

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

[Docket No. APHIS–2022–0004]

RIN 0579–AE70

**Horse Protection****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Proposed rule.

**SUMMARY:** We propose to amend the horse protection regulations to provide that the Animal and Plant Health Inspection Service (APHIS) will screen, train, and authorize qualified persons to conduct inspections at horse shows, horse exhibitions, horse sales, and horse auctions to ensure compliance with the Horse Protection Act (the Act). The proposed actions are intended to strengthen regulatory requirements to protect horses from the practice of soring and eliminate unfair competition as the Act requires.

**DATES:** We will consider all comments that we receive on or before October 20, 2023.

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

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov). Enter APHIS–2022–0004 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0004, 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 [www.regulations.gov](http://www.regulations.gov) or in our reading room, which is located in Room 1620 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.

**FOR FURTHER INFORMATION CONTACT:** Dr. Aaron Rhyner, DVM, Assistant Director, USDA–APHIS–Animal Care, 2150 Centre Ave., Building B, Mailstop 3W11, Fort Collins, CO 80526–8117; [horseprotection@usda.gov](mailto:horseprotection@usda.gov); (970) 494–7484.

**SUPPLEMENTARY INFORMATION:**

Under the Horse Protection Act (HPA), or the Act, 15 U.S.C. 1821 *et seq.*, the

Secretary of Agriculture is authorized to promulgate regulations to prohibit the movement, showing, exhibition, or sale of sore horses.

The Secretary has delegated responsibility for administering the Act to the Administrator of the U.S. Department of Agriculture’s (USDA) Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the Act has been delegated to the Deputy Administrator for Animal Care. Regulations and standards established under the Act are contained in 9 CFR part 11 (referred to below as the regulations), and 9 CFR part 12 lists the rules of practice governing administrative proceedings.

Section 2 of the Act, “Definitions” (15 U.S.C. 1821(3)), defines a “sore” horse as follows:

“The term ‘sore’ when used to describe a horse means that:

(A) An irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse,

(B) Any burn, cut, or laceration has been inflicted by a person on any limb of a horse,

(C) 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

(D) 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 used primarily in the training of Tennessee Walking Horses and racking horses<sup>1</sup> to produce an exaggerated gait in competition. However, the HPA’s prohibition against sored horses participating in shows, exhibitions, sales, and auctions applies to all horse breeds.<sup>2</sup> In addition to declaring that the soring of horses is cruel and inhumane, Congress further found that the movement, showing, exhibition, or sale of sore horses in intrastate commerce adversely affects and burdens interstate and foreign

<sup>1</sup> The racking horse is a breed derived from the Tennessee Walking Horse. It has a smooth, natural gait known as the “rack,” a four-beat gait with only one foot striking the ground at a time.

<sup>2</sup> APHIS monitors the activities of other breeds and investigates credible evidence of soring as warranted.

commerce and creates unfair competition.

**Background of HPA Regulations**

Under the HPA, it is unlawful for any person to show, exhibit, sell, or transport sore horses, or to use any prohibited equipment, device, paraphernalia, or substance in horse shows, exhibitions, sales, or auctions. The HPA holds horse owners responsible should they allow any such unlawful activities to occur, and requires management of horse shows, exhibitions, sales, and auctions (referred to as “management” or “event management,” below) to ensure that sore horses do not compete or otherwise participate in these events.

After Congress passed the HPA in 1970, APHIS established regulations to enforce the Act, including restrictions on the use of certain equipment, devices, and substances. In accordance with the Act, the regulations also include inspection provisions for detecting soring in horses at shows, exhibitions, sales, and auctions. In 1976, Congress amended the Act<sup>3</sup> to allow (but not require) the management of any horse show, exhibition, or sale or auction to appoint persons qualified to inspect horses for soreness. Section 4 of the Act (15 U.S.C 1823(c)) requires the Secretary of Agriculture to prescribe by regulation requirements for any appointment by the management of a horse show, exhibition, sale, or auction 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 the Act does not require that management appoint a qualified person to inspect horses, if management chooses not to do so it can be held liable for violating the Act if it fails to disqualify a sore horse from participating in an event. If, alternatively, event management appoints a qualified person to conduct inspections, management may be held liable only for failing to disqualify a sore horse after being notified by the qualified person or by the Secretary of Agriculture, or his or her designee, that a horse is sore.

Responding to Congress’ 1976 amendment to the Act, APHIS revised the regulations (44 FR 1558–1566, January 5, 1979) to include qualifications for “Designated Qualified Persons,” or DQPs, to serve as third-party inspectors employed and compensated by the industry, as well as provisions for certifying industry-run

<sup>3</sup> Public Law 94–360, 3, July 13, 1976, 90 Stat. 915; <https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg915.pdf>.

programs to train and license them. These programs are currently administered by Horse Industry Organizations, or HIOs.

HIOs currently fill several roles, both unregulated and regulated, for horse shows, exhibitions, sales, and auctions. For example, event management may retain an HIO to assist with activities not regulated under the Act, such as registering participants and coordinating event logistics, supplying show judges, and promoting events. Regulated HIO activities, in addition to training and licensing DQPs, include assessing and enforcing minimum penalties for certain violations of the regulations, conducting hearings for appeals of violations, and reporting disciplinary actions against exhibitors, event management, and DQPs to APHIS. Under the current regulatory regime, an HIO seeking certification to train and license DQPs is required to submit to APHIS a formal request in writing for certification of its DQP program and a detailed outline of the program, in accordance with paragraph (b) of § 11.7 of the regulations.<sup>4</sup>

Under the current Horse Protection program, DQPs are the primary party responsible for inspecting and diagnosing soreness in horses. A DQP is a qualified person who, under the provisions of 15 U.S.C. 1823(c) cited above, may be appointed by management of a horse show or sale to detect horses that are sore, and to otherwise conduct inspections for the purpose of enforcing the Act. DQPs may be reimbursed for services directly by event management or by an HIO which has contracted with them to provide inspections for events. DQPs must have equine experience and meet professional qualifications as set forth in § 11.7(a).

DQP candidates must successfully complete a formal training program developed and delivered by the HIO before they can be licensed, except that veterinarians already accredited by USDA may be licensed as DQPs without having to participate in formal training. Such veterinarians must also be a member of the American Association of Equine Practitioners, or large animal practitioners with substantial equine experience, or knowledgeable of equine lameness as related to soring and soring practices. Section 11.7(a)(1)(iii) states that veterinarians having such knowledge might include those with a small animal practice who own, train,

judge, or show horses, or be Doctors of Veterinary Medicine who teach equine related subjects in an accredited college or school of veterinary medicine.

Alternatively, DQPs may be farriers, horse trainers, and other knowledgeable individuals whose past experience and training would qualify them for positions as HIO stewards or judges (or their equivalent), provided that they are trained and licensed by an HIO or association whose DQP program has been certified by APHIS. Of the 59 persons licensed as DQPs in fiscal year 2022, only one is a veterinarian.

APHIS Veterinary Medical Officers (VMOs) may attend HPA-covered events unannounced to oversee and conduct inspections and to otherwise determine compliance with the Act. To ensure that horses are disqualified when soreness is detected or when other violations are found, APHIS also reviews reports by event management, HIOs, and DQPs, and conducts audits of records maintained by certified DQP programs.

APHIS has several options for resolving a case in which the evidence substantiates that an alleged violation has occurred. These include issuing official warnings to those involved in the alleged violation, offering to resolve the case through a stipulated penalty, and referring the case to the USDA Office of the General Counsel for formal administrative action before the USDA Office of Administrative Law Judges or referral to the U.S. Department of Justice.

### Summary of Current Regulations

The current structure of the Horse Protection regulations in 9 CFR parts 11 and 12 is summarized below.

Section 11.1, “Definitions,” lists the definitions for terms used throughout part 11.

Section 11.2, “Prohibitions concerning exhibitors,” lists general and specific prohibitions for any device, method, practice, or substance used on any horse at any horse show, exhibition, or horse sale or auction if such use causes or can reasonably be expected to cause such horse to be sore.

In § 11.2(a), the general prohibitions state that “no chain, boot, roller, collar, action device, nor any other 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.” Prohibitions regarding devices, equipment, or practices on any horse at any horse show, exhibition, or horse sale or auction are listed in paragraph (b) of § 11.2. (We discuss the specific prohibitions under

“Prohibitions Concerning Exhibitors” below.)

Paragraph (c) prohibits all substances on the extremities above the hoof of any Tennessee Walking Horse or racking horse while being shown, exhibited, or offered for sale at any horse show, exhibition, or horse sale or auction, except lubricants such as glycerin, petrolatum, and mineral oil, or mixtures. Lubricants can only be applied after the horse has been inspected by management or by a DQP, and lubricants that will be applied must be made available to APHIS personnel for inspection and sampling as deemed necessary.

Paragraph (d) provides specific requirements for rest periods during horse show and horse exhibition workouts or performances for 2-year-old Tennessee Walking Horses and racking horses, and working exhibitions for 2-year-old Tennessee Walking Horses and racking horses at sales or auctions.

In paragraph (e) of § 11.2, failure to provide information or providing any false or misleading information required by the Act or regulations or requested by Department representatives, by any person that owns, trains, shows, exhibits, or sells or has custody of, or direction or control over any horse shown, exhibited, sold, or auctioned or entered for the purpose of being shown, exhibited, sold, or auctioned at any horse show, exhibition, or horse sale or auction, is prohibited.

Under § 11.3, “Scar rule,”<sup>5</sup> 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 the “anterior and anterior-lateral surfaces of the fore pasterns (extensor surface)” are required to “be free of bilateral granulomas,<sup>6</sup> 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) of § 11.3 states the “posterior surfaces of the pasterns (flexor surface), including the sulcus or “pocket” may show bilateral areas of

<sup>5</sup> The term “scar rule” refers generally to the presence of visible lesions or other abnormalities on the horse’s pasterns suggesting that a horse has been subjected to soring. We discuss the scar rule in detail in a later section titled “Dermatologic Changes and the Scar Rule.”

<sup>6</sup> “Granuloma” is defined in the regulation 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. This regulatory definition covers a considerably wider range of lesions than does the medical definition of *granuloma*. We elaborate on this distinction in “Dermatologic Changes and the Scar Rule.”

<sup>4</sup> Details of the current HIO certification process are available in an APHIS-Animal Care Tech Note located at [https://www.aphis.usda.gov/animal\\_welfare/hp/downloads/tech-note-certification-requirements-dqp-programs-web-layout.pdf](https://www.aphis.usda.gov/animal_welfare/hp/downloads/tech-note-certification-requirements-dqp-programs-web-layout.pdf).

uniformly thickened epithelial tissue if such areas are free of proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation.”

Section 11.4, “Inspection and detention of horses,” includes requirements regarding inspection of horses by APHIS representatives, as well as detention of horses for inspection if an APHIS representative has probable cause to believe that a horse is sore. This section also includes provisions for maintaining the well-being of a horse in detention and for informing the owner, trainer, exhibitor, or other person having immediate custody of or responsibility for any horse allegedly found to be in violation of the Act or the regulations of such alleged violation before the horse is released from detention. Provisions for requesting reexamination and testing of detained horses are also included in this section.

Under § 11.5, “Access to premises and records,” paragraph (a) provides that the management of any horse show, exhibition, or horse sale or auction “shall, without fee, charge, assessment, or other compensation, provide 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.” Management must also provide an adequate, 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 horse exhibition, or while such horses are being sold or auctioned or offered for sale or auction at any horse sale or horse auction.

Paragraph (b) of § 11.5 requires that “[e]ach horse owner, exhibitor, or other person having custody of or responsibility for 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 Designated Qualified Person 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 persons must also promptly present his or her horse for inspection

upon notification by any APHIS representative or DQP appointed by management for the purpose of determining whether such horse is in compliance with the Act and regulations.

Section 11.6, “Inspection space and facility requirements,” requires the management of every horse show, exhibition, or horse sale or auction containing Tennessee Walking Horses or racking horses to provide, without fee, sufficient space and facilities for APHIS representatives to carry out their duties under the Act and regulations, whether or not management has received prior notification by APHIS. The management of every horse show, exhibition, horse sale or auction which does not contain Tennessee Walking Horses or racking horses must provide, without fee, sufficient space and facilities when requested to do so by APHIS representatives. Space and facility requirements include sufficient space for inspecting horses, protection from the elements, a means to control crowds and onlookers, an accessible, reliable, and convenient 110-volt electrical power source, if electrical service is available at the site and is requested by the APHIS representative, and appropriate inspection waiting and detention areas.

Paragraph (a) of § 11.7, “Certification and licensing of designated qualified persons (DQP’s)” currently lists basic professional qualifications required of DQP applicants and paragraph (b) lists certification requirements for DQP programs certified by APHIS and initiated and maintained by HIOs or associations.<sup>7</sup> As part of maintaining a DQP program that APHIS has certified, HIOs are responsible for delivering the training curriculum as well as ensuring that criteria for selecting and licensing DQPs are met. HIOs must also submit records to APHIS containing details of horse shows, exhibitions, sales, and auctions at which DQPs appointed by them inspect horses.

Paragraph (c) contains DQP licensing requirements in HIOs or associations receiving Department certification for the training and licensing of DQPs, and paragraph (d) of § 11.7 lists recordkeeping and other requirements to be met by HIOs or associations and DQPs.

Paragraph (e) of § 11.7 prohibits the management of any horse show, exhibition, horse sale, or horse auction from appointing any person to detect and diagnose horses which are sore or to otherwise inspect horses for the

purpose of enforcing the Act if such person does not hold a valid DQP license, if the license is canceled, or if the person has been disqualified by the Secretary from performing diagnosis, detection, and inspection under the Act, after notice and opportunity for a hearing.

Paragraph (f) contains provisions for canceling a DQP license. Concluding this section, paragraph (g) provides the process for revoking the DQP program certification of an HIO or association.

Section 11.20 of the current regulations lists the responsibilities and liabilities of the management of any horse show, exhibition, or horse sale or auction which does not appoint a DQP to inspect horses, noting that in such cases event management is responsible and legally liable for identifying all horses that are sore or otherwise in violation of the Act or regulations and must disqualify or disallow any such horses from participating or competing in any horse show, exhibition, horse sale, or horse auction. If management does appoint a DQP to inspect horses, the section provides that management must not take any action which would interfere with or influence a DQP in carrying out his or her duties or making decisions concerning whether or not any horse is sore or otherwise in violation of the Act or regulations.

Section 11.20 also includes responsibilities for the management of any horse show, exhibition, horse sale or auction which designates and appoints one or more DQPs to inspect horses. Management in such cases must accord the DQP 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.

Section 11.21 lists inspection procedures that DQPs must follow, including requirements for walking and turning the horse in a manner that allows the DQP to determine whether the horse exhibits signs of soreness. This section also includes the procedure for proper palpation to detect soreness, as well as procedures for conducting horses through other elements of the inspection process.

Under § 11.22, “Records required and disposition thereof,” the management of any horse show, exhibition, or horse sale or auction, that contains Tennessee Walking Horses or racking horses is required to maintain for at least 90 days following the closing date of the show, exhibition, or sale or auction, all pertinent records. If specifically required by APHIS, management may be required to hold the records specified longer than 90 days.

<sup>7</sup> “Association” refers to HIOs using that term to describe themselves.

Under paragraph (a) of § 11.23, “Inspection of records,” the management of any horse show, exhibition, or horse sale or auction must allow any APHIS representative, upon request, to examine and make copies of any and all records pertaining to any horse. Similarly, paragraph (b) requires that HIOs or associations that train, maintain, and license inspectors under a certified DQP program must permit any APHIS representative, upon request, to examine and copy any and all records relating to the DQP program which are required by any part of the regulations.

In § 11.24, “Reporting by management,” paragraph (a) states that within 5 days following the conclusion of any horse show, exhibition, or horse sale or auction, containing Tennessee Walking Horses or racking horses, management must submit to the Regional Director for the State in which the show, exhibition, sale or auction was held, information required in paragraphs (a)(1) through (a)(6) of § 11.22 for each horse excused or disqualified by management or its representatives from being shown, exhibited, sold or auctioned, and the reasons for such action.

In paragraph (b) of § 11.24, within 5 days following the conclusion of any horse show, exhibition, or horse sale or auction which does not contain Tennessee Walking Horses or racking horses, the management must inform the Regional Director for the State in which the show, exhibition, sale or auction was held, of any case where a horse was excused or disqualified by management or its representatives from being shown, exhibited, sold or auctioned because it was found to be sore.

Section 11.25, “Minimum penalties to be assessed and enforced by HIOs that license DQPs” lists suspensions and minimum penalties for violations of the Act and regulations. HIOs are required to include penalties in their rulebooks<sup>8</sup> for violations that equal or exceed the penalties listed in paragraph (c) of the section; minimum penalties are specified in that paragraph. HIOs are also required in this section to assess and enforce the penalty, as well as and any suspension included with the penalty. The HIO must provide a process, subject to APHIS approval, for alleged violators to appeal penalties.

Section 11.40 lists prohibitions and requirements concerning persons involved in transportation of certain

horses, including providing APHIS with transportation information in order to determine compliance with the Act and regulations.

Section § 11.41 currently requires each HIO or association which sponsors or sanctions any horse show, exhibition, or sale or auction, to furnish the Department by March 1st of each year with all such HIO or association rulebooks, and disciplinary procedures for the previous year pertaining to violations of the Act or regulations, applicable to such horse show, exhibition, or sale or auction. Each HIO or association must also furnish the Department with a quarterly report of all disciplinary actions taken against the management of<sup>9</sup> any horse show, exhibition, sale, or auction, any exhibitor, or any licensed DQP, for violation of the Act or regulations, and the results. The Department retains the authority to initiate enforcement proceedings with respect to any violation of the Act.

Part 12 of the Horse Protection regulations reference the rules of practice for USDA as promulgated in 7 CFR part 1.

Section 12.1 addresses the scope and applicability of rules of practice. These rules of practice are applicable to adjudicatory, administrative proceedings under section 6(a) of the Act (15 U.S.C. 1825(a)) and sections 6(b) and (c) of the Act (15 U.S.C. 1825(b) and (c)).

Lastly, § 12.10, “Stipulations,” provides that the Administrator may enter into a stipulation with any person notified of an apparent violation of the Act or regulations if that person waives a hearing and agrees to pay a specified civil penalty within a designated time.

#### **Evaluation of the Horse Protection Program**

Consistent with the aims of the HPA, the goal of the USDA–APHIS Horse Protection program and regulations is to eliminate the inhumane practice of soring and by so doing promote fair competition in horse shows and exhibitions. Since 1979, when APHIS promulgated the regulations to allow management to appoint qualified persons to conduct inspections, the Agency has regularly evaluated the effectiveness of the Horse Protection program and sought ways to improve its approaches to ending soring.

Unfortunately, soring persists despite the Agency’s efforts to regulate and

work with the Tennessee Walking Horse and racking horse industries to eliminate the practice. In September 2010, USDA’s Office of the Inspector General (OIG) formally evaluated APHIS’ oversight of the Horse Protection program<sup>10</sup> in accordance with generally accepted government auditing standards.<sup>11</sup> USDA–OIG concluded that the inspection program, in which the horse industry trains and licenses DQPs to inspect horses under APHIS’ oversight, is ineffective in ensuring that horses are not sore upon inspection as required under the Act.

As part of the audit, OIG auditors performed fieldwork in 2008 and 2009 at APHIS offices in Washington, DC and Riverdale, Maryland. In addition, auditors completed field visits to horse shows in Florida, Kentucky, Missouri, South Carolina, and Tennessee, and reviewed laws, regulations, procedures, and inspection protocols relating to oversight of DQPs. They also interviewed APHIS program officials to understand how they ensure oversight of their respective programs and reviewed available laws, regulations, procedures, and program documents to evaluate program implementation. Audit staff also interviewed personnel from USDA–APHIS Investigative and Enforcement Services to understand their role in collecting evidence for Federal cases, as well as USDA Office of General Counsel officials to learn their processes for evaluating potential cases for enforcement, prosecution, and closing of Federal cases related to violations of the Act. APHIS Review and Analysis Branch personnel were interviewed regarding HIO record reviews performed and their study of the violation rate disparity that exists when APHIS veterinarians are present at shows, sales, and exhibitions.

OIG auditors also reviewed show and sale reports for 34 shows that they attended in 2008, in order to identify problems noted by APHIS veterinarians relating to DQP performance and the issuance of violation tickets. Audit staff interviewed HIO officials to discuss their perspective on APHIS’ oversight of the DQP program and interviewed DQPs to discuss the program and possible improvements. Finally, auditors attended a training seminar hosted by

<sup>10</sup> USDA–OIG, Administration of the Horse Protection Program and the Slaughter Horse Transport Program Audit Report, 33601–2–KC, September 2010. The document is available on the [Regulations.gov](https://www.regulations.gov) website (see under **ADDRESSES** in this document for a link to *Regulations.gov*).

<sup>11</sup> *Generally Accepted Government Auditing Standards* (the “Yellow Book”) is a publication of the U.S. Government Accountability Office (GAO): <https://www.gao.gov/assets/gao-18-568g.pdf>.

<sup>8</sup> Rulebooks issued by HIOs or associations also include rules and regulations for showing horses and descriptions of the several classes and divisions in which horses show.

<sup>9</sup> Due to a typographical error, the regulations in this section currently say, “management or” rather than “management of.” However, contextually, the latter is implied.

APHIS for Tennessee Walking horse trainers to learn about new inspection procedures and to observe APHIS personnel interacting with industry trainers.

During these evaluations, 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 concluded that these conflicts of interest contributed to horses being allowed to compete while sore. They noted that some DQPs are reluctant to dismiss sore horses discovered during inspections, as doing so inconveniences event management and makes it less likely that such DQPs will be hired to inspect at future 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 conducting inspections at another show. As a consequence, auditors found that some DQPs frequently failed to inspect horses visually and physically in accordance with the regulations and allowed sore horses to show.

OIG auditors also discovered that some DQPs avoid documenting instances of soring in several ways. DQPs may provide only a warning to exhibitors when they detect soring in a horse, when under the regulations they are required to recommend to event management that the horse be prohibited from performing. The auditors also concluded that DQPs fail to sufficiently inspect and weigh chains, boots, and other action devices as required under the regulations. The report noted that when DQPs document a noncompliance with the Act, they sometimes identify a stable hand or a relative of the exhibitor as the alleged violator, so that the person actually at fault for the alleged violation can avoid responsibility. Further, the OIG report found that no reliable controls are in place to prevent an exhibitor who is serving an industry-issued suspension for a violation from competing in another show.

USDA–OIG's findings regarding the persistence of soring are consistent with those of the USDA's Office of the Judicial Officer (OJO), which issues final decisions on behalf of the Secretary of Agriculture for purposes of

judicial review.<sup>12</sup> The Secretary of Agriculture, through the OJO, has found that DQP inspections of horses are less probative than inspections conducted by APHIS VMOs. Decisions issued by the OJO include accounts of exhibitors showing sore horses that had been inspected and cleared by DQPs, cursory inspections or use of incorrect methods by DQPs, and exhibitors attempting to avoid violations by having another person acknowledge responsibility.

As the USDA–OIG audit showed, DQPs are less likely to issue violations and more likely to allow sore horses to perform when APHIS officials are not present to observe and confirm the outcome of inspections. In a review of program data from 2005 to 2008, the OIG audit report<sup>13</sup> noted that out of 1,607 events in which DQPs provided inspection services, 49 percent of the violations they issued occurred at the 108 events at which APHIS officials were also present, suggesting that DQPs were considerably more inclined to issue violations when under APHIS observation than when they were not.

Furthermore, inspection data compiled by APHIS from fiscal year (FY) 2017 to 2022 (Tables 1 and 2, below) shows that inconsistencies persist in the number of violations detected by APHIS officials and those issued by DQPs inspecting horses. During this period, APHIS attended

<sup>12</sup> Decisions for showing sore horses include: Decision and Order, Tracy Essary (HPA Docket No. 15–0041, June 15, 2016): <http://nalcprowpenginepowered.com/wp-content/uploads/assets/decisions/061516-Essary-HPA15-0041-DO.pdf>; Decision and Order, Rocky Roy McCoy (HPA Docket No.16–0026, June 2, 2016): <http://nalcprowpenginepowered.com/wp-content/uploads/assets/decisions/060216-McCoy-HPA16-0026-DO.pdf>; and Decision and Order, Justin Jenne (HPA Docket No. 13–0080, July 29, 2014): [https://www.usda.gov/sites/default/files/documents/140729\\_13-0080%20Justin%20Jenne\\_%20DO.pdf](https://www.usda.gov/sites/default/files/documents/140729_13-0080%20Justin%20Jenne_%20DO.pdf). Decisions also include those issued for horses sore under the scar rule, as in Decision and Order, Randall Jones (HPA Docket No. 13–0053, June 29, 2015): <http://nalcprowpenginepowered.com/wp-content/uploads/assets/decisions/062915-Jones-HPA13-0053-DO.pdf>. Decisions of the Office of the Judicial Officer are located at <https://www.usda.gov/oha/services/decisions>. Decisions entered prior to January 1, 2017, are available on the University of Arkansas National Agricultural Law Center website: <https://nationalaglawcenter.org/decisions/>. In addition, a digest published by USDA from 2013 to 2020, *Agricultural Decisions*, contains indexed summaries of decisions and orders issued in adjudicatory proceedings conducted for the Department: <https://www.usda.gov/oha/services/agriculture-decisions-publications>.

