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9 CFR Part 11

Horse Protection; Licensing of Designated Qualified Persons and Other Amendments; Proposed Rule

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****9 CFR Part 11**

[Docket No. APHIS–2011–0009]

RIN 0579–AE19

Horse Protection; Licensing of Designated Qualified Persons and Other Amendments**AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Proposed rule.

SUMMARY: We are proposing to amend the horse protection regulations to provide that the Animal and Plant Health Inspection Service (APHIS) will train and license Designated Qualified Persons (DQPs) to inspect horses at horse shows, exhibitions, sales, and auctions for compliance with the Horse Protection Act. DQPs are currently trained and licensed through programs certified by APHIS and initiated and maintained by horse industry organizations (HIOs). Under this proposal, APHIS will train and license DQPs on an individual basis. The proposed changes to the regulations would relieve HIOs of all regulatory burdens and requirements. We would also establish a process by which APHIS could revoke the license of a DQP for professional misconduct or failure to conduct inspections in accordance with the regulations. We would establish requirements to minimize conflicts of interest between DQPs and others within the horse industry that enable the practice of soring. We are also proposing several changes to the responsibilities of management of horse shows, exhibitions, sales, and auctions, as well as changes to the list of devices, equipment, substances, and practices that can cause soring or are otherwise prohibited under the Horse Protection Act and regulations. Additionally, we are proposing to amend the inspection procedures that DQPs are required to perform. These actions would strengthen existing requirements intended to protect horses from the unnecessary and cruel practice of soring and eliminate unfair competition.

DATES: We will consider all comments that we receive on or before September 26, 2016. We will also consider comments made at public hearings to be held in Murfreesboro, TN, on Tuesday, August 9, 2016; Lexington, KY, on Wednesday, August 10, 2016; Sacramento, CA, on Tuesday, August 16, 2016; Riverdale, MD, on Tuesday,

September 6, 2016; and during a virtual public hearing on Wednesday, September 15, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0009>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2011–0009, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0009> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

Public Hearings: Public hearings regarding this rule will be held at the following locations:

1. Murfreesboro, TN: Embassy Suites, 1200 Conference Center Boulevard, Murfreesboro, TN.
2. Lexington, KY: Clarion Hotel Lexington, 1950 Newtown Pike, Lexington, KY.
3. Sacramento, CA: Courtyard Sacramento Airport Natomas, 2101 River Plaza Drive, Sacramento, CA.
4. Riverdale, MD: USDA Center at Riverside, 4700 River Road, Riverdale, MD.

5. A virtual public hearing will also be held. Persons wishing to participate in the virtual hearing are required to register at <http://ems7.intellor.com?do=register&t=1&p=706174>. Upon registering, persons will receive an email containing dial-in numbers and a personalized access code.

FOR FURTHER INFORMATION CONTACT: Dr. Kay Carter-Corker, Assistant Deputy Administrator, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737; (301) 851–3751.

SUPPLEMENTARY INFORMATION:**Public Hearings**

We are advising the public that we are hosting five public hearings on this proposed rule. The first public hearing will be held in Murfreesboro, TN, on Tuesday, August 9, 2016, beginning at 9 a.m. local time. The second public hearing will be held in Lexington, KY, on Wednesday, August 10, 2016, beginning at 9 a.m. local time. The third

public hearing will be held in Sacramento, CA, on Tuesday, August 16, 2016, beginning at 9 a.m. local time. The fourth public hearing will be held in Riverdale, MD, on Tuesday, September 6, 2016, beginning at 9 a.m. local time. The fifth public hearing, which will be conducted as virtual hearing, will be held on Wednesday, September 15, 2016, beginning at 5 p.m. EDT. Each hearing will begin at the appointed time and may continue for up to 4 hours depending on the number of persons desiring to speak. Each hearing may be terminated at any time (*i.e.*, prior to the expiration of the 4 hour time period) if all persons desiring to speak and who are present in the hearing room or participating in the virtual hearing have been heard.

A representative of the Animal and Plant Health Inspection Service (APHIS) will preside at each of the public hearings. Any interested person may appear and be heard in person, by attorney, or by other representative. For the virtual hearing, any person may call in to be heard. Information about the hearings can be viewed online at <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/horse-protection-amendments>. Written statements may be submitted and will be made part of the hearing record. A transcript of the public hearings will be placed in the rulemaking record and will be available for public inspection.

Registration is required to speak at one or more of the public hearings. Registration for the face-to-face hearings may also be accomplished by registering with the presiding officer 30 minutes prior to the scheduled start of each hearing (*i.e.*, 8:30 a.m. local time). Persons who wish to speak at a hearing will be asked to sign in with their name and organization to establish a record for the hearing. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. The presiding officer may limit the time for each presentation so that all interested persons appearing at the face-to-face hearings, or calling in to the virtual hearing, have an opportunity to participate.

The purpose of the hearings is to give interested persons an opportunity for presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearings, except to clarify or explain provisions of the proposed rule.

Information on the public hearings can be found on the Internet at <https://>

www.aphis.usda.gov/aphis/ourfocus/animalwelfare/horse-protection-amendments.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Executive Summary

I. Purpose of Regulatory Action

In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821–1831), referred to below as the Act, or the HPA, to eliminate the practice of soring by prohibiting the showing or selling of sored horses. The regulations in 9 CFR part 11 implement the Act.

In the Act, Congress found and declared that the soring of horses is cruel and inhumane. The Act states that the term “sore” when used to describe a horse means that:

- An irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse;
- Any burn, cut, or laceration has been inflicted by a person on any limb of a horse;
- Any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse; or
- Any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse; and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving.

Soring has been primarily used in the training of Tennessee Walking Horses, Racking Horses, and related breeds to produce an exaggerated gait for competition. However, the Act is intended to enforce prohibitions against soring in all horse breeds. In addition to declaring that the soring of horses is cruel and inhumane, Congress found that horses shown or exhibited that are sore compete unfairly with horses that are not sore. Congress further found that the movement, showing, exhibition, or sale of sore horses in intrastate commerce adversely affects and burdens interstate and foreign commerce because it creates unfair competition, deceives the spectating public and horse buyers, and negatively impacts horse sales.

Section 4 of the Act, as amended (15 U.S.C. 1823), requires the Secretary of Agriculture to prescribe by regulation requirements for the appointment by the management of a horse show,

exhibition, sale, or auction (referred to below as “show management”) of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for the purpose of enforcing the Act. Although show management is not required to appoint these so called “designated qualified persons” (DQPs) to inspect horses, if show management chooses not to do so, it may be liable for violating the HPA if it fails to disqualify a sore horse. If, alternatively, show management appoints DQPs, it may be held liable only for failing to disqualify a sore horse after being notified by a DQP or by the Secretary of Agriculture, or his designee, that a horse is sore.

To implement that amendment, the Animal and Plant Health Inspection Service (APHIS) established the DQP program in 1979. Horse industry organizations with a DQP program certified by APHIS (referred to as HIOs, below), are responsible for training and licensing DQPs to inspect horses at shows, exhibitions, sales, or auctions. Under this program, DQPs are trained and licensed by the HIO to inspect horses to determine compliance with the Act and regulations.

In response to public concerns about the ability of APHIS’ Horse Protection Program to detect and prevent soring, the United States Department of Agriculture’s (USDA’s) Office of the Inspector General (OIG) evaluated APHIS’ oversight of the program. OIG examined whether inspections conducted by HIO-trained and licensed DQPs to detect soring were adequate and whether occasional, unannounced inspections by APHIS officials provided sufficient oversight of DQPs.

In September 2010, OIG issued a report concluding, among other things, that the DQP program for inspecting gaited horses is not adequate to ensure that horses are not being sored for the purposes of enhanced performance, in part because it found that DQPs have a “clear conflict of interest” with respect to their decisions on whether or not to identify a violation of the HPA. To remove that conflict of interest and to achieve the goals of the HPA, OIG recommended that APHIS eliminate the DQP program in its current form and assume a direct involvement in the accreditation and monitoring of horse inspectors and the conditions and procedures of the horse inspection process.

Summary of Major Provisions

APHIS agrees with the OIG’s conclusion that the current program of HIOs training and licensing DQPs is not adequately detecting soring or

promoting enforcement of the Act. We are proposing several provisions to the regulations in 9 CFR part 11 that will increase APHIS’ ability to oversee the Horse Protection program and enforce provisions of the Act and regulations. Changes we are proposing to the regulations include:

- Having APHIS assume the training, licensing, and monitoring of third-party, independent inspectors to conduct inspections at shows, exhibitions, sales, and auctions,
- Amending the regulations to prohibit use of pads, substances, and action devices on horses at horse shows, exhibitions, sales, and auctions,
- Adding licensing eligibility requirements for DQPs¹ and revising training requirements and inspection procedures,
- Amending existing access, space, and facility requirements for management of horse shows, exhibitions, sales, and auctions,
- Amending management recordkeeping and reporting requirements,
- Ensuring there are at least 2 DQPs employed at shows in which 150 horses or fewer are entered, and more than 2 DQPs for shows at which more than 150 horses are entered,
- Requiring that a farrier be available at every horse show, exhibition, sale, and auction, and
- Removing from the regulations all regulatory responsibilities pertaining to HIOs.

II. Costs and Benefits

The proposed rule would promote the Act’s goal of ending the unnecessary, cruel and inhumane practice of soring by helping to ensure that horses present at and participating in exhibitions, sales, shows, or auctions are not sored. This benefit is an unquantifiable animal welfare enhancement. Furthermore, these changes would further the statutory mandate of Congress to prohibit the showing or exhibiting of sored horses, remove the incentive to painfully mistreat horses, and prevent unfair competition by horses shown or exhibited that are sore. Congress also found that the movement, showing, exhibition, or sale of sore horses in intrastate commerce adversely affects and burdens interstate and foreign commerce.

The proposed amendments concerning management recordkeeping

¹ As we explain later in this document, we propose to change the term “Designated Qualified Person” throughout the regulations to “Horse Protection Inspector,” or HPI, as the latter term more accurately describes the tasks performed by these persons.

and reporting, and granting of access, space, and facilities for inspections, are intended to consolidate or clarify existing provisions of the HPA. These proposed changes are procedural and should not impose additional costs for the show management.

Of these proposed amendments to the horse protection regulations, only the amendments requiring a farrier to be present for all shows and a minimum of 2 inspectors for shows with 150 or fewer horses and more than 2 inspectors for shows with more than 150 horses may result in additional costs for the shows or their participants.² Based on APHIS estimates, the costs of services provided by veterinarians, farriers, and inspectors range from a few hundred to several thousand dollars. Many if not most of the entities that may be affected by this proposed rule are small.

While the proposed rule would result in better oversight of inspectors and enforcement of the HPA, implementation of the proposed changes would result in additional administrative and technological tasks associated with training and licensing inspectors. These tasks include designing, coordinating, and delivering training and providing program guidance and oversight. With program allocated funds, APHIS personnel would support these additional training needs while continuing to attend a percentage of horse events in order to ensure consistency among inspectors, address performance concerns, and inspect horses for compliance with the Act.

Background

In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821–1831), referred to below as the Act, or HPA, to eliminate the practice of soring by prohibiting the showing or selling of sored horses. The regulations in part 11, referred to below as the regulations, implement the Act.

In the Act, Congress found and declared that the soring of horses is cruel and inhumane. The Act states that the term “sore” when used to describe a horse means that:

- An irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse;

² Additional inspector oversight is needed for pre-inspection warm-up areas at shows and exhibitions, as we have observed that it is difficult for a single inspector to inspect and monitor 150 or more entries at a show. A farrier needs to be made available to remove a shoe so the inspector may examine a horse’s hoof for evidence of soring. We note that shows frequently have a farrier present, so this requirement should not significantly affect current practices.

- Any burn, cut, or laceration has been inflicted by a person on any limb of a horse;

- Any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse; or

- Any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse;

and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving.

Soring has been primarily used in the training of Tennessee Walking Horses, Racking Horses, and related breeds to produce an exaggerated gait for competition. However, the Act is intended to enforce prohibitions against soring in all horse breeds. Congress found that horses shown or exhibited that are sore compete unfairly with horses that are not sore. Congress further found that the movement, showing, exhibition, or sale of sore horses in intrastate commerce adversely affects and burdens interstate and foreign commerce.

Section 4 of the Act, as amended (15 U.S.C. 1823), requires the Secretary of Agriculture to prescribe by regulation requirements for the appointment by the management of a horse show, exhibition, sale, or auction (referred to below as “show management”) of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for the purpose of enforcing the Act. Although show management is not required to appoint these so called “designated qualified persons” (DQPs) to inspect horses, if management chooses not to do so, it may be liable for violating the HPA if it fails to disqualify a sore horse. If, alternatively, show management appoints DQPs, it may be held liable only for failing to disqualify a sore horse after being notified by a DQP or by the Secretary of Agriculture, or his designee, that a horse is sore.

To implement that amendment, the Animal and Plant Health Inspection Service (APHIS) established the DQP program in 1979. Horse industry organizations with a DQP program certified by APHIS (referred to as HIOs, below), are responsible for training and licensing DQPs to inspect horses at shows, exhibitions, sales, or auctions. Under this program, DQPs are trained and licensed by the HIO to inspect horses and determine compliance with

the Act and regulations. In order to be certified by APHIS, HIO programs must meet the requirements in § 11.7 of the current regulations for licensing, training, recordkeeping and reporting, and DQP standards of conduct.

Under the current regulations, show management can forego appointing and retaining a DQP and assume responsibility for ensuring that sored horses are not participating in their event. In most cases, however, shows appoint and retain DQPs licensed by certified HIOs. The HIO provides the show with DQPs to conduct inspections to determine compliance with the Act and regulations and may impose industry-established penalties for violations identified in an HIO’s rulebook. HIOs are currently required to provide at least 2 DQPs when more than 150 horses are entered in an event and can pay the DQPs from fees paid to them by show management. Any horses discovered by the DQP to be in noncompliance with the Act or regulations must be reported to show management. Show management must then prohibit those horses from being shown, exhibited, sold, or auctioned, and, if show management fails to do so, it will constitute noncompliance with the Act and regulations.

With passage of the Horse Protection Act in 1970, APHIS’ annual budget for the Horse Protection Program was set by Congress at \$500,000³ yearly and has changed little since that time. Under this budget, APHIS sends officials to a small number of horse shows to observe DQPs and conduct inspections.⁴

DQPs trained and licensed by USDA-certified HIOs and appointed and retained by show management are the primary parties responsible for inspecting horses to determine compliance with the Act.⁵

Office of the Inspector General Audit

In response to public concerns about the ability of the Horse Protection Program to detect and prevent soring, USDA’s OIG conducted an evaluation of the program. The OIG examined whether inspections conducted by HIO-trained and licensed DQPs to detect

³ In 2014 and 2015, the budget allocation for the program was \$697,000 for each year, amounting to a \$197,000 annual increase over the budget set in 1970.

⁴ Shows attended by USDA can be found on the APHIS Horse Protection Act Inspection and Enforcement Web page: https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_hpa/activity-and-show-reports.

⁵ DQP inspection data from 2010–2015 is located on the APHIS Horse Industry Organizations and Designated Qualified Persons Web page: https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_hpa/ct_hpa_hio_and_dqps.

soring were adequate and whether occasional, unannounced inspections by APHIS officials provided sufficient oversight of DQPs. OIG auditors gathered evidence for the audit from several sources, including visits to horse shows and interviews with APHIS Horse Protection Program management and staff. In September 2010, OIG issued a report⁶ on APHIS' administration of the Horse Protection Program and the Slaughter Horse Transport Program.

In the report, the OIG auditors identified multiple conflicts of interest among DQPs, the HIOs that train, license, and employ them, horse exhibitors, and management of shows and exhibitions that affiliate with HIOs for inspection services. OIG auditors concluded that these conflicts of interest have contributed to sored horses being allowed to compete while sore. OIG auditors found that DQPs are reluctant to dismiss sored horses discovered during inspections because doing so inconveniences show management and makes it less likely the DQP will be hired for other shows. Moreover, some DQPs own and exhibit their own horses, so a DQP inspecting an exhibitor's horse at one show may be facing that exhibitor inspecting horses at another show. In such an environment, the OIG noted that DQPs frequently fail to visually and physically inspect horses in accordance with the Act and regulations.

The OIG auditors found that DQPs avoid documenting instances of soring in several ways. DQPs often provide warnings to exhibitors when they detect soring in a horse, when under the regulations they are required to recommend to show management that the horse be prohibited from performing. The report also concluded that DQPs fail to sufficiently inspect and weigh chains, boots, and other action devices as currently required in the regulations.

The report noted that when DQPs document noncompliance with the Act, they often identify a stable hand or a relative of the exhibitor as the alleged violator of the Act, so that the person actually responsible for the alleged violation can avoid responsibility. Furthermore, the report stated that there are no reliable controls in place to prevent an exhibitor who is serving an industry-issued suspension for a violation of an HIO's rulebook from competing in another show.

