

APHIS HORSE PROTECTION OPERATING PLAN

2001 - 2003

PURPOSE AND TERM

The purpose of this document is to set forth APHIS's plan (Operating Plan or Plan) for implementation and enforcement of the Horse Protection Act (HPA or Act) for the 2001 - 2003 horse show seasons, and the duties and responsibilities of the certified horse industry organizations (HIOs) who, through the signature of a legally responsible HIO official, have voluntarily agreed to adhere to this Plan. This Plan incorporates by reference the Act and the Horse Protection regulations (Regulations). Any conflict between the provisions of this Operating Plan and the Act or Regulations shall be resolved by relying on the terms contained in the latter as the more authoritative documents.

This Operating Plan is not retroactive. It will become effective on the date it is signed and remain in effect for three horse show seasons, until December 31, 2003. The Plan will undergo periodic review by APHIS and the HIOs. If APHIS determines that changes are necessary in order for the Plan to achieve its intended purpose, they will be made at that time. If no changes are deemed necessary, the Plan will remain in effect as written until December 31, 2003. The Plan may be renewed beyond this date if this is agreeable to one or more HIOs and APHIS.

I. DEFINITIONS

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

II. APHIS ENFORCEMENT RESPONSIBILITIES

Nothing in this Operating Plan is intended to indicate that APHIS has relinquished any of its authority under the Act or Regulations.¹ Under the terms of this Operating Plan, APHIS is placing initial enforcement responsibility on the various certified DQP programs for affiliated horse shows, exhibitions, sales, and auctions.² APHIS Veterinary Medical Officers (VMOs) will inspect horse shows, exhibitions, sales and auctions affiliated or sanctioned by an organization in order to determine whether or not the DQP programs are successful in the detection of sore horses and individual DQPs are properly trained and competent for that purpose.³

A. Deputy Administrator for Animal Care. The APHIS Deputy Administrator for Animal Care is responsible for:

1. Certifying and decertifying DQP programs pursuant to the Regulations;
2. Allocating funds for HPA enforcement;

¹ The HPA gives to the Secretary the authority to administer and enforce the Act. Interpretation of the Act and Regulations is a necessary function of that administration and enforcement, and is one that is given to all federal departments and agencies with similar authority. It is not the purpose or intent of this Operating Plan to limit in any way the Secretary’s authority. It should be clearly understood that the Secretary has the ultimate administrative authority in the interpretation and enforcement of the Act and the Regulations. This authority can only be curtailed or removed by an act of Congress, and not by this Plan.

² The use of the term “initial enforcement responsibility” is intended to indicate that the Department has allowed the signatories to this Plan to take the initial action to enforce the Act and the Regulations.

³ This does not mean that VMOs will refrain from examining horses for compliance with the Act and the Regulations, and documenting cases of noncompliance.

3. Annually reviewing for approval HIO Rule Books to ensure compliance with the HPA and Regulations, pursuant to 9 C.F.R. § 11.41;

4. Reviewing for approval HIO Rule Book amendments directly related to HPA enforcement;

5. Initiating and reviewing HPA program projects (including training and research), APHIS HPA policies, and other regulatory activities; and

6. Coordinating APHIS-DQP program regulatory activities, including the scheduling of meetings with DQP program representatives to address current issues.⁴

B. Horse Protection Coordinator. The APHIS Horse Protection Coordinator (HP Coordinator) is responsible for:

1. Assigning VMOs to affiliated and unaffiliated shows, exhibitions, sales, or auctions;

2. Receiving reports or data from DQP programs or show management, (including HPA “tickets” issued by DQPs, show reports, and HPA suspension lists)⁵ and releasing such information to the public;

3. Recommending the issuance of Letters of Warning to individual DQPs; and

4. Communicating directly with DQP program representatives regarding training, daily operations, conflict resolution, and requests for assistance.⁶

C. Veterinary Medical Officers. APHIS Veterinary Medical Officers are responsible for:

⁴ This list of responsibilities is not all-inclusive.

⁵ This list is not all-inclusive.

⁶ This list of responsibilities is not all-inclusive.

1. Conducting unannounced or scheduled audits of HIO records with assistance from APHIS Investigative and Enforcement Services personnel during ordinary business hours which is further defined as the hours between 8:00a.m. to 5:00p.m., Monday through Friday, except for legal Federal holidays.

