

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 91-025]

Horse Protection Inspection Guidelines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Horse Protection regulations to revise the procedures to be followed by Designated Qualified Persons in conducting inspections at horse shows, exhibitions, and sales or auctions. We believe these amendments are necessary to provide practicable inspection procedures that protect horses under the Horse Protection Act (Act).

DATES: Consideration will be given only to comments received on or before July 8, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-025. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R. L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, room 565, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

SUPPLEMENTARY INFORMATION:

Background

The practice known as "soring" is the causing of suffering in show horses to affect their performance in the show ring. In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821-1831), referred to below as the Act, to eliminate the practice of soring, by prohibiting the showing or selling of sored horses. Exercising our rulemaking power under the Act, we issued regulations published at 9 CFR part 11, referred to below as the regulations, that prohibit devices and methods that might sore horses. In 1979, in response to an amendment to the Act, we established guidelines under which show managements must, to avoid liability for any sore horses which are shown, hire individuals trained to conduct preshow inspections. These individuals, referred to as Designated Qualified Persons (DQP's), are trained and licensed under industry-sponsored DQP programs that we certify and monitor.

The requirements for DQP licensing are set forth in § 11.7 of the regulations. As part of the licensing process, prospective DQP's are trained in procedures we have established for examining a horse prior to exhibition or sale. The inspection procedures include both examination by palpation of the horse's pasterns and visual examination of the horse.

Inspection Procedures

On October 17, 1990, we published in the Federal Register a final rule (55 FR 41989-41994, Docket No. 90-071) amending the Horse Protection regulations to expand and clarify the procedures to be followed by DQP's at horse shows, exhibitions, sales, and auctions. In general, we continue to consider the changes we made necessary for the protection of horses. However, members of the horse industry, including DQP organizations, have expressed concern that a certain few of the regulation changes either are not workable, or might lead to potentially dangerous situations for inspectors. We have carefully reviewed these concerns and believe that, in certain cases, changes need to be made in the regulations to allow for inspection procedures that are practicable and safe, and that continue to protect the horses being inspected. Therefore, we are proposing to amend the Horse

Protection regulations, as described below.

Inspection of Horses

Section 11.21(a)(2) provides that DQP's shall examine the rear limbs of all horses inspected after showing. Concern has been raised by the horse industry that mandatory inspection of the rear limbs of all horses after showing is dangerous and could lead to DQP's being seriously injured. We continue to believe that adequate inspection of horses requires that DQP's examine the rear limbs of horses exhibiting lesions on the rear legs or unusual movement of the rear legs, and are so specifying in this proposed rule. However, our experience enforcing the Act indicates that the incidences of soring on the rear limbs of horses does not justify requiring examination of the rear limbs of all horses after showing. Therefore, we are proposing to amend § 11.21(a)(2) to provide that, except for the situations described above, it shall be left to the DQP's discretion whether to examine the rear limbs of all horses inspected after showing, and the rear limbs of any horse examined preshow or on the showgrounds.

The current regulations require the weighing and/or measuring of all action devices, pads, and other equipment to determine if they are in compliance with the regulations. Checking pads and devices on a horse requires six to eight measurements per horse. Members of the horse industry have expressed concern that such a requirement delays inspections and hurries inspectors unnecessarily, because certain horses are entered in several classes, and therefore need not have their equipment weighed and measured each time they are entered. Based on information supplied to us by our field personnel, we believe that in many cases it is possible to assure visually that pads and other equipment are in compliance. We also believe that it is not always necessary for adequate protection of horses to weigh and/or measure their equipment more than once during a show or on the same night. We are therefore proposing to amend § 11.21(a)(3) to provide that all action devices, pads, and other equipment shall be observed and/or examined to assure they are in compliance with the regulations. We continue to consider it necessary, however, to require that the equipment

on certain horses be weighed and/or measured. We are therefore proposing to provide in § 11.21(a)(3) that all horses examined postshow (which includes all Tennessee Walking Horses and racking horses tied first in their class or event), and all horses examined preshow that are not clearly in compliance, shall have their pads and action devices weighed and/or measured.

