit C.

C. **Incorporation of Certain 2010 Points of Emphasis Into HPA Regulations Will Greatly Increase Enforcement Efficiency**

USDA should be commended on the release of the 2010 Points of Emphasis, which outlines a comprehensive list of clarifications to the Regulations and USDA authority. Several of these Points of Emphasis are particularly noteworthy and should be implemented into the Regulations in order to further clarify the scope and application of the Act. We have prepared a list of items, set forth in Exhibit D, that identifies those 2010 Points of Emphasis and additional items that should be promulgated in the HPA Regulations. These are common-sense steps which will help to eliminate the mockery of current, rampant non-compliance. For example, these regulations would end the absurd practice of disqualified sore horses re-entering in the very same show, but in a different class; the regulations would make the practice of horse-swapping to avoid the soring rules subject to criminal penalties; the concept of “participation” in horse soring will be broadened to include many acts which fall outside the regulations now, and will extend to owners of sored horses; and any multiple or subsequent HPA violations that incur suspension penalties would be served consecutively, in order to avoid strategic postponements of hearings to

⁶⁴ 15 U.S.C. § 1828.

“time” suspensions to fall outside of show season. Including these policies (as listed) in the Regulations would greatly improve enforcement efficiency of the Act.

As discussed above, USDA has been granted authority by Congress to implement rules and policies necessary to effectuate and enforce the Act. We request that USDA implement the items set forth in Exhibit D into the Horse Protection Regulations.

D. Permanent Disqualification of Repeat Individual Violators of the Act Will Enhance Enforcement and Conserve Department Resources

Repeated violations of the HPA by the same individuals and organizations are a serious problem, as already-scarce USDA resources should not be spent on monitoring the same group of flagrant offenders. And most of the violators are indeed flagrantly ignoring the law: 4,267 out of 8,783 total documented HPA violations since 1986 were committed by repeat offenders.⁶⁵ One Texas couple has been suspended over 20 times in the past 8 years, primarily on the basis of scar rule and bilateral soring violations; another Minnesota man was suspended 16 times in the past 7 years, primarily for scar rule violations.⁶⁶ It is abundantly clear that with some chronic violators, such as these individuals, the current suspension penalties do not deter illegal soring.

While Congress contemplated repeated violations of the Act (given its graduated penalty structure for each offense), it certainly did not intend to condone, perpetually and indefinitely, individuals who violate the Act with impunity. USDA should promulgate a regulation requiring permanent disqualification of any individual or organization that has been assessed more than three violations of the Act. Permanent disqualification would prohibit these flagrant repeat

⁶⁵ HPA Data website, <http://www.hpdata.us/> (last visited July 23, 2010).

⁶⁶ *Id.*

offenders from competing, entering, or otherwise participating in any shows (including roles as an inspector, judge, committee member, or any other show-related capacity). Most professional industries have limits on the number of intermediate and egregious violations that may occur before licenses are permanently revoked, and the Tennessee Walking Horse industry should be no exception.⁶⁷

The Petitioners request that permanent disqualification penalties be included in the HPA Regulations simultaneously with the other recommended changes to the Regulations in this petition (permanent disqualification of scarred horses, discussed above, and the decertification of non-compliant HIOs, discussed below).

E. The Decertification of Non-Compliant HIOs is Necessary for Effective Enforcement In a Self-Regulating Industry

The Act requires the Secretary to prescribe regulations governing inspections to aid enforcement.⁶⁸ Because HIOs perform the overwhelming majority of inspections, HIO compliance and integrity must be guaranteed to achieve the humane goals of the Act. Yet it is clear that conflicts of interest are rampant among those responsible for enforcing the Act. USDA should discipline non-compliant HIOs and otherwise promulgate stricter regulations.

⁶⁷ For example, the licenses of horse racing drivers and trainers can be permanently suspended for the use of banned substances on a horse (*Spano v. New York State Racing and Wagering Board*, 2009 WL 982177 (NY 2009) and *Vaders v. Pennsylvania State Horse Racing Commission*, 2008 WL 5473629 (Comm.Ct. PA 2009)); embalmers' licenses may be permanently revoked following repeated and systematic violation of statutory requirements (*Moraski v. Connecticut Board of Examiners of Embalmers and Funeral Directors*, 291 Conn. 242, 967 A.2d 1199 (CT 2009)); physicians' licenses may be permanently revoked for repeated acts of gross negligence (*Halil v. Medical Board of California*, 2009 WL 783251 (App. Ct. CA 2009)); and chiropractors may have their licenses indefinitely suspended based on multiple complaints of misconduct from patients without violating due process rights (*Greene v. Wyoming Board of Chiropractic Examiners*, 204 P.3d 285 (WY 2009)).

⁶⁸ 15 U.S.C. § 1823(c); 9 C.F.R. § 11.7(g).

