

February 23, 2009

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UNITED STATES FIRST CLASS MAIL
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RE: "Emphasis on Inspection for Horse Protection Program"
Issued by APHIS and Dated December 17, 2008

Dear Dr. Gipson:

On behalf of TWHBEA, WHOA, and WHTA, this letter respectfully requests clarification on several issues raised by your and Dr. Rachel Cezar's announcement of the captioned new requirements in 2009 for inspections under the Horse Protection Act ("HPA") and the Regulations issued in relation thereto.

We are committed to working with the USDA to enforce the HPA and, as you recently and graciously acknowledged, we have made great progress. We intend to continue this progress, as we want nothing more than to preserve this wonderful horse and this industry for future generations. However, we are concerned that the modifications to the inspection process that you are imposing for 2009, while well intended, are counter-productive to objective, consistent, and reliable inspections pursuant to the HPA.

We understand and appreciate that administration of the Horse Protection Program is under considerable scrutiny at this time, and therefore you believe that you need to consider alternative tools and practices to ensure compliance. We agree with that effort and wish to work with you toward improving the inspection process. The owners, exhibitors, trainers, horse show management and the public are entitled to an inspection process that is objective, reliable, and consistent show to show. Our concern is that several of the inspection modifications that you have imposed for 2009 do not move us toward that end, but simply create "background noise" which will interfere with identifying non-compliant horses, while falsely accusing compliant horses.

We will divide our comments, information requests, and recommendations by specific issue.

1) **The use of thermography for the 2009 show season.**

Issue: In recent meetings and discussions, the USDA has implied that it intends to rely on thermography alone in determining whether a horse is in compliance with the HPA, without regard to contrary evaluation from the physical and visual examinations outlined in the Regulations for VMO/DQP inspections. We believe that applying thermography in

such a manner is inconsistent with recommended use and suggests a misunderstanding of the capabilities of thermography.

In the recent VMO/DQP Training Session in Shelbyville, Tennessee, you stated that "it is very possible that the DQP will go through everything [meaning their examination of the horse] and find nothing. While we're evaluating our thermogram, we *will probably find something*." (Emphasis added.) We are concerned that this level of scrutiny, in which the intent is obviously to find "something," even in a clinically normal horse, goes far beyond the intent of the HPA and will likely result in many horses being pulled from the show ring that are not in violation of the HPA. You further indicated that thermography can detect "foreign substances" on a forelimb and that you expected many horses that passed inspection last year would likely not be able to show this year once your inspectors "apply their technology". In a discussion with the Walking Horse Owners Association, you also implied that thermography can be used to detect scars that cannot be found clinically. Such detection capabilities of the thermography equipment appear contrary to literature and experienced practice.

Concerns:

- Thermography, appropriately used, is neither a stand-alone nor definitive diagnostic tool, and should not be used as such to determine compliance with the HPA.

We agree that thermography is a valuable tool, but it is intended to be used in combination with physical and visual examinations. Thermography provides only one piece of information in the clinical analysis. The literature is clear that none of the newer imaging techniques can be used in lieu of clinical examination. Rather, imaging techniques only enhance the database established by the physical and visual examinations.¹ Thermography specifically increases the potential for identifying inflammation and provides pictorial data suggestive of whether further diagnostic testing may be appropriate.^{2;3} This is further complicated by the research indicating that thermography can predict joint and tendon problems before they become clinically apparent.⁴ Therefore, to imply that a horse that shows an increase of temperature in a limb is in violation of the HPA is not accurate. Such horse may simply have some early, clinically unapparent tendonitis or other physical anomaly. That would be useful information for the trainer and his veterinarian, but since it is not clinically apparent, and the cause of the temperature depiction is unknown, based solely on thermography findings, the horse certainly cannot be considered out of compliance with the HPA.

