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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. APHIS-2022-0004]

RIN 0579-AE70

Horse Protection Amendments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the horse protection regulations to provide that the Animal and Plant Health Inspection Service will screen, train, and authorize qualified persons for appointment by the management of any horse show, horse exhibition, or horse sale or auction to detect and diagnose soring at such events for the purposes of enforcing the Horse Protection Act. These and other regulatory amendments will strengthen the Agency's efforts to protect horses from the cruel and inhumane practice of soring as the Act requires and by so doing eliminate unfair competition.

DATES: This rule is effective on February 1, 2025, except for § 11.19, which is effective [Insert date 30 days after date of publication in the *Federal Register*].

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SUPPLEMENTARY INFORMATION:

Background

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 Horse Protection regulations or just 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^[1] 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,

¹ We interpret "device" to include chains, which are commonly placed on the limbs of Performance division Tennessee Walking Horses and racking horses when competing in shows. The association of chains with devices has been included in the regulations since 1979: "General Prohibitions" (§ 11.2(a)) states that, notwithstanding the provisions of paragraph (b), ". . . no chain, boot, roller, collar, action device, *nor any other device*...shall be used..." [our emphasis].

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.”

Soring has been used almost exclusively in the training of certain Tennessee Walking Horses and racking horses² to induce pain, resulting in an exaggerated gait that is valued in the show ring. However, the HPA’s prohibition against sored horses participating in shows, exhibitions, sales, and auctions extends to events involving all horse breeds.³ 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 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,

² 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.

³ Records of non-compliance with the HPA’s soring prohibition is rare in breeds other than the Tennessee Walking Horse and racking horse. APHIS nonetheless conducts occasional inspections and investigates other breed activity, and keeps records of any such noncompliance.

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 soreing in horses at shows, exhibitions, sales, and auctions. In 1976, Congress amended the Act⁴ 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 (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 programs to train and license DQPs. Prior to

⁴ Pub. L. 94-360, §3, July 13, 1976, 90 Stat. 915;
<https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg915.pdf>.

this final rule, these training and licensing programs were administered by Horse Industry Organizations, or HIOs.

HIOs have historically filled several roles, both unregulated and regulated, for horse shows, exhibitions, sales, and auctions. For example, event management sometimes retains 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.⁵ Regulated HIO activities, in addition to training and licensing DQPs, included reporting disciplinary actions against exhibitors, event management, and DQPs to APHIS. Under the previous regulatory regime, an HIO seeking certification to train and license DQPs was required to submit to APHIS a formal request in writing for certification of its DQP program and a detailed outline of the program.

Under the Horse Protection program prior to promulgation of this final rule, DQPs were the primary party responsible for inspecting and diagnosing soreness in horses participating in horse shows, exhibitions, auctions, or sales. A DQP was a qualified person who, under the provisions of 15 U.S.C 1823(c) cited above, could 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 were reimbursed for services directly by event management or by an HIO contracting with the DQPs to provide inspections for events. DQPs were required to have equine experience and meet professional qualifications as set forth in the regulations.

DQP candidates also had to successfully complete a formal training program developed and delivered by the HIO before they could be licensed, except that veterinarians already accredited by USDA were able to be licensed as DQPs without having to participate in formal

⁵ HIOs may continue conducting such unregulated activities under the new regulatory scheme.

training. Such veterinarians also had to be either a member of the American Association of Equine Practitioners, or a large animal practitioner with substantial equine experience, or be, based on the HIO's judgment, otherwise knowledgeable of equine lameness as related to soring and soring practices. The regulations provided that veterinarians having such knowledge might include those with a small animal practice who own, train, judge, or show horses, or who are Doctors of Veterinary Medicine who teach equine-related subjects in an accredited college or school of veterinary medicine.

Alternatively, DQPs were able to be farriers, horse trainers, and other knowledgeable individuals whose past experience and training would, in the HIO's judgment, qualify them for positions as HIO stewards or judges (or their equivalent), provided that they were trained and licensed by an HIO or association whose DQP program was certified by APHIS.

APHIS Veterinary Medical Officers (VMOs) would sometimes 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 reviewed reports by event management, HIOs, and DQPs, and conducted audits of records maintained by certified DQP programs.

APHIS has used 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, disqualification from competing, 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.

As we explained in the proposal on which this final rule is based, this rule replaces a final rule that was filed for public inspection on the *Federal Register* website, in advance of official publication, on January 19, 2017. However, the incoming Administration at that time ordered this and other rules pending publication to be withdrawn, which USDA accordingly did. As the result of a lawsuit claiming that the rule had actually been promulgated and that USDA had withdrawn the 2017 final rule without proper notice and comment as required under the Administrative Procedure Act, a notice of proposed rulemaking to withdraw the 2017 final rule legally was published in the *Federal Register* on July 21, 2023 (88 FR 47068–47071, Docket No. APHIS–2011–0009), and finalized on October 31, 2023 (88 FR 74336-74341, Docket No. APHIS-2011-0009). This current rule incorporates provisions included in the 2017 HPA final rule to eliminate soring, including replacing DQPs with APHIS-authorized inspectors and banning pads and action devices on Tennessee Walking Horses and racking horses, the only two breeds in which APHIS currently finds elevated levels of soring.

Evaluations of the Horse Protection Program

Since 2009, multiple evaluations have been conducted outside the Agency to determine program efficacy. In September 2010, USDA’s Office of the Inspector General (OIG) formally evaluated APHIS’ oversight of the Horse Protection program⁶ in accordance with generally accepted government auditing standards.⁷ USDA-OIG concluded that the inspection program, in

⁶ 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 Web site (see under ADDRESSES in this document for a link to Regulations.gov).

⁷ *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>.

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.

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. 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 sored 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.

In addition, a 2021 study⁸ by the National Academy of Sciences (NAS) analyzed the causes of soring and its diagnosis in light of the current regulations. This is the most recent available study on this subject. The NAS study 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 NAS committee authoring the study examined the inspection process, which included a review of 61 inspection videos provided by APHIS and by HIOs that revealed numerous instances of inadequate performance by DQPs.⁹ 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

⁸ National Academies of Sciences, Engineering, and Medicine: *A Review of Methods for Detecting Soreness in Horses* (2021), <https://nap.nationalacademies.org/catalog/25949/a-review-of-methods-for-detecting-soreness-in-horses>.

⁹ NAS study, page 30.

competitions. The committee added that if APHIS continues to use third-party inspectors, they should be limited to veterinarians or other equine industry professionals who are screened for potential industry 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 from HIOs.

These evaluations, which were, again, external to APHIS, also correspond to evaluations of program efficacy that APHIS conducts as part of ongoing evaluation of its Horse Protection program. Inspection data compiled by APHIS from fiscal years (FY) 2017 to 2022 demonstrated that inconsistencies persisted 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. These inspections were conducted on horses competing in the Performance (“padded”) division as well as the flat-shod division. While APHIS attended only a fraction of the events at which DQPs were appointed to inspect horses, APHIS consistently reported much higher rates of noncompliance at these events based on its VMO inspection findings when compared to DQP findings. Moreover, virtually all noncompliances were found in padded horses competing in the Performance division.

Proposed Rule

In light of the foregoing evaluations, on August 21, 2023, we published in the *Federal Register* (88 FR 56924-56962, Docket No. APHIS-2022-0004) a proposal¹⁰ to amend the Horse Protection regulations. Substantive changes we proposed to make in part 11 included:

- Removing the requirement that DQPs be trained and licensed by HIOs and removing the term DQPs from the regulations. Instead, we proposed that APHIS would screen and train qualified persons to be “Horse Protection Inspectors,” or HPIs. APHIS would authorize these applicants, preferably licensed 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. We stated that other 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 mask evidence of soring. (We stated that existing prohibitions on other items and practices that can reasonably be expected to cause or contribute to soring would be retained in the regulations.)

¹⁰ To view the proposal, supporting documents, and the comments we received, go to www.regulations.gov and enter APHIS-2022-0004 in the Search field.

- Prohibiting all action devices, artificial extension of toe length, pads, wedges, and lubricants¹¹ on the limbs or feet of Tennessee Walking Horses and racking horses (with exceptions for approved therapeutic uses of artificial extension of toe length, 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. We proposed to afford the industry 270 days from the effective date of the final rule before the prohibition on pads and wedges, and artificial toe extensions, would be effective.
- Replacing the “scar rule”¹² 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

¹¹ All other substances are already prohibited on the 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, horse exhibition, or horse sale or auction.

¹² In place of this term, we prefer to use “Dermatologic conditions indicative of soring (DCIS),” although we still use “scar rule” in this document when referring to the current regulations or when a commenter refers to it as such.

fewer horses to have a farrier on call within the local area to be present if requested by an APHIS representative or HPI. We stated that 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 at least 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 were 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.

Discussion of Comments

We solicited comments concerning our proposal for 60 days ending October 20, 2023. We received 8,787 comments on the proposed rule through submissions received via regulations.gov, email, and U.S. mail. Comments received by APHIS via email and U.S. mail were copied into regulations.gov. We conducted a thorough and unbiased review of all comments, the majority of which consisted of variations on a single form letter supporting the rule submitted by over 7,000 persons, as well as a form letter submitted by an organization supporting the rule with 107,257 signatories listed. Variations of other form letters generally opposing or supporting the proposed rule were submitted by smaller groups of commenters. Other comments were from: State and Federal elected officials, including U.S. Senators and Representatives; State agricultural agencies and farm bureaus; gaited horse breeder organizations, trotting horse federations and organizations, and other domestic and foreign horse industry

organizations; equine veterinarians and veterinary associations; horse rescue and animal welfare advocacy organizations; horse owners, trainers, and exhibitors; and saddle clubs, farriers, cattle grower associations, small business owners, and other interested persons. We address the issues the commenters raised in the order that they appear in the regulatory text of the proposed rule.

Based on the comments received, we are finalizing the proposed rule, including these significant modifications:

- We have revised proposed § 11.5, so that it provides for appeal of a disqualification rather than appeal of an inspection report.
- We have elected not to finalize the proposed 270-day implementation period for phasing out pads, wedges, and artificial toe extensions on Tennessee Walking Horses and racking horses as provided for in § 11.6(c).
- We have elected not to provide management of a covered horse show, exhibition, sale, or auction with the option of requesting a variance at least 15 days before an event if no APHIS representative or HPI is available. This requirement was in proposed § 11.16(a)(6).
- We have elected not to require that veterinarians be licensed as a qualification for authorization as an HPI. This requirement was in proposed § 11.19(a)(1).
- We have revised the language of our proposed description of dermatological conditions indicative of soring by making the list of conditions illustrative, rather than requiring that the presence of any one condition must result in a diagnosis of soring. We made this revision and moved this provision to revised § 11.7.

We explain why we made each of these changes to the proposed regulations under the relevant section below. Our responses to economic issues and questions received from

commenters are included in the economic analysis summarized in this final rule and available as a supporting document on regulations.gov (see footnote 10).

Comments on Supporting Data in the Proposal

We included in the proposal two tables showing inspection data for HPA-covered events from fiscal years (FY) 2017 through 2022. Table 1 presents Performance division horse inspection data for HPA-covered events from FY 2017 to FY 2022. Table 2 presents flat-shod horse inspection data for HPA-covered events from the same period. Each table shows, by year, the number of horses inspected by DQPs at events where APHIS officials were not present, the number of noncompliance violations the DQPs found, and the rate of noncompliance (number of horses inspected divided by the number of violations found). Each table also shows the number of horses inspected by DQPs at events where APHIS officials were present, the number of noncompliance violations the DQPs found in the presence of APHIS officials, and the rate of noncompliance. Finally, each table shows the number of horses inspected by APHIS officials at these events, the number of noncompliance violations they found, and the rates of noncompliance.

The noncompliance rates detected by DQPs when APHIS is present and when APHIS is not present are calculated using the same method, by using the number of noncompliances detected by DQPs and the number of horse entries inspected by DQPs. We cited this data in the proposal to highlight the differences between noncompliances detected by DQPs when APHIS officials are present to observe DQP inspections and when APHIS officials are not present. These differences, in our view, are significant in that they suggest that in the absence of APHIS officials checking their work, DQPs are passing horses during inspections that they likely know would not pass if checked by an APHIS official. We therefore can only conclude that some

DQPs are unwilling to correctly palpate and, therefore, make a proper diagnosis of the horses they inspect. As a result, the current DQP system is not contributing to the goal of eliminating soring in Tennessee Walking Horses and racking horses, particularly those that show as Performance division horses in pads and action devices. To underscore this point, the table data for flat-shod horses shows dramatically lower rates of noncompliance in APHIS' inspections of horses, although a smaller discrepancy in rates of noncompliance remains when DQPs are inspecting horses when APHIS VMOs are present and when they are not.

Several commenters stated that the noncompliance data we included in Tables 1 and 2 is incomplete, misleading, and based on a subjective inspection protocol that renders any conclusions APHIS draws from the data as being unreliable. One such commenter noted that the data reproduced in the tables in the proposal does not match up with activity reports publicly available on APHIS's Horse Protection program website. The commenter noted that the proposed rule indicates that USDA inspectors detected a total of 323 instances of noncompliance in FY 2022, but that the activity report for that year shows only 117 instances. The commenter stated that USDA needs to explain the discrepancy, as it calls into question the higher rates of noncompliance at these events based on the APHIS VMO inspection findings.

The commenter is comparing data sets from two report types that are not commensurable. The fiscal year activity report that the commenter found online¹³ only includes noncompliance data reported by APHIS VMOs to management of the regulated event for possible disqualification. The report does not include instances of noncompliance that were observed by an APHIS VMO and referred to a DQP for appropriate follow-up inspection or remedial action.

¹³ APHIS Horse Protection Program FY 2022 Activity Report: https://www.aphis.usda.gov/animal_welfare/downloads/hp/fy2022-horse-program-activity-report.pdf.

Those instances, which often result in actions taken by the DQPs themselves, are not part of the activity report, but were part of the data sets in Tables 1 and 2 of the proposed rule. The fiscal year activity report also does not include instances of noncompliance that were observed by a DQP during inspection but reported by the DQP directly to management. In sum, the data in Tables 1 and 2 of the proposed rule provide a more accurate depiction of the rate of noncompliance than the activity reports, which show a more limited range of noncompliance data.

We included the tables in the proposed rule to show that DQPs were far more likely to identify noncompliance of any sort when APHIS VMOs were also present and observing at the event.

The commenter also stated that the data in the proposed rule showing higher rates of soring detected by VMOs is invalid because it was not based on a random sample of horses inspected. As a result, the USDA's data purportedly showing higher rates of noncompliance detected by USDA inspectors cannot properly be treated as showing the violation rate at Tennessee Walking Horse events because it is based on inspections of a subset of horses that were singled out in advance as being suspected of soring.

As the commenter indicated, we indeed acknowledged in the proposed rule that many horses selected by VMOs for inspection "are more likely to be diagnosed [as sore], as that sample presented indications of soring prior to inspection." We have never claimed that inspections of horses for soring are randomized, although we also inspect horses showing no indications of soring. The data is not restricted to a random sample because APHIS does not operate in an environment in which a fully random sampling is warranted, or, indeed, possible.

After 50 years of enforcing the HPA, APHIS has amassed an aggregate body of data indicating the Tennessee Walking Horse and racking horse industry is disproportionately likely to sore their horses, and DQPs in the industry are disproportionately unlikely to detect the soring. This is true regardless of the year in question, the number of inspections conducted, or other controls applied. For example, in 2023, APHIS VMOs conducted significantly more inspections than in 2022; yet the rate of soring detected remained almost identical. Our inspection efforts under the HPA thus properly focus on those industries that present a much higher risk of soring their horses based on prior experience over the past 50 years.

It is also worth noting, as we did in the proposed rule, that both USDA-OIG and the NAS study committee reached similar conclusions regarding the Tennessee Walking Horse and racking horse industry, and that the NAS study was jointly requested not only by APHIS, but also by the Tennessee Department of Agriculture and the Tennessee Walking Horse Breeders Foundation.

Further, the commenter stated that the data cited in Tables 1 and 2 of the proposal is misleading because it reflects rates for all HPA noncompliance violations, not just soring violations. The commenter added that by failing to distinguish between violations that do and do not involve soring, USDA overinflates the data that supposedly shows soring violations, and that the actual rate of soring is likely even lower than that reported.

The commenter is correct that the data cited in the proposal includes HPA noncompliances that are not categorized as “sore” noncompliances. However, we disagree that the tables were misleading. The proposed rule did not purport to indicate that Tables 1 and 2 contained only instances of noncompliance indicative of soring. Again, the articulated purpose of Tables 1 and 2 in the proposed rule was to show that there are still higher rates of soring,

insofar as DQPs were much more likely to identify all types of noncompliance, both actual soreing and otherwise, when APHIS VMOs were also present at the event. And, in fact, the majority of these noncompliances across all years in the data chart were indeed categorized as “sore.” Aside from a slight decrease in FY2019, the percentage of noncompliances categorized as “sore” continued to increase year after year, as the following table shows:

Table 1: Numbers of Sore and Other Noncompliances Detected by APHIS, FY2018-FY2023*

	FY18	FY19	FY20	FY21	FY22	FY23
Number of Sore Noncompliances APHIS Detected	78	180	61	122	257	525
Number of Other HPA Noncompliances APHIS Detected	27	69	19	37	66	96
Total Number of HPA Noncompliances APHIS Detected	105	249	80	159	323	621
Percentage Involving Sore Noncompliance	74%	72%	76%	77%	80%	85%

*This table combines noncompliances of both Performance and flat-shod horses. Not included are noncompliances detected by APHIS at events where DQPs were not present.

Table 2: Overall Noncompliance Rates Detected by APHIS, FY2018-FY2023*

	FY18	FY19	FY20	FY21	FY22	FY23
Number of Entries Inspected by APHIS	1,556	1,198	326	541	1,287	2,740
Number of Sore Noncompliances APHIS Detected	78	180	61	122	257	525

Noncompliance Rate Detected by APHIS Involving Sore Noncompliances (%)	5%	15%	19%	23%	20%	19%
Number of Other HPA Noncompliances APHIS Detected	27	69	19	37	66	96
Noncompliance Rate Detected by APHIS Involving Other HPA Noncompliances (%)	2%	6%	6%	7%	5%	4%

*This table combines noncompliances of both performance and flat-shod horses. Not included are noncompliances detected by APHIS at events where DQPs were not present.

The same commenter claimed that the data on noncompliances reported by APHIS resulted from a subjective inspection process that has been shown to be incapable of producing reproducible results. The commenter stated that USDA implemented a requirement in late 2016 that a horse found in violation of the HPA by a VMO must be re-inspected by a second VMO, if present. USDA removed that requirement in 2021 because we concluded that a single VMO’s finding of soring was reliably accurate without the need for additional confirmation. The commenter stated, however, that when the second inspection rule was in use between 2017 and 2021, the number of violations dropped significantly whenever two VMO inspectors had to agree on a finding of a violation. The commenter concluded, therefore, that the number of violations APHIS reported in the tables in FY 2017, FY 2021, and FY 2022 is likely lower than what is reported.

The fact that APHIS VMOs occasionally reach different conclusions about whether a horse is sore does not categorically invalidate the ability or the reasoned judgment of a trained inspector with respect to detecting and diagnosing soreness in horses. The protocol referred to by the commenter required APHIS VMOs to make exactly the same findings in order to document a violation, and, as the NAS study stated, “[t]he requirement that two VMOs must make exactly the same findings (i.e., sensitive on the lateral pastern but not bulbs of heels or

medial pastern) does not consider changes that may occur over time between examinations, how the horse may respond to repeated palpation, or how the presence of foreign substances either parenterally or topically may influence findings over time.”¹⁴ Further, the NAS study noted that “[d]istractions and stressors can inhibit a horse’s sensitivity to and expression of pain, such that detection of soreness would be missed, or a horse’s reaction to distractions could be incorrectly attributed to pain. Moreover, when more than one inspector examines the horse, its behavior may differ between the two inspections if the number and type of distractions and stressors at that location and time also differ.”¹⁵

While we agree with the commenter that inspection does often entail a professional’s judgment that observable symptoms are indicative of soreness, we disagree with the commenter’s characterization of the inspection process as subjective and incapable of producing reproducible results. The NAS study describes the current process APHIS uses for detecting soreness, which involves informed observation of the horse’s movement and posture and palpation of the limbs, as “the gold standard for detecting local pain and inflammation. These examination methods are known to be valid and reliable when performed by veterinarians who are trained and highly experienced in detecting lameness and pain. They are employed to detect lameness, injury, and pain in all breeds of horses that are used in competitions, shows, recreational riding, work, breeding, and teaching.”¹⁶

The same commenter also stated that the NAS study recognizes and supports their position that USDA’s current inspection protocol is predominantly subjective and does not yield reproducible and consistent results. As evidence, the commenter stated that USDA’s own

¹⁴ NAS study, Conclusion 2-5, page 34.

¹⁵ Ibid., Conclusion 3-1, page 52.

¹⁶ Ibid., Finding 2-2, page 33.

inspectors cannot agree on whether an individual horse is sore. The commenter cited inspection data from one horse event in 2016, which showed that when two different USDA officials inspected the same horses, they could not agree on the same conclusion up to 52 percent of the time. Based on this discrepancy, the commenter stated that APHIS can draw no valid conclusions that Agency inspectors generally find a higher rate of violations and cannot use data obtained from that inspection protocol as evidence that soring persists.

The commenter's characterization of the NAS study distorts its content. The study did not suggest that the current inspection protocol is incapable of detecting soring; to the contrary, as noted above, it considered the current practice for detecting soreness to be the "gold standard" for doing so. NAS also found, however, that APHIS' inspection protocol was actually overly prescriptive. At the time of the NAS study, a second VMO was required to inspect a horse if the first VMO initially found it to be bilaterally sore and, to warrant a finding of soring and disqualification, "the second inspection must be exactly the same as to the area of apparent pain and the type of response given by the horse as well as findings of skin changes indicative of previous injury."¹⁷ Thus, even if the second VMO also found the horse to be sore, any difference between the first and second inspections, however minor, could invalidate the finding. The NAS study noted that "[f]ailure by a VMO to adhere to such a prescriptive protocol could "allow for possible objections to the VMO's finding by the horse custodian," adding that "inspection by a second VMO may cast doubt on the ability of VMOs to detect pain or other abnormalities and may negatively affect the VMO's ability to make appropriate judgments."¹⁸ The study recommended that properly qualified and trained individuals be afforded greater latitude to make

¹⁷ J. Baker, former VMO, USDA Animal Care Horse Protection Program, personal communication, July 27, 2020; cited in NAS study, page 32.

¹⁸ NAS study, Conclusion 2-4, page 34.

a professional judgment of soring under a less prescriptive protocol, noting that under the two-VMO protocol, a determination of soring can easily be overturned when it should not; in other words, a false negative on reinspection is more likely the outcome than is a false positive of soring.

With respect to the inspection data cited by the commenter from one show in 2016, the nature of the prescriptive protocol may explain why inspections by different VMOs resulted in a different finding 52 percent of the time at that show. Even so, the single show data the commenter cited is not a representative sampling, nor does it address the ability of APHIS VMOs to detect soring.

In claiming the unreliability of the USDA inspection protocol and, thus, of the data from those inspections, the commenter also referred to a research project included in the NAS study report, conducted by Dr. Paul Stromberg, that examined skin biopsies from Tennessee Walking Horses disqualified for scar rule violations. Dr. Pamela E. Ginn, a member of the NAS study committee and a board-certified veterinary pathologist and a specialist in veterinary dermatopathology, also examined the biopsies and reviewed Dr. Stromberg's conclusions.

As this comment pertains mainly to questioning the accuracy of the scar rule, we respond to the comment under the "heading "Dermatologic Conditions Indicative of Soring" below.

Another commenter, citing the same 2016 event inspection data as the commenter above, stated that APHIS is relying on different "violation" rates when APHIS officials are present and when they are not present, and that this is misleading.

We interpret the commenter to mean that it is misleading for APHIS to show that DQPs are allowing sore horses to pass inspection when not under the supervision of APHIS officials and citing the discrepancy in rates. We disagree that this is misleading because we are simply

citing the results of DQP inspections under different conditions. We agree with the commenter that DQPs find more noncompliances when APHIS officials are present.

A commenter also questioned the reliability of the noncompliance data by stating it is based on citations issued by APHIS VMOs lacking equine experience. The commenter noted that the NAS study report explained that “examinations should be performed not only by a veterinarian, but by a veterinarian who has equine experience.”