Congress gave the USDA discretion to decertify HIOs that violate the Act or fail to carry out their duties as outlined in the Regulations.⁶⁹ The Department issued the Horse Protection Strategic Plan in 1998 in response to compliance concerns and declared that decertification of HIOs would be based on “chronic inaction or noncompliance to resolve DQP problems, on fraudulent bookkeeping, on data obtained from audits, and/or on any noncompliance.”⁷⁰ USDA also specifically listed that failure to “establish or properly carry out...monitoring, supervision, or disciplinary procedures” would be grounds for decertification of an HIO.⁷¹ While USDA has acknowledged that certain HIOs are consistently non-compliant, *not a single DQP program has yet to be decertified, and not a single HIO has been disciplined by USDA.*⁷² Shows known for performing lax inspections and issuing fewer tickets attract vastly more participants, because abusive trainers prefer to enter their horses where soring enforcement is less likely. The failure to decertify non-compliant HIOs thus has the perverse effect of enabling, and indeed rewarding, those who turn a blind eye to the law. With no fear of decertification, non-compliant HIO’s are free to associate with more shows, encourage the spread of illegal competitive advantages of soring, and reap the associated financial benefits.⁷³

⁶⁹ The Regulations permit decertification of DQP programs if the HIO fails to properly implement the required monitoring, inspection, reporting, and discipline procedures. 9 C.F.R. § 11.7(g). Decertification may also occur if an HIO licenses an HPA violator as a DQP within two years of a first violation or five years of a second or subsequent violation. *Id.* at § 11.7(c)(4).

⁷⁰ USDA Horse Protection Strategic Plan, issued April 1998, *supra* note 9.

⁷¹ “The Department feels that methods of monitoring[,] supervision, and disciplinary procedures are primarily the responsibility of the licensing organizations or associations and should be properly established and maintained by them. Should the licensing organization or association fail to establish or properly carry out such monitoring, supervision, or disciplinary procedures, the Department may revoke certification of the DQP program of that organization or association.” 44 Fed. Reg. 1560 (Jan. 5, 1979).

⁷² See May 29, 2009 APHIS warning letter to SHOW, attached as [Exhibit E](#).

⁷³ With little enforcement or serious consequences for inspectors who look the other way, the competitive advantage of soring inevitably encourages more shows to affiliate with HIOs with lax enforcement practices. For example, the Kentucky HIO (which was a non-signatory to previous USDA operating plans) has attracted several shows which were previously affiliated with SHOW (which had recently taken initial steps committing to compliance and enhanced enforcement).

It is clear that “chronic inaction or noncompliance” pervades some of the HIOs, given the instances of DQP violators, HIO committee members with scar rule violations, and the drastic reductions in ticketing without USDA presence. These widespread and repeated failures to enforce the Act are obvious and compelling grounds for decertification of noncompliant HIOs. Until a chronic offender is decertified, however, there is little to discourage the irresponsible HIO from ignoring the law.

The Petitioners propose that the USDA adopt an aggressive policy for the automatic decertification of HIOs after their failure or refusal to correct instances of non-compliance.⁷⁴ Examples of non-compliance would include but not be limited to: licensing, or failure to revoke licensing, of any DQP that has violated the Act;⁷⁵ failure to make required reports; conducting inspections in a manner other than contemplated by the Act; permitting a disqualified or scarred horse to show; failing to conduct required post-show inspections; and the presence of any prohibited action devices on show premises. Failure to correct non-compliance within 30 days of notification by USDA should be grounds for decertification. Initial non-compliance, followed by a refusal or failure to remedy the problem is adequate proof that an HIO cannot live up to its legal obligations, and USDA should immediately initiate the decertification process for that HIO.

During the 2009 Celebration Show, citations were issued for the following HPA violations: entry of horses under incorrect or varying names (of horse or individuals); switching of horse numbers to avoid proper identification; swapping of horses to pass inspections;

⁷⁴ While the Act and Regulations clearly contemplate decertification of non-compliant HIOs, the Regulations lack specific criteria for non-compliance, other than requiring that HIOs correct any non-compliance within 30 days. 15 U.S.C. § 1823 (c); 9 C.F.R. § 11.7(g).

⁷⁵ The Regulations require HIOs to cancel the license of any DQP who has been convicted of any HPA violations. 9 C.F.R. § 11.7(f)(2). The Regulations also prohibit HIOs from licensing any person as a DQP within two years of their first violation or five years of their second violation. *Id.* at § 11.7(c)(4).

improper maintenance of inspection areas; and presence of prohibited persons inside inspection areas.⁷⁶ Any of these, if brought to the attention of the HIO and not corrected, should have been grounds for decertification.

The prospect of an aggressive policy that includes immediate decertification proceedings after uncorrected violations of the Act will encourage HIOs to closely supervise their shows for compliance. HIOs would also be deterred from licensing, or failing to revoke licensing from, DQPs who have personally violated the HPA.⁷⁷ Automatic decertification will increase efficiency and conserve Department resources, because USDA would not be required to assign the large number of employees currently needed to monitor a historically non-compliant HIO that was likely to commit further violations.