2. Participating in and providing instruction in training courses for DQPs and VMOs. Further, where appropriate and feasible, USDA VMOs will jointly train with DQPs from at least one of the certified DQP programs;

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

4. Inspecting horses and, in cases where a DQP has apparently failed to detect a violation of the Act or the Regulations, documenting that violation.⁷

III. HIO RESPONSIBILITIES

The DQP programs must demonstrate the ability to properly identify sore horses and apply the appropriate penalties as outlined in Section VII of this Plan.⁸ Each HIO shall develop performance standards by which its DQP program can be evaluated, and shall be responsible for ensuring that it and its DQP program perform in accordance with the Act, the Regulations, and this Operating Plan. As set forth in 9 C.F.R. § 11.7(g), an HIO that fails to comply with the requirements in the Regulations is subject to decertification. If an HIO fails to comply with the

⁷ This list of responsibilities is not all-inclusive. The documentation by VMOs of cases of noncompliance is not limited solely to cases where the DQP has failed to detect a violation.

⁸ APHIS intends to monitor closely the identification of violations, and the assessment of penalties by HIOs, and to take appropriate steps to address cases of HIO noncompliance. The Department retains the authority to initiate enforcement proceedings against any violator when it feels such action is necessary to fulfill the purposes of the HPA.

provisions of this Plan, it will be given notice of such noncompliance and an opportunity to correct the deficiencies. If the HIO fails to correct the deficiencies within the allotted time period, APHIS will cease to honor its signature on the Plan for the duration of that show season, and continuing until APHIS is satisfied the deficient areas have been corrected.

A. Rule Book. Each HIO shall prepare and publish a Rule Book that is in accordance with the HPA, the Regulations, and this Operating Plan, and shall annually submit the Rule Book for APHIS review as required by 9 C.F.R. § 11.41.⁹ APHIS shall review and approve or require modification of those sections of the Rule Book directly related to compliance with and enforcement of the HPA, the Regulations, and this Operating Plan.

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

C. DQP Licensing, Training, Discipline and Evaluation.

1. Evaluation of DQPs. Each HIO shall evaluate each DQP's performance and shall take appropriate administrative action under 9 C.F.R. §§ 11.7(d)(7) and 11.7(f).

2. Licensing and Training. Each HIO shall issue DQP licenses to qualified candidates and develop and provide uniform, consistent training in accordance with 9 C.F.R. §§ 11.7(a)-(c) and (d)(6).

3. Letter of Warning. The standards for satisfactory DQP performance are to be in writing and included as part of the annual DQP training program. A Letter of Warning (LOW) is an official notice of unsatisfactory DQP performance. A LOW may be requested by a VMO or other APHIS official when it has been determined that a DQP has failed to perform his

⁹ Rule Books must contain penalties equal to or greater than those set forth in this Operating Plan.

or her duties in a satisfactory manner. A request by a VMO for the issuance of a letter of warning must be accompanied by and based on specific, written evidence. The VMO must forward the request in writing to the HP Coordinator along with any supporting documentation. The HP Coordinator will review the request and, if necessary, forward it to the DQP Program Manager for further action in accordance with 9 C.F.R. § 11.7(f). An HIO shall issue a LOW to any of its DQPs who fail to perform his or her duties in a satisfactory manner within 2 weeks of having received written notice from APHIS of a DQP's poor performance. Alternately, the HIO may submit to APHIS any evidence or documentation they may have that refutes APHIS' claims of poor DQP performance. Such documentation must be submitted within 2 weeks of the HIO's receipt of the notice from APHIS. APHIS will consider all such evidence and documentation in determining if a LOW shall be issued. If it is then determined that the DQP performed unsatisfactorily, the HIO shall issue the LOW to the DQP in accordance with the Regulations and within 2 weeks of receipt of subsequent notification from APHIS.

4. License Cancellation. The HIO shall cancel the license of any DQP who receives two Letters of Warning, and shall not reissue a license to that individual for three (3) years. A DQP may appeal a license cancellation as provided in 9 C.F.R. § 11.7(f). As set forth above, a DQP whose license has previously been canceled may only become relicensed after three (3) years. If such a relicensed DQP receives another Letter of Warning within two (2) years of such relicensing, his or her license will immediately be revoked, and he or she will be permanently barred from becoming relicensed.¹⁰

¹⁰ Nothing in this section is intended to limit APHIS's disciplinary authority under the Act and the Regulations.