<sup>13</sup> See footnote 10. USDA–OIG's data review and table is found on page 11 of the audit report.

about 16 percent of all HPA-covered events featuring Tennessee Walking Horses, racking horses, and other breeds at which horse industry DQPs conducted inspections, performance as well as flat-shod classes. While APHIS attended only a fraction of the events at which DQPs were appointed to inspect horses, APHIS consistently reported higher rates of noncompliance at these events based on its VMO inspection findings. Most horses inspected by APHIS officials at these events were chosen at random, although APHIS chose to inspect some horses for which a suspicion of soring was warranted.<sup>14</sup>

Moreover, DQPs consistently reported higher rates of noncompliance when APHIS officials were in attendance than when they were not. In FY 2021, for example, if only horses wearing “performance packages” (*i.e.*, a padded horse) are considered, APHIS officials detected 158 instances of noncompliance with the HPA out of the 398 horses APHIS inspected at the 17 events attended, resulting in close to a 40 percent rate of noncompliance for performance horses. In contrast, of the 207 events attended and inspected by DQPs during the same period, DQPs detected just 321 instances of noncompliance with the HPA out of the 11,825 performance horses they inspected, recording only a 1.9 percent rate of noncompliance when APHIS officials were not present and 7.1 percent when they were.

Also notable is that the rate of noncompliance detected for horses wearing performance packages was significantly and consistently higher than that detected for flat-shod horses (Table 2). The marked difference between the rates of noncompliance found in padded performance classes and those found in flat-shod classes indicates that soring is concentrated in horses made to perform the exaggerated and unnatural chest-high gait popularly known as the “big lick.” Table 3 shows a similar discrepancy between performance and flat-shod horses regarding positive tests for prohibited substances.

<sup>14</sup> The rates of noncompliance reported by APHIS VMOs represent the sampling of horses that they inspected, not every horse at each event. Moreover, APHIS records of inspections conducted by VMOs do not differentiate between horses chosen at random and those chosen on suspicion of soring. Horses in the latter group are more likely to be diagnosed, as that sample presented indications of soring prior to inspection.

TABLE 1—PERFORMANCE HORSE INSPECTION DATA FOR HPA-COVERED EVENTS FROM FY 2017–2022

	Entries inspected by DQPs (APHIS not present)	HPA non-compliances detected by DQPs (APHIS not present)	Non-compliance rate detected by DQPs (APHIS not present) (%)	Entries inspected by DQPs (APHIS present)	HPA Non-compliances detected by DQPs (APHIS present)	Non-compliance rate detected by DQPs (APHIS present) (%)	Entries inspected by APHIS <sup>1</sup>	HPA Non-compliances detected by APHIS	Non-compliance rate detected by APHIS (%)
FY 2022 .....	9,746	174	1.8	3,220	219	6.8	930	317	34.1
FY 2021 .....	11,825	224	1.9	1,373	97	7.1	398	158	39.7
FY 2020 .....	8,522	251	2.9	1,107	88	7.9	276	79	28.6
FY 2019 .....	9,698	417	4.3	2,978	297	10.0	901	233	25.9
FY 2018 .....	9,290	277	3.0	4,427	230	5.2	1,081	100	9.3
FY 2017 .....	9,992	154	1.5	4,112	163	4.0	1,005	126	12.5

<sup>1</sup> Horse industry DQPs conducted inspections at these events. Not included are the few events APHIS attended where DQPs were not present.

TABLE 2—FLAT-SHOD HORSE INSPECTION DATA FOR HPA-COVERED EVENTS FROM FY 2017–2022

	Entries inspected by DQPs (APHIS not present)	HPA non-compliances detected by DQPs (APHIS not present)	Non-compliance rate detected by DQPs (APHIS not present) (%)	Entries inspected by DQPs (APHIS present)	HPA non-compliances detected by DQPs (APHIS present)	Non-compliance rate detected by DQPs (APHIS present) (%)	Entries inspected by APHIS <sup>1</sup>	HPA non-compliances detected by APHIS	Non-compliance rate detected by APHIS (%)
FY 2022 .....	29,822	16	0.1	4,956	16	0.3	357	6	1.7
FY 2021 .....	33,949	31	0.1	1,624	3	0.2	143	1	0.7
FY 2020 .....	27,252	16	0.1	758	5	0.7	50	1	2.0
FY 2019 .....	35,302	32	0.1	4,045	24	0.6	297	16	5.4
FY 2018 .....	32,624	14	0.04	5,168	8	0.2	475	5	1.1
FY 2017 .....	31,871	9	0.03	3,818	17	0.4	483	3	0.6

<sup>1</sup> Horse industry DQPs conducted inspections at these events. Not included are the few events APHIS attended where DQPs were not present.

TABLE 3—PROHIBITED SUBSTANCE TESTING DATA FOR HPA-COVERED EVENTS FROM FY 2017–2022

	Performance horses tested for prohibited substances	Performance horses positive for prohibited substances <sup>1</sup>	Flat-shod horses tested for prohibited substances	Flat-shod horses positive for prohibited substances <sup>2</sup>
FY 2022 .....	1,196	55	382	4
FY 2021 .....	1,104	71	292	2
FY 2020 .....	51	8	11	1
FY 2019 .....	111	84	23	3
FY 2018 .....	194	144	66	28
FY 2017 .....	123	83	35	10

<sup>2</sup> These numbers reflect substances the laboratory reported to APHIS as significant findings.

While the data in tables 1 and 2 contain statistical anomalies and represent only a sampling of rates of noncompliance, the discrepancy between soring detected when APHIS officials are present at shows and when they are not is broadly consistent over time. We have considered several possible explanations for this discrepancy. In the absence of APHIS representatives, some DQPs may feel complacent and less focused on inspecting horses accurately, not due to any intention to allow a sore horse to show, but simply through inattention. It also may be that some DQPs are not receiving proper training in conducting inspections, although the evidence above suggests that, on the whole, DQPs

are capable of diagnosing sore horses when under observation by APHIS representatives. We find none of these explanations credible in accounting for the discrepancy in soring diagnoses with and without APHIS representatives present, nor do we believe that a significantly different outcome would emerge if APHIS inspected every horse at every event. Our conclusion, as was also the conclusion of the OIG audit, is that a key obstacle to eliminating soring under the Horse Protection program is the unwillingness of some DQPs to correctly palpate and observe other actions necessary to making a proper diagnosis.

The data and findings presented in the OIG report and our evaluation of

inspection records show that soring is still underdiagnosed in part because of the above noted conflicts of interest within the Tennessee Walking Horse and racking horse industries. The report also confirmed that APHIS lacked a sufficient number of veterinary officers to attend and oversee inspections at all shows. The report recommended that APHIS abolish the DQP program and establish by regulation that only independent, accredited veterinarians perform inspections at sanctioned shows. It also recommended that better controls be instituted to prevent persons disqualified for HPA infractions at sanctioned events from participating in subsequent events. The report added that APHIS should hire and train these

inspectors and pass the costs for inspections along to event management. In return, shows would benefit from improved compliance and exhibitors would see fairer competition.

As indicated in its 2010 response to the report, APHIS agreed with the intent of the USDA–OIG recommendations. APHIS responded that it would propose a regulatory change to abolish the current DQP licensing system and have the Agency be the only entity authorized to train and license DQPs but stated that it could not predict the timing for doing so. APHIS also stated that it would establish strict qualifications to prohibit conflicts of interest so that DQPs having close ties with the horse show industry would be excluded from licensing. APHIS additionally declared at the time that it would continue to allow HIOs to hire and compensate DQPs to inspect horse shows but they would have to use only DQPs trained and licensed by APHIS.<sup>15</sup> This would replace the practice, still in place today, of DQPs being trained and licensed under an HIO-run program under APHIS oversight, a practice that, as discussed immediately below, APHIS has determined to present an insoluble conflict of interests.

APHIS' response to the USDA–OIG audit report formed the basis for our proposed 2016 revision of the HPA regulations, discussed below.<sup>16</sup> After issuance of the report in 2010, APHIS also undertook several nonregulatory approaches to help the industry improve compliance with the Act, among them increased engagement with industry groups, inspection workshops for DQPs, and stepped-up APHIS presence at certain shows to oversee inspections and check whether disqualified persons are participating. From 2018 to the present, APHIS has also hosted joint training sessions with the HIOs to ensure all DQPs are receiving the same training. Despite being directly trained by APHIS, DQPs continued to perform unsatisfactory inspections, with no substantial reduction in the number of sore horses performing in certain show classes. We ultimately determined that the problem was not inadequate training, but rather a regulatory structure in which DQPs lacked sufficient latitude to inspect

horses properly without fear of reprisal from management and often had strong incentives not to do so.

Two provisions, both in § 11.7(d)(7) of the current regulations, specifically address conflicts of interest—one that prohibits a DQP from exhibiting or selling a horse at an event in which he or she has been appointed to inspect horses, and another in which the DQP cannot inspect at a show or sale in which horses owned by a member of his or her immediate family or employer are competing or are being offered for sale. While these provisions focus on two clearly apparent conflicts of interest, many others are not addressed in the regulations and are not enforceable through nonregulatory actions. A DQP may, for example, have business or other transactional interests with show judges, HIO officials, or others who have horses competing in events inspected by that DQP. We believe that a regulatory change that brings inspectors directly under APHIS oversight is necessary so that they can be sufficiently screened for conflicts of interest as a condition of Agency authorization to conduct inspections.

#### 2011 HPA Rulemaking

In 2011, APHIS initiated work on a rulemaking to reduce industry conflicts of interest and participation of suspended persons in HPA-covered events, as well as further restrict the physical means by which horses are soled. On July 26, 2016, we published in the *Federal Register* (81 FR 49112–49137, Docket No. APHIS–2011–0009) a proposal to amend the regulations to provide that APHIS, rather than HIOs, would train and license inspectors to diagnose sore horses and determine compliance with the Act at horse shows, exhibitions, sales, and auctions.

We invited the public to address our proposal to have APHIS train and license inspectors to address the conflict of interests between DQPs and the industry that results in underreporting violations of the Act. Following the recommendation from the USDA–OIG audit, we further proposed that only veterinarians and veterinary technicians,<sup>17</sup> screened by APHIS for conflicts of interest and having equine experience, may be licensed to inspect horses for sores at horse shows, exhibitions, sales, and auctions. This would help ensure that inspectors possess the medical expertise and

adherence to professional veterinary ethics codes to detect and diagnose sore horses capably and reliably.

We also proposed in 2016 to amend the prohibitions on devices, equipment, substances, and practices that can cause or mask sores or can reasonably be expected to do so, particularly with respect to Tennessee Walking Horses and racking horses.

We solicited public comments on the proposal and received 130,975 submissions, as well as comments provided at 5 listening sessions. Comments came from State and Federal elected officials, including current and former U.S. Senators and Representatives; State agricultural agencies; farm bureaus; gaited horse organizations; trotting horse federations and organizations; other domestic and foreign horse industry organizations; veterinarians and veterinary associations; horse rescue and animal welfare advocacy organizations; horse owners, trainers, and farriers; small business owners; and the general public.

After responding to public requests to extend the proposal comment period,<sup>18</sup> we reviewed the comments and, on January 11, 2017, we submitted a final rule to the Office of the Federal Register (OFR) for publication. That rule was filed for public inspection, in advance of publication, on January 19, 2017. However, on January 20, 2017, the Chief of Staff of the President issued a memorandum instructing Federal agencies to immediately withdraw all regulations awaiting publication at the OFR.<sup>19</sup> In response to the memorandum, APHIS withdrew the rule from the OFR and it did not publish. The proposed rule on which the final rule was based was also subsequently withdrawn<sup>20</sup> from publication.

On August 13, 2019, the Humane Society of the United States and other non-governmental organizations filed a lawsuit. HSUS argued that the 2017 HPA final rule had been duly promulgated and could not be withdrawn without first providing public notice in the *Federal Register* and an opportunity for public comment. On July 27, 2020, the U.S. District Court for the District of Columbia dismissed the suit, holding that a rule becomes final upon publication in the *Federal Register*.

On July 22, 2022, the U.S. Court of Appeals for the D.C. Circuit reversed and remanded, ruling that APHIS had to

<sup>15</sup> USDA–OIG Audit Report, page 18.

<sup>16</sup> In a separate rulemaking, APHIS also published a proposal (76 FR 30864–30868, Docket No. APHIS–2011–0030) on May 27, 2011, to require HIOs or associations that license DQPs to assess and enforce minimum penalties for violations of the Act and regulations. A final rule (77 FR 33607–33619) was published June 7, 2012, and became effective 30 days later. These requirements are located in § 11.25 of the current regulations.

<sup>17</sup> Veterinary technicians are not mentioned in the USDA–OIG audit report, but we determined in the 2016 rulemaking that persons holding this credential from an accredited program and having adequate equine experience are qualified and may be considered for licensure to inspect horses.

<sup>18</sup> 81 FR 65307 (Docket No. APHIS–2011–0009), September 22, 2016.

<sup>19</sup> 82 FR 8346, January 20, 2017.

<sup>20</sup> December 13, 2021 (86 FR 70755, Docket No. APHIS–2011–0009).

provide notice and an opportunity for comment before withdrawing a rule that was available for public inspection, but not yet published in the **Federal Register**. *Humane Soc’y of the U.S. v. U.S. Dep’t of Agric.*, 41 F.4th 564, 565 (D.C. Cir. 2022). The mandate was issued December 13, 2022.

On May 12, 2023, the U.S. District Court issued its decision on remand without vacatur, but ordered that the 2017 rule would take automatic effect if the agency failed to take appropriate remedial action: Either promulgate an updated version of the rule, or otherwise remedy the deficiency in the withdrawal of the 2017 rule by conducting notice and comment on the withdrawal. *Humane Soc’y of the U.S. v. U.S. Dep’t of Agric.*, No. 19–cv–2458 BAH, 2023 WL 3433970 (D.D.C. May 12, 2023). APHIS signaled to the Court its intent to remedy the deficiency by proposing to withdraw the 2017 final rule through notice and comment processes, and a notice of proposed rulemaking to withdraw the 2017 rule was published in the **Federal Register** on July 21, 2023 (88 FR 47068–47071, Docket No. APHIS–2011–0009).

This current proposal incorporates steps taken in the 2017 HPA final rule to eliminate soring. In addition, it provides recent support and data emphasizing that the causes of soring are long-standing and endemic, and not simply aberrations that occurred in the past. To this end, we introduce into this proposal the Horse Protection program’s latest inspection statistics and a recent study<sup>21</sup> by the National Academy of Sciences (NAS), discussed below, that analyzes the causes of soring and its diagnosis in light of the current regulations.

### National Academy of Sciences (NAS) Study

The NAS study, published in 2021, concurs with the USDA–OIG audit report’s recommendation that a regulatory change to the inspection component of the Horse Protection program is necessary to eliminate the conflicts of interest that encourage soring. The study was initiated in July 2017, when APHIS, the Tennessee Department of Agriculture, and the Tennessee Walking Horse Breeders Foundation jointly requested that NAS evaluate methods to detect soreness to help ensure that Horse Protection inspection protocols are based on sound scientific principles that can be applied consistently.

In the study, NAS examined the methods currently employed by DQPs and APHIS VMOs for detecting soreness in Tennessee Walking Horses and evaluated current inspector qualifications. NAS also highlighted emerging approaches for detecting soreness in horses and evaluated the role of the scar rule, a set of visual criteria in current § 11.3 used to determine if a horse has been sored. The committee that drafted the NAS study consisted of equine veterinarians and other professionals qualified to review the veterinary medical literature on hoof and pastern pain and skin changes and evaluate methods used to identify soreness in horses as defined in the Act and regulations for scientific validity. As part of their research, the committee reviewed USDA training materials and 61 DQP inspection videos provided by an HIO, and observed problems consistent with those cited in the OIG audit report 11 years earlier. The NAS committee confirmed, in brief, that due to both inadequate HIO training and industry conflicts of interest, DQPs were not consistently or correctly diagnosing sore horses. The committee noted that USDA’s “current horse inspection process for detecting soreness involves observation of the horse’s movement and posture and palpation of the limbs, which is the gold standard for detecting local pain and inflammation,”<sup>22</sup> and that performing these actions knowledgeably and without conflicts of interest is essential to determining whether a horse is sore.

Consistent with the findings of the USDA–OIG audit, the NAS committee concluded that some sored horses were not being identified during inspections. The committee’s observation from evaluating the inspection videos was that DQPs are inconsistent in applying diagnostic techniques. During palpation, DQPs “showed large variations in the technique used to palpate the forelimbs from the carpus to the fetlock—from an absent to a very cursory palpation of limited areas at the palmar surface of the distal limb, with minimal attention given to the dorsal surface of the limb.”<sup>23</sup> DQPs were also at times observed in the videos gripping the leg too tightly, which may inhibit responses to limb palpation. By comparison, APHIS VMOs are required to practice a standard procedure that involves palpating the limb in a consistent

pattern and pressure, resulting in more accurate soring diagnoses.

The NAS committee further observed that, in many instances, DQPs did not adequately observe the horse’s movement and posture. For example, from its review of inspection videos, the committee noted that DQPs often did not require the horse to take enough steps to determine whether soring or lameness was present.

At most shows, inspections are performed by a DQP employed by an HIO; less often, by an APHIS VMO, or in some instances, by both. The NAS committee reviewed the training requirements for DQPs in the regulations and noted that not only are DQPs not required to be veterinarians, but that they receive instruction from trainers who are not required to be veterinarians. APHIS VMOs, by contrast, have veterinary degrees and receive extensive medical training in identifying dermatologic, physiological, and behavioral indications of soring in horses.

The NAS committee strongly recommended that the use of DQPs for inspections under the current regulations be discontinued and that only veterinarians, preferably with equine experience, be allowed to examine horses, as is done in other equine competitions.<sup>24</sup> The committee added that if APHIS continues to use third-party inspectors, they should be veterinarians or other equine industry professionals who are screened for potential conflicts of interest and trained by APHIS to properly inspect horses for soring. The committee also stated that consequences for performing substandard examinations should be strictly enforced, and that reports of substandard performance and enforcement warning letters should come from APHIS, not HIOs. We agree with these recommendations and propose in this rulemaking that qualified inspectors be screened and trained by APHIS, and that inspectors be veterinarians as availability allows. We discuss further below how we propose to amend the regulations consistent with these recommendations.

As we noted, the NAS committee also evaluated the scar rule criteria in § 11.3 as a means of diagnosing soring in horses. Since its 1979 inclusion in the regulations, interpretations of what the scar rule means and how to apply it have long led to disagreements among APHIS, veterinary organizations, and the gaited horse industry. As we noted, the NAS study resulted from a shared

<sup>21</sup> *A Review of Methods for Detecting Soreness in Horses*. Washington, DC: The National Academies Press, 2021: <https://doi.org/10.17226/25949>.

<sup>22</sup> NAS, *A Review of Methods for Detecting Soreness in Horses*, page 3.

<sup>23</sup> NAS, *A Review of Methods for Detecting Soreness in Horses*, page 31.

<sup>24</sup> NAS, *A Review of Methods for Detecting Soreness in Horses*, page 4.



desire by both the industry and APHIS that inspection protocols be based on sound scientific principles that can be applied consistently. The NAS committee analyzed the scar rule with this in mind, and based on their work made recommendations for revising the scar rule language that we believe will make it much easier to understand and apply and more accurate as a tool to diagnose soring. We discuss NAS analysis of the scar rule and explain how its findings have helped to shape our proposed changes to it under “Dermatologic Changes and the Scar Rule.”

The NAS study is the latest major effort to evaluate from a scientific perspective the causes of soring, the current and emerging methods available to diagnose it, and the effectiveness of the current Horse Protection regulations to eliminate the practice. The evidence in the NAS and OIG reports and the Horse Protection program inspection data indicate that many DQPs lack either the correct training or the willingness, or both, to diagnose sored horses, with one outcome—soring persists as an incentive to gain competitive advantage and sored horses

continue to appear at shows, exhibitions, sales, and auctions.

**Proposed Changes to the Regulations**

The changes we propose to make to 9 CFR part 11 include a comprehensive reorganization of the part. We have provided a derivation table below to show where we propose to move content currently in the regulations. Current sections are to the left. Sections where content will be moved and revised are listed on the right side of the table, along with new and removed sections:

Existing regulations	Where addressed in proposed rule
§ 11.1 Definitions .....	§ 11.1 Definitions (revised).
§ 11.2 Prohibitions concerning exhibitors .....	§ 11.6 Prohibitions concerning exhibitors (revised).
§ 11.3 Scar rule .....	§ 11.6(a)(22) Prohibitions concerning exhibitors (revised).
§ 11.4 Inspection and detention of horses .....	§ 11.8 Inspection and detention of horses (revised).
§ 11.5 Access to premises and records .....	§ 11.9 Access to premises and records (revised).
§ 11.6 Inspection space and facility requirements .....	§ 11.10 Inspection space and facility requirements (revised).
§ 11.6(c) (Non-interference with APHIS personnel) .....	§ 11.3 Non-interference with APHIS representatives and HPIs (revised).
§ 11.7 Certification and licensing of designated qualified persons (DQPs).	§ 11.19 Authorization and training of Horse Protection Inspectors (new section added). (§ 11.7 would be reserved for future use but its content would be removed.)
§ 11.20(a) Responsibilities and liabilities of management .....	§ 11.11 (new section added and reserved).
§ 11.20(b) Responsibilities and liabilities of management .....	§ 11.12 (new section added and reserved).
§ 11.21 Inspection procedures for designated qualified persons (DQPs).	§ 11.13(a) Horse shows, horse exhibitions, horse sales, and horse auctions at which the management does not utilize an APHIS representative or Horse Protection Inspector. (new section added and revised).
§ 11.22 Records required and disposition thereof. ....	§ 11.13(b) Horse shows, horse exhibitions, horse sales, and horse auctions at which the management utilizes an APHIS representative or Horse Protection Inspector. (new section added and revised).
§ 11.22, § 11.24(a) Records required and disposition thereof; Reporting by management. (§ 11.24(b) is an obsolete requirement and not retained in proposed regulations).	Section removed, as HIOs would no longer train DQPs in inspection procedures.
§ 11.23(a) Inspection of records (§ 11.23(b) pertains to training DQPs and would not be retained in proposed regulations).	§ 11.14 Records required and disposition thereof (new section added and revised).
§ 11.25 Minimum penalties to be assessed and enforced by HIOs that license DQPs.	§ 11.14(a) Records required and disposition thereof (new section added and revised).
§ 11.40 Prohibitions and requirements concerning persons involved in transportation of certain horses.	§ 11.15 Inspection of records (new section added and revised).
§ 11.41 Reporting required of horse industry organizations or associations (pertains to HIOs and not retained in proposed regulations).	§ 11.16 Reporting by management (new section added). Section removed.
	§ 11.17 Requirements concerning persons involved in transportation of certain horses (new section added and revised).
	§ 11.18 Utilization of inspectors (new section added). Section removed.

Substantive changes we propose to make in part 11 include:

- Removing the requirement that DQPs be trained and licensed by HIOs and removing the term DQPs from the regulations. Instead, APHIS would screen and train qualified persons to be Horse Protection Inspectors, or HPIs. APHIS would authorize these applicants, preferably veterinarians, as HPIs after screening them for potential conflicts of interest and conducting training.

- Removing all regulatory requirements pertaining to HIOs, as HIOs would no longer have any regulatory responsibilities specific to them. APHIS would assume program administration and development, HPI training, and HPI disciplinary actions as necessary to enforce the Act and regulations. Services contracted between HIOs and event management, such as supplying judges and handling show logistics, would not be affected.
- Prohibiting any device, method, practice, or substance applied to any

horse that can hide or mask evidence of soring. (Current prohibitions on other items and practices that can reasonably be expected to cause or contribute to soring would be retained in the regulations.)