We are also concerned that the use of thermography without regard to the VMO/DQP exam will introduce significant inconsistencies in the inspection process and decrease the opportunities to find violators—something we both want to avoid. Under the proposed process as we understand it, in some cases, a VMO/DQP inspection with no adverse findings will allow a horse to show (if no thermography is present), while in other cases, when USDA is there with thermography, that same horse may not be able to show even if that same VMO/DQP inspection still has no adverse findings. This inconsistency may result in exhibitors electing not to show when USDA is using thermography under its current plan, as we understand it—something neither of us want. Should that occur, the

opportunity to find those incidences when a horse has truly been harmed will be lost. Such inconsistency would therefore be contrary to our common effort to eliminate the "sore" horse and reward the compliant horse.

- Detection capabilities of thermography appear to have been misrepresented.

If you stated, as reported, that thermography will detect "concoctions" applied to a horse's leg, such statement is incorrect. Thermography is the pictorial representation of the surface temperature of an object.^{1,2} It is a noninvasive technique that measures emitted heat.¹ It does not detect substances. There are many things that can cause heat to be visible in a thermogram. Many of them are artifacts.

At the recent Training Session, you stated that "the technology does not lie." We agree that the technology may not lie; however, it also does not tell the whole story. Simply stated, thermography alone cannot determine whether illegal substances or devices have been employed. Enforcement actions based solely thereon are subject to serious challenge. Should those challenges be successful, USDA and HIOs may encounter claims of interference with commercial interests of horse owners and show management. Such allegations would be hurtful to our collective enforcement efforts.

- Thermography has documented limitations and there is some controversy in the literature regarding its value.

Although thermography is a very good tool when used appropriately, there are limitations to the technology that must be seriously considered in a regulatory capacity. As clearly documented in the literature, thermographic examination of skin is highly sensitive to extraneous contact. Anything that comes in contact with the object being thermographically examined will affect the scan. For instance, if someone touches the limb, the heat from the individual touch will be detected, leading to false positive readings. This type of interference can also occur from heat transference such as evaporation with sweating, convection, or conduction. Air drafts can artificially cool the object and direct light and movement can artificially heat the object.¹

Certain factors must be controlled for reliable thermograms to be produced. Factors that must be controlled are motion, extraneous radiant energy, ambient temperature, and quantification of the thermogram. Horses should be allowed, at a minimum, 10 to 20 minutes to acclimate to the environment or room where thermography is performed.¹

In addition, there is some controversy in the literature about the value of thermography. In one reference, it is stated that "thermography has been less enthusiastically embraced than ultrasound and nuclear scintigraphy, because interpretation of the results at this juncture is more ambiguous. It is a technique that deserves more attention, at least until its interpretation has been fine-tuned enough so that more precise benefits of the technique can be interpreted."⁵ Another reputable reference notes "that results of thermography can be unpredictable; experience using the modality is necessary for accurate interpretation. In addition, surface temperatures can vary markedly because of many uncontrollable

factors.”⁶ The same reference further states that an “area of increased temperature on an animal’s limb may be a normal thermographic variation, an inflammatory area on the skin surface, or a benign vascular abnormality....Despite these limitations, thermography may be a useful diagnostic tool, complementing digital palpation and helping confirm suspected soft tissue/muscle injuries.”⁶

While there is value in using thermography, its limitations must be considered.

Furthermore, thermographic studies of race horses showed a significant number of thermographic abnormalities, often exacerbated by exercise. In many cases, horses with abnormal thermograms did progress to have some problems weeks after the initial scan, but not in all cases. One horse that did not have clinical problems showed abnormal scans after galloping. An incidental finding was that the feet remained hot for almost 24 hours after a gallop⁴ -- another indication that thermography, as a diagnostic tool, has insufficient reliability for definitive statutory determinations, such as whether a horse is “sore.”

- Use of thermography and findings in USDA field trials of Tennessee Walking Horses.

You stated at the recent Training Session that USDA has been testing thermography in Tennessee Walking Horses since 2004 or 2006. We respectfully request information on your findings. We are specifically interested in how many horses were evaluated and, of those, how many were found to have abnormal findings? How many of those were clinically normal at inspection? When was each horse last exercised before the thermographic examination? We are similarly interested in learning if you observed any variations of results using thermographic equipment provided by different manufacturers during your trials.