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

E. Records. Each HIO shall make records available for APHIS in accordance with 9 C.F.R. § 11.23(b). Such records include, without limitation, class sheets, DQP HPA violation tickets¹¹ and penalty assessments, DQP assignments and show schedules, recorded transcripts or minutes of HPA violation hearings, DQP resumes, and DQP evaluations by the HIOs. If an HIO chooses to document its hearings with minutes rather than recorded transcripts, those minutes shall contain sufficient and accurate details of the proceedings so that APHIS may have a clear understanding of what transpired and the basis for the decisions rendered.

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

G. Suspensions. HIOs shall issue suspension notices within ten (10) days of the violation, by sending the notice to the violator by certified and regular mail.¹² All suspensions

¹¹ HIOs are required to document and report on all violations of the HPA (including violations concerning foreign substances and the “Other Violations” described in this Plan) and all horses disqualified or excused for any reason. [9 C.F.R. § 11.7(d)(3)] This requirement applies regardless of the number of violations or the penalties involved. The USDA needs this information to ensure that HIOs are in compliance with the reporting requirements in the Regulations. [9 C.F.R. § 11.7(d)(3) and 11.41] The Regulations require the DQP to “inform the custodian of each horse allegedly found in violation of the Act or its regulations, or disqualified or excused for any other reason, of such action and the specific reason for such action.” [9 C.F.R. § 11.7(d)(2)] The documentation and reporting requirements apply to all HPA violations and all horses disqualified or excused, not only to the violation that corresponds with the penalty imposed. If there are multiple violations in connection with a single horse, HIOs must ensure that all are documented on the DQP ticket, and reported to the Department. At a minimum, the HIO must impose the single most severe of the penalties set forth in this Plan. A subsequent violation of the same type as any documented on the DQP ticket will subject the violator to an enhanced penalty, as set forth in this Operating Plan.

¹² In cases of HPA violations, the failure of an HIO to notify a violator of a suspension in accordance with this Operating Plan may result in the initiation by the Department of an enforcement proceeding against the violator(s).

shall begin twenty (20) days from the date the notification is mailed, unless a bona fide request for an appeal is received by the HIO within the twenty (20) day period.

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

IV. CERTIFICATION OF HIO DQP PROGRAMS

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

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

1. Developed a program to select, train, license and discipline DQPs in accordance with 9 C.F.R. § 11.7;

2. Submitted to the APHIS Deputy Administrator for Animal Care a written request for certification of its DQP program, a detailed outline of the program, and current financial statements or other documents that demonstrate its financial solvency ;

3. Established an organizational structure that enables the HIO to fulfill its responsibilities under the HPA, the Regulations, and this Plan;

4. Published a Rule Book that contains, at a minimum, show rules and uniform inspection procedures that conform to the HPA, the Regulations and this Operating Plan, standards of ethical conduct for officers, employees, DQPs, and judges, a mission statement, and a schedule of penalties for HPA violations that meet the minimal penalties set forth in this Operating Plan;

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

6. Hired a DQP Program Manager or Coordinator who holds a DQP license; and

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

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

V. INSPECTIONS

Inspections conducted under the HPA must be conducted in accordance with the Regulations and this Operating Plan. The inspection guidelines contained in this Plan are designed to help VMOs and DQPs examine horses under the HPA and are not intended to supersede the HPA or the Regulations.

A. Inspection Areas.

1. DQP/VMO Area. All horses shall be inspected in a specific area that meets the requirements as set forth in 9 C.F.R. §11.6. Only the horse and custodian of the horse shall be allowed in the DQP/VMO inspection area except as described (in Section V.A.3.) below.

2. Designated Area. Inspected horses shall be held in a designated area that is under observation by the DQP. Only the horse, the rider, the groom, the trainer, the DQP(s) and APHIS representatives shall be allowed in the designated area. No horse may leave the designated area before showing without the permission of the DQP or the VMO. [9 CFR §

11.21(b)] Any horse leaving the designated area before showing must be reinspected by the DQP before being allowed into the show ring.

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

B. Stewarding and Unruly Horses. No person shall act in any manner that may cause a false examination result, or use any signal or device (including without limitation whips or cigarette smoke), to distract or steward a horse during examination. If the DQP or VMO observes such behavior, the DQP or VMO shall immediately excuse the horse and shall report the incident to show management and the HIO. DQPs and VMOs shall excuse any horse that is unruly or exhibits an unwillingness to submit to examination.