APHIS veterinary medical officers conduct unannounced inspections at selected horse events to evaluate DQPs and to visually and physically inspect horses for indications of soring and determine compliance with the Act and regulations. However, as noted above, APHIS officials can only attend a small number of shows, sales, exhibitions and auctions each year. OIG noted that DQPs were much more likely to document noncompliance with the Act when APHIS was also present at a horse show. From the shows OIG reviewed, it found that DQPs issued 49 percent of their total violations at the 6 percent of shows at which APHIS officials also attended.

Given the above issues, the OIG report concluded that the DQP program for inspecting gaited horses is inadequate to ensure that horses are not being sored for the purposes of enhanced performance. OIG recommended that APHIS eliminate the DQP inspection program in its current form and assume a direct involvement in the licensing and monitoring of inspectors and the conditions and procedures of the horse inspection process.

APHIS agrees with OIG's conclusion that the current program of HIOs training and licensing DQPs is not adequately detecting instances of soring. Our observations of inadequacies within the DQP program are consistent with those described by OIG auditors. Therefore, to achieve the Act's purpose of ending the soring of horses, additional changes to the regulations are necessary.

Proposed Changes to the Regulations

In this rule, we are proposing to revise the Horse Protection regulations in 9 CFR part 11 to improve our enforcement of the Act and regulations. The proposed changes would include a reorganization of part 11 so that the requirements are clearer and better organized. The revised and new sections we propose would appear in the regulations as listed below:

- § 11.1 Definitions.
- § 11.2 Prohibited actions, practices, devices, and substances.
- § 11.3 Scar rule.
- § 11.4 Providing required information.
- § 11.5 Inspection and detention of horses; responsible parties.
- § 11.6 Training and licensing of Horse Protection Inspectors (HPIs).
- § 11.7 [Reserved]
- § 11.8 [Reserved]
- § 11.9 Management responsibilities; access, space, and facilities.

§ 11.10 Management responsibilities; operation of horse shows, horse exhibitions, and horse sales and auctions.

§ 11.11 Management responsibilities; records and reporting.

§ 11.12 Inspection procedures for HPIs.

§ 11.13 Requirements concerning persons involved in transportation of certain horses.

Changes we propose to make include the following:

- Changing the term "Designated Qualified Person" throughout the Horse Protection regulations to "Horse Protection Inspector" to more accurately describe the tasks performed by these persons.⁸ We are also proposing to revise the definition of this term in § 11.1 to reflect our proposal to have APHIS assume the regulatory responsibility for training and licensing of DQPs.

- Retitling § 11.2 as "Prohibited actions, practices, devices, and substances" and prohibiting all action devices, pads, and substances applied to a horse's limbs. Also prohibited is any practice involving a horse, and, as a result of such practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving.

- Moving the inspection and detention requirements in current § 11.4 to a revised § 11.5. We would move the prohibition against providing false information from current § 11.2(e) to § 11.4 and retitle revised § 11.4 as "Providing required information."

- Revising § 11.5 so that it consolidates horse inspection and detention requirements that must be observed by custodians of horses and retitling it "Inspection and detention of horses; responsible parties." Access to premises and records pertaining to exhibitors would remain in revised § 11.5 and access pertaining to management would be moved to a new § 11.9.

- Revising § 11.6 to indicate that APHIS would undertake the training and licensing of horse inspectors and adding new requirements for license eligibility. We would retitle § 11.6 as "Training and licensing of Horse Protection Inspectors." Inspection space and facility requirements currently in § 11.6 would be moved to revised § 11.5.

- Revising § 11.7 by moving all inspector training and licensing

⁶ APHIS Administration of the Horse Protection Program and the Slaughter Horse Transport Program: Office of the Inspector General Audit Report. Available at <http://www.usda.gov/oig/webdocs/33601-02-KC.pdf>.

⁷ Sections 11.7 and 11.8 are reserved for future use.

⁸ In this document, we use the term "Designated Qualified Person" or "DQP" when referring to the current regulations. We use the term "Horse Protection Inspector," or "HPI," when referring to our proposed changes to the regulations.

requirements to revised § 11.6 so that all such inspector requirements are consolidated in one section. We would also remove from § 11.7 all regulatory requirements pertaining to HIOs in this and all other sections of 9 CFR part 11, as HIOs would no longer have any regulatory responsibilities. Section 11.7 and a new § 11.8 would be reserved.

- Adding a new § 11.9, titled “Management responsibilities; access, space, and facilities,” that draws together access, space, and facility requirements from current § 11.5 and other sections pertaining to management of horse shows, exhibitions, sales, and auctions. This section also includes proposed requirements that limit the number of persons allowed in designated horse inspection and warm-up areas and that prohibit show management from influencing attendees to interfere with the duties of authorized inspectors and APHIS representatives.

- Adding a new § 11.10, titled “Management responsibilities; operation of horse shows, horse exhibitions, and horse sales and auctions,” that draws together operating requirements from other sections. This section also includes proposed requirements intended to prevent prohibited persons from participating in shows, exhibitions, sales, or auctions.

- Adding a new § 11.11, titled “Management responsibilities; records and reporting,” that draws together management recordkeeping and reporting requirements from other sections. Included in this section is a provision that would provide additional time for management to provide APHIS with information for each horse prohibited by management or its representatives from being shown, exhibited, sold or auctioned.

- Adding a new § 11.12, “Inspection procedures for HPIs,” that draws together inspection procedures for inspectors from § 11.21 and other sections. In this section we also propose additional requirements to ensure that an inspector can conduct an effective inspection of the horse to determine compliance with the Act or regulations.

- Adding a new § 11.13, titled “Requirements concerning persons involved in transportation of certain horses,” that draws together horse transportation requirements from § 11.40 and other sections.

- Removing §§ 11.20, 11.21, 11.22, 11.23, 11.24, 11.25, 11.40, and 11.41 from the regulations. As noted above, some material from these sections would be moved to the proposed new and remaining sections of part 11. All regulatory responsibilities specifically

pertaining to HIOs in these sections would be removed from the regulations.

We now describe each section in our proposed revision of the Horse Protection regulations.

Definitions

We would make changes to several terms and definitions in § 11.1 that reflect our proposed changes to the Horse Protection program.

We would remove the definition for *APHIS Show Veterinarian*. We would continue to have APHIS veterinary staff attend shows and monitor inspections, but we would no longer formally use this title to refer to such staff.

We would add a definition for the term *custodian*, which describes any person who is responsible for directing, controlling, and supervising the horse during inspection at any horse show, exhibition, sale, or auction. The definition includes any person who shows or exhibits, or enters for the purpose of showing or exhibiting in any horse show or horse exhibition any horse, as well as any person who sells, auctions, or offers for sale in any horse sale or auction any horse. The definition also includes any person who owns a horse and allows the horse to be shown, exhibited, or entered in a show or exhibition; sold, auctioned, or entered in a sale or auction; or transported for any of these purposes, as well as any person who transports a horse for any of these purposes. In addition, the custodian must be able to provide required information about the horse. We are proposing adding this term in order to more clearly identify the custodian.

We are also proposing to change the current term *Designated Qualified Person* to *Horse Protection Inspector* in this section and throughout the regulations because it more accurately describes the duty performed by such persons. We would also amend the definition of this term to reflect our proposal to transfer to APHIS the regulatory responsibility to train and license inspectors. These Horse Protection Inspectors, or HPIs, would not be APHIS officials or employees, and APHIS would not pay them for performing their duties. We would indicate in our proposed definition that the management of a horse show, exhibition, sale, or auction can appoint and retain an APHIS-trained and licensed HPI to inspect horses and records pertaining to such horses for compliance with the HPA.

A *horse industry organization* (HIO) is currently defined as “an organized group of people, having a formal structure, who are engaged in the

promotion of horses through the showing, exhibiting, sale, auction, registry, or any activity which contributes to the advancement of the horse.” We propose to remove this definition from the definition section of the regulations. Under the changes we propose, the regulations in part 11 would remove all regulatory burdens and requirements pertaining to HIOs, including the requirements for certification of DQP programs, and recordkeeping, and other requirements specific to HIOs.

The current regulations define *inspection* to mean “the examination of any horse and any records pertaining to any horse by use of whatever means are deemed appropriate and necessary for the purpose of determining compliance with the Act and regulations.” To clarify that this determination is made by APHIS, we would amend the definition of *inspection* to indicate any visual, physical, and diagnostic means approved by APHIS to determine compliance with the Act and regulations. The proposed definition would go on to explain that such inspection may include, but is not limited to, visual inspection of a horse and review of records, physical inspection of a horse, including touching, rubbing, palpating, and observation of vital signs, and the use of any diagnostic device or instrument, and may require the removal of any shoe or any other equipment, substance, or paraphernalia from the horse when deemed necessary by the person conducting such inspection.

We would remove the definition for *lubricant*. Such substances are frequently used to reduce friction caused by action devices on the limbs of Tennessee Walking Horses, Racking Horses, and related horse breeds. However, as we propose to prohibit all action devices, lubricants would no longer be necessary.

We also propose removing the term *Regional Director* from the definitions in § 11.1. APHIS representatives performing Horse Protection Program duties are no longer supervised by a regional director.

Finally, we would add a definition for the term *substance*. This term would be defined as any agent applied to a horse’s limbs while a horse is shown, exhibited, or offered for sale, or otherwise present on the grounds at any horse show, exhibition, sale, or auction. This definition would also include agents applied to a horse’s limbs before and after a horse is shown, exhibited, or offered for sale, or otherwise present on the grounds at any horse show, exhibition, sale, or auction. We propose

to prohibit the presence of all substances on the limbs of any Tennessee Walking Horse, Racking Horse, or related breed while the horse is present on the grounds at any horse show, exhibition, sale, or auction.

Prohibited Actions, Practices, Devices, and Substances

We propose to revise current § 11.2, "Prohibitions concerning exhibitors." We would amend this section by renaming it "Prohibited actions, practices, devices, and substances," as our proposed revision of this section focuses on prohibiting actions, practices, devices, and substances that can be used to sore horses.

Paragraph (a) of § 11.2 currently prohibits any chain, boot, roller, collar, action device, and any other device, method, practice, or substance used with respect to any horse at any horse show, horse exhibition, or horse sale or auction if such use causes or can reasonably be expected to cause such horse to be sore. We would remove current paragraph (a), as the prohibitions it includes would be covered under paragraph (b), "Specific prohibitions," and redesignate paragraph (b) as paragraph (a).

In a 1979 rulemaking,⁹ APHIS amended several provisions of the Horse Protection regulations to prevent the showing, exhibiting, selling, or auctioning of sore horses. Among the provisions were those restricting the equipment, devices, and substances allowed to be present on horses. APHIS has observed from its experience in enforcing the Act and regulations that a relationship exists between the use of such items and sores in horses. APHIS stated in the rule that "if the horse industry makes no effort to establish a workable self-regulatory program for the elimination of sore horses, or if such program is established but does not succeed in eliminating the sore horse within a reasonable length of time, the Department will give serious consideration to the prohibition of all action devices and pads."

As we indicated we would do in the 1979 rule cited above, we have given serious consideration to prohibiting all action devices and pads, as the current industry inspection program has failed to adequately address instances of sores. The Department believes that 38 years has been more than enough time for the gaited horse industry to reform its training practices to comply with the Act. Therefore, to successfully and significantly reduce the number of sores

horses shown, exhibited, sold, and auctioned, we are proposing to prohibit the use of pads, action devices, and substances on the limbs of any Tennessee Walking Horse, Racking Horse, or related breed.

Our experience indicates that the majority of horse shows contain numerous classes, and that large numbers of horses participating in those shows are flat-shod horses (those that do not use the pads and action devices this proposed rule would seek to prohibit). Some shows are entirely flat-shod and already prohibit pads and action devices. To our knowledge, the proposed rule would not have any impact on those horses. Additionally, although action devices and pads would be prohibited, the horse itself would still be eligible to compete, albeit in classes that do not use action devices or pads. We welcome public comments as to how many flat-shod horses there are versus how many are entered into performance classes at HPA-covered events.

Our proposal to prohibit the use of all such items that can induce sores, combined with a corps of third-party inspectors working independently of the horse industry, will place the Department in a stronger position to achieve the remedial purpose of the HPA, which is to eliminate the abusive practice of sores.

We would add a new paragraph (a)(1) to § 11.2 that prohibits any action device and a new paragraph (a)(2) that prohibits hoof bands, wedges, and pads at any horse show, exhibition, sale, or auction. We would also remove current paragraphs (b)(1) through (b)(8). These paragraphs provide for restrictions regarding action devices and pads.

Current paragraph (b)(9) of § 11.2 prohibits the use of any weight on yearling horses, excepting a keg or similar horseshoe, and also prohibits horseshoes weighing more than 16 ounces on yearling horses.

We would redesignate paragraph (b)(9) as (a)(3) and replace the term "yearling horses" with "horses up to 2 years old." This change would clarify that horses younger than 1 year old are not yearlings but should be covered under the prohibitions in those paragraphs.

Paragraphs (b)(10) and (11) of § 11.2 currently include requirements for heel/toe ratios. Paragraph (b)(10) prohibits artificial toe lengthening, whether accomplished with pads, acrylics, or any other material, or combinations of these, that exceeds 50 percent of the natural hoof length, as measured from the coronet band, at the center of the anterior pastern along the front of the

hoof wall, to the distal portion of the hoof wall at the tip of the toe. The artificial extension must be measured from the distal portion of the hoof wall at the tip of the toe at a 90 degree angle to the proximal hoof surface of the shoe.

We would redesignate paragraph (b)(10) as paragraph (a)(4) and amend it by prohibiting all artificial toe lengthening. Toe lengthening involves the use of pads or foreign substances attached to the hoof, both of which we propose to prohibit.

We would not include the provisions of paragraph (b)(11) of § 11.2 concerning artificial toe length measurements, as artificial toe lengthening would be prohibited under proposed § 11.2(a)(4).

We would remove current paragraph (b)(12) of § 11.2, which contains provisions for hoof pads. Such pads would be prohibited under proposed § 11.2(b)(2).

Paragraph (b)(13) of § 11.2 prohibits the practice of inserting between the horse's hoof and a pad any object or material other than acceptable hoof packing. We would redesignate this paragraph as paragraph (a)(5) and amend it to remove the reference to pads. Acceptable packing would continue to include pine tar, oakum, live rubber, sponge rubber, silicone, commercial hoof packing, or other material that does not create any pain on the frog, sole or any areas underneath the hoof. We also propose to prohibit acrylic and similar materials as hoof packing, as they can harden and cause pressure sores.

Paragraph (b)(14) of § 11.2 prohibits rocker-bars on the bottom surface of horseshoes which would cause, or could reasonably be expected to cause, an unsteadiness of stance in the horse with resulting muscle and tendon strain due to the horse's weight and balance being focused upon a small fulcrum point. We would retain the prohibitions in this paragraph, as well as the footnote allowing certain corrective devices for the purpose of correcting a lameness or pathological condition of the foot. We would redesignate paragraph (b)(14) as paragraph (a)(6).

We would remove paragraphs (b)(15) through (17) of § 11.2, which provide conditions for the use of hoof bands and action devices. Under the proposed regulations, all hoof bands and action devices would be prohibited at any horse show, horse exhibition, or horse sale or auction. Hoof bands are known to cause pressure on the wall of the hoof and overtightening of the bands has been difficult to monitor and detect.

Paragraph (b)(18) of § 11.2 currently prohibits any manner of shoeing or trimming a horse's hoof that will cause

⁹ Federal Register (44 FR 25172–25184), April 27, 1979.

suffering, pain or distress, inflammation, or lameness when the animal is walking, trotting, or otherwise moving.

We propose to redesignate paragraph as (b)(18) as (a)(7) and amend it by adding prohibitions on paring out the frog and intentional bruising of the hoof, and adding that horses showing any other indications of pressure shoeing are considered sore and subject to all the prohibitions in the Act. These practices can cause soring but are not specifically covered in the current regulations.

Paragraph (b)(19) of § 11.2 currently prohibits lead or other weights to be attached to the outside of the hoof wall, the outside surface of the horseshoe, or any portion of the pad except the bottom surface within the horseshoe. It also states that pads may not be hollowed out for the purpose of inserting or affixing weights, and weights may not extend below the bearing surface of the shoe. Paragraph (b)(19) also prohibits hollow shoes or artificial extensions filled with mercury or similar substances.

We propose to redesignate paragraph (b)(19) of § 11.2 as paragraph (a)(8) and remove references to pads in this paragraph. As we explain above, their use would be prohibited under the proposed regulations at any horse show, horse exhibition, or horse sale or auction. We would also remove the exception that allows the practice of adding weights to the bottom surface within the horseshoe because we have determined that such weights can be used in ways that can cause soring.

Paragraph (c) of § 11.2 currently prohibits application of substances to the extremities above the hoof of any Tennessee Walking Horse, Racking Horse, or related breed while being shown, exhibited, or offered for sale at any horse show, horse exhibition, or horse sale or auction except lubricants such as glycerine, petrolatum, and mineral oil, or mixtures thereof.