Recommendation: At this time, we are aware of no USDA protocol on the use of thermography nor its intended application in the inspection process or for enforcement proceedings. If our understanding is misplaced, please clarify and provide us the detailed protocol. Otherwise, we recommend that the USDA work with us in creating a task force composed of VMOs, industry veterinarians, and AAEP veterinarians to develop such a protocol consistent with known benefits and limitations of this technology, in a manner that will not bias the physical or visual inspection process, and in accord with both regulatory inspection procedures (physical examination, locomotion, and appearance) and HPA requirements for “reasonable promptness” and “reasonable limits” in the inspection process.

We are prepared to move forward immediately with such a task force. Toward that end, we plan to contact the American Association of Equine Practitioners (AAEP) in this regard. Of course, we would appreciate your timely response so that we may determine if and how we can put thermography to work to provide more objectivity, reliability and consistency in the inspection process.

2) Use of hoof testers.

Issue: It is our understanding from the recent VMO/DQP Training Session that a horse that reacts upon application of the hoof testers is to be considered "sore" without regard to other inspection factors and without further examination. If we misunderstood this message from the Training Session, please correct us and provide us your intended approach to the use of hoof testers or other appliances and the evaluation of such test results in detection of pressure shoeing or other practices prohibited by the HPA.

As you are aware, hoof testers are most commonly used in the diagnosis of navicular disease and other lameness conditions. We have heard from one VMO that a horse that reacts to hoof testers would be considered "sore," regardless of the findings of the rest of the inspection, yet Dr. Cezar stated that hoof testers will not be used unless the inspection indicates a need to use hoof testers. Could you also please clarify the circumstances under which the need for hoof testers will be based?

Concern: In 2008, the NHSC attempted to amend its rulebook to address the situation of lameness or possible pressure shoeing when horses reacted to hoof testers. This was attempted in an effort to address industry concern above and beyond HPA strictures. By letter dated August 12, 2008, you threatened to decertify the NHSC as an HIO if it did not remove the amendment immediately. Then, you stated that a horse that reacts positively on one foot after application of the hoof testers is to be considered unilaterally "sore" and a horse that reacts on both feet is to be considered bilaterally "sore," irrespective of the rest of the VMO/DQP evaluation. You provided no rationale for this position and did not address appropriate practices for identifying pressure shoeing or the application of penalties, currently in place, for that abhorrent practice.

In its response dated August 20, 2008, the NHSC apologized for not seeking your prior approval before strengthening industry rules and, as you directed, the amendment was retracted. The letter further set forth our understanding that under the Operating Plan, as well as the Regulations, VMO/DQP inspections for determining compliance with the HPA require an evaluation of the horse's appearance and locomotion, as well as a physical examination, before rendering any findings. The NHSC took exception to your view that the use of hoof testers alone is an acceptable inspection and that no other evaluation is needed. Moreover, the NHSC requested the opportunity to work with USDA to determine the best way to use hoof testers in the inspection process, proposing that HIOs and USDA work together to determine a protocol for the use of the hoof testers, including when they should be used, and what follow-up should occur for the fair evaluation of horses that reacted to the hoof tester. No response was received.

In 2008, at the request of HIOs, Dr. Doug Corey of the AAEP addressed the use of hoof testers for the diagnosis of pressure shoeing. According to Dr. Corey, most hoof testing results are subjective. He further opined that while hoof testers are a valuable tool in the hands of experienced equine practitioners as a diagnostic tool, hoof testing alone is not the basis for a reliable medical diagnosis. As you should be aware, Dr. Corey's thesis was confirmed at the recent VMO/DQP Training Session. While one of the horses at the session showed no reaction to palpation and was found fit in appearance and locomotion, the horse reacted to the hoof testers. After removing the front shoes, using radiographs

and further physical and visual evaluation of the legs and shoulders of the horse, AAEP veterinarians, Drs. Mike Harry and John Bennett, concurred in a diagnosis of tendonitis. Citing this horse as "bilateral sore," solely based upon the hoof tester reaction, as your August 20, 2008 letter directs, would be clearly inappropriate. How then are VMOs and DQPs to detect and address these anomalies in the inspection station? Similarly, we would appreciate your thoughts on how the industry might handle the issue of excusing from competition horses found in the inspection station to be possibly lame, but HPA compliant.