C. Inspection Authority. The DQP or VMO may inspect any horse at any horse show, exhibition, sale or auction. DQPs may also inspect horses for the purpose of ensuring compliance with breed-specific rules and regulations adopted and published by the HIO as long as such inspections do not interfere with enforcement of the HPA. The DQP or VMO may carry out additional inspection procedures or conduct additional tests such as using hoof testers or fluoroscopy as deemed necessary to determine whether or not a horse is in compliance with the HPA. If more than one inspector (DQP or VMO) examines the same horse, then each examination shall include a full examination of the horse's movement, appearance and physical examination, as set forth herein and in the applicable Regulations.¹³

¹³ Nothing in this Operating Plan is intended to supersede the inspection procedures set forth in the Regulations, the current APHIS Horse Protection Inspection Manual, and Department policies.

D. Prohibited Practices. The Regulations prohibit shoeing, trimming or using any method or device on a horse's hoof in a manner that causes such horse to suffer, or can reasonably be expected to cause such horse to suffer pain, distress, inflammation or lameness when walking, trotting or otherwise moving. This includes inserting a tack, screw, nail or other device or substance, other than acceptable hoof packing, between the horse's hoof and its shoe or pad. If a DQP or VMO suspects that a horse's hoof has been subjected to any such practice, the DQP or VMO may require the horse's custodian to remove the shoes, pads, or both, to allow further examination.

E. Examination of Horses. The examination of horses for purposes of determining compliance with the Act involves an evaluation of the horse's movement and appearance, and the physical examination described below. Each examination must include all three components.¹⁴

1. Movement. During the inspection, the DQP or VMO shall direct the custodian of the horse to lead, walk, and turn the horse in a manner that allows the DQP or VMO to determine whether the horse suffers, or can reasonably be expected to suffer physical pain or distress, inflammation, or lameness when walking, trotting or otherwise moving.

2. Appearance. At all times during the inspection, including during the physical examination, the DQP or VMO shall observe and evaluate the horse's appearance to determine whether the horse suffers, or can reasonably be expected to suffer physical pain¹⁵ or distress, inflammation, or lameness when walking, trotting or otherwise moving. The DQP or

¹⁴ Although the examination for compliance with the Act comprises three elements, the determination by the DQP and/or VMO as to whether there is or is not a violation may be based upon any one of the three components alone. For example, a finding that a horse is "sore" based solely on the results of the digital palpation component of the examination is sufficient to prove a violation of the Act.

¹⁵ Observable indications of pain may include changes in the depth and rate of respiration, excessive perspiration on the skin and hair coat, abnormal reactions of the eyes and ears, abnormal stance, tucking of flanks and flexing of abdominal muscles, stepping forward with the rear limbs while the front limbs remain lightly planted, tossing of the head to maintain balance, and/or the overall demeanor and temperament of the horse.

VMO shall look for evidence of prohibited substances, and prohibited or non-compliant paraphernalia or devices.

3. Physical Examination. The DQP or VMO shall digitally palpate the front limbs of the horse from knee to hoof, with particular emphasis on the pasterns and fetlocks, as described in the applicable Regulations.

F. Conflicting Examination Results. If the VMO and the DQP disagree about whether a horse is in violation of the Act or the Regulations, then the horse will be excused from showing in the class and the dispute will be resolved in accordance with the conflict resolution procedures contained in Section VIII of this Operating Plan.

VI. COMPLIANCE WITH SCAR RULE

The following information and procedures have been developed to promote consistency in the detection of non-compliance with the Scar Rule. (9 CFR 11.3)

A. Definitions. For purposes of the Scar Rule, the following definitions are used:

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

Bilateral granuloma: Tumor-like masses of granulation tissue (proud flesh or focal lesions) that occur on both legs, usually as a result of chronic inflammation.

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

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

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

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

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

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

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

Neurovascular Groove: The anatomical lines of demarcation between the medial or lateral and posterior surfaces of the pastern are those parallel lines extending downward in front of the flexor tendon bundle along the depression or groove occupied by the neurovascular

bundle which intersects with the angles of the hoof wall and includes the bulbs of the hoof. This neurovascular groove or bundle is anatomically located totally within the medial and lateral surfaces.