Paragraph (c)(1) currently requires that the management agree to furnish all of the lubricants permitted to be applied to horses as noted above and to maintain control over them during their use at the event. Paragraph (c)(2) states that these lubricants can only be applied after the horse has been inspected by management or by a DQP and only under the supervision of the horse show, exhibition, sale, or auction management. Paragraph (c)(3) requires that management make lubricants available to Department personnel for inspection and sampling as deemed necessary.

We would redesignate paragraph (c) as paragraph (b) and revise it to prohibit

all substances, including lubricants, on the limbs of any Tennessee Walking Horse, Racking Horse, or related breed while being shown, exhibited, or offered for sale at any horse show, horse exhibition, or horse sale or auction. This prohibition would apply to any and all horses present on the grounds of a horse show, exhibition, sale or auction. We are proposing these changes because, as we explain above, our experience in enforcing the Act has shown that a wide range of foreign substances have historically been applied to the legs and pasterns of gaited horses to induce soreness. Numbing substances are also applied to a sore horse to temporarily mask the pain of being palpated during inspection.

We would also remove paragraphs (c)(1) through (3). These paragraphs address provisions for lubricants, which are typically used to reduce the friction of action devices. However, as we propose to prohibit all action devices there is no longer a need for such lubricants.

Paragraph (d) of § 11.2 provides specific requirements for rest periods during horse show and horse exhibition workouts or performances for 2-year-old Tennessee Walking Horses, Racking Horses, and related breeds and working exhibitions for 2-year-old Tennessee Walking Horses, Racking Horses, and related breeds at horse sales or horse auctions. We would retain these requirements in a revised paragraph (c).

Paragraph (e) of § current 11.2 prohibits persons from failing to provide information or providing false or misleading information when such information is required by the Act or regulations or requested by APHIS representatives. This provision applies to any custodian of any horse shown, exhibited, sold, auctioned, or entered for any of these purposes.

We would move this provision from § 11.2 to revised § 11.4, as this section would specifically include requirements for providing information about the horse.

Scar Rule

The scar rule applies to all horses born on or after October 1, 1975. Horses that do not meet the scar rule criteria are considered to be sore and are subject to all prohibitions of the Act.

Paragraph (a) of § 11.3 states that the anterior and anterior-lateral surfaces of the fore pasterns (extensor surface) are required to be free of bilateral granulomas, other bilateral pathological evidence of inflammation, and, other bilateral evidence of abuse indicative of soring including, but not limited to, excessive loss of hair.

Paragraph (b) states that the posterior surfaces of the pasterns (flexor surface), including the sulcus or “pocket” may show bilateral areas of uniformly thickened epithelial tissue if such areas are free of proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation.

We intend to retain the current scar rule provisions in the regulations.

Providing Required Information

Section 11.4, “Inspection and detention of horses,” lists the inspection and detention requirements that custodians of a horse must meet upon request by an APHIS representative. We would revise § 11.4 by moving the inspection and detention requirements to a revised § 11.5 and amending those requirements to reflect changes made to other sections. We would also change the section heading of revised § 11.4 to “Providing required information” and add to that section the provision regarding failure to provide information or providing false information currently in § 11.2(e). This provision prohibits an individual from refusing to provide information or providing false or misleading information when such information is required by the Act or regulations or requested by inspectors or APHIS representatives. It applies to any custodian of any horse shown, exhibited, sold, or auctioned at any horse show, exhibition, sale, or auction.

Inspection and Detention of Horses: Responsible Parties

Section 11.5 currently includes the requirement that show management and custodians of horses at any horse show, exhibition, auction, or sale must provide access for APHIS representatives and DQPs to visually and physically inspect horses and records.

We would move the access requirements for show management in current § 11.5(a) to proposed § 11.9 so that all such requirements for show management are together in one section. We would also move horse inspection and detention requirements for custodians of horses from current § 11.4 into revised § 11.5 and retain the access requirements pertaining to custodians of horses currently in § 11.5 so that all such requirements for these persons relating to access, inspection, and detention are located in one section. Revised § 11.5 would be retitled “Inspection and detention of horses; responsible parties.”

We would combine the first sentence of current § 11.5(b)(1) and the second through last sentences of current § 11.4(a) to create paragraph (a) of revised § 11.5. These sentences contain

inspection requirements for custodians of horses at horse shows, exhibitions, sales, and auctions.

Paragraph (b) of revised § 11.5 would be drawn from current § 11.5(b)(2), which requires that the custodian of a horse promptly present it for inspection upon notification by any APHIS representative or authorized inspector to determine compliance with the Act and regulations.

Paragraph (c) of revised § 11.5 would state that no objects or tack other than a halter is to be placed on a horse during inspection. We would add this requirement because other objects can be used to train a sore horse to show no visible reaction to pain when its hooves and limbs are palpated during inspection.¹⁰

With minor changes, the content we would include in paragraphs (d) through (k) of revised § 11.5 would be drawn from the content in current § 11.4(b) through § 11.4(i), which list horse inspection and detention requirements pertaining to custodians of horses subject to inspection.

Paragraph (f) of current § 11.4 states that it is APHIS' policy to inform the owner, trainer, exhibitor, or other custodian of any horse allegedly found to be in violation of the Act or the regulations of the alleged violation before the horse is released by an APHIS representative. We would add language to indicate that the APHIS representative would inform the custodian of a horse of the alleged violation and move the content to paragraph (h) of revised § 11.5.

We would move the contents of paragraphs (e)(2) and (h)(1) and (2) of current § 11.4 to new paragraphs (g)(2) and (j)(1) and (2) of revised § 11.5, respectively, in order to draw together similar inspection and detention

¹⁰ As noted in the OIG report (see footnote 6), such distractions are part of the practice of stewarding, in which sore horses are forced to stand still for inspection even if they are in pain. Techniques generally involve a stable employee palpating the horse's sore front limbs; if the horse flinches from the pain of soring, another employee injures the horse by hitting it in the head, using a cigarette to burn its tongue, or other painful methods. By associating certain objects with infliction of these methods, the horse eventually learns to stand still for the lesser pain of inspection. To cite one instance of stewarding, Chris Zahnd was the owner and operator of Swingin' Gate Stables, located in Trinity, Alabama, and trained, boarded, and showed Tennessee Walking Horses. On July 4, 2009, at the Woodbury Lions Club Horse Show, a horse trained and stabled by Zahnd was discovered to be wearing a nerve cord—in this case, a plastic zip tie that distractingly stimulated the horse's gums—in its mouth and was determined to be bilaterally sore by an inspector. At a plea hearing, Zahnd admitted to soring violations prohibited by the Horse Protection Act: <http://www.justice.gov/archive/usao/tnm/pressReleases/2011/12-9-11.html>.

requirements. We would also replace the term "APHIS Show Veterinarian" with "APHIS representative" wherever it occurs in those paragraphs for the reasons explained above under "Definitions."

Consolidation of Inspection Space and Facility Requirements

Section 11.6 currently contains horse inspection space and facility requirements for management of a horse show, exhibition, sale, or auction. Under the current requirements, management must provide sufficient space and facilities for inspectors and APHIS representatives to perform their duties under the Act and regulations. These requirements include ensuring that inspectors and APHIS representatives who inspect horses are provided with a safe area (for example, a well-defined inspection area where inspectors are free from potential harm) to conduct inspections and protection from the elements, and that there are separate waiting areas for horses awaiting inspection and horses that the inspector determines should be detained.

In order to consolidate management-specific inspection space and facility requirements, we propose moving these requirements from current § 11.6 to proposed § 11.9, "Management responsibilities; access, space, and facilities."

Training and Licensing of DQPs¹¹

DQPs conduct inspections of horses at shows, sales, auctions, and exhibitions under procedures set out in § 11.21 of the regulations. That section provides instructions on how to visually and physically detect and diagnose soring in horses, requires the inspecting DQP to ensure that no devices and methods used on the horse are prohibited under § 11.2, and sets out the conditions under which horses must be inspected. Under the current DQP program, DQPs are certified, hired, paid, and, if necessary, disciplined by HIOs. APHIS certifies HIOs subject to their meeting the requirements under § 11.7 of the regulations for licensing and training, recordkeeping and reporting, and standards of conduct, and monitors them for compliance with these requirements.

As we have noted, the OIG report cited conflicts of interest between DQPs, the HIOs that maintain training and licensing programs, and management of horse shows and exhibitions that

¹¹ As noted in footnote 1, Designated Qualified Person (DQP) would be changed to Horse Protection Inspector (HPI) under the proposed regulations.

affiliate with the HIOs. The report's findings and our own experience with the DQP program indicate that the current program facilitates conflicts of interest between HIOs and DQPs that contribute to the persistence of soring in the gaited horse industry. DQPs under HIO supervision have a long history of allowing horses to pass inspection despite indicators of soring. The report recommended that APHIS undertake training and licensing of horse inspectors in order to ensure that inspection techniques are correctly and consistently applied by inspectors working independently of the horse industry.

Inspection data compiled by APHIS suggests that inadequate inspections by DQP at HPA-covered events has resulted in underreporting of sore horses when APHIS inspectors are not in attendance. This is consistent with the findings of the 2010 OIG report on the horse protection program, which noted that, on average, DQPs issued 49 percent of their total violations at the small number of shows at which APHIS was also present.¹² In the data set OIG reviewed, OIG found APHIS attended 108 shows out of 1,607 shows where DQPs provided inspection services. With respect to inspection findings, OIG found that DQPs reported 1,409 alleged HPA violations at the 108 shows where APHIS was also present, compared to 1,620 alleged HPA violations at the 1,499 shows where APHIS was not present.

Table 1 shows inspection data compiled by APHIS from fiscal years (FY) 2010 to 2015. During this period, APHIS attended about 18 percent of all HPA-covered events featuring Tennessee Walking Horses, Racking Horses, or related breeds at which horse industry DQPs conducted inspections. The data indicates that while APHIS attended only a fraction of the events at which DQPs were retained to inspect horses, APHIS consistently reported higher rates of noncompliance based on Veterinary Medical Officer inspection findings. In FY 2015, for example, APHIS detected 509 instances of noncompliance with the HPA at the 62 shows APHIS attended. Of the 278 shows DQPs attended during the same time frame, DQPs detected just 228 instances of noncompliance with the HPA. From FY 2010 through FY 2015, the statistics show DQPs identify noncompliance at a lower rate compared to APHIS Veterinary Medical Officers. While the trend in the number of noncompliance detected by DQPs has

¹² See footnote 6. OIG's data review and table is found on page 11 of the audit report.

steadily fallen between FY 2010 and FY 2015, APHIS' detection of

noncompliance has remained relatively stable. This further suggests some of the

potential deficiencies of the existing DQP program.

TABLE 1—HPA-COVERED EVENTS INSPECTION DATA FROM FY 2010–2015

FY	Shows attended by APHIS	Noncompliance detected by APHIS	Shows attended by DQPs	Noncompliance detected by DQPs	Foreign substance testing (positive finding/number tested)
FY 2015	62	509	278	228	500/768
FY 2014	61	579	365	355	107/203
FY 2013	74	409	365	529	195/314
FY 2012	103	688	427	790	309/478
FY 2011	82	672	461	1131	184/189
FY 2010	54	498	373	1214	312/363

While we propose to eliminate the existing DQP program and replace it with a program of independent, APHIS-licensed and trained inspectors (see section below titled “Training and Licensing of DQPs”), we also propose to reduce instances of soring by addressing the means by which horses are sored.

The regulations currently allow the use of a chain or other action device on each limb of a horse if the device weighs 6 ounces or less. In prior rulemakings, APHIS has received a range of comments from members of the gaited horse industry, veterinary professional organizations, animal advocates, and the general public regarding the purposes and effects of such devices, and whether there are minimum weights below which such devices will not cause lesions that constitute soring. We have observed, however, from our direct experience in enforcing the Act and regulations over many years that chains, rollers, and similar devices placed on a horse's feet, when used in combination with prohibited foreign substances applied to the pasterns of a horse, can create lesions and inflammation that constitute soring. When such substances are used, we have diagnosed soring in horses that have worn chains under 6 ounces and other devices allowed in the current regulations. Although our experience enforcing the HPA indicates that soring occurs when action devices are used alone or in combination with prohibited foreign substances, we welcome public comment, supported with scientific data or other information, on whether action devices used alone or in combination with other training methods may result in soring.

In table 1 above, the right column shows the number of horses tested by APHIS for prohibited foreign substances and the number of horses shown to be positive for such substances from FY 2010 through 2015. In FY 2015, for example, 500 horses were positive out of 768 tested, and over the 5 year period the average rate of positives was 69

percent. All of the horses testing positive for foreign substances wore action devices while being shown or exhibited. Prohibited foreign substances applied to these horses include masking and numbing agents that temporarily block the pain of soring so inspectors cannot detect pain upon inspection.

A study¹³ conducted at the Auburn University School of Veterinary Medicine from 1978 to 1982 (“the Auburn study”) suggests a strong relationship between soring and the combined use of action devices and substances. Moreover, our observations from over three decades of administering and enforcing the Act indicate that soring does occur with the use of irritating foreign substances and 6 ounce action devices.

As noted above, the foreign substances data in table 1, averaged over a 6 year period, indicate that 71 percent of substance samples taken from the limbs of horses tested positive for prohibited substances. These substances include mustard oil and detergents, both of which, as demonstrated in the Auburn study, resulted in soring. Prohibited substances also included local anesthetic agents such as benzocaine and lidocaine to deter detection of soring upon evaluation, as well as dyes and paints to cover lesions that would indicate noncompliance with the scar rule.

Of the alleged show violations found from FY 2010 through 2015 with APHIS representatives present, many of these alleged violations involved the failure to comply with the scar rule. The high number of horses found noncompliant with the scar rule that also tested positive for foreign substances suggests

that the use of 6 ounce action devices currently allowed under the regulations are resulting in soring and that horses continue to endure this abusive and cruel practice.

Our experience at horse shows and exhibitions also indicates that soring has continued to occur through the use of hoof pads (also referred to as performance packages). Research undertaken in the Auburn study indicated that raising a horse's heels through the use of pads alone resulted in swollen flexor tendons and signs of inflammation. About 90 percent of the alleged violations documented at shows from FY 2010 through 2015 involved horses wearing pads. Pads used in performance packages can conceal objects that produce pain or be designed to cause the horse's hoof to strike the ground at an abnormal angle in order to produce pain on stepping, resulting in an exaggerated gait.¹⁴

Therefore, because the existing regulatory structure, which requires HIOs to hire and train inspectors to identify sore horses at industry-sponsored events, has not been effective in eliminating the practice of soring, we propose to revise the regulations so that APHIS assumes all regulatory responsibility for training and licensing

¹³ *Thermography in Diagnosis of Inflammatory Processes in Horses in Response to Various Chemical and Physical Factors: Summary of the Research from September 1978 to December 1982*. Submitted to the U.S. Department of Agriculture by Dr. Ram C. Purohit, Associate Professor, Department of Large Animal Surgery and Medicine, School of Veterinary Medicine, Auburn University.

¹⁴ On April 26, 2011, a Federal grand jury in Chattanooga, TN returned a 34-count indictment against Barney Davis, charging him with violations of the Horse Protection Act and related financial crimes because he screwed bolts and other hard objects against the soles of horse's hoofs to produce pain to alter the gait of a horse. As part of his sentencing, Davis was ordered to help produce an educational video (<https://youtu.be/vZTlBwaibOE>) showing soring methods and demonstrating how inspectors can better detect sored horses. In the video, Davis described mechanical devices and chemical irritants used to sore horses and showed examples of chains, bolts, blocks, and eight-pound tungsten shoes used to cause a gaited horse to adopt an exaggerated gait for the show ring. Davis stressed the pervasiveness of soring in the gaited horse industry and testified that horses “have got to be sored to walk,” referring to the exaggerated gait displayed in the show ring. See <http://www.justice.gov/archive/usao/tne/news/2011/November/110811%20Horse%20Soring%20Guilty%20Plea.html>.

of third-party inspectors. We would include these regulations in a revised § 11.6, which we propose to title as "Training and licensing of Horse Protection Inspectors (HPIs)." As HIOs would no longer be responsible for training and licensing inspectors and enforcing penalties, we would relieve HIOs of all regulatory burdens and requirements assigned to them in the regulations.

We would add an introductory paragraph to revised § 11.6. That paragraph would state that APHIS will train and license HPIs and reiterate the current policy in § 11.7(a) that allows the management of any horse show, horse exhibition, horse sale, or horse auction to engage inspectors holding a valid, current license under section 4 of the Act, and to appoint and delegate authority to inspectors to detect or diagnose horses that are sore or to otherwise inspect horses and records for the purposes of determining compliance with the Act. While HPIs would be bound by APHIS requirements regarding his or her duties and responsibilities, HPIs would not be employed or reimbursed by APHIS for their inspections but would contract directly with show management. The introductory paragraph would state that show management may engage one or more HPIs from the list of APHIS trained and licensed HPIs by contacting them directly. A list of licensed HPIs would be made available on the APHIS Horse Protection Program Web site.

We would remove the statement in paragraph § 11.7(a)(1)(iii) that accredited Doctors of Veterinary Medicine who meet these qualifications "may be licensed as DQPs by a horse industry organization or association whose DQP program has been certified by the Department under this part without undergoing the formal training requirements set forth in this section." APHIS would be the entity licensing qualified veterinarians and veterinary technicians as inspectors under the revised regulations.