We disagree that noncompliance data presented in the proposed rule should be considered unreliable because certain noncompliance was detected by individuals lacking equine experience, although if lack of experience is an issue, we note that it is DQPs, rather than APHIS VMOs, who are doing most of the inspections and are so situated currently. We note that APHIS VMOs, by virtue of being veterinarians working within the Horse Protection program, are experienced with equines and have received training in equine medicine. APHIS’ training of VMOs involves practice in learning and applying medically established methods of diagnosing sores. We intend to extend a similar rigorous level of HPI training to qualified persons with equine experience under the changes we proposed to the Horse Protection program.

The commenter also stated that APHIS’ inspection methods fail to account for injuries or sensitivity that may occur from “legal” activity that occurs during a show, comparing the minor sensitivity that may result from normal activity during a show to what a human athlete might feel after competing. The commenter stated that USDA unfairly disqualifies horses post-show for such sensitivity when no evidence of actual sores is found, and that USDA disregards any plausible explanations for sensitivity not resulting from sores.

We disagree with the commenter, in that any show activity considered “normal” would not result in a response to sensitivity painful enough to be confused with sores, particularly if an

inspector has the training and experience to palpate and diagnose horses accurately. To this end, we note again that palpation as practiced by APHIS VMOs was determined by the NAS study to be the “gold standard” in detecting local pain and inflammation indicative of soring, particularly when administered by a properly qualified and trained veterinarian. We also note that medical professionals such as VMOs are specifically trained in making the sort of differential diagnoses cited by the commenter based on their professional judgment. In addition, our records indicate that horses at flat-shod shows that also compete athletically almost never exhibit soreness on post-show inspection. We see no reason to discount our data on noncompliance as being unreliable or misleading for the reason the commenter claims.

The commenter also stated that the data does not support USDA’s decision to treat Tennessee Walking Horses and racking horses differently from other breeds.¹⁹ The commenter explained that USDA based its decision that Tennessee Walking Horses require special rules on the conclusion that violation rates are much higher at Tennessee Walking Horse events than at competitions with other breeds, but that the USDA provided no data showing violation rates for other breeds as comparison. The commenter added that USDA apparently does not have data for other breeds because it does not inspect those breeds the same way it inspects Tennessee Walking Horses, and concluded from this that the Agency should not place more onerous restrictions on the breed without evidence to support that action. Another commenter echoed this point, stating that other breeds have not been subject to decades of stringent subjective inspections and that they are rarely inspected by the same protocols as Tennessee Walking Horses and racking horses.

¹⁹ Related to this point, we note that in current § 11.2(c) and (d) restrictions on substances and workouts specific to Tennessee Walking Horses and racking horses have long been part of the regulations.

In the proposed rule, we provided several reasons why APHIS does not inspect other breeds for soring to the degree that we inspect Tennessee Walking Horses and racking horses. As the commenter noted, we indicated in the proposal that we base this approach on our informed knowledge and monitoring for signs of soring in other breeds and, as a means to further improve our ability to monitor the activities of other breeds, we proposed in § 11.16(a) that management of all horses covered under the Act report their events 30 days in advance. Moreover, the current regulations in § 11.2(c) and (d) and § 11.6 listing prohibitions specific to Tennessee Walking Horses and racking horses (provisions regarding substances and workouts) already treat these breeds differently, as findings of soring are highly concentrated in these breeds and infrequent in all other breeds. We also note that in the occasional inspections we conduct on other breeds, we have found only rare instances of noncompliance, and we maintain records of such noncompliances.

In the small sample of data from events attended by APHIS where other breeds were inspected, we found a very low noncompliance rate comparable to that found in flat-shod Tennessee Walking Horses and racking horses. These events included Missouri Fox Trotters, Rocky Mountain, and Spotted Saddle Horses. The average noncompliance rate detected by APHIS from FY 2017 to FY 2022 at these events was 0.8 percent, whereas the average noncompliance rate detected by APHIS for flat-shod horses across the same years was 1.9 percent. In Table 1 of the proposal, during the same period, the average noncompliance rate from APHIS inspections of Tennessee Walking Horses and racking horses competing in Performance division events was 25 percent, and 34.1 percent in FY 2022 alone.

While isolated cases of soring have been reported in other horse breeds, we question the commenter's implication that only regular inspections of other horse breeds will confirm these

breeds to be at lower risk of soring, as opposed to other means of knowledge gathering sufficient to establish an informed level of risk, which includes occasional inspections. We noted, for instance, that the distinctive 2-inch-high stacked pads worn by Tennessee Walking Horses and racking horses are not used at shows by any other breed. In addition, “[e]quine veterinarians on the NAS committee noted that skin changes seen on the pasterns of Tennessee Walking Horses are not observed on the pasterns of other breeds of horses (Arabians, American Saddlebreds, Morgan horses), which also train with action devices such as chains and rollers but do not wear them when shown at competitions.”²⁰

While all horse breeds are subject to provisions of the Act, we proposed Tennessee Walking Horse- and racking horse-specific prohibitions on certain items and practices because USDA has 50 years of data showing a documented record of soring in these breeds that simply does not exist for other breeds. On the other hand, if USDA were considering establishing new regulations in a currently unregulated community, presuming beforehand that one class of entity will be more noncompliant than other classes without evidence would be inappropriate.

Finally, soring imparts little to no advantage to competitors at other breed 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. While we make a distinction between Tennessee Walking Horses and racking horses and other breeds by prohibiting the use of pads, artificial extension of the toe, and action devices, we note that it is not necessarily the pad or action device in itself that can cause soring *per se*, but rather their specific application and use in training of a horse. Pads and wedges in certain forms, for

²⁰ NAS study, page 81.

instance, can actually be used in training in such a way as to cause soring. We address this issue further in the comment responses below.

Definitions

In § 1.1, we proposed adding definitions for *custodian*, *day(s)*, *event manager*, *Horse Protection Inspector (HPI)*, *local area*, *participate*, and *therapeutic treatment*.

A commenter stated that a definition should be added for stewarding.

We believe that new § 11.6(b)(21) adequately defines what we consider to be stewarding. The paragraph prohibits the use of whips, cigarette smoke, or similar 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. All such actions constitute stewarding.

The same commenter stated that a definition should be added for “substances.”

In a 2016 proposed rule to revise the HPA regulations (81 FR 49112-49137, Docket No. APHIS-2011-0009), we proposed adding such a definition.²¹ However, in response to comments at that time, we refrained from including it in the regulations. In brief, commenters raised questions about the regulatory status of substances having multiple uses and what constitutes a substance that should be prohibited, as well as requests to provide a definition that covers all substances of concern.

As no useful definition of “substances” can encompass all their uses and abuses for the purposes of regulation, we believe the regulation is adequate and have opted not to define the term. As explained elsewhere in this document, the Act provides us with the authority to restrict

²¹ To view this proposed rule, go to <https://www.regulations.gov/document/APHIS-2011-0009-0001>.

or prohibit practices, including the use of substances, that can cause soring or mask evidence of it.

We proposed revising the definitions of *action device*, *Administrator*, *APHIS representative*, *inspection*, *management*, *person*, and *sponsoring organization*. We proposed removing the definitions for *APHIS Show Veterinarian*, *Designated Qualified Person or DQP*, *horse industry organization or association*, *lubricant*, *Regional Director*, and *show manager*. Our responses to comments received on these changes are addressed below.

We proposed no changes to, and received no substantive comments on, the definitions for *Act*, *Animal and Plant Health Inspection Service (APHIS)*, *Department*, *exhibitor*, *horse*, *horse exhibition*, *horse sale or horse auction*, *horse show*, *Secretary*, *sore*, and *State*.

We proposed revising the definition for *action device* by adding beads and bangles to the list of such devices.

One commenter recommended that we also remove the word "joint" in the definition when referring to the fetlock, adding that the fetlock includes the joint and this wording implies it may be acceptable to strike the area between the coronary band and the fetlock joint.

The term “fetlock joint” has been part of the HPA regulations since 1979 and is only included in the definition of *action device*. While we agree that the term “fetlock” includes the metacarpophalangeal and metatarsophalangeal joints, both “fetlock” and “fetlock joint” are used in scientific literature interchangeably to refer to the same region of a horse’s distal limb. We are finalizing as proposed.

We proposed revising the definition for *Administrator* by adding U.S. mail and email addresses for sending mail to the Administrator of APHIS. We received no comments on this revision and are finalizing as proposed.

We proposed removing the definition for *APHIS Show Veterinarian* and revising the definition of *APHIS representative*. 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 proposed revising this term to read “any employee or official of APHIS,” which includes APHIS-employed veterinarians attending shows in an official capacity. APHIS representatives will include qualified full-time and intermittent VMOs employed by APHIS to inspect horses for soring. HPIs, on the other hand, will not be APHIS representatives under this definition because they are not employees of APHIS and not compensated by the Agency, but will be authorized to conduct inspections and will contract as third parties with event management for their services. We received no comments specifically addressing this change and are finalizing as proposed.

We proposed adding a definition for the term *custodian*, which we proposed to mean any person who has initial control of and who presents a horse for inspection at any horse show, horse exhibition, horse sale, or horse auction. We noted that a person acting as custodian may typically perform additional roles, such as owner, exhibitor, seller, or transporter. Also, the custodian must be able to provide required information about the horse as required in part 11.

A few commenters expressed support for the new definition but recommended that we limit the definition to “any adult person, of the age of 18 or older,” noting that children should not be allowed to present horses for inspection.

We agree with the commenter’s recommendation and are modifying the definition in this final rule by adding “any adult person, age 18 or older”. If a minor were found to be in violation with the regulations, the person's status as a minor could complicate legal liability and

responsibility for purposes of addressing the infraction and enforcing the Act. Custodian of a noncompliant horse is a role APHIS pursues for enforcement.

Another commenter recommended that we insert the words "and/or subsequent" after the word "initial," as the proposed wording would not address the question of subsequent control of the horse.

Occasionally, the person who has initial control of the horse will have someone else take their place during the inspection process. That person will have to meet the same requirements as the custodian who had initial control of the horse. We agree with the commenter's recommendation and will address it by removing "initial" from the definition. By removing this word, the term accounts for any person having control of the horse at any time, initially or subsequently.

We proposed and are adding the term *day(s)* to § 1.1, and defining 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. We received no comments specifically addressing this addition and are finalizing as proposed.

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 proposed removing the term *Designated Qualified Person or DQP* and its definition, as well as all regulatory requirements in the regulations pertaining to them. Instead, APHIS will screen, train, and authorize *Horse Protection Inspectors or HPIs* 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. HPIs, preferably veterinarians, will be authorized by APHIS pursuant to proposed § 11.19 and appointed by management of the event. Accordingly, we are including a definition for *Horse Protection Inspector* in the regulations, included below. We received no comments specifically addressing this proposed action and are finalizing as proposed.

We proposed to add the term *event manager* to mean the person who has been delegated primary authority by a sponsoring organization for managing a horse show, horse exhibition, horse sale, or horse auction. An individual event manager will need to be designated even if the event is managed by a team of persons. This definition will clarify management responsibility. We received no comments specifically addressing this addition and are finalizing as proposed.

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 proposed removing the term *horse industry organization or association* and its definition, as all regulatory requirements under the Act pertaining to these groups, including requirements for certification of DQP programs, recordkeeping, and other requirements assigned to them will no longer be included in the revised regulations.

A few commenters opposed removal of the term and removal of the role played by HIOs under the current program. One commenter stated that the change will impose significant new

recordkeeping and reporting requirements, and new tasks such as crowd control, on local show managers.

We are making no changes based on these comments. We disagree with the commenter's point that the proposed regulatory changes eliminate HIOs or prevent them from working with show management. As we noted in the proposal, HIOs are free to continue supplying other services to shows and events not subject to regulation, including registering participants and coordinating event logistics, supplying show judges, and promoting events. This rulemaking does not affect their freedom to contract with event management to perform these services. The proposed removal of the term was solely to reflect the fact that they would no longer have a distinct role specifically pertaining to APHIS' Horse Protection regulations.

We proposed adding 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 soreing.

A commenter stated that we should clarify in the definition that HPIs are not APHIS representatives.

We agree, and will clarify the definition we proposed by adding a sentence stating that "HPIs are not employees of APHIS."

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 proposed revising 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,” with some illustrative examples. While we received comments on what inspections should include and address them elsewhere in this document, we received no comments on the definition itself and are finalizing as proposed.

We proposed adding a definition for *local area*, which we define as the area within a 10-mile radius of the horse show, horse exhibition, horse sale, or horse auction. This term will be added in conjunction with § 11.13(b)(3), which requires 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 will be required to have a farrier onsite unless they elect to enforce the HPA without recourse to an inspector.

A commenter disagreed with the proposed definition of *local area* and advised a 30-mile radius to compromise the local area, while another commenter suggested it be increased to greater than 40 miles.

We are finalizing as proposed. A farrier may be required to provide services to assist an APHIS representative or HPI in conducting an inspection, such as removing a shoe. A 10-mile

radius allows the on-call farrier to be close enough to arrive at a show promptly if so requested by an APHIS representative or HPI. This, in turn, forestalls delays in conducting inspections. We also note that the first commenter also stated that most horse events retain a farrier onsite, and the other commenter assumed that farriers would not be onsite in recommending a radius of more than 40 miles.

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 proposed removing the definition for *lubricant* and prohibiting the use of lubricants on the limbs of all Tennessee Walking Horses and racking horses; the current regulations allow the use of lubricants for Tennessee Walking Horses and racking horses under certain circumstances. Some commenters opposed prohibiting lubricants but were silent on removal of the definition itself. We discuss our reasons for prohibiting lubricants to prevent the soring of horses in this document under the heading “Prohibitions for Tennessee Walking Horses and racking horses.”

We proposed revising 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 received no comments on this proposed change to replace “show manager” with “event manager” and are finalizing as proposed.

We proposed adding a definition of *participate* 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. We received no comments specifically addressing this proposed addition and are finalizing as proposed.

Person in the regulations means “any individual, corporation, company, association, firm, partnership, society, organization, joint stock company, or other legal entity.” We proposed revising the definition by adding “State or local government agency” to the list of illustrative examples of a person. This change highlights that State and local government agencies also fall under the definition of *person* for the purposes of enforcing the regulations. We received no comments specifically addressing this proposed revision and are finalizing as proposed.

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 proposed to remove the term from § 11.1 because APHIS representatives performing Horse Protection duties are no longer organized and managed by region. We received no comments specifically addressing this revision and are finalizing as proposed.

The regulations currently define *sore* to mean, among other things, that “a person has engaged in a practice involving a horse and, as a result of such...practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving.” Although we proposed no changes to the definition of *sore*, one commenter asked if the part of the definition referring to a person “engaged in a practice involving a horse” is applicable to a scenario in which a horse is injured in its stall.

We are finalizing as proposed. The regulatory definition of *sore* is patterned after the statutory definition. The scenario mentioned by the commenter is presumably accidental. If, in the professional judgment of a qualified inspector, the horse is not sore, and presuming no other noncompliance is identified, the horse could be shown under the regulations. However, regardless of the commenter's question, if the horse is injured it should first be evaluated to determine if it needs medical attention.

Another commenter stated that the definition of *sore* is not enforceable unless "a person" is actually observed committing any of the actions prohibited under the definition.

We disagree with the commenter. The Act does not require that an act of soring be observed. To the contrary, the Act defines "sore" based on the condition of the horse after the act has occurred. *See* 15 U.S.C. 1821(3) (defining "sore" as when "an irritating or blistering agent has been applied," "any burn, cut, or laceration has been inflicted," any tack, nail, screw, or chemical agent has been injected," or "any other substance or device has been used"). Moreover, the commenter's suggestion would deprive properly qualified and trained inspectors from making a professional judgment that a practice that resulted in soring had occurred prior to the inspection.

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 proposed revising 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 received no comments specifically addressing this revision and are finalizing as proposed.

We also are adding a definition for the term *therapeutic treatment* to mean 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. We proposed 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. This definition corresponds with the exceptions allowed under the definition of *sore* for any practice involving therapeutic treatment of a horse by or under the supervision of a licensed veterinarian.

A commenter stated that the definition should include a set time limit to be part of the prescribed therapeutic use of pads and other restricted items.

We are making no changes to the definition based on the comment, as we believe a licensed veterinarian is generally best qualified to determine specific treatment plans. We note that we proposed in § 11.14(b)(5) that an expected length of treatment be included as part of the veterinary record that is to be maintained by event management. All such treatment plans are subject to APHIS review, in order to determine whether the plans include the use of substances or practices to cause or mask soring.

A few commenters asked that we include "and such therapeutic practices cannot supersede what is allowed within the HPA" to the end of the definition.

We are adding no such change to the definition because it is unnecessary. The regulations are limited to what is required or permitted in the Act and do not supersede it.

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, horse exhibition, horse sale, or horse auction if such use causes or can reasonably be expected to cause such horse to be sore. We are moving those prohibitions from § 11.2 to revised § 11.6 and reserving § 11.2 in the regulations for future use. No commenters took issue with our proposal to move the prohibitions to another section and reserve § 11.2.

Non-Interference With APHIS Representatives

Current § 11.3 contains the “scar rule,” which refers to the presence of certain types of dermatologic conditions on the horse’s pastern and fore pastern suggesting that a horse has been sored.

We proposed removing the scar rule from this section. We are including a revised version of it in § 11.7, a section which we had previously reserved in the proposed rule, under the heading “Dermatologic conditions indicative of soring,” or DCIS. We originally proposed to move the revised scar rule to § 11.6(b)(22) but determined that it is thematically incompatible with other provisions in § 11.6(b). We discuss DCIS at greater length later in this document.

The language we proposed adding to revised § 11.3 prohibits 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. As we noted in the proposal, this amendment strengthens 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. We received no comments specifically addressing this revision and are finalizing as proposed.

Owners, Trainers, Exhibitors, Custodians, Transporters, and any other Disqualified Person

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 veterinarian has probable cause to believe that a horse is sore. We proposed revising § 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, have been moved to proposed § 11.8.

The text we proposed for revised § 11.4 requires 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 received no comments specifically on this change and are finalizing this provision to prevent disqualified persons from continuing to participate in shows and other events either directly or indirectly through the aid of other identities or persons.

Appeal of Inspection Report

Section 11.5 currently requires the management of any horse show, horse exhibition, horse sale, or horse 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 proposed moving these provisions for access to premises and records to a new § 11.9 and changing the heading of § 11.5 to read “Appeal of inspection report.” In the proposed rule, we proposed to revise § 11.5 to provide that any horse owner, trainer, exhibitor, custodian, or transporter may appeal inspection report findings all or in part to the Administrator. We also proposed that the appeal would require a written statement contesting the inspection finding(s) as well as any documentation or other information in support of the appeal. We proposed that the appeal would have to be received by the Administrator, preferably by electronic mail, or by U.S. mail, within 21 business days of receipt of the inspection report. The Administrator would then send a final decision to the person requesting the appeal.

Several commenters addressed this proposed provision. One commenter stated that “inspection report” is not a defined term in the proposed rule.

As discussed below, the term does not appear in the revised regulations and thus does not need to be defined in this final rule. With that being said, to address the comment for the purposes of the proposed rule, we would define an inspection report as a report that details the finding resulting from an inspection to determine compliance with the Act and regulations. Any alleged noncompliances of the Act or regulations found as a result of the inspection would have been noted in the report.

A few commenters supporting the proposed rule stated that appeals should only apply to adjudicated cases, not inspection reports, adding that the current regulations [§ 11.25] require HIOs to provide a process to appeal penalties resulting from inspections—not the results of the inspections themselves. One commenter stated that if a horse is found sore under the proposed regulations and disqualified without prosecution or penalty, there should be no appeal.

The Act directs the Secretary not to assess a penalty or issue a cease-and-desist order without giving parties the right to appeal and opportunity to a hearing. There will be no civil penalties assessed without notice and an opportunity for a hearing, and all noncompliances will be subject to enforcement by the Department. As explained below, we have amended proposed § 11.5 so that it addresses due process and provides for appeal of a disqualification.

A commenter stated that the removal of the regulatory role of HIOs leaves no recourse or appeal for a determination of violation and appears to permit an appeal only if USDA determines there is “probable cause” to do so, meaning it passes an absolute judgment upon its own decision and imposes a 21-day limitations period on any appeal. The commenter added that by imposing a 21-day deadline, USDA would now require owners and trainers to challenge every disqualification or risk having USDA later argue that any such challenge was waived.

Though unclear, the commenter’s mention of “probable cause” is apparently in reference to the provision for re-inspection of detained horses under proposed § 11.8(h), in which an alleged violator may request re-inspection and testing of a horse provided that the request is made to APHIS “immediately after the horse has been examined by APHIS representatives,” and that “an APHIS representative determines that sufficient cause for re-inspection and testing exists.” The 21-day limitation period referenced by the commenter applies to appeal of the inspection report under proposed § 11.5. As discussed below, the two are distinct processes, and,

under the terms of the proposed rule, a party could file an appeal to contest an inspection report regardless of whether re-inspection was requested or not.

The intent of proposing appeal of an inspection report under § 11.5 was to explore potential options to provide parties with a recourse to appeal disqualification, including possible options to resolve disputes before the show takes place. The 21 days permitted for an appeal gives time for the alleged violator to prepare an appeal, although the individual can choose to submit the appeal of disqualification at any point up to 21 days. We did not consider it likely that an alleged violator would appeal the inspection report unless they had been disqualified. With that being said, the commenter is correct that, under the specific terms of the proposed rule, there was no direct recourse for appeal in the proposed rule following a determination resulting in a disqualification. Moreover, for purposes of due process, it is the disqualification itself, rather than the inspection report, for which we think appeal should be afforded.

To address this matter, we are revising proposed § 11.5 to provide for appeal of the disqualification itself, rather than the inspection report. As revised, it provides that any horse owner, trainer, exhibitor, custodian (or any other person responsible for entering the horse in an event), or transporter may appeal to the Administrator for a decision on whether a disqualification decision concerning a horse at a horse show, horse exhibition, horse sale, horse auction, or other covered event was justified. There may only be one appeal per disqualified horse per event; however, all parties with interest in the disqualification may contribute to the appeal. (This will preclude duplicative appeals and help focus agency resources on expeditious evaluation of the appeals received.) To appeal, the horse owner, trainer, exhibitor, custodian, or transporter must send a written statement contesting the disqualification and include any documentation or other information in support of the appeal. To receive consideration, the

appeal must be received by the Administrator, preferably by electronic mail, to horseprotection@usda.gov within 21 days of the date the horse owner, trainer, exhibitor, custodian or transporter received the disqualification that is the subject of the appeal. In addition, we are adding an avenue to request expedited review. If expedited review of the appeal is requested, this must be noted as such, and information in support of this request must accompany the appeal so that APHIS may ascertain whether expedited review is warranted. The Administrator will send a final decision, in writing via either electronic mail or postal mail, to the person requesting the appeal as promptly as practicable. Additionally, the above-mentioned provision for re-inspection in proposed § 11.8(h), in which an alleged violator may request re-inspection of a horse, addresses due process concerns to some degree by giving the violator an imminent opportunity to appeal a disqualification resulting from inspection in the field. However, the re-inspection is contingent on whether the inspector determines that sufficient cause exists for doing so. If the horse passes a re-inspection before the show, there is no disqualification based on inspection results. If the horse fails the re-inspection, the disqualification stands, and the alleged violator may appeal through the process in § 11.5.

The same commenter stated that forcing owners and trainers to challenge every disqualification on a purportedly inadequate record does not comport with due process or allow them to be heard in a meaningful manner. The commenter added that to comport with due process, USDA must require any disqualification to be supported by adequate evidence and documentation by requiring the inspector to document and provide photographic evidence of any “dermatologic conditions,” and allowing an owner or trainer to photograph or film an inspection in order to raise challenges to that inspection at a later date.

APHIS representatives and HPIs are required to document noncompliant dermatologic conditions, as well as any other indications of noncompliance.²² As the commenter correctly stated, due process involves providing the custodian of the horse adequate notice of the basis for the disqualification as soon as practicable and prior to the deadline to appeal. We will do so by providing the inspection report to the custodian following the disqualification so that, prior to leaving the event, they have the information necessary to mount an appeal based on dispute of material fact. With that being said, owners and trainers are free to record inspections from a position outside the inspection area.

One commenter stated that a fundamental tenet of due process requires that parties receive fair notice of the specific standards by which they are being deprived of any property interest. On this point, they stated that the standards for an HPA violation under the existing regulations and the proposed rule are vague and fail to provide adequate notice, particularly the revised scar rule's reference to "dermatologic conditions."