Other bilateral pathological evidence of inflammation: Pain, heat, redness, swelling, serum or pus, or loss of function in both front pasterns are indications of inflammation. Inflammation results when, in response to an injury or destruction of tissue, the body attempts to dilute or “wall off” the injurious agent and the injured tissue. Inflammation can be acute or chronic and may result in permanent tissue damage (e.g., scarring).

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

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

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

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

Uniformly thickened epithelial tissue: A thickening of skin that retains its smoothness such as in a callous or corn.

B. Anterior, medial and lateral surfaces: The anterior, medial and lateral surfaces of the fore pasterns must show no evidence of bilateral granuloma, other bilateral pathological evidence of inflammation, bilateral evidence of abuse indicative of soring or evidence of intentional or malicious injury inflicted to both front pasterns or excessive loss of hair.

C. Posterior surfaces: The posterior surfaces of the pasterns (flexor surface), including the sulcus or “pocket” may show bilateral areas of uniformly thickened epithelial tissue only if such areas are completely free of proliferating granuloma tissue, irritation, moisture, localized edema, or other evidence of inflammation such as pain, heat, redness, swelling, ulceration and/or excessive loss of hair.

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

The VMO or DQP may use either the “Flattened Hand” or the “Neurovascular Groove” method (described below) to measure the posterior surface of the pastern. If, by using one or the other of these methods, the VMO and DQP are able to easily determine, and agree, whether the horse is or is not in compliance with the Scar Rule criteria, then they may proceed to document

their findings. If, by using these screening methods, the VMO and the DQP cannot easily determine the boundaries of the posterior surface, or if a dispute arises as to whether the horse is in compliance with the Scar Rule, then the VMO (or the DQP if there is no VMO at the event) shall measure the circumference of the horse's pastern, and determine the location of the boundary between the posterior and the medial and the posterior and the lateral areas using the chart set forth below. For purposes of this Plan, APHIS will consider the posterior area of the pastern to include 35 percent of the circumference of the pastern. This will allow for any margin of error.¹⁶

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

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

(c) Measuring the Posterior. The posterior surface is determined by measuring the circumference of the pastern where the affected area is located. Using the midline

¹⁶ Nothing in this Operating Plan is intended to modify the scar rule regulation, 9 C.F.R. §11.3.

of the posterior surface, which is half the distance between the bulbs of the heel, the actual posterior surface extends 12.5 percent of the circumference on either side of this the midline. To allow for a margin of error, APHIS will use 17.5 percent from the midline. The circumference measurement is multiplied by .175 to obtain the distance from the posterior midline to the edge of the medial or lateral surfaces. The chart below can be used as a quick reference to determine this measurement.

Scar Rule Chart

Measurements for Determining Violation of Scar Rule

Circumference of Foot	35 Percent	17.5 Percent
7 in	2 1/2 in	1 1/4 in
7 1/8 in	2 1/2 in	1 1/4 in
7 1/4 in	2 1/2 in	1 1/4 in
7 3/8 in	2 5/8 in	1 1/4 in
7 1/2 in	2 5/8 in	1 3/8 in
7 5/8 in	2 5/8 in	1 3/8 in
7 3/4 in	2 3/4 in	1 3/8 in
7 7/8 in	2 3/4 in	1 3/8 in
8 in	2 3/4 in	1 3/8 in
8 1/8 in	2 7/8 in	1 3/8 in
8 1/4 in	2 7/8 in	1 1/2 in
8 3/8 in	2 7/8 in	1 1/2 in
8 1/2 in	3 in	1 1/2 in
8 5/8 in	3 in	1 1/2 in
8 3/4 in	3 1/8 in	1 1/2 in
8 7/8 in	3 1/8 in	1 1/2 in
9 in	3 1/8 in	1 5/8 in
9 1/8 in	3 1/4 in	1 5/8 in
9 1/4 in	3 1/4 in	1 5/8 in
9 3/8 in	3 1/4 in	1 5/8 in
9 1/2 in	3 3/8 in	1 5/8 in
9 5/8 in	3 3/8 in	1 5/8 in
9 3/4 in	3 3/8 in	1 3/4 in
9 7/8 in	3 1/2 in	1 3/4 in
10 in	3 1/2 in	1 3/4 in
10 1/8 in	3 1/2 in	1 3/4 in
10 1/4 in	3 5/8 in	1 3/4 in
10 3/8 in	3 5/8 in	1 7/8 in
10 1/2 in	3 5/8 in	1 7/8 in