- Prohibiting all action devices, pads, wedges, and substances on the limbs or feet of Tennessee Walking Horses and racking horses (with exceptions for approved therapeutic uses of pads, wedges, and substances). An action device is any boot, collar, chain, roller, beads, bangles, 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.

- Replacing the scar rule with language that more accurately describes visible dermatologic changes indicative of soring, and removing the requirement that such changes be bilateral.

- Requiring the management of any horse show, exhibition, sale, or auction that elects to utilize an APHIS representative or HPI to choose and appoint an additional HPI if more than 100 horses are entered in the event.

- Requiring the management of any horse show, exhibition, sale, or auction that elects to utilize an APHIS representative or HPI to inspect horses to have at least one farrier physically present if more than 100 horses are entered in the event, or if there are 100 or fewer horses to have a farrier on call within the local area to be present if requested by an APHIS representative or HPI. Farriers would not be required for shows that do not utilize an inspector.

- Adding new reporting and recordkeeping requirements for management of all horse shows, exhibitions, sales, and auctions covered under the Act. These include retaining records for 90 days of any horse allowed to show under therapeutic treatment, informing APHIS and reporting event information at least 30 days in advance of the event, and notifying APHIS of changes to event information at least 15 days in advance of the event. These requirements are intended to prevent disqualified persons and horses from participating in HPA-covered events and to give APHIS sufficient time to schedule an APHIS representative to inspect at the event, if requested.

To restructure part 11, we propose to reserve current §§ 11.2 and 11.7 and remove §§ 11.20, 11.21, 11.22, 11.23, 11.24, 11.25, 11.40, and 11.41 from the regulations. Requirements for event management recordkeeping, records inspection, and reporting included in §§ 11.20, 11.22, 11.23, and 11.24, as well as requirements for transportation of horses in § 11.40, would be included in new sections we propose.

Our proposed changes to the regulations are detailed below.

### 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 amend the definition of *action device* by including “beads” and “bangles” to the illustrative list of

devices included under the definition. We are including these devices because they can encircle the leg and move with the horse, striking the skin or creating friction.

We would revise the definition for *Administrator* by adding U.S. mail and email addresses for sending mail to the Administrator of APHIS.

We would remove the definition for *APHIS Show Veterinarian* and revise the definition of *APHIS representative* to mean any employee or official of APHIS. The definition of *APHIS Show Veterinarian* currently means the APHIS veterinarian responsible for the immediate supervision and conduct of the Department’s activities under the Act at any horse show, horse exhibition, horse sale or horse auction.

The current definition of *APHIS representative* is any employee of APHIS, or any officer or employee of any State agency who is authorized by the Administrator to perform inspections or any other functions authorized by the Act, including the inspection of the records of any horse show, horse exhibition, horse sale or horse auction. We propose to revise this term to mean “any employee or official of APHIS.” APHIS representatives would include qualified full-time and intermittent VMOs employed and trained by APHIS to inspect horses for soring. HPIs would not be considered to be APHIS representatives under this proposed definition because they are not employees of APHIS and not compensated by the Agency, but rather by the show management that contracts their services.

We would add a definition for the term *custodian*, which would mean any person who presents a horse for inspection at any horse show, exhibition, sale, or auction. We note that a person acting as custodian may typically perform additional roles, such as owner, exhibitor, seller, or transporter. Also, the custodian would have to be able to provide required information about the horse as required in part 11. We are proposing adding this term in order to define the term *custodian* more clearly.

We propose to add the term *day(s)* to § 1.1 and define it to mean business days, *i.e.*, days other than weekends and Federal holidays. In several instances, the regulations require the submission of reports or records with a period of days, and we wish to clarify that weekends and Federal holidays are not included within that day count.

The current definition of *Designated Qualified Person* is “a person meeting the requirements specified in § 11.7 of this part who has been licensed as a

DQP by a horse industry organization or association having a DQP program certified by the Department and who 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.”

We are proposing to remove the term *Designated Qualified Person or DQP* and its definition, as well as all regulatory requirements in the regulations pertaining to them. We propose instead that APHIS will screen, train, and authorize persons qualified to conduct inspections of horses, devices, and records for the purposes of determining compliance with the Act at horse shows, exhibitions, sales, and auctions. We propose to refer to these qualified persons as Horse Protection Inspectors (HPIs), which would be authorized by APHIS pursuant to proposed § 11.19 and appointed by management of the event. Accordingly, we propose to include a definition for *Horse Protection Inspector* in the regulations, included below.

We would add the term *event manager* and define it to mean the person who has been delegated primary authority by a sponsoring organization for managing a horse show, exhibition, sale, or auction. An individual event manager would need to be designated even if the event is managed by a team of persons. We are proposing this definition in order to clarify management responsibility.

The term *horse industry organization or association* 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 would remove the term *horse industry organization or association* and its definition, as we propose to remove all regulatory requirements under the Act pertaining to these groups, including requirements for certification of DQP programs, recordkeeping, and other requirements assigned to them. As we note above, HIOs supply other services to shows and events not subject to regulation, including registering participants and coordinating event logistics, supplying show judges, and promoting events. Under this proposal they could continue contracting with events to perform these services.

We would add the term *Horse Protection Inspector (HPI)* to mean a person meeting the qualifications in proposed § 11.19 whom the Administrator has authorized as an HPI and who 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 detecting or diagnosing soring. Under proposed § 11.16(a)(6), event management wishing to have an APHIS representative conduct inspections at their event are required to notify APHIS at least 30 days in advance of the event.

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. Such inspection may include, but is not limited to, visual examination of a horse and records, actual physical examination 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, pad, action device, or any other equipment, substance or paraphernalia from the horse when deemed necessary by the person conducting such inspection.” To emphasize that any means of determining compliance with the Act and regulations must be approved by APHIS, we would revise the definition of *inspection* to include the words “any visual, physical, and diagnostic means approved by APHIS to determine compliance with the Act and regulations.” The proposed definition would follow the current definition in that such inspection “may include, but is not limited to, visual inspection of a horse and review of records, physical examination 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 professional conducting such inspection.”

We propose to add a definition for *local area*, which we would define as the area within a 10-mile radius of the horse show, exhibition, sale, or auction. We would add this term in conjunction with proposed § 11.13(b)(2), which would require event management to have a farrier on call within the local

area if requested by an APHIS representative or HPI appointed by management and 100 or fewer horses are entered in the horse show, exhibition, sale, or auction. When over 100 horses are entered in an event, management would be required to have a farrier onsite unless they elected to enforce the HPA without recourse to an inspector. We invite comments on this definition as to whether it is reasonable with respect to the geographical distribution of farriers, as well as comments on the costs associated with having a farrier at the shows and on call.

The term *lubricant* in the current definitions means “mineral oil, glycerine or petrolatum, or mixtures exclusively thereof, that is applied to the limbs of a horse solely for protective and lubricating purposes while the horse is being shown or exhibited . . . .” We would remove the definition for *lubricant* and prohibit the use of any substances on the limbs of all Tennessee Walking Horses and racking horses. Most substances applied to horses at shows and exhibitions, such as skin and hair conditioners, are not implicated in soring, but they can be used to diminish signs of soring. As we explain under the proposed changes to prohibitions concerning exhibitors, a strong association exists between applications of substances and soring in these particular breeds.

We propose to retain and revise the current definition of *management*, which means “any person or persons who organize, exercise control over, or administer or are 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.” We would remove “show manager” from this definition, as we propose removing that term elsewhere in the regulations, and replace it with “event manager,” a term which, as we note above, we propose adding to the regulations.

A definition of *participate* would be added to § 1.1 to mean engaging in any activity, either directly or through an agent, beyond that of a spectator in connection with a horse show, horse exhibition, horse sale, or horse auction, and includes, without limitation, transporting, or arranging for the transportation of, horses to or from equine events, personally giving instructions to exhibitors, being present in the warm-up or inspection areas or in any area where spectators are not allowed, and financing the participation of others in equine events.

*Person* in the regulations means “any individual, corporation, company, association, firm, partnership, society, organization, joint stock company, or other legal entity.” We propose to revise the definition by adding “State or local government agency” to the list of illustrative examples. We are proposing this change to highlight that State and local government agencies also fall under the definition of *person* in the regulations.

As currently defined in the regulations, *Regional Director* means “the APHIS veterinarian who is assigned by the Administrator to supervise and perform official duties of APHIS under the Act in a specified State or States.” We propose removing the term from § 11.1 because APHIS representatives performing Horse Protection duties are no longer organized and managed by region.

*Sponsoring organization* in the current regulations means “any person under whose immediate auspices and responsibility a horse show, horse exhibition, horse sale, or horse auction is conducted.” We propose to revise the current definition to mean “any person or entity whose direction supports and who assumes responsibility for a horse show, horse exhibition, horse sale, or horse auction that has, is, or will be conducted.” We are making this change to clarify that an “entity” is also included under the definition, and to ensure that any person or entity supporting and assuming responsibility for such an event also falls under the definition. Our proposed revision also clarifies that the sponsoring organization’s responsibility applies whether the event in question has already occurred or is yet to occur.

We also propose to add a definition for the term *therapeutic treatment* to mean the treatment of disease, injury, or disorder by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was prescribed. We are proposing to define this term to ensure that therapeutic practices applied to any horse covered under the regulations are administered or overseen by qualified veterinarians only.

#### Prohibitions Concerning Exhibitors

Current § 11.2, “Prohibitions concerning exhibitors,” lists general and specific prohibitions for any device, method, practice, or substance used on any horse at any horse show, exhibition, or horse sale or auction if such use causes or can reasonably be expected to cause such horse to be sore. We propose to move those prohibitions from § 11.2

to a revised § 11.6 and reserve § 11.2 for future use.

### Non-Interference With APHIS Representatives

Current § 11.3 contains the “scar rule,” which refers to the presence of certain types of lesions on the horse’s pastern and fore pastern suggesting that a horse has been sored. Horses that do not meet the scar rule criteria are considered to be sore and are subject to all prohibitions of the Act.

We propose to remove the scar rule from this section and include the revised language in proposed § 11.6(a)(22). A full discussion of the proposed changes to the scar rule is included under “Dermatologic Changes and the Scar Rule,” below.

The language we propose to add to revised § 11.3 is based on current § 11.6(c) and amended to prohibit persons from assaulting, resisting, opposing, impeding, intimidating, threatening, or interfering with APHIS representatives or HPIs, or in any way influencing attendees of a horse show, exhibition, sale, or auction to do the same. Persons guilty of such violations may be held criminally liable and referred to the U.S. Department of Justice for prosecution. These proposed amendments strengthen regulatory protections for the safety of both APHIS representatives and HPIs appointed by management and engaged in duties at the events listed, as well as the safety of horses and attendees.

### Prohibitions for Disqualified Persons

Section 11.4 of the current regulations includes requirements regarding inspection of horses by APHIS representatives, as well as detention of horses for inspection if an APHIS representative has probable cause to believe that a horse is sore. We propose to revise § 11.4 to include provisions regarding the status of persons whom USDA has disqualified from showing, exhibiting, selling, or auctioning horses. Provisions for inspection and detention of horses, which currently comprise this section, would be moved to a new § 11.8.

The proposed text for § 11.4 would indicate that any person disqualified from participating in any horse show, exhibition, sale, or auction shall not show, exhibit, or enter any horse, directly or indirectly through any agent, employee, corporation, partnership, or other device, and shall not judge, manage, or otherwise participate in events covered by the Act within the period during which the disqualification is in effect. We would add this provision to the regulations to

ensure that prohibitions are in place to address attempts by disqualified persons to continue participating in events listed above either directly or indirectly through the aid of other identities or persons.

### Appeal of Inspection Report

Section 11.5 currently includes requirements for the management of any horse show, exhibition, or horse sale or auction to provide APHIS representatives with unlimited access to the grandstands and all other premises of any horse show, exhibition, or horse sale or auction, including any adjacent areas under their direction, for the purpose of inspecting horses or records. Management must also provide an adequate, safe, and accessible area for the visual inspection and observation of horses. This section also requires persons having custody of any horse at any horse show, exhibition, or horse sale or auction to admit any APHIS representative or DQP appointed by management to all areas of barns, compounds, horse vans, horse trailers, stables, or other grounds or related areas at any horse show, exhibition, or horse sale or auction, for the purpose of inspecting any such horse at reasonable times.

We propose changing the heading of § 11.5 to read “Appeal of inspection report” and moving provisions for access to premises and records to a new § 11.9. Revised § 11.5 would provide that any horse owner, trainer, exhibitor, custodian or transporter may appeal inspection report findings all or in part to the Administrator. The appeal would require a written statement contesting the inspection finding(s) and include any documentation or other information in support of the appeal. The appeal would have to be received by the Administrator, preferably by electronic mail, or by U.S. mail,<sup>25</sup> within 21 business days of receipt of the inspection report. The Administrator would send a final decision, either via electronic mail or U.S. mail, to the person requesting the appeal.

We note that in current § 11.25, each HIO is required to provide a process in its rulebook, subject to APHIS approval, for alleged violators of the regulations to appeal penalties resulting from inspections. However, as HIOs would no longer play a role in inspections, proposed § 11.5 includes a process for alleged violators to appeal penalties resulting from inspections conducted by

APHIS representatives or HPIs appointed by management.

### Pre-Show Review of a Finding of Soring

In response to the 2016 proposed HPA rule, APHIS received some comments raising due process concerns. The comments included a request that APHIS develop and implement a pre-show process whereby owners and trainers may contest and seek immediate review of a finding that a horse is sore from a decision-maker, and the suggestion that when USDA finds that a horse is sore after being passed by a DQP, the horse should be allowed to be shown until there is a final decision in the matter.

The HPA vests in management the responsibility to disqualify or prohibit a horse from being shown, exhibited, sold, or auctioned following a determination by an inspector that the horse is sore. *See* 15 U.S.C. 1823(a). Specifically, the statute and regulations require management to (among other acts) disqualify a horse in instances where (1) the horse is sore or (2) management is notified by a DQP or APHIS representative that the horse is sore. *Id.*; *see* § 11.20(b)(1) of the regulations (management “shall immediately disqualify” a horse identified by the DQP to be sore or otherwise known by management to be sore). Given this nexus between management’s decision and an inspector’s findings, and in light of the due process concerns raised in comments on the 2016 proposed rule, we seek additional public comment on potential ways to resolve disputes arising from a determination of soring following inspection, including possible options for resolving such disputes before a show takes place.

We are concerned that the suggestions by commenters on the 2016 proposed rule are not consistent with the intent or language of the Act itself. For instance, if a horse determined by an inspector to be sore is allowed to be shown until a final decision is made, this could undermine Congress’s two primary goals in enacting the Act: To eliminate the cruel and inhumane practice of horse soring and to ensure fair competition at horse shows and exhibitions by not permitting sored horses to unfairly compete with horses that are not sore. *See* 15 U.S.C. 1822. Moreover, it would directly contradict paragraph (a) of section 1823 of the Act, which requires that “[t]he management of any horse show or horse exhibition shall disqualify any horse from being shown or exhibited (1) which is sore or (2) if the management has been notified by [an inspector] that the horse is sore.”

<sup>25</sup> Email address: [horseprotection@usda.gov](mailto:horseprotection@usda.gov). Appeals may also be sent via U.S. mail to APHIS, 2150 Centre Ave., Bldg. B, MS 3W-11, Fort Collins, CO 80547.

Section 1824 of the Act underscores that management must disqualify such horses by listing the failure to do so as an “unlawful act” under the Act. Section 1825 of the Act authorizes fines, imprisonment and civil penalties for violations of section 1824. Finally, Congress found that “horses shown or exhibited which are sore, where such soreness improves the performance of such horse, compete unfairly with horses which are not sore.” 15 U.S.C. 1822(2).

In addition to these statutory concerns, the process envisioned by past commenters, or other lengthy processes that could not be completed before a scheduled show or exhibition, as they are currently operated, could strongly incentivize owners to contest findings of soring in order to delay as long as possible any possible disqualification. This could undermine the intent and requirements of the Act for the reasons discussed above.

One possible solution could be to conduct the inspections far enough in advance of the exhibition or show to allow for an opportunity to be heard before the event. However, given the current structure of horse shows and exhibitions, as well as the need to ensure that horses are not sored following an inspection and before a show, this proposal would require significant internal changes and cooperation from the horse industry. Most horse shows and exhibitions are 1-day events that are set up during the day and take place in the early evening. Inspections take place approximately 30 minutes before the horse enters the arena, and immediately following the inspection, the horse enters a supervised warm-up area and does not leave that area until the horse enters the arena to perform. This is to ensure that the horse’s conditions do not change following its inspection and before the horse enters the show ring. Under the current structure, there is insufficient time to conduct a review process between the inspection and the horse being exhibited or shown, and it would require a significant change in show and exhibition practices, and possible restructuring of the industry itself, to allow such a process to take place. It would also entail a significant reallocation of existing APHIS resources. We may need to deploy more inspectors to shows, have them arrive earlier, develop monitoring protocols to ensure horses are not sored following inspection but before the event, and provide both personnel and direct and indirect support costs to the review process.

To that end, in order to assess the feasibility of conducting inspections in advance of a show or exhibition in a manner that would afford a pre-show review process while still ensuring that the horse is not subsequently sored after inspection, we request specific public comment on the following:

- Could pre-show inspections still take place in the same physical area as the show or exhibition? If not, where should they take place?
- How early should pre-show inspections take place, in order to ensure time for a review process?
- How should the health and safety of the horse be monitored after the inspection takes place in order to ensure that the horse is not subsequently sored? Who would be responsible for monitoring to ensure that the horse is not subsequently sored?
- What type of review process would be afforded to contest a finding that a horse is sore? Who would decide these matters? What parties should be involved? Do the parties need to be physically present at the site of the show or exhibition?
- What timing mechanisms would need to be in place to ensure the review process can be completed in time for the horse to show, if the initial inspection is overturned? What actions should occur in the event that the review process is not completed before the show or exhibition?
- How would any pre-show review process implicate or interact with the existing reinspection process currently located in section 11.4(h), as proposed for amendment and relocation at section 11.8(h)?

In addition to the alternative that we have identified to address the issue, we acknowledge that there may be other means of addressing the issue that we are not aware of. To that end, we request public comment regarding other possible alternatives, including consideration of regulatory bodies, statutory authorities, or incentives or disincentives, including the withholding or forfeiture of prize money, that could be applied to address the issue.

#### Prohibited Items and Practices

Current § 11.2 contains prohibitions on the use of certain action devices, equipment, pads, substances, and practices on horses at any horse show, exhibition, sale or auction covered under the Act.

The prohibitions are intended to pertain to the devices, practices, and substances that are used either to sore horses directly or contribute to the act of soring (an example of the latter being

a hoof pad that hides a sharp object). Reaction to the pain caused by soring results in the exaggerated chest-high gait prized in certain classes at Tennessee Walking horse and racking horse shows. Chains and other devices, especially those that are heavy or have sharp or rough edges, can inflict pain and exacerbate soring through repeated strikes to the leg while the horse performs, particularly if irritating substances have also been applied to the skin. Pads that cause a horse’s foot to strike the ground at an unnatural angle can also induce pain and soring over time, as can heavy pads and horseshoes. Substances can be used to mask the pain a sore horse feels long enough to pass inspection, while dyes and other substances can hide lesions and other signs of soring on the skin. As reflected in the inspection statistics presented above, soring is diagnosed almost exclusively at events featuring Tennessee Walking horses and racking horses that perform in pads and action devices. By comparison, APHIS and DQP inspections at flat-shod events in which horses do not wear pads and action devices rarely find soring violations.

We note that the current regulations do not prohibit all devices—for example, in § 11.2(b), certain rollers, chains, and bell boots weighing 6 ounces or less are permitted, as are certain types of pads. In proposed § 11.6(b), we allow for the restricted use of some items so that events featuring breeds other than Tennessee Walking Horses and racking horses may continue using them. APHIS recognizes that action devices and pads are sometimes used for purposes that do not cause soring during training of Morgans, American Saddlebreds, and many other gaited breeds. Applying light chains or other devices on the pastern, for example, creates a sensory, or proprioceptive, reaction that can stimulate front and rear hoof height without pain, and that on rear hooves can increase the range of motion.<sup>26</sup> While all horse breeds are subject to provisions of the Act, soring imparts little to no advantage to competitors at these shows, as the gaits on which most breeds are evaluated are noticeably distinct from the exaggerated “big lick” step featured at many Tennessee Walking horses and racking horse events.<sup>27</sup>

<sup>26</sup> Clayton, Hilary, “Rehabilitation for Horses.” Paper presented at American Association of Equine Practitioners, July 2014.

<sup>27</sup> We acknowledge that many owners of Tennessee Walking horses and racking horses show their horses in “flat shod” classes, meaning they do not use the action devices and thick pads associated

The restrictions on pads, devices, and activities listed in current § 11.2(b) make no distinction between breeds that are often diagnosed as sore—Tennessee Walking Horses and racking horses—and other gaited breeds that are not known to be sore. As currently permitted under § 11.2(b), many breeds perform in light chains under six ounces and low pads that elevate the heel by less than an inch. We considered prohibiting all non-therapeutic pads, action devices, substances, and other practices for all breeds at all covered events, but in doing so we would unfairly conflate those breeds that do not sore for competitive advantage with those that do.

Accordingly, we propose to revise § 11.6(b) by including a more restrictive list of prohibitions specific to Tennessee Walking Horses and racking horses. We base our reasons for establishing prohibitions specific to these breeds on several points. As we have noted above, our records show that the clear majority of horses diagnosed by APHIS representatives and DQPs as being sore are Tennessee Walking Horses and racking horses, specifically those that participate in pads and action devices in certain competitions favoring a high-stepping, accentuated gait. Insofar as APHIS directs most of its compliance inspections toward Tennessee Walking Horse and racking horse events, it follows that our records would show that almost all noncompliances we report are among these two breeds. However, based on our informed knowledge about the practices of all breeds performing or exhibiting in the United States, we know that soring in breeds other than Tennessee Walking Horses and racking horses confers no significant performance advantage and is therefore rarely if ever practiced. APHIS-Animal Care officials remain updated on the activities of all breed organizations and investigate any allegations or reports suggesting that violations of the Act are occurring within any breed. We invite public comment on any observations persons may have regarding soring in other breeds.

Further, APHIS has observed from its experience in administering and enforcing the Act and regulations (including through compliance inspections, investigations, enforcement of alleged violations, oversight of industry-based inspection programs, and outreach to the horse industry) that a relationship continues to exist between the use of certain permitted

devices and instances of soring, notably among Tennessee Walking Horses and racking horses, when used alone or in conjunction with prohibited substances.

We acknowledge that at many, if not most, shows featuring Tennessee Walking Horses and racking horses, the majority of entrants are exhibiting or performing with so called “flat-shod” horses (those that do not normally use the pads and action devices this proposed rule would seek to prohibit). Some shows featuring Tennessee Walking Horses and racking horses are entirely flat-shod in nature and already prohibit pads and action devices. We note that in 2022, almost 35,000 flat shod entries were inspected by DQPs and APHIS representatives combined, with a compliance rate above 99 percent. We do not consider such shows to be high risk with respect to noncompliance with the Act and regulations.

#### *Action Devices, Boots, Collars*

Under § 11.2(b), 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. *Action device* is currently defined as “a boot, collar, chain, 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.” In the Definitions section, we proposed adding beads and bangles to the illustrative list of action devices, as these devices encircle the leg, and strike the leg or create friction during movement.