We disagree that the regulations do not provide persons with knowledge of what might constitute a violation, including with respect to dermatologic conditions. The prohibitions on particular action devices, types of pads and wedges, and substances are clear and unambiguous. Likewise, under the regulations as revised in this final rule, dermatologic conditions cannot be any conditions whatsoever, but only those that an HPI or APHIS representative determines to be indicative of soring as that term is defined in the statute, including irritation, moisture, edema, swelling, redness, epidermal thickening, and loss of hair (patchy or diffuse). Moreover,

²² APHIS representatives and other qualified persons prepare this documentation as part of fulfilling the notification requirement for reporting sore horses to management in accordance with section 4 of the Act (15 U.S.C. 1823(b)). The Horse Protection program also internally requires that such documentation be prepared and maintained for reporting and enforcement purposes by APHIS representatives and qualified persons inspecting horses.

following the disqualification, the HPI or APHIS representative will disclose the specific basis for the disqualification through issuance of an inspection report and the party involved may contest the disqualification through appeal.

A commenter asked us what happened to the provisions in current § 11.25, particularly in light of a discrepancy between the preamble and the regulatory text. The preamble had stated that the regulatory text of the proposed rule contained a parallel process in § 11.5 “for alleged violators to appeal penalties resulting from inspections conducted by APHIS representatives or HPIs appointed by management,” yet the regulatory text contained no such parallel process.

The provisions in § 11.25 give authority to HIOs to establish and enforce minimum penalties for violators. Because we proposed to relieve HIOs of all regulatory roles and responsibilities under the HPA, there was no longer a need for the provisions in that section. With regard to the discrepancy between the preamble and the regulatory text, we initially intended to draft a separate process to establish and enforce minimum penalties for violators, as well as the right for violators to contest any attempt to enforce such penalties. Later on, during development of the proposed rule, we determined that the existing right to a hearing provided for in the Act, the process for which is described in 7 CFR part 1, contains such a process, and that a separate process would be duplicative and potentially confusing. The regulatory text of the proposed rule reflects the Agency’s intent.

With that being said, as noted above, we are explicitly providing for appeal of disqualification under § 11.5 in this final rule.

In 2016, we published a separate proposed rule to revise the HPA regulations in the *Federal Register* (81 FR 49112-49137, Docket No. APHIS-2011-0009). In response to the 2016 proposal, several commenters submitted due process concerns over reviews of pre-show

inspection findings of soring and subsequent disqualification from showing. Some commenters at the time requested that we develop a pre-show process whereby owners and trainers may contest and seek immediate review of a finding that a horse is sore. They also suggested that when USDA diagnoses a horse as sore after initially being passed by a DQP, the horse should be allowed to be shown until there is a final decision in the matter, i.e., until due process is completed.

We suggested in the proposal to this final rule that one possible solution involves conducting pre-show inspections far enough in advance of the exhibition or show to allow for an opportunity to be heard before the event. A key problem with this solution, however, is that the farther in advance of a show that an inspection takes place, the more time there is to sore a horse after the inspection and before the show. Monitoring protocols would need to be developed and staffed to ensure horses are not sored following inspection. Moreover, under the current event 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 deploying more inspectors to shows and developing monitoring protocols to ensure horses are not sored following inspection.

We acknowledged in the proposal that there may be other means of addressing the issue and requested public comment regarding other alternatives to a pre-show review process, including consideration of regulatory bodies, statutory authorities, or incentives and disincentives, including withholding or forfeiture of prize money. To determine the feasibility of a pre-show inspection and review, we asked for comments addressing the particulars of such a review, including where and when the pre-show inspection might be conducted, how monitoring

of horses after inspection would take place to prevent tampering, and what parties should be involved in the review process.

We received several comments supporting and opposing a pre-show inspection that would allow for reviews of soreness findings.

Most commenters addressing this subject agreed that such a review is not feasible under the way that shows are currently conducted. Several commenters stated that it is not possible to adjudicate in the limited timeframe between examining a horse and competition, with one adding that the point is to have qualified inspectors undertaking examinations and not finding ways to override their findings. Another commenter stated that it is unacceptable to propose that the findings of a qualified, unbiased professional inspector should be challenged and overridden in the moment at an event. The commenter added that the HPA requires that a horse in violation must be prohibited from being shown, and that any delay in or failure to invoke this prohibition would be in violation of the Act. One commenter opined that concerns about due process originated in the conflicts seen when a DQP would ‘pass’ a horse and the APHIS inspector would subsequently ‘fail’ the horse as sore, and that with abolishment of the DQP program and the use of only inspectors screened and authorized by APHIS, a pre-show review to resolve such conflicts would be unnecessary.

We agree with commenters that it is not feasible to adjudicate in the limited timeframe between examining a horse and competition; we did not receive comments that suggested alternative show practices that would make a pre-show review process practicable. The HPA prohibits showing or exhibiting horses determined as sore from showing, with a litigation risk inherent in allowing horses that may be sore to show. Also, the longer the interval between an inspection and the event, the more opportunity there is to sore a “cleared” horse. As we

indicated in our recent proposal, section 4 (15 U.S.C. 1823(a)) of 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. Specifically, the statute and regulations require management to (among other actions) 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. Further, section 5 (15 U.S.C. 1824) requires that management disqualify such horses by listing the failure to do so as an “unlawful act.” Because of these statutory considerations, and because commenters could not provide a meaningful way to allow for a pre-show hearing following an inspection resulting in disqualification, we consider the appeals process in this final rule, which allows for prompt post-disqualification appeal, due process regarding the deprivation caused by disqualification. Further, the re-inspection provision in proposed § 11.8(h) addresses due process concerns to some degree by giving an alleged violator an opportunity to appeal a disqualification resulting from inspection in the field provided sufficient cause for doing so is determined by an APHIS representative. If a horse passes a re-inspection before the show, there is no disqualification based on inspection results.

A commenter opposed to the proposed rule stated that under the current system, horse owners have no right to raise a challenge and have their horses shown if they are disqualified before a show, and that the rule offers no solution to this problem. The commenter stated that to address due process concerns with its enforcement efforts, USDA must begin by looking at other breeds covered under the HPA and consider an objective inspection system that utilizes blood testing, urinalysis, thermography, x-rays/radiology, and gas chromatography-mass spectrometry. The commenter further recommended that the program be overseen by an independent inspection

entity under the current HIO structure or through some other new structure as is currently allowed in other breed programs.

These comments do not offer a workable solution. No such tests listed by the commenter can definitively rule out that a horse has been sore, and the commenter discounted a determination of soring by a trained inspector who has palpated the horse and found sensitivity to be present. As we stated above, the NAS study considered this part of the inspection protocol to be the “gold standard” for detecting local pain and inflammation.²³ It is also worth noting that one commenter stated that the practice of disqualifying a horse based on an adverse inspection finding (i.e., not allowing the horse to be shown/exhibited), with appeals possible after the fact, is consistent with what is done in other breeds. To that end, we note that one of the commenter’s suggestions would entail retention of the regulatory functions of HIOs, which, for reasons discussed in the proposed rule and this final rule, we are abolishing.

Finally, we note that the commenter failed to address critical details regarding how any pre-show review process could achieve the statutory prohibition against showing sore horses. Details that the commenter did not address in their recommendation include where and when the inspection should take place if a pre-show review process will be afforded, who should be physically present for the review process, and how the health and safety of the horse should be monitored after the inspection to make sure the horse is not subsequently sore while review is ongoing. Because of these deficiencies, and in light of the foregoing considerations that counsel against pre-show review processes, we do not consider the commenter to have provided a meaningful recommendation to afford pre-deprivation due process.

²³ NAS study, page 46.

One commenter asked who would be appointed to a pre-show review process, noting that reviewers would have to be on site in addition to the inspectors, and wanted to know how APHIS would fill the gap.

We cannot answer the commenter's question as to whom we would appoint, as we only asked for comments about the feasibility of establishing such a review process.

We also asked how a pre-show review process might implicate or interact with the re-inspection process currently located in section 11.4(h), which we are revising and moving to new § 11.8(h). As we note above, this re-inspection provision provides a pre-show means to appeal an initial disqualifying inspection in the field by requesting a second inspection provided that sufficient cause for reinspection exists and an APHIS representative is available to perform the re-inspection. If a re-inspection is granted and the horse passes, there is no disqualification based on inspection results. We received no comments specifically on this point.

Finally, a few commenters provided specific ideas for disincentivizing soring, as we requested. One commenter suggested that any horse found to be sore not be allowed to show for 6 months. The commenter also recommended making the offspring of a horse found to be sore more than one time ineligible for breed registration, as well as not allowing a sore horse to be sold for 2 years after diagnosis, which would reduce the value of such horses and disincentivize soring.

We think this final rule is adequate to disincentivize soring. Therefore, we do not think the measures proposed by the commenter, even if they fall within the bounds of the Act, are necessary.

A commenter suggested that the Act be strengthened by fining violators \$5,000 for the first offense, \$25,000 for the second, \$150,000 for the third, and taking the horse in question for a fourth offense.

We are making no change in response to the commenter's suggestion. Penalties are enshrined in the Act and require Congressional action to change.

Another commenter asked why the rule does not include the imposition of extended disqualification periods, up to and including lifetime disqualifications, and to consider including extended disqualification periods for sore horses or offenders with multiple violations.

These periods are listed in the Act and cannot be changed without an act of Congress.

Prohibitions to Prevent Soring

Current § 11.2, "Prohibitions concerning exhibitors," contains general and specific prohibitions on certain devices, methods, practices, or substances used on any horse at any horse show, horse exhibition, horse sale, or horse auction covered under the Act. These current prohibitions already include prohibitions intended specifically for Tennessee Walking Horses and racking horses regarding substances and duration of workouts in paragraphs (c) and (d) respectively.

We proposed to revise § 11.6 and retain the current § 11.2 heading "Prohibitions concerning exhibitors." As with current § 11.2, revised § 11.6 lists general and specific prohibitions on certain devices, methods, and practices used on any horse at any horse show, horse exhibition, horse sale, or horse auction. We also proposed to include new prohibitions in § 11.6(c) specific to Tennessee Walking Horses and racking horses.

General Prohibitions

Current paragraph § 11.2(a) contains a general prohibition on the use of any device, method, practice, or substance on any horse at any horse show, exhibition, sale, or auction if that use causes or can reasonably be expected to cause a horse to be sore.

We proposed in § 11.6(a) to include a similar general prohibition on the use of any device, method, practice, or substance. We also proposed adding a provision under the general prohibitions prohibiting the use on a horse of any device, method, practice, or substance that masks soring.

Under section 5 (15 U.S.C. 1824(7)) of the Act, APHIS has the authority to prohibit any equipment, device, paraphernalia, or substance that a horse is wearing or bearing which the Secretary by regulation under section 9 (U.S.C. 1828) of the Act prohibits to prevent the soring of horses. USDA considers prohibiting items and substances that mask soring to be essential in helping to prevent the soring of horses, as masking can impede efforts to detect soring through inspections. APHIS currently considers the use of substances to mask soring as a violation of the Act and regulations and conducts enforcement accordingly. Our addition of the prohibition on masking in the general prohibitions is intended to underscore what the Act already prohibits. (We also proposed prohibiting lubricating substances.)

As masking typically involves the use of substances, including lubricants, we address comments relating to masking below under “Lubricants.”

Prohibited Devices, Equipment, and Practices

Paragraph (b) of current § 11.2, “Specific prohibitions,” prohibits on any horse the use of certain devices, methods, practices, and substances at any covered horse show, exhibition, sale,

or auction. Under the current regulations, some restricted uses are permitted provided they do not exceed the specifications accompanying each.

In proposed §11.6(b), “Prohibited devices, equipment, and practices,” we similarly list devices, equipment, and practices that are prohibited on any horse at a horse show, horse exhibition, horse sale, or horse auction, including Tennessee Walking Horses and racking horses. We address specific comments we received on the list below.

We noted in the proposal that § 11.6(b) will continue to allow breeds other than Tennessee Walking Horses and racking horses to use certain rollers, chains, and bell boots weighing 6 ounces or less, as well as pads that elevate or change the angle of hooves 1 inch or less at the heel, and certain toe extensions, shoes, and metal hoof bands. Except for Tennessee Walking Horses and racking horses, for which all action devices are prohibited under proposed paragraph (c)(1), we also proposed in paragraph (b) to continue to allow the use of an action device on each limb of a horse if the device weighs 6 ounces or less.

As proposed, we are moving from current § 11.2 to § 11.6(b)(1) the provision prohibiting more than one action device permitted under this section on any limb of a horse. We did not receive comments specific to that change and are finalizing as proposed.

In paragraph (b)(2), we are moving from current (b)(1) the prohibition on 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. We did not receive comments specific to that provision and are finalizing as proposed.

In paragraph (b)(3), we are moving from current § 11.2(b)(2) the prohibition on chains weighing more than 6 ounces each, including the weight of the fastener. We did not receive comments specific to this provision and are finalizing as proposed. (We received comments on the prohibition of chains and chain weights pertaining to Tennessee Walking Horses and racking horses, which we address under “Action Devices, Pads, and Wedges” below.)

In paragraph (b)(4), we are moving from current § 11.2(b)(3) the prohibition on chains with links that are not of uniform size, weight, and configuration and chains that have twisted links or double links. We did not receive comments specific to that provision and are finalizing as proposed.

In paragraph (b)(5), we are moving from current § 11.2(b)(4) the prohibition on chains that have drop links on any horse that is being ridden, worked on a lead, or otherwise worked out or moved about. We did not receive comments specific to that provision and are finalizing as proposed.

In paragraph (b)(6), we are moving from current § 11.2(b)(6) the prohibition on 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. We did not receive comments specific to that provision and are finalizing as proposed.

In paragraph (b)(7), we are moving from current § 11.2(b)(7)(i) the prohibition on 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. We did not receive comments specific to that provision and are finalizing as proposed.

In paragraph (b)(8), we are moving from current § 11.2(b)(7)(ii) the prohibition on 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. We did not receive comments specific to that provision and are finalizing as proposed.

In paragraph (b)(9), we are moving from current § 11.2(b)(8) the prohibition on 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. While we received many comments on the prohibition of pads on Tennessee Walking Horses and racking horses, we did not receive comments on this specific provision as it pertains to § 11.2(b) and are finalizing as proposed.

In paragraph (b)(10), we are moving from current § 11.2(b)(9) the prohibition on 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.

Some commenters stated that USDA should prohibit weighted shoes on any Tennessee Walking and racking horses at covered events because they can increase the potential for injury in the form of tissue damage or overexertion of the musculature. One commenter cautioned against an outright prohibition on weighted shoes, noting that all horseshoes have weight, and proposed a maximum shoe weight limit of 16 ounces, while other commenters suggested setting a similar shoe weight limit for all horses. Another commenter stated that some Tennessee Walking Horses are wearing shoes made from metals heavier than steel or iron, and that the heavier shoes are inducing soreing even in horses in flat-shod classes. To prohibit the use of heavier metals for shoes, some commenters recommended that the shoes required for horses of all ages be made completely of rubber, plastic, aluminum, or steel. On the other hand, some commenters asked that we continue to allow heavy shoes for horses that tend to be overly “pacey.”

We are finalizing as proposed. While we limit shoe weights on horses up to 2 years old to 16 ounces or less, there is no scientific literature that we are aware of on which we can base a prohibition on shoes weighing more than 16 ounces on older horses at this time. Therefore, we are not including a weight limit on shoes for horses 2 years and older. We are actively collecting data on the usage and effects of shoes weighing more than 16 ounces on horses and will consider prohibiting such shoes in a future rulemaking, if warranted.

Another commenter stated the proposed rule is insufficient because it allows the use of “a keg or similar conventional horseshoe” without a weight limitation.

The proposed provision in paragraph (b)(10) actually limits horseshoe weights on horses up to 2 years old to 16 ounces or less, which includes a “keg or similar conventional horseshoe.” However, to ensure that the provision is clear on this point we are including the words “that weighs 16 ounces or less” after the words “keg or similar conventional horseshoe.”

Many commenters asked that hoof bands and any weight attached to the hoof or horseshoe (other than a keg or similar conventional horseshoe itself, including the allowable caulk and any studs or material used on the bottom of the shoe for traction) weighing more than 16 ounces should be prohibited on horses of any age in the three breeds known to be subjected to soring.

We are not making any changes to the regulations regarding hoof bands or horseshoe weights. Horseshoes are not a prohibited item and hoof bands, when used in accordance with proposed paragraph (b)(17), can serve to secure the shoe to the hoof. As we note above, we continue to collect data on the effects of shoes weighing more than 16 ounces on horses.

A commenter stated that if USDA allows heavy shoes, it should require management to inform APHIS if heavy shoes will be permitted at a show (extending § 11.16(a)(7) accordingly).

Proposed § 11.16(a)(7) requires that management contact APHIS if they plan to allow any horse to be shown, exhibited, or sold undergoing therapeutic treatment with any of the items otherwise prohibited in § 11.6. The proposed regulations do not consider shoes weighing more than 16 ounces on horses 2 years old and older to be a prohibited item. We are not making a change to the regulations that would require management to inform APHIS if they plan to allow heavy shoes because absent such a prohibition, we do not expect any show to prohibit such shoes. We continue to gather information on the effects of shoes weighing more than 16 ounces and will consider future limitations on such shoes if we determine their prohibition is necessary to prevent the soring of horses.

The same commenter added that whether or not management plans to allow horses to wear pads or wedges, if they plan to allow the use of heavy shoes on horses, a farrier should be required to be present or on call to pull a shoe for inspection if called for by an APHIS representative or HPI.

The farrier requirement stands for any horse show that has appointed an APHIS representative or HPI to conduct inspections, as even horses wearing shoes that are not heavy may need to have a shoe pulled upon request of an inspector to check for conditions such as pressure shoeing. A trained farrier's presence is important because only a farrier can safely remove or replace shoes on a horse.

Several commenters cited possible problems with shoe width impeding proper inspection of the horse's hooves. Some commenters recommended a requirement that shoe dimensions cannot exceed 1½ inches wide by ½ inch thick and cannot obstruct the use of hoof testers on the sole and frog, and one suggested that APHIS adopt language from other breed disciplines by adding to the provision "the sole and entire frog of the foot must be visible."

We are not setting specific dimension requirements on shoes because we reviewed research available regarding horseshoe dimensions and did not determine there was sufficient evidence to justify any restrictions at this time. APHIS will collect data regarding the use of these shoes and consider horseshoe dimension restrictions in a future rulemaking if we determine they are necessary to prevent the soring of horses. We note that APHIS may examine or require that a shoe be removed at any time if necessary to determine if a horse is sore.

In paragraph (b)(11), we are moving from current § 11.2(b)(10) the prohibition on 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 must be measured from the distal portion of the hoof wall at the tip of the toe at a 90-degree angle to the proximal (foot/hoof) surface of the shoe.

Some commenters stated that, if they are to remain, recommended toe extensions should be within the limit of 50 percent of the natural hoof length as measured from the hairline of the hoof capsule to 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. One commenter recommended that the maximum toe length be 4½ inches, including the thickness of the shoe, measured as specified in United States Equestrian Federation (USEF) General Rule 510.²⁴

²⁴ To view General Rule 510, go to <https://www.usef.org/forms-pubs/s9SeSv4S0Sc/gr--general-rules>.

We are finalizing as proposed. To make a determination about the specific lengths recommended by commenters, we will require more research on artificial toe lengths used for other horse breeds, most of which are regulated under USEF.

Another commenter stated that allowing toe extensions in proposed § 11.6(b)(11) is open to abuse because "natural hoof length" can be manipulated to far exceed ideal hoof length, and then a further toe extension is permitted beyond that. The commenter added that artificial toe extensions should be prohibited entirely.

We assume the commenter's concern is not with the provision as applied in § 11.6(b)(11), but with artificial toe extensions and soring in Tennessee Walking Horses and racking horses, insofar as soring is rarely practiced and confers no competitive advantage to horses that do not practice the "big lick" step in Performance division events. We note that all artificial toe extensions will be prohibited on any Tennessee Walking Horse or racking horse unless such horse has been prescribed and is receiving therapeutic treatment as approved in writing by a licensed veterinarian. However, even if a Tennessee Walking Horse or racking horse is wearing artificial toe extensions under a therapeutic exemption, the toe extension cannot exceed the restrictions for all horses in § 11.6(b)(11) and (b)(12) of this final rule. To the commenter's point, regulations cannot prescribe "ideal" hoof length, but a prohibition of all toe extensions unless therapeutically required can be considered in a future rulemaking if evidence arises that supports such a prohibition in other horse breeds.

In paragraph (b)(12), we are moving from current § 11.2(b)(11) the prohibition on toe length that does not exceed the height of the heel by 1 inch or more. The length of the toe must 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 must 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 3/4 inch in length. That portion of caulk at the rear of a horseshoe in excess of 3/4 of an inch must be added to the height of the heel in determining the heel/toe ratio.

A few commenters stated that caulks exceeding 3/4 of an inch should be prohibited entirely.

We are finalizing as proposed. We will consider such a prohibition in a future rulemaking if evidence is identified supporting such a prohibition. As it stands now, caulks exceeding 3/4 of an inch must have the extra height considered in heel/toe ratio measurements.

In paragraph (b)(13), we are moving from current § 11.2(b)(12) the prohibition on pads that are not made of leather, plastic, or a similar pliant material. While we received numerous comments regarding the prohibition on pads for Tennessee Walking Horses and racking horses, we received none that opposed our moving this specific provision to proposed § 11.6(b) and we are finalizing as proposed.

In paragraph (b)(14), we are moving from current § 11.2(b)(13) the prohibition on 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. We proposed and are adding a prohibition on the use of acrylic or other hardening substances as hoof packing.

A commenter stated that eliminating non-therapeutic pads and wedges in proposed § 11.6(c)(3) means that § 11.6(b)(14) should be revised to prohibit all objects or materials inserted into the hoof, as most hoof-packing materials require a pad to hold them in place.

We are making no changes in response to the commenter. Certain pads continue to be permitted for breeds other than Tennessee Walking Horses and racking horses not covered under § 11.6(c). Moreover, pads for therapeutic treatment can still be prescribed by a licensed veterinarian in accordance with proposed § 11.6(c)(3) for Tennessee Walking Horses and racking horses.

We proposed in paragraph (b)(15) to move from current § 11.2(b)(14) the prohibition on single or double rocker-bars on the bottom surface of horseshoes which extend more than 1½ 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.

A commenter asked that we develop a regulatory definition in § 11.6(b)(15) that clearly distinguishes between permitted shoes and prohibited “non-conventional” shoes and asked that we include other specific types of abusive shoes that APHIS wants to ban in order to prevent soring.

We are finalizing as proposed. Requirements pertaining to shoes are addressed in the discussion of § 11.6(b)(10); questions about the regulatory status of a specific shoe type can be directed to APHIS.²⁵

We proposed in paragraph (b)(16) to move from current § 11.2(b)(15) the prohibition on metal hoof bands, such as used to anchor or strengthen pads and shoes, if placed less than 1/2 inch below the coronet band. In paragraph (b)(17), we are moving from § 11.2(b)(16) the

²⁵ Send email to horseprotection@usda.gov, or U.S. mail to USDA/APHIS/AC, 2150 Centre Ave. Building B, Mailstop 3W11, Fort Collins, CO 80526-8117.

prohibition on 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.

A commenter asked why an exhibitor is not allowed to correct a loose hoof band and re-show.

We expect exhibitors presenting for inspection to check their horse for any compliance issues prior to actually presenting. If after the horse has passed inspection and prior to showing the custodian identifies that the hoof band has become loose, only then can the band be adjusted as needed under the supervision of an HPI authorized by the event or an APHIS representative.

In paragraph (b)(18), we proposed to move from current § 11.2(b)(17) the prohibition on 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. We did not receive comments specific to that provision and are finalizing as proposed.

In proposed paragraph (b)(19), we are moving from current § 11.2(b)(18) the prohibition on shoeing a horse or trimming a horse's hoof in a manner that will cause such horse to suffer, or can reasonably be expected to cause such horse to suffer pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving. To this prohibition, we added language not in current paragraph (b)(18) prohibiting paring the frog or sole in such a manner to cause the pain and distress described above, and prohibiting bruising of the hoof or any other method of pressure shoeing.

A commenter asked if a horse would be considered sore if a farrier accidentally trims a hoof too short, or if a ride across hard, rocky ground results in an accidental bruise to the sole.

We are finalizing as proposed. We note that under proposed § 11.6(b)(19), trimming a horse's hoof in a manner that will cause such horse to suffer, or can reasonably be expected to

cause such horse to suffer pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving is prohibited. Also, bruising of the hoof or any other method of pressure shoeing is prohibited. Regardless of the intent of the farrier, any horse with such injuries entered into an event may be considered sore.

Another commenter stated that in all the APHIS “violations” issued there is not one pressure shoeing violation, so the justification for eliminating the pad on that basis is unfounded.