We would also remove the provision in current § 11.7(a)(2) that farriers, horse trainers, and other knowledgeable horsemen can be qualified as DQPs if their past experience and training qualifies them for positions as horse industry organization or association stewards or judges (or their equivalent) and if they have been formally trained and licensed as DQPs by a horse industry organization or association. Instead, we would state in paragraph (a) of revised § 11.6 that only veterinarians and veterinary technicians may be licensed as HPIs. We are making this change to ensure that inspectors have

the professional education, working knowledge, technical and practical experience, and training necessary to inspect horses properly under the Act and regulations.

In the case of veterinarians, paragraph (a)(1) would state that they would need to have extensive knowledge and experience of equine husbandry and science defined as understanding the anatomy, selection, breeding, care, and maintenance of horses, and applicable principles of equine science, welfare, care, and veterinary health and be eligible to be licensed as HPIs under paragraph (b) of § 11.6. They would also have to be accredited in any State by the United States Department of Agriculture under 9 CFR part 161 and be: Members of the American Association of Equine Practitioners, or large animal practitioners with substantial equine experience, or knowledgeable in the area of equine soring and soring practices (for example, Doctors of Veterinary Medicine with a small animal practice with sufficient knowledge of horses, or Doctors of Veterinary Medicine who teach equine-related subjects in an accredited college or school of veterinary medicine).

Paragraph (a)(2) would state that veterinary technicians with degrees awarded by educational programs accredited by the American Veterinary Medical Association Committee on Veterinary Technician Education and Activities could also be licensed as HPIs if they possess knowledge and experience of equine husbandry and science and are eligible to be licensed as HPIs under the requirements in paragraph (b) of § 11.6.

Paragraph (b) of current § 11.7 provides certification requirements for DQP programs maintained by horse industry organizations or associations. As the task of training and licensing inspectors in such programs would shift to APHIS under the proposed regulations, these program requirements would be removed.

Paragraph (c)(4) of current § 11.7 states that each horse industry organization or association receiving Department certification for the training and licensing of DQPs under the Act shall not license any person as a DQP if such person has been found in violation of the Act or regulations occurring after July 13, 1976, (the date of enactment of the last major statutory change to the HPA) or paid any fine or civil penalty in settlement of any proceeding regarding a violation of the Act or regulations occurring after that date, for a period of at least 2 years following the first violation and at least

5 years following any subsequent violation.

We would include a similar provision in paragraph (b)(1) of revised § 11.6 stating that APHIS will not license any person as a HPI if that person has been convicted or found to have violated any provision of the Act or the regulations in 9 CFR part 11 occurring after July 13, 1976, or has been assessed any fine or civil penalty, or has been the subject of a disqualification order in any proceeding involving an alleged violation of the Act or regulations occurring after July 13, 1976. However, in order to ensure that any person who has been found in violation of the Act or has been the subject of an order assessing a fine or civil penalty or imposing a disqualification period to resolve alleged violations of the Act is not granted a license to inspect horses, we would not include the current 2- and 5-year limitations for violators. In other words, a person who has been found in violation of the Act or subject to an order assessing a fine or civil penalty or imposing a disqualification period would not be allowed to be a HPI.

We would include in paragraph (b)(2) of revised § 11.6 a restriction against licensing any person as a HPI if that person, any members of that person's immediate family, or that person's employer participates in the showing of horses or acts as a judge, a farrier, or as show management involving any Tennessee Walking Horses, Racking Horses, or related breeds, or as determined by the Administrator of APHIS.

Proposed paragraph (b)(3) would state that APHIS will not license any person as a HPI if that person has been disqualified by the Secretary of Agriculture from making detection, diagnosis, or inspection for the purpose of enforcing the Act. This restriction is adapted from current paragraph (c)(6) of § 11.7.

Paragraph (b)(4) of revised § 11.6 would contain the restriction that APHIS will not license any person as a HPI if the professional integrity, reputation, honesty, practices, and reliability of the person do not support a conclusion that the applicant is fit to carry out the duties of a HPI. The information that APHIS would consider in reaching a conclusion would include: Criminal conviction records; official records of the person's actions while participating in Federal, State, or local veterinary programs; judicial determinations in any type of litigation, and any other evidence that reflects on the integrity, reputation, honesty, practices, and reliability of the person.

Paragraph (c) of current § 11.7 lists requirements that must be met by each HIO that receives APHIS certification for training and licensing DQPs. We would remove these requirements from the regulations, as HIOs will no longer train and license inspectors or be certified by APHIS.

Under paragraph (c)(1) of revised § 11.6, persons wishing to become a HPI would have to submit an application to APHIS and show that they satisfy the requirements we propose in paragraphs (a) and (b) of revised § 11.6. If accepted, HPI candidates would have to complete a formal training program administered by APHIS that includes instruction on: The anatomy and physiology of the limbs of a horse; the Act and the regulations; the history of soring and procedures necessary to detect soring; practical instruction using live horses; HPI standards of conduct, and recordkeeping requirements and procedures. Training would be delivered regionally and utilize distance learning whenever possible to minimize expenses for attendees and APHIS.

Once the HPI candidate successfully completes the formal training program required in proposed paragraph (c)(1) and passes a written examination, proposed paragraph (c)(2) provides that he or she would be granted a license for 1 year. Licenses would terminate after 1 year and all HPIs would be required to reapply if they wish to be licensed another year.

Paragraph (d) of § 11.7 currently provides requirements to be met by DQPs and HIOs. We would remove these requirements from the regulations and propose inspector requirements in a revised paragraph § 11.6(d), titled "Requirements to be met by HPIs." A description of the inspector requirements we propose in § 11.6(d) follows our summary of current § 11.7(d).

Paragraph (d)(1) of § 11.7 currently requires that DQPs keep and maintain information and records concerning any horse which the DQP recommends be excused for any reason from being shown, exhibited, sold or auctioned, in a uniform format required by the horse industry organization or association that has licensed the DQP. This information includes: The name and address of the horse owner, exhibitor, and trainer; the horse's exhibit, sale, or auction tag number; the date and time the horse was inspected; a detailed description of all of the DQP's findings and the nature of the alleged violation, or other reason for prohibiting the horse; name, age, sex, color, and markings of the horse, and the name of the show manager or other management representative notified by

the DQP that such horse should be excused, and whether such manager or management representative excused such horse.

Paragraph (d)(2) of current § 11.7 requires that the DQP inform the custodian of each horse alleged to be in violation of the Act or its regulations, or excused for any other reason, of such action and the specific reasons for the action.

In paragraph (d)(3) of current § 11.7, each horse industry organization or association having a Department certified DQP program is currently required to submit a report to the Department that includes information about the identity of all horse shows, horse exhibitions, horse sales, or horse auctions that have retained the services of DQPs licensed by the organization or association during the month covered by the report.

In paragraph (d)(4) of current § 11.7, each horse industry organization or association having a Department certified DQP program has to provide to the trainer and owner of each horse allegedly in violation of the Act, or otherwise excused for any reason, the name and date of the show, exhibition, sale, or auction, as well as the name of the horse and the reason why the horse was excused or alleged to be in violation of the Act or its regulations.

Paragraph (d)(5) of current § 11.7 states that each horse industry organization or association having a Department certified DQP program has to provide its licensed DQPs with a current list of all persons that have been disqualified by order of the Secretary from showing or exhibiting any horse, or judging or managing any horse show, exhibition, sale, or auction.

Under our proposed changes, APHIS would make this list of disqualified persons available to HPIs and show management of any horse show, sale, exhibition, and auction.

Paragraph (d)(6) of current § 11.7 states that each horse industry organization or association having a Department certified DQP program must develop and provide a continuing education program with not less than 4 hours of instruction per year to each licensed DQP.

As we propose that APHIS would develop and provide an education program for HPIs, we would remove this particular requirement from the proposed regulations.

In paragraph (d)(7) of current § 11.7, each HIO having a Department certified DQP program must promulgate standards of conduct for its DQPs and provide administrative procedures for initiating, maintaining, and enforcing

such standards, including the causes for and methods to be utilized for canceling the license of any DQP.

We are removing these and all other HIO-related requirements from the regulations because HIOs would no longer be training or licensing inspectors. As indicated in proposed § 11.6(c)(1), APHIS would provide instruction on standards of conduct for HPIs.

In proposed paragraph (d)(1) of revised § 11.6, drawn from current § 11.7(d)(1), we would require that any licensed HPI appointed and retained by the management of a horse show, exhibition, sale, or auction to inspect horses for the purpose of determining compliance with the Act and regulations must collect and maintain the following information and records concerning any horse which the HPI recommends be prohibited for any reason from such horse show, exhibition, sale or auction, from being shown, exhibited, sold, or auctioned: Names and addresses, including street address or post office box number and ZIP Code, of the show and show manager, horse owner, trainer, farrier, exhibitor; exhibitor number and class number, or the sale or auction tag number of the horse; date and time of inspection; detailed description of all of the HPI's findings and the nature of the alleged violation, or other reason from prohibiting the horse, including the HPI's statement regarding the evidence or facts upon which the HPI recommended that show management disqualify a horse; name, registration number (if the horse is registered), age, sex, color, and markings of the horse; and the name or names of the show manager or other management representative notified by the HPI that such horse should be prohibited from participating and whether or not such show management prohibited such horse.

In proposed paragraph (d)(2) of revised § 11.6, drawn from current § 11.7(d)(2), we would require that copies of records be submitted by the HPI to show management and to APHIS within 72 hours of conclusion of the horse show, exhibition, sale, or auction.

Paragraph (d)(3) of revised § 11.6 would require that the HPI, after completing the inspection, inform the custodian of each horse found noncompliant with the Act or its regulations, or prohibited for any other reason, of such action and the specific reasons for such action. The HPI would collect the information related to the alleged violation from the custodian.

Paragraph (d)(4) of revised § 11.6 would require that the HPI immediately

inform show management of each case regarding the custodian of any horse that is found to be noncompliant with the Act or its regulations.

Paragraph (e) of current § 11.7 states that the management of any horse show, horse exhibition, horse sale, or horse auction must not appoint any person to detect and diagnose horses which are sore or to otherwise inspect horses for the purpose of enforcing the Act, if that person: Does not hold a valid, current DQP license issued by a horse industry organization or association having a DQP program certified by the Department; has had his DQP license canceled by the licensing organization or association; is disqualified by the Secretary from performing diagnosis, detection, and inspection under the Act, after notice and opportunity for a hearing, when the Secretary finds that such person is unfit to perform such diagnosis, detection, or inspection because he has failed to perform his duties in accordance with the Act or regulations; or because he has been convicted of a violation of any provision of the Act or regulations occurring after July 13, 1976, or has paid any fine or civil penalty in settlement of any proceeding regarding a violation of the Act or regulations occurring after July 13, 1976. In accordance with proposed § 11.10(c)(1), persons appointed by management to inspect horses to detect or diagnose indications of soreing would be required to hold a valid, current license issued by APHIS for that purpose.

In current paragraph (f) of § 11.7, each HIO or association having a DQP program certified by the Department must issue a written warning to any DQP whom it has licensed who violates the rules, regulations, by-laws, or standards of conduct promulgated by such HIO or association under § 11.7, who fails to follow the procedures in § 11.21, or who otherwise carries out his duties and responsibilities in a less than satisfactory manner. The HIO must also cancel the license of any DQP after a second violation. In addition, each HIO or association having a Department certified DQP program must cancel the license of any DQP licensed under its program if that person has been convicted of a violation of the Act or the regulations in 9 CFR part 11 occurring after July 13, 1976, or paid any fine or civil penalty in any proceeding in which a violation of the Act or regulations was found in a final unappealable decision occurring after July 13, 1976.

As HIOs would no longer administer inspector training and licensing under our proposal, we would remove the

provisions in § 11.7(f) from the regulations. Instead, we would replace them with provisions for APHIS to issue warnings to HPIs and deny or revoke HPI licenses.

Under paragraph (e) of proposed § 11.6, APHIS may deny or revoke a license for any of the reasons outlined in § 11.6(b), and will revoke the license of any HPI who fails to follow the inspection procedures set forth in § 11.12, or who otherwise carries out his or her duties and responsibilities in a less than satisfactory manner. Upon denial or revocation of a license, the applicant or HPI may appeal the revocation to the Administrator within 30 days from the date of such decision, and the Administrator would make a final determination in the matter. If the Administrator upholds the denial or revocation of the license, the applicant or HPI would be given notice and opportunity for a hearing. Hearings will be in accordance with the Uniform Rules of Practice for the Department of Agriculture in 7 CFR 1.130 *et seq.* The license denial shall remain in effect until the final legal decision has been rendered.

Paragraph (g) of current § 11.7 states that any HIO or association having a Department certified DQP program that has not received Department certification of the inspection procedures provided for in § 11.7(b)(6), or that otherwise fails to comply with the requirements contained in part 11, may have certification of its DQP program revoked, unless upon written notification from the Department of failure to comply with the requirements in this section, the organization or association takes immediate action to rectify such failure and takes appropriate steps to prevent a recurrence of such noncompliance within the time period specified in the Department notification, or otherwise adequately explains such failure to comply to the satisfaction of the Department.

We would remove the requirements in § 11.7(g), as HIOs would no longer be administering inspector training and licensing programs. We would add provisions in paragraph (f) of revised § 11.6 for the status of persons who have been licensed as inspectors prior to the effective date of this rule. Inspectors licensed as DQPs prior to the effective date of this rulemaking would no longer be allowed to perform inspection duties under that license after the effective date. DQPs seeking to become inspectors after the effective date of this rulemaking would need to apply for a license and fulfill all HPI eligibility requirements included in § 11.6.

HIO Certification and Responsibilities

Current §§ 11.7, 11.23, and 11.41 contain requirements for HIOs interested in applying for Department certification of a DQP training program and maintaining the program in good standing. As stated above, we propose to remove from the regulations all regulatory requirements for HIOs. HIOs would no longer be subject to any of the regulations pertaining to them in part 11, nor would they have the regulatory responsibility to train or license HPIs or enforce penalties. Under the proposed changes, HIOs could still affiliate with shows, auctions, and other horse-centered events, train judges, maintain registries, and engage in other activities that promote the horse industry.

Management Responsibilities Access, Space, and Facilities

In proposed § 11.9, we would consolidate and revise the show management responsibilities pertaining to inspector access, space, and facilities currently in §§ 11.5, 11.6, and 11.20.

Paragraph (a) of proposed § 11.9 would include requirements regarding access to premises for inspection of horses and records. In proposed § 11.9(a)(1), we would include the requirement from current § 11.5(a)(1) that the management of any horse show, horse exhibition, or horse sale or auction must, without fee, charge, assessment, or other compensation, provide authorized HPIs and APHIS representatives with unlimited and unrestricted access to the grandstands, sale ring, barns, stables, grounds, offices, and all other areas of any horse show, exhibition, sale, or auction. This requirement includes any adjacent areas under their direction, control, or supervision for the purpose of inspecting any horses, or any records required to be kept by regulation or otherwise maintained.

In paragraph (a)(2) of proposed § 11.9, drawn from current § 11.5(a)(2), we would require that the management of any horse show, exhibition, or sale or auction must, without fee, charge, assessment, or other compensation, provide authorized HPIs and APHIS representatives with an adequate, sufficient, safe, and accessible area for the visual inspection and observation of horses while such horses are competitively or otherwise performing at any horse show or exhibition. This requirement also applies while such horses are being sold or auctioned, or offered for sale or auction.

In paragraph (b) of proposed § 11.9, we would include space and facility requirements drawn from current § 11.6

for the management of any horse show, exhibition, sale, or auction. Management would be required to provide, without fee, charge, assessment, or other compensation, adequate, sufficient, safe and accessible space and facilities for authorized HPIs and APHIS representatives to carry out such duties under the Act and regulations whether or not management has received prior notification or otherwise knows that the show may be inspected by APHIS.

In paragraph (b)(1) of proposed § 11.9, drawn from paragraph (a) of current § 11.6, we would require sufficient space in a convenient location to the horse show, exhibition, sale, or auction arena, acceptable to authorized HPIs or APHIS representatives, in which horses may be physically, thermographically, or otherwise inspected for soiling.

In paragraph (b)(2) of proposed § 11.9, drawn from current § 11.6(b), we would require that management provide protection from the elements of nature, such as rain, snow, sleet, hail, and wind for the inspection space. While current § 11.6(b) requires such protection only if requested by an inspector or an APHIS representative, we would require it at every event as it may not be possible to perform accurate inspections under exposure to the elements, as well as to permit last minute or unannounced inspections.

In paragraph (b)(3) of proposed § 11.9, drawn from paragraph (c) of current § 11.6, we would require that management maintain control of crowds or onlookers in order that authorized HPIs and APHIS representatives may carry out their duties safely and without interference. We are seeking public comment on instances in which it would be necessary to hire security personnel to protect HPIs.