VII. CONCLUSION

The Petitioners urge USDA immediately to promulgate regulations and adopt policies that will effectively prohibit abusive soring and increase HPA enforcement consistency and efficiency. The 2010 Points of Emphasis document is a positive first step towards this aim. While these changes are commendable, they are nonetheless long overdue responses to known soring practices that have persisted for 40 years. Soring remains rampant largely due to the continuous failure of the self-regulating administration of the HPA at the industry level and non-enforcement in deference to powerful industry participants and groups. USDA's failure to remedy these rampant illegalities for 40 years is in direct contravention of the Congressional purpose of the Act.

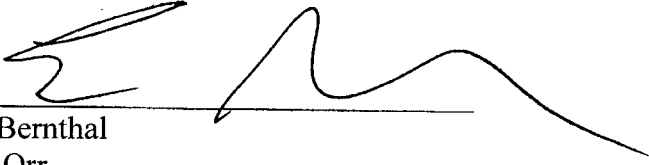
⁷⁶ See HPA Data website, *supra* note 65.

⁷⁷ *Supra* note 74. These provisions have not stopped delinquent DQPs from continuing to perform inspections, whether they are in personal violation of the Act or refuse to enforce the Act on others.

A few regulatory changes, which are easily within USDA's authority to implement, underscore the feasibility of drastically improving administration of the Act with minimal effort. Mandating the HIOs' implementation of a minimum penalty structure is an integral step that USDA should take to fulfill its affirmative obligation to effectuate and enforce the Act. Decertification of non-compliant HIOs and permanent disqualification of repeat violators would serve as effective deterrents to violations and circumventions of the Act. More urgently, scarred horses should be immediately and permanently disqualified, so that individual horses are no longer subjected to repeated soring and scar removal processes, trainers are incentivized to train without soring (and scarring) horses, and owners are incentivized not to allow this mistreatment of their animals.

Most importantly, these constructive changes will help to change the culture of non-compliance that pervades the industry and better serve the humane objectives of the Act and the HPA. In order to protect horses from further cruel and inhumane abuse, the Petitioners respectfully request that USDA implement these changes immediately.

Respectfully submitted,



Eric L. Bernthal
Sara K. Orr
Danielle A. Lackey
Joyce M. Wang
Latham & Watkins LLP
555 Eleventh Street, NW
Washington, DC 20004



Kimberly Ockene
The Humane Society of the United States
2100 L Street, NW
Washington, DC 20037



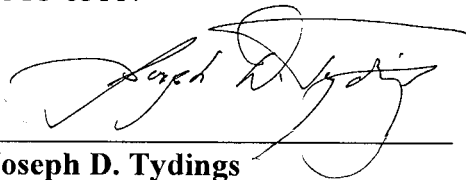
Matthew Bershader, Senior Vice President, Anti-Cruelty Group
The American Society for the Prevention of Cruelty to Animals
424 E. 92nd Street
New York, NY 10128



Robin C. Lohnes, Executive Director
The American Horse Protection Association, Inc.
1000 29th Street NW, Suite T-100
Washington, DC 20007



Lori Northrup, President
Friends of Sound Horses, Inc.
6614 Clayton Road #105
St. Louis, MO 63117



Senator Joseph D. Tydings
1825 Eye Street NW
Washington, DC 20006

EXHIBIT A

2010 POINTS OF EMPHASIS

Dismissal from Show, Exhibition, Sale or Auction – *Horse Protection Act (HPA) § 1823(a). Horse Protection Regulations (HPR) § 11.20(a), (b); § 11.22(d).*

HIOs must dismiss a horse found in violation of HPA from participating in any remaining portion of horse show, horse exhibition, horse sale or auction (rather than just the individual class).

HIO will track horses appropriately so horses cannot enter into another class inspection throughout the show, exhibition, sale, or auction.

DQPs will collect class sheets and entry forms for each show. HIO offices must keep these records for 1 year and make them available for yearly USDA audits to confirm that horses found in violation of the HPA did not participate in any classes and shows.

Dismissal from Arena – *HPA § 1823 (a); § 1824. HPR § 11.20.*

Horses dismissed from the show arena, either by a judge, steward or rider of the horse, must report directly to the inspection area for follow-up inspection.

Inspections will be conducted on all horses, regardless of breed, that are going to perform an accentuated gait – *HPA § 1821(3). HPR § 11.1.*

Horses in parades, trail rides, timed or rodeo events do not need to be inspected. Horses in classes considered to be versatility may not require inspection if the HIO submits a class list to USDA for review and USDA provides approval (prior to the class) for non-inspection. Breeds participating in a multi-breed class will be subject to inspection. HIOs may apply more stringent inspection requirements if deemed necessary.

Detention – *HPA §1825(e). HPR § 11.4; § 11.21(c).*

A USDA representative may detain a horse, up to 24 hours, for additional inspection if they have reason to believe the horse is sore.

Protective Boots – *HPA § 1824(7). HPR § 11.2(b)(7)(i),(ii).*

Soft rubber or soft leather bell boots and quarter boots used as protective devices are allowed unless the protective device appears to be functioning as an action device and/or can reasonably be expected to cause a horse to be sore, in which case the horse will be in violation of the HPA. Boots, collars, or any other devices that weigh more than 6 ounces are prohibited.