Circumference of Foot	35 Percent	17.5 Percent
10 5/8 in	3 3/4 in	1 7/8 in
10 3/4 in	3 3/4 in	1 7/8 in
10 7/8 in	3 3/4 in	1 7/8 in
11 in	3 7/8 in	1 7/8 in
11 1/8 in	3 7/8 in	2 in
11 1/4 in	4 in	2 in
11 3/8 in	4 in	2 in
11 1/2 in	4 in	2 in
11 5/8 in	4 1/8 in	2 in
11 3/4 in	4 1/8 in	2 in
11 7/8 in	4 1/8 in	2 1/8 in
12 in	4 1/4 in	2 1/8 in
12 1/8 in	4 1/4 in	2 1/8 in
12 1/4 in	4 1/4 in	2 1/8 in
12 3/8 in	4 3/8 in	2 1/8 in
12 1/2 in	4 3/8 in	2 1/4 in
12 5/8 in	4 3/8 in	2 1/4 in
12 3/4 in	4 1/2 in	2 1/4 in
12 7/8 in	4 1/2 in	2 1/4 in
13 in	4 1/2 in	2 1/4 in
13 1/8 in	4 5/8 in	2 1/4 in
13 1/4 in	4 5/8 in	2 3/8 in
13 3/8 in	4 5/8 in	2 3/8 in
13 1/2 in	4 3/4 in	2 3/8 in
13 5/8 in	4 3/4 in	2 3/8 in
13 3/4 in	4 7/8 in	2 3/8 in
13 7/8 in	4 7/8 in	2 3/8 in
14 in	4 7/8 in	2 1/2 in

VII. HIO SANCTIONS FOR HPA VIOLATIONS

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

B. Disqualifications and Suspensions. A person who has been suspended or disqualified as a result of an HPA violation may only be a spectator at horse shows, exhibitions, sales or auctions.¹⁷ For example, persons who are on suspension shall not: (1) judge a horse show; (2) show a horse at a horse show; (3) exhibit a horse at a public exhibition such as a college football game; (4) ride a horse through a public auction sale; (5) enter the show ring during the course of a horse show; (6) enter the inspection area or warm-up area where previously inspected horses are allowed to await ring or sale entry, during the course of a horse show or sale; or (7) coach any trainer, owner, or exhibitor anytime during the show or exhibit.¹⁸

¹⁷ For an HIO's HPA suspensions to be an effective and uniform deterrent to future violations, they must be reasonably on par with the disqualifications imposed for HPA violations by the Secretary after notice and an opportunity for a hearing. This means that individuals suspended by an HIO may only attend an auction, sale, show or exhibition as a spectator. Suspended individuals may not participate in any fashion in entering or exhibiting a horse at any horse show, sale, exhibition or auction (including financing the participation of others in such events, transporting horses to such events, or preparing a horse, on the sale, show, auction or exhibition grounds). An HIO may employ its own procedures to ensure that such suspensions are enforced. In order to deter violations, multiple suspensions are to be served consecutively, not concurrently.

¹⁸ A person who has been disqualified by the Secretary under the Horse Protection Act may not transport or arrange for the transportation of horses to or from any horse show, exhibition, sale or auction.

Each HIO agrees to update and distribute its suspension list on at least a monthly basis to all its DQPs, all certified HIOs, and to APHIS.¹⁹

C. Liability. Those who transport, enter and exhibit horses in violation of the HPA shall be personally liable for monetary penalties and disqualification or suspension.

D. Limited Exemption from Liability. Section 1824(2)(D) of the Act contains a limited exemption from liability for a horse owner who demonstrates that he or she did not “allow” the horse to be entered or exhibited in a show while sore. This exemption applies only to those owners who themselves did not participate in the entry, exhibition, sale, or auction of a sore horse.²⁰ An owner, to avoid liability for “allowing” his or her horse to be shown or exhibited, entered, sold, auctioned, or offered for sale while sore, must first present credible evidence that he or she did not participate in the entry, transportation, preparation for showing, exhibiting, sale, or auction. Second, the owner must show that he or she took affirmative steps: (1) to select a trainer whom the owner would not reasonably expect would sore the horse; (2) to ensure that the trainer understands what soring is as defined in the HPA, understands that the owner does not

¹⁹ USDA agrees to provide to each HIO current mailing addresses so suspension notices can be mailed to the correct HIO address. HIOs are to ensure that the Horse Protection Coordinator and each of the other HIOs receives a current suspension notices. All suspension lists shall clearly indicate the violation, the nature of the violation (i.e., Bilateral sore, active scar, etc.), and the time period of the suspension. USDA will set up a system to assure each HIO receives an updated USDA suspension list.