Paragraph (b)(3)(i) of proposed § 11.9 would require that management ensure that each horse in the designated inspection and warm-up areas be accompanied by no more than three individuals, including the trainer, rider, and the custodian. Official guests of show management, such as elected officials, legislators, and technical advisers would be allowed access to the designated inspection and warm-up areas for limited periods of time at the discretion of show management and only with the concurrence of an authorized HPI or APHIS representative. Our experience has shown that people congregating in designated inspection and warm-up areas can impede the ability of inspectors and APHIS representatives to perform their duties, and could be used to attempt to

intimidate the inspectors and/or APHIS representatives.

Paragraph (b)(3)(ii) of proposed § 11.9 would require that management must not in any way influence show attendees to assault, resist, oppose, impede, intimidate, or interfere with authorized HPIs or APHIS representatives. If management influences attendees in such a manner, HPIs and APHIS representatives would immediately stop conducting inspections at the event and document the events, which may result in a potential investigation or enforcement action against management.

In proposed paragraph (b)(4), we would require that management provide an accessible, reliable, and convenient 110-volt electrical power source for the inspection space if requested by an authorized HPI or APHIS representative. Paragraph (d) of § 11.6 currently stipulates that this is a requirement only if electrical service is available. We would retain this requirement in the regulations. If electrical service is not available, management would be required to provide a portable electric generator as requested by the inspector of APHIS representatives.

In proposed paragraph (b)(5), we would adopt the requirement from current § 11.6(e) that management provide appropriate areas adjacent to the inspection area for designated horses to wait before and after inspection and an area to be used for detention of horses.

Operation of Horse Shows, Exhibitions, Sales, and Auctions

We also propose to add a new § 11.10 that contains management operating requirements for horse shows, exhibitions, sales, and auctions. Our experience, which is corroborated by the OIG report, is that current operating requirements are insufficient to enforce prohibitions on persons who have been disqualified from participation in horse shows, exhibitions, sales, and auctions. In proposing these management operating requirements, we intend to make it easier to identify persons who are disqualified from participating in regulated horse shows, exhibitions, sales, and auctions.

In paragraph (a)(1) of proposed § 11.10, we would require that the management of any horse show, horse exhibition, or horse sale or auction involving Tennessee Walking Horses, Racking Horses, and related breeds notify the Administrator of the event at least 30 days before it begins. We would stipulate that notification may be made by mail, fax, or electronic means such as email, but that notification through

electronic means is strongly preferred.¹⁵ Notification must include: The name and location of the show, exhibition, sale, or auction; the name and address of the manager; a phone number and email address (if available); the date or dates of the show, exhibition, sale, or auction; and a copy of the official horse show, horse exhibition, horse sale, or horse auction program, if any such program has been prepared. Notification would also have to include the names of the APHIS-licensed HPIs scheduled to perform inspections at the horse show, exhibition, sale, or auction.

In paragraph (a)(2) of proposed § 11.10, we would require management to ensure that no action devices or substances prohibited under § 11.2 are present in the warm-up area.

We would require in paragraph (a)(3) of proposed § 11.10 that management post the list of people who have been disqualified by USDA in a prominent place at the event. We would require in paragraph (a)(4) of proposed § 11.10 that management check the people entering horses in the horse show, exhibition, sale, or auction against the list of people noted in paragraph (a)(3) who have been disqualified and prevent them from entering their horses if they are on the list.

Finally, in paragraph (a)(5) of proposed § 11.10, we would require that management ensure that all horses entered in the horse show, exhibition, sale, or auction be properly identified by one of the following methods: A description sufficient to identify the individual equine, as determined by APHIS, to include name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (*e.g.*, brands, tattoos, scars, cowlicks, or blemishes); electronic identification that complies with ISO 11784/11785;¹⁶ an equine passport issued by a State government and accepted in the government of the State in which the horse show, exhibition, sale, or auction will occur; or digital photographs sufficient to identify the individual equine, as determined by an authorized HPI or an APHIS representative. Additionally, if any such horses belong to a registry, the registry number and registry records would have to be provided to an authorized HPI and/or APHIS representative upon request. In addition, APHIS may add at its

¹⁵ Email notification may be sent to hp@aphis.usda.gov.

¹⁶ An international standard regulating the radio frequency identification (RFID) of animals.

discretion additional forms of identification.

As indicated in current § 11.20, the management of a horse show, exhibition, sale or auction is not required to designate and appoint inspectors to conduct inspections. However, under the requirements in paragraph (b) of proposed § 11.10, which are similar to those currently in § 11.20, management not using an inspector from the list of APHIS-trained and licensed inspectors would themselves be responsible for identifying and prohibiting any horses which are sore from participating or competing in any horse show, exhibition, sale, or auction. In the event that show management either does not hire inspectors or hires inspectors that are not licensed by APHIS, show management can be held liable for the failure to disqualify a sore horse from participating in an HPA-covered event. If they do choose to use APHIS-licensed inspectors, show management can only be found liable if they fail to disqualify a horse that an APHIS-licensed inspector or APHIS identifies as a sore horse and notifies show management. Horses entered in a sale or auction would have to be identified as sore prior to the sale or auction and prohibited from entering the ring. Sore horses that have been entered in a show or exhibition for the purpose of showing or exhibition would have to be identified and disqualified by management. Any horses found to be sore during participation in the show or exhibition would have to be prohibited from further participation prior to the tying of the class or the completion of the show or exhibition. Show management's failure to prohibit a horse from participating in any of these situations would result in an alleged violation of the Act and regulations.

Under proposed § 11.10(b)(2), copies of the records required under proposed § 11.6(d)(1) would have to be collected and submitted by management to APHIS within 72 hours after the horse show, exhibition, sale, or auction is over. Proposed § 11.10(b)(3) would contain the requirement that after completing inspection, management would notify the custodian of each horse that is noncompliant with the Act or regulations that the horse is disqualified from participating in any show, exhibition, sale or auction, or involved with any other action under the Act or its regulations along with the reasons for such action. Management would have to collect the information relating to the alleged violation from the custodian.

In current § 11.20, only a horse tied first in each Tennessee Walking Horse,

Racking Horse, or related breed class or event at any horse show or exhibition has to be inspected after being shown or exhibited to determine if such horse is in compliance with the Act or regulations. We would add this inspection requirement to proposed § 11.10(b) and amend it to state that any horse placing first, second, or third, and any other horses indicated by a HPI or APHIS representative in each Tennessee Walking Horse, Racking Horse, or related breed class or event at any horse show or exhibition, will have to be inspected after being shown or exhibited to determine if such horses are compliant with the Act or regulations. We are proposing this change to improve compliance with the Horse Protection regulations.

At horse shows, exhibitions, sales, and auctions, we would require in proposed § 11.10(c)(1) that management designate and appoint a minimum of two HPIs holding valid, current licenses issued by APHIS. This requirement is drawn from § 11.20(c), which requires that management appoint and designate at least two inspectors when more than 150 horses are entered. However, we would amend this requirement to require that management appoint two HPIs when 150 or fewer horses are entered in an event and more than two HPIs when more than 150 horses are entered. In addition, we would add in proposed § 11.10(c)(1) the requirement that management make a farrier available to assist with inspections at every horse show, exhibition, sale, and auction.

Under proposed § 11.10(c)(2), management would have to accord HPIs access to all records and areas of the grounds of a show, exhibition, sale, or auction and accord the same right to inspect horses and records as is accorded to any APHIS representative under the regulations. Further, management would be prohibited from taking any action which would interfere with or influence a HPI while carrying out his or her duties.¹⁷

Under proposed § 11.10(c)(3), we would require that after an authorized HPI has completed inspection of a horse, management must prevent tampering with any part of a horse's limbs or hooves in such a way that could cause a horse to be sore.

Under proposed § 11.10(c)(4), we would require that management not dismiss or otherwise interfere with a

HPI during the HPI's appointed tour of duty, which is the duration of the show, exhibition, or sale or auction. This includes situations in which management is dissatisfied with the performance of a particular HPI, including disagreement with a HPI's decision that the custodian of a horse is in alleged violation of the Act or regulations. However, if management has reason to believe that a horse is sore but it is not identified as sore by the HPI, management would be required to prohibit that horse from participating. We would state that management should immediately notify the Administrator, in writing, as to why the performance of a HPI was inadequate or otherwise unsatisfactory. Management would have to immediately prohibit from being shown, exhibited, sold, or auctioned any horse alleged by the HPI to be sore or otherwise known by management to be sore in violation of the Act or regulations. Should management fail to prohibit from being shown, exhibited, sold, or auctioned any such horse, management would have to assume full responsibility for and liabilities arising from the showing, exhibition, sale, or auction of such horses.

Finally, under proposed § 11.10(c)(5), we would require that if an authorized HPI or APHIS representative finds any horse to be sore at a show, exhibition, sale, or auction featuring Tennessee Walking Horses, Racking Horses, or related breeds, the management would have to prohibit the horse from competing in that show or exhibition.

Records and Reporting

To improve organization of the regulations, we are proposing to move the records and reporting requirements for management in current §§ 11.22, 11.23, and 11.24 to proposed § 11.11 and amend them.

In proposed § 11.11(a)(1), we would include record requirements for show management adapted from current § 11.22. However, we would require that management maintain all records for a period of at least 6 years, instead of the current 90 days, following the closing date of the show, exhibition, or sale or auction. We are proposing this change to ensure that records remain available for verifying compliance with the Act and regulations. Investigations of suspected cases of soring often take greater than 90 days, so requiring show managers to hold onto records for additional lengths of time would greatly aid these investigations with minimal burden on show managers. We have proposed 6 years, which accounts for the statute of limitations plus an

¹⁷ A document with side-by-side comparisons of the current duties of inspectors, HIOs, and show management with those proposed in this rulemaking can be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0009>.

additional year. Investigations and case development on cases involving the HPA can be difficult and the extra time we would require these records to be held would greatly assist our ability to properly enforce the Act. Although the field investigative process may conclude in roughly a year, the administrative (or civil or criminal) enforcement based on the investigation takes many years. Often times, when attorneys review investigative files, they request additional information related to the alleged violation(s) that may have not been collected as part of the initial investigation. We want to ensure the records are preserved so long as the investigation remains open and active, which is the case until APHIS receives a final legal decision on the matter. These records would have to contain the following information:

- The dates and place of the horse show, exhibition, sale, or auction.
 - The name and address (including street address or post office box number, and ZIP Code) of the sponsoring organization.
 - The name and address of the horse show, exhibition, sale, or auction management.
 - The name and address (including street address or post office box number, and ZIP Code) of the HPIs, if any, employed to conduct inspections and, if applicable, the name of the HIO with which the HPIs are affiliated.
 - The name and address (including street address or post office box number, and ZIP Code) of each show judge.
 - A copy of each class or sale sheet containing the names of horses, the names and addresses (including street address or post office box number, and ZIP Code) of horse owners, the exhibitor number and class number, or sale number assigned to each horse, the show class or sale lot number, and the name and address (including street address or post office box number, and ZIP Code) of the person paying the entry fee and entering the horse in a horse show, horse exhibition, or horse sale or auction.
 - A copy of the official horse show, exhibition, sale, or auction program, if any such program has been prepared.
 - The name and identification of each horse as required in proposed § 11.10(a)(5), as well as the name and address (including street address or post office box number, and ZIP Code) of the owner, the trainer, the custodian, and the location (including street address and ZIP Code) of the home barn or other facility where the horse is stabled.
- We would include in proposed § 11.11(a)(2) the requirement from current § 11.22(b), which requires that

management designate a person to maintain the required records.

In proposed § 11.11(a)(3), we would include the requirement from current § 11.22(c) that management furnish to any APHIS representative, upon request, the name and address (including street address or post office box number, and ZIP Code) of the person designated by the sponsoring organization or manager to maintain the records required throughout proposed § 11.11. We would add the requirement that management provide the information requested within 30 days of the request.

We would include provisions for the inspection of records in current § 11.23 in proposed § 11.11(b) and remove § 11.23 from the regulations. Under these provisions, the management of any horse show, exhibition, sale, or auction must permit any APHIS representative, upon request, to examine and make copies of records pertaining to any horse, either required in any part of the regulations or otherwise maintained, during ordinary business hours or other times as may be mutually agreed upon. A room, table, or other facilities necessary for proper examination and copying of such records would need to be made available to the APHIS representative.

We also propose to move provisions for reporting in current § 11.24 to proposed § 11.11(c) and remove § 11.24 from the regulations. We would add that the reports required in proposed § 11.11 may be submitted by mail, fax, or electronic means such as email and note that we prefer that reports be submitted via electronic means.

In proposed § 11.11(c)(1), we would include from current § 11.24(a) the requirement that following the conclusion of any horse show, exhibition, sale, or auction featuring Tennessee Walking Horses, Racking Horses, or related breeds, the management of such show, exhibition, sale or auction would have to submit to the Administrator the information required by proposed § 11.11(a)(1) for each horse disqualified from being shown, exhibited, sold or auctioned, and the reasons for such action. However, instead of requiring that this information be submitted to the Administrator within 5 days, we would allow it to be submitted within 30 days following the conclusion of the show or other event. This change gives management more time to compile the necessary information. If no horses are disqualified, the management would still have to submit a report stating this fact.

Similarly, in proposed § 11.11(c)(2), we would include from § 11.24(b) the

requirement that following the conclusion of any horse show, exhibition, or sale or auction that does *not* include Tennessee Walking Horses, Racking Horses, or related breeds, the management would have to inform the Administrator of any case where a horse was disqualified by management or its representatives from being shown, exhibited, sold or auctioned because it was found to be sore. We would allow that this information be submitted within 30 days following the conclusion of the show or other event.

Inspection Procedures for Horse Protection Inspectors

Horse inspection procedures are currently located throughout several sections of the regulations. We propose to add a new § 11.12 in which inspection procedures would be consolidated and amended to reflect proposed changes in other sections, as explained below.

Current § 11.20(b)(2) contains requirements for inspectors. We would remove this section and include a requirement in proposed § 11.12(a)(1) that the HPI physically inspect all Tennessee Walking Horses, Racking Horses, and related breeds for which soring is a concern that are:

- Entered for sale or auction;
- Entered in any animated gait class (whether under saddle, horse to cart, or otherwise), regardless of breed;
- Entered for exhibition before they are admitted to be shown, exhibited, sold, or auctioned, except as provided in proposed § 11.12(a)(2);
- Tied first in their class or event, and any other Tennessee Walking Horse, Racking Horse, or other breed in a class or event at any horse show or exhibition that, in the view of the HPI, raises a concern about soring. Such an inspection would be for the purpose of determining whether any such horses are in compliance with the Act or regulations. The inspection would be conducted in accordance with the inspection procedures provided for in proposed § 11.12.

In proposed § 11.12(a)(2), adapted in part from current § 11.20(b)(2), we would require that when a horse is presented for inspection, its custodian must present the HPI with a record or entry card that includes the horse's required identifying information. The HPI would be required to observe horses in the designated warm-up area and during actual performances whenever possible and to inspect any horse in the barn area and show grounds as he or she deems necessary to determine whether the custodian of any such horse shown, exhibited, sold, or auctioned is in

compliance with the Act and regulations.

Current § 11.20(b)(3) states that an inspector must immediately report, to the management of any horse show, exhibition, sale, or auction, any horse which, in his opinion, is sore or otherwise in alleged violation of the Act or regulations. Paragraph (b)(3) further states that such report must be made, whenever possible, before the show class or exhibition involving the horse has begun or before the horse is offered for sale or auction.

We would include this reporting requirement in proposed § 11.12(a)(4) without the words “whenever possible,” to eliminate the possibility of sore horses competing or being sold before a report is made.

In proposed § 11.12(a)(5), we would include the requirement that horses prohibited from entering the show arena, whether by a judge, steward, or custodian of the horse, be taken directly to the inspection area for follow-up inspection by a HPI. Horses that suffer serious illness or injury while performing, and determined by an authorized HPI or APHIS representative to require immediate veterinary treatment, would not be required to return to the inspection area.

In proposed § 11.12(b), we would include procedures that must be followed by HPIs while conducting inspections. The intent of these procedures is to help ensure that a HPI can conduct an inspection of the horse to determine whether the custodian of the horse is in compliance with the Act or regulations.

Paragraph (b)(1) of proposed § 11.12 would require that a HPI ensure that all tack except for a halter and lead rope is removed from the horse during inspection.

Paragraph (b)(2) of proposed § 11.12 would require that during the preshow inspection, the HPI direct the custodian of the horse to lead, walk, and turn the horse in a figure-eight to allow the HPI to determine whether the horse exhibits a gait deficiency. A figure-eight pattern ensures that the HPI gets an impression of the horse adequate to determine whether the horse moves in a free and easy manner.

We would include specific requirements in proposed § 11.12(b)(3), taken in part from current § 11.21(a)(3), for proper manipulation of the hoof and limb of a horse during inspection. The digital palpation conducted throughout this process would require pressure against the hoof and limb sufficient to blanch, or whiten, the thumb of the inspecting HPI. The HPI would have to palpate the front limbs of the horse from

knee to hoof, with particular emphasis on the fetlocks and pasterns. The HPI would also have to inspect the posterior surface of the pastern by picking up the hoof and examining the posterior (flexor) surface. In addition, the HPI would need to digitally palpate the pocket (sulcus), including the bulbs of the heel, and continue the palpation to the medial and lateral surfaces of the pastern. During palpation of the hoof and limb, the HPI is required to watch for responses to pain in the horse such as sudden movements. While continuing to hold the pastern, the HPI would have to extend the hoof and limb of the horse to inspect the front (extensor) surfaces, including the coronary band.