Equine veterinarians on the NAS study committee noted that abnormal skin changes seen on the pasterns of Tennessee Walking Horses are not observed on other breeds of horses such as Arabians, American Saddlebreds, and Morgans, which sometimes train with action devices but do not usually wear them when competing. Moreover, action devices used on other breeds typically are of lower weight than those used on Tennessee Walking Horses and racking horses. The committee also noted that Tennessee Walking Horses are often trained with action devices weighing in excess of the 6-ounce action devices currently allowed for competition and concluded that the use of heavier or more cumbersome devices in training may be more likely to contribute to the formation of skin lesions.<sup>28</sup>

NAS’ observations regarding action devices and their role in soring are consistent with those of an older but still relevant study<sup>29</sup> conducted at the Auburn University School of Veterinary Medicine from 1978 to 1982, which evaluated the effects of acute and chronic inflammatory responses on the front and hind limbs of horses. The findings of that study suggest a strong relationship between soring and the combined use of action devices and substances. Horses were exercised for 2–3 weeks wearing 2-, 4-, and 6-ounce chains, after which it was determined that the use of such chains for a duration of 2 to 3 weeks “did not produce any harmful effects to the horses’ legs, with exception to some loss of hair from 6-ounce chains in the pastern areas.” However, in another phase<sup>30</sup> of the study, it was determined that the combined use of prohibited substances and chains on the pasterns of horses caused lesions, tissue damage, and visible alterations of behavior consistent with soring. Although this phase of the study used 10-ounce chains, 4 ounces heavier than what is currently allowed, if a horse may be trained sore using 10-ounce chains (or other weight and/or substance combinations) and then shown in 6-ounce chains, the use of a 6-ounce chain may reasonably be expected to cause the horse to experience pain while walking, trotting, or otherwise moving.<sup>31</sup>

Historically, prohibited substances such as caustic irritants have been applied to the pasterns of some gaited breeds, most commonly Tennessee Walking Horses and racking horses, until the skin is sensitive and painful to the touch. This process typically takes several days and completed before the horse enters the event grounds. When the horse wears a chain or other action device while performing, it strikes the treated skin, causing pain and a high stepping reaction. Our observations from administering and enforcing the Act have indicated that soring can and does occur in Tennessee Walking Horses and racking horses with the use

<sup>29</sup> 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, School of Veterinary Medicine, Auburn University. The study is available at the regulations.gov address included under ADDRESSES or by contacting the individual listed under FOR FURTHER INFORMATION CONTACT above.

<sup>30</sup> Phase 7, “Simultaneous Use of Chemical and Chains for Soring Horses”.

<sup>31</sup> The NAS study (page 81) also indicated that heavier chains and other action devices are typically used when training Tennessee Walking Horses.

with soring and required as a condition of entry in performance classes.

<sup>28</sup> *A Review of Methods for Detecting Soreness in Horses*, page 81 (see footnote 21).

of prohibited substances and/or action devices such as chains and rollers of nearly any weight, including the 6-ounce weight limit currently in the regulations.

Under proposed § 11.6(a), “General Prohibitions for All Horses,” we would continue to prohibit any action device, method, practice, or substance to be used on any horse at any horse event covered under the Act if such use causes or can reasonably be expected to cause such horse to be sore or is otherwise used to mask previous and/or ongoing soring.

Proposed § 11.6(b) lists prohibitions that apply to all horses at covered events but which allow for some devices used by some breeds for purposes unrelated to soring, as discussed above.

Under § 11.6(c)(1), we would prohibit all action devices on Tennessee Walking Horses and racking horses, and in paragraph (c)(2) prohibit all artificial extension of the toe length unless the horse has been prescribed and is receiving therapeutic treatment using artificial extension of the toe length. In proposed paragraph (c)(3) we would prohibit all pads and wedges on any Tennessee Walking Horse or racking horse at any horse show, exhibition, sale, or auction, unless the horse has been prescribed and is receiving therapeutic treatment using pads or wedges as approved in writing by a licensed veterinarian. Finally, in proposed paragraph (c)(4), we would prohibit all substances on the extremities above the hoof of any Tennessee Walking Horse or racking horse entered for the purpose of being shown or exhibited, sold, auctioned, or offered for sale in or on the grounds of any horse show, horse exhibition, or horse sale or auction. Explanations for each of these prohibitions is provided below.

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. Our experience with enforcing the Act indicates that soring can be induced when action devices are used alone or in combination with prohibited substances. We welcome public comment, supported with scientific data or other rigorous evidence, on the effects of action devices used alone or in combination with other training methods.

#### *Pads, Toe Extensions*

Section 11.2(b)(8) of the current regulations prohibits pads or other devices on yearling horses (horses up to 2 years old) that elevate or change the angle of such horses’ hooves in excess of 1 inch at the heel. Altering the angulation of a horse’s feet and legs can cause painful lameness, soreness, and inflammation by transferring concussive impact and weight-bearing pressures to joints and other parts of the horse not normally subjected to these forces. Elevating the foot using stacked hoof pads, or “performance packages,” can also cause an increase in tension in the tendons leading to inflammation, as can extra weight on the horse’s foot. Additionally, elevating only the front feet, as is typically done in Tennessee Walking Horse and racking horse performance-class competitions using pads, “causes an unnatural angulation of the back and body of the horse, and changes the alignment of the shoulder muscles, the vertebrae, and the pelvis, all of which are then subject to stress, irritation, and inflammation.” (See 53 FR 14780 (April 26, 1988)).

Research undertaken in the above-cited Auburn study indicated that raising a horse’s heels through the use of pads alone resulted in swollen flexor tendons and signs of inflammation. The same study also found the ability to detect pressure soring (*i.e.*, the illegal application or use of bolts, screws, blocks, hoof packing material, and other methods of pressure) through visual and physical inspection of the soles of horses’ hooves is limited because pads obscure the solar surface of the foot.

Under proposed § 11.6(c)(3), we would prohibit all pads and wedges on any Tennessee Walking Horse or racking horse at any horse show, exhibition, sale, or auction, unless the horse has been prescribed and is receiving therapeutic treatment involving the use of pads or wedges as approved in writing by a licensed veterinarian. APHIS’ experience at Tennessee Walking Horse and racking horse events indicates that soring continues to occur through the use of performance packages that can introduce unnatural angulations of the foot or hide signs of pressure shoeing. However, we would not have this specific provision become effective until 270 days after promulgation of a final rule, as it takes approximately 6 to 8 months for a padded horse to become acclimated to being flat-shod (*i.e.*, walking and performing without pads).

We invite comments on whether this is an appropriate timeframe for transitioning to a prohibition on pads,

but underscore that this prohibition is necessary in order for APHIS to enforce the provisions of the Act. APHIS inspection data shows that of the alleged HPA violations documented at events from FY 2017 through 2021, 94 percent involved horses wearing pads.<sup>32</sup> This is not to imply that pads were directly responsible for soring these horses. Rather, the performance classes in which soring confers the greatest benefit (an unnatural high-stepping gait) require that the horse wear pads.

In proposed § 11.6(b)(9) and (13), we would continue to allow the restricted use of pads at shows without Tennessee Walking Horses and racking horses, provided that the pads or other devices on horses up to 2 years old that elevate or change the angle of such horses’ hooves are not in excess of 1 inch at the heel, and would also continue to allow the use of pads made of leather, plastic, or a similar pliant material.

In proposed § 11.6(c)(2), we would also prohibit all artificial extensions of toe length on Tennessee Walking horses and racking horses, unless the horse has been prescribed and is receiving therapeutic treatment. Toe extensions can be used to sore horses by increasing stress on certain tendons and ligaments. However, similar to what we indicated regarding pads, prohibition of artificial extensions would not become effective until 270 days after promulgation of a final rule, as it takes approximately 6 to 8 months to take the steps needed to re-acclimate a Tennessee Walking horse or racking horse accustomed to going in such extensions to walking and performing without them. As the practice has non-soring uses in other breeds, such as to make safe adjustments to a horse’s gait, we will retain the provision in § 11.2(b)(11) to allow artificial extension of the toe length on horses other than Tennessee Walking horses or racking horses, whether accomplished with pads, acrylics or any other material or combinations thereof, provided that it not exceed 50 percent of the natural hoof length as measured from the coronet band, at the center of the front pastern along the front of the hoof wall, to the distal portion of the hoof wall at the tip of the toe.

#### *Substances*

Under the general prohibitions in current § 11.2(a), a substance must not be used on any horse at any covered event, regardless of breed, if such use causes or can reasonably be expected to cause such horse to be sore.

<sup>32</sup> Inspection data compiled by APHIS Horse Protection program from FY 2017 through 2021.

Numerous substances are used on horses at shows, exhibitions, and sales events for legitimate purposes, among them shampoos, polishes, conditioners, oils, and insect repellents, as well as lubricants that allow action devices to slide on the leg with less friction. For this reason, the specific prohibitions in current § 11.2(b) do not include substances. However, as we mentioned above, at Tennessee Walking horse and racking horse events, we have observed from our experience enforcing the regulations (including through compliance inspections, investigations, enforcement actions, and industry oversight and outreach) that chains, rollers, and similar devices are sometimes used with caustic substances to induce painful lesions and inflammation. Other prohibited substances sometimes detected on horses include masking and numbing agents that temporarily block the pain of soring so inspectors cannot detect pain upon inspection. Specifically, local anesthetic agents such as benzocaine and lidocaine are used to deter detection of soring upon evaluation, as well as dyes and paints to cover evidence of soring.

Even lotions such as skin softeners and conditioners are implicated in soring at Tennessee Walking horse and racking horse events. While these substances do not directly cause soring, their intended use is to diminish the effects of soring. Such substances are used so that when soring is induced, the skin is softer and does not react as badly, thus decreasing the chance of inflammation and a subsequent scar rule violation.

Current § 11.2(c) prohibits all substances on the extremities above the hoof of any Tennessee Walking Horse or racking horse while being shown, exhibited, or offered for sale at any covered event, except lubricants such as glycerin, petrolatum, and mineral oil, or mixtures of these. Moreover, these lubricants must be furnished by event management and can only be applied after inspection.

However, data collected by APHIS from 2017 through 2022<sup>33</sup> indicates that, in each of those years, substantial numbers of horses tested by APHIS were positive for prohibited substances, with nearly all of them being Tennessee Walking horses and racking horses. In FY 2018, among horses that wore performance packages (action devices and pads), 144 horses were positive out of 194 tested, and over the 6-year period the average rate of positives was more

than 40 percent.<sup>34</sup> Furthermore, during this 6-year period, masking and numbing agents constituted about 36 percent of the prohibited substances detected on all horses tested. Of the horses testing positive for prohibited substances, about 90 percent wore performance packages while being shown or exhibited in performance classes. The data from this period shows that the Tennessee Walking Horse and racking horse communities continue to use prohibited substances to induce, hide, or mask soring despite the current ban.

Therefore, in proposed § 11.6(c)(4), we would prohibit all substances on the extremities above the hoof of any Tennessee Walking Horse or racking horse entered for the purpose of being shown or exhibited, sold, auctioned, or offered for sale in or on the grounds of any horse show, exhibition, sale, or auction, regardless of the substance's composition. Lubricants would no longer be allowed to be used with action devices as we also propose to prohibit such devices on these breeds. Given the wide range of substances that can induce or numb pain, or otherwise hide evidence of soring, we consider a prohibition of all substances at shows with Tennessee Walking Horses and racking horses to be the best means to reduce incidences of soring in accordance with the HPA.

#### Stewarding

In proposed new paragraph (b)(21), we would prohibit stewarding of any breed of horse during inspection for soreness. Stewarding involves the use of whips, cigarette smoke, or other threatening actions or paraphernalia to distract a horse from feeling leg pain when palpated during inspection or to otherwise impede the inspection process.

We would also prohibit holding of reins less than approximately 18 inches from the bit shank. The earlier-cited NAS study committee's observation of 61 inspection videos revealed numerous incidents of stewarding during the standing inspection that were not dealt with by the inspector, including holding the reins closer than 18 inches from the bit, often just below or on the shank. In some cases, the committee observed that the horse was restrained with constant tension, often with the reins held in an upward direction, or the reins were pulled sharply. The committee noted that these restraint tactics can create a distraction during the palpation

procedure by inducing pain in the oral cavity.<sup>35</sup>

#### Dermatologic Changes and the Scar Rule

Under current § 11.3 of the regulations, all horses<sup>36</sup> subject to the "scar rule" that do not meet certain criteria are considered sore and are subject to all prohibitions of section 5 of the Act. Paragraph (a) states that "the anterior and anterior-lateral surfaces of the fore pasterns (extensor surface) must 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." A footnote is also appended to paragraph (a). It defines "granuloma" 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."

Paragraph (b) of the scar rule 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."

In paragraph (a)(2) of § 11.21, the requirements for inspection of horses by DQPs include an examination to determine whether the horse meets the scar rule criteria. Paragraph (a)(2) states that "[w]hile carrying out the procedures set forth in this paragraph, the DQP shall also inspect the horse to determine whether the provisions of § 11.3 of this part are being complied with, and particularly whether there is any evidence of inflammation, edema, or proliferating granuloma tissue."

The scar rule is not a part of the Horse Protection Act. In its current form, the scar rule was proposed in 1978 and added to the regulations in 1979.<sup>37</sup> According to the 1978 proposal, the scar rule was initially developed in 1974 by representatives of the horse industry and the Department as part of the industry's self-policing program against

<sup>35</sup> A Review of Methods for Detecting Soreness in Horses, page 7 (see footnote 21).

<sup>36</sup> The regulation states that it applies to all horses born on or after October 1, 1975, but as this now includes every living horse it no longer needs to be part of the regulations.

<sup>37</sup> The proposal was published in the **Federal Register** on April 28, 1978 (43 FR 18514–18531) and the final rule was published on April 27, 1979 (44 FR 25172–25184).

<sup>33</sup> HIO collected samples are included in FY 2020 through FY 2022 data and were funded by APHIS.

<sup>34</sup> See Table 3 presented above in the section "Evaluation of the Horse Protection Program."



soring.<sup>38</sup> The proposal notes that as a result of that program, a distinction between the types of scars found on younger and older horses gradually emerged; younger horses “do not bear the scars, granulomas, and callouses indicative of soring that are often found on older horses.”<sup>39</sup> The Department therefore stated in the proposal that it “believes it will benefit all concerned parties by adopting and enforcing a national uniform criteria for applying the ‘scar rule.’”<sup>40</sup>

The Department added that the scar rule it was proposing would allow for normal changes in the skin due to friction and permit thickening of the epithelial layer of the skin in the pastern area, comparing it to “a callous on a workman’s hands,” and would also allow for moderate loss of hair on the pastern caused by the friction caused by an action device.<sup>41</sup> Notably, the proposal emphasized that the scar rule must be applied bilaterally and that the scarring must be identical on both legs, so that horses bearing scars from accidental injury to one leg are not unfairly penalized as being sore, being that “[t]he chances are extremely remote that any horse would ever injure both forelegs in an identical manner with resulting identical scars in the anterior or posterior pastern area of each foreleg.”<sup>42</sup>

In 2001, APHIS issued a guide<sup>43</sup> regarding how to apply the scar rule during inspections. The scar rule as currently written requires that for a horse to be in compliance with the scar rule, there must be no proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation indicative of soring visible in highly specific locations on or near the anterior pasterns. The guide emphasized that “[b]ecause of the difference between what is allowed on the front and back of the pastern, it is important to know where the boundaries of the anterior and posterior surfaces are located,” and provided specific instructions for determining the boundaries for purposes of determining

regulatory compliance. Once the boundaries are determined, the anterior and posterior surfaces of the horse’s pasterns must be determined to be entirely free of scars indicative of soring but the posterior surface of the pastern is allowed to show uniformly thickened skin that is free of inflammation, with no redness, swelling, pain, or oozing. The guide also emphasized that for there to be a scar rule violation, skin abnormalities must be found on both front pasterns, although they do not have to be identical in appearance or location to be a violation.

The 2001 guide indicates that APHIS’ understanding of scarring had evolved since 1978, such that the Agency now understood that a horse need not bear identical scars on both pasterns in order to be bilaterally scarred. Its issuance also indicates that APHIS believed guidance was warranted at the time to ensure that inspections for violations of the scar rule were correctly and uniformly conducted.

Despite the issuance of the 2001 guide, and the development of subsequent training that supplanted the guide, the scar rule itself remains unchanged in practice from its inclusion in the regulations 44 years ago. Since that time, however, advances in veterinary science as well as technical innovations in imaging and diagnostics have improved our understanding of how soring occurs and our ability to detect it. (As the NAS study notes, even the term “scar rule” has become something of a misnomer, with the obvious bilateral soring lesions and scars seen prior to passage of the Act in 1970 only rarely observed today.)

However, as technical advancements during the intervening period have improved our ability to detect soring, so too have technical advancements improved violators’ ability to evade detection of scarring during inspections. APHIS, veterinary organizations, and the horse industry continue to see violators developing new ways to obscure the gross dermatologic indicia of soring, leaving little or no visible lesions on the leg and making it difficult to disqualify a horse under the scar rule as currently written. Violators, for example, have used lasers to smooth out irregularly thickened skin or evidence of chronic inflammation on one pastern of a horse that has been sored bilaterally, leaving only one leg with obvious signs of soring (unilateral), thus allowing the horse to avoid being disqualified under the current bilateral requirement of the scar rule. Requiring that lesions be bilateral in order for a horse to be considered sore under the scar rule has made it less effective against the

innovations devised to evade it. In short, it is now clear to the Agency that a horse need not gross dermatologic indicia of soring bilaterally in order for the horse to be sore.

Further, although the existing scar rule specifies regions on the limb (extensor and flexor surfaces, sulcus) on which the scarring must occur for a violation of the scar rule to occur, as the issuance of the 2001 guide illustrates, the boundaries of the regions may not always be clearly and uniformly understood in the absence of guidance. Moreover, an abnormality indicative of soring is not enforceable as a scar rule violation if it appears outside these regions.

The NAS study also found the term “granuloma” to be imprecise in its regulatory use as one of the visible signs of soring during a gross inspection. The study notes that medically, the term is defined as “an inflammatory lesion composed of specific types of leukocytes arranged in a particular way,” and indicates that only a microscopic evaluation of the tissue in question will establish the presence of granulomatous inflammation.<sup>44</sup> This stands in contrast to the regulatory definition within the scar rule itself, which defines “granuloma” much more broadly 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.” The regulatory definition of the term includes lesions and other effects of inflammation caused by soring that are visible to the naked eye upon inspection of the limb. The medical definition of “granuloma” describes pathology that can only be viewed microscopically. The study suggested that the scar rule be revised to limit evidence to dermatologic conditions that are observable during gross examination (an examination by an inspector that involves palpating the horse, observing its movements, and looking for visible (not microscopic) abnormalities on the skin indicative of soring).

Given the foregoing considerations, we propose updating the scar rule. Accordingly, what had been known as the scar rule would be moved to proposed paragraph (b)(22) of proposed § 11.6, and would be updated to the following: “The forelimbs and hindlimbs of the horse must be free of dermatologic conditions that are indicative of soring. Examples of such dermatologic conditions include, but are

<sup>38</sup> See also *In Re: F. Dale Rowland & Denise Rowland*, 52 Agric. Dec. 1103, 1126 (U.S.D.A. Aug. 25, 1993) (citing Horse Protection Enforcement, 1979: Annual Report of the Secretary of Agriculture to the President of the United States Senate and the Speaker of the House of Representatives (July 1980) at 4).

<sup>39</sup> 43 FR 18514–18531, page 18519.

<sup>40</sup> *Idem*.

<sup>41</sup> *Idem*.

<sup>42</sup> *Idem*.

<sup>43</sup> USDA–APHIS, *Understanding the Scar Rule*, February 2001. This guide was removed from Agency circulation (and its website) when the Agency updated its training materials on the scar rule.

<sup>44</sup> *A Review of Methods for Detecting Soreness in Horses*, page 83.

not limited to, irritation, moisture, edema, swelling, redness, epidermal thickening, loss of hair (patchy or diffuse) or other evidence of inflammation. Any horse found to have one or more of the dermatologic conditions set forth herein shall be presumed to be 'sore' and be subject to all prohibitions of section 6 (15 U.S.C. 1825) of the Act."

As to the likelihood of accidental abrasions and other skin irregularities being confused for soring, changes in the skin due to soring are fairly distinctive when compared to accidental injuries. When horses are repeatedly sored, the skin on their pasterns will develop thickening that usually is in a ridge pattern and diffuse around the posterior and/or anterior pasterns. An injury is usually a discrete, well-demarcated cut or scar that can be differentiated from the skin changes seen with soring.

In our proposed change to the scar rule, we removed all references to scars and scarring, which is supported by the NAS study's conclusion that "scars have not been documented microscopically in Tennessee Walking Horses that have been found to be sore. A scar is an area of tissue where the normal components and organization of the tissue have been lost and replaced by fibrous connective tissue."<sup>45</sup>

We also propose removing all requirements that violations of the proposed § 11.6(b)(22) be bilateral in nature given the ability of violators to obscure signs of soring on at least one limb. We also note that it has long been the Agency's understanding, as evidenced in the 2001 guide, that soring may result in dermatologic indicia that is not uniform. Notwithstanding the current scar rule's language, we consider this proposed revision to be consistent with the Act itself. In the definition of "sore" in Section 2 of the Act (15 U.S.C. 1821), a horse is considered sore if the agents and other devices listed in the definition and used in the soring are applied, inflicted, injected, or used to or on "any limb of a horse." This definition, which is fundamental to understanding the Act's requirements regarding soring, clearly allows for diagnoses of soring regardless of the number of limbs involved. Therefore, a horse may be sore if a single limb has been subjected to the use of one of the devices, substances, or practices enumerated in the statutory definition of the term "sore."

The Agency acknowledges that section 6 of the Act (15 U.S.C. 1825(d))

states that "[i]n any civil or criminal action to enforce this chapter or any regulation under this chapter a horse shall be presumed to be a horse which is sore if it manifests abnormal sensitivity or inflammation in both of its forelimbs or both of its hindlimbs." However, APHIS considers this provision to mean that a horse must be considered presumptively sore during enforcement actions if it manifests such bilateral sensitivity or inflammation. It does not preclude the Agency from considering a horse sored based on evidence of unilateral soring; again, such an interpretation would cut against the definition of *sore* within the Act and render the clause "any limb of the horse" to be without meaning.<sup>46</sup>

Regarding our proposal to remove terms describing specific regions of the limb in the revision, we note that the definition of "sore" in the Act also supports this change. The definition accounts for soring being applied, inflicted, injected, or used on any limb of a horse without limiting it to any specific regions of the limb. Moreover, APHIS has found evidence of soring that can be identified through gross examination outside of these specific regions, and, as the 2001 guide illustrates, these regions may not be readily identified in all cases without guidance.

We also propose to remove references to "granulomas" and "proliferating granuloma tissue." Although the current footnote definition of "granuloma" in § 11.3 describes visible lesions and inflammation as scar rule violations, we are removing the term to prevent continued confusion with its medical definition as elaborated on in the NAS study.

Finally, we would remove the reference to "uniformly thickened epithelial tissue" on the flexor surface of the pasterns and cite the NAS study as support for this change. The NAS committee reviewed an unpublished but peer-reviewed evaluation ("Stromberg report")<sup>47</sup> of 136 microscopic biopsies of skin samples taken from 68 Tennessee Walking Horses that had

<sup>46</sup> See *Duncan v. Walker*, 533 U.S. 167, 174 (2001) ("It is our duty 'to give effect, if possible, to every clause and word of a statute.'" (quoting *United States v. Menasche*, 348 U.S. 528, 538–39 (1955) (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883))).

<sup>47</sup> Stromberg, P. 2017. *Summary report about soring in Tennessee walking horses*. Unpublished manuscript: <https://www.nationalacademies.org/documents/embed/link/LF2255DA3DD1C41C0A42D3BEF0989ACAECE3053A6A9B/file/D3016359C83283E8AABAF73D5E24301E7BA78A03B4B3?noSaveAs=1>. The manuscript was provided to the NAS committee by a member of the Tennessee Walking Horse industry.

been disqualified for violations of the scar rule during the Tennessee Walking Horse National Celebration events of 2015 and 2016. The evaluation, conducted by two veterinary anatomic pathologists,<sup>48</sup> examined 136 pastern biopsies (right and left pastern from each horse). Their evaluation of the biopsies indicated abnormal findings of variable epidermal hyperplasia in the form of acanthosis (thickening of the stratum spinosum layer of the epidermis) and variable degrees of hyperkeratosis (thickening of the stratum corneum layer of the epidermis). However, they concluded that beyond these abnormalities, there was no evidence of scar tissue or granulomatous inflammation in the biopsies and therefore concluded there was no basis or proof of a scar rule violation.

The pathologists subsequently provided 24 pairs of the pastern samples from their study to Dr. Pamela E. Ginn, a NAS study committee member and board-certified veterinary pathologist, for further review. While Dr. Ginn's initial observations on reviewing the pastern biopsies are similar to those documented by Drs. Stromberg and Cassone in the Stromberg report, Dr. Ginn interprets the significance of the lesions differently. Drawing from her evaluation, the NAS committee reports that the changes of hyperkeratosis and acanthosis, which were prominent in the biopsy specimens, do not normally occur without a previously inflicted injury on the pasterns. While these changes are recognized as secondary, chronic lesions, and do not provide clear evidence of the initial injury to the skin leading to these changes, they correlate with the grossly detectable lesions of irregular epidermal thickening known as lichenification, a pathologic change most often caused by rubbing, scratching, or other repeated trauma to the skin.<sup>49</sup> In other words, while the Stromberg report found no granuloma in the tissue microscopically and therefore concluded that there was no evidence of a violation, Dr. Ginn's evaluation on behalf of NAS found other pathological changes indicative of repeated trauma that correlate to an unnatural thickening of the skin visible on gross examination. Furthermore, NAS' evaluation found that the absence of granulomatous and scar tissue does not rule out a scar rule violation.