We disagree with the commenter about pressure shoeing. Pressure shoeing involves either cutting a significant portion of or causing significant trauma to a horse’s hoof immediately before nailing a shoe to the hoof, and can cause or be expected to cause the horse to suffer pain or distress when moving. Further, the commenter is incorrect in stating there are no pressure shoeing violations. APHIS has issued at least one violation, in 2018, for pressure shoeing that is specifically a soring violation, but the number of violations issued for pressure shoeing is not indicative of its ability to cause pain and suffering in horses.

In paragraph (b)(20), we are moving from current § 11.2(b)(19) the prohibition on 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. In addition, 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 also prohibited in this paragraph.

While some commenters specifically asked us to consider prohibiting any weight of more than 16 ounces attached to the hoof or horseshoe on Tennessee Walking Horses, racking horses, and Spotted Saddle Horses, we received no comments specific to other prohibitions of this

paragraph and are finalizing as proposed. Those comments are addressed under the discussion of paragraph (b)(10) above.

Stewarding

In proposed paragraph (b)(21), we added a prohibition on the use of whips, cigarette smoke, or similar 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.

The NAS study committee's earlier-cited observation of 61 inspection videos revealed numerous incidents of stewarding during the standing inspection that were not dealt with by the DQP, including holding the reins closer than 18 inches from the bit, often just below or on the shank. The committee noted that these restraint tactics can create a distraction during the palpation procedure by inducing pain in the oral cavity.²⁶ APHIS' experience in conducting inspections is consistent with NAS' observation.

A commenter stated it is necessary to hold the reins closer to the bit in order to control a horse undergoing palpation, as any flinch or movement from the horse will cause it to be turned down.

We respond that such movements from a horse may indicate pain sensitivity upon palpation consistent with soring. An experienced, properly trained inspector can distinguish incidental movements of the horse from the specific behavioral signs of a pain response. The NAS study discusses several such behavioral indications of pain that are evaluated in veterinary clinical practice.²⁷

²⁶ NAS study, page 49.

²⁷ NAS study, pages 54-65.

Another commenter recommended that in the prohibition, "alligator clips" be inserted after "smoke," adding that a far more detailed description of stewarding is needed in the regulations.

We are making no changes in response to the commenter's recommendation, as it is not possible to include an exhaustive list of all things that could be used to distract a horse or otherwise impede the inspection process. The prohibition of "other stewarding actions or paraphernalia to distract a horse or to otherwise impede the inspection process during an examination" includes alligator clips and anything else used to distract a horse or otherwise impede the inspection process during an examination.

Prohibitions for Tennessee Walking Horses and Racking Horses

Under proposed § 11.6(c), we prohibited pads, action devices, artificial toe length extension, and lubricants 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 pads, wedges, toe length extensions, or substances as approved in writing by a licensed veterinarian in accordance with proposed § 11.14(b).

The current regulation (§ 11.2(b)) prohibits the use of a chain or other action device on each limb of a horse if the device weighs more than 6 ounces. Therefore, the proposal to prohibit all action devices on Tennessee Walking Horses and racking horses under § 11.6(c)(1) has the effect of extending the existing prohibition to action devices weighing 6 ounces or less.

We also proposed under § 11.6(c)(3) to prohibit all pads and wedges on any Tennessee Walking Horse or racking horse at any horse show, unless prescribed for therapeutic treatment. Under the existing regulations, these horses were allowed to wear pads or wedges that elevate the angle of horses' hooves less than 1 inch at the heel. Under this proposal, no pads or wedges

would be allowed, regardless of whether they create an angle less than 1 inch at the heel, unless a therapeutic exemption has been obtained.

In the proposed rule, we provided support indicating that pads, wedges, and action devices can, on their own or in conjunction with other substances and practices, cause soring. For example, with respect to pads, we noted that they can “cause a horse’s foot to strike the ground at an unnatural angle” and “can also induce pain and soring over time.” (88 FR 56936). We also noted in the proposed rule 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,” that is, in competitions in which the use of soring could confer a “significant performance advantage” (88 FR 56937).

We further stated that, based on our observations and experience, including “compliance inspections, investigations, enforcement of alleged violations, oversight of industry-based inspection programs, and outreach to the horse industry...a relationship continues to exist between the use of certain permitted devices and soring, notably among Tennessee Walking Horses and racking horses.” (ibid). Finally, we indicated that this relationship between the use of devices and soring is not present in Morgans, American Saddlebreds, and other gaited breeds, and indicated that soring is rarely detected in flat-shod Tennessee Walking Horses and racking horses.

In other words, in the proposed rule we advanced two bases for the proposed prohibition on the use of pads, wedges, and action devices for Tennessee Walking Horses and racking horses: First, that pads, wedges, and action devices may, under certain circumstances, and particularly in conjunction with other substances and practices, cause soring; and second, that the

use of pads, wedges, and action devices among Tennessee Walking Horses and racking horses is strongly associated with soring.

In the proposed rule, we also proposed under § 11.6(c)(2) to prohibit all artificial extension of the toe length in Tennessee Walking Horses and racking horses unless a horse has been prescribed it for therapeutic treatment. This proposal removes the existing allowance for artificial toe extensions on Tennessee Walking horses and racking horses that are less than 50 percent of the natural hoof length. We explain our rationale for the proposed ban on such artificial extensions below, under “Artificial Toe Extensions.”

Finally, we also proposed under § 11.6(c)(4) to prohibit the application of lubricants above the hoof of any Tennessee Walking or racking horse at any horse show, exhibition, sale, or auction, unless approved in writing by a licensed veterinarian for therapeutic use. Under the current regulations in § 11.2(c), all other substances are already prohibited 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, horse exhibition, or horse sale or auction. We explain our rationale for the proposed ban on lubricants below, under “Lubricants.”

Before we discuss the comments we received on the proposed prohibitions on pads, wedges, and action devices, we feel it important to situate them within the historical context of our administration of the HPA regulations over the past 50 years and our knowledge of the relationship between pads, wedges, and action devices and the soring of horses within the Tennessee Walking Horse and racking horse industry.

In a 1979 rulemaking,²⁸ APHIS stated that “if the horse industry makes no effort to establish a workable self-regulatory program for the elimination of sore horses, or if such

²⁸ 44 FR 25172-25184, April 27, 1979.

program is established but does not succeed in eliminating the sore horse within a reasonable length of time, the Department will give serious consideration to the prohibition of all action devices and pads.” (Then, as now, an unacceptable percentage of horses wearing these devices and pads was found to be noncompliant with the Act.) Between 1979 and 1982, Auburn University School of Veterinary Medicine conducted a study (the “Auburn study”) that evaluated the effects of chronic and acute inflammatory responses on the front and hind limbs of horses. That study, which we discuss at greater length later in this document, 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. Finally, in a 1988 rulemaking²⁹ to expand the list of prohibited devices and equipment on horses, APHIS noted that “experts in the horse industry have advised us that elevating the foot can cause an increase in tension in the tendons, which can lead to inflammation. A tall pad can also contribute to stresses caused by extra weight on a horse’s foot. Additionally, elevating only the front feet, as is typically done, 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.”

In other words, by 1979 we had identified a correlation between the use of action devices and pads and an increased incidence of soring within the Tennessee Walking Horse and racking horse industry; by 1982, a peer-reviewed third party had identified that chains can, in conjunction with other prohibited substances, cause effects consistent with soring; and by 1988, we had received expert advice that certain uses of pads and wedges can cause soring. As we mentioned above, the data cited in Tables 1 and 2 of the proposed rule regarding noncompliance

²⁹ 53 FR 14778-14782, April 26, 1988.

rates within the industry, which covered only a handful of years, must be viewed in the context of the aggregate body of data that the Agency has amassed over 50 years of enforcing the HPA. This includes the above data.

As we noted in the proposed rule, we have attempted many solutions over the years to address the increased incidence of soring in the Performance division of the Tennessee Walking Horse and racking horse industry, a division that relies extensively on the pads, wedges, and action devices that we proposed to prohibit. Beginning in 2010, APHIS 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 were participating. From 2017 through 2022, APHIS hosted joint training sessions with HIOs to ensure all DQPs received the same training.

Nonetheless, these many attempts at nonregulatory solutions have done little to move us toward the statutory goal of eliminating soring, and incidents of soring remain statistically elevated in the Performance division of the Tennessee Walking Horse and racking horse industry, especially when compared to rates of soring noncompliance found in inspections of flat-shod Tennessee Walking Horses and racking horses. In FY 2022, APHIS VMOs found noncompliances in 34.1 percent of the 930 horses they inspected at Performance division events, compared to a noncompliance rate of only 1.7 percent of the 357 horses they inspected at flat-shod events, in which horses compete without wearing pads and action devices. As we note elsewhere in this rule, horses in both the Performance and flat-shod divisions are the same breeds, frequently come from the same bloodlines, and practice the same gaits. What differentiates these horses is the presence or absence of the tall pads, wedges, chains, and other

action devices used in training and exhibition, and the exaggerated gait of Performance division horses.

Accordingly, after 44 years of attempts to encourage this division to address soring without recourse to Federal intervention in the form of restrictions and prohibitions, we have reached a point at which it is apparent that the prohibitions articulated in the proposed rule, along with establishing a corps of third-party inspectors working independently of the horse industry and free of conflicts of interest, are a necessary recourse to prevent the soring of horses. This determination is shared by other parties with significant experience in and knowledge of the equine industry: The changes to the HPA regulations are supported by the American Veterinary Medical Association, the American Association of Equine Practitioners, and other major veterinary organizations in the United States. The outcome will place the Department in a stronger position to achieve the remedial purpose of the HPA, which is to prevent and eventually eliminate the abusive practice of soring.

We received many comments that specifically addressed our creation of a separate list of prohibitions under § 11.6(c) exclusively for the Tennessee Walking Horse and racking horse breeds.

Numerous commenters stated that APHIS must extend the list of prohibited actions and items specific to Tennessee Walking and racking horses in § 11.6(c) to all horse breeds, and Spotted Saddle Horses in particular. A smaller number of commenters opposed to the proposed rule stated that, by creating a separate list of prohibitions, APHIS is unfairly singling out Tennessee Walking Horses and racking horses and should be inspecting events featuring other breeds equally.

We are making no changes to § 11.6(c) regarding the breeds covered in that paragraph. Our reasoning for allowing the use of these items on some breeds, but prohibiting all such items on Tennessee Walking Horses and racking horses, is as follows. We did not state in the proposed rule that pads, wedges, action devices, and toe extensions are always necessarily and *per se* associated with soring. While they can cause soring, as we stated in the proposed rule, action devices and pads are sometimes used for proprioceptive purposes during training of Morgans, American Saddlebreds, and other gaited breeds.³⁰ If the use of action devices and pads always and *per se* caused soring, we would detect soring in those breeds that rely on such devices and pads at a rate commensurate with the incidence of soring in the Performance division of the Tennessee Walking Horse and racking horse industry. However, based on our knowledge of all horse breeds showing or exhibiting in the United States, soring in breeds other than Tennessee Walking Horses and racking horses is rare.

We are not contending that soring never occurs in other breeds; for instance, soring has been known to occur in the Spotted Saddle Horse community. However, the infrequency of soring in that breed does not warrant the targeted enforcement that we consider necessary to address the dramatically higher incidence of soring detected among Tennessee Walking Horses and racking horses, especially those competing in the Performance division with tall pads and action devices.³¹

³⁰ Clayton, Hilary, “Rehabilitation for Horses.” Paper presented at American Association of Equine Practitioners, July 2014.

³¹APHIS inspections at Fox Trotter, Spotted Saddle Horse, Rocky Mountain Horse, and Mountain Horse shows between FY 2017 and FY 2022 resulted in a noncompliance rate of under 1 percent. The overall rate of noncompliance at performance shows featuring Tennessee Walking Horses in pads and action devices in FY 2022 was 34.1 percent.

APHIS will continue to enforce the Act and monitor the instances of soring in breeds and classes other than the Performance division of the Tennessee Walking Horse and racking industry. However, as we noted in the proposed rule and again reiterate, 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 Tennessee Walking horses and racking horse Performance division events, and events for other breeds do not incentivize soring by placing such a premium on the “big lick” step.

A commenter, noting that the proposal states that “soring in breeds other than Tennessee Walking Horses and racking horses confers no significant performance advantage and is therefore rarely if ever practiced” stated that this is a blanket assumption that glosses over the longstanding problems with the current inspection model and ignores that Spotted Saddle horses have been targeted as well. As support, the commenter noted that the U.S. Department of Justice successfully prosecuted Barney Davis, a Spotted Saddle Horse trainer, and two of his employees for various violations of the HPA after a USDA investigation.

The Act prohibits soring in all breeds of horses, which is why the U.S. Department of Justice was able to successfully prosecute a soring violation in a Spotted Saddle Horse. This particular case does not discount the proposed rule’s statements on other breeds, nor does it invalidate our risk-based inspection method. We use the same inspection protocol on all breeds of horses covered under the Act. In our more than 50 years of enforcing the Act, soring has occurred far more frequently at Tennessee Walking Horse and racking horse shows than at Spotted Saddle horse shows,³² and the exclusion of Spotted Saddle Horses or any other breed

³² See footnote 31.

from proposed § 11.6(c) does not preclude a horse in those breeds at any covered event from being diagnosed as sore.

One commenter stated that the final rulemaking should reaffirm that the HPA applies to all horse show breeds as provided in proposed § 11.6(a) and (b), and that the new restrictions provided in § 11.6(c) specific to Tennessee Walking Horses, racking horses, and Spotted Saddle Horses are not intended to negate the continuing obligation of other breeds and shows to comply with the law.

The new regulatory prohibitions on Tennessee Walking Horses and racking horses do not negate the obligation of other breeds also covered under the Act to be in compliance with the Act's provisions, which we monitor through a risk-based inspection protocol. The general prohibitions in § 11.6(a) apply to all horse breeds. Further, while we do not include Spotted Saddle Horses under the prohibitions in § 11.6(c), this fact does not preclude APHIS from issuing a violation for a finding of soring, or a finding of use of a device is prohibited under § 11.6(a), for a Spotted Saddle Horse or any other breed, or for a finding that the use of an action device, method, practice, or substance "causes or can reasonably be expected to cause such horse to be sore or is otherwise used to mask previous and/or ongoing soring." These horses can be diagnosed as sore—or a device, method, practice, or substance can be determined to be prohibited under § 11.6(a)—regardless of breed.

One commenter stated that USDA lacks evidence showing an absence of soring in other breeds and has itself acknowledged that other breeds do engage in soring. The commenter added that APHIS has found evidence of soring during inspections conducted at Spotted Saddle Horse and Missouri Fox Trotter events.

As addressed above, APHIS focuses its risk-based enforcement efforts where soring is most concentrated, i.e., on Tennessee Walking Horse and racking horse shows, particularly Performance division events in which horses wear the tall pads and action devices and practice the “big lick.” Persons exhibiting horses in events in which soring confers no competitive advantage have no incentive to sore their horses. Further, APHIS has never denied that soring occurs, albeit rarely, in breeds other than Tennessee Walking Horses and racking horses.³³ From FY 2017 to FY 2022, APHIS conducted 88 inspections at 6 shows featuring Fox Trotter, Spotted Saddle Horses, Rocky Mountain Horses, and Mountain Horses and found a rate of noncompliance under 1 percent, compared to a 34 percent rate of noncompliance found by APHIS VMOs in inspections of Performance division Tennessee Walking Horses in FY 2022 alone.³⁴

Action Devices, Pads, and Wedges (§ 11.6(c)(1) and (c)(3))

In the proposal, we invited public comment on the effects upon horses of action devices and pads, including wedges, whether used alone or in combination with other training methods. We have chosen to address comments on action devices and pads under one heading because many commenters made statements referring to them in combination.

Numerous commenters expressed general support for prohibiting action devices and pads in order to prevent soring. A smaller number stated support for prohibiting action devices and pads because they unfairly allow sored horses to gain a competitive advantage. Several other

³³ Persons can report suspected cases of soring to horseprotection@usda.gov for further investigation.

³⁴ Proposed rule (88 FR 56930), Table 1.

commenters stated that action devices and pads, when used in the ways we have addressed above, are being used to sore horses.

On the other hand, many commenters opposed prohibiting action devices and pads for Tennessee Walking Horses and racking horses, stating that pads, chains, and other action devices currently allowed under the regulations do not cause soring. A few commenters stated that the action devices, tall pads, and weighted shoes enhance the talent for the “big lick” that these horses already have. Another commenter stated that equine veterinarians that regularly treat the Tennessee Walking Horse credit the use of the pads with decreased laminitis but provided no support to back this claim.

One commenter stated that prohibiting pads and action devices exceeds USDA’s statutory authority because Congress made clear that the “twin goals” of the Act are to prohibit soring while simultaneously protecting and enhancing fair competition. On this point, the commenter cited as support *Thornton v. United States Department of Agriculture*,³⁵ quoting from it that “[t]he Horse Protection Act was adopted to further two public purposes: the altruistic one of protecting the animals from an unnecessary and cruel practice and the economic one of eliminating unfair competition from sored pseudo-champions that could fatally damage the Tennessee walking horse industry.”³⁶ The commenter posited that the proposed prohibition on pads and action devices among the Tennessee Walking Horse and racking horse industry would

³⁵ *Thornton v. U.S. Dep’t of Agric.*, 715 F.2d 1508 (11th Cir.) 1983. This case provides that “[t]he Horse Protection Act was adopted to further two public purposes: the altruistic one of protecting the animals from an unnecessary and cruel practice and the economic one of eliminating unfair competition from sored pseudo-champions that could fatally damage the Tennessee walking horse industry.” *Id.* at 1511 (internal citations removed).

³⁶ Tennessee Walking Horse Celebration comment, page 27.

undermine fair competition by imposing collateral punishments on members of the industry who do not sore their horses, and thus was inconsistent with the Act.

The purpose of the Act is to prevent soring of horses, which has benefits for the welfare of horses and for eliminating unfair competition. The “Congressional statement of findings” states 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. Nothing in the regulations—which apply to all Tennessee Walking horses and racking horses, and which are aimed at addressing a practice, soring, that Congress found to cause unfair competition—undermines fair competition.

A commenter stated that it appeared that our rationale for proposing to ban pads and action devices on Tennessee Walking Horses and racking horses at regulated events was that, because some percentage of the owners and/or trainers who show horses in the Performance division of competition seem to be involved in soring, the way to address soring was to prohibit action devices and pads for all Tennessee Walking Horses and racking horses. The commenter stated that APHIS had misconstrued its authority under the Act to prohibit devices which, the commenter asserted, was limited to prohibiting only devices that cause soring. The commenter stated APHIS’ proposed prohibitions were based on the erroneous legal premise that the Secretary has authority to eliminate any practice, however safe in itself, that seems to be associated in some loose statistical way with the members in the industry who engage in *other* practices that are already separately prohibited. The commenter stated that this interpretation of the Act could be used by APHIS to prohibit events entirely, because staging any horse show could contribute to soring.

The commenter is incorrect that the Act limits prohibitions of devices to those that cause soring; section 5 (15 U.S.C. 1824(7)) and section 9 (15 U.S.C. 1828) jointly authorize APHIS to prohibit the use of devices by regulation if the prohibition is necessary to prevent soring. To that end, we disagree with the commenter's contention that there is no more than a loose statistical connection between the use of pads and action devices within the Tennessee Walking Horses and racking horse industry and incidences of soring; Table 1 of the proposed rule indicated that noncompliance, primarily due to soring, is 1300 percent more likely in the Tennessee Walking Horse and racking horse division that uses pads and action devices than in the Tennessee Walking Horse and racking horse division that does not.³⁷ The commenter's contention that APHIS' interpretation of the Act would authorize the wholesale prohibition of all horse shows is likewise in error. There is no provision of the Act that authorizes the elimination of horse shows and exhibitions.

The commenter also stated that because the Act does not prohibit practices or items that do not cause soring, it does not provide the USDA authority to prohibit action devices and pads.

To the point regarding authority, we disagree that USDA lacks authority under the Act to prohibit pads and action devices. Section 5 (15 U.S.C. 1824) of the Act specifically prohibits, as unlawful, the showing or exhibiting of a sore horse. Section 2 (15 U.S.C. 1821) of the Act defines "sore" to include "any other substance or device" that "has been used by a person on any limb of a horse...and, as a result of such...use...such horse suffers, or can reasonably be expected to suffer, physical pain...when walking, trotting, or otherwise moving...except that

³⁷ See proposed rule (88 FR 56930), Table 1, FY 2017 to FY 2022 average noncompliance rate detected by APHIS. Over the 6 years of data provided, noncompliance rates for Performance division Tennessee Walking Horses and racking horses averaged 25.1 percent, whereas noncompliance rates for flat-shod Tennessee Walking Horses and racking horses during that same period was 1.91 percent.

such term does not include” use for therapeutic treatment. Section 9 (15 U.S.C. 1828) of the Act provides USDA with broad authority to issue regulations as deemed necessary to carry out the provisions of this chapter. Finally, section 5 (15 U.S.C. 1824(7)) of the Act authorizes APHIS to prohibit the showing or exhibiting of a horse which is wearing or bearing any equipment, device, paraphernalia, or substance which the Secretary by regulation under section 9 (15 U.S.C. 1828) prohibits to prevent the soring of horses. The proposed ban on action devices and pads for Tennessee Walking Horses and racking horses is therefore within the Agency’s statutory authority in several ways. First, as we stated in the proposed rule and reiterate in this rule, action devices and pads may, under certain circumstances, and particularly in conjunction with other substances and practices, cause soring. It is thus within our statutory authority under section 2 (15 U.S.C.1821) to prohibit their use insofar as they can cause soring. Second, irrespective of action devices and pads causing soring, there is a statistically elevated incidence of soring in the Performance division of the Tennessee Walking Horse and racking horse industry that is not found in other breeds that compete in pads and action devices, nor is it found in the flat-shod division of the Tennessee Walking Horse and racking horse industry, which does not compete in pads and action devices. The statistically elevated incidence of soring is thus breed and class-specific. It is also long-standing; again, by 1979, APHIS was already aware of increased incidence of soring within the Performance division. Finally, it has not been able to be addressed by other means, despite many efforts by the Agency to do so. Accordingly, the prohibitions in this rule are also within our statutory authority under sections 5 and 9 (15 U.S.C. 1824 and 1828) of the HPA as necessary to prevent the soring of horses.

The same commenter added that the proposed ban on action devices and pads is arbitrary and capricious because the use of action devices and pads does not, *per se*, cause soring.

Similarly, other commenters stated that pads and action devices have never been shown to cause soring.

As we note above, we did not state in the proposed rule that pads and action devices *per se* cause soring; indeed, we pointed to specific examples where they are used for purposes that do not result in soring. What we said, however, is that they can cause soring. In this regard, we disagree with the latter commenters that pads and action devices do not cause soring. We have provided support in the proposal and this final rule indicating that chains and other action devices can inflict pain and exacerbate soring through repeated strikes to the leg in training and while the horse performs, particularly if the leg is already irritated from soring off-site (e.g., if irritating substances have also been applied to the skin or if the leg is sore from the use of heavier action devices at the horse's home barn, away from the show). Indeed, the NAS study notes that horses are often trained with action devices weighing in excess of the 6-ounce action devices currently allowed for competition; action devices above this weight are prohibited during shows and exhibitions because they can cause soring.³⁸ We have also provided that pads, when used in certain ways, can cause a horse's foot to strike the ground at an unnatural angle and induce tendon problems and soring over time, as can the repeated lifting of heavy pads and horseshoes.

The same commenter added that if action devices and pads were a cause of soring then the inspection results would have shown a violation rate of near 100 percent.

As noted previously, the commenter's stated assumption was that the Act requires APHIS to establish that a device causes soring in order to prohibit its use during regulated events. The Act, however, does not require us to prove that a device always and *per se* causes soring in order

³⁸ NAS study, page 81.

to prohibit it. Rather, under section 5 (15 U.S.C. 1824(7)) and section 9 (15 U.S.C. 1828) of the Act, we may prohibit the use of a device through the issuance of regulations if we determine that the prohibition is necessary to prevent the soring of horses. Pads and action devices may be employed in certain ways to cause soring, and the class of Tennessee Walking Horses and racking horses that use pads and action devices, the Performance division, is disproportionately likely to have horses found to be sore following inspection. For these reasons, we consider it necessary to prohibit the use of pads and action devices on Tennessee Walking Horses and racking horses in order to prevent the soring of horses.

As support for pads and action devices not causing soring, one commenter cited a joint statement by two major veterinary organizations and a pair of studies that evaluated the effects of pads and action devices on horses.³⁹ In the joint statement by the American Veterinary Medical Association and the American Association of Equine Practitioners,⁴⁰ the commenter quoted the statement that “there is little scientific evidence to indicate that the use of action devices below a certain weight are detrimental to the health and welfare of the horse....”

