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February 20, 2015

VIA UPS NEXT DAY MAIL

THE HONORABLE TOM VILSACK
SECRETARY OF AGRICULTURE
U.S. DEPARTMENT OF AGRICULTURE
1400 INDEPENDENCE AVENUE SW, ROOM 200-A
WASHINGTON DC 20250

Dear Secretary Vilsack

As you may recall, we sent a letter to you last April 2, 2014. As we explained at that time our firm has been retained by the Performance Show Horse Association ("PSHA"), and numerous owners, trainers and others in connection with issues of concerns to the PSHA and its members regarding the enforcement of the Horse Protection Act ("HPA") and the regulations previously adopted by the United States Department of Agriculture under the authority granted it by the HPA.

As we indicated last year, the TWH industry has, since early 2009, communicated with your agency and specifically APHIS regarding concerns regarding the Agency's application of the HPA and the continuing issues with its VMOs improperly implementing the HPA. We enclose some of that correspondence for your review. The only action the USDA has taken to date is to state that the VMOs have been "directed to simply enforce the HPA and its implementing regulations as written." Pursuant to recent information that is an incorrect statement.

At the recent SHOW Designated Qualified Persons ("DQPs") training on January 16-17th, 2015, Dr. Baker admitted that he has not been following the HPA or the stated USDA inspection protocol in his inspections or in the training he has provided for at least four years, that has so often been confirmed by the USDA. Please see the enclosed transcript from the January, 2015 training. Specifically, he admitted he has not trained inspectors to attempt to flatten out the skin to determine if the tissue is uniform thickened epithelium if an alleged scar is identified. He also has never discussed with inspectors that a callous, wrinkles or other changes to the tissue caused by the natural friction of the action device are NOT scars.

The USDA has consistently stated the requirement of attempting to flatten the skin to determine if "what appears to be a scar is uniformly thickened epithelium" is not a scar. Specifically, this inspection protocol was put in place to ensure that normal changes to the skin from the friction of the action device or other changes to the skin that occur naturally are not improperly deemed an illegal scar violation. The USDA and its VMOs are required to follow this inspection protocol to ensure the due process rights of owners and exhibitors in determining whether a tissue change is allowed or not allowed.

Unfortunately, according to Dr. Baker, this is not the actual practice. As reflected in the enclosed transcript, at the January, 2015 training session, Dr. Baker admitted on several occasions the USDA protocols were not being followed:

1. UNIDENTIFIED SPEAKER "If you had a fold of skin and you flattened it out and you didn't feel anything there and that ridge flattened out, it was compliant. If it didn't flatten out, it's not compliant. **That's where we started in 2010.**"

Dr. BAKER. **"That's not how USDA was doing it at the time....and it's not what we were trained on then."** (Page 26 lines 12-24, emphasis added).

2. DR BAKER: "From the definition of this regulation, which we've been trained to, we talk about a granuloma which is – the granuloma tissue, it's a fairly distinctive – they are fairly distinctive in the manner that **they're visible**. They're fairly distinctive. They have that pattern. They're localized lesions caused by an inflammatory process. That's how we're taught. **We routinely don't press that thing open or press it like that**, because I **don't think** you get a good representation of what that is. You can press anything flat or smooth." (Page 27, lines 14-24, emphasis added).

3. UNIDENTIFIED SPEAKER: **"So there is no smoothing or there is?"**

Dr. BAKER **"We don't routinely do it because we found it doesn't help. The physical, visual, physical examination, run our thumb perpendicular, we look at them and that's how we determine if it's a scar rule.**

UNIDENTIFIED SPEAKER: "So the VMOs don't try to flatten them? I mean you look at it.."

DR. BAKER "We don't have – **in our standard operating procedures we don't go to that detail as far as take your two thumbs, spread it out and see if it's smooth. We don't go to that detail.** (Page 28, lines 1-8, 11-16, emphasis added).

4. UNIDENTIFIED SPEAKER: "Inspectors – tell me if this is true or false. Inspectors are instructed to spread the skin on the pastern to determine if what appears to be a scar is uniformly thickened epithelium, Are we still true there? ... Dr. Baker?"

Dr. BAKER **"We don't have that in our standard operating..."** (Page 30, lines 6-15, emphasis added).

5. UNIDENTIFIED SPEAKER "...who instructs you?"

Dr. BAKER "Dr. Cezar, Dr. Turner." (Page 42 lines 21-22).

These statements are consistent with the affidavits and letters that have so often been sent to the USDA since 2009. Dr. Baker's statements and the findings by the VMOs over the years, of scar violations where none were found by other veterinarians, including renowned equine specialists and equine clinics, is again consistent with what the Tennessee Walking Horse industry has been stating – the USDA is improperly finding scar violations where none exist and using the scar rule to retaliate, and illegally profile and target individuals to the economic and reputational harm of numerous individuals.

A thorough review of the APHIS website regarding the inspection protocol, including specific references to the scar rule, is also not only misleading but incomplete and inconsistent with the HPA and Regulations. For instance, the 2007 Slide Show posted on the APHIS website states on 12 slides that "excessive loss of hair" is indicative of soring. Not only is this not complete but

"excessive loss of hair" is not found in the HPA, Regulations or the definition of a scar regarding the posterior surface of the pasterns of a horse. That term is only used for the anterior surfaces. And none of the slides are of anterior surfaces of the pasterns.

The 2007 Slide Show also states that visual examination alone is not sufficient and then attaches 44 slides of visuals without accompanying comments or identification of any issues. And the 2009 Slide Show posted on the APHIS website only has visual slides, with no explanation. In addition as previously described to the USDA, some of the 2009 slides have been altered with the use of some sort of red filter to make them appear "inflamed" thereby justifying a scar violation. Clearly manipulating photographs to obtain the desired effect taints not only the TWH Industry but the USDA.

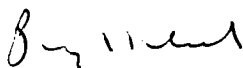
It is very apparent from the USDA's training, inspections, website material, and enforcement actions that the USDA has an agenda of targeting the TWH industry. In light of all the above, it is disingenuous for APHIS officials to continue to state that they direct inspectors to "simply enforce the HPA and its implementing regulations as written."

In addition when the USDA intentionally and knowingly ignores both the statute and existing regulations without complying with the Administrative Procedures Act, and improperly identifies HPA violations where none exist, it is violating the Constitutional due process rights of every owner, trainer, and exhibitor in the Tennessee Walking Horse industry.

As we have done many times, we respectfully request a prompt and complete investigation regarding all the above. We also attach the letter we have sent to the OIG and General Counsel office requesting additional action regarding the illegal determined violations found by your VMOs.

Very truly yours

GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.



Phillip L. Kunkel

Enclosures

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