<sup>48</sup> Dr. Paul Stromberg, of the Ohio State University, and Dr. Lynne Cassone, of the University of Kentucky.

<sup>49</sup> *A Review of Methods for Detecting Soreness in Horses*, page 82.

<sup>45</sup> *A Review of Methods for Detecting Soreness in Horses*, page 84.

The NAS study recommended that the scar rule language should reflect what inspectors see on sore horses during gross examination. We agree with these conclusions and have proposed a set of diagnostic criteria that retains the visual elements of the scar rule detectable by gross examination.

Finally, we wish to note that APHIS does not entirely agree with the NAS study in its evaluation of the scar rule. While the study has provided APHIS with findings instrumental to our proposed changes to the scar rule, we disagree with NAS' statement regarding its enforceability, excerpted here:

The language of the scar rule is based on the assumptions that certain lesions exist microscopically, that those lesions can be detected by gross clinical dermatologic exam, and that the terms used in the scar rule were used appropriately. In addition, it is assumed that the rule can be interpreted and applied in a consistent manner by APHIS veterinary medical officers VMOs and DQPs tasked with examining horses for scar rule violations. None of these assumptions hold true today, and therefore the rule as written is not enforceable.<sup>50</sup>

We hold that the current scar rule is in fact enforceable. One of the NAS study's primary bases for considering the scar rule "unenforceable" is that it relies on a definition of "granuloma" that differs from the commonly accepted medical definition. The use of a regulatory term of art with a defined definition that is different from its ordinary meaning is, however, a well-established and defensible regulatory practice. Additionally, while we agree with the study that, without training and guidance, inspectors could differ in identifying regions of a horse covered by the scar rule, the study ignores the remedial measures that can be used to address this possible discrepancy, such as the issuance of the 2001 guide referenced above. Again, the use of guidance to address issues of possible inconsistent interpretation of the regulations is a well-accepted and long-standing regulatory practice that does not render the regulations themselves "unenforceable." Finally, as we stated above, NAS indicated that the pathological changes found in the biopsy specimens they examined correlate with grossly detectable lesions

of irregular epidermal thickening known as lichenification, most often caused by repeated trauma. We note that the grossly detectable (*i.e.*, visible upon gross examination) lichenification is actually equivalent to the non-uniformly thickened epithelial tissue APHIS inspectors document during inspections for soring.

In short, although the APHIS Horse Protection program and the NAS study use different terminology, both agree that microscopic, pathological changes to the skin indicative of soring correlate with a visible thickening detectable on gross examination. Such an examination obviously does not reveal microscopic changes in pathology indicative of soring, but it does not need to do so because of the visible changes that correlate with this pathology.

*Other Proposed Changes to Prohibitions Concerning Exhibitors*

Below is a table outlining other prohibitions for any horse at any horse show, horse exhibition, or horse sale or auction that we would move from current § 11.2 to proposed § 11.6.

<i>Prohibitions concerning exhibitors in current § 11.2</i>	<i>Location in proposed § 11.6 and substantive changes</i>
<b>General prohibitions</b>	
Paragraph (a) .....	Paragraph (a), with proposed additional language specifically prohibiting substances or practices that "mask previous and/or ongoing soring." Certain substances can hide or cause skin lesions, and practices such as stewarding or otherwise distracting a horse during inspection can mask behavioral evidence of pain.
<b>Specific prohibitions</b>	
Paragraph (b)(1) (Certain beads, bangles, rollers) .....	Paragraph (b)(2).
Paragraph (b)(2) (Chains weighing more than 6 ounces) .....	Paragraph (b)(3).
Paragraph (b)(3) (Chains not of uniform size, or twisted or doubled chains).	Paragraph (b)(4).
Paragraph (b)(4) (Chains with drop links) .....	Paragraph (b)(5).
Paragraph (b)(5) (More than one action device per limb of horse) .....	Paragraph (b)(1).
Paragraph (b)(6) (Chains, rollers with rough edges) .....	Paragraph (b)(6).
Paragraph (b)(7)(i) (Boots, collars with sharp edges) .....	Paragraph (b)(7).
Paragraph (b)(7)(ii) (Boots, collars weighing more than 6 ounces) .....	Paragraph (b)(8).
Paragraph (b)(8) (Pads changing the angle of hoof in excess of 1 inch at the heel).	Paragraph (b)(9).
Paragraph (b)(9) Any weight on yearling horses, except a keg or similar conventional horseshoe, and any horseshoe on yearling horses that weighs more than 16 ounces.	Paragraph (b)(10).
Paragraph (b)(10) Artificial extension of the toe length, whether accomplished with pads, acrylics or any other material that exceeds 50 percent of the natural hoof length.	Paragraph (b)(11).
Paragraph (b)(11) (Toe length that does not exceed the height of the heel by 1 inch or more.)	Paragraph (b)(12).
Paragraph (b)(12) Pads that are not made of leather, plastic, or other pliant material.	Paragraph (b)(13).
Paragraph (b)(13) Any object or material inserted between the pad and the hoof other than acceptable hoof packing.	Paragraph (b)(14).
	Proposed additional prohibition on acrylic and hardening substances as hoof packing. These substances, when hardened, can cause hoof pain upon stepping.

<sup>50</sup> A Review of Methods for Detecting Soreness in Horses, page 82.

<i>Prohibitions concerning exhibitors in current § 11.2</i>	<i>Location in proposed § 11.6 and substantive changes</i>
Paragraph (b)(14) Single or double rocker-bars on the bottom surface of horseshoes which extend more than 1½ inches back from the point of the toe.	Paragraph (b)(15).
Paragraph (b)(15) (Metal hoof bands placed less than 1½ inch below the coronet band).	Paragraph (b)(16).
Paragraph (b)(16) (Metal hoof bands that can be easily and quickly loosened or tightened by hand).	Paragraph (b)(17).
Paragraph (b)(17) (Action device or any other device that strikes the coronet band of the foot of a horse, except soft bell boots).	Paragraph (b)(18).
Paragraph (b)(18) (Shoeing a horse, or trimming a horse's hoof in a manner that will cause such horse to suffer).	Paragraph (b)(19).
Paragraph (b)(19) (Lead or other weights 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).	Proposed additional prohibition on paring of frog or bruising of hoof. These actions can cause the hoof to be overly sensitive to pain. Paragraph (b)(20).
	Paragraph (b)(21) Proposed new paragraph to prohibit stewarding (described above).
	Paragraph (b)(22) Proposed new paragraph on dermatologic changes (described above).

In proposed § 11.6(d), we include time restrictions on workouts and performances for 2-year-old Tennessee Walking Horses and racking horses. These restrictions are moved from current § 11.2(d). We would prohibit show or exhibition workouts or performances of 2-year-old Tennessee Walking Horses and racking horses, as well as working exhibitions of 2-year-old Tennessee Walking Horses and racking horses (horses eligible to be shown or exhibited in 2-year-old classes) at horse sales or auctions, that 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, and more than two such 10-minute periods per performance, class, or workout.

We would also include the horse-related information requirements under § 11.2(e) in proposed § 11.6(e). These requirements currently prohibit failing to provide information or providing any false or misleading information required by the Act or regulations or requested by APHIS representatives, by any person that enters, owns, trains, shows, exhibits, transports or sells or has custody of, or direction or control over any horse shown, exhibited, sold, or auctioned, or entered for the purpose of being shown, exhibited, sold, or auctioned at any horse show, exhibition, sale, or auction.

We would require that this provision apply to requests by HPIS appointed by management as well as APHIS representatives. This information includes, but is not limited to, information concerning the name, any applicable registration name and number, markings, sex, age, and legal ownership of the horse; the name and

address of the horse's training and/or stabling facilities; the name and address of the owner, trainer, rider, custodian, any other exhibitor, 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. In determining whether a horse is sore, it is important for an inspector, whether an APHIS representative or an HPI, to have access to these records, especially if a question of material fact arises regarding whether an observable condition on the horse is the result of soring or some other condition, malady, or infirmity known to the horse's owner and its custodians. We would add to paragraph (e) that failure to provide the information requested may result in termination under § 11.13.

#### **Inspection and Detention of Horses**

Section 11.4(a) currently includes the requirement that each horse owner, exhibitor, trainer, or other person having custody of, or responsibility for, any horse at any horse show, exhibition, or sale or auction allow any APHIS representative to reasonably inspect such horse at all reasonable times and places the APHIS representative may designate. We would move this requirement to proposed § 11.8(a) and include HPIS appointed by management to make such a designation.

We would also retain the requirement in current § 11.4(b), in which an APHIS representative must notify the owner, exhibitor, trainer, or other person having custody of or responsibility for a horse at any horse show, exhibition, or sale or auction that APHIS desires to

inspect the horse, and that it must not be moved from the horse show, exhibition, or sale or auction until such inspection has been completed and the horse has been released by an APHIS representative. We would include this requirement in proposed § 11.8(b) and add that HPIS may also make the notification that APHIS desires to inspect the horse. We would retain the provision that only an APHIS representative could officially release the horse as this is decision is made on behalf of the Department.

Paragraph (c) of proposed § 11.8 would state that for the purpose of inspection, testing, or taking of evidence, APHIS representatives may detain for a period not to exceed 24 hours any horse, at any horse show, exhibition, or sale or auction, which is sore or which an APHIS representative has probable cause to believe is sore. Such detained horse may be marked for identification and any such markings must not be removed by any person other than an APHIS representative. This requirement is moved from current § 11.4(c). We do not propose to provide HPIS with this authority as it is an official decision to detain property, in which the APHIS representative is acting on behalf of the Department.

In proposed § 11.8(d), we would include requirements for detained horses, moved from current § 11.4(d), which state that detained horses are required to be kept under the supervision of an APHIS representative or secured under an official USDA seal or seals in a horse stall, horse trailer, or other facility with limited access. In addition, APHIS must have at least one representative present in the immediate detention area when a horse is being held in detention. The official USDA

seal or seals may not be broken or removed by any person other than an APHIS representative, unless the life or well-being of the horse is in danger by fire, flood, windstorm, or other dire circumstances that are beyond human control, the horse needs immediate veterinary care that its life may be in peril before an APHIS representative can be located, or the horse has been detained for the maximum 24-hour detention period, and an APHIS representative is not available to release the horse. As with the proposed provision on detaining horses, we also consider detaining a horse to be an official decision requiring an APHIS representative to act on behalf of the Department.

In proposed § 11.8(e), we would include from current § 11.4(e) the requirement that the owner, exhibitor, trainer, or other person having custody of or responsibility for any horse detained by APHIS for further inspection, testing, or the taking of evidence be allowed to feed, water, and provide other normal custodial and maintenance care, such as walking and grooming, for the detained horse. This would be allowed provided that such care is rendered under the direct supervision of an APHIS representative. Additionally, the regulations would allow any non-emergency veterinary care of the detained horse provided that the use, application, or injection of any drugs or other medication for therapeutic or other purposes is rendered by a veterinarian in the presence of an APHIS representative and the identity and dosage of the drug or other medication and its purpose is furnished in writing to the APHIS representative prior to its use, application, or injection. The use, application, or injection of such drug or other medication must be approved by the APHIS representative. This would be an official oversight function limited to officials acting on behalf of the Department. Further, in retaining this requirement from the current regulations, we would replace the term “APHIS Show Veterinarian” in § 11.4(e)(2) with “APHIS representative” for the reasons explained above under “Definitions.”

We would also move to § 11.8(f) the requirement from current § 11.4(f) that APHIS must inform the owner, trainer, exhibitor, or other person having immediate custody of or responsibility for 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 APHIS representative. An HPI would be able to inform the person of this information,

although the decision to release the horse from detention would have to be made by an APHIS representative.

Current § 11.4(g) requires that the owner, trainer, exhibitor, or other person having immediate custody of or responsibility for any horse that an APHIS representative determines must be detained for examination, testing, or taking of evidence, be informed after such determination is made and must allow the horse to be immediately put under the supervisory custody of APHIS or secured under official USDA seal until the completion of the examination, testing, or gathering of evidence, or until the 24-hour detention period expires. We propose to retain this requirement and include it in § 11.8(g), but to replace “examination” with “inspection” wherever it is used to make the terminology more consistent with its use in other parts of the regulations.

Current § 11.4(h) contains provisions for requesting re-inspection and testing by persons having custody of or responsibility of horses allegedly found to be in violation of the Act or regulations. Proposed § 11.8(h), moved from § 11.4(h), contains provisions for re-inspection and testing and would extend authority to HPIS for certain actions not requiring an official decision or determination. Paragraph (h) would state that the owner, trainer, exhibitor, or other person having custody of or responsibility for any horse allegedly found to be in violation of the Act or regulations, and who has been notified of such alleged violation by an APHIS representative or HPI as stated in proposed § 11.8(f), may request re-inspection and testing of the horse within a 24-hour period. A re-inspection can only occur under the following conditions: (1) A request is made to an APHIS representative immediately after the horse has been inspected by the representative or an HPI appointed by management and before the horse has been removed from the inspection facilities; (2) an APHIS representative determines that sufficient cause for re-inspection and testing exists; and (3) the horse is maintained under APHIS supervisory custody as prescribed in paragraph (d) of the section until such re-inspection and testing has been completed. We would replace the term “APHIS Show Veterinarian” with “APHIS representative” throughout § 11.8(h) for the reasons explained above under “Definitions.” We would also use the terms “inspection” and “re-inspection” rather than “examination” and “re-examination” for consistency with the regulations. In addition, proposed paragraph (i) would require that the owner, exhibitor, trainer, or

other person having custody of, or responsibility for, any horse being inspected is required to render such assistance, as the APHIS representative or HPI may request, for purposes of the inspection.

#### Access to Premises and Records

Inspector access to premises and records is necessary to ensuring that event management and participants are in compliance with the Act and regulations. In proposed § 11.9, we would include requirements for managers to provide access to premises and records for inspection and for exhibitors to provide access to barns, vans, trailers, stalls, and other locations of horses at any horse show, exhibition, sale, or auction. We would also extend all access to premises and records for the purposes of inspection to HPIS appointed by management. These requirements would be moved from current § 11.5.

Paragraph (a)(1), moved from § 11.5(a)(1), would state that the management of any horse show, exhibition, or sale or auction shall, without fee, charge, assessment, or other compensation, provide APHIS representatives and HPIS appointed by management with unlimited access to the grandstands, sale ring, barns, stables, grounds, offices, and all other areas of any horse show, exhibition, or 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.

Proposed paragraph (a)(2) would state that the management of any horse show, exhibition, sale or auction shall, without fee, charge, assessment, or other compensation, provide APHIS representatives and HPIS appointed by management with an adequate, safe, and accessible area for the visual inspection and observation of horses. This requirement is moved from § 11.5(a)(2).

In proposed § 11.9(b)(1), we would include the requirement from current § 11.5(b)(1) that each horse owner, trainer, exhibitor, or other person having custody of or responsibility for any horse at any horse show, exhibition, or sale or auction shall, without fee, charge, assessment, or other compensation, admit any APHIS representative or 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, exhibition, sale, or auction, for the

purpose of inspecting any such horse, at any and all times.

Under proposed § 11.9(b)(2), moved from current § 11.5(b)(2), each owner, trainer, exhibitor, or other person having custody of or responsibility for, any horse at any horse show, exhibition, or sale or auction shall promptly present his or her horse for inspection upon notification, orally or in writing, by any APHIS representatives or HPIS 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.

These proposed requirements in § 11.9 would not include references to DQPs, a role which we propose to remove from the regulations and replace with HPIS.

### 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 requirements, management must provide sufficient space and facilities for APHIS representatives to perform their duties as prescribed by the Act and regulations. These requirements include ensuring that APHIS representatives and HPIS appointed by management 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. As noted in the NAS study, designating an inspection area that has as few distractions as possible will reduce the effect of the environment on the horse's response to pain during examination.<sup>51</sup> We would retain these requirements under proposed § 11.10.

In proposed § 11.10(a)(1), moved from current § 11.6(a), we propose adding that the management of every horse show, exhibition, sale, or auction is required to provide, when requested by APHIS representatives or HPIS appointed by management, without fee, charge, assessment, or other compensation, sufficient, well-lit space and facilities in a convenient location to the horse show, exhibition, sale, or auction arena, so they may carry out their duties under the Act and regulations, whether or not management has received prior notification or

otherwise knows that such show, exhibition, sale, or auction may be inspected by APHIS. We added to this provision that the HPI can also make such requests.

In proposed § 11.10(a)(2), event management would need to provide protection from the elements of nature, such as rain, snow, sleet, hail, and windstorms for the inspection area and other areas in which APHIS representatives and HPIS appointed by management carry out their duties. In current § 11.6(b), this requirement is contingent on whether an APHIS representative requests it, but the proposed revision would require that protection from the elements be available to all inspectors at all times, including HPIS. Protection from the elements is needed in order to facilitate accurate inspections.

Proposed § 11.10(a)(3), moved from § 11.6(c), would require that event management provide a means to control crowds or onlookers in order that APHIS representatives and HPIS appointed by management may carry out their duties safely and without interference. This requirement is intended to protect inspectors (whether APHIS representatives or HPIS appointed by management), staff, and spectators, as well as horses.

Inspection for soreness in horses sometimes requires the use of radiography and other technological equipment that must be connected to an electrical power source. Proposed § 11.10(a)(4), moved from § 11.6(d), would require that an accessible, reliable, and convenient 110-volt electrical power source be available at the horse show, exhibition, sale, or auction site. This provision has been amended so that a site without electrical power is no longer an option needing to be requested by APHIS. If fixed electrical service is not available, event management would be required to provide other means for electrical power such as a portable electric generator.

Finally, § 11.10(a)(5) would require appropriate areas to be provided adjacent to the inspection area for designated horses to wait before and after inspection, as well as an area to be used for detention of horses. An appropriate area would be one with sufficient space for the horses and separated from onlookers. This requirement is moved from current § 11.6(e), amended to include separation from onlookers.

We would add to proposed § 11.10(b) a provision that, except for the other persons listed below, only a management representative, HPIS appointed by management, and APHIS

representatives be allowed in the warm-up and inspection area. Each horse in the designated warm-up area may be accompanied by no more than three individuals, including the person having immediate custody of or responsibility for the horse, the trainer, and the rider. Each horse in the inspection area may only be accompanied by the person having immediate custody of or responsibility for the horse. No other persons would be allowed in the warm-up or inspection areas without prior approval from an APHIS representative or HPI appointed by management.

We are proposing this provision because 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 inspectors or event officials. Another safety concern is having large groups of people massed in an area where multiple horses are warming up.

### Responsibilities and Liabilities of Management

Under § 11.20 of the current regulations, the management of a horse show, exhibition, sale or auction that does not appoint a DQP to conduct inspections is responsible for identifying all horses that are sore or otherwise in violation of the Act or regulations, and must disqualify or disallow any horses which are sore or otherwise in violation from participating or competing in any horse show, exhibition, sale, or auction. If event management does not appoint qualified inspectors, management can be held liable for the failure to disqualify a sore horse from participating in a covered event.<sup>52</sup> If management appoints a DQP to conduct inspections, management can only be found liable for violations of the Act and regulations if they fail to disqualify a horse that the DQP identifies as a sore horse and notifies management accordingly.

Under this proposal, HPIS would replace the current role played by DQPs. Management could also request that an APHIS representative conduct inspections instead of an HPI. Under proposed § 11.16(a)(6), management of a covered horse show, exhibition, sale, or auction would have to contact APHIS at least 30 days in advance of the event and announce their intention either to request an APHIS representative or appoint an HPI to conduct inspections, or to have no inspector, or to request a

<sup>51</sup> *A Review of Methods for Detecting Soreness in Horses*, page 69.

<sup>52</sup> 15 U.S.C. 1824(3).

variance if no APHIS representative or HPI is available.

In proposed § 11.13(a), we would include requirements from current § 11.20(a), in that the management of any horse show, exhibition, sale or auction which does not utilize an APHIS representative or HPI is responsible for identifying all horses that are sore or otherwise in violation of the Act or regulations, and must disqualify or prohibit any horses which are sore or otherwise in violation of the Act or regulations from participating or competing in any horse show, exhibition, sale, or auction.

Under proposed § 11.13(a), horses entered for sale or auction at a horse sale or horse auction must be, as appropriate, identified as sore or otherwise in violation of the Act or regulations prior to the sale or auction and, as required by law, prohibited from entering the sale or auction ring. Sore horses or horses otherwise in violation of the Act or regulations that have been entered in a horse show or exhibition for the purpose of show or exhibition must be identified and disqualified prior to the show or exhibition. Any horses found to be sore or otherwise in violation of the Act or regulations during actual participation in the show or exhibition must be removed from further participation immediately (*e.g.*, prior to the horse placing in the class or the completion of the exhibition). Finally, all horses that placed first in each class or event would need to be inspected after the event to determine if such horses are sore or otherwise in violation of the Act or regulations.

We acknowledge concerns that management of some events may forego appointing an APHIS representative or HPI to inspect horses, but in doing so they are legally liable for any sore horses participating in the horse show, exhibition, sale, or auction. Shows without inspectors are more likely to be attended and inspected by APHIS representatives, particularly if APHIS determines the event poses a higher risk of sore horses participating. We noted above that shows featuring Tennessee Walking Horses and racking horses performing in pads and action devices have historically posed a much higher risk of soring, and accordingly we would focus our resources on them. Events featuring horses of other breeds, particularly those shown or performing without pads and action devices, pose a very low risk of soring. We invite comments on which horse events covered under the Act APHIS should focus on with respect to compliance risks, particularly events that choose to forego an inspector.

If event management requests an APHIS representative be appointed to conduct inspections on a certain date and no such representatives are available, event management could instead choose and appoint an HPI to inspect horses. If management determines that no HPIs are available on the desired date, management could request that APHIS consider granting a variance to proceed with the show or sale without an inspector, as proposed in § 11.16(a)(6).

When management requests an APHIS representative to inspect an event, the Agency would choose the representative. If management opts to appoint an HPI, management would choose the HPI from a list maintained on the APHIS Horse Protection website.

Proposed § 11.13(b) includes requirements moved from current § 11.20(b), and lists provisions for horse shows, exhibitions, sales, and auctions at which management utilizes an APHIS representative or HPI to conduct inspections. Proposed paragraph (b)(1) would state that the management of any horse show, exhibition, sale, or auction that utilizes an APHIS representative or HPI must not take any action which may interfere with or influence the APHIS representative or HPI in carrying out their duties.

In paragraph (b)(2), we would require that the management of any horse show, exhibition, sale, or auction that utilizes an HPI to inspect horses shall appoint at least 2 HPIs when more than 100 horses are entered. We note that in current § 11.20(c), 2 DQPs are required for inspections when more than 150 horses are entered in an event. We determined that limiting the number of horses to 100 or fewer for one HPI in this proposal would allow that individual to inspect horses more thoroughly and manageably. Additionally, we considered the fact that relatively few horse events covered under the Act involve the participation of 100 or more horses and the vast majority would therefore only require one inspector.

In paragraph (b)(3) of proposed § 11.13, we would require the management of any horse show, exhibition, sale, or auction that utilizes an APHIS representative or HPI to inspect horses to have at least one farrier physically present if more than 100 horses are entered in the event. If 100 or fewer horses are entered in the horse show, exhibition, sale, or auction the management would have to, at minimum, have a farrier on call within the local area to be present, if requested by an APHIS representative or HPI appointed by management. Because we

would continue to allow the use of pads and wedges for therapeutic treatment of Tennessee Walking Horses and racking horses, it is necessary for management to make a farrier available to assist with inspections of horses at horse shows, exhibitions, sales, and auctions in case a pad or wedge needs to be removed as part of an inspection.

Under proposed paragraph (b)(4) of § 11.13, management is required to prevent tampering with any part of a horse's limbs or hooves in such a way that could cause a horse to be sore after an APHIS representative or HPI appointed by management has completed inspection and before participating in a show, exhibition, sale, or auction.