The HPI may also inspect the rear limbs of all horses inspected after showing, and before showing or on the show grounds whenever he or she considers it necessary. The HPI would be required to inspect the rear limbs of all horses exhibiting lesions or unusual movement of the rear limbs. While carrying out the procedures set forth in paragraph (b)(3) of proposed § 11.12, the HPI would also have to inspect the horse to determine whether it complies with the scar rule in § 11.3.

As part of the inspection, the HPI may also use an x-ray machine or other technologies to detect evidence of soring consistent with violations of the Act or regulations. Such soring practices can include intentional manipulation of a horse's hooves or feet in such a way that can reasonably be expected to cause physical pain or distress, inflammation, or lameness when the animal is walking, trotting, or otherwise moving.

We would require in paragraph (b)(4) of proposed § 11.12, adapted in part from current § 11.21(a)(3), that a HPI observe and inspect all horses for compliance with the provisions set forth in proposed § 11.2, “Prohibited Actions, Practices, Devices, and Substances.”

In proposed § 11.12(b)(5), adapted from current § 11.21(a)(4), we would require that the HPI instruct the custodian of the horse to control it for inspection by holding the lead rope approximately 18 inches from the halter. The HPI will not inspect a horse if it is presented in a manner that might cause the horse not to react to a HPI's inspection, or if whips, cigarette smoke, or other actions or paraphernalia are used to distract a horse during inspection.¹⁸ Horses that are not presented in a manner to allow their proper inspection, as well as unruly or fractious horses, would be prohibited from showing. The HPI would have to

report all such incidents to show management and APHIS.

Paragraph (c) of proposed § 11.12, adapted in part from paragraph (b) of current § 11.21, would include inspection logistics for HPIs.

Paragraph (c)(1) of proposed § 11.12 would require that in shows with more than 150 horses entered, an authorized HPI may inspect horses 3 classes ahead of the time such horses are to be shown but only if another authorized HPI can provide continuous and uninterrupted supervision of the designated warm-up area for the inspected horses. This is intended to reduce crowding in the designated warm-up area and to lessen the risk that inspected horses could be tampered with while waiting to be shown. In shows with 150 horses or fewer entered, one HPI may inspect horses 2 classes ahead of the time the inspected horses are to be shown but only if another authorized HPI can provide continuous and uninterrupted supervision of the designated warm-up area for the inspected horses.

Paragraph (c)(2) of proposed § 11.12 would require that inspected horses be held in a designated area that is under observation by an authorized HPI or an APHIS representative. Horses would not be permitted to leave the designated area before showing. Only the horse, the custodian, the trainer, the HPI(s), and APHIS representatives would be allowed in the designated area. As noted in proposed § 11.9(b)(3)(i), official guests of show management, such as elected officials, legislators, and technical advisers would be allowed access to the designated inspection and warm-up areas for limited periods of time at the discretion of show management and only with the concurrence of authorized HPIs or APHIS representatives.

We would include in proposed § 11.12(d) requirements for additional inspection procedures that have been adapted from current § 11.21(d). We would allow the HPI to carry out additional inspection procedures on a horse as he or she deems necessary to determine whether the custodian of the horse is in compliance with the Act and regulations. The HPI would be permitted to remove and inspect plastic, cotton, or any materials wrapped around the limbs of any horse at a horse show, exhibition, sale, or auction to determine whether any prohibited foreign substances are present. The HPI may also require that horseshoes be removed by a farrier provided by management as part of the inspection. Finally, the HPI would be authorized to use hoof testers on all horses.

¹⁸ See footnote 10.

Transportation of Horses

We would move the prohibitions and requirements in current § 11.40 concerning persons involved in transporting certain horses to proposed § 11.13 and remove § 11.40. Under the regulations, each person who ships, transports, or otherwise moves, or delivers or receives for movement, any horse with reason to believe such horse may be shown, exhibited, sold or auctioned at any horse show, exhibition, or sale or auction, would be required to allow inspection of such horse at any such show, exhibition, sale, or auction to determine compliance with the Act and regulations. Such a person would also be required to furnish to any APHIS representatives upon request the following information: Name and address (including street address or post office box number, and ZIP Code) of the horse owner and of the shipper, if different from the owner or trainer; name and address of the horse trainer; name and address of the carrier transporting the horse and the driver of the means of conveyance used; the origin and date of the shipment; and the destination of the shipment. We would also require the transporter to provide APHIS with the name and address (including street address or post office box number, and ZIP Code) of the horse's farrier.

Alternatives Considered

Consistent with Executive Orders 12866 and 13563, which emphasize determining the least costly regulatory option, and with the President's January 12, 2011, Memorandum on Small Businesses and Job Creation, APHIS has considered several alternatives to this proposed action. For the reasons discussed below, we believe the changes proposed in this document represented the best alternative option that would satisfactorily accomplish the stated objectives and minimize impacts on small entities. However, we welcome comments from the public on these and other alternative options. Specifically, we would seek feedback on the viability of alternative approaches that would continue to rely on the horse industry organization concept, and what the governance of such an organization should be like. Additionally, we would request comments on how any proposed alternative would minimize the conflicts of interest issues raised by the 2010 Office of the Inspector General report into the horse protection program, especially as compared to the changes proposed in this document.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides an initial regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

The prohibition of pads and action devices does not impose costs on shows or the shows' participants. However, of these proposed amendments to the horse protection regulations, only the amendments requiring a farrier to be present for all shows, exhibitions, sales, and auctions and a minimum of 2 HPIs for shows with 150 or fewer horses and more than 2 HPIs for shows with more than 150 horses may result in additional costs for the shows or their participants. Based on the estimates of an expert elicitation commissioned by APHIS, the cost of services provided by veterinarians, farriers, and HPIs ranges from a few hundred to several thousand dollars. However, by prohibiting pads and action devices, inspections may be slightly more efficient and less time-consuming. Any additional cost burden to a show would depend on the show's ability to pass these costs along to attendants or other entities involved with the shows. Many if not most of the entities that may be affected by this proposed rule are small.

While the proposed rule would result in better oversight of the HPIs and enforcement of the HPA, implementation of the proposed changes would result in additional

administrative and computer-related costs associated with training, licensing, and certifying HPIs. Consequently, APHIS would need to allocate resources to design, coordinate, and deliver computer-based training of HPIs, and provide program guidance and oversight. In FY 2015, the USDA's Horse Protection Program received \$697,000 in appropriated funding. APHIS would be able to implement the proposed Horse Protection Program revisions and maintain this same level of funding through a reallocation among Program activities of approximately \$300,000. For example, APHIS expects there to be a large reduction in Program travel expenditures because, with the HPIs trained and licensed by APHIS, they will require less direct Agency oversight. USDA personnel would continue to attend a percentage of horse events, to ensure consistency among inspectors, address performance concerns, and assist in meeting the program's goals.

The benefits of the proposed rule are expected to justify the costs. The proposed changes to the horse protection regulations would promote the humane treatment of walking and racking horses by more effectively ensuring that those horses that participate in exhibitions, sales, shows, or auctions are not sore. This benefit is an unquantifiable animal welfare enhancement.

The proposed rule is not expected to adversely impact communities in which shows are held since walking and racking horse shows are expected to continue. Therefore, owners will still be able to participate in shows if they choose to participate. Better enforcement of the HPA is expected to also benefit participating HIOs and HIO-affiliated shows by improving the reputation of the walking and racking horse industry. Participation in HIO-affiliated events may increase if the proposed rule were to result in increased confidence by owners that individuals who intentionally sore horses to gain a competitive advantage are likely to be prevented from participating. The affected HIOs would also benefit from no longer having to bear the costs of training and licensing the HPIs.

If promulgated, this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175

requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Animal and Plant Health Inspection Service has assessed the impact of this proposed rule on Indian tribes and determined that this proposed rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, the Animal and Plant Health Inspection Service will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), some of the information collection and recordkeeping requirements included in this proposed rule have been approved under 0579–0056. The new reporting and recordkeeping requirements proposed by this rule have been submitted as a new information collection package for approval to the Office of Management and Budget (OMB). Upon approval of this new information collection, it will be merged into the existing 0579–0056. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket

No. APHIS–2011–0009. Please send a copy of your comments to: (1) APHIS, using one of the methods described under **ADDRESSES** at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

The regulations in 9 CFR part 11 authorized by the HPA require actions including, but not limited to, ensuring that inspectors are trained and licensed; requiring the management of horse shows, auctions, sales, and/or exhibitions to notify APHIS in advance that events are going to occur and to provide for the inspection of horses for soring; requiring inspectors to notify the custodian if a horse is detained for inspection, testing, or taking of evidence with respect to soring; and providing a waiver process to waive certain classes of horses from being inspected for soring.

We are soliciting comments from the public and others concerning our proposed information collection and recordkeeping requirements. These comments will help us:

- (1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;
 - (2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;
 - (3) Enhance the quality, utility, and clarity of the information to be collected; and
 - (4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).
- Estimate of burden:* Public reporting burden for this collection of information is estimated to average 7 minutes per response.
- Respondents:* Management of horse shows, events, auctions, sales, and exhibitions; individuals seeking inspector certification; and certified inspectors.
- Estimated annual number of respondents:* 50.
- Estimated annual number of responses per respondent:* 8.72.
- Estimated annual number of responses:* 436.

Estimated total annual burden on respondents: 51 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual

number of responses multiplied by the reporting burden per response.)

Copies of this new information collection are located at <http://www.regulations.gov/#/docketDetail;D=APHIS-2011-0009> and can be obtained from Kimberly Hardy, APHIS' Information Collection Coordinator, at 301–851–2727.

USDA will respond to any information collection request-related comments in the final rule. All comments will also become a matter of public record.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Reporting and recordkeeping requirements.

Accordingly, we propose to revise 9 CFR part 11 to read as follows:

PART 11—HORSE PROTECTION REGULATIONS

- Sec.
- 11.1 Definitions.
 - 11.2 Prohibited actions, practices, devices, and substances.
 - 11.3 Scar rule.
 - 11.4 Providing required information.
 - 11.5 Inspection and detention of horses; responsible parties.
 - 11.6 Training and licensing of Horse Protection Inspectors (HPIs).
 - 11.7–11.8 [Reserved]
 - 11.9 Management responsibilities; access, space, and facilities.
 - 11.10 Management responsibilities; operation of horse shows, horse exhibitions, and horse sales and auctions.
 - 11.11 Management responsibilities; records and reporting.
 - 11.12 Inspection procedures for HPIs.
 - 11.13 Requirements concerning persons involved in transportation of certain horses.

Authority: 15 U.S.C. 1823–1825 and 1828; 7 CFR 2.22, 2.80, and 371.7.

§ 11.1 Definitions.

For the purpose of this part, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The

singular form shall also impart the plural and the masculine form shall also impart the feminine. Words of art undefined in the following paragraphs shall have the meaning attributed to them by trade usage or general usage as reflected by definition in a standard dictionary, such as "Webster's."

Act means the Horse Protection Act, as amended (Pub. L. 94-360), 15 U.S.C. 1821 *et seq.*

Action device means any boot, collar, chain, beads, bangles, roller, or other device which encircles or is placed upon the lower extremity of the leg of a horse in such a manner that it can either rotate around the leg, or slide up and down the leg so as to cause friction, or which can strike the hoof, coronet band, or fetlock joint.

Administrator means the Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator. Mail for the Administrator should be sent to the Animal and Plant Health Inspection Service, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737-1234.

Animal and Plant Health Inspection Service (APHIS) means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative means any employee or official of APHIS.

Custodian means any person who is responsible for directing, controlling, and supervising the horse during the inspection at any horse show, exhibition, sale, or auction; or any person who shows or exhibits, or enters for the purpose of showing or exhibiting, in any horse show or horse exhibition, any horse; or any person who sells, auctions, or offers for sale, in any horse sale or auction, any horse. The term also means any person who owns a horse and allows the horse to be shown, exhibited, or entered in a show or exhibition, sold or auctioned, or entered in a sale or auction, or transported for any of these purposes, or any person who transports a horse for showing, exhibition, sale, or auction. The custodian must also be able to provide required information about the horse.

Department means the United States Department of Agriculture.

Exhibitor means:

- (1) Any custodian who directs or allows any horse under his direction, control, or supervision to be entered in any horse show or horse exhibition;
- (2) Any custodian who shows or exhibits any horse, any custodian who allows his horse to be shown or exhibited, or any custodian who directs or allows any horse under his direction,

control, or supervision to be shown or exhibited in any horse show or horse exhibition;

(3) Any custodian who enters or presents any horse for sale or auction, any custodian who allows his horse to be entered or presented for sale or auction, or any custodian who allows any horse under his direction, control, or supervision to be entered or presented for sale or auction in any horse sale or horse auction; or

(4) Any custodian who sells or auctions any horse, any custodian who allows his horse to be sold or auctioned, or any custodian who allows any horse under his direction, control, or supervision to be sold or auctioned.

Horse means any member of the species *Equus caballus*.

Horse exhibition means a public display of any horses, singly or in groups, but not in competition. The term does not include events where speed is the prime factor, rodeo events, parades, or trail rides.

Horse Protection Inspector (HPI) means a person meeting the requirements specified in § 11.6 whom the Administrator has licensed as a HPI (formerly termed a Designated Qualified Person, or DQP). A HPI may be appointed and delegated authority by the management of any horse show, horse exhibition, horse sale, or horse auction under section 4 of the Act to detect or diagnose horses which are sore or to otherwise inspect horses and any records pertaining to such horses for the purposes of enforcing the Act.

Horse sale or horse auction means any event, public or private, at which horses are sold or auctioned, regardless of whether or not the horses are exhibited prior to or during the sale or auction.

Horse show means a public display of any horses, in competition. The term does not include events where speed is the prime factor, rodeo events, parades, or trail rides.

Inspection means any visual, physical, and diagnostic means approved by APHIS to determine compliance with the Act and regulations. Such inspection may include, but is not limited to, visual inspection of a horse and records, physical inspection of a horse, including touching, rubbing, palpating, and observation of vital signs, and the use of any diagnostic device or instrument, and may require the removal of any shoe or any other equipment, substance, or paraphernalia from the horse when deemed necessary by the person conducting such inspection.

Management means any person who organizes, exercises control over, or

administers or is responsible for organizing, directing, or administering any horse show, horse exhibition, horse sale or horse auction and specifically includes, but is not limited to, the sponsoring organization and show manager.

Person means any individual, corporation, company, association, firm, partnership, society, organization, joint stock company, State or local government agency, or other legal entity.

Secretary means the Secretary of Agriculture or anyone who has heretofore or may hereafter be delegated authority to act in his stead.

Show manager means the person who has been delegated primary authority by a sponsoring organization for managing a horse show, horse exhibition, horse sale, or horse auction.

Sore when used to describe a horse means:

(1) An irritating or blistering agent has been applied, internally or externally, to any limb of a horse;

(2) Any burn, cut, or laceration has been inflicted on any limb of a horse;

(3) Any tack, nail, screw, or chemical agent has been injected into or used on any limb of a horse; or

(4) Any other substance or device has been used on any limb of a horse, and as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was given.

Sponsoring organization means any person or entity under whose responsibility a horse show, horse exhibition, horse sale, or horse auction is conducted.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

Substance means any agent applied to a horse's limbs while a horse is shown, exhibited, or offered for sale, or otherwise present on the grounds at any horse show, horse exhibition, or horse sale or auction. This definition also includes any agent applied to a horse's limbs before or after a horse is shown, exhibited, or offered for sale, or otherwise present on the grounds at any

horse show, horse exhibition, or horse sale or auction.

§ 11.2 Prohibited actions, practices, devices, and substances.

(a) *Specific prohibitions.* No device, method, practice, or substance shall be used with respect to any horse at any horse show, horse exhibition, or horse sale or auction if such use causes or can reasonably be expected to cause such horse to be sore. The use of the following devices, equipment, or practices is specifically prohibited with respect to any Tennessee Walking Horse, Racking Horse, or related breed that performs with an accentuated gait that raises concerns about soring at any horse show, horse exhibition, horse sale, or horse auction:

(1) Any action device as defined in § 11.1 is prohibited.

(2) Any pad, wedge, or hoof band is prohibited.

(3) The use of any weight on horses up to 2 years old, except a keg or similar conventional horseshoe is prohibited, as is the use of a horseshoe on horses up to 2 years old that weighs more than 16 ounces.

(4) Artificial extension of the toe length is prohibited.

(5) Any object or material inserted into the hoof other than acceptable hoof packing, which includes pine tar, oakum, live rubber, sponge rubber, silicone, commercial hoof packing or other substances used to maintain adequate frog pressure or sole consistency, is prohibited. Acrylic and other hardening substances are prohibited as hoof packing.