Additionally, veterinary literature states (in addition to pain caused by intentional processes such as pressure shoeing), hoof testers may elicit a positive response for many reasons, including stone bruises, sole abscesses, and other such problems. Even sound horses may show a withdrawal response if long-armed hoof testers are used. Simply stated, as set-forth in the literature and seen in practice, hoof tester reactions should not be relied upon, in isolation, to determine whether a horse is "sore." Further evaluation is required.

Recommendation: A protocol for the appropriate use of hoof testers in the inspection process remains a priority. The Board of Directors of the WHOA has unanimously approved that its President, Frank Neal, and Drs. Harry and Bennett, request the University of Tennessee School of Veterinary Medicine to undertake a study to develop a method and protocol for pressure shoeing detection in the inspection station. The initial contacts have been made. With such, practitioners of this abhorrent practice could be identified to a reasonable medical certainty and severely penalized.

While awaiting this development, we suggest that the USDA, HIOs, and AAEP put together a small task force to develop quickly a protocol for the use of hoof testers in the inspection station and for appropriate steps to determine whether a horse that responds to hoof testers is in violation of the HPA. This protocol should be, and we believe can be, developed, circulated, and finalized prior to the start of the show season in mid-March. Again, the main objective is to truly identify those horses that are not in compliance with the Act, and to differentiate them from horses that are compliant, but otherwise reactive to the hoof testers, so that appropriate enforcement decisions can be made.

3) Requirement for the removal of tack prior to inspection.

Issue: For the 2009 show season, the USDA has indicated that it will now require all tack (except for bridle or halter with lead) to be removed from horses presented for pre-show and post-show inspection.

Concern: The Celebration and NHSC (and we understand other HIOs) have previously corresponded with the USDA taking exception with, and offering a workable alternative to, this new "field rule." We are not aware of any written responses by the USDA.

During the recent VMO/DQP Training Session, Dr. Cezar stated that this new requirement grew out of USDA's concern that devices could be placed under the saddle,

girth, or breast strap to alter a horse's response to the visual, locomotion, and physical examinations. We are not aware of any routine or recurring activity by horse custodians in this regard. Moreover, we are unaware of any data showing that such a practice would have the affect that Dr. Cezar ascribed to it. Should you have reliable information to the contrary, please provide such evidence to us so that we may evaluate it and work with you to address any such practice directly within the industry and eliminate the problem at its source.

During the interim, if the requirement for horses to go through both pre- and post-show inspections without tack remains in place, this measure will cause an undue burden on the handlers, lengthen inspection times, especially for post-show inspections, and otherwise delay shows to provide additional time for exhibitors to tack-up after inspection.

Dr. Cezar stated in the VMO/DQP Training Session that if the tack is not removed, USDA would consider such to be intentional interference with the inspection and that a "Federal Case" would be considered by the USDA. This is a clear stretch since HPR Sec.11.1 specifically provides that the removal of equipment may only be required "when deemed necessary by the person conducting such inspection." Clearly, the Regulations provide no blanket prohibition of tack in the inspection station.

Recommendation: As you are aware, during the 2008 Celebration, show officials required that girths be loose in the inspection station—a practice the USDA has never attempted. If the VMO/DQP then determined there was sufficient reason to remove the tack for further inspection, removal could then be requested, as provided in the Regulations. Interestingly, with over 3000 inspections at this horse show, no evidence of interference with inspection were reported.

In an effort to be even more transparent than the loose girth practice employed at the 2008 Celebration, the horses could be presented at the inspection station with the girth dropped. This approach, would address your concern while largely eliminating the many downsides of a general prohibition of tack on horses being inspected. Of course, should the VMO/DQP reasonably suspect a tack problem as to any horse presented, the inspector could then direct removal of tack in the inspection station as the Regulations provide.

4) Only the exhibitor, trainer, custodian involved with the horse are allowed in the inspection area.

Issue: Our understanding of the practice over the last several years has been that only the horse, its custodian, and applicable USDA, HIO, and show management representatives were permitted in the inspection station. The Regulations at 11.21(b) provide that inspected horses are thereafter to be held in a "designated area" under the supervision of VMO/DQP representatives until such horses enter the show ring. The Regulations further limit those in the "designated area" to the horse and associated exhibitor, trainer, and custodian.