The current regulations in § 11.20(b)(1) provide a means for event management to notify the Department regarding a DQP when they consider the performance of the DQP to be inadequate or otherwise unsatisfactory. Under proposed § 11.13(b)(5), we would provide a similar opportunity for management to address concerns regarding the performance of an HPI utilized to conduct inspections. If management is dissatisfied with the performance of a particular HPI, management would need to notify, in writing, the Administrator as to why they believe the performance of the HPI was inadequate or otherwise unsatisfactory. It is in the best interests of management to notify APHIS as soon as possible so that the Agency can gather relevant information and interview witnesses before recollections are lost to time. If the Agency determines the HPI's performance was inadequate or otherwise unsatisfactory, this could be addressed prior in a timely manner.

Current § 11.20(b)(1) also requires that “[m]anagement which designates and appoints a DQP shall immediately disqualify or disallow from being shown, exhibited, sold, or auctioned any horse identified by the DQP to be sore or otherwise in violation of the Act or regulations or any horse otherwise known by management to be sore or in violation of the Act or regulations.” Under proposed § 11.13(b)(6), we would similarly require that management that utilizes an APHIS representative or HPI would have to immediately disqualify or prohibit from showing, exhibition, sale, offering for sale, or auction of any horse identified by the APHIS representative or HPI appointed by management to be sore or otherwise in violation of the Act or regulations and any horse otherwise known by management to be sore or otherwise in violation of the Act or regulations.

Under proposed § 11.13(c)(1), management at horse shows, exhibitions, sales, and auctions would be required to ensure that no devices or substances prohibited under proposed § 11.6 are present in the horse warm-up area. This provision would ensure that such devices are not being used for any purposes contributing to soiling in the warm-up area. Paragraph (c)(2) would require that management review the orders of the Secretary disqualifying persons from showing or exhibiting any horse, or judging or managing any horse show, exhibition, sale, or auction, and disallow the participation of any such person in any such event for the duration of the period of termination.

Management would also be required to verify the identity of all horses entered in the show, exhibition, sale, or auction under proposed § 11.13(c)(3), with acceptable methods of identification being: (1) A description sufficient to identify the horse, 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 (2) electronic identification that complies with ISO standards;<sup>53</sup> or (3) an equine passport issued by a State government and accepted in the government of the State in which the horse show, exhibition, or sale or auction will occur. Verifying the identity of horses is critical to ensuring that a horse disqualified for an HPA violation does not participate in the event in question.

#### Records Required

Under proposed § 11.14(a), moved from current § 11.22(a), management of any horse show, exhibition, sale, or auction that contains Tennessee Walking Horses or racking horses would be required to maintain all records for a minimum of 90 days following the closing date of the show, exhibition, sale, or auction.<sup>54</sup> Records also would be required to contain the dates and place of the event, as well as the name and address of the sponsoring organization, event management, and each show judge, as applicable. In addition, management would be required to keep a copy of each class or sale sheet containing the names of horses, the registration number of the horse (if applicable), names and addresses of horse owner, the exhibition number and class number or sale

number assigned to each horse, the show class or sale lot number, and the name and address of the person paying the entry fee and entering the horse in the show, exhibition, sale, or auction. Copies of the official program would also need to be kept, if such a program has been prepared, as well as a copy of the official scoring cards for each show containing Tennessee Walking Horses and racking horses, to include the place each horse finished in the class. Management would also be required to maintain records showing the name and any applicable registration name and number of each horse, as well as the names and addresses of the owner, the trainer, the custodian, the exhibitor and the location of the home barn or other facility where the horse is stabled.

Records required to be kept by event management in proposed § 11.14(a) would also include those of horses disqualified from participating, which are currently required to be kept by management and submitted to APHIS under § 11.24(a). These records are required to contain the name, exhibition number and class number, or assigned sale number, and the registration name and number (if applicable) for each horse disqualified or prohibited by management from being shown, exhibited, sold or auctioned, and the reasons for such action, as well as the name and address of the person designated by the management to maintain the records required. Finally, if management has appointed an HPI to conduct inspections at the event, the name and address of each HPI appointed to conduct the inspections would be required.

In the current regulations, there are no recordkeeping requirements for horses under the care of a licensed veterinarian and requiring therapeutic treatment using pads or other restricted or prohibited devices. Proposed § 11.14(b) would require that the management of any horse show, exhibition, or sale or auction that allows any horse to be shown, exhibited or sold with devices, pads, substances, applications, or other items restricted under proposed § 11.6 for therapeutic treatment must maintain the following information for each horse receiving the therapeutic treatment for a period of at least 90 days following the closing date of the horse show, exhibition, sale, or auction: (1) The name, exhibition number and class number, or assigned sale number, and the registration name and number (if applicable) for each horse receiving therapeutic treatment; (2) the name, address, and phone number of the licensed veterinarian providing the therapeutic treatment; (3) the State and

license number of the licensed veterinarian providing the therapeutic treatment; and (4) the name and address and phone number of the licensed veterinarian's business. Finally, the records would also need to contain a description of the disease, injury, or disorder for which the treatment is given, to include at minimum the starting date of treatment, prescription or design of the treatment plan, and expected length of treatment, including an estimate of when it is anticipated to be discontinued. We are applying this recordkeeping requirement to all horses participating in events covered under the Act to ensure that any such horses under therapeutic care involving restricted or prohibited items in proposed § 11.6 are receiving legitimate veterinary treatment and are not being soiled.

#### Inspection of Records

Under proposed § 11.15, moved from current § 11.23(a), the management of any horse show, exhibition, sale, or auction would be required to permit any APHIS representative or HPI appointed by management, upon request, to examine and make copies of all records pertaining to any horse that are required in the regulations or otherwise maintained during business hours or agreed upon times. In addition, 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 or HPI appointed by management.

#### Reporting by Management

Proposed § 11.16(a) requires that the management of any horse show, horse exhibition, horse sale, or horse auction notify the Administrator of the event by mail, fax, or email not less than 30 days before it occurs and submit the following information: (1) The name and address (including street address and ZIP Code) of the horse show, exhibition, sale, or auction; (2) the name, address, phone number (and email address, if available) of the event manager; (3) the date(s) of the horse show, horse exhibition, horse sale, or horse auction; (4) a copy of the official horse show, exhibition, sale, or auction program, if any such program has been prepared; and (5) anticipated or known number of entries.

Also, paragraph (a)(6) would require event management to provide information on whether they are requesting an APHIS representative to perform inspections at the horse show, horse exhibition, horse sale, or horse auction; or, if not, whether they have chosen and appointed an HPI to inspect

<sup>53</sup> An international standard for regulating the radio frequency identification (RFID) of animals.

<sup>54</sup> These information collection activities will be scheduled for merger into 0579-0056 upon publication of a final rule.



horses or have no inspector. If neither an APHIS representative nor an HPI is available on the date of the event, event management may request a variance. Variances would have to be submitted in writing by mail, fax, or electronic means such as email to the Deputy Administrator of Animal Care at least 15 days before the event and state the reason for requesting the variance. Finally, paragraph (a)(7) would require management to provide information regarding whether they will allow any horse to be shown, exhibited or sold with prohibitions under section § 11.6 for therapeutic treatment.

The 30-day notice requirement is not currently in the regulations, and has been proposed to give APHIS advance notice of the event and sufficient time to arrange for an APHIS representative to be present to inspect horses, if requested by event management. APHIS would also reserve the right to attend and conduct inspections at such events unannounced.

Proposed § 11.16(b) requires that at least 15 days before any horse show, exhibition, sale, or auction is scheduled to begin, the management of the event must notify APHIS of any changes to the information required to be submitted to APHIS under proposed § 11.16(a) by mail, fax, or email. We included this provision so that APHIS would have knowledge of any changes to the event, such as a change in the number of horses participating or the addition of show classes, that could potentially affect inspections and compliance. We assume that no changes have occurred to the submitted information unless we receive notification to the contrary.

Under paragraph (c) of proposed § 11.16, within 5 days following the conclusion of any horse show, exhibition, sale, or auction that contains Tennessee Walking Horses or racking horses, the management of such an event is required to submit to APHIS the records required by § 11.14 by mail, fax, or email. Event information already submitted in accordance with § 11.16(a) (information to be submitted at least 30 days before the event) would not need to be submitted again.

Under paragraph (d) of proposed § 11.16, management of any horse show, exhibition, sale, or auction which does *not* include Tennessee Walking Horses and racking horses would be required to submit the following information to APHIS within 5 days following the conclusion of the event: Any case where a horse was prohibited by management from being shown, exhibited, sold or auctioned because it was found to be sore or otherwise in violation of the Act or regulations. Information would

include at a minimum the name, exhibition number and class number, or assigned sale number, and the registration name and number (if applicable) for each horse disqualified or prohibited by management from being shown, exhibited, sold or auctioned, and the reason(s) for such action. We invite comment on the timing and nature of these recordkeeping and records retention requirements.

#### **Transportation Requirements**

Under proposed § 11.17, moved from current § 11.40, we would require that 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, sale, or auction, must allow and assist in the inspection of such horse at any such horse show, exhibition, sale, or auction to determine compliance with the Act and regulations. The person would also need to furnish to any APHIS representative or HPI appointed by management upon their request the following information: (1) Name and address of the horse owner and of the shipper, if different from the owner or trainer; (2) name and address of the horse trainer; (3) name and address of the carrier transporting the horse and of the driver of the means of conveyance used; (4) origin of the shipment and date thereof; and (5) destination of the shipment.

#### **Utilization of Inspectors**

We would include the provision in proposed § 11.18(a) that the management of any horse show, horse exhibition, horse sale, or horse auction may utilize an APHIS representative or an HPI to detect and diagnose a horse which is sore or to otherwise inspect horses for compliance with the Act or regulations.

In proposed § 11.18, paragraph (b), we would include the requirement that if management elects to utilize an HPI to detect and diagnose horses which are sore or to otherwise inspect horses for compliance with the Act or regulations, the HPI must currently be authorized by APHIS pursuant to § 11.19 of the regulations to perform this function.

In proposed paragraph (c), we would include the provision that the management of any horse show, exhibition, sale, or auction must not utilize any person to detect and diagnose horses which are sore or to otherwise inspect horses for the purpose of determining compliance with the Act and regulations, if that person has not been authorized by APHIS or if that

person has been disqualified by the Secretary, after notice and opportunity for a hearing, in accordance with section 4 (15 U.S.C. 1823) of the Act, to make such detection, diagnosis, or inspection.

We would include a provision in proposed paragraph (d) providing that, after the effective date of the final rule, assuming this rulemaking is finalized, only APHIS representatives and HPIs as defined in § 11.1 must be utilized by management to detect and diagnose horses which are sore or otherwise inspect horses for compliance with the Act or regulations. Any DQPs seeking to continue inspecting or other persons wishing to become inspectors after the effective date of this rule must apply to APHIS and meet eligibility qualifications for authorization included in proposed § 11.19.

#### **Authorization and Training of Horse Protection Inspectors**

Under the current regulations in § 11.7, HIOs operating APHIS-certified DQP programs are responsible for selecting, training, evaluating, licensing, and disciplining DQPs. When an HIO requests certification of its DQP program, APHIS requires the HIO to submit criteria it intends to use to select DQP applicants, as well as training plans, standards of conduct expected of DQPs, and other materials listed in § 11.7(b).

We propose to have APHIS assume the training and authorization of inspectors, which involves removing and reserving § 11.7 and proposing new requirements for inspectors in a new § 11.19. Based on the conclusions of the USDA–OIG audit and the NAS study discussed above, as well as our own observations made in the course of administering the Horse Protection program, we determined that the current regulations delegating DQP training and licensing responsibilities to HIOs were not addressing the conflicts of interest and inadequate training resulting in a failure to diagnose sore horses, and that APHIS having a direct regulatory role in these functions would best achieve the aim of eliminating soreing.

Section 11.7(a) of the current regulations lists the basic qualifications required of DQPs. In brief, persons are eligible to be licensed as DQPs if they are: (1) licensed veterinarians with equine experience, or (2) farriers, horse trainers, or other knowledgeable horsemen whose experience and training qualify them for positions as HIO stewards or judges and who have been formally trained and licensed as DQPs by an APHIS-certified HIO.

DQPs are not evaluated and licensed by APHIS for their suitability as

inspectors. These tasks are performed by HIOs that APHIS has certified based on the criteria in § 11.7(b). Certified HIOs must maintain and enforce DQP training requirements and standards of conduct and are responsible for ensuring that DQPs follow all regulatory requirements pertaining to them throughout § 11.7.

Proposed § 11.19 includes the qualifications required of persons who are applying to APHIS as HPI candidates. Applicants would be required to show that they meet all qualifications in two tiers, designated as Tier 1 and Tier 2. As we explain below, an applicant must meet the Tier 1 requirement as a prerequisite to be further evaluated under Tier 2 requirements. We invite comment on the clarity of the proposed process, and/or the utility of a tiered process for evaluating HPI applicants as proposed, including suggestions for simplifying it or replacing it with an altogether different process.

Prior to authorization, APHIS would ensure that inspectors are sufficiently trained and qualified to perform inspections and, once authorized, that they observe all standards of conduct and perform their duties consistent with enforcing the Act and regulations. All applicants would be required to submit an HPI application to APHIS using guidance provided on the APHIS Horse Protection Program website.<sup>55</sup>

Paragraph (a)(1) of proposed § 11.19 lists the qualifications of Tier 1, which would require that the applicant be a veterinarian, except that veterinary technicians and persons employed by State and local government agencies to enforce laws or regulations pertaining to animal welfare may also be authorized if APHIS determines that there is an insufficient pool of veterinarians among HPIs and applicants to be HPIs.

Unlike the current DQP eligibility qualifications in § 11.7(a), proposed Tier 1 includes no provision for HPI eligibility for farriers, horsemen, and other laypersons with industry experience. As expressed by the USDA–OIG audit report and NAS study and supported by all major veterinary organizations, licensed veterinarians with equine experience are best qualified to detect soring in horses. Among other advantages, their medical training in anatomy and physiology affords them the ability to discern signs of soring in a horse that may be missed by experienced inspectors who lack such intensive training. In addition, licensed veterinarians in the United States are bound by their profession to

ethical codes of conduct established by the American Veterinary Medical Association (AVMA) and supported by other veterinary organizations. Under the AVMA principles for veterinary medical ethics, veterinarians are required to avoid conflicts of interest that put financial or other considerations ahead of animal welfare and the best interests of the animal involved. For these reasons, we are proposing the Tier 1 veterinary requirement.

However, we acknowledge that given the number and geographical distribution of veterinarians in the United States, there may be an insufficient number of such veterinarians with equine experience applying to be authorized as HPIs, with several commenters on the 2016 proposed rule raising the same concern. Other public comments we received rightly noted that veterinarians, when available, could charge more for their time than could veterinary technicians or other qualified non-governmental persons, resulting in higher costs that may be prohibitive for smaller horse shows and exhibitions. Under this proposal, shows and sales opting to appoint an APHIS representative would incur no such costs.

The Act itself does not mandate that “persons qualified to detect and diagnose a horse which is sore” have formal veterinary training, and accordingly some commenters on the 2016 rule contended that many experienced veterinary technicians and DQPs are as sufficiently able as veterinarians to diagnose sored horses. We partially agree, insofar as degreed and accredited veterinary technicians possess a level of medical training that, when combined with APHIS training, can qualify them to be authorized as HPIs. We also believe that making authorization available to qualified veterinary technicians under proposed Tier 1, if needed, would result in a sufficient pool of candidates applying to be HPIs, given that we are also proposing to allow management to request inspection directly by APHIS representatives. As a result, we would not seek applications from persons lacking formal veterinary medical or technical credentials regardless of their experience as DQPs. By considering veterinary technicians and qualified State and local animal control officials<sup>56</sup> as conditions dictate, we would maintain a sufficient number of

trained HPIs to meet demand without compromising the levels of inspection accuracy and integrity we hope to achieve.

If an applicant meets the qualifications in Tier 1, APHIS would then evaluate whether a candidate meets the qualifications listed in Tier 2, which we include in proposed paragraph (a)(2). Guidance explaining details of these qualifications would be posted to the APHIS Horse Protection website.

Under proposed paragraph (a)(2)(i) of the Tier 2 qualifications, APHIS would require the applicant to demonstrate sufficient knowledge and experience of equine husbandry and science and applicable principles of equine science, welfare, care, and health to determine that the applicant can consistently identify equine soring and soring practices. The current regulations do not specifically require that inspectors demonstrate this knowledge during evaluation of their application. While an HIO could establish this application requirement as part of its certified DQP program, APHIS cannot confirm that the HIO is actually enforcing the requirement under the current regulations.

In proposed paragraph (a)(2)(ii), we would require that an HPI applicant not have been found to have violated any provision of the Act or the regulations in this part occurring after July 13, 1976,<sup>57</sup> 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. This requirement is similar to one currently under DQP licensing requirements for HIOs in § 11.7(c)(4). As other requirements in paragraph (c) pertain to HIOs, they are no longer necessary.

Under proposed paragraph (a)(2)(iii), we would require that the applicant, as well as the applicant’s immediate family and employer, not participate in the showing, exhibition, sale, or auction of horses or act as a judge or farrier, or be an agent of management. The current regulations in § 11.7(d)(7)(i) prohibit a DQP from exhibiting, selling, auctioning, or purchasing any horse sold at any horse show, sale, or auction at which he or she has been appointed to inspect horses, and paragraph (d)(7)(ii) prohibits a DQP from inspecting horses at any horse show, exhibition, sale or auction in which a

<sup>55</sup> <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/hpa>.

<sup>56</sup> State and local animal control officials authorized to perform inspections would not be doing so as governmental officials, but as individuals meeting the qualifications for authorization.

<sup>57</sup> On this date, the revision to the Horse Protection Act establishing the Secretary to prescribe requirements for the appointment of persons qualified to detect and diagnose soring was promulgated as Public Law 94–360.

horse or horses owned by a member of the DQP's immediate family or the DQP's employer are competing or being offered for sale. This proposal broadens the scope of prohibited industry relationships for inspectors and evaluates such conflicts of interest at the application stage, rather than apply them after the inspector has already been authorized to conduct inspections.

Under proposed paragraph (a)(2)(iv), we would require that the applicant must not have been disqualified by the Secretary from performing diagnosis, detection, and inspection under the Act, which is similar to the current requirement in paragraph (c)(6) in which HIOs must not license such persons.

In paragraph (a)(2)(v) of proposed § 11.19, we would require that the applicant must not have acted in a manner that calls into question the applicant's honesty, professional integrity, reputation, practices, and reliability relative to possible authorization as an HPI. We believe that such in-depth screening to determine an applicant's suitability is only possible if APHIS directs the application process and decides whether to authorize a person to conduct inspections.

Applicants screened under Tier 2 would not be considered to be authorized as HPIs if any of the following sources of evidence in proposed paragraph (a)(2)(V) raises questions about their suitability.

Under proposed paragraph (a)(2)(v)(A), we would review criminal conviction records, if any, that may indicate the applicant lacks the honesty, integrity, and reliability to appropriately and effectively perform HPI duties.

Proposed paragraph (a)(2)(v)(B) would allow APHIS to review 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 applicant.

Under proposed paragraph (a)(2)(v)(C), APHIS would review judicial determinations in any type of litigation adversely reflecting on the honesty, reputation, integrity, and reliability of the applicant.

Finally, under proposed paragraph (a)(2)(v)(D), APHIS would review any other evidence reflecting on the honesty, reputation, integrity, and reliability of the applicant to perform HPI duties.

Current § 11.7(b) contains several specific training requirements that HIOs are required to provide to DQPs. As APHIS would train all HPIs to perform inspection duties, we propose to include in paragraph (b) of § 11.19 the

requirement that all applicants selected as candidates will complete a formal training program administered by APHIS prior to authorization. APHIS would train HPIs using professionally recognized, science-based approaches to detecting soring, many of which are discussed in the above-mentioned NAS study. Continual training of HPIs as APHIS determines to be necessary would be a condition of maintaining authorization to inspect horses. Additional details of the training program would be available on the APHIS Horse Protection website.

In proposed § 11.19, paragraph (c), we would state that APHIS will maintain a list of all HPIs on the APHIS Horse Protection website. The list would also be available by writing to APHIS via email or U.S. mail. Event management would appoint an HPI of their choosing from the list.

As current paragraphs (e), (f), and (g) of § 11.7 pertain to requirements based on HIO licensure of DQPs, these would not be retained in the regulations. However, paragraph (f) provides a process for canceling a DQP license and for appealing such a cancellation. We consider it necessary in accordance with the Act to provide similar means in this proposal for HPIs to appeal disqualification of their authorization. As APHIS would have sole responsibility for granting or denying applications for HPI authorization, we would extend the appeals process to apply to denials of applications for authorization.

In proposed § 11.19, we are including an appeals process for any applicant whose application for authorization has been denied. We are also including a process for authorized HPIs who are being disqualified from inspecting horses to receive notice and opportunity for a hearing before a final decision for disqualification is rendered. We propose that APHIS may deny an applicant for any of the reasons outlined in paragraph (a). We also propose that APHIS may permanently disqualify an HPI, after notice and opportunity for a hearing, who fails to inspect horses in accordance with the procedures prescribed by APHIS or otherwise fails to perform duties necessary for APHIS to enforce the Act and regulations.

We propose in paragraph (d)(1) that APHIS may deny an application to be authorized as an HPI for any of the reasons outlined in paragraph (a) of § 11.19. In such instances, the applicant would be provided written notification of the grounds for the denial. The applicant may appeal the decision, in writing, within 30 days after receiving the written denial notice. The appeal

would need to state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. As soon as practicable, the Administrator would grant or deny the appeal, in writing, stating the reasons for the decision.

We propose in paragraph (d)(2) that APHIS may permanently disqualify any HPI who fails to inspect horses in accordance with the procedures prescribed by APHIS or otherwise fails to perform duties necessary for APHIS to enforce the Act and regulations, after notice and opportunity for a hearing. Requests for hearings and the hearings themselves would be in accordance with the Uniform Rules of Practice for the Department of Agriculture in subpart H of part 1, subtitle A, of 7 CFR.

#### Alternatives Considered

Consistent with Executive Orders 12866 and 13563, APHIS has considered other alternatives to this proposed action.

As we have noted, APHIS has implemented numerous program-based initiatives within the current regulatory regime in its attempt to eliminate soring, including ensuring that DQPs receive the training needed to inspect horses responsibly and accurately. From the 2010 issuance of the OIG audit report to the present, APHIS' efforts to curb soring have included issuing enforcement warning letters to HIOs and DQPs, increasing oversight of DQP inspections, and sending VMOs to observe events having a higher likelihood of sored horses being present. APHIS has also worked to build trust with the industry by funding joint trainings with HIOs on proper inspection procedures, arranging clinics for the public to learn about inspections and ask questions, and transitioning primary enforcement to DQPs such that VMOs would not re-inspect a horse that a DQP finds noncompliant. In addition, APHIS has funded prohibited substance testing and limited the number of rule updates to HIOs between show seasons so that DQPs are not overly burdened with new information.

However, given the rates of noncompliance found in inspections between 2017 and 2022, our programmatic attempts to strengthen the program under the current regulations have not produced meaningful reductions in the number of sored horses appearing in shows and other HPA-covered events, nor has increased enforcement significantly deterred the practice. Even when DQPs have the skills needed to accurately diagnose horses for soring, which many demonstrate in the presence of APHIS

representatives, conflicts of interest within the Tennessee Walking Horse and racking horse communities continue to encourage soring. These conflicts undercut all programmatic alternatives that we have attempted within the current regulatory regime.

We acknowledge that some regulations are in place to address these conflicts. Under paragraph (d) of § 11.7, HIOs operating an APHIS-certified DQP program are required to promulgate standards of conduct, including prohibiting DQPs from inspecting at events at which horses owned by them are participating. This applies also to members of their family or their employers. However, even if the HIO reliably enforces these standards, conflicts of interest extend well beyond those of family and employer, to business and other relationships among persons active in the industry who consider soring their horses a means to gain competitive advantage.

Through this proposed rule, we would amend the regulations to transfer from HIOs to APHIS the task of screening, training, and authorizing qualified persons to inspect horses for soring. By so doing, APHIS would be better positioned to ensure that inspectors are screened for conflicts of interest and could take immediate disciplinary action if an inspector fails to follow Agency and professional codes of ethical conduct. Also, APHIS could directly deliver to inspectors the proper training needed to conduct science-based inspections for soreness as supported in the NAS committee report.

While we believe the amendments in the 2017 HPA final rule that we are proposing to withdraw could serve as an effective alternative for remedying the problems with enforcement and compliance, and ultimately help to eliminate soring, we consider this latest proposal to be the preferable alternative. Among other changes, both rulemakings move responsibility for training and authorizing inspectors under direct APHIS oversight, and both prohibit the pads, devices, substances, and actions that have long been used to sore Tennessee Walking Horses and racking horses.