(6) Single or double rocker-bars on the bottom surface of horseshoes which extend more than 1 1/2 inches back from the point of the toe, or any device which would cause, or could reasonably be expected to cause, an unsteadiness of stance in the horse with resulting muscle and tendon strain due to the horse's weight and balance being focused upon a small fulcrum point, are prohibited.¹

(7) Shoeing a horse, or trimming a horse's hoof in a manner that will cause such horse to suffer, or can reasonably be expected to cause such horse to suffer pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving is prohibited, as is paring out of the frog. Bruising of the

hoof or any other method of pressure shoeing is prohibited.

(8) Lead or other weights attached to the outside of the hoof wall or the outside surface of the horseshoe are prohibited. Hollow shoes or artificial extensions filled with mercury or similar substances are prohibited.

(b) *Substances.* Any substances are prohibited on the limbs of any Tennessee Walking Horse, Racking Horse, or related breed horse that performs with an accentuated gait while being shown, exhibited, or offered for sale, or otherwise present on the grounds at, any horse show, horse exhibition, or horse sale or auction.

(c) *Restrictions on 2-year-old horses.* With regard to 2-year-old Tennessee Walking Horses, Racking Horses, and related horse breeds that perform with an accentuated gait that raises concerns about soring (horses eligible to be shown or exhibited in 2-year-old classes), any performances, classes, workouts, or working exhibitions at horse shows, exhibitions, sales or auctions must not exceed a total of 10 minutes continuous workout or performance without a minimum 5-minute rest period between the first such 10-minute period and the second such 10-minute period. More than two such 10-minute periods per performance, class, or workout are prohibited.

§ 11.3 Scar rule.

The scar rule applies to all horses born on or after October 1, 1975. Horses subject to this rule that do not meet the following scar rule criteria shall be considered to be "sore" and are subject to all prohibitions of section 5 of the Act. The scar rule criteria are as follows:

(a) The anterior and anterior-lateral surfaces of the fore pasterns (extensor surface) must be free of bilateral granulomas,² other bilateral pathological evidence of inflammation, and other bilateral evidence of abuse indicative of soring including, but not limited to, excessive loss of hair.

(b) The posterior surfaces of the pasterns (flexor surface), including the sulcus or "pocket" may show bilateral areas of uniformly thickened epithelial tissue if such areas are free of proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation.

§ 11.4 Providing required information.

Failing to provide information, or providing any false or misleading

information, by any custodian of any horse shown, exhibited, sold, or auctioned or entered for the purpose of being shown, exhibited, sold, or auctioned at any horse show, horse exhibition, or horse sale or auction, is prohibited. Such information shall include, but is not limited to: The name and identification of the horse; the name and address of the horse's training and/or stabling facilities; the name and address of the legal owner, trainer, custodian, or other legal entity bearing responsibility for the horse; the class in which the horse is entered or shown; the exhibitor identification number; and any other information reasonably related to the identification, ownership, control, direction, or supervision of any such horse.

§ 11.5 Inspection and detention of horses; responsible parties.

(a) Each custodian of any horse at any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, admit any APHIS representative or authorized Horse Protection Inspector (HPI) appointed by management to all areas of barns, compounds, horse vans, horse trailers, stables, stalls, paddocks, or other show, exhibition, or sale or auction grounds or related areas at any horse show, horse exhibition, or horse sale or auction, for the purpose of inspecting any such horse at any and all reasonable times. Such inspections may be required of any horse which is stabled, loaded on a trailer, being prepared for show, exhibition, or sale or auction, being exercised or otherwise on the grounds of, or present on the grounds at, any horse show, horse exhibition, or horse sale or auction, whether or not such horse has or has not been shown, exhibited, or sold or auctioned, or has or has not been entered for the purpose of being shown or exhibited or offered for sale or auction at any such horse show, horse exhibition, or horse sale or auction. HPIs and APHIS representatives will not generally or routinely delay or interrupt actual individual classes or performances at horse shows, horse exhibitions, or horse sales or auctions for the purpose of examining horses, but they may do so in extraordinary situations such as, but not limited to, lack of proper facilities for inspection, failure of management to cooperate with inspection efforts, reason to believe that failure to immediately perform inspections may result in the loss, removal, or masking of any evidence of a violation of the Act or the regulations, or a request by management that such inspections be performed by

¹ This prohibition is not intended to disallow corrective devices, such as Memphis bars which consist of a metal bar(s) crossing from the ground surface of one side of the horseshoe to the ground surface of the other side of the horseshoe, and the purpose of which is to correct a lameness or pathological condition of the hoof: *Provided*, That such metal bar(s) do not act as a single fulcrum point so as to affect the balance of the horse.

² Granuloma is defined as any one of a rather large group of fairly distinctive focal lesions that are formed as a result of inflammatory reactions caused by biological, chemical, or physical agents.

an authorized HPI or APHIS representative.

(b) Each custodian of any horse at any horse show, horse exhibition, or horse sale or auction shall promptly present his horse for inspection upon notification, orally or in writing, by any APHIS representative or an authorized HPI appointed by management, that the horse has been selected for inspection for the purpose of determining whether such horse is in compliance with the Act and regulations.

(c) No tack other than a halter and lead rope may be on the horse during inspection.

(d) When an authorized HPI or APHIS representative notifies the custodian of a horse at any horse show, horse exhibition, or horse sale or auction that he or she desires to inspect such horse, it shall not be moved from the horse show, horse exhibition, or horse sale or auction until such inspection has been completed and the horse has been released by an authorized HPI or APHIS representative.

(e) For the purpose of inspection, testing, or taking of evidence, authorized HPIs and APHIS representatives may detain for a period not to exceed 24 hours any horse, at any horse show, horse exhibition, or horse sale or auction, which is sore or which an authorized HPI or APHIS representative has probable cause to believe is sore. Such detained horse may be marked for identification and any such identifying markings shall not be removed by any person other than an authorized HPI or APHIS representative.

(f) Detained horses shall be kept under the supervision of an authorized HPI or APHIS representative in a horse stall, horse trailer, or other facility to which access shall be limited. It shall be the policy of APHIS to have at least one authorized HPI or APHIS representative present in the immediate detention area when a horse is being held in detention. A detained horse cannot be moved by any person other than an authorized HPI or an APHIS representative, unless:

(1) The life or well-being of the detained horse is immediately endangered by fire, flood, windstorm, or other dire circumstances that are beyond human control.

(2) The detained horse is in need of such immediate veterinary attention that its life may be in peril before an authorized HPI or APHIS representative can be located.

(3) The horse has been detained for a maximum 24-hour detention period, and an authorized HPI or APHIS representative is not available to release the horse.

(g) The custodian of any horse detained by an authorized HPI or APHIS for further examination, testing, or the taking of evidence shall be allowed to feed, water, and provide other normal custodial and maintenance care, such as walking, grooming, etc., for such detained horse:

Provided, That:

(1) Such feeding, watering, and other normal custodial and maintenance care of the detained horse is rendered under the direct supervision of an authorized HPI or APHIS representative.

(2) Any non-emergency veterinary care of the detained horse requiring the use, application, or injection of any drugs or other medication for therapeutic or other purposes is rendered by a Doctor of Veterinary Medicine in the presence of an authorized HPI or APHIS representative and, the identity and dosage of the drug or other medication used, applied, or injected and its purpose is furnished in writing to the authorized HPI or APHIS representative prior to such use, application, or injection by the Doctor of Veterinary Medicine attending the horse. The use, application, or injection of such drug or other medication must be certified by an authorized HPI or APHIS representative.

(h) When possible, APHIS will inform the custodian of any horse allegedly found to be in violation of the Act or the regulations of such alleged violation or violations before the horse is released by an authorized HPI or APHIS representative.

(i) The custodian of any horse or horses that an authorized HPI or APHIS representative determines shall be detained for inspection, testing, or taking of evidence pursuant to paragraph (e) of this section shall be informed after such determination is made and shall allow the horse to be immediately put under the supervisory custody of APHIS as provided in paragraph (f) of this section until the completion of such inspection, testing, or gathering of evidence, or until the 24-hour detention period expires.

(j) The custodian of any horse allegedly found to be in violation of the Act or regulations, and who has been notified of such alleged violation by an authorized HPI or APHIS representative as stated in paragraph (h) of this section, may request reinspection and testing of the horse within a 24-hour period if:

(1) Such request is made to the APHIS representative immediately after the horse has been inspected by an authorized HPI or APHIS representative and before such horse has been removed from the inspection facilities; and

(2) An authorized HPI or APHIS representative determines that sufficient cause for reinspection and testing exists; and

(3) The horse is maintained under HPI or APHIS supervisory custody as prescribed in paragraph (f) of this section until such reinspection and testing has been completed.

(k) The custodian of any horse being inspected shall render such assistance as an authorized HPI or APHIS representative may request for purposes of such inspection.

§ 11.6 Training and licensing of Horse Protection Inspectors (HPIs).

APHIS will train and license HPIs. The management of any horse show, horse exhibition, horse sale, or horse auction may engage HPIs holding a valid, current license under section 4 of the Act and appoint and delegate authority to HPIs to detect or diagnose horses that are sore or to otherwise inspect horses and any records pertaining to such horses for the purposes of enforcing the Act. A current list of licensed HPIs is available on the APHIS Horse Protection Program Web site.

(a) *Basic qualifications of HPI applicants.* Persons licensed as HPIs under this part shall be veterinarians or veterinary technicians. The required qualifications of each are as follows. (1) Veterinarians must have extensive knowledge and experience of equine husbandry and science defined as understanding the anatomy, selection, breeding, care, and maintenance of horses, and applicable principles of equine science, welfare, care, and veterinary health, and be eligible to be licensed as HPIs under paragraph (b) of this section. Veterinarians must also be accredited in any State by the United States Department of Agriculture under part 161 of this chapter and be:

(i) Members of the American Association of Equine Practitioners; or
 (ii) Large animal practitioners with substantial equine experience; or
 (iii) Knowledgeable in the area of equine soring and soring practices (such as Doctors of Veterinary Medicine with a small animal practice with sufficient knowledge of horses, or Doctors of Veterinary Medicine who teach equine-related subjects in an accredited college or school of veterinary medicine).

(2) Veterinary technicians who wish to be licensed as HPIs under this part must have a degree awarded by an educational program accredited by the American Veterinary Medical Association Committee on Veterinary Technician Education and Activities, possess adequate knowledge and

experience of equine husbandry and science, and be eligible to be licensed as HPIs under paragraph (b) of this section.

(b) *Additional restrictions on HPI licensing.* (1) APHIS will not license any person as a HPI if that person has been convicted or found to have violated any provision of the Act or the regulations in this part occurring after July 13, 1976, or has been assessed any fine or civil penalty, or has been the subject of a disqualification order in any proceeding involving an alleged violation of the Act or regulations occurring after July 13, 1976.

(2) APHIS will not license any person as a HPI if that person, any member of that person's immediate family, or that person's employer participates in the showing of horses or acts as a judge or farrier, or is an agent of show management involving any Tennessee Walking Horses, Racking Horses, or related breeds.

(3) APHIS will not license any person as a HPI if that person has been disqualified by the Secretary of Agriculture from making detection, diagnosis, or inspection for the purpose of enforcing the Act.

(4) APHIS will not license any person as a HPI if the honesty, professional integrity, reputation, practices, and reliability of the person do not support a conclusion that the applicant is fit to carry out the duties of a HPI. In making this conclusion, the Administrator shall review all available information about the applicant and shall consider:

(i) Criminal conviction records, if any, indicating that the person may lack the honesty, integrity, and reliability to appropriately and effectively perform HPI duties;

(ii) Official records of the person's actions while participating in Federal, State, or local veterinary programs when those actions reflect on the honesty, reputation, integrity, and reliability of the person;

(iii) Judicial determinations in any type of litigation adversely reflecting on the honesty, reputation, integrity, and reliability of the person; and

(iv) Any other evidence reflecting on the honesty, reputation, professional integrity, reputation, practices, and reliability of the person.

(c) *Licensing of HPIs.* (1) All persons wishing to become HPIs must submit an application to the Administrator. Applicants will be required to show that they satisfy the requirements in paragraphs (a) and (b) of this section. HPI applicants selected as candidates will complete a formal training program administered by APHIS. This training program will include instruction on:

(i) The anatomy and physiology of the limbs of a horse;

(ii) The Act and the regulations in this part;

(iii) The history of soring, the physical inspection procedures necessary to detect soring, the detection and diagnosis of soring, and related subjects;

(iv) Practical instruction using live horses;

(v) HPI standards of conduct; and

(vi) Recordkeeping requirements and procedures.

(2) After a HPI candidate successfully completes the formal training program in paragraph (c)(1) of this section and passes a written examination, a license will be granted to that candidate for 1 year. Licenses terminate after 1 year and all HPIs must submit a new application each year if they wish to be considered for licensing for another year.

(d) *Requirements to be met by HPIs.*

(1) Any licensed HPI appointed by the management of any horse show, horse exhibition, horse sale or auction to inspect horses for the purpose of detecting and determining or diagnosing horses which are sore and to otherwise inspect horses for the purpose of determining compliance with the Act and regulations shall collect and maintain the following information and records concerning any horse which he or she recommends be disqualified or prohibited for any reason from being shown, exhibited, sold or auctioned:

(i) The name and address, including street address or post office box number, and ZIP Code, of the show and the show manager;

(ii) The name and address, including street address or post office box number, and ZIP Code, of the horse owner;

(iii) The name and address, including street address or post office box number, and ZIP Code, of the horse trainer;

(iv) The name and address, including street address or post office box number, and ZIP Code, of the farrier;

(v) The name and address, including street address or post office box number, and ZIP Code, of the horse exhibitor;

(vi) The exhibitor's number and class number, or the sale or auction tag number of the horse;

(vii) The date and time of the inspection;

(viii) A detailed description of all of the HPI's findings and the nature of the alleged violation, or other reason for prohibiting the horse, including the HPI's statement regarding the evidence or facts upon which show management disqualified the horse from a show, exhibition, sale or auction;

(ix) The name, registration number (if the horse is registered), age, sex, color, and markings of the horse; and

(x) The name or names of the show manager or other management representative notified by the HPI that such horse should be disqualified and whether or not such manager or management representative disqualified such horse.

(2) Copies of the records required by paragraph (d)(1) of this section shall be submitted by the HPI to APHIS and show management within 72 hours after the horse show, exhibition, sale, or auction is over.

(3) After completing inspection, the HPI shall inform the custodian of each horse that is noncompliant with the Act or regulations, notify the custodian, on behalf of show management, that the horse is disqualified from participating in any show, exhibition, sale or auction, or involved with any other action under the Act or its regulations along with the reasons for such action. The HPI shall collect the information relating to the alleged violation from the custodian.

(4) The HPI shall immediately inform management of each case regarding the custodian of any horse which, in his opinion, is found to be in noncompliance with the Act or regulations.

(e) *Denial and revocation of HPI license.* APHIS will deny or revoke a license for any of the reasons outlined in paragraph (b) of this section, and will revoke the license of any HPI who fails to follow the inspection procedures set forth in § 11.12, or who otherwise carries out his or her duties and responsibilities in a less than satisfactory manner. Upon denial or revocation of a license, the applicant or HPI may appeal the revocation to the Administrator within 30 days from the date of such decision, and the Administrator shall make a final determination in the matter. If the Administrator upholds the denial or revocation of the license, the applicant or HPI shall be given notice and opportunity for a hearing. Hearings will be in accordance with the Uniform Rules of Practice for the Department of Agriculture in 7 CFR 1.130 through 1.151. The license denial shall remain in effect until the final legal decision has been rendered.

(f) *Inspectors licensed prior to [effective date of final rule].* Inspectors licensed as Designated Qualified Persons (DQPs) prior to [effective date of final rule] may not perform inspection duties under that license after the effective date. DQPs seeking to become inspectors after [effective date of final rule] must apply for a license and fulfill all HPI eligibility requirements included in this section.

§ 11.7–11.8 [Reserved]**§ 11.9 Management responsibilities; access, space, and facilities.**

(a) *Access to premises and records.* Requirements regarding access to premises for inspection of horses and records are as follows:

(1) The management of any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, provide authorized HPIs and APHIS representatives with unlimited access to the grandstands, sale ring, barns, stables, grounds, offices, and all other areas of any horse show, horse exhibition, or horse sale or auction, including any adjacent areas under their direction, control, or supervision for the purpose of inspecting any horses, or any records required to be kept by regulation or otherwise maintained.

(2) The management of any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, provide authorized HPIs and APHIS representatives with an adequate, safe, sufficient, and accessible area for the visual inspection and observation of horses while such horses are competitively or otherwise performing at any horse show or horse exhibition, or while such horses are being sold or auctioned or offered for sale or auction at any horse sale or horse auction.