We have no objection to either the regulatory limitation for the "designated area" or the historical practice relative to the inspection station.

Concern: We simply have no clear understanding of what you are attempting to address here. It would not be our expectation that you are proposing to increase the number of attendants per horse in the inspection station unless you are doing so in light of the burden upon handlers attributable to your recent tack removal rule, as above discussed.

Recommendation: Clarify your intent and the basis for any concern. Once we have that information, we are happy to work with you in this regard. As you are aware, HIOs are responsible under HPR Sec. 11.21(d)(7) for supervising their DQPs toward ensuring that uniform and reliable inspection protocol are being observed and fairly executed and that DQPs are appropriately interfacing with VMOs. We undertake that responsibility seriously and expect to continue HIO and show management oversight of DQP performance in the inspection station toward our goal of objective, reliable and consistent pre- and post-show inspection practices.

5) **Metal bands are not to be tightened in warm-up area after going through inspection.**

Issue: As you are aware, hoof bands are frequently used (and permitted under the regulations) to anchor and strengthen the shoe and minimize casting the shoe with the possibility of damaging the hoof and horse, as well as reducing potential danger to competitor horses, bystanders, and spectators from a shoe being cast. While HPR Sec. 11.2(b)(15) and (16) address the mechanics and placement of bands, the regulations do NOT address when or where bands are to be loosened or tightened.

Concern: The new metal band "field rule" side-steps the Regulations, disregards the purposes of bands, and promotes harmful consequences to the horse, the show, and the public. While we understand that custodians generally check and adjust bands prior to inspection, the horses are not warmed-up or otherwise put in show-ready condition until after inspection. During warm-up, bands can fail and bands can loosen. Moreover, the trainer may recognize an oversight and find that the bands were not properly tightened prior to inspection or were tightened too much. Also, shoes are cast from time to time in the warm-up area.

In these instances, according to Dr. Cezar at the recent VMO/Training Session, the horses would be required to leave the designated warm-up area and return to the inspection station before the shoe and band could be replaced or the band tightened. (Your new rule apparently does not limit loosening the band in the warm-up area.) The delays to entering the ring and the inconvenience to trainers and exhibitors attendant to this new requirement are clear. The increased number of inspections spawned by this approach is equally obvious. More importantly, this so-called revised field rule is a disincentive for trainers to be attentive to hoof band issues in the warm-up area with the possible consequences of harm to the horse and others.

The basis for this new requirement has not been disclosed. We are simply unaware of a problem with bands that justifies the disregard of past practices to notify the VMO/DQPs overseeing the warm-up area of the need to adjust or replace a band and then proceeding to undertake that action with their approval. Share with us your concern with band adjustments and we will gladly work with you to address it.

Recommendation: Until then, the current practice of notifying the VMO/DQP overseeing the designated warm-up area of the need to address a band issue and then doing so under his observation should be followed.

In conclusion, our primary concern is that we work together to use appropriately all resources to identify objectively and consistently those remaining persons who, contrary to the HPA, are causing harm to our horses and industry so that they can be appropriately penalized. In doing so, however, we also want to be sure that we do not accuse wrongly those who have caused no harm, as to do so would detract from enforcement credibility and the resolve to take decisive action.

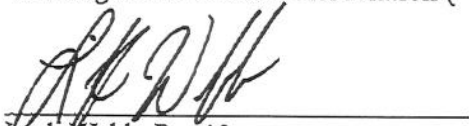
We respectfully request a written response to each of our concerns and proposals as outlined herein. Many of these issues seriously impact our livelihood and our industry. Resolution is critical before our first major show, currently scheduled for March 18-24, 2009.

We look forward to your response and thank you in advance for your working with us to improve the inspection process.

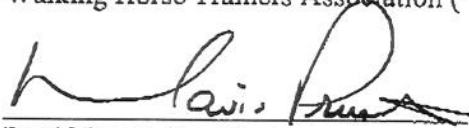
Sincerely,



Frank Neal, President
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Link Webb, President
Walking Horse Trainers Association ("WHTA")



David Pruett, President
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