Leg Wraps – HPA § 1821(3); § 1824(7). HPR § 11.2(c).

Plastic, cotton, or any materials thereof that are on horses' legs while they are on showgrounds may be subject to immediate inspection and sampling for foreign substance (*please refer to 2009 Point of Emphasis*).

Digital Imaging Findings – HPA § 1821(3). HPR § 11.1, § 11.2(12),(13).

Horses found with coffin bone rotation of more than 5 degrees are in violation of the HPA and considered sore.

Horses found with materials other than permitted materials within the package will be found in violation of the HPA.

Inspection Findings – HPA § 1823(c), (e); § 1825(c). HPR § 11.7(e), (f).

If the USDA representative finds a horse in violation of the HPA/HPR after the DQP has inspected the horse, all individuals who participated in the entry and/or showing of that horse will be subject to a federal case.

The USDA representative will advise the DQP of his/her findings and the DQP can recheck the horse and/or apply the penalty through the HIO.

Any licensed DQP who violates the rules, regulations, by-laws, or standards of conduct set forth by their HIO; who fails to follow the inspection procedures set forth in the Horse Protection regulations or; who otherwise fail to carry out his duties and responsibilities in a less than satisfactory manner, shall be subject to a letter of warning, or cancellation of their DQP licenses by their HIO or USDA.

USDA Disqualifications and HIO Suspensions – HPA § 1825(c). HPR § 11.7(d)(5).

A violator on disqualification or suspension may only participate as a spectator at the horse show, horse exhibition, horse sale, or horse auction.

- Violators are disqualified or suspended from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, family member, corporation, partnership, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, or horse sale or auction, directly or indirectly through any agent, employee, family member, corporation, partnership, or other device.
- “Participating” means engaging in any activity beyond the activities of a spectator, and includes, without limitation: (a) transporting or arranging for the transportation of horses to or from any horse show, horse exhibition, horse sale, or horse auction; (b) personally giving instructions to exhibitors; (c) being present in the warm-up areas, inspection areas, or other areas where spectators are not allowed at any horse show, horse exhibition, horse sale, or horse auction; and (d) financing the participation of others in any horse show, horse exhibition, horse sale, or horse auction.

HIOs should share their HIO suspension and disqualification lists with all HIOs via email, postal mail or webpage. HIOs should honor suspension and disqualification lists from other HIOs.

Designated Qualified Persons (DQPs) – HPA § 1823(c). HPR § 11.7.

USDA certified HIO must provide all DQPs with annual in person training (i.e., an annual continuing education program of not less than 4 hours and new DQP applicant training program of 14 hours) with oversight by a USDA representative prior to conducting inspections for the show season.

No DQP will be licensed if such person has been convicted of any violation of the HPA or the regulations occurring after July 13, 1976, or paid any fine or civil penalty in settlement of any proceeding regarding a violation of the HPA or the regulations occurring after July 13, 1976, for a period of at least 2 years following the first such violation, and for a period of at least 5 years following the second such violation and any subsequent violation.

Horse Protection Database – HPA § 1823(d). HPR § 11.7(d), § 11.22(a), § 11.24(a)-(b).

All HIOs will submit the required information to USDA utilizing the 2010 USDA Horse Protection database.

HIOs will provide all information required in HPR section 11.7(d)(1) concerning violators directly to the database or via their HIO database coordinator within 72 hours after the horse show, horse exhibition, or horse sale or auction has ended.

HIOs will place in the database the identity of all horse shows, horse exhibitions, or horse sales or auctions as described in HPR section 11.7(d)(3), which have retained the services of the HIOs' DQPs **no later than 30 days prior to the event** with assigned DQPs identified.

Within 30 days following the conclusion of the horse show, horse exhibition, or horse sale or auction, HIOs will place, in the database, information of all horses at each horse show, horse exhibition, or horse sale or auction that their licensed DQPs disqualified or excused. The information will include registered name of horse and name of trainer, exhibitor, or other person having custody of such horse.

HIOs will also place in the database the information contained in the detail show report that is outlined HPR section 11.22 (a).

Letter of Warnings (LOWs) to DQPs – HPA § 1823(c). HPR § 11.7(f)(1).

If the USDA recommends that a HIO give a LOW to its DQP, the HIO will have 30 days to either issue the LOW to its DQP or provide sufficient justification, in writing, explaining why the HIO did not issue the LOW.

Means to Control Crowds – HPA § 1825(a)(2)(C). HPR § 11.6(c).

Show management is responsible for controlling crowds and onlookers in the inspection area and warm up area.

If an excess number of people are permitted in the inspection or warm up areas and their presence impedes the inspection process, the HIO and show management will be in violation of the HPA.

Each horse in the inspection and warm up area may have up to 3 individuals with the horse which include trainer, rider and/or custodian.

Official guests of the HIO or show management, such as elected officials, legislators, technical advisors, may be authorized for entrance to the inspection and warm up area on a case-by-case basis for limited periods of time.

Show Management Records – HPA §1823(d). HPR § 11.5(a)(1), § 11.22(c).