²⁰ The mere fact of ownership of the horse does not entitle a person to claim an “exemption” under section 1824(2)(D). That section applies only to owners who themselves do not participate at all in the entry, exhibition, sale or auction of the horse. An owner who allows a horse to be entered has violated the HPA if that horse is found to be in violation. HIOs are required to penalize all persons who violate the HPA. To do so, HIOs must identify the correct violation, and penalize the violator accordingly:

1. A person who **transports** a sore horse to a show, exhibition, sale or auction (even if that person owns the horse) should be charged with a violation of section 1824(1) of the HPA;
2. A person who **exhibits** a sore horse in a show, exhibition, sale or auction (even if that person owns the horse) should be charged with a violation of section 1824(2)(A) of the HPA;
3. A person who **enters** a sore horse in a show, exhibition, sale or auction (even if that person owns the horse) should be charged with a violation of section 1824(2)(B) of the HPA; and
4. A person who **sells or auctions** a sore horse, or offers a sore horse for sale or auction in a show, exhibition, sale or auction (even if that person owns the horse) should be charged with a violation of section 1824(2)(C) of the HPA.

want the trainer to sore the horse and understands the consequences of soring the horse; and (3) to periodically check the condition of the horse. Examples of such affirmative action by an owner include without limitation the following:

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

2. Consideration of Trainer's History. The owner determines whether or not the trainer has previously violated the HPA. For example, if an owner hires a trainer whom the USDA, in a litigated HPA enforcement proceeding, has found to have violated the Act on or after March 1, 1999²¹, then the hiring of such trainer by an owner means that the owner is aware that the trainer has previously exhibited, shown, entered, sold or transported a sore horse in violation of the HPA, and has accepted the risk that such trainer may do so again. Such an owner would have to present evidence to show that he or she acted reasonably in knowingly hiring that trainer.

3. Unannounced Visits. The owner or the owner's agent makes unannounced visits to the trainer's facility. The owner arranges for periodic unannounced inspections of the horse by a knowledgeable, independent licensed veterinarian (a veterinarian who is not otherwise

²¹ For purposes of this Operating Plan and this exemption, APHIS' consideration of a trainer's history will only apply to violations committed by a trainer on or after March 1, 1999.

employed by the trainer and who is competent to determine whether a horse is sore under the HPA).

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

F. Penalties.²² All HIOs must impose the following minimum penalties:²³

	<u>First</u>	<u>Second</u>	<u>Third</u>	<u>Fourth & Subsequent</u>
SORING VIOLATIONS:				
15 U.S.C. § 1824(1)				
15 U.S.C. § 1824(2)				
Pressure Shoeing	12 months	2 years	5 years	Life
Bilateral Sore	8 months	2 years	5 years	Life
Unilateral Sore	2 weeks	2 months	1 year	2 years
Scar Rule				
First year of Plan	DQ Class	2 weeks	2 months	1 year
Subsequent years	2 weeks	2 months	1 year	2 years

SUSPENSION VIOLATIONS: -----6 months for each occurrence-----

OTHER HPA VIOLATIONS:²⁴

15 U.S.C. § 1824(7)	
Foreign Substance	
Pre Show	-----DQ Class (Non-correctable)-----
Post Show	-----2 weeks for each occurrence-----
Equipment Violations	
Pre Show	-----DQ Class (Non-correctable)-----
Post Show	-----2 weeks for each occurrence-----

UNRULY/FRACTIOUS HORSE: -----DQ Class (Non-correctable)-----

During the first year of this Plan (2001 horse show season), a first violation of the Scar Rule will require that the horse be disqualified from the class in which it was entered. The custodian will then be provided with educational material on the Scar Rule. Subsequent violations within the first year of the Plan shall require that the penalties be imposed in accordance with the above chart as listed in the category “First year of Plan.” In all subsequent years and

²² A violation will be a subsequent violation for enhanced penalty purposes only if it occurs at a subsequent event on a date after a violator has commenced serving a penalty imposed by an HIO.