However, unlike the previous rulemaking, this one draws upon the findings of the recent NAS study to revise the scar rule so that its criteria more accurately describe the dermatological changes associated with soring. Also, by affording event management the option of appointing an APHIS official instead of an HPI to conduct inspections, this proposed rulemaking relieves costs for smaller events choosing to appoint an inspector.

For events that use inspectors, this proposal would require one inspector for every 100 horses participating, while the 2017 final rule only requires one inspector for every 150 horses. This proposal also requires that a farrier be present if more than 100 horses are participating and requires that a farrier be on call if there are 100 or fewer horses. The smaller numbers provide inspectors and farriers with a more manageable workload by which they can thoroughly inspect and diagnose sore horses.

This proposal also sets new management requirements to maintain information for 90 days on the therapeutic use of pads, substances, and other prohibited items on horses at events covered under the Act, and requires that management of any covered event notify APHIS at least 30 days before it begins.

The 2017 final rule limits this requirement to events featuring Tennessee Walking horses and racking horses. These requirements allow APHIS to establish a broader record of events covered under the Act, allowing for adjustments to enforcement should noncompliance with the Act become an issue in current or emerging horse breeds.

Finally, we note that a discussion of the rationale for proposing to withdraw the 2017 HPA final rule is contained in the proposed withdrawal itself.

We believe the changes proposed in this document represent 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 alternatives.

#### 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 examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. A summary of the economic analysis is included below. Copies of the full analysis are also available on the *Regulations.gov* website (see under **ADDRESSES** in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The Horse Protection Act (HPA, or Act, 15 U.S.C. 1821 *et seq.*) prohibits sored horses from participating in horse exhibitions, sales, shows, or auctions covered under the Act. Soring is the practice of intentionally injuring a horse's front feet and limbs to cause pain so intense that the horse lifts its legs quickly to relieve the pain when its hooves strike the ground, thereby producing a distinctive high-stepping gait.

In September 2010, USDA's Office of Inspector General (OIG) released an audit of the Animal Plant and Health Inspection Service's (APHIS) enforcement of the HPA. In addition, a 2021 National Academy of Sciences (NAS) study examined methods used to inspect horses for soreness and made recommendations. The proposed rule is in response to several findings and recommendations contained in that audit and in the NAS study, as well as in response to data independently obtained by the Agency. The objective of the proposed rule is more effective enforcement of the HPA.

The principal proposed amendment to the Horse Protection regulations is that APHIS would screen, train and authorize qualified persons to conduct inspections at horse shows, horse exhibitions, horse sales, and horse auctions to ensure compliance with the HPA. APHIS would authorize applicants, preferably veterinarians, as Horse Protection Inspectors (HPI)<sup>58</sup> after screening them for potential conflicts of interest and conducting training. APHIS would also develop a process for denying an application or disqualifying a person authorized to inspect horses who does not meet our qualifications or who otherwise fails in duties or conduct under the Act or regulations. We also propose that event management may elect instead to have an APHIS representative conduct inspections. The proposed rule would remove all regulatory responsibilities and requirements for horse industry organizations and associations (HIOs).

<sup>58</sup> The term Designated Qualified Persons or DQPs, would be replaced by HPIs, or horse protection inspectors, under the proposed rule.

Currently, horse shows either assume responsibility for conducting preshow inspections for evidence of soring or contract with an APHIS-certified HIO to provide DQPs to conduct inspections. However, the OIG audit discovered conflicts of interest between DQPs, the HIOs that license and hire them, and organizers of the shows and exhibitors that contract with HIOs to provide DQPs. The OIG audit noted that at times DQPs fail to inspect horses adequately or to issue violations in accordance with the regulations. Concurring with the findings of the OIG audit, the NAS study committee concluded that some horses experiencing soreness are not being identified during inspections and strongly recommended that use of DQPs for inspections under the current program be discontinued.

Inspection data compiled by APHIS from fiscal year (FY) 2017 to 2022 show that inconsistencies persist in the number of violations detected by APHIS officials and those issued by DQPs inspecting horses. During this period, APHIS attended about 16 percent of all HPA-covered events featuring Tennessee Walking Horses, racking horses, and other breeds at which horse industry DQPs conducted inspections, performance as well as flat-shod classes. While APHIS attended only a fraction of the events at which DQPs were appointed to inspect horses, APHIS consistently reported higher rates of noncompliance at these events based on its VMO inspection findings. Most horses inspected by APHIS officials at these events were chosen at random, although APHIS chose to inspect some horses for which a suspicion of soring was warranted.

Designated Qualified Persons consistently reported higher rates of noncompliance when APHIS officials were in attendance than when they were not. In FY 2021, for example, if only horses wearing “performance packages” (*i.e.*, a padded horse) are considered, APHIS officials detected 158 instances of noncompliance with the HPA out of the 398 horses APHIS inspected at the 17 events attended, resulting in close to a 40 percent rate of noncompliance for performance horses. In contrast, of the 207 events attended and inspected only by DQPs during the same period, DQPs detected just 321 instances of noncompliance with the HPA out of the 11,825 performance horses they inspected, recording only a 1.9 percent rate of noncompliance when APHIS officials were not present and 7.1 percent when they were. Also notable is that the rate of noncompliance detected for horses wearing performance packages was significantly and

consistently higher than that detected for flat-shod horses.

In addition, the proposed rule would also prohibit non-therapeutic pads and action devices at all events involving Tennessee Walking Horses and racking horses, as these items are used to induce or hide soring. The proposed rule would also update the scar rule by including language that better describes visible dermatologic changes and stating that the changes do not have to be bilateral.

An additional amendment to the rule would also require a farrier to be present at shows with 100 or more horses and on-call for shows with fewer than 100 horses if the management of the shows utilize an AHPIIS representative or HPI. We welcome public comments on the costs associated with having a farrier at the shows and on-call. Also, for horse shows that utilize an HPI or APHIS representative, if there are more than 100 horses participating in the show, there must be an additional HPI.

The prohibition of pads and action devices does not impose costs on show management or participants. Of these proposed amendments to the Horse Protection regulations, only the amendments requiring a farrier to be present at a show of more than 100 horses, or on call if fewer than 100 horses are participating, may result in additional costs such as record keeping for show management and participants.

Given that event managers may choose to have an APHIS inspector at no cost to them, the proposed rule would impose no additional required costs to horse show management in terms of inspectors.

Currently, horse shows either assume responsibility for conducting preshow inspections for evidence of soring or contract with an APHIS-approved Horse Industry Organization (HIO) to provide Designated Qualified Persons to conduct inspections. HIOs may be able to pass this cost on to the exhibitors and participants in the show. Under the proposed rule, if an APHIS inspector is used, they would no longer have to bear the costs associated with having inspectors at the shows. This could potentially result in cost savings to the HIOs and the exhibitors. The cost of having inspectors at the shows varies by region and ranges from \$350 to \$23,000 with the average being \$700 to \$800 per show.

Conversely, it is possible that HPIs will charge more for their inspections than DQPs currently do. The rate that HPIs will charge for their services under the proposed rule, as compared to the current rate of compensation for DQPs mentioned above, is unknown because the rate is negotiated between the

inspectors and the management that contracts for their services, and thus not within APHIS’ purview. Management may also be able to pass the costs of having inspectors at the shows on to the exhibitors. We welcome public comments to the extent that there may be additional costs or cost savings associated with this proposed rule.

Based on the estimates of an expert elicitation<sup>59</sup> commissioned by APHIS, the cost of services provided per show by veterinarians, farriers, and inspectors ranges from a few hundred to several thousand dollars. Because this analysis was conducted several years ago, we use the consumer price index (CPI) to convert the costs to 2021 dollars. APHIS believes these estimates to be reasonably accurate. However, we acknowledge that there is some level of uncertainty, as the structure of the industry may have changed. In addition, we do not know the impact that the pandemic may have had on the industry. We welcome comments which would provide better insight and detailed information on the components of the costs, if applicable. The incidence of the costs to the show of the farrier would depend on their ability to pass the costs along to participants or other entities involved with the shows. In addition, many of the entities may already have farriers present at shows, auctions, and sales. Many, if not most, of the entities that may be affected by this proposed rule are small.

The proposed rule would result in foregone revenue for most current DQPs, who would not meet APHIS’ requirements for HPIs under the terms of the proposed rule. As noted above, the average cost of having inspectors at shows is \$700 to \$800 per show. With 59 currently authorized DQPs and 300 shows on average per year, this suggests that DQP income is supplemental, rather than a primary source of revenue, for most DQPs. Additionally, APHIS anticipates 30 new initial applications from parties interested in becoming HPIs under the proposed requirements. For new HPIs who were not previously DQPs, this rule would result in new income. We request public comment on this matter.

While the proposed rule would result in better enforcement of the HPA, implementation of the proposed changes would result in additional costs to APHIS in terms of conducting inspections, screening, and training potential HPIs. We expect that APHIS

<sup>59</sup> *Expert Elicitation in Support of the Economic Analysis of the Tennessee Walking and Racking Horse Industry*; RTI International, November 2012 3040 Cornwallis Road, Research Triangle Park, NC 27709.

costs would increase by approximately \$6.4 million. This assumes that APHIS inspectors would attend approximately 300 shows per year. Over the last 5 years, there have been an average of 226 shows per year. In addition, the industry and APHIS may incur additional recordkeeping costs of \$47,000 and \$127,000, respectively. Training costs would include renting a training horse and employee travel. The average 3-day horse rental is \$450 and the travel cost per employee is \$1,900. APHIS would not charge a fee for training; however, the participants may have to pay their travel expenses to and from training and lodging. If funds are available, APHIS would pay travel expenses and other costs associated with attending training.

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 Tennessee Walking Horses and racking horses by more effectively ensuring that those horses that participate in exhibitions, sales, shows, or auctions covered by the HPA are not sore. This qualitative benefit, enhancing animal welfare, is likely to result in greater public confidence that the animals are being treated humanely.

The proposed rule is not expected to adversely impact the communities in which shows are held because Tennessee Walking Horse and racking horse shows are expected to continue. Owners are motivated to show their prized horses and are likely to continue participating in shows. Better enforcement of the HPA is expected to also benefit shows and participants by improving the reputation of the Tennessee Walking Horse and racking horse industry. Participation in 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. Management of horse shows, exhibitions, sales, and auctions would also benefit from no longer having to bear the costs of compensating inspectors if they use APHIS inspectors.

In an attempt to eliminate soring, APHIS considered several alternatives to the proposed rule. These include programmatic changes such as increased training, issuing enforcement warning letters to HIOs and DQPs, increasing oversight of DQP inspections, and sending VMOs to observe events having a higher likelihood of sored horses being present. APHIS has also worked to build trust with the industry by funding joint

trainings with HIOs on proper inspection procedures, arranging clinics for the public to learn about inspections and ask questions, and transitioning primary enforcement to DQPs such that VMOs would not re-inspect a horse that a DQP finds noncompliant. In addition, APHIS has funded prohibited substance testing and limited the number of rule updates to HIOs between show seasons so that DQPs are not overly burdened with new information. These non-regulatory solutions have not meaningfully decreased detections of soring, however.

One alternative that we also considered was to eliminate the use of non-APHIS inspectors and to limit inspectors to APHIS VMOs. While this approach would address conflicts of interest and allow APHIS to have a direct role in managing inspections, we determined that the availability of inspectors could be subject to number of VMOs available at any given time and their geographic distribution. Further, section 4 (15 U.S.C. 1823) of the Act provides for “the appointment by the management of any horse show, horse exhibition, or horse sale or auction of persons qualified to detect and diagnose a horse which is sore . . .” which precludes assigning an inspector to an event and eliminating any element of choice for event management. Under this proposal, management would be able to choose to appoint an APHIS representative or an APHIS-authorized inspector.

Another alternative considered was implementing our 2017 final rule to revise the HPA regulations. However, we consider this proposed rule preferable to that rule for several reasons. Among them, this rule provides that management may request direct APHIS inspection of a show at no cost to management, an option not provided for in the 2017 final rule despite comments that HPAs could be cost-prohibitive for smaller shows.

We invite public comments on these and other alternatives that may achieve the desired policy objective of the proposed rule.

The entities affected by this rule are likely small by Small Business Administration standards. We invite public comments on the potential impacts on the entities that may be affected by this rule.

#### 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.

APHIS has determined that this proposed rule does not, to our knowledge, have tribal implications that require formal tribal consultation under Executive Order 13175. To engage Tribal nations on this rulemaking, APHIS hosted a tribal webinar to discuss the proposed rule, with four attendees participating and no tribal comment. If a Tribe requests consultation, APHIS 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

Many of the activities described in this proposed rule are currently approved under OMB control number 0579-0056, including the requirement that the management of any event that contains Tennessee Walking Horses or racking horses maintain for at least 90 days following the closing date of the event all pertinent records in § 11.22(a), and that within 5 days following the conclusion of any event containing Tennessee Walking Horses or racking horses, event management must submit to APHIS the information required by § 11.22(a) for each horse excused or disqualified by management or its representatives. In addition, there are seven new information collection and reporting activities. Therefore, in accordance with section 3507(d) of the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the new activities and their burden associated with this proposed rule have been submitted to OMB as a new information collection for approval. After a final rule is published, this information collection request will be scheduled for merger into 0579–0056 in the future.

Written comments and recommendations for the proposed information collection should be sent within 60 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 60-day Review-Open for Public Comments” or by using the search function. Please send a copy of your comments to: (1) Docket No. APHIS–2022–0004, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue SW, Washington, DC 20250.

Administering the Horse Protection Act (HPA) requires the use of several information collection activities that are currently approved under 0579–0056. The proposed changes to the regulations result in the creation of new reportable activities, as previously mentioned. These activities and any additional ones announced in the final rule resulting from public comment will be scheduled for merger into 0579–0056 after OMB approval.

The seven new activities in this proposed rule change are as follows:

- § 11.13(b)(5)—Event managers will be permitted to submit unsatisfactory performance notices against HPIS performing inspections. APHIS estimates there will be 5 responses per year with 1 hour of burden per response.

- § 11.14(b)—Managers of any horse show, horse exhibition, horse sale, or horse auction that allows any horse to be shown, exhibited or sold with prohibitions for therapeutic treatment will be required to maintain certain information for each horse receiving the therapeutic treatment for a period of at least 90 days following the closing date of a show, exhibition, sale, or auction. Based on the APHIS Horse Protection program’s knowledge of the frequency of therapeutic treatments used on horses participating in prior covered events, APHIS estimates there will be 50 responses per year with 1 hour of burden per response. Managers will not have to maintain such records if no horses undergoing therapeutic treatments are in the event.

- § 11.16(a)—Managers of any such show, exhibition, sale, or auction will be required to provide the Administrator information of the event by mail, fax, or electronic means such as email at least 30 days before any horse show, horse exhibition, horse sale, or horse auction is scheduled to begin. Such notification would have to include information about the show, information about the anticipated or known number of entries and whether management will allow any horse to be shown, exhibited, or sold with prohibitions under proposed § 11.6 for therapeutic treatment. Finally, the notification will include a request to appoint an APHIS representative if one is needed. This requirement has been added to give APHIS advance notice of the event and sufficient time to arrange for an APHIS representative to be present to inspect horses, if requested by management. APHIS estimates there will be 450 shows per year with 30 minutes of burden per response.

- § 11.16(a)(6)—If neither an APHIS representative nor an HPI is available on the date of the horse show, horse exhibition, horse sale, or horse auction, event management may request a variance. It must be submitted by mail, fax, or electronic means such as email to the Deputy Administrator of Animal Care. APHIS estimates there will be 20 requests per year with 1 hour of burden per request.

- § 11.16(b)—Managers of any such show, exhibition, sale, or auction will be required to provide any changes to the event information submitted to the Administrator at least 15 days before the event is to begin. APHIS estimates there will be 300 shows per year with 30 minutes of burden per response.

- § 11.16(c)—Event managers of any horse show, horse exhibition, horse sale, or horse auction that contains Tennessee Walking Horses or racking horses must submit to APHIS within 5 days after the event’s conclusion the information required to be maintained by § 11.14. Event information already submitted to APHIS under § 11.16(a) does not need to be sent again. APHIS estimates there will be 300 shows per year with 30 minutes of burden per response.

- § 11.19(a)—APHIS will authorize and train Horse Protection Inspectors. Prospective candidates must submit an application to APHIS and will be evaluated using a 2-tier system of qualifications. APHIS estimates there will be 30 applicants per year with an estimated 1 hour of burden per application.

The proposed changes to the regulations in 9 CFR part 11 authorized

by the HPA also include removing regulatory requirements for horse industry organizations and associations and eliminating the role of Designated Qualified Persons as inspectors at horse shows, exhibitions, sales, and auctions. The burden for these will be transferred and trained by APHIS. Activities related to event schedules are event-driven so the total number of estimated responses and burden hours will remain unchanged.

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 electronic submission of responses).

*Estimate of burden:* Public burden for this collection of information is estimated to average 0.55 hours per response.

*Respondents:* Managers of horse shows, exhibitions, sales, or auctions; veterinarians.

*Estimated annual number of respondents:* 530.

*Estimated annual number of responses per respondent:* 3.

*Estimated annual number of responses:* 1,155.

A copy of the information collection may be viewed on the [Regulations.gov](http://Regulations.gov) website or in our reading room. (A link to [Regulations.gov](http://Regulations.gov) and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) Information about the information collection process may be obtained from Mr. Joseph Moxey, APHIS’ Paperwork Reduction Act Coordinator, at (301) 851–2483. APHIS will respond to any information collection-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. APHIS estimates that all of the total responses can be processed electronically by email or fax. Respondents are free to maintain required records as best suited for their organization. Details about specific forms for reportable activities can be found in the information collection request supporting statement.

For assistance with E-Government Act compliance related to this proposed rule, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851-2483, or the person listed under **FOR FURTHER INFORMATION CONTACT**.

**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 [Reserved]
- 11.3 Non-interference with APHIS representatives and HPIs.
- 11.4 Owners, trainers, exhibitors, custodians, transporters, and any other person who has been disqualified.
- 11.5 Appeal of inspection report.
- 11.6 Prohibitions concerning exhibitors.
- 11.7 [Reserved]
- 11.8 Inspection and detention of horses.
- 11.9 Access to premises and records.
- 11.10 Inspection space and facility requirements.
- 11.11–11.12 [Reserved]
- 11.13 Responsibilities and liabilities of management.
- 11.14 Records required and disposition thereof.
- 11.15 Inspection of records.
- 11.16 Reporting by management.
- 11.17 Requirements concerning persons involved in transportation of certain horses.
- 11.18 Utilization of inspectors.
- 11.19 Authorization and training of Horse Protection Inspectors.

**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.

*Act* means the Horse Protection Act of 1970 (Pub. L. 91–540) as amended by the Horse Protection Act Amendments of 1976 (Pub. L. 94–360), 15 U.S.C. 1821 *et seq.*, and any legislation amendatory thereof.

*Action device* means any boot, collar, chain, roller, beads, bangles, 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/Horse Protection, 2150 Centre Avenue, Building B, Mailstop 3W11, Fort Collins, CO 80526–8117. Electronic mail for the Administrator should be sent to [horseprotection@usda.gov](mailto:horseprotection@usda.gov).

*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 has initial control of and presents a horse for inspection at any horse show, exhibition, sale, or auction. The custodian must be able to provide information about the horse that is required by this part.

*Day(s)* means business days, *i.e.*, days other than weekends and Federal holidays.

*Department* means the United States Department of Agriculture (USDA).

*Event 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.

*Exhibitor* means:

(1) Any person who enters any horse, any person who allows his or her horse to be entered, or any person who directs or allows any horse in his or her custody or under his or her direction, control or supervision to be entered in any horse show or horse exhibition;

(2) Any person who shows or exhibits any horse, any person who allows his or her horse to be shown or exhibited, or any person who directs or allows any horse in his or her custody or under his or her direction, control, or supervision to be shown or exhibited in any horse show or horse exhibition;

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

(4) Any person who sells or auctions any horse, any person who allows his or her horse to be sold or auctioned, or any person who directs or allows any horse in his or her custody or under his or her 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 qualifications in § 11.19 whom the Administrator has authorized as an HPI and who may be appointed by management or a representative of management of any horse show, horse exhibition, horse sale or horse auction under section 4 of the Act (15 U.S.C. 1823) to detect or diagnose horses which are sore or to otherwise inspect horses and any records pertaining to such horses for the purposes of detecting or diagnosing sores.

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

*Horse show* means a public display of any horses, in competition, except 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 examination of a horse and review of records, physical examination 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 professional conducting such inspection.

*Local area* means an area within a 10-mile radius of the horse show, horse exhibition, horse sale, or horse auction.

*Management* means any person or persons who organize, exercise control



over, or administer or are 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 event manager.

*Participate* means engaging in any activity, either directly or through an agent, beyond that of a spectator in connection with a horse show, horse exhibition, horse sale, or horse auction, and includes, without limitation, transporting, or arranging for the transportation of, horses to or from equine events, personally giving instructions to exhibitors, being present in the warm-up or inspection areas or in any area where spectators are not allowed, and financing the participation of others in equine events.

*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 or her stead.

*Sore* when used to describe a horse means:

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

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

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

(4) 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, 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 whose direction supports and who assumes responsibility for a horse show, horse exhibition, horse sale, or horse auction that has, is, or will be conducted.

*State* means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S.

Virgin Islands, Guam, American Samoa, Northern Mariana Islands or the Trust Territory of the Pacific Islands.

*Therapeutic treatment* means relating to the treatment of disease, injury, or disorder by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was prescribed.

#### **§ 11.2 [Reserved]**

#### **§ 11.3 Non-interference with APHIS representatives and HPIs.**

No person shall assault, resist, oppose, impede, intimidate, threaten, or interfere with APHIS representatives or HPIs appointed by management, or in any way influence attendees of a horse show, horse exhibition, horse sale, or horse auction or other individuals to do the same.

#### **§ 11.4 Owners, trainers, exhibitors, custodians, transporters, and any other person who has been disqualified.**

Any person who has been disqualified by the Secretary from participating in any horse show, horse exhibition, horse sale, or horse auction shall not show, exhibit, or enter any horse, directly or indirectly through any agent, employee, corporation, partnership, or other device, and shall not judge, manage, or otherwise participate in events covered by the Act within the period during which the disqualification is in effect.

#### **§ 11.5 Appeal of inspection report.**

Any horse owner, trainer, exhibitor, custodian or transporter may appeal all or part of the inspection findings in an inspection report to the Administrator. To appeal, the horse owner, trainer, exhibitor, custodian or transporter must send a written statement contesting the inspection finding(s) and include any documentation or other information in support of the appeal. To receive consideration, the appeal must be received<sup>1</sup> by the Administrator, preferably by electronic mail, to [horseprotection@usda.gov](mailto:horseprotection@usda.gov) within 21 business days of the date the horse owner, trainer, exhibitor, custodian or transporter received the inspection report that is the subject of the appeal. The Administrator will send a final decision, in writing via either electronic mail or postal mail, to the person requesting the appeal.

#### **§ 11.6 Prohibitions concerning exhibitors.**

(a) *General prohibitions for all horses.* Notwithstanding the provisions of this section, no action device, method, practice, or substance shall be used with

respect to any horse at any horse show, horse exhibition, horse sale, or horse auction if such use causes or can reasonably be expected to cause such horse to be sore or is otherwise used to mask previous and/or ongoing sores.

(b) *Prohibited devices, equipment, and practices.* The use of the following action devices, equipment, or practices on any horse, at any horse show, exhibition, sale, or auction is prohibited:

(1) More than one action device permitted under this section on any limb of a horse.

(2) All beads, bangles, rollers, and similar devices, with the exception of rollers made of lignum vitae (hardwood), aluminum, or stainless steel, with individual rollers of uniform size, weight and configuration, provided each such device may not weigh more than 6 ounces, including the weight of the fastener.

(3) Chains weighing more than 6 ounces each, including the weight of the fastener.

(4) Chains with links that are not of uniform size, weight, and configuration; and chains that have twisted links or double links.

(5) Chains that have drop links on any horse that is being ridden, worked on a lead, or otherwise worked out or moved about.

(6) Chains or lignum vitae, stainless steel, or aluminum rollers which are not smooth and free of protrusions, projections, rust, corrosion, or rough or sharp edges.

(7) Boots, collars, or any other devices, with protrusions or swellings, or rigid, rough, or sharp edges, seams or any other abrasive or abusive surface that may contact a horse's leg.