Show management must provide USDA with any records that the USDA requests at the horse show or within 90 days. If show management does not provide records when requested, it will be in violation of the HPA and the regulations.

False Information and Swapping of Horses – HPA § 1825 (a)(2)(b). HPR § 11.2(e).

Anyone who provides false information requested by USDA may be subject to a criminal penalty.

Anyone who swaps horses before or after USDA inspections may be subject to a criminal penalty.

Indian Reservations

Indian reservations are subject to the laws of the United States unless a treaty provides otherwise.

Refer to: Santa Clara Pueblo v. Martinez, 436 U.S. 49 citing Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832) and Donovan v. Coeur d'Alene Tribal Farm, 751 F.2d. 1113 (7th Cir. 1989).

Therefore, inspections required at horse shows to enforce the Horse Protection Act, are required, as well, on an Indian reservation by a USDA-certified HIO DQP or a USDA representative.

EXHIBIT B

2010 PENALTY PROTOCOL

USDA has established the following recommended penalty structure for implementation by the HIO for enforcement of the HPA and HPR. The HIO may apply more stringent penalties but not less than minimum requirements set forth in the penalty structure.

If an HIO imposes and enforces a penalty that USDA believes effectuates the purpose of the Act and the regulations, USDA will not initiate a Federal case against the violator.

USDA may initiate a federal case against any persons who participated in the entry, showing and, if appropriate, transportation of a sore horse (including, for example, the owner, custodian, trainer, rider, and/or transporter), if it is determined that the HIO has not enforced a penalty that effectuates the purpose of the Act and the regulations.

PLEASE NOTE: USDA retains primary jurisdiction to pursue cases when it deems appropriate.

SUSPENSIONS	1st OFFENSE	2nd OFFENSE	3rd OFFENSE
Bilateral sore	1 year	2 years	4 years
Unilateral sore	60 days	120 days	1 year
Scar rule	2 weeks	60 days	1 year

Foreign substance (Pre Show) – Horse dismissed from horse show, exhibition, sale or auction

Foreign substance (Post Show) – Two weeks suspension and horse dismissed from rest of horse show, exhibition, sale or auction

Equipment violation (Pre Show) – Horse dismiss from horse show, exhibition, sale or auction

Equipment violation (Post Show) – Two weeks suspension and horse dismissed from rest of horse show, exhibition, sale or auction

Shoeing violation – Horse dismissed from horse show, exhibition, sale or auction

Heel-Toe Ratio – Horse dismissed from horse show, exhibition, sale or auction

Unruly/fractious horse – Horse dismissed from individual class

Suspension violation – Six (6) months for each occurrence

Repeated Violations

Multiple or subsequent violations that incur suspension penalties must be served consecutively. For example, if the violator received a bilateral sore violation and a scar rule violation at the same show or a separate show, the violator will have a one year suspension followed by a 2 week suspension.

Appeals

Violators will have the right to appeal a HIO ticket.

- USDA will closely monitor the HIO appeal process.
- By March 1 of the 2010 show season, HIOs must submit a description of their appeal process.
- HIOs must submit to USDA their decisions for ticket appeals within 30 days of the appeal decision completion.
- Violators will need to have the appeal process completed or begin serving the imposed penalty within 60 days of the date of the violation.

EXHIBIT C

PROPOSED MINIMUM PENALTY STRUCTURE*

Suspension Penalties for HPA Soring Violations				
	1st Offense	2nd Offense	3rd Offense	4th+ Offense
Bilateral Sore	One (1) year	Two (2) years	Four (4) years	Life
Unilateral Sore	Two (2) months	Three (3) months	One (1) year	Two (2) years
Scar Rule	One (1) year	Two (2) years	Four (4) years	Life
Suspension Violations				
Six (6) months for each occurrence				
Other HPA Violations				
Foreign Substance - Pre Show		Disqualification from Class and two (2) weeks suspension for each occurrence		
Foreign Substance - Post Show		Two (2) weeks suspension for each occurrence		
Equipment Violations - Pre Show		Disqualification from Class and two (2) weeks suspension for each occurrence		
Equipment Violations - Post Show		Two (2) weeks suspension for each occurrence		
Intentionally Providing False Information		One (1) year suspension for each occurrence		
Pressure Shoeing		Two (2) year suspension for first occurrence and horse dismissed for remainder of show season. Life suspension for second occurrence.		
Unruly/Fractious Horse		Disqualification from Class		
Stewarding Acts**		One year suspension for each occurrence and horse dismissed for remainder of show season		
Swapping Horses or Numbers		One (1) year suspension for each occurrence and horse dismissed from rest of horse show, exhibition, sale or auction		
Use of Plastic Wrap		Thirty (30) days suspension and horse dismissed from rest of horse show, exhibition, sale or auction		
Overweight Chains on Show Grounds		Thirty (30) days suspension and horse dismissed from rest of horse show, exhibition, sale or auction		

* These penalties apply to the individuals involved in the scar rule violation. Horses found to be in violation of the scar rule are disqualified for life.

** Stewarding Acts are any acts which cause the horse pain during inspection to avoid detection, including but not limited to the use of surgical staples, nerve cords/zip ties, alligator clips, bit burrs or any other device in or on the mouth, anus, genitals or any other part of the horse's body.