What the commenter declined to add was that the joint statement also “support[s] a ban on the use of action devices and performance packages in the training and showing of Tennessee Walking Horses.” The excerpt quoted by the commenter, in its full context, reads as follows:

“Action devices used in the training and showing of Tennessee Walking Horses include chains, ankle rings, collars, rollers, and bracelets of wood or aluminum beads. When used in conjunction with chemical irritants on the pastern of the horse's foot, the motion

³⁹ National Celebration comment, page 22.

⁴⁰ *Joint Statement of the Am. Med. Veterinary Assoc. and Am. Assoc. of Equine Practitioners*, 2016 [included in Celebration comment, incorrectly dated 2012], Exhibit 17 of comment at <https://www.regulations.gov/comment/APHIS-2022-0004-8788>.

of the action device creates a painful response, resulting in a more exaggerated gait.

While there is little scientific evidence to indicate that the use of action devices below a certain weight are detrimental to the health and welfare of the horse, banning action devices from use in the training and showing of Tennessee Walking Horses reduces the motivation to apply a chemical irritant to the pastern.”

We agree with the professional judgment of the American Medical Veterinary Association and the American Association of Equine Practitioners, although we note the Act only covers showing, and not training, activities. If no action devices are allowed on Tennessee Walking Horses and racking horses during shows and exhibitions, there is less incentive to sore a horse as there will be no mechanism to strike the limb to induce the exaggerated show gait through pain.

Further, the joint statement notes that “[p]erformance packages (also called stacks or pads) . . . add weight to the horse's foot, causing it to strike with more force and at an abnormal angle to the ground. They also facilitate the concealment of items that apply pressure to the sole of the horse's hoof. Pressure from these hidden items produces pain in the hoof so that the horse lifts its feet faster and higher in an exaggerated gait.”

The knowledge and expertise that these two veterinary organizations have regarding the horse industry and equine veterinary science is not in question. We concur with the full statement but have more to say below about the point regarding action devices below a certain weight being detrimental.

The commenter also cited two other studies⁴¹ in claiming that the use of action devices and pads does not cause a horse to be sore. We cited one of these studies (the “Auburn study”) in the proposal to support the prohibition of action devices and pads as being necessary to prevent soring.

The Auburn study involved exercising horses for 2 to 3 weeks wearing 2-, 4-, and 6-ounce chains (action devices), 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.”⁴² The commenter also reported that a USDA study in 1975 similarly found no lesions present on horses wearing chains under 8 ounces in weight.

While we acknowledge that the lighter chains in and of themselves appear in these particular studies to have no harmful effects on horses, we note that the Auburn study also applied irritating substances to horses’ limbs and exercised them in such chains. Under these conditions, Dr. Ram C. Purohit, the study’s author, reported that “[t]he combined use of detergent, chains, and mustard oil on the pasterns of horses causes lesions and tissue damage visible to the naked eye. They also cause alterations of the horse’s behavior that are predictable.”⁴³

While the commenter noted that Dr. Purohit achieved these effects by exercising horses in 10-ounce chains, they did not address our point that “if a horse may be trained sore using 10-

⁴¹ *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*, prepared by Dr. Ram C. Purohit, Associate Professor of Veterinary Medicine at Auburn University, and *Soring in Tennessee Walking Horses: Detection by Thermography*, August 1975, prepared by Dr. H.A. Nelson, *et al.*, then of APHIS’s Veterinary Lab Services, Ames, Iowa.

⁴² Auburn Study, *Phase XI. Use of 2-, 4- and 6-Ounce Chains*.

⁴³ *Ibid.*, *Phase VII, Simultaneous Use of Chemicals and Chains for Soring Horses*.

ounce chains (or other weight and/or substance combinations)⁴⁴ and then shown in 6-ounce chains, the use of the 6-ounce chain may reasonably be expected to cause the horse to experience pain while walking, trotting, or otherwise moving.”⁴⁵ Moreover, another quote from Dr. Purohit offered by the commenter, in which the doctor stated that his data “provided no evidence that chains of eight ounces or less used from three to five weeks in a normal, non-scarred horse produced inflammation or soreness,” addresses neither the use of chains with irritating substances during training nor the effects of wearing chains of heavier weights for periods appreciably longer than 3 to 5 weeks.

We mention this in order to highlight that the manner in which a horse is trained has a material bearing on whether the use of chains during shows and exhibitions contributes to soreing, and precludes us from saying that chains of a certain weight cannot be associated with soreing. For example, if an irritant is applied to a horse’s limbs during training and/or the horse has been trained in heavy chains, performing in chains of 6 ounces or less may cause the horse to suffer physical pain or distress when moving during the competition, and thus to meet the statutory definition of being “sore.” This is entirely consistent with the findings of the Auburn study and highlights one of the limitations of the HPA: APHIS has no authority over training practices under the HPA; our authority is limited to the horse shows, exhibitions, sales, and auctions covered by the Act. We are limited to determining, primarily through inspection, whether horses at such events are sore. Within these constraints, it is the Agency’s finding that Tennessee

⁴⁴ The NAS study indicated that “[w]alking horses are often trained with action devices weighing in excess of the 6-ounce action devices currently allowed for competition. The use of heavier or more cumbersome devices in training may be more likely to contribute to the formation of the lesions described in this report” (page 81).

⁴⁵ 88 FR 56938.

Walking Horses and racking horses in the Performance division are disproportionately likely to be determined to be sore, regardless of the weight of the chains in which they perform.

The commenter also stated that this rulemaking reverses APHIS' position on the use of 6-ounce chains, stating that "not only was the evidence USDA relies on today in front of it at the time it adopted the current regulations permitting the use of pads and action devices in 1989, but it relied on that evidence [i.e., the Auburn study] to reach a conclusion—action devices weighing 6 ounces or less are permissible because they do not cause sores—that is completely at odds with the ban the Agency now proposes."⁴⁶ The commenter also cited a July 28, 1988 interim rule (53 FR 28366-28373), in which USDA stated that "while chains and other action devices weighing more than 6 ounces can sore horses, those weighing 6 ounces or less are not themselves likely to cause sores" (page 28370). The commenter concluded that "USDA may not change course and ban action devices by relying on a study that undermines the rationale for a complete ban on action devices and pads."⁴⁷

The commenter is incorrect that the Agency changed course without providing any indication in the proposed rule that its thinking had evolved regarding the meaning and import of the Auburn study since 1988. The 1988 interim rule assumed that horses would be trained and shown in chains of equivalent weight, and cited the Auburn study to establish a *de minimis* chain weight in compliance with a Court Order.⁴⁸ The 1988 interim rule cited no data in support of this assumption regarding training, and this assumption, if ever true, no longer corresponds to industry practices. To that end, we cited the NAS study to indicate that use of heavy chains and

⁴⁶ National Celebration comment, page 23.

⁴⁷ *Ibid.*, page 24.

⁴⁸ *Am. Horse Prot. Ass'n, Inc. v. Lyng*, 681 F. Supp. 949, 958 (D.D.C. 1988).

devices during training was currently widespread within the Tennessee Walking Horse and racking horse industry. Given what we now know about training practices, other aspects of the Auburn study that we assumed to be inoperative in 1988 are in fact germane.

We proposed under paragraph (c)(3) to prohibit all pads and wedges on any Tennessee Walking Horse or racking horse at any show or other covered event, 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.

A commenter stated that APHIS had acknowledged that pads and action devices do not cause soring by choosing not to ban their use in other breeds. The commenter added that the pads used by Tennessee Walking Horses during training and those used by other breeds were the same, and cited the USEF rulebook as evidence that Arabian, Anglo-Arabian, Andalusian, Friesian, Saddlebred, and Morgan horses may all be shown in pads. The commenter also disagreed with our contention that the gait of Tennessee Walking Horses in the Performance division is noticeably different from that of other Performance breeds, and submitted photos that, the commenter contested, showed a similar accentuated gait in Friesian, Hackney, American Saddlebred, and other horse breeds.

Again, the commenter's stated assumption is that APHIS has statutory authority to prohibit a device, such as pads, only if it causes soring. As we have stated above, section 5 (15 U.S.C. 1824(7)) and section 9 (15 U.S.C. 1828) of the Act authorize APHIS to prohibit the use of a device by issuing regulations if the prohibition is necessary to prevent soring.

Depending on how they are used or designed, pads can cause soring. However, we are not banning them for Tennessee Walking Horses and racking horses because they always and *per se* cause soring, which they do not. Were we to do so, the commenter would be correct in

assuming the prohibition should be extended to all other padded breeds. Rather, we are prohibiting the use of pads in Tennessee Walking Horses and racking horses because the Performance division, in which horses of these breeds routinely exhibit in pads, has a disproportionately high incidence of soring relative to other breeds and even to flat-shod Tennessee Walking Horses and racking horses. As we have stated previously, the incidence of soring is disproportionately more likely in Tennessee Walking Horses and racking horses that compete in pads than other breeds, and noncompliance, particularly in the form of soring, is even 1300 percent more likely than other flat-shod classes of Tennessee Walking Horses and racking horses. This disproportionate incidence makes it necessary to prohibit the use of pads for Tennessee Walking Horses and racking horses at regulated events in order to prevent soring.

A commenter also claimed that our proposed prohibition of pads is lacking on the same grounds as action devices, claiming that pads also do not cause soring.

As noted above, we are prohibiting the use of pads in Tennessee Walking Horses and racking horses because the only Tennessee Walking Horse and racking horse class that routinely exhibits in pads has a disproportionately high incidence of soring, relative to other breeds and even to flat-shod Tennessee Walking Horses and racking horses. Further, we noted above that the uniquely tall stacks of pads and wedges worn in exhibition by Performance division Tennessee Walking Horses and racking horses, when employed in certain ways, can cause a horse to become sore, a point with which the American Veterinary Medical Association and American Association of Equine Practitioners concur.

The commenter further reasoned that “if raising a horse’s heel through pads could cause soring by itself, then USDA would necessarily need to ban the use of pads in all HPA Breeds.”⁴⁹

⁴⁹ National Celebration comment, page 24.

Again, we never contended that pads always and *per se* cause soring; indeed, we specifically pointed to instances in other breeds where horses are able to use pads (and action devices) without either item causing soring, and where instances of soring in those breeds are rare. However, we did indicate that pads can cause soring, either on their own or in conjunction with other substances and practices. Additionally, there is a statistically elevated incidence of soring among horses in the Performance division of the Tennessee Walking Horse and racking horse industry in comparison to other breeds that use pads during competition.

The commenter further contended that “of course the pads used by these other breeds during training are no different from those used by Tennessee Walking Horses.” This contention is in error and does not acknowledge the obvious difference between the tall stacks of pads and wedges used to train and show Performance division Tennessee Walking Horses and the much thinner protective pads used by most other breeds.

The same commenter cited an affidavit by USDA’s former Chief Staff Veterinarian for Horse Protection matters from 1973 to 1978, Dr. Lois Hinson, who testified that clinics that USDA conducted definitively prove that pads *per se* do not cause inflammation or soring in the hooves of horses, but rather extreme angulation of the hoof causes inflammation and soring. The commenter indicated that these studies are the only ones the commenter is aware of that evaluated whether pads cause soring on Tennessee Walking Horses and racking horses.

As we noted previously, one of the commenter’s stated assumptions was that APHIS could only ban pads if the pads always and *per se* cause soring. As previously articulated, we are prohibiting pads on Tennessee Walking Horses and racking horses not because they always and *per se* cause soring, but because they can cause soring. Soring is so disproportionately likely in Tennessee Walking Horses and racking horses wearing pads that the prohibition is necessary in

order to prevent soring. This is consistent with our authority under section 5 (15 U.S.C. 1824(7)) and section 9 (15 U.S.C. 1828) of the Act. Accordingly, the studies and affidavit of Dr. Hinson are not relevant to our proposed prohibition.

The commenter also stated that USDA lacks evidence showing an absence of soring in other breeds and has itself acknowledged that other breeds do engage in soring.

We note that USDA has never stated that other breeds do not sore their horses. What we have stated in the proposal and in this final rule is that breeds other than Tennessee Walking Horses and racking horses have not been found to sore horses with any frequency, as soring confers no competitive advantage to horses that do not perform the exaggerated “big lick” step in Performance division shows.

Further, the same commenter stated that USDA has not provided evidence that violations such as pressure shoeing are otherwise impossible to detect beneath pads, or that such violations occur with such frequency that a ban on pads is warranted. The commenter added that pressure shoeing can be detected currently through radiography and other means.

The Auburn study found that the ability to detect pressure soring (the illegal application and/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.⁵⁰ APHIS agrees with this finding. Moreover, because evidence of pressure soring can be removed prior to inspection, the evidence of soring would not necessarily appear on radiographs as the commenter contends.

One commenter recommended that we include in § 11.6(c) a clarification that explicitly allows applications of nails to limbs (feet) to secure horseshoes.

⁵⁰ Auburn study, Phase xvi.

We acknowledge the commenter's point but do not find it necessary to add such a clarification, as nails are usually necessary to secure the shoe to the hoof.

Two commenters opposed to the prohibition on action devices and pads cited a 2017 study⁵¹ that found no evidence of change in biological markers associated with stress and pain with stacked pads and action devices.

APHIS is aware of the study cited by the commenters as well as the limitations of the study that the authors themselves pointed out, including that the horses were never exercised at a running walk, there were no riders on the horses when exercised, and the evaluation period of when the horses were outfitted with stacked wedge pads and chains was only 5 days.

Accordingly, the authors of the study themselves acknowledged that "these findings should not be extrapolated to the long-term use of such devices."⁵² While the chains used on the horses in this study were 6-ounce chains, Tennessee Walking Horses can be trained with chains much heavier than what the regulations allow,⁵³ along with the use of prohibited substances on the pasterns of these horses in training to make them more reactive to action devices during shows.

Several commenters stated that banning pads and action devices on Tennessee Walking Horses and racking horses constitutes a violation of their rights under the U.S. Constitution. Specifically, one commenter stated that the Takings Clause of the Fifth Amendment of the U.S. Constitution provides that when the Federal Government takes private property for a public use, it must provide just compensation. The commenter expressed concern that if USDA proceeds

⁵¹ Everett JB, Schumacher J, Doherty TJ, et al. *Effects of stacked wedge pads and chains applied to the forefeet of Tennessee Walking Horses for a five-day period on behavioral and biochemical indicators of pain, stress, and inflammation*. *American Journal of Veterinary Research* 2018; 79:21–32: <https://doi.org/10.2460/ajvr.79.1.21>.

⁵² Letters to the Editor. *American Journal of Veterinary Research* 2018; 79:248-249:<https://doi.org/10.2460/ajvr.79.3.248>

⁵³ Equine experts on the NAS Committee also raise this point in their study (page 81).

with the ban on pads and action devices, its actions will amount to a taking because it would destroy all the value in Tennessee Walking Horses trained to compete in the performance division by essentially banning the sport in which they compete.

To support this point, the commenter provided statements from several trainers⁵⁴ supporting why the value of such horses would diminish. Some trainers cited the time and cost required to retrain a horse to compete flat-shod (without pads), while others stated, without explanation, that very few horses trained to compete in the Performance division are able to make the transition to competing flat-shod. Underscoring this latter point, the commenter added that “[I]t would be like asking a professional athlete to drop one sport and train for another.” Similarly, another commenter opined that Performance division Tennessee Walking Horses have been specifically bred and trained to compete with action devices and pads and cannot simply be retrained to compete as a flat-shod horse.

We disagree with the commenter that the regulations would result in the loss of all economically valuable use of Tennessee Walking Horses competing in the Performance division. The statements from trainers provided by the commenter that cite the time and cost required to retrain such a horse actually underscore that retraining is possible. If the regulations deprived the horse of all economic value regardless of its use, retraining would be either impossible or materially irrelevant. Indeed, based on the statements provided, there is no basis to conclude that the value of Tennessee Walking Horses competing in the Performance division—that is, trained to perform in stacked pads and action devices—would necessarily be reduced if they cannot compete wearing these items. It is, of course, possible that this could occur and that the prohibitions in the rule will render some horses less valuable. However, to the extent that this

⁵⁴ National Celebration comment, page 32.

foregone value was derived from an illicit and illegal activity, soring, that was being pursued in order to gain a competitive advantage, this reduction in value is foreseen by the Act and consistent with it. And again, a reduction in value, particularly illicitly derived value, is not tantamount to loss of all economically valuable use; even if there were some basis to conclude that the regulations would result in some limited reduction in value, that is not sufficient to show the loss of all economically valuable use.

First, while the commenter implies that horses competing flat-shod and in stacked pads are engaging in two dramatically different activities, a prominent Tennessee Walking Horse industry organization⁵⁵ notes that they both actually employ the same basic gaits--the flat-foot walk, the running walk, and the canter. These are described by the organization as “natural, inherited gaits,”⁵⁶ with the only difference between flat-shod and Performance gaits being that the latter is practiced with “more animation and accentuated brilliance.”⁵⁷ We cite this organization’s statement to show that the industry itself notes that the same gaits, described as being natural and inherent to the breed, are used by horses competing with and without stacked pads and actions devices, the main difference between the two being the degree of animation.

Second, despite the claim that such horses cannot be retrained to show without pads, commenters did not explain specifically why such horses cannot practice an inherited gait on their natural hooves, rather than on unnaturally tall pads. Further, trainers and other commenters responding to this rulemaking have stated that flat-shod horses can achieve the animated “big lick” step with proper training. If the only elements missing from a show are pads and action

⁵⁵ Tennessee Walking Horse Breeders’ and Exhibitors’ Association website: <https://twhbea.com/the-breed/disciplines/>. Accessed January 5, 2024.

⁵⁶ Ibid.

⁵⁷ Ibid.

devices, we question why their absence alone will affect the value of a horse in terms of its ability to show. Nowhere do commenters explain how these items work in any benign way to animate what they otherwise claim to be the natural and inherited ability of such horses to practice the “big lick” step.

One commenter opined that Performance division Tennessee Walking Horses have been specifically bred and trained to compete with action devices and pads and cannot simply be retrained to compete as a flat-shod horse, although this and other commenters provided no specific evidence that Performance division horses trained to perform with the use of pads and action devices cannot perform well without them. We note that other breeds of horses can transition successfully from one sport to another. Racehorses are successfully retrained to practice dressage and jumping, and other breeds have switched easily from English- to Western-style riding, and the industry itself indicates that the horses can easily be retrained to different purposes.⁵⁸ While commenter concern over how this rulemaking may affect a horse’s value is understandable, we note that this rulemaking makes no changes to the ability of horses to freely compete in shows and exhibitions. Further, the evidence that the commenter provided, as well as evidence we obtained from some commenters and the industry website discussed above, suggests they can be retrained.

Numerous commenters opined that the prohibition on action devices and pads would diminish public interest in shows and result in the cultural and economic decline of the Tennessee Walking Horse industry. Some stated that Performance division horses that use pads and action devices are essential to horse shows and, without such classes, owners and spectators would lose interest in the shows.

⁵⁸ Ibid.

The commenters ignore the fact that flat-shod classes compete widely within the Tennessee Walking Horse industry and are of growing popularity. This fact suggests that the use of pads and action devices are not essential to the survival of shows featuring such breeds. Without pads and action devices, the same shows could be held under the same management, and, if trained to go flat-shod, which, again, we have reason to believe is possible, the same horses could continue to compete in them with the same custodians and trainers. To that end, we again note that the industry itself indicates that Tennessee Walking Horses can be easily retrained to different purposes, and that the basic gait for padded and flat-shod Tennessee Walking Horses is the same. This comports with evidence provided by veterinary organizations with expertise in equine medicine and humane animal care, which we discuss immediately below, and which suggests that Tennessee Walking Horses can be retrained to go flat-shod in far less time than we proposed to afford for the transition.

Interest in flat-shod shows is growing nationwide. In a 2015 article,⁵⁹ the president of a prominent Tennessee Walking Horse owners' association noted that entries for its sanctioned, flat-shod shows across the country almost doubled from 2012 to 2014, adding that the number of such shows has also increased. The economic analysis accompanying this final rule provides an evaluation of its economic impact on the affected segments of the horse industry.

Some commenters stated that USDA has failed to conduct a proper cost-benefit analysis for the proposed ban on action devices and pads.

We address the topic of economic impacts in the economic analysis prepared for this final rule.

⁵⁹ Meyer, Holly. "Walking horse group successful with flat-shod rules." *The Tennessean*, July 18, 2015.

We proposed to have the prohibition on pads and wedges, and artificial toe extensions, on Tennessee Walking Horses and racking horses to become effective 270 days after promulgation of a final rule. In the proposal, we also invited comments on whether this is an appropriate timeframe for transitioning to a prohibition on pads and wedges, and artificial toe extensions.

Many commenters stated that the USDA should reevaluate its proposal to delay the ban on hoof pads for Tennessee Walking Horses and racking horses for 270 days after finalizing the regulations. They noted that the proposed rule states that pads can induce pain by "caus[ing] a horse's foot to strike the ground at an unnatural angle." One commenter added that Tennessee Walking Horses "sometimes have their pads/wedges removed at the conclusion of show season with no negative ramifications to the horse. The transition from pads to flat-shod can be and sometimes is accomplished in a day, as long as the hoof is trimmed to maintain the same proportions." One commenter stated that no scientific evidence was provided to support the claim that transitioning the horse from padded to flat-shod requires a set period of time. Some commenters additionally asked that artificial toe extensions not have the 270-day phaseout period. Another commenter asked if owners are allowed to exhibit with these devices and pads up and until the end of the 270-day period and deemed a 90-day period sufficient, adding that those affected and covered under this regulation have had sufficient time to plan and institute training without the use of these devices.

In the proposed rule, we had stated that it takes approximately 6 to 8 months for a padded horse to become acclimated to walking and performing without pads. However, we reviewed the evidence provided by veterinary organizations with expertise in equine medicine and humane animal care that stated a grace period was not necessary for acclimation to walking without pads. We reconsidered the 270-day requirement and the evidence on which we based it, as well as

statements from several commenters that a 270-day phaseout period for pads and toe extensions could unduly extend the time that horses are suffering from soring as a result of continued use of these items. Accordingly, we are establishing February 1, 2025, as the date on which pads and toe extensions can no longer be used on Tennessee Walking Horses and racking horses. This change reduces the amount of time that horses are made to wear these items.

A commenter stated that if therapeutic treatment using a pad or wedge is allowed, there is potential for pressure shoeing. The commenter recommended that “pressure shoeing” be defined clearly in § 11.1 to prevent uncertainty or ambiguity.

We agree with the commenter that a potential for pressure shoeing exists whenever pads and wedges are used, which is a reason we are prohibiting such items to prevent soring. However, the practice can be applied in many ways and to define the term “pressure shoeing” in one prescriptive way may limit APHIS’ options for citing it as a violation. As we go forward with these regulatory changes, we will evaluate the potential for this practice in conjunction with the use of therapeutic pads and wedges.

Some commenters stated that pads are sometimes used as a way to alleviate pain and prevent damage to hoof structures and related connective tissue in all breeds of horses.

Pads with legitimate therapeutic applications may be used on Tennessee Walking Horses and racking horses in accordance with the veterinary prescription requirements in § 11.14(b).

A commenter suggested that we include limits on dimensions of therapeutic pads and wedges, adding that a veterinarian may be persuaded by owners and trainers to prescribe such items that are identical to those currently used in performance packages.

We do not consider it necessary to include such specific dimensions within the regulations. As management is required to maintain all records of therapeutic treatment,

including prescription information, APHIS can evaluate and determine the suitability of any such prescription for pads and wedges as warranted. If APHIS disputes a therapeutic treatment at a show on veterinary grounds, the horse will not be allowed to show.⁶⁰ If APHIS disputes such a therapeutic treatment in the records required to be maintained, we reserve the right to contact the appropriate State veterinary board regarding the veterinarian prescribing that treatment.

Several commenters opposed to the proposed rule stated that the existence of 15-year-old and older Tennessee Walking Horses and racking horses still showing in pads is evidence that soring is neither a common nor serious problem.

We incorporate our earlier rationale for the prohibition and note that the presence of older horses wearing pads in shows is neither evidence that pads are harmless nor that horses performing at that age are not being sored. A horse can be sored at any age.

A commenter stated that APHIS does not clearly explain how it intends to determine if a pad is used for therapeutic purposes or used as an action device.

To determine if a pad is used for therapeutic purposes, APHIS will review, as necessary, the relevant records that management is required to maintain in paragraph (b) of proposed § 11.14 for each horse receiving therapeutic treatment. A pad can only be used therapeutically in accordance with the veterinary requirements in paragraph (b) of proposed § 11.14. Under the revised regulations, action devices will be prohibited on all Tennessee Walking Horses and racking horses as they have no therapeutic exemption.