The current regulations require that horses be inspected no more than one class ahead of the time they are to be shown. However, members of the horse industry, including DQP organizations, have expressed concern that if a show class has a large number of horses, or if the previous class has a small number of horses, it might be difficult for a DQP to give adequate attention to all horses if they are inspected no more than one class ahead of the time they are to be shown. We have carefully considered these concerns, and believe that, in order to allow time for adequate inspections, it is necessary to amend the regulations regarding how far ahead of showing a horse may be examined. The current regulations require that horses be confined to a special area after preshow inspection. This holding area is under observation, and greatly reduces the opportunity for tampering with the horses after inspection. We are therefore proposing to amend § 11.21(b) to provide that, except as discussed below, the DQP shall inspect horses no more than three classes ahead of the time the inspected horses are to be shown. At smaller shows, however (those with fewer than 150 horses), the DQP will have more time to conduct adequate inspections, and can inspect horses closer to the time they are shown. We are therefore proposing to provide that at shows having fewer than 150 horses, the horses must be inspected no more than two classes ahead of the time they are to be shown.

Section 11.21(b) of the current regulations also limits the individuals who may be present in the designated holding area to the rider, and either a groom or the trainer. Members of the horse industry have noted, however, that three people are required to prepare properly each horse for showing (the trainer, the rider, and a groom). We consider this observation to have merit, and believe that it will not adversely affect the DQP's enforcement capabilities to allow one more individual in the designated holding area. We are therefore proposing to amend the regulations to allow the rider, groom, and trainer to be present in the holding area. Additionally, in order to void any confusion at a show, we are

proposing to specify that DQP's and APHIS representatives may also be present in the holding area.

Required Number of DQP's

The current regulations require that the management of any horse show, exhibition, sale, or auction that designates and appoints a DQP to inspect horses must appoint and designate at least two DQP's when more than 100 horses are entered. Members of the horse industry have noted, however, that most of the small charity-sponsored horse shows have over 100 horses, and that the requirement for two DQP's places a prohibitive financial burden on many of these shows. Most of these charity-sponsored shows have fewer than 150 horses. Based on our experience enforcing the Act, we believe that increasing the number of houses requiring two DQP's from 100 to 150 would not significantly alter the enforcement capabilities of the DQP's conducting the inspections. We are therefore proposing to make such a change in § 11.20(c) of the regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291 and Departmental Regulation 1512-1, and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than \$100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

The proposed change regarding inspection procedures would provide for practicable, safe inspection procedures. We expect the implementation of these regulations would not cause a significant change in the number of shows inspected by DQP's.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 11

Animal welfare. Horses. Humane animal handling. Soring of horses

PART 11—HORSE PROTECTION REGULATIONS

Accordingly, 9 CFR part 11 would be amended as follows:

1. The authority citation for part 11 would continue to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

§ 11.20 [Amended]

2. In § 11.20, paragraph (c), the number "100" would be removed and the number "150" would be added in its place.

§ 11.21 [Amended]

3. In § 11.21, paragraph (a)(2), the fifth sentence would be revised to read as follows: "The DQP may examine the rear limbs of all horses inspected after showing, and may examine the rear limbs of any horse examined preshow or on the showgrounds when he deems it necessary, except that the DQP shall examine the rear limbs of all horses exhibiting lesions on, or unusual movement of, the rear legs."

4. In § 11.21, paragraph (a)(3), the second sentence would be revised to read as follows: "All action devices, pads, and other equipment shall be observed and/or examined to assure that they are in compliance with the regulations. All such equipment on horses examined postshow, and on horses examined preshow that are not clearly in compliance, shall be weighed and/or measured."

5. In § 11.21, paragraph (b), the first sentence would be revised to read as follows: "The DQP shall inspect horses no more than three classes ahead of the time the inspected horses are to be shown, except that, in shows with fewer than 150 horses, the DQP shall inspect horses no more than 2 classes ahead of the time the inspected horses are to be shown."; and the last sentence would be revised to read as follows: "Only the horse, the rider, the groom, the trainer, the DQP(s) and APHIS representatives shall be allowed in the designated area."

Done in Washington, DC, this 3rd day of June 1991.

James W. Glosser,
Administrator, Animal and Plant Health
Inspection Service.

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