EXHIBIT D

PROPOSED INCLUSIONS INTO THE REGULATIONS

1. Dismissal from Show, Exhibition, Sale or Auction
 - a. HIOs must dismiss a horse found in violation of HPA from participating in any remaining portion of horse show, horse exhibition, horse sale or auction (rather than just the individual class).
 - b. HIO will track horses appropriately so horses cannot enter into another class inspection throughout the show, exhibition, sale, or auction.
 - c. DQPs will collect class sheets and entry forms for each show. HIO offices must keep these records for 1 year and make them available for yearly USDA audits to confirm that horses found in violation of the HPA did not participate in any classes and shows.
2. Dismissal from Arena
 - a. Horses dismissed from the show arena, either by a judge, steward or rider of the horse, must report directly to the inspection area for follow-up inspection.
3. Digital Imaging Findings
 - a. Horses found with coffin bone rotation of more than 5 degrees are in violation of the HPA and considered sore.
 - b. Horses found with materials other than permitted materials within the package will be found in violation of the HPA.
4. Inspection Findings
 - a. If the USDA representative finds a horse in violation of the HPA/HPR after the DQP has inspected the horse, all individuals who participated in the entry and/or showing of that horse will be subject to a federal case. The HIO must apply the applicable penalty to the owner and trainer of the horse in violation of the HPA/HPR, and must apply any applicable disqualifications to the horse.
 - b. The USDA representative will advise the DQP of his/her findings and the DQP can recheck the horse and/or apply the penalty through the HIO.
5. USDA Disqualifications and HIO Suspensions
 - a. A violator on disqualification or suspension may only participate as a spectator at the horse show, horse exhibition, horse sale, or horse auction.

- b. Violators are disqualified or suspended from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, family member, corporation, partnership, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, or horse sale or auction, directly or indirectly through any agent, employee, family member, corporation, partnership, or other device.
- c. “Participating” means engaging in any activity beyond the activities of a spectator, and includes, without limitation: (a) transporting or arranging for the transportation of horses to or from any horse show, horse exhibition, horse sale, or horse auction; (b) personally giving instructions to exhibitors; (c) being present in the warm-up areas, inspection areas, or other areas where spectators are not allowed at any horse show, horse exhibition, horse sale, or horse auction; and (d) financing the participation of others in any horse show, horse exhibition, horse sale, or horse auction.
- d. HIOs should share their HIO suspension and disqualification lists with all HIOs via email, postal mail or webpage. HIOs should honor suspension and disqualification lists from other HIOs.

6. Letter of Warnings (LOWs) to DQPs

- a. If the USDA recommends that a HIO give a LOW to its DQP, the HIO will have 30 days to either issue the LOW to its DQP or provide sufficient justification, in writing, explaining why the HIO did not issue the LOW.

7. False Information and Swapping of Horses

- a. Anyone who provides false information requested by USDA may be subject to a criminal penalty.
- b. Anyone who swaps horses before or after USDA inspections may be subject to a criminal penalty.

8. Repeat Violations

- a. Multiple or subsequent violations that incur suspension penalties must be served consecutively, according to the minimum penalty structure.

EXHIBIT E

WARNING LETTER



United States
Department of
Agriculture

Animal and Plant
Health Inspection
Service

Animal Care
4700 River Road
Riverdale, MD
20737

May 29, 2009

Dr. Doyle G. Meadows
SHOW III
P.O. Box 1010
Shelbyville, TN 37162

Dear Dr. Meadows,

This is to advise you of concerns the Department has based on our observations at shows affiliated with SHOW.

Crowd control in the inspection area:

**According to the Horse Protection Regulations,
Sec 11.21 (b) Only the horse, the rider, the groom, the trainer, the DQP(s) and APHIS
representatives shall be allowed in the designated area.**

The Department observed during the Celebration Fun Show from May 21-23, 2009, the inspection area being closely monitored whereas the warm-up area was not. There was a lack of crowd control with an excessive number of unauthorized individuals in the warm-up area. According to the Horse Protection Regulations, only the groom, trainer, rider, and DQP or APHIS representative are authorized to be in the warm-up area. Many of the unauthorized individuals were present in the warm-up area for the entire show observing the inspection process. Specifically, a woman was videotaping every inspection in the warm-up area. Purportedly she was with show management; however, it is our understanding that she was paid by the owners' membership and worked as a member of Mr. Jerry Harris' video company. The video being produced was to be used for a commentated broadcast on his local television show. The presence of these individuals posed a safety risk, as many were children, in addition to the possibility of inciting the crowd, as has happened in previous situations. While representatives of the Department did attempt to assist the Horse Industry Organization (HIO) and show management with monitoring these areas, it is not the responsibility of the Department. As a certified HIO, you are responsible for working with show management of the shows affiliated with you to develop procedures for proper enforcement of the Horse Protection Act and Regulations.