A few commenters stated that prescriptions for use of therapeutic pads and wedges should be submitted by the prescribing veterinarian to APHIS and be received before the horse is

⁶⁰ Persons wishing to appeal a disqualification based on a therapeutic treatment can do so in accordance with § 11.5 of 9 CFR part 11.

allowed to be shown wearing those devices. One commenter recommended that prescriptions for horses under therapeutic treatment be limited to 6 months and that renewals should only be allowed after an in-person veterinary exam and filed with APHIS before horses with therapeutic devices are allowed to be exhibited.

We consider the proposed requirements sufficient to ensure that a horse showing under a therapeutic exemption is cleared to do so by the veterinarian prescribing the pads and wedges. We also note that treatment duration and prescription renewals are generally best determined by prescribing licensed veterinarians, as they are usually best able to determine the particular medical condition of the horse. Under § 11.14(b), this information is part of the management recordkeeping requirement and APHIS can evaluate the suitability of prescribed treatments as warranted to determine whether they are being used to cause or mask soring.

Commenters also suggested that an online database of verified currently valid prescriptions be maintained by USDA for instant verification by inspectors.

We do not currently see the need to maintain such a database to maintain prescription records but will consider the need for one in the future. APHIS will ensure that inspectors have the resources needed to conduct inspections, but it will still be the responsibility of event management to provide APHIS with records associated with the therapeutic treatment as outlined in proposed § 11.14 each time a horse is allowed to be shown, exhibited, sold, or auctioned with devices, pads, substances, applications, or other items restricted under proposed §11.6(c).

The commenter also asked that APHIS require a signed statement from the licensed veterinarian who prescribed the pads/wedges that the individual horse is medically cleared to participate in the event with the prescribed pads/wedges.

We note that a signed statement from the licensed veterinarian is already part of the proposed requirement, as it is necessary for the prescription. As the prescription is being provided to show management, it would be assumed that the licensed veterinarian believes the horse is medically cleared to participate. APHIS may access and review records of prescriptions required to be kept by management.

The same commenter added that APHIS should include a regulatory presumption that a horse with pads or wedges is “sore” for purposes of the HPA unless the owner, trainer, custodian, or exhibitor can produce the required documentation.

The commenter appeared to be referring to a Tennessee Walking Horse or racking horse present in pads or wedges at a covered event. APHIS will not presume a horse to be sore without a diagnosis by a qualified inspector. However, unless the pads or wedges have a therapeutic purpose as prescribed by a licensed veterinarian, any such horse present at or attempting to participate in a covered event would be in violation of the regulations. We do not stipulate who is to provide this information to event management, just that event management needs to provide the information to APHIS.

Several commenters expressed concern that certain noninvasive therapeutic treatments they currently use to keep horses competitive and comfortable on showing weekends will require veterinary supervision, particularly vibration plate therapy, saltwater spa therapy, massage therapy, and electromagnetic pulse therapy. The commenters asked to continue such therapies without the veterinary requirement.

If such treatments are for Tennessee Walking Horses and racking horses and involve the application of substances to a horse’s limbs at a show or other covered event, they require a prescription issued by a licensed veterinarian as a therapeutic exemption. Massage therapy does

not require such a prescription. We will evaluate the effects of other treatments, emerging or as currently practiced, under the revised regulations. Any questions about therapeutic treatments may be submitted to APHIS.

Artificial Toe Extension (§ 11.6(c)(2))

Artificial toe extensions are used legitimately on many breeds of horses to make adjustments to gait and to correct certain medical conditions such as clubfoot, which is why they are permitted, with restrictions on length, under proposed § 11.6(b) for breeds other than Tennessee Walking Horses and racking horses.

However, toe extensions can also be used to sore horses by increasing stress on already sore tendons and ligaments, which is why we proposed to prohibit all artificial extension of the toe length 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. Also, as we noted above, there is a long-standing statistically elevated incidence of soring in the division of Tennessee Walking Horses and racking horses that rely on artificial toe extensions. If a Tennessee Walking Horse or racking horse is wearing artificial toe extensions under a therapeutic exemption, the therapeutic extensions cannot exceed the restrictions for all horses in new § 11.6(b)(11) and (b)(12).

We discuss our decision to eliminate the proposed 270-day phaseout period for artificial toe extensions on Tennessee Walking Horses and racking horses in the discussion of pads above.

Lubricants (§ 11.6(c)(4))

Under the current regulations (§ 11.2(c)), all substances are prohibited 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, horse exhibition, or horse sale or auction, excepting lubricants such as glycerine, petrolatum, and mineral oil, or mixtures thereof: *Provided, That:*

- The horse show, horse exhibition, or horse sale or auction management agrees to furnish all such lubricants and to maintain control over them when used at the horse show, horse exhibition, or horse sale or auction.
- Any such lubricants shall be applied only after the horse has been inspected by management or by a DQP and shall only be applied under the supervision of the horse show, horse exhibition, or horse sale, or auction management.
- Horse show, horse exhibition, or horse sale or auction management makes such lubricants available to Department personnel for inspection and sampling as they deem necessary.

We proposed in § 11.6(c)(4) to prohibit lubricants 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. We consider this action necessary to prevent the soring of horses, as we can determine no legitimate use for such lubricants in the absence of the use of chains and action devices, and as lubricants can be used to mask soring, either by conditioning sore skin or by illicitly containing numbing or other agents to reduce the painful effects of soring.

The longstanding regulatory prohibition on substances was put in place out of concern over the application of irritating and masking agents on horses with the intent to cause or mask soring. These concerns arose from high numbers of positive tests for prohibited substances on Tennessee Walking Horses and racking horses exhibiting in the Performance division. Masking

agents such as benzocaine and lidocaine can temporarily anesthetize the skin of a horse and mask soring so that inspectors cannot detect pain upon inspection. The only purpose for applying lubricants is to allow action devices to move more smoothly on the leg. With our prohibition on action devices, lubricants are no longer necessary for that purpose. We proposed to prohibit lubricants because they can be easily mixed with numbing substances to mask soring and because such mixing makes it difficult to detect masking substances. We are also seeing lubricants being used to soften sore skin in order to make the condition appear less than sore.

Under current § 11.2(c)(1) through (3), lubricants may be applied only if event management furnishes them, supervises their application, and makes them available for testing by APHIS. These specific requirements were included in § 11.2(c) because lubricants, if not kept under management control, have a reasonable likelihood of being tampered with, although given the industry conflicts of interest found during the OIG audit and cited in the NAS study, event management may themselves not be able to ensure the integrity of lubricants they furnish and control.

As we showed in Table 3 of the proposal, an unacceptable number of Tennessee Walking Horses and racking horses that APHIS randomly tested between FY 2017 and FY 2022 were positive for prohibited substances. Some 144 out of 194 Performance division horses tested by APHIS in FY 2018 were positive for prohibited substances, and over the period from FY 2017 to FY 2022 the average rate of positives was more than 40 percent. During this 6-year period, masking and numbing agents constituted about 36 percent of the prohibited substances detected on all horses tested, with 90 percent of them competing in the Performance division wearing the stacked pads and action devices. As we explained in the proposal, a strong association remains

between the application of substances and soring in Tennessee Walking Horses and racking horses competing in the Performance division.

We received comments asking whether APHIS has evidence of masking of soring in Tennessee Walking Horses and racking horses, as well as in other breeds.

As noted above, we have detected through substance testing anesthetizing agents such as benzocaine that are used to mask the pain of soring on the limbs of Tennessee Walking Horses and racking horses. We have also noted the use of lubricants to soften sore skin in order to make the condition appear less sore and thus mask the soring.

One commenter stated that USDA in the proposal ignores the express carve-out in the statutory definition of “sore” for the “application” of “any substance” for therapeutic reasons under directions of a licensed veterinarian.

The commenter is correct. In the proposed rule, we did not expressly include a therapeutic exception for substances as prescribed by a licensed veterinarian as we did with pads, wedges, and toe extensions. We intended to include one and, to correct this oversight, are adding one to proposed § 11.6(c)(4) in conformance with the Act.

A commenter stated that the proposed ban on all substances falls outside the USDA’s statutory authority under the HPA and is arbitrary and capricious based on USDA’s failure to provide a reasoned basis for the rule or to support it with substantial evidence. The commenter stated that the HPA limits bans on substances only to those that have caused or could cause soring.

A ban on substances administered as part of therapeutic treatment under direction of a licensed veterinarian would have exceeded our statutory authority. We have corrected that inadvertent omission in this final rule. We disagree with the commenter, however, that a

substance must cause or be expected to cause soring in order to be prohibited. Substances, including lubricants, can be used to condition the skin in such a way that masks evidence of soring, or can contain numbing agents that evade detection. We note, additionally, that for Tennessee Walking Horses and racking horses all other substances are already prohibited. The only substances not currently prohibited are lubricants, which can, as noted above, only be used if furnished by event management and applied after inspection. As we also stated above, we see no legitimate use for such lubricants if action devices are prohibited during regulated events.

The same commenter stated that the substance testing data provided in Table 3 of the proposal are skewed to show higher numbers of violations, because where there is already a suspicion of soring, USDA engages in selection bias. (Table 3 includes prohibited substance data for both Performance and flat-shod horses for HPA-covered events from FY 2017 to FY 2022.)

As with the risk-based inspections APHIS performs on horses where there is reasonable suspicion of soring, it is immaterial that substance testing is not based on a random sample because APHIS does not operate in an environment in which a random sample is warranted, or, indeed, possible. As Table 3 in the proposed rule indicates, Tennessee Walking Horses and racking horses showing in the Performance division are disproportionately more likely to test positive for prohibited substances than flat-shod horses, regardless of the year in question, the number of inspections conducted, or other controls applied. Whether prohibited substances are detected in random testing or detected through testing arising from reasoned suspicion, the result in either case is that horses are found to have prohibited substances on their limbs. Under the revised regulations in § 11.6(c)(4), any substance detected on the limbs of Tennessee Walking Horses and racking horses constitutes a violation.

Many commenters requested clarification on the prohibition of the use of any substances on the limbs of all Tennessee Walking Horses and racking horses. Several asked if commonly applied substances such as fly sprays and liniment would be prohibited. One such commenter expressed concern that the ban on substances could encompass certain therapeutic substances for which the HPA provides a limited allowance, and recommended that APHIS modify the ban to allow limited use of truly therapeutic substances and continue to maintain and utilize its list of defined prohibited foreign substances as guidance in enforcing the ban.

Section 5 (15 U.S.C. 1824(7)) and section 9 (15 U.S.C. 1828) of the Act authorize APHIS to prohibit the use of a substance by issuing regulations if the prohibition is necessary to prevent soring. Under the revised regulations, only substances having a legitimate therapeutic use may be applied to horses provided that the prescription, expected length of treatment, name of the prescribing veterinarian, and other pertinent information are provided to management and maintained under the recordkeeping requirements we proposed in § 11.14(b). Fly sprays and other over-the-counter products would only be permitted under the requirements for approving a therapeutic treatment. Based on the color, texture, and smell during a gross inspection, many seemingly benign products are indistinguishable from numbing, irritating, or caustic substances. Further, such products can be mixed with masking agents making them more difficult to detect. As to the commenter's request that we maintain a list of defined prohibited substances, this list is unnecessary because we are prohibiting all substances on Tennessee Walking Horses and racking horses not exempted for therapeutic treatment.

The same commenter stated that by extending the prohibition to include the use of lubricants during competition, USDA seeks to ban substances that not only have no connection to soring but are actually used to reduce friction and help prevent a horse from becoming sore,

and therefore, the ban on lubricants is arbitrary and capricious and USDA should not enact the proposed ban.

We disagree that the ban is arbitrary and capricious. As we explain above, lubricants can mask soring by illicitly containing anesthetizing agents, and the appearance and feel of some lubricants during a gross inspection are indistinguishable from numbing agents such as benzocaine gel. Lubricants are a permitted substance in the current regulations because, as the commenter states, they were used to reduce friction and soring from the movement of action devices. With the prohibition of action devices we proposed, the need for such lubricants becomes unnecessary.

The same commenter stated that the proposal points to no evidence that lubricants cause soring or even mask soring.

While lubricants *do not* cause soring, lubricants can mask soring by carrying anesthetizing agents, as noted above.

The same commenter stated that treating Tennessee Walking Horses differently from other HPA breeds is unlawful, particularly in the absence of any evidence demonstrating how often trainers of other breeds are using substances to their horses' detriment.

Lubricants are not prohibited on breeds other than Tennessee Walking Horses and racking horses because soring is not concentrated in other breeds. We consider prohibiting lubricants on Tennessee Walking Horses and racking horses as being necessary to prevent soring.

The commenter also stated that USDA has not provided a definitive list of which substances are banned.

All substances are banned on the extremities of Tennessee Walking Horses and racking horses.

The commenter also stated that USDA has not provided the level at which a substance would cause a violation or the levels at which a substance may trigger a violation, adding that a violation for an amount of a substance that is insufficient to cause a horse to be sore is not rationally connected to the relevant statutory language in the HPA regarding soring.

Under section 5 (15 U.S.C. 1824(7)), the Act allows the Secretary to prohibit substances “as he deems necessary” under section 9 (15 U.S.C. 1828) in order to prevent soring. As all substances will be prohibited on the legs of Tennessee Walking Horses and racking horses, there is no minimum authorized amount.

Another commenter noted that some horses are allergic to commonly used substances such as liniments and insect repellents and asked if such horses would be considered sore if they presented at inspection with peeling, sores, or hives resulting from applications of commonly used topical products.

We assume that the commenter means that the products were applied to the horse at some point prior to the event, with sufficient time having elapsed for an allergic reaction to be present on inspection. The skin changes associated with soring are distinctly different from those caused by an allergic reaction and a qualified inspector can make this distinction.

A number of commenters recommended a drug testing requirement, especially for substances on the legs and systemically administered NSAIDS⁶¹ and other drugs in urine and blood, as is done for other competition breeds, to maintain the integrity of the sport. Another commenter agreed with testing urine and blood, noting that NSAIDS and other substances can be

⁶¹ Non-steroidal anti-inflammatory drugs.

used to mask soring but are not detected by a physical exam. One commenter recommended that horses be tested for the presence of tranquilizing and visually distorting drugs.

We are making no changes based on this commenter recommendation. Testing for prohibited substances is already covered under APHIS regulatory authority and does not require a change to the proposed regulations. We pursue current and new testing methods that will facilitate our ability to enforce compliance with the Act.

Dermatologic Conditions Indicative of Soring (DCIS)

Under current § 11.3 of the regulations, all horses⁶² 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.” We explained in the proposal that this definition, for regulatory purposes, describes a granuloma as a dermatological change visible to the naked eye, which differs considerably from the medical definition that identifies

⁶² The regulation states that it applies to all horses born on or after October 1, 1975, but as this obviously includes every horse living it no longer needs to be included in the regulations.

granuloma as a change at the histological, microscopic level. We discussed the significance of this difference in the proposed rule.

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 current § 11.21, the requirements for inspection of horses by DQPs include an examination to determine whether the horse meets the scar rule conditions.

We proposed moving the scar rule to new paragraph (b)(22) of § 11.6 and revising it as follows: “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.” We also proposed to remove the requirement that the conditions be bilateral.

Several commenters expressed concerns that the dermatological conditions listed can have many possible causes and therefore may not in fact be indicative of soring. Some commenters questioned how inspectors would distinguish a dermatological change caused by soring from a change resulting from incidental causes. Some stated that, as the cause of a condition can be interpreted in different ways, the proposed language for dermatologic conditions indicative of soring is subjective and unreliable.

One such commenter stated that the proposed rule provides no evidence to establish that the dermatologic conditions listed are actually reliable evidence of soring, and as a result a horse could be disqualified solely on the basis that it has “patchy” “hair loss” on one leg even though such hair loss could be the result of many possible causes. Similarly, another commenter stated that the revised “scar rule” protocol fails to draw a connection between the conditions being present and any evidence that soring has actually occurred, particularly as each of the conditions can have several different causes unrelated to soring, such as pastern dermatitis. The commenter opined that with only evidence of the condition and no other evidence linking it to a specific cause, “horse trainers and owners have no guidelines by which they can expect to know whether or not their horse will be able to compete, and ‘what level of irritation, moisture, or patchy hair will lead to a disqualification is left in the eye of the beholder.’”⁶³ The commenter concluded that the revised scar rule provides no objective guidance to inspectors as to what should or should not be a violation.

By including the statement in our proposed revised DCIS language, “[a]ny horse found to have one or more of the dermatologic conditions set forth herein shall be presumed to be ‘sore’,” we inadvertently proposed to establish a rigid standard by which an inspector would have no choice but to diagnose a horse with any of the listed conditions as sore, regardless of his or her professional judgment as to whether soring caused the condition. As a result, the standard, as we proposed it, could have the unintended result of calling out all horses that display such conditions as being sore when in fact some of them have not been sored. To that end, we agree with commenters that the dermatological conditions listed in the proposed rule can have other causes and, thus, lead to differential diagnoses.

⁶³ National Celebration comment, page 43.

We disagree, however, that a determination of soring based, in part or in whole, on the observation of one or more of the listed conditions is necessarily arbitrary or subjective. Each of the conditions listed in the proposed rule has been identified with soring in certain instances; for example, the proposed rule spoke at length about the association between non-uniform epidermal thickening found by APHIS VMOs and soring. (88 FR 56942). Another condition associated with soring that APHIS VMOs see is a distinct pattern of thickened skin ridges on the posterior pastern, consistent with lichenification. In contrast to the pattern of linear skin ridges indicative of soring, field injuries tend to be jagged and focal in appearance.

Our revision of the proposed DCIS protocol emphasizes that the dermatologic conditions listed in the protocol are not, in and of themselves, always necessarily indicative of soring, but are indicative based upon the informed determination of a qualified inspector. Properly qualified persons with specific veterinary training and equine experience are trained to make differential diagnoses; determining whether a condition observed is or is not indicative of soring would be no different. To that end, we note that training in differential diagnoses is an established core function of the medical profession, whether in human medicine or veterinary medicine. And, for the foregoing reasons, we disagree that the inspector must be able to conclusively identify the specific cause of the condition. Such a requirement would necessarily mandate the inspector to be cognizant of all practices used on-farm and during training, an unmeetable standard and one for which APHIS lacks statutory authority.

To address the above commenters' concerns about the proposed DCIS protocol language, while still affording inspectors the discretion to make determinations of soring based on the dermatologic conditions they observe during an inspection, we are revising the proposed DCIS (§ 11.7) language to read as follows:

If a Horse Protection Inspector or APHIS representative, upon inspection, finds that any limb of a horse displays one or more dermatologic conditions that they determine are indicative of soring as that term is defined in 15 U.S.C. 1821, the horse shall be presumed to be sore and subject to all prohibitions set forth in 15 U.S.C. 1824. Examples of dermatologic conditions that will be evaluated in determining whether a horse is sore shall include, but are not limited to, irritation, moisture, edema, swelling, redness, epidermal thickening, and loss of hair (patchy or diffuse).

This revised DCIS language provides that if an HPI or APHIS representative is present and finds a DCIS after inspection, that finding creates a presumption that the horse is sore. It is our opinion that HPIs or APHIS representatives are best qualified to evaluate a horse under the DCIS because they have specific veterinary training and equine experience and are trained to make differential diagnoses. We acknowledge that show management may elect not to utilize an APHIS representative or an HPI; however, show management is still obligated to ensure that the horses at a show or exhibition are free of dermatologic conditions indicative of soring even if an HPI or APHIS representative is not present. Accordingly, if show management elects not to utilize an HPI or an APHIS representative, and one or more horses subsequently are found to display dermatologic conditions that would establish the presumption of soreness, show management is subject to liability for showing or exhibiting a sore horse in violation of 15 U.S.C. 1824.

The revised DCIS language contains modifications to address the concerns expressed by commenters. As previously noted, we believe that an HPI or APHIS representative is best qualified to evaluate whether the horse has any dermatologic conditions, and further, whether

any one or more of those conditions are indicative of soring. The initial proposed language lacked such a modification.

The revised DCIS language further addresses commenters' concerns because it clarifies that the mere presence of any dermatologic condition does not automatically result in a determination of soring. Rather, a dermatologic condition results in a determination of soring only after the horse is inspected and it is determined by an HPI or APHIS representative that the condition is indicative of soring as that term is defined in the HPA. Further, rather than mandating that the inspector find the horse sore if any of the listed dermatologic conditions are present, the revised language now presents a non-exhaustive list of examples of the types of dermatologic conditions an HPI or APHIS representative "will consider" in evaluating whether the horse is sore. In other words, by our presenting the list of dermatologic conditions as illustrative instead of prescriptive, the regulatory requirement to regard anything on that list as always being indicative of soring is gone. It remains the case, though, that HPIs or APHIS representatives, depending on their observations during the inspection, may consider a horse sore based on the presence of any one or more of the conditions on the list upon a finding that one or more of those conditions is indicative of soring. If one or more such dermatologic conditions on the list presents itself during the inspection, HPIs or APHIS representatives, as part of their evaluation of whether the condition is more likely than not caused by soring, would need to consider other possible causes. As previously noted, APHIS representatives are trained to make differential diagnoses and HPIs will be trained accordingly.

Additionally, if an HPI or APHIS representative finds a horse sore based on the presence of one or more dermatologic conditions during the inspection, violators will have recourse to appeal through a request for re-inspection pursuant to § 11.8(h) or through appeal of a

disqualification pursuant to § 11.5. We discuss that appeal process above in this document, in our discussion of comments we received regarding our proposed revisions to § 11.5.

In the proposed rule,⁶⁴ we noted that the NAS committee reviewed an unpublished but peer-reviewed evaluation (“Stromberg report”) of 136 microscopic biopsies of skin samples taken from 68 Tennessee Walking Horses that had been disqualified for violations of the scar rule during the Tennessee Walking Horse National Celebration events of 2015 and 2016.⁶⁵ The evaluation, directed by Dr. Paul Stromberg, a veterinary anatomic pathologist, examined 136 pastern biopsies (right and left pastern from each horse).

A commenter stated that the NAS study agreed with Dr. Stromberg’s conclusion that the biopsies evaluated⁶⁶ from the disqualified horses showed no basis or proof of a scar rule violation.

We disagree with the commenter. As NAS reported, “[Dr. Stromberg] did not find any evidence of scar tissue or granulomatous inflammation and therefore concluded there was no basis or proof of scar rule violation.”⁶⁷ However, the NAS committee made no conclusion about whether Dr. Stromberg’s conclusion was warranted, and noted that Dr. Stromberg’s study did not include “images of gross lesions corresponding to the biopsy selection areas.” Nowhere in their study does the NAS committee concur with the conclusion of Dr. Stromberg’s study that there was no basis for finding a scar rule violation, and in fact, the committee found abnormalities in the biopsies he examined that do not rule out soring as a cause.

⁶⁴ 88 FR 56941.

⁶⁵ NAS study, page 78.

⁶⁶ As we explained in the proposed rule (88 FR 56941-56942), Dr. Stromberg evaluated the biopsies for soring based on a regulatory definition of “granuloma” in current § 11.3 that is different from the definition used in pathology.

⁶⁷ NAS study, page 78.

Dr. Pamela E. Ginn, a member of the NAS study committee and a board-certified veterinary pathologist and specialist in veterinary dermatopathology, also examined the biopsies and reviewed Dr. Stromberg's conclusions. Drs. Ginn and Stromberg both noted abnormal dermatological thickening prominent in the biopsy specimens that does not normally occur without a previously inflicted injury on the pasterns. The NAS study authors indicated that while these changes are recognized as secondary, chronic lesions, and do not provide clear evidence of the initial injury to the skin that led 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.⁶⁸

In brief, while the Stromberg report found no granulomas in the tissue microscopically and concluded from this that there was no evidence of a violation, Dr. Stromberg's own findings of "variably thickened epidermis" and the NAS study's finding that the biopsies were consistent with gross lesions of lichenification support a conclusion that the pasterns studied actually were noncompliant with the scar rule, as non-uniformly thickened epithelial tissue and evidence of inflammation were present. As we noted above, to diagnose soring an inspector need not identify exactly what action occurred to cause a dermatological condition, just that something occurred outside the event that resulted in a sore horse.

We also proposed in § 11.6(b)(22) that violations of the scar rule need not be bilateral in nature due to the practice of violators obscuring signs of soring on at least one limb. 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 to, inflicted on, injected into, or used on "any limb of a horse." This definition, which is fundamental to

⁶⁸ Ibid., Finding 4-2, page 82.

understanding the Act's requirements regarding soring, 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."

Several commenters opposed our proposed change to allow for a presumptive determination of soring in cases where only one limb shows dermatological conditions indicative of soring.