(8) Boots, collars, or any other devices that weigh more than 6 ounces, except for soft rubber or soft leather bell boots and/or quarter boots that are used as protective devices.

(9) Pads or other devices on horses up to 2 years old that elevate or change the angle of such horses' hooves in excess of 1 inch at the heel.

(10) Any weight on horses up to 2 years old, except a keg or similar conventional horseshoe, and any horseshoe on horses up to 2 years old that weighs more than 16 ounces.

(11) Artificial extension of the toe length, whether accomplished with pads, acrylics, or any other material or combinations thereof, that exceeds 50 percent of the natural hoof length, as measured from the coronet band, at the center of the front 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 shall be

<sup>1</sup> Appeals may also be sent by U.S. mail to APHIS, 2150 Centre Ave, Bldg. B, MS 3W-11, Fort Collins, CO 80547.

measured from the distal portion of the hoof wall at the tip of the toe at a 90-degree angle to the proximal (foot/hoof) surface of the shoe.

(12) Toe length that does not exceed the height of the heel by 1 inch or more. The length of the toe shall be measured from the coronet band, at the center of the front pastern along the front of the hoof wall to the ground. The heel shall be measured from the coronet band, at the most lateral portion of the pastern, at a 90-degree angle to the ground, not including normal caulks at the rear of a horseshoe that do not exceed  $\frac{3}{4}$  inch in length. That portion of caulk at the rear of a horseshoe in excess of  $\frac{3}{4}$  of an inch shall be added to the height of the heel in determining the heel/toe ratio.

(13) Pads that are not made of leather, plastic, or a similar pliant material.

(14) Any object or material inserted between the pad and 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. Acrylic and other hardening substances are prohibited as hoof packing.

(15) Single or double rocker-bars on the bottom surface of horseshoes which extend more than  $\frac{1}{2}$  inches back from the point of the toe, or 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.

(16) Metal hoof bands, such as used to anchor or strengthen pads and shoes, placed less than  $\frac{1}{2}$  inch below the coronet band.

(17) Metal hoof bands that can be easily and quickly loosened or tightened by hand, by means such as, but not limited to, a wing-nut or similar fastener.

(18) Any action device or any other device that strikes the coronet band of the foot of the horse except for soft rubber or soft leather bell boots that are used as protective devices.

(19) Shoeing a horse, trimming a horse's hoof, or paring the frog or sole 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. Bruising of the hoof or any other method of pressure shoeing is also prohibited.

(20) Lead or other weights 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. 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. Hollow shoes or artificial extensions filled with mercury or similar substances are prohibited.

(21) The use of whips, cigarette smoke, or other stewarding actions or paraphernalia to distract a horse or to otherwise impede the inspection process during an examination, including but not limited to, holding the reins less than 18 inches from the bit shank is prohibited.

(22) The forelimbs and hindlimbs of the horse must be free of dermatologic conditions that are indicative of soring. Examples of such dermatologic conditions include, but are not limited to, irritation, moisture, edema, swelling, redness, epidermal thickening, loss of hair (patchy or diffuse) or other evidence of inflammation. Any horse found to have one or more of the dermatologic conditions set forth herein shall be presumed to be "sore" and be subject to all prohibitions of section 6 (15 U.S.C. 1825) of the Act.

(c) *Specific prohibitions for Tennessee Walking Horses and racking horses.* (1) All action devices are prohibited on any Tennessee Walking Horse or racking horse at any horse show, horse exhibition, horse sale, or horse auction.

(2) All artificial extension of the toe length is prohibited on any Tennessee Walking Horse or racking horse at any horse show, horse exhibition, horse sale, or horse auction, unless such horse has been prescribed and is receiving therapeutic treatment using artificial extension of the toe length as approved in writing by a licensed veterinarian.

(3) All pads and wedges are prohibited on any Tennessee Walking Horse or racking horse at any horse show, exhibition, sale, or auction, unless such horse has been prescribed and is receiving therapeutic treatment using pads or wedges as approved in writing by a licensed veterinarian.

(4) All substances are prohibited on the extremities above the hoof of any Tennessee Walking Horse or racking horse entered for the purpose of being shown or exhibited, sold, auctioned, or offered for sale in or on the grounds of any horse show, horse exhibition, or horse sale or auction.

(d) *Competition restrictions—2-Year-old horses.* Horse show or horse exhibition workouts or performances of 2-year-old Tennessee Walking Horses and racking horses and working exhibitions of 2-year-old Tennessee Walking Horses and racking horses (horses eligible to be shown or exhibited

in 2-year-old classes) at horse sales or horse auctions that 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, and, more than two such 10-minute periods per performance, class, or workout are prohibited.

(e) *Information requirements—horse related.* Failing to provide information or providing any false or misleading information required by the Act or regulations or requested by APHIS representatives or HPIs appointed by management, by any person that enters, owns, trains, shows, exhibits, transports or sells or has custody of, or direction or control over 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, horse sale, or horse auction is prohibited and may result in disqualification under § 11.13. Such information shall include, but is not limited to: Information concerning the name, any applicable registration name and number, markings, sex, age, and legal ownership of the horse; the name and address of the horse's training and/or stabling facilities; the name and address of the owner, trainer, rider, custodian, any other exhibitor, 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.

#### § 11.7 [Reserved]

#### § 11.8 Inspection and detention of horses.

(a) For the purpose of effective enforcement of the Act: Each horse owner, exhibitor, trainer, or other person having custody of, or responsibility for, any horse at any horse show, horse exhibition, horse sale, or horse auction, shall allow any APHIS representative or HPI appointed by management to inspect such horse at all reasonable times and places the APHIS representative or HPI may designate. 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 at, any horse show, horse exhibition, or horse sale or horse 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 horse auction. APHIS representatives and HPIs appointed by management 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, refusal of management to cooperate with inspection efforts, reason to believe that failure to immediately perform inspection 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 an APHIS representative.

(b) When any APHIS representative or HPI appointed by management notifies the owner, exhibitor, trainer, or other person having custody of or responsibility for a horse at any horse show, horse exhibition, or horse sale or horse auction that APHIS desires to inspect such horse, it shall not be moved from the horse show, horse exhibition, or horse sale or horse auction until such inspection has been completed and the horse has been released by an APHIS representative.

(c) For the purpose of inspection, testing, or taking of evidence, APHIS representatives may detain for a period not to exceed 24 hours any horse, at any horse show, horse exhibition, or horse sale or horse auction, which is sore or which an 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 APHIS representative.

(d) Detained horses shall be kept under the supervision of an APHIS representative or secured under an official USDA seal or seals 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 representative present in the immediate detention area when a horse is being held in detention. The official USDA seal or seals may not be broken or removed by any person other than 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 APHIS representative can be located.

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

(e) The owner, exhibitor, trainer, or other person having custody of or responsibility for any horse detained by APHIS for further inspection, 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 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 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 APHIS representative prior to such use, application, or injection by the Doctor of Veterinary Medicine attending a horse. The use, application, or injection of such drug or other medication must be approved by the APHIS representative.

(f) It shall be the policy of an APHIS representative or HPI appointed by management to inform the owner, trainer, exhibitor, or other person having immediate custody of or responsibility for 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 as determined by an APHIS representative.

(g) The owner, trainer, exhibitor, or other person having immediate custody of or responsibility for any horse or horses that an APHIS representative determines shall be detained for inspection, testing, or taking of evidence pursuant to paragraph (c) of this section shall be informed after such determination is made and shall allow said horse to be immediately put under the supervisory custody of APHIS or secured under official USDA seal as provided in paragraph (d) of this section until the completion of such inspection, testing, or gathering of evidence, or until the 24-hour detention period expires.

(h) The owner, trainer, exhibitor, or other person having custody of or responsibility for any horse allegedly found to be in violation of the Act or regulations, and who has been informed of such alleged violation by an APHIS

representative or HPI appointed by management as stated in paragraph (f) of this section, may request re-inspection and testing of said horse within a 24-hour period: *Provided*, That:

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

(2) An APHIS representative determines that sufficient cause for re-inspection and testing exists; and

(3) The horse is maintained under APHIS supervisory custody as prescribed in paragraph (d) of this section until such re-inspection and testing has been completed.

(i) The owner, exhibitor, trainer, or other person having custody of, or responsibility for, any horse being inspected shall render such assistance, as the APHIS representative or HPI appointed by management may request, for the purposes of such inspection.

#### § 11.9 Access to premises and records.

(a) *Management*. (1) The management of any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, provide APHIS representatives and HPIs appointed by management 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 APHIS representatives and HPIs appointed by management with an adequate, safe, and accessible area for the visual inspection and observation of horses.

(b) *Exhibitors*. (1) Each horse owner, trainer, exhibitor, or other person having custody of or responsibility for any horse at any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, admit any APHIS representatives and HPIs 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 times.

(2) Each owner, trainer, exhibitor, or other person having custody of or responsibility for, any horse at any horse show, horse exhibition, or horse sale or auction shall promptly present his or her horse for inspection upon notification, orally or in writing, by any APHIS representatives or HPIs appointed by the management that said horse has been selected for inspection for the purpose of determining whether such horse is in compliance with the Act and regulations.

**§ 11.10 Inspection space and facility requirements.**

(a) The management of every horse show, horse exhibition, horse sale, or horse auction shall provide, without fee, charge, assessment, or other compensation, sufficient space and facilities for APHIS representatives and HPIs appointed by management to carry out their duties under the Act and regulations when requested to do so by APHIS representatives or HPIs appointed by management, whether or not management has received prior notification or otherwise knows that such show, exhibition, sale, or auction 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, well-lit space in a convenient location to the horse show, horse exhibition, horse sale, or horse auction arena, acceptable to APHIS representatives and HPIs appointed by management, in which horses may be inspected.

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

(3) A means to control crowds or onlookers in order that APHIS representatives and HPIs appointed by management may carry out their duties safely and without interference.

(4) An accessible, reliable, and convenient 110-volt electrical power source available at the show, exhibition, sale, or auction site.

(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.

(b) Other than the persons noted below, only a management representative, HPIs appointed by management, and APHIS representatives are allowed in the warm-up and inspection areas. Each horse in the inspection area may only be accompanied by the person having immediate custody of or responsibility

for the horse. Inspected horses shall be held in a designated area under the observation by a management representative and shall not be permitted to leave the designated area before showing. Each horse in the designated warm-up area may be accompanied by no more than three individuals, including the person having immediate custody of or responsibility for the horse, the trainer, and the rider. No other persons are allowed in the warm-up or inspection areas without prior approval from an APHIS representative or HPI appointed by management.

**§ 11.11–11.12 [Reserved]**

**§ 11.13 Responsibilities and liabilities of management.**

(a) *Horse shows, horse exhibitions, horse sales, and horse auctions at which the management does not utilize an APHIS representative or HPI.* The management of any horse show, exhibition, sale or auction which does not utilize an APHIS representative or appoint an HPI shall be responsible for identifying all horses that are sore or otherwise in violation of the Act or regulations, and shall disqualify or prohibit any horses which are sore or otherwise in violation of the Act or regulations from participating or competing in any horse show, horse exhibition, horse sale, or horse auction. Horses entered for sale or auction at a horse sale or horse auction must be inspected and, as appropriate, identified as sore or otherwise in violation of the Act or regulations prior to the sale or auction and, as required by the Act, prohibited from entering the sale or auction ring. Sore horses or horses otherwise in violation of the Act or regulations that have been entered in a horse show or horse exhibition for the purpose of show or exhibition must be identified and disqualified prior to the show or exhibition. Any horses found to be sore or otherwise in violation of the Act or regulations during actual participation in the show or exhibition, must be removed from further participation immediately (e.g., prior to the horse placing in the class or the completion of the exhibition). All horses that placed first in each class or event at any horse show or horse exhibition shall be inspected after being shown or exhibited to determine if such horses are sore or otherwise in violation of the Act or regulations.

(b) *Horse shows, horse exhibitions, horse sales, and horse auctions at which the management utilizes an APHIS representative or HPI appointed by management.* (1) The management of

any horse show, horse exhibition, horse sale, or horse auction that utilizes an APHIS representative or HPI appointed by management shall not take any action which will interfere with or influence the APHIS representative or HPI appointed by management in carrying out their duties.

(2) The management of any horse show, exhibition, sale, or auction that utilizes an HPI to inspect horses shall appoint at least 2 HPIs when more than 100 horses are entered.

(3) The management of any horse show, horse exhibition, horse sale, or horse auction that utilizes APHIS representatives or HPIs to inspect horses shall have at least one farrier physically present if more than 100 horses are entered in the event. If 100 or fewer horses are entered in the horse show, horse exhibition, horse sale, or horse auction, the management shall, at minimum, have a farrier on call within the local area to be present, if requested by an APHIS representative or HPI appointed by management.

(4) After an APHIS representative or HPI appointed by management 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.

(5) If management is dissatisfied with the performance of a particular HPI, management should promptly notify, in writing, the Administrator as to why management believes the performance of the HPI was inadequate or otherwise unsatisfactory.

(6) Management that utilizes an APHIS representative or HPI shall immediately disqualify or prohibit from showing, exhibition, sale, offering for sale, or auction of any horse identified by the APHIS representative or HPI to be sore or otherwise in violation of the Act or regulations and any horse otherwise known by management to be sore or otherwise in violation of the Act or regulations. Should management fail to disqualify or prohibit from being shown, exhibited, sold or auctioned any such horse, the management is responsible for any liabilities arising from the showing, exhibition, sale, or auction of said horses.

(c) *Other responsibilities of management at horse shows, horse exhibitions, horse sales, and horse auctions.* (1) Ensure that no devices or substances prohibited under § 11.6 are present in the warm-up area.

(2) Review the orders of the Secretary disqualifying persons from showing or exhibiting any horse, or judging or managing any horse show, exhibition, sale, or auction and disallow the participation of any such person in any

horse show, exhibition, sale, or auction, for the duration of the period of disqualification.

(3) Verify the identity of all horses entered in the horse show, exhibition, sale, or auction. Acceptable methods of identification are as follows:

(i) A description sufficient to identify the horse, 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 standards; 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.

#### **§ 11.14 Records required and disposition thereof.**

(a) The management of any horse show, exhibition, sale, or auction that contains Tennessee Walking Horses or racking horses shall maintain for a minimum of 90 days following the closing date of a horse show, horse exhibition, horse sale, or horse auction all records containing:

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

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

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

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

(5) A copy of each class or sale sheet containing the names of horses, the registration number of the horse (if applicable), the names and addresses (including street address or post office box number, and ZIP Code) of the horse owner, the exhibition number and class number unique to each horse, 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, horse sale, or horse auction.

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

(7) A copy of the official judge's or scoring card(s) for each horse show class containing Tennessee Walking Horses and racking horses to include the place each horse finished in the class.

(8) The name and any applicable registration name and number of each horse, as well as the names and addresses (including street address or post office box number, and ZIP Code) of the owner, the trainer, the custodian, the exhibitor and the location (including street address and ZIP Code) of the home barn or other facility where the horse is stabled.

(9) The name, exhibition number and class number, or assigned sale number, and the registration name and number (if applicable) for each horse disqualified or prohibited by management from being shown, exhibited, sold or auctioned, and the reasons for such action.

(10) Name and address (including street address or post office box number, and ZIP Code) of the person designated by the management to maintain the records required by this section.

(11) The name and address of each HPI appointed by management to conduct inspections at the event, if an HPI was appointed.

(b) The management of any horse show, horse exhibition, horse sale, or horse auction that allows any horse to be shown, exhibited or sold with devices, pads, substances, applications, or other items restricted under § 11.6 for therapeutic treatment must maintain the following information for each horse receiving the therapeutic treatment for a period of at least 90 days following the closing date of a show, exhibition, sale, or auction:

(1) The name, exhibition number and class number, or assigned sale number, and the registration name and number (if applicable) for each horse receiving therapeutic treatment.

(2) The name, address (including street address and ZIP Code), and phone number of the licensed veterinarian providing the therapeutic treatment.

(3) The state and license number of the licensed veterinarian providing the therapeutic treatment.

(4) The name and address (including street address and ZIP Code) and phone number of the licensed veterinarian's business.

(5) A description of the disease, injury, or disorder for which the treatment is given, to include at minimum:

(i) Start date of treatment.

(ii) Prescription or specific design and prescription (for example, as to the height, weight, and material of a therapeutic pad) of the treatment plan.

(iii) Expected length of treatment period and an estimation of when treatment will be discontinued.

#### **§ 11.15 Inspection of records.**

The management of any horse show, horse exhibition, horse sale, or horse auction shall permit any APHIS representative or HPI appointed by management, upon request, to examine and make copies of any and all records pertaining to any horse that are required in the regulations or otherwise maintained, during business hours, or such other times as may be mutually agreed upon. A room, table, or other facilities necessary for proper examination and copying of such records shall be made available to the APHIS representative or HPI appointed by management.

#### **§ 11.16 Reporting by management.**

(a) At least 30 days before any horse show, horse exhibition, horse sale, or horse auction is scheduled to begin, management must notify the Administrator of such event by mail, fax, or electronic means such as email. Such notification must include:

(1) The name and address (including street address and ZIP Code) of the horse show, exhibition, sale, or auction.

(2) The name, address, phone number (and email address, if available) of the event manager.

(3) The date(s) of the horse show, horse exhibition, horse sale, or horse auction.

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

(5) Anticipated or known number of entries.

(6) Whether management requests an APHIS representative to perform inspections at the horse show, horse exhibition, horse sale, or horse auction; or, if not, whether management has chosen and appointed an HPI to inspect horses, or will have no inspector. If neither an APHIS representative nor an HPI is available on the date of the event, event management may request a variance. Variances must be submitted by mail, fax, or electronic means such as email to the Deputy Administrator of Animal Care at least 15 days before the event and state the reason for requesting the variance.

(7) Whether management will allow any horse to be shown, exhibited or sold with prohibitions under section § 11.6 for therapeutic treatment.

(b) At least 15 days before any horse show, horse exhibition, horse sale, or horse auction is scheduled to begin, the management of any such horse show, horse exhibition, horse sale, or horse auction must notify the Administrator of any changes to the information required under § 11.16(a) by mail, fax, or electronic means such as email.

(c) Within 5 days following the conclusion of any horse show, horse exhibition, horse sale, or horse auction that contains Tennessee Walking Horses or racking horses, the management of such show, exhibition, sale or auction shall submit to the Administrator the information required to be maintained by § 11.14 by mail, fax, or electronic means such as email. Event information already submitted to APHIS under paragraph (a) of this section does not need to be sent again.

(d) Within 5 days following the conclusion of any horse show, horse exhibition, horse sale, or horse auction which does not include Tennessee Walking Horses or racking horses, the management of such show, exhibition, sale or auction shall submit to the Administrator the following information: Any case where a horse was prohibited by management from being shown, exhibited, sold or auctioned because it was found to be sore or otherwise in violation of the Act or regulations. Information will include at a minimum the name, exhibition number and class number, or assigned sale number, and the registration name and number (if applicable) for each horse disqualified or prohibited by management from being shown, exhibited, sold or auctioned, and the reason(s) for such action.

**§ 11.17 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, exhibition, sale, or auction, shall allow and assist in 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 APHIS representative or HPI appointed by management upon their 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 carrier transporting the horse, and of the driver of the means of conveyance used;

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

(e) Destination of shipment.

**§ 11.18 Utilization of inspectors.**

(a) The management of any horse show, horse exhibition, horse sale, or horse auction may elect to utilize an APHIS representative or HPI to detect and diagnose horses which are sore or to otherwise inspect horses for compliance with the Act or regulations.

(b) If management elects to utilize an HPI to detect and diagnose horses which are sore or to otherwise inspect horses for compliance with the Act or regulations, the HPI must currently be authorized by APHIS pursuant to § 11.19 to perform this function.

(c) The management of any horse show, horse exhibition, horse sale, or horse auction shall not utilize any person to detect and diagnose horses which are sore or to otherwise inspect horses for the purpose of determining compliance with the Act and regulations, if that person has not been authorized by APHIS or if that person has been disqualified by the Secretary, after notice and opportunity for a hearing, in accordance with section 4 (15 U.S.C. 1823) of the Act, to make such detection, diagnosis, or inspection.

(d) After [effective date of the final rule], only APHIS representatives and HPIs as defined in § 11.1 shall be utilized by management to detect and diagnose horses which are sore or otherwise inspect horses for compliance with the Act or regulations. Any other persons seeking to continue inspecting or to become inspectors after [EFFECTIVE DATE OF FINAL RULE] must apply to APHIS and meet eligibility qualifications for authorization included in § 11.19.

**§ 11.19 Authorization and training of Horse Protection Inspectors.**

APHIS will authorize HPIs after the successful completion of training by APHIS. The management of any horse show, exhibition, sale, or auction may appoint HPIs holding a current authorization to detect and diagnose horses that are sore or to otherwise inspect horses and any records pertaining to such horses for the purposes of determining compliance with the Act and regulations.

(a) *Authorization process.* All persons wishing to become HPIs must submit an application to APHIS. Guidance regarding submitting applications is found on the APHIS Horse Protection website. Applicants will be required to show that they meet the Tier 1 qualifications in paragraph (a)(1) of this section in order for the application to be evaluated. If the applicant meets the qualifications in paragraph (a)(1) of the section, the applicant will be further evaluated based on the Tier 2

qualifications in paragraph (a)(2) of this section. In order for APHIS to consider the applicant as a candidate to be an HPI, all qualifications must be met.

(1) *Tier 1 qualifications.* The applicant must be a licensed veterinarian, except that veterinary technicians and persons employed by State and local government agencies to enforce laws or regulations pertaining to animal welfare may also be authorized if APHIS determines that there is an insufficient pool of veterinarians among current HPIs and applicants to be HPIs.

(2) *Tier 2 qualifications.* (i) The applicant must demonstrate sufficient knowledge and experience of equine husbandry and science and applicable principles of equine science, welfare, care, and health for APHIS to determine that the applicant can consistently identify equine soring and soring practices.

(ii) The applicant must not have been found to have violated any provision of the Act or the regulations in this part occurring after July 13, 1976, or have been assessed any civil penalty, or have been the subject of a disqualification order in any proceeding involving an alleged violation of the Act or regulations occurring after July 13, 1976.

(iii) The applicant, as well as the applicant's immediate family and any person from whom the applicant receives a financial benefit, must not participate in the showing, exhibition, sale, or auction of horses or act as a judge or farrier, or be an agent of management.

(iv) The applicant must not have been disqualified by the Secretary from performing diagnosis, detection, and inspection under the Act.

(v) The applicant must not have acted in a manner that calls into question the applicant's honesty, professional integrity, reputation, practices, and reliability relative to possible authorization as an HPI. APHIS will base this on a review of:

(A) Criminal conviction records, if any, indicating that the applicant may lack the honesty, integrity, and reliability to appropriately and effectively perform HPI duties.

(B) 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 applicant.

(C) Judicial determinations in any type of litigation adversely reflecting on the honesty, reputation, integrity, and reliability of the applicant.

(D) Any other evidence reflecting on the honesty, reputation, integrity, and reliability of the applicant.

(b) *Training.* All applicants selected as candidates will complete a formal training program administered by APHIS prior to authorization. Continual training as APHIS determines to be necessary is a condition of maintaining authorization to inspect horses.

(c) *Listing.* APHIS will maintain a list of all HPIs on the APHIS Horse Protection website. The list is also available by contacting APHIS by email or U.S. mail.<sup>1</sup>

(d) *Denial of an HPI application and disqualification of HPIs—(1) Denial.*

<sup>1</sup> Send email to [horseprotection@usda.gov](mailto:horseprotection@usda.gov), or U.S. mail to USDA/APHIS/AC, 2150 Centre Ave. Building B, Mailstop 3W11, Fort Collins, CO 80526-8117.

APHIS may deny an application for authorization of an HPI for any of the reasons outlined in paragraph (a) of this section. In such instances, the applicant shall be provided written notification of the grounds for the denial. The applicant may appeal the decision, in writing, within 30 days after receiving the written denial notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

(2) *Disqualification.* APHIS may permanently disqualify any HPI who fails to inspect horses in accordance

with the procedures prescribed by APHIS or otherwise fails to perform duties necessary for APHIS to enforce the Act and regulations, after notice and opportunity for a hearing. Requests for hearings and the hearings themselves shall be in accordance with the Uniform Rules of Practice for the Department of Agriculture in subpart H of part 1, subtitle A, of 7 CFR.

Done in Washington, DC, this 15th day of August 2023.

**Jennifer Moffitt,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 2023-17814 Filed 8-17-23; 8:45 am]

**BILLING CODE 3410-34-P**