²³ The violations listed herein are all violations of the Act. That the sanctions imposed for them are different does not indicate that some violations are considered more serious than others. Furthermore, the sanctions listed herein do not represent the sanctions that the Department will seek in an administrative or judicial enforcement case.

²⁴ Foreign substance and equipment violations are all violations of the HPA.

horse show seasons, penalties for Scar Rule violations shall be imposed in accordance with the above chart under the listing “Subsequent years.” In all cases, when any violation is identified after a horse has shown in its class (post show), the winnings shall be forfeited and the class shall be retied. HIOs shall require that show management agree to enforce this stipulation when affiliating with an HIO which is a signatory to this Plan.

Penalties assessed during the term of this Plan shall not automatically become void upon the termination of this Plan.

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

VIII. CONFLICT RESOLUTION²⁵

A. Resolution Procedures. APHIS instructs VMOs to do their utmost to ensure that any disagreements with DQPs are resolved at the field personnel level. DQPs and VMOs must do their best to communicate their concerns to each other at the time the conflict occurs. If, however, a disagreement cannot be resolved at the event, then the horse will be excused from

²⁵ If a disagreement arises between a DQP and VMO as to their inspection findings and cannot be resolved at the show, it may be considered suitable for resolution under this Operating Plan. If during the Conflict Resolution process, it becomes apparent that the findings of the VMO and DQP are the same or similar and result in the same HPA violation, the process will cease. The HIO will then be given the opportunity to impose the appropriate penalty. If the HIO fails to do so, APHIS will then pursue a federal case against the alleged violator(s). APHIS has the inherent authority to pursue a federal case whenever it determines the purposes of the HPA have not been fulfilled.

showing. At the end of the event, the VMOs shall provide the DQPs with a written list of all cases where a disagreement could not be resolved. The list shall include the horse's entry and class number or sale number, and a brief description of the nature of the disagreement. Both the VMO and the DQP shall submit written documentation on each of these cases to their respective coordinators within seven (7) days after the end of the show. The Horse Protection Coordinator and the DQP Coordinator will then work together to resolve the conflict and, if necessary, request the appropriate DQP sanction or HPA penalty. If they are unable to resolve the conflict, then they will refer the matter to the appropriate HIO Chairman or President and the APHIS Deputy Administrator for Animal Care, who will resolve the matter.²⁶ The final decision will be provided to the HIO by APHIS within sixty (60) days of the date of the initial dispute.²⁷

B. Mediation. APHIS will continue its dialogue with the American Association of Equine Practitioners to determine their willingness to assist with rendering an opinion if the USDA and HIO cannot resolve a dispute. Any expenses for these services will be the responsibility of the HIO involved in the dispute.²⁸

C. Complaint of VMO Performance. An HIO may submit to APHIS a written complaint of unsatisfactory performance by a VMO when such has been observed at a show, exhibition, sale or auction. If the person making the complaint is a DQP or HIO official, that

²⁶ Nothing in this Operating Plan is intended to limit the authority of the Deputy Administrator to delegate his authority.

²⁷ VMOs will prepare documentation whenever they detect evidence of a violation of the Act. APHIS may gather preliminary information at the show as well. APHIS will hold in abeyance any case that is timely and properly introduced into the conflict resolution process until the process terminates, and the proper penalty has been imposed. If the Department at any time determines that the HIO has not taken the steps necessary to detect and penalize HPA violations as required by and in accordance with the Act, the Regulations, this Operating Plan, or the HIO's own rule book, the Department may institute enforcement proceedings against the violator. If and when the Department determines that the HIO has properly applied and enforced the penalties under this Operating Plan, it will close its files on the case.

²⁸ The AAEP has indicated that they have reservations about entering into such discussions. The Agency will continue to seek opinions from veterinary medical organizations on disputed medically-related issues only.

person must inform the VMO of the complaint at the end of the particular show, exhibition, sale or auction. The complaint must be based on facts, and must be submitted to the Horse Protection Coordinator. The Coordinator shall review the complaint and if necessary investigate the allegations contained in it. Thereafter, the Coordinator shall consult with the APHIS Deputy Administrator for Animal Care, who will send a written response to the HIO.