One such commenter stated that accidents happen and horses sometimes develop flesh or scars that will not grow hair from these natural injuries, adding that it would be unfair to consider a horse with a unilateral scar as "sored." Another commenter similarly stated that removing the bilateral requirement could cause horses to be wrongly diagnosed as sore due to dermatologic conditions resulting from pasture injuries. Similarly, another commenter stated that the proposed rule's language fails to give inspectors any objective criteria by which to differentiate a true case of soring from a horse presenting accidental injuries.

Because of our revisions to the proposed DCIS regulatory text, we consider the commenters' concerns to be addressed. We agree that a scar on one leg may be caused by something other than soring, but we also assert that soring should not be automatically ruled out as a possible cause. We note that, historically, the requirement for pathological evidence of inflammation indicative of soring was made to be bilateral, as it was thought that a horse was unlikely to display such evidence only unilaterally if it truly had been sored. On this point, we previously thought that there was no reason to ever unilaterally sore a horse. Moreover, properly qualified persons with specific veterinary training and equine experience are trained to make differential diagnoses, and determining whether the condition observed is or is not indicative of

soring would be no different, so we reiterate that we disagree that the inspector must be able to conclusively identify the cause of the condition.

However, inspectors do see unilateral soring, in which one pastern shows clear evidence of soring while the other pastern may show dermatologic change, but not to the degree that it meets the threshold of noncompliance. Signs of soring may be more apparent on one pastern than the other due to several causes, including soring to balance the step height in both front limbs or the result of masking soring. In addition, technological advancements such as lasering the skin have resulted in inspectors seeing more indications of unilateral soring. Specifically, APHIS VMOs inspecting Performance division Tennessee Walking Horses frequently observe significant skin changes in one pastern indicative of soring (e.g., hyperkeratosis, acanthosis, alopecia), while the contralateral pastern has an unnaturally smooth appearance not attributable to any accident or disease. In such instances, APHIS VMOs may conclude that a horse with one sored pastern and one uniquely smooth pastern has had evidence of soring on the latter pastern effaced using lasers or other applications, as trainers know that a unilateral soring indication will not meet the current scar rule criteria in § 11.3 for a diagnosis of soring that is bilateral.

One commenter stated that we provided no evidence or citations regarding the use of lasers and other tools to artificially efface evidence of soring on one limb. The commenter reasoned that “if the premise is that violators are able to get rid of visible signs of soring, then the rational conclusion should be that a visual inspection is not a good way to detect soring.”⁶⁹

We note that the revised DCIS language does not require an inspector to make a finding of laser treatment—the inspector need only observe and evaluate one or more dermatologic conditions on the horse indicative of soring on one limb. That being said, the commenter

⁶⁹ National Celebration comment, page 41.

wrongly assumes that effacing sores on skin leaves no trace of alteration. Lasers or other means used to smooth skin on one limb leave distinct signs that cannot be mistaken for natural, unaltered skin, particularly when contrasted with distinct signs that soring has been undertaken on the other limb. In effect, the sores on skin are lasered away, leaving unnaturally smoothed, hairless skin in a particular location on the pastern—the smoothed skin obscures the soring but itself is entirely visible. Further, a person properly trained to diagnose equine soring can identify characteristics of the smoothed skin (e.g., location on the foot, corresponding lack of hair, straight margins) that rule it out as being attributable to any natural cause.

As to the question of unintended or natural injuries on one pastern being wrongly diagnosed as soring, trained APHIS representatives and HPIs with the knowledge to differentiate such accidental conditions from deliberate soring will further limit the potential for erroneous diagnoses. On the posterior pastern, skin changes resulting from soring show a distinct pattern of thickened skin ridges, consistent with lichenification, that are not seen with field injuries. This is further supported by the NAS study, which reinforced the point that self-inflicted repeated injury to this one area of the skin is unlikely. In contrast to the pattern of linear skin ridges indicative of soring, field injuries tend to be jagged and focal in appearance.

One commenter stated that USDA provided no adequate explanation for eliminating the carve-out in the prior scar rule that permitted uniform thickening of epithelial tissue on the posterior surface of pasterns, and that removing the allowance for non-traumatic epidermal thickening will result in disqualifications that are not based on actual soring.

We note that there was never an allowance for “non-traumatic epidermal thickening” in the current scar rule. There was an allowance for “uniformly thickened epithelial tissue,” but only if it was free of “other evidence of inflammation.” Our revisions to the current scar rule are

based on the NAS study observation that epidermal thickening can be indicative of a response to chronic injury consistent with soring.

One commenter stated that removing the scar rule and replacing it with a list of dermatologic changes that are indicative of soring is ambiguous, as dermatologic changes in horses can occur naturally through the aging process. Another commenter noted that horses in New Mexico are prone to dermatological changes from fly bites, fungus, and other naturally occurring hazards, and asked if such changes would be considered soring.

We disagree with the first commenter's implication that normal signs of dermatologic aging on the limbs of horses can be incorrectly attributed to soring and note that dermatologic conditions are already listed in the current scar rule, so the current regulations are not being "replaced." Visual changes to the skin resulting from soring appear markedly different from signs of aging. As we noted above, skin changes resulting from soring often show a distinct pattern of thickened skin ridges on the posterior pastern, consistent with lichenification. With respect to the other commenter's concerns, a qualified inspector can also distinguish deliberate signs of soring from changes resulting from fly bites and other natural conditions or environmental hazards. As we noted above, in contrast to the distinct pattern of linear skin ridges indicative of soring, field injuries tend to be jagged and focal in appearance. Equine veterinarians on the NAS committee agreed that the skin changes seen on the pasterns of Tennessee Walking Horses are not observed on the pasterns of other breeds, including those that also train with action devices,⁷⁰ further supporting the conclusion that the skin changes observed

⁷⁰ NAS study, Finding 4-1, page 82. Other breeds in which soring is infrequent can and do use action devices permitted under proposed § 11.6(b). We discuss the relationship between action devices and soring under "Prohibitions for Tennessee Walking Horses and racking horses," above.

in response to soring are unique, distinctive, and identifiable to APHIS veterinarians and HPIs trained to detect and diagnose soring.

A few commenters asked that USDA-APHIS consider including in proposed paragraph (b)(22) inspection instructions recommended by the NAS study, beginning with “[a] trained inspector should examine the skin of the front limb of the horse from the knee (carpus) to the hoof...”⁷¹ and continuing with several details describing a horse whose dermatologic condition does not qualify as a scar rule violation.

While the instructions cited by the commenter provide useful inspection guidance, we do not consider it necessary to include inspection details in the regulations, particularly as inspection techniques may evolve over time with new knowledge and technological developments. APHIS will ensure that HPI training includes workshops, classroom and virtual instruction, and hands-on training, with evaluations to confirm mastery of subject matter. This approach will use multiple methods to provide HPIs with the knowledge and skills required to evaluate whether dermatologic conditions present on a horse during an inspection are indicative of soring. We intend to make information on inspection procedures publicly available on our website on or near the effective date of this rule.

Finally, we are moving the revised DCIS language from proposed § 11.6(b)(22) to § 11.7, which we initially proposed to reserve but will now include the revised contents of proposed § 11.6(b)(22). We are making this change because § 11.6(b) overall lists “prohibited devices, equipment, and practices,” none of which characterize DCIS. The heading for § 11.7 will be “Dermatologic conditions indicative of soring.”

⁷¹ Ibid., Recommendation 4-1, page 86.

Other Proposed Changes to Prohibitions Concerning Exhibitors

We proposed moving time restrictions on workouts and performances for 2-year-old Tennessee Walking Horses and racking horses from current § 11.2(d) to revised § 11.6(d). We proposed to 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.

A commenter recommended that we prohibit the mounted showing or exhibition of horses less than 30 months old, adding that the term “two-year olds” should be defined, as these animals may not be even 24 months old and, if shown under saddle, will have been in training since they were 18 months old. The commenter stated that this is cruel for young horses and the regulations should be changed to prohibit it.

Stating the age at which it is appropriate to start training a horse is outside the scope of the HPA. As horse breed and discipline organizations will often have their own definitions of horse ages, we are not inclined to impose a definition of the term and are finalizing as proposed.

We also proposed moving the horse-related information requirements under § 11.2(e) to revised § 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 owns, trains, shows, exhibits, 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. In the proposed rule, we added to the description of the person who must abide by the requirements to include any person that enters, transports, or sells any horse shown, exhibited, sold, or auctioned.

We are requiring, as proposed, that this provision also apply to information supplied to HPIs at their request. 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. We received no comments that specifically addressed this provision and are finalizing as proposed.

We also proposed adding to § 11.6(e) that failure to provide the information requested in that paragraph may result in termination under the responsibilities and liabilities of management in § 11.13.

A commenter was confused over our use of “termination” when we explained in the proposal preamble the consequence of management not providing the information requested. The commenter asked if we intended to use the word “disqualification,” as this is the word we actually used in the regulatory text. The commenter is correct.

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 proposed moving this requirement to new § 11.8(a) and including HPIs appointed by management to also have the authority to inspect and make such designations. We received no comments that specifically addressed this change and are finalizing as proposed.

We also proposed to 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, horse exhibition, or horse 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 included this requirement in proposed § 11.8(b) and added that HPIs may also make the notification to the owner, exhibitor, trainer, or other person having custody that APHIS desires to inspect the horse. We retained the provision that only an APHIS representative could officially detain and release the horse as these decisions are made on behalf of the Department.

A commenter observed that we did not propose to give authority to HPIs to detain horses, release them from detainment, or supervise any of the other activities currently restricted to APHIS representatives in current § 11.4. The commenter expressed concern that show management, seeking to avoid horses being detained, might elect to utilize only HPIs because they lack the power to detain horses. The commenter added that we provided HPIs with this authority in the 2016 proposal and recommended that this final rule likewise extend such authority to HPIs, or that we should at least provide that an HPI may seek written or verbal approval to detain a horse from an APHIS representative.

The commenter is correct in that we proposed to extend this authority to HPIs in the 2016 proposal. However, we subsequently determined that under section 6 (15 U.S.C. 1825(e)(1)) of the Act, only the Secretary may detain (for a period not to exceed twenty-four hours) for examination, testing, or the taking of evidence, any horse at any horse show, horse exhibition, or horse sale or auction which is sore or which the Secretary has probable cause to believe is sore. Accordingly, this is a Federal responsibility under the Act, and only APHIS representatives are authorized on behalf of the Secretary to take this official action.

We proposed moving to paragraph (c) of proposed § 11.8 the requirement in current § 11.4(c) which states 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. Other than the comment above requesting HPI involvement in detaining horses, we received no comments that specifically addressed this change and are finalizing as proposed.

In proposed § 11.8(d), we included 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, or 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. Detaining a horse is an official decision requiring an APHIS representative to act on behalf of the Secretary. Other than the comment above requesting HPI authority to detain horses, we received no comments that specifically addressed this change and are finalizing as proposed.

In proposed § 11.8(e), we included 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 is allowed provided that such care is rendered under the direct supervision of an APHIS representative. We received no comments that addressed this change and are finalizing as proposed.

Additionally, the regulations we proposed in § 11.8(e)(2) 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 approval is an official oversight function limited to officials acting on behalf of the Secretary. Further, while retaining this requirement from the current regulations, we also proposed to replace the term “APHIS Show Veterinarian” in § 11.4(e)(2) with “APHIS representative” for the reasons explained above under “Definitions.”

A commenter expressed concern that APHIS' approval of any drug or medication under this provision may put the APHIS representative in conflict with the attending veterinarian. The commenter recommended that the APHIS representative have the option of further penalizing the owner, trainer, exhibitor, or other person having immediate custody of or responsibility for the horse if a substance is administered without the approval of the APHIS representative.

If care is administered outside the presence of an APHIS representative, has not been furnished in writing to the APHIS representative in advance, and has not been approved by the APHIS representative, such care would be noncompliant with the regulations.

We also proposed moving 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. We added language allowing an HPI to deliver this information to the person having responsibility for the horse, although the actual decision to release the horse from detention will be made by an APHIS representative. Other than the comment above requesting HPI authority to detain horses, we received no comments that specifically addressed this change and are finalizing as proposed.

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 proposed retaining this requirement and including 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. Other than the comment above requesting HPI authority to detain horses, we received no comments that specifically addressed this change and are finalizing as proposed.

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. We proposed moving from § 11.4(h) to new § 11.8(h) the provisions for re-inspection and testing and extending authority to HPIs for certain actions not requiring an official decision or determination. Paragraph (h) states 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 new § 11.8(f), may request re-inspection and testing of said 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. For a re-inspection to occur, an APHIS representative must be present to authorize it.

A commenter questioned the value of a re-inspection as late as 24 hours after the initial inspection. The commenter stated that the horse's condition can change during that time, and the results of the re-inspection may be different, adding that any re-inspection should take place

before the horse leaves the inspection area, after an initial finding that the horse is not in compliance.

When APHIS determines that sufficient cause exists to conduct a re-inspection, the APHIS representative will endeavor to perform the re-inspection as close in time after the initial inspection as necessary, unless APHIS suspects the horse to be in a state where a later inspection may yield more accurate results. The 24-hour window for re-inspection is necessary only in cases in which an APHIS representative may not be available to reinspect immediately or where a later inspection may yield more accurate results.

We proposed replacing the term “APHIS Show Veterinarian” with “APHIS representative” throughout § 11.8(h) and using the terms “inspection” and “re-inspection” rather than “examination” and “re-examination” for consistency with the regulations. In addition, we proposed in paragraph (i) to 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. We received no comments on these specific changes and are finalizing as proposed.

Access to Premises and Records

As we noted in the proposal, 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 included 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, horse exhibition, horse sale, or horse auction. We

also extended all access to premises and records for the purposes of inspection to HPIs appointed by management.

Paragraph (a)(1), which we are moving from § 11.5(a)(1) and revising to include HPIs, proposed 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. We received no comments specifically addressing this change and are finalizing as proposed.

In paragraph (a)(2) we proposed 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. We moved this requirement from current § 11.5(a)(2) and revised it to include HPIs. We also removed language that only required providing such an area “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.”

A commenter stated that this requirement is vague, adding that many shows are held in a field or other such places where a temporary ring is set up and no permanent sheltered facilities are on the property. Another commenter similarly stated that many horse events occur outside, and that many lack any sort of indoor space.

We are finalizing as proposed. Proposed paragraph (a)(2) requires providing APHIS representatives with an adequate, safe, and accessible area for the visual inspection and observation of horses for the duration of the event. While § 11.10 requires protection from the elements, we note that this could be accomplished through a temporary structure set up on-site. Additionally, while we do require a power source, we note that this could be accomplished through use of a generator.

We proposed to revise current § 11.5(b)(1) and include in proposed § 11.9(b)(1) the requirement that each horse owner, trainer, exhibitor, or other person having custody of or responsibility for any horse at any horse show, exhibition, or horse 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. We received no comments specifically addressing this change and are finalizing as proposed.

Under proposed § 11.9(b)(2), which we 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. We received no comments specifically addressing this change and are finalizing as proposed.

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. The NAS study found that designating an inspection area that has as few distractions as possible reduces the effect of the environment on the horse's response to pain during examination.⁷² As explained below, we proposed to retain each of these requirements under proposed § 11.10.

In new § 11.10(a)(1), moved from current § 11.6(a), we proposed 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.

⁷² NAS study, page 69.

A commenter stated that the space requirement in proposed § 11.10(a)(1) is vague and subject to interpretation, and recommended that the requirement should specify the minimum dimensions of the protected area.

We are finalizing as proposed. APHIS recognizes the wide variability of venues that host horse shows, exhibitions, sales, and auctions. As such, it is not possible to prescribe minimum dimensions as larger events will need more space than smaller ones. Management will be required to provide sufficient facilities consistent with § 11.10(a)(1) and their acceptance will be determined by APHIS representatives and/or HPIs appointed by management.

We proposed in § 11.10(a)(2) that management of every horse show, exhibition, sale, or auction is required to provide protection from the elements of nature, such as rain, snow, sleet, hail, windstorm, etc. Protection from the elements is needed in order to facilitate accurate inspections.

A few commenters opposed the requirement that management provide an area protected from the elements so that HPIs and APHIS representatives can perform inspections. One commenter stated that the requirement is vague, and that even a temporary shelter represents a cost burden to shows.

We are making no changes, as the space provisions we proposed will require management, when requested to do so by APHIS representatives or HPIs, to provide such protection to ensure that inspections are not adversely affected by weather. Historically, we have not observed problems with management meeting these requirements regardless of event size. Management is free to arrange for the most economical means of shelter, whether temporary or permanent, as long as it complies with the regulations in § 11.10.

Proposed § 11.10(a)(3), which we moved from current § 11.6(c), requires 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 protects inspectors (whether APHIS representatives or HPIs appointed by management), staff, and spectators, as well as horses. We received no comments specifically addressing this change and are finalizing as proposed.

Inspections sometimes require the use of radiography and other equipment that must be connected to an electrical power source. In new § 11.10(a)(4), we proposed to 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, which we moved from current § 11.6(d), has been amended so that the availability of a 110-volt electrical power source is a requirement. If fixed electrical service is not available, event management will be required to provide other means for electrical power such as a portable electric generator.

One commenter stated that it is standard practice for shows to make a generator available to run a fan or lights, but otherwise we received no comments specifically addressing this change and are finalizing as proposed.

Finally, we proposed in § 11.10(a)(5) to 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. We moved this requirement from current § 11.6(e) and revised it to include separation from onlookers.

A commenter recommended that the distance from onlookers should be specified and should not be less than 10 feet, with a fence or other barrier preventing onlookers from approaching the horses or people in the enclosure.

We are finalizing as proposed. We note that given the variability in venue size, a minimum distance specified by the commenter may not always be possible, but it remains the responsibility of event management to control crowds such that APHIS representatives and HPIs appointed by management can carry out their duties safely and without interference.

We also proposed to add a provision to § 11.10(b) stating that, except for the other persons listed below, only a management representative, HPIs appointed by management, and APHIS representatives are allowed to be 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 will be allowed in the warm-up or inspection areas without prior approval from an APHIS representative or HPI appointed by management. We proposed this provision because our experience has shown that people congregating in designated inspection and warm-up areas can impede the ability of inspectors to perform their duties, and large groups of people massed in an area where multiple horses are warming up can be unsafe both to people and horses. We received no comments specifically addressing this change and are finalizing as proposed.

Responsibilities and Liabilities of Management

Under § 11.20 of the current regulations, event management 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.⁷³ 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.

As we proposed, HPIS will replace the current role played by DQPs. We also proposed the option that, if desired by event management, an APHIS representative (i.e., a qualified employee of the Agency) can be retained to conduct inspections.

We proposed in § 11.13(a) to include the requirement from current § 11.20(a) 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. In the proposal, we acknowledged that management may choose not to appoint an APHIS representative or HPI to inspect horses, rendering them legally liable for any sores horses participating in the event.

A commenter noted that it is implied that without an APHIS inspector or HPI, the event management and related parties assume the liability of the enforcement of the HPA, but nowhere in the regulations does it specifically state that hiring inspectors absolves event management. The commenter stated that this needs to be answered.

⁷³ 15 U.S.C. 1824(3).

Hiring an inspector does not absolve management of liability if sore horses participate in the event, as under current § 11.20(b)(1) management is still the agent responsible for disqualifying any sore horses reported to management by the inspector. If management does not do so, that constitutes a violation. Current § 11.20(a) states that 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. We proposed to retain these management requirements in proposed § 11.13(a) and (b) and are finalizing as proposed.

We reiterate 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 show much higher rates of noncompliance than do flat-shod horses and other breeds that do not compete in the tall pads. In the proposal, we invited 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.

Many commenters stated that APHIS needs to focus on breeds that are the focus of soring concerns—Tennessee Walking Horses and racking horses—as well as Spotted Saddle Horses.

We agree with the commenters with respect to focusing enforcement efforts on Tennessee Walking Horses and racking horses. We have responded to comments concerning Spotted Saddle Horses above.

A commenter stated that the 2010 USDA-OIG audit and inspection data compiled by APHIS showed that DQPs are less likely to issue violations and more likely to allow sore

horses to perform when APHIS is not present to confirm the outcome of inspections. For these reasons, the commenter recommended that APHIS prioritize random checks at events at which management has declined to engage either an APHIS representative or an HPI.

We agree with the commenter and will continue conducting risk-based checks at such events as warranted.

We proposed in § 11.13(b) to include requirements, moved from current § 11.20(b), for horse shows, exhibitions, sales, and auctions at which management utilizes an APHIS representative or HPI to conduct inspections. New paragraph (b)(1) will 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. We received no comments specifically addressing this change and are finalizing as proposed.

We proposed in paragraph (b)(2) to 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. In current § 11.20(c), 2 DQPs are required for inspections when more than 150 horses are entered in an event. However, we determined that limiting the number of horses to 100 or fewer for one HPI, as proposed, allows that HPI to inspect horses more thoroughly and manageably. We also considered the fact that relatively few horse events covered under the Act involve the participation of 100 or more horses and most will therefore only require one inspector.

A commenter stated that if management chooses to appoint an APHIS representative, the proposal does not clearly address whether APHIS will send two representatives if more than 100 horses are entered in a covered event. The commenter also asked that if APHIS is already

planning to send a representative to monitor the inspection activities at the show, will APHIS send a different representative for that purpose than the one designated for appointment by management, and added that this should be clarified in the final rule.

We are finalizing as proposed. If management requests APHIS representatives to inspect at an event, APHIS will send the needed number of APHIS representatives on the date requested as availability allows. If a show is allowing horses to participate under therapeutic exceptions, APHIS may send additional representatives to ensure compliance with the Act and regulations.

In paragraph (b)(3) of proposed § 11.13, we required 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 at the event 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.

Several commenters stated that the proposed farrier requirement is a cost burden, particularly to smaller horse shows. Some noted that farriers are likely to make more money serving their existing clients than agreeing to be on call weekends for shows. Some commenters declared there to be a shortage of farriers and that it would be impractical for management to expect on-call farriers to come promptly when needed.

We acknowledge that farriers are in demand and that shows may need to compensate them for their time accordingly. Indeed, at least two commenters stated that it is already standard practice with shows in dressage and other equine disciplines to require that a farrier be on site. As we will allow use of pads and wedges specifically for therapeutic treatment of Tennessee Walking Horses and racking horses participating in covered events, the farrier

requirement is necessary to ensure compliance with the Act. During the inspection, a farrier can remove pads and wedges if requested by an APHIS representative or HPI if they need to examine the hoof more closely. We note that no farrier is required at events at which management opts not to utilize an APHIS representative or HPI to inspect horses.

One commenter questioned the need for a farrier at horse shows that do not allow bands, hoof black, toe extensions, tungsten shoes, mixed metal shoes, or any type of pads, including therapeutic, and that require the hoof and sole to be clearly visible for inspection.

We would still require that a farrier be available for such shows if over 100 horses are showing, as horses at these shows are still wearing shoes; and bands, hoof black, and mixed metal shoes, all of which can obscure visibility of the hoof and sole, are not actually prohibited. Furthermore, the farrier requirement only applies when management utilizes an APHIS representative or HPI to inspect horses. Management may opt to forego an inspector, although they will be liable for ensuring that no sore horses participate or are otherwise present at the event.

One commenter stated that the requirement for having a farrier on call is unclear, as it seems to state that a farrier be on call only if requested by the APHIS representative or HPI, while the preamble addresses it as a requirement regardless of whether it is requested. The commenter asked that we clarify the intent of the requirement.

We intend the requirement to mean that if 100 or fewer horses are entered in the event, management must provide for a farrier in the local area to be on-call. If the APHIS representative or HPI at some point determines that the on-call farrier needs to come to the event, management will need to ensure that the farrier shows up to the event promptly. To clarify this point, we are revising § 11.13(b)(3) to state that 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 be on call within the local area and ensure that the farrier appear promptly at the horse show, exhibition, sale, or auction if requested by an APHIS representative or HPI appointed by management.

We proposed in paragraph (b)(4) of § 11.13 a provision requiring event management 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. We received no comments specifically on this provision and are finalizing as proposed.

Current § 11.20(b)(1) provides a means for event management to notify the Department when they consider the performance of a DQP to be inadequate or otherwise unsatisfactory. Under proposed § 11.13(b)(5), we similarly provided an opportunity for management to address concerns over the performance of an HPI utilized to conduct inspections. If dissatisfied with the performance of a particular HPI, management will need to notify, in writing, the Administrator as to why they believe the performance of the HPI is inadequate or otherwise unsatisfactory. We noted that it is in the best interests of management to notify APHIS promptly so that the Agency can gather relevant information and interview witnesses. We received no comments that specifically addressed this change and are finalizing as proposed.