Pre-inspections conducted in the barn area:

While we understand that these pre-inspections were coordinated by the Walking Horse Owners Association and were conducted for owners' education, unfortunately, they did



Safeguarding American Agriculture

APHIS is an agency of USDA's Marketing and Regulatory Programs
An Equal Opportunity Provider and Employer

Federal Relay Service
(Voice/TTY/ASCII/Spanish)
1-800-877-8339

Dr. Doyle G. Meadows

Page 2

create a disturbance in the inspection area when results of pre-inspections were in conflict with the official inspection conducted by the DQPs and VMOs.

The following are examples:

- o Multiple custodians would argue with DQPs and VMOs that they were given a "clean bill" at the pre-inspection station in the barn; thus, there should be no HIPA violation found on their horses.
- o Some custodians were given a piece of paper to show the DQPs and VMOs, stating "cleared to proceed to the USDA inspections".

The perception that the pre-inspection would be honored during the official inspection and the contentious atmosphere created during the inspection process is considered interference with the inspection process. While the intent of the pre-inspection was to educate the owner, the unintended consequences must be mitigated to prevent a disruption that will result in a loss of control as experienced in past situations. As previously stated, as a certified HIO, you are responsible for working with show management of the shows affiliated with you to develop procedures for proper enforcement of the Horse Protection Act and Regulations.

According to the Horse Protection Regulations,

Sec 11.6(c) A means to control crowds or onlookers in order that APHIS personnel may carry out their duties without interference and with a reasonable measure of safety, if requested by the APHIS Show Veterinarian.

According to the Horse Protection Act,

Sec 6 (C) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Act shall be fined not more than \$5,000, or imprisoned not more than three years, or both. Whoever, in the commission of such acts, uses a deadly or dangerous weapon shall be fined not more than \$10,000, or imprisoned not more than ten years, or both. Whoever kills any person while engaged in or on account of the performance of his official duties under this Act shall be punishable as provided under sections 1111 and 1112 of title 18.

As stated previously, we understand the owners need further education about the enforcement of the Horse Protection Act; however, it needs to be done without interfering with enforcement of the Act and Regulations by the DQPs and VMOs.

This letter serves not only as a reminder, but also as the first formal warning about violating the Horse Protection regulations in regards to Sec 11.21 (b), Sec 11.6 (c), and violating the Horse Protection Act in regards to Sec 6 (C). Please know that the Department is monitoring horse shows, announced and unannounced, and that we expect all HIOs to enforce the Horse Protection Act and regulations as written.

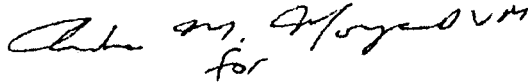
Dr. Doyle G. Meadows

Page 3

If SHOW fails to enforce the Act and Regulations as written, the Department will begin the process of decertification of the HIO DQP program per the HPA regulations. A HIO may appeal decertification as outlined in 9 CFR 11.7 (g).

We wish nothing but success for the Walking Horse industry. However, please understand that the Department remains firmly resolved to carry out its duties under the Horse Protection Act to eliminate the cruel and inhumane practice of soring.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chester A. Gipson", with the word "for" written below it.

Chester A. Gipson
Deputy Administrator
Animal Care

EXHIBIT F

DECLARATION OF KEITH DANE

DECLARATION OF KEITH DANE

1. I, Keith Dane, have personal knowledge of the facts set forth below unless otherwise noted; if called to do so, I could and would testify competently to these facts.

2. I attended the Tennessee Walking Horse Celebration Show ("Celebration Show") on September 2-6, 2009, where I observed the top three winning horses in the World Grand Championship class being examined, photographed and cited as being in violation of the Horse Protection Act during post-show VMO inspections; I later confirmed the violations were of the scar rule.

3. Dr. Chester Gipson, the USDA/APHIS Deputy Administrator, told me during a telephone conversation that the horses described in Section 2 above were likely treated by foreign substances prior to showing, for the purposes of camouflaging soring scars. Dr. Gipson told me that he believed that trainers in the industry were masters at camouflaging scars, which is probably how these horses managed to pass initial, pre-show inspections.

4. To the best of my knowledge, no criminal penalties have ever been imposed for violations of the Act.

Executed this 23 day of April 2010 at Sykesville, MD.

By Keith Dane

Keith Dane

ACKNOWLEDGMENT

The State of Maryland)

)

County of Carroll)

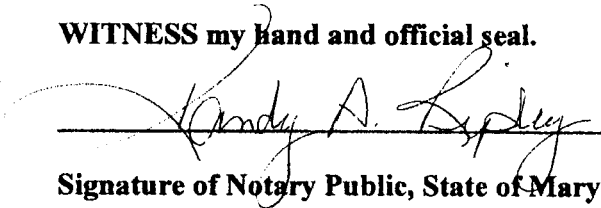
On 4/23/2010, before me, Randy Ripley,

(Name and Title of Officer)

personally appeared Keith Dane who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his personal capacity, and that by his signature on the instrument, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Maryland that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Signature of Notary Public, State of Maryland

My commission expires on: 1/2014

EXHIBIT G

DECLARATION OF LORI NORTHRUP

DECLARATION OF LORI NORTHRUP

1. I, Lori Northrup, have personal knowledge of the facts set forth below; if called to do so, I could and would testify competently to these facts.