(b) *Inspection space and facility requirements.* The management of every horse show, horse exhibition, horse sale or auction, including horse shows, horse exhibitions, horse sales or auctions which do not include Tennessee Walking Horses, Racking Horses, or related breeds of horses that perform with an accentuated gait that raises concerns about soring, shall provide, without fee, charge, assessment, or other compensation, sufficient space and facilities for authorized HPIs and APHIS representatives to carry out their duties under the Act and regulations when requested to do so by authorized HPIs or APHIS representatives, whether or not management has received prior notification or otherwise knows that such show may be inspected by APHIS. With respect to such space and facilities, it shall be the responsibility of management to provide at least the following:

(1) Sufficient space in a convenient location to the horse show, horse exhibition, or horse sale or auction arena, acceptable to authorized HPIs and APHIS representatives, in which horses may be physically, thermographically, or otherwise inspected.

(2) Protection from the elements of nature, such as rain, snow, sleet, hail, wind, etc.

(3) Control of crowds or onlookers in order that authorized HPIs and APHIS representatives may carry out their duties safely and without interference.

(i) Each horse in the designated inspection and warm-up areas may be accompanied by no more than three individuals, including the trainer, custodian, and rider. Official guests of show management, such as elected officials, legislators, and technical advisers may be allowed access to the designated inspection and warm-up areas for limited periods of time at the discretion of show management and only with the concurrence of an authorized HPI or APHIS representative.

(ii) Management must not in any way influence show attendees to assault, resist, oppose, impede, intimidate, or interfere with authorized HPIs or APHIS representatives. If management influences attendees in such a manner, inspections will not be provided and the management will be liable for any violations of the Act or the regulations in this part.

(4) An accessible, reliable, and convenient 110-volt electrical power source, if electrical service is requested by an APHIS representative or an authorized HPI to conduct inspections.

(5) Appropriate areas adjacent to the inspection area for designated horses to wait before and after inspection, and an area to be used for detention of horses.

§ 11.10 Management responsibilities; operation of horse shows, horse exhibitions, and horse sales and auctions.

(a) At horse shows, horse exhibitions, or horse sales or auctions involving Tennessee Walking Horses, Racking Horses, and related breeds that perform with an accentuated gait that raises concerns about soring, the management of any such horse show, exhibition, sale, or auction must:

(1) Notify the Administrator of the event at least 30 days before it begins. Notification must be received by that date and may be made by mail, fax, or electronic means such as email.³ The electronic means is strongly preferred. Notification must include:

(i) The name and location of the horse show, horse exhibition, or horse sale or auction;

(ii) The name, address, phone number (and email address, if available) of the manager;

(iii) The date or dates of the horse show, horse exhibition, or horse sale or auction;

(iv) A copy of the official horse show, exhibition, sale, or auction program, if any such program has been prepared; and

(v) The name or names of the APHIS-licensed HPIs scheduled to perform inspections at the horse show, exhibition, sale, or auction, should show management choose to engage APHIS-licensed HPIs.

(2) Ensure that no devices or substances prohibited under § 11.2 are present in the warm-up area.

(3) Post the list of persons who are subject to a USDA order disqualifying them from participating in horse shows, exhibitions, sales, and auctions in a prominent place;

(4) Check the drivers' licenses or other official photo identification of the people entering horses in the horse show, horse exhibition, or horse sale or auction against the list noted in paragraph (a)(3) of this section, and prevent them from entering their horses if they are on the list; and

(5) Ensure that all horses entered in the horse show, horse exhibition, or horse sale or auction are identified. If any horse entered in the horse show, exhibition, sale, or auction belongs to a registry, the registry number and registry records must be provided to an authorized HPI or APHIS representative, upon request. Horses must also be identified by one of the following methods:

(i) A description sufficient to identify the individual equine, as determined by an authorized HPI or an APHIS representative, including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (*e.g.*, brands, tattoos, cowlicks, or blemishes); or

(ii) Electronic identification that complies with ISO 11784/11785; or

(iii) An equine passport issued by a State government and accepted in the government of the State in which the horse show, horse exhibition, or horse sale or auction will occur; or

(iv) Digital photographs sufficient to identify the individual equine, as determined by an authorized HPI or an APHIS representative.

(b) *Horse shows, horse exhibitions, and horse sales and auctions at which the management does not designate and appoint HPIs.* (1) At horse shows, horse exhibitions, or horse sales or auctions involving Tennessee Walking Horses, Racking Horses, and related breeds that perform with an accentuated gait that raises concerns about soring, management shall be responsible for identifying all horses that are sore or

³ Email notification may be sent to hp@aphis.usda.gov.

otherwise noncompliant with the Act or the regulations. Management shall prohibit the showing, exhibition, sale, offering for sale, or auction of any horse that is sore. In instances where a horse is found sore during actual participation in the horse show, horse exhibition, horse sale, or horse auction, management shall disqualify the horse prior to the tying of the class, or completion of the show, exhibition, sale, or auction. In each Tennessee Walking Horse, Racking Horse, or related breed class or event at any horse show or exhibition, management shall inspect all horses tied first, second, or third, and any other horses they may select for inspection, to determine if such horses are compliant with the Act or the regulations.

(2) Copies of the records required under § 11.6(d)(1) shall be collected and submitted by management to APHIS within 72 hours after the horse show, exhibition, sale, or auction is over.

(3) After completing inspection, management shall notify the custodian of each horse that is noncompliant with the Act or regulations that the horse is disqualified from participating in any show, exhibition, sale or auction, or involved with any other action under the Act or its regulations along with the reasons for such action. Management shall collect the information relating to the alleged violation from the custodian.

(c) *Horse shows, horse exhibitions, and horse sales and auctions at which the management designates and appoints HPIs.* (1) The management of any horse show, horse exhibition, horse sale or auction that designates and appoints APHIS-licensed HPIs to inspect horses must designate and appoint a minimum of 2 HPIs if 150 horses or fewer are entered in the event. If more than 150 horses are entered in the horse show, horse exhibition, or horse sale or auction, the management must appoint more than 2 HPIs. The management must also make a farrier available to assist in inspections at every horse show, horse exhibition, or horse sale and auction.

(2) The management shall accord authorized HPIs access to all records and areas of the grounds of such show, exhibition, sale, or auction and the same right to inspect horses and records as is accorded to any APHIS representative under this section. Further, management shall not take any action which would interfere with or influence the HPIs in carrying out his or her duties.

(3) After an authorized HPI has completed inspection, management must prevent tampering with any part of a horse's limbs or hooves in such a way that could cause a horse to be sore.

(4) If management is dissatisfied with the performance of a particular HPI, including disagreement with the HPI's finding that a horse is sore, management shall not dismiss or otherwise interfere with the HPI during the HPI's appointed tour of duty, which is the duration of the horse show, horse exhibition, or horse sale or auction. However, if management has reason to believe that a horse is sore but it is not determined to be sore by the HPI, management shall override the HPI's decision and disqualify the horse from participating in the event. Management should immediately notify, in writing, the Administrator as to why management believes the performance of the HPI was inadequate or otherwise unsatisfactory. Management that designates and appoints HPIs shall disqualify from showing, exhibition, sale, offering for sale, or auction of any horse identified by the HPI or any horse otherwise known by management to be sore.

(5) If an authorized HPI or APHIS representative finds any horse to be sore or otherwise noncompliant with the Act or regulations at a show, exhibition, sale, or auction, featuring Tennessee Walking Horses, Racking Horses, or related breeds, the management must disqualify the horse from competing, being exhibited, sold, or auctioned in that show, exhibition, sale or auction.

§ 11.11 Management responsibilities; records and reporting.

(a) *Records required and disposition thereof.* (1) The management shall maintain for a period of at least 6 years following the closing date of the show, exhibition, or sale or auction, all pertinent records containing:

(i) The dates and place of the horse show, horse exhibition, horse sale, or horse auction.

(ii) The name and address (including street address or post office box number, and ZIP Code) of the sponsoring organization.

(iii) The name and address of the horse show, exhibition, horse sale, or horse auction management.

(iv) The name and address (including street address or post office box number, and ZIP Code) of the HPIs employed to conduct inspections under § 11.6.

(v) The name and address (including street address or post office box number, and ZIP Code) of each show judge.

(vi) A copy of each class or sale sheet containing the names of horses, the names and addresses (including street address or post office box number, and ZIP Code) of horse owners, the exhibitor number and class number, or sale number assigned to each horse, the show class or sale lot number, and the

name and address (including street address or post office box number, and ZIP Code) of the person paying the entry fee and entering the horse in a horse show, horse exhibition, or horse sale or auction.

(vii) A copy of the official horse show, horse exhibition, horse sale, or horse auction program, if any such program has been prepared.

(viii) The name and identification required in § 11.10(a) of each horse, as well as the name and address (including street address or post office box number, and ZIP Code) of the owner, the trainer, the custodian, and the location (including street address and ZIP Code) of the home barn or other facility where the horse is stabled.

(2) The management of any horse show, horse exhibition, or horse sale or auction shall designate a person to maintain the records required in this section.

(3) The management of any horse show, horse exhibition, or horse sale or auction shall furnish to any APHIS representative, upon request, the name and address (including street address or post office box number, and ZIP Code) of the person designated by the sponsoring organization or manager to maintain the records required by this section. Management must provide this information within 30 days of the request.

(b) *Inspection of records.* The management of any horse show, horse exhibition, or horse sale or auction shall permit any authorized HPI or APHIS representative, upon request, to examine and make copies of any and all records pertaining to any horse, either required in any part of the regulations, or otherwise maintained, during ordinary business hours or such other times as may be mutually agreed upon. A room, table, or other facilities necessary for proper examination of such records shall be made available to the APHIS representative or authorized HPI.

(c) *Reporting.* The reports in this paragraph may be submitted by mail, fax, or electronic means such as email.⁴ The electronic means is strongly preferred.

(1) Within 30 days following the conclusion of any horse show, horse exhibition, or horse sale or auction containing Tennessee Walking Horses, Racking Horses, or related breeds that perform with an accentuated gait that raises concerns about soring, the management of such show, exhibition, sale or auction shall submit to the Administrator the information required by paragraph (a)(1) of this section for

⁴ See footnote 3.

each horse disqualified by management or its representatives from being shown, exhibited, sold or auctioned, and the reasons for such action. If no horses are disqualified, the management shall submit a report so stating.

(2) Within 30 days following the conclusion of any horse show, horse exhibition, or horse sale or auction which does *not* include Tennessee Walking Horses, Racking Horses, or related breeds that perform with an accentuated gait that raises concerns about soring, the management of such show, exhibition, sale or auction shall inform the Administrator of any case where a horse was prohibited by management or its representatives from being shown, exhibited, sold or auctioned because it was found to be sore.

§ 11.12 Inspection procedures for HPIs.

(a) *Required inspections.* (1) The HPI shall physically inspect:

(i) All horses that perform with an accentuated gait that raises concerns about soring entered for sale or auction;

(ii) All horses, regardless of breed, entered in any animated gait class (whether under saddle, horse to cart, or otherwise);

(iii) All horses that perform with an accentuated gait that raises concerns about soring entered for exhibition before they are admitted to be shown, exhibited, sold, or auctioned, except as provided in paragraph (a)(2) of this section;

(iv) All horses that perform with an accentuated gait that raises concerns about soring and that are tied first in their class or event; and

(v) Any other horse in a class or event at any horse show or exhibition that, in the view of the HPI, raises concerns about soring. Such inspection shall be for the purpose of determining whether any such horse is sore or the custodian of the horse is otherwise in noncompliance with the Act or the regulations in this part. Such physical inspection shall be conducted in accordance with the inspection procedures provided for in this section.

(2) When a horse is presented for inspection, its custodian shall present the HPI with a record or entry card that includes identifying information about the horse pursuant to § 11.10(a)(5). The HPI shall observe horses warming up and during actual performances whenever possible, and shall inspect any horse in the barn area and show grounds as he or she deems necessary at any time to determine whether the custodian of any such horse shown, exhibited, sold, or auctioned is in

noncompliance with the Act or regulations.

(3) Horses that perform with an accentuated gait entered in classes in which the horses will *not* be judged on their gait may not need to be inspected if the management submits a class list⁵ to the Administrator for review and the Administrator waives inspection for the class. The waiver must be requested along with the required notification to the Administrator that the event will occur and must be granted prior to judging of the class, or the HPI will inspect the horses.

(4) The HPI shall immediately report, to the management of any horse show, horse exhibition, or horse sale or auction, any horse which, in his or her opinion, is sore or otherwise in alleged violation of the Act or regulations. Such report shall be made before the show class or exhibition involving the horse has begun or before the horse is offered for sale or auction.

(5) Horses dismissed from the show arena, whether by a judge, steward, or custodian of the horse, must be taken directly to the inspection area for follow-up inspection by a HPI or an APHIS representative. Horses that suffer serious illness or injury while performing and determined by an authorized HPI or APHIS representative to require immediate veterinary treatment are not required to return to the inspection area at that time.

(b) *Inspection procedures.* (1) The HPI must ensure that all tack except for a halter and lead rope is removed from the horse during inspection, as required in § 11.5(c).

(2) During the preshow inspection, the HPI shall direct the custodian of the horse to lead, walk, and turn the horse in a figure-eight that allows the HPI to determine whether the horse exhibits a gait deficiency. The HPI shall determine whether the horse moves in a free and easy manner.

(3) The HPI shall digitally palpate the front limbs of the horse from knee to hoof, with particular emphasis on the fetlocks and pasterns. Digital palpation must be of a pressure sufficient to blanch, or whiten, the thumb of the inspecting HPI. The HPI shall inspect the posterior surface of the pastern by picking up the hoof and examining the posterior (flexor) surface. The HPI shall apply digital pressure to the pocket (sulcus), including the bulbs of the heel, and continue the palpation to the medial and lateral surfaces of the pastern, being careful to observe for responses to pain in the horse. While

⁵ See footnote 3, which includes the email address for submitting the list.

continuing to hold onto the pastern, the HPI shall extend the hoof and limb of the horse to inspect the front (extensor) surfaces, including the coronary band. The HPI may inspect the rear limbs of all horses inspected after showing, and may inspect the rear limbs of any horse inspected preshow or on the showgrounds when he deems it necessary, except that the HPI shall inspect the rear limbs of all horses exhibiting lesions on, or unusual movement of, the rear limbs. While carrying out the procedures set forth in this paragraph, the HPI shall also inspect the horse to determine whether it is compliant with the scar rule in § 11.3, and particularly whether there is any evidence of inflammation, edema, proliferating granuloma tissue, or other evidence of prior abuse.

(4) The HPI shall observe and inspect all horses for compliance with the provisions set forth in § 11.2.

(5) The HPI shall instruct the custodian of the horse to control it by holding the lead rope approximately 18 inches from the halter. The HPI shall not be required to inspect a horse if it is presented in a manner that might cause the horse not to react to a HPI's inspection, or if whips, cigarette smoke, or other actions or paraphernalia are used to distract a horse during inspection. Horses that are not presented in a manner to allow their proper inspection, as well as unruly or fractious horses, will be prohibited from showing. The HPI shall report such incidents to show management and APHIS.

(c) *Inspection logistics.* (1) In shows with 150 horses or more are entered, an authorized HPI may inspect horses 3 classes ahead of the time such horses are to be shown but only if another authorized HPI can provide continuous and uninterrupted supervision of the designated warm-up area for the inspected horses. In shows with fewer than 150 horses are entered, the HPI may inspect horses 2 classes ahead of the time the inspected horses are to be shown.

(2) Inspected horses shall be held in a designated area that is under observation by an authorized HPI or APHIS representative. Horses shall not be permitted to leave the designated warm-up area before showing. Only the custodian, the trainer, the rider, authorized HPIs, and APHIS representatives shall be allowed in the designated area. Guests of management may be permitted in the designated area at the discretion of an authorized HPI or APHIS representative.

(d) *Additional inspection procedures.* The HPI may carry out additional

visual, physical, or diagnostic inspection procedures as he or she deems necessary to determine whether the horse is sore or the horse's custodian is otherwise not in compliance with the Act or regulations. The HPI may inspect and remove plastic, cotton, or any materials wrapped around the limbs of any horse at a horse show, exhibition, sale, or auction to determine whether any prohibited foreign substance is present. The HPI may require that horseshoes be removed by a farrier as part of the inspection. The HPI may use hoof testers on all horses.

§ 11.13 Requirements concerning persons involved in transportation of certain horses.

Each person who ships, transports, or otherwise moves, or delivers or receives for movement, any horse with reason to

believe such horse may be shown, exhibited, sold or auctioned at any horse show, horse exhibition, or horse sale or auction, shall allow the inspection of such horse at any such horse show, horse exhibition, horse sale, or horse auction to determine compliance with the Act and regulations and shall furnish to any authorized HPI or APHIS representative upon his or her request the following information:

(a) Name and address (including street address or post office box number, and ZIP Code) of the horse owner and of the shipper, if different from the owner or trainer;

(b) Name and address (including street address or post office box number, and ZIP Code) of the horse trainer;

(c) Name and address (including street address or post office box number, and ZIP Code) of the farrier;

(d) Name and address (including street address or post office box number, and ZIP Code) of the carrier transporting the horse, and of the driver of the means of conveyance used;

(e) Origin of the shipment and date thereof; and

(f) Destination of shipment.

Done in Washington, DC, this 21st day of July 2016.

Elvis S. Cordova,

Deputy Under Secretary for Marketing and Regulatory Programs.

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