Current paragraph (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.” We proposed in § 11.13(b)(6) to similarly require that management that utilizes an APHIS representative or HPI must immediately disqualify or prohibit from showing, exhibiting, selling,

offering for sale, or auctioning 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. We received no comments that specifically addressed this change and are finalizing as proposed.

We proposed in § 11.13(c)(1) that management at horse shows, exhibitions, sales, and auctions be required to ensure that no devices or substances prohibited under proposed § 11.6 are present in the horse warm-up area. This provision ensures that such devices are not being used for any purposes contributing to soiling in the warm-up area. We also proposed in paragraph (c)(2) that management must 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. We received no comments that specifically addressed this change and are finalizing as proposed.

We also proposed in § 11.13(c)(3) that management be required to verify the identity of all horses entered in the show, exhibition, sale, or auction, 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;⁷⁴ 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.

⁷⁴ An international standard for regulating the radio frequency identification (RFID) of animals.

Several commenters recommended that USDA-APHIS require that horses have a microchip for identification in order to show, with some noting that many equine breed and discipline organizations already require this. Another commenter agreed, noting that the identification of horses is essential to managing biosecurity concerns and would enable APHIS to identify horses that have been disqualified due to soring and ensure that such horses do not participate in the event in question.

We acknowledge the important reasons cited by the commenters for horse identification but are making no changes to the proposed identification methods, as they are modeled from and generally consistent with the identification requirements in 9 CFR part 86 for official identification of horses moving in interstate commerce. We consider the methods of identification we proposed to be sufficient but will consider the commenters' recommendations in future rulemakings.

Records Required

In proposed § 11.14(a), moved from current § 11.22(a) and with additions, we required the management of any horse show, horse exhibition, horse sale, or horse auction that contains Tennessee Walking Horses or racking horses to maintain all records for a minimum of 90 days following the closing date of the show, exhibition, sale, or auction.⁷⁵ Records must 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. Management will also 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 and class number or

⁷⁵ These information collection activities will be scheduled for merger into 0579-0056 upon publication of this final rule.

sale number of 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 will also need to be kept if one has been prepared, as well as a copy of the scoring cards for shows containing Tennessee Walking Horses and racking horses that includes the place each horse finished in the class. Management must also maintain records showing the name and any registration name and number of each horse, as well as the names and addresses of the owner, the trainer, the custodian, and 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 § 11.14(a) also include those of horses disqualified from participating, which are already required to be kept by management and submitted to APHIS under current § 11.24(a). These records must 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 is required to be recorded and kept.

Some commenters proposed that records be retained for a duration of 3 years, as opposed to 90 days, by event management for any horse show, exhibition, sale, or auction that contains Tennessee Walking Horses or racking horses found to be sore and in violation of the HPA, or longer, if necessary, until all known investigations or court cases are resolved and after final disposition of the matter.

While we consider 90 days to be a sufficient minimum period for maintaining records, we agree that in some cases an investigation may require that they be held longer to ensure due process. In § 11.22 of the current regulations, we state that the Administrator may, in specific cases, require that a horse show, horse exhibition, or horse sale or auction records be maintained by management for a period in excess of 90 days. We intended to include this provision in the proposed rule but inadvertently omitted it. In response to the above comments and to correct this oversight, we are including this provision in § 11.14(c) of the revised regulations.

A few commenters stated that APHIS should also require management to maintain entry forms for a minimum of 90 days and send them to APHIS within five days following the conclusion of the event.

We do not consider it necessary for management to maintain entry forms for 90 days, as in proposed paragraph (a)(5) we already require on the class or sale sheet the address of the person paying the entry fee and entering the horse in the event. In § 11.16(c), we require management to send these records to APHIS within 5 days following the conclusion of the event.

A few commenters asked if APHIS intends to require management of all horse events, regardless of breed, to submit reports and keep records.

Section 11.16(d) requires management of horse events that do not include Tennessee Walking Horses or racking horses to submit to the Administrator information relating to 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. Other than this, APHIS is not requiring management of other horse events to submit reports and keep records at this time. Management of events covered under the Act will need to notify APHIS of the event under paragraphs (a) and (b) of proposed § 11.16.

One commenter stated that eliminating the role of HIOs in the industry is arbitrary and will impose significant new recordkeeping and reporting requirements, and new tasks such as crowd control, on local show managers. The commenter added that under the existing system, HIOs manage these tasks, leaving management to perform tasks which they have never had to previously manage or face being found in violation and having their shows shut down.

We disagree with the commenter's point that the proposed regulatory changes eliminate HIOs or prevent them from working with show management to assist with the tasks described. As we noted in the proposal, HIOs are simply being relieved of their regulatory roles and may continue to contract with and supply recordkeeping and other services to shows and events in a support capacity, including registering participants and coordinating event logistics (including crowd control), supplying show judges, and promoting events.

In the current regulations, there are no recordkeeping requirements for horses under the care of a licensed veterinarian and undergoing therapeutic treatment with pads or other restricted items. We proposed in § 11.14(b) to 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(c) 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 will 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.

A commenter noted that proposed § 11.14(b) requires management of any event that allows any horse to be shown, exhibited, or sold with devices, pads, substances, applications, or other items restricted under § 11.6(c) for therapeutic treatment to maintain information for each horse receiving the therapeutic treatment. The commenter added, however that there are no devices, substances or applications restricted in § 11.6(c) for therapeutic treatment. Therefore, the commenter asked that § 11.14(b) be amended to remove the reference to “devices, substances or applications” and to add “wedges” since those are allowed in § 11.6(c) for therapeutic treatment.

In the proposal, § 11.6(c) allowed only the use of wedges, pads, and toe extensions for therapeutic purposes if administered by a qualified veterinarian and documented in accordance with the regulations in part 11. Accordingly, we will remove “devices” and “applications” from § 11.14(b) as requested by the commenter and add “wedges, pads, and toe extensions,” as these are items that can be used therapeutically. However, we are retaining “substances” in § 11.14(b), as we had intended that substances can be used therapeutically in accordance with the veterinary requirements in § 11.6(c)(4).

A commenter stated that the record requirement for horses receiving therapy seems unnecessarily redundant and invasive, and that requiring only the veterinarian's business contact information should be sufficient.

We disagree that the therapeutic exemption records are unnecessarily redundant and invasive and are finalizing as proposed. We have included prohibitions on pads, wedges, substances, and toe extensions in this new rule as they have been consistently associated with soring in Tennessee Walking Horses and racking horses. If a horse is to be shown under a therapeutic exemption with these items, a legitimate veterinary need must be cited and documented so that APHIS can review in case of any concerns as to the validity of the treatment. If APHIS disputes a therapeutic exemption at a show, the horse would not be permitted to be shown. Such disqualification could be appealed in accordance with the provisions in revised § 11.5. If APHIS disputes such an exemption in the course of reviewing records, we would consider submitting it to the appropriate State veterinary board.

With respect to our requiring information about the veterinarian, it is important to have adequate information about the veterinarian as such records help to ensure that therapeutic practices are either applied by or under the oversight of a qualified veterinarian. 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(c) are receiving legitimate veterinary treatment and are not being sored.

Inspection of Records

Under proposed § 11.15, moved from current § 11.23(a), the management of any horse show, horse exhibition, horse sale, or horse auction will 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 will need to be made available to the APHIS representative or HPI appointed by management.

A commenter stated that this provision should indicate whether a copier is a required to be provided.

Management is not required to provide a photocopier. We are finalizing as proposed.

Reporting by Management

We proposed in new § 11.16(a) a requirement that the management of any horse show, horse exhibition, horse sale, or horse auction notify the Administrator of the event by mail or email not less than 30 days before it occurs and submit the following information: (1) The name and address 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, we proposed that 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; and (7) whether management will allow any horse to be shown, exhibited, or sold with prohibitions under section § 11.6(c) for therapeutic treatment.

Many commenters stated that the proposed recordkeeping requirements in proposed § 11.16 constitute an undue burden on management, particularly those at smaller shows. Some added that the proposed reporting requirements are extreme, as show management would be legally liable for missing information, which they stated was endemic at shows, as well as new liabilities such as notifying USDA of any event more than 30 days out and documenting the use of therapeutic pads or devices.

We note that under both the current and proposed regulations, primary responsibility for recording and reporting required data is the responsibility of management. Ultimate liability for ensuring these requirements are met has always rested upon management, even when an HIO has been legally contracted to perform these tasks on behalf of management.

In paragraph (a)(6), we proposed that event management be required 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 horses or have no inspector. A commenter asked if it is reasonable to expect that an APHIS inspector will be available for each projected show if requests are made at the beginning of the year. The commenter noted that requests must be submitted by show management a minimum of 30 days prior to the event but saw no provision for a response time, and suggested that APHIS should provide an answer within 10 business days of the request.

While we have proposed to make APHIS representatives available to conduct inspections if requested, we can provide no timeline as to when we will respond to management regarding their request but will do so as promptly as circumstances allow. We cannot guarantee that an

APHIS representative will be available to inspect every show requested by management but will provide such representatives as resources allow.

Another commenter stated that under the proposal, horse shows must advise of their need for an HPI at least 30 days prior to the horse show but that there is a 15-day period of which to respond. If after 15 days, the event or show manager is informed an HPI is unavailable, management will only have 15 days to secure another option for inspection, such as a local veterinarian. The commenter stated that this short timeframe will either result in cancellation of the event or result in costly fees at the last-minute request.

Under proposed § 11.16(a)(6), management choosing to use an HPI are required to notify APHIS that they have chosen and appointed an HPI from the official list. In other words, an HPI should already be secured by the time APHIS is notified at least 30 days prior to the event. Management is not constrained from seeking and securing an HPI more than 30 days before the show if they wish. In the event that an HPI cannot be secured for a given show, management is free to conduct the show without having appointed an HPI or APHIS representative to conduct inspections. APHIS may send representatives to observe such shows unscheduled, as warranted.

If neither an APHIS representative nor an HPI is available on the date of the event, we also proposed in paragraph (a)(6) that event management may request a variance. Variances would have to be submitted in writing to the Deputy Administrator of Animal Care at least 15 days before the event and state the reason for requesting the variance.

Several commenters asked for more information about the proposed variance provision. Some commenters stated that variances are not within the regulatory authority of APHIS and in no situation should event management be relieved of their responsibility to ensure sore horses are not shown. Another commenter agreed, stating that under the HPA, APHIS lacks the authority

to relieve management from liability for allowing a sore horse to be shown. The commenter added that to the extent APHIS proposed the variance for that purpose, there is no need for management to be relieved of their legal obligation to ensure that sore horses are not shown. This commenter and a few others also noted correctly that no variance is granted under current regulations if a DQP is not available. Some commenters asked whether a variance means a show would need to be cancelled if no APHIS representatives are available on the date requested.

We have considered the several comments we received that question the legality and intended purpose of the variance. We did not intend to absolve management of responsibility under the Act, and the commenters are correct in stating that under the Act (section 4 (15 U.S.C.1823(a)), and the current regulations (§ 11.20), the responsibility of management to disqualify sore horses and to be liable if they fail to do so is clear. Based on these comments and our own re-evaluation of the variance, we agree with the commenters and will not finalize this provision for variances in paragraph (a)(6). We are finalizing the other provisions of § 11.16(a) as proposed.

We proposed in § 11.16(b) a requirement 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 § 11.16(a) by mail, fax, or email. We included this provision so that APHIS is aware 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. We received no comments specifically addressing this revision and are finalizing as proposed. We are removing the fax option for these records because the Horse Protection program no longer receives

correspondence from persons by fax. Further, U.S. mail and other electronic methods for submission are more efficient for both the industry and the Agency.

We proposed that under § 11.16(c), 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. This provision is a revision of current § 11.24(a). Event information required under § 11.16(c) that has not changed and was already submitted in accordance with § 11.16(a) (information to be submitted at least 30 days before the event) will not need to be submitted again. We received no comments that specifically addressed this provision and are finalizing as proposed. We are removing the fax option for submitting the information for the reasons cited above.

Under § 11.16(d), we proposed that 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. This provision is a revision of current § 11.24(b). We received no comments that specifically addressed this provision and are finalizing as proposed.

Several commenters asked whether the responsibility for reporting requirements will fall to show managers on site or to USDA inspectors, and that more detail of the required timelines is needed to adequately follow these rules.

When APHIS representatives or HPIs appointed by event management are onsite they can request any records needed from management. To summarize, management is still responsible for submitting records under proposed § 11.16. Event management will be required to provide APHIS with information on an event at least 30 days in advance of it occurring, as noted above, along with informing APHIS whether they intend to utilize an APHIS representative or an authorized HPI to perform inspections at the event. Management will need to contact APHIS at least 15 days in advance informing us of any changing to the information required to be submitted at least 30 days in advance. The new requirements for event management will take effect upon the effective date of this rule.

Several commenters also asked how management responsibilities and liability will change as a result of these changes to the regulations.

In accordance with sections 4 and 5 (15 U.S.C. 1823(b) and 15 U.S.C. 1824(3)) of the Act, management will continue to be responsible and ultimately liable for disqualifying a horse upon notification by an inspector that a horse is sore, or when no inspector has been appointed.

Transportation Requirements

Under proposed § 11.17, moved from current § 11.40, we required 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, horse exhibition, horse sale, or horse 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 will 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. We received no comments specifically addressing this section and are finalizing as proposed.

Utilization of Inspectors

We proposed in § 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 paragraph (b), we included 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.

Several commenters, without providing evidence, objected to replacing DQPs with HPis, stating that most DQPs have sufficient equine experience to inspect horses for soeing.

We are finalizing as proposed. We explained in the proposed rule why we are replacing DQPs with HPis with regard to industry conflicts of interest irrespective of what equine experience a DQP may have.

One commenter approved of APHIS providing a representative to conduct inspections at no cost, but stated that without any guarantee a representative will be available, and without a set, contracted cost for HPis, it leaves show management unable to budget the appropriate funds

for a show. Some commenters stated that the cost of hiring an HPI needs to be a fixed cost and should not be more than \$275 per inspector per day. A few commenters requested that APHIS pay for anything above the standard \$275 per day.

We acknowledge the commenters' concerns but note that shows are already budgeting for DQPs to conduct inspections. HPIs are not employed by APHIS and can negotiate contracts with shows based on their own costs and expenses. We have no intention of subsidizing HPIs, but note that shows that have concerns about the cost of HPIs may request inspections be conducted by APHIS representatives. While we cannot guarantee availability of an APHIS representative for a given request, we will make them available to the extent that program resources allow.

Other public comments we received 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. One such commenter stated that while we proposed that the Act requires USDA to allow for the appointment by event management of persons qualified to detect and diagnose soreing, the rule precludes this requirement by coercing management to accept USDA inspectors at all horse shows by making the alternative (i.e., veterinarians) cost prohibitive. The commenter explained that the cost of hiring a privately employed veterinarian of a show's choice (which would still force the show to pick from a pre-approved list of certified USDA HPIs) versus accepting a free inspector hand-picked by USDA effectively forces shows to choose the latter.

We acknowledge that as third-party contractors, veterinarians authorized as HPIs may indeed charge higher rates than other qualified inspectors without veterinary degrees. We disagree, however, that the rule incentivizes management to accept only an APHIS representative

to conduct inspections because of the costs associated with a veterinarian. If, as the commenter also claims, there are not enough veterinarians to inspect the number of horses competing each season and there is no indication that veterinarians will seek to become USDA-approved HPIs, we have stated in this rule that we will authorize non-veterinary qualified persons as HPIs, with which management could then likely contract at a lower cost than a veterinarian HPI.

Management thus would have the option to appoint a non-veterinary HPI, to appoint an APHIS representative, or hold the event without retaining an inspector.

A commenter stated that in 2023, an industry publication reported that 61 percent of shows were single-day events and that only 3 percent of all shows were 5 days or longer. The commenter stated that the longer shows are likely the only shows capable of securing the financing to hire HPIs and cover their travel expenses, effectively eliminating 97 percent of Tennessee Walking Horse and racking horse shows.

Fees and costs associated with hosting the event include cost of the venue, judges, advertising, announcers, and awards. Those fees and costs usually determine the appropriate entry fee for participants of the event. Inspections are another cost that management of Tennessee Walking Horse and racking horse shows currently incur. We have no data indicating that only events that are 5 days or longer will have the funds to cover HPI expenses.

We note that with the discontinuation of DQPs, the costs formerly attributed to their fees might/could be used to help cover the costs associated with HPIs. Shows can apply the funds they currently use for DQPs to offset the cost of hiring an HPI under the revised regulations. Shows that cannot afford the increased cost may request inspection by APHIS representatives at no cost.

We also proposed including a provision in paragraph (c) of § 11.18 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 received no comments specifically addressing this section and are finalizing as proposed.

We also included a provision in proposed paragraph (d) requiring that, after the effective date of the final rule, only APHIS representatives and HPIs as defined in § 11.1 may 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 final rule must apply to APHIS and meet eligibility qualifications for authorization included in proposed § 11.19.

One commenter stated that APHIS did not propose an effective date as to when show management would be required to utilize APHIS representatives or HPIs as inspectors. Another commenter recommended that § 11.19 of the proposed rule should become effective as soon as possible following APHIS' consideration of public comments and development of a final rule. The commenter stated that this should be accomplished well in advance of the 2024 horse show season.

The requirements in proposed § 11.19 for accepting, training, and authorizing HPIs are effective 30 days after publication of this final rule. This will allow APHIS to prepare inspectors for the effective date of the remaining provisions of the rule, which is February 1, 2025.

It is the Agency's intent that, because the acceptance, training, and authorizing of HPIs may be accomplished in advance of the other provisions of the rule, the HPI-specific provisions of the rule do not depend on the other provisions, are capable of operating independently irrespective of the implementation of the other provisions, and are thus distinct and severable from these provisions. It is thus also the Agency's intent that, should a court hold any provisions of this rule to be invalid, such action shall not affect any other provision of this rule. For example, should the rule's prohibitions on the use of pads, action devices, and toe extensions within the Tennessee Walking Horse and racking horse industry be removed, HPIs could still be trained and authorized regarding the remaining provisions of the rule, as well as the Act itself, and the Agency would still have jurisdiction over such training and authorization. Likewise, should the provisions regarding DCIS be removed, HPIs could still be trained and authorized regarding the remaining provisions of the rule, as well as the Act itself, and the Agency would still have jurisdiction over such training and authorization. Finally, should the HPI-specific provisions be removed and DQPs be retained, DQPs could still be trained and authorized regarding the remaining provisions of the rule and the Act itself.

A few commenters requested that APHIS clarify the final rule to prohibit HIOs from licensing new DQPs, but to permit currently-licensed DQPs in good standing to continue to inspect horses for compliance under the revised provisions following the effective date, until the HPI program is fully implemented.

We are finalizing as proposed. DQPs can continue to perform inspections under the current program until the new program is implemented. We have no authority to prohibit HIOs from licensing new DQPs in accordance with the existing regulations as long as the current inspection program is in effect.

Authorization and Training of Horse Protection Inspectors

We noted in the proposal that, 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.

We proposed 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. As we noted in the proposal, 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 sorning. Such was also the finding of the 2010 USDA-OIG audit and the 2021 NAS study.⁷⁶

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.

As we noted in the proposal, 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

⁷⁶ OIG Audit Report, page 19; NAS study, Recommendation 2-1, page 4.

and standards of conduct and are responsible for ensuring that DQPs follow all regulatory requirements pertaining to them throughout § 11.7.

Some commenters opposed to the proposed rule expressed general support for the current DQP program and the performance of HIOs in training DQPs and facilitating shows. One such commenter opposed to abolition of the DQP program submitted several objections on this point.

First, the commenter stated that our proposed elimination of the DQP program is at odds with the HPA because it effectively eliminates the Tennessee Walking Horse industry's participation in the HPA's enforcement and the self-regulatory scheme that Congress enacted. The commenter opined that Congress amended the HPA in 1976 to give show management a role in the inspection process because USDA lacked the resources to conduct inspections on its own. Therefore, elimination of the DQP program is contrary to the HPA's vision of an industry that will work with USDA to police itself.

We disagree with the commenter that the Act includes industry self-regulation as a requirement, nor does it stipulate that inspectors come from the industry. The Act directs the Secretary of USDA to prescribe by regulation requirements 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 or to otherwise inspect horses. The proposed regulations follow this requirement by establishing a pool of qualified persons which management can then choose from and appoint. The proposed regulation allows management to appoint a qualified person to diagnose soring in horses. We explained at length in the proposal the inability of the industry under the current program to address conflicts of interest that impede accurate inspections and enforcement of violations of the Act.

The commenter stated that the credentials required to be an authorized HPI will make it cost prohibitive for shows and, in effect, force management to accept free APHIS inspectors at all horse shows. In addition, the likely shortage of private persons meeting APHIS' qualification standards will also induce horse show management to appoint APHIS representatives instead of HPis. The effect, the commenter stated, is that the proposed regulation does not give management a choice in who it appoints to inspect horses and, therefore, the regulation is not consistent with the Act's intent to encourage the horse industry to self-regulate.

The regulation was written to give management an ample pool of qualified inspectors to choose from and, at the same time, address the OIG audit and NAS study recommendations regarding conflict-of-interest issues. We believe it is consistent with the Act's self-regulatory scheme because it gives management choices.

Furthermore, to support its comment that the proposed regulation is at odds with the Act, the commenter cited USDA's ability to direct and control the HPis in ways that, in effect, makes HPis *de facto* USDA agents.

We are uncertain about what the commenter means by referring to HPis as "USDA agents," as they will be third-party contractors and not employees of APHIS. The Act gives USDA the authority to prescribe the requirements for the appointment by management of persons qualified to detect and diagnose a horse which is sore. This provision gives USDA authority to define, by regulation, "persons qualified" and to oversee the administration of the HPI program.

The commenter also stated that it is arbitrary for USDA to insist that private horse inspectors have doctoral training in veterinary medicine while its own representatives do not need any credential besides agency employment to inspect horses for soring, adding that any

qualification imposed on private persons seeking to serve as horse inspectors must equally apply to USDA representatives.

We do not require that HPIs necessarily have doctoral training. In proposed § 11.19(a)(1), under the HPI qualification requirements we stated that 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. Further, the commenter incorrectly stated that Agency representatives are not required to be credentialed to inspect horses. All APHIS representatives that conduct the actual hands-on inspections of horses for soring are veterinarians. The commenter further stated that the proposal lacks a principled basis by which to exclude professional horse trainers and farriers from its new licensing regime, and opined that neither veterinary technicians nor local animal welfare personnel have greater claim to accurately detect soring in horses than professional horse trainers and farriers and may have far less equine or even large-animal experience.

Under the Act, “[t]he Secretary shall prescribe by regulation requirements of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses....” We determined that persons qualified to inspect horses must be free of the conflicts of interest explained in the proposal and noted in the OIG audit and NAS study. Many trainers and farriers working in the Tennessee Walking Horse and racking horse industries are not likely to meet this requirement. Further, veterinary technicians and animal welfare officials have the animal welfare experience necessary to conduct inspections in good faith.

One commenter cited a Tennessee law, Tenn. Comp. R. & Regs. 1730-03-.02, that the commenter suggested may not authorize veterinary technicians to make diagnoses, stating that this law could also limit the pool of HPI applicants, which would make it more necessary to include professional horse trainers and farriers as eligible to apply to become HPIs.

We disagree that the Tennessee law cited would limit the pool of HPI applicants. Veterinary technicians in Tennessee who apply, meet the requirements, and are authorized as HPIs would be performing duties under the authority of the Horse Protection Act. To the extent that it could be argued that the Tennessee regulation conflicts with the Act, section 1829 of the Act would be operative, and the Tennessee regulation would be preempted.

The same commenter stated that the elimination of the DQP program was arbitrary and capricious because USDA's data in support of eliminating it is unreliable and does not provide a reasoned basis for USDA's decision.

We disagree that our proposed elimination of the current DQP program is arbitrary and capricious. We note evidence we presented in the proposal from the OIG audit report, which found that 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. Further, in a review of program data from 2005 to 2008, the OIG audit 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.

In the proposed rule, we cited findings of USDA's Office of the Judicial Officer (OJO), which issues final decisions on behalf of the Secretary of Agriculture, as evidence that sorning

continues to persist within the Tennessee Walking Horse and racking horse communities largely due to conflicts of interest. We stated that 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 sored 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. In the paragraph describing the OJO findings, we provided a footnote, footnote 12 of the proposed rule, which provided links to four illustrative examples of OJO decisions.

In citing of OJO decisions as support for eliminating the DQP program, a commenter suggested that we had mischaracterized the cases we cited. The commenter stated that three of the cases cited were unsuccessful appeals of default judgments that contain no discussion of the underlying examination, and in the fourth, the administrative law judge (ALJ) expressed significant concern about the credibility of