2. I am currently the President of the Friends of Sound Horses Inc., which is a non-profit organization with the purpose of providing information to the public about the humane care, treatment, and training of gaited horses.

- 3. I have thoroughly researched the following specific data sets:**
- a. The Horse Protection Act (“HPA”) violation rates for Horse Industry Organizations (“HIOs”) from 1990-2008, with USDA present and not present;**
 - b. The HPA violation history of first-place horses at the Tennessee Walking Horse Celebration Show (“Celebration Show”);**
 - c. The HPA violation history of all judges at the 2009 Celebration Show;**
 - d. The HPA violation history of all Designated Qualified Persons (“DQPs”) from the S.H.O.W. HIO (“SHOW”) as listed by SHOW;**
 - e. HPA violation tickets issued by DQPs at the 2008 Celebration Show;**
 - f. People with repeat violations of the HPA documented up to February 26, 2010; and**
 - g. Suspensions issued based on HPA violations, from August 1, 2007 through October 16, 2009.**

LN 4/7/10

4. I conducted a thorough analysis of the data sets listed in Paragraph 3. Based on my analysis of this data, my statistical conclusions are the following:

a. From 1991 to February 26, 2010, the highest number of HPA-related suspensions occurred in Tennessee (2,898 or 38.4%), Kentucky (1,113 or 14.8%), and Alabama (638 or 8.5%);

b. During the 2009 show season, a total of 761 HPA violations were documented by USDA VMOs at USDA-attended shows, which included 361 scar rule violations. Of these totals, 405 violations (53%) were documented at the 2009 Celebration Show, and 223 of these were scar rule violations (61.7% of all scar rule violations);

c. At the 2009 Celebration Show, over 55% of the exhibitors of the first-place horses had past HPA violations, from 59 classes analyzed. Between these exhibitors winning first place awards, they shared 105 HPA violations, and over 50% of these trainers had two or more past violations;

d. Tickets issued at the 2008 Celebration Show often did not include the names of violating trainers, and owner data and horse descriptions were also frequently missing;

e. Of 142 tickets issued at the 2008 Celebration Show, 139 (98%) of these were missing essential information at the time of issuance, such as horse registration numbers, owners' addresses, exhibitors' names, and trainer's license number and address. In addition, 27 of the sequentially numbered tickets were completely missing;

f. Violations issued at the 2008 shows held by the Heart of America Walking Horse Association fell by 269% when USDA was not present; and

g. Violations issued at the 2008 shows held by the Kentucky Walking Horse Association fell by 80% when USDA was not present.

5. Based on publicly-available HIO information and the data sets listed in Paragraph 3, I have observed the following:

a. In 2009, SHOW HIO chose 17 individuals who have personally violated the HPA, a vast majority of which have violated the HPA within the past five years, to serve on its HIO Committees. These 17 people share 45 HPA suspensions;

b. At least two members of SHOW's Sound Horse Task Force have been personally suspended three or more times for scar rule violations and unilateral sore violations;

c. 100% of the past ten recipients of the Walking Horse Trainers' Association's "Trainer of the Year" award have HPA suspensions, and these 10 individuals share 55 HPA suspensions, including a 2009 unilateral sore violation for the recipient of the 2009 Trainer of the Year award;

d. In 2009 and 2008, the top three honorees at the Rider's Cup shared a history of 26 and 16 HPA violations, respectively. The 46 total individuals listed in the standings for the Rider's Cup shared a total of 204 HPA violations. Only two people on this list did not have any HPA violations;

e. Three DQPs currently working for SHOW are documented to have a history of HPA violations, and one has been subject to at least four separate HPA-related suspensions; and

f. **One of the 2009 Celebration Show judges (who has judged six past Celebration Shows, and serves as SHOW's Director of Judges) has five documented HPA violations, one each for bilateral sore and unilateral sore, and three for scar rule violations. One of these violations was issued at the 2007 Celebration Show, resulting in suspension time as recently as 2008;**

g. **Another 2009 Celebration Show judge has two documented HPA violations, and yet another has one documented HPA violation;**

h. **A horse named Moody Star was dismissed for scar rule violations and was suspended for 2 months in late 2008. Moody Star resumed showing and placed first at the 2009 Celebration Show's Amateur World Grand Championship; and**

i. **A horse named Private Charter was disqualified for scar rule violations in 2008, but showed and placed 6th in the 2009 Celebration World Grand Championship.**

Executed this 7th day of April 2010 at Fountain Hills, AZ

By Lori Northrup

Lori Northrup

ACKNOWLEDGMENT

The State of Arizona)

)

County of Maricopa)

On 4-7-2010, before me, Gail Oliphant, Notary,

(Name and Title of Officer)

personally appeared Lori Northrup who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same in her personal capacity, and that by her signature on the instrument, executed the instrument.

*4-page Declaration of Lori Northrup
LN.*

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Gail Oliphant

Signature of Notary Public, State of Arizona



My commission expires on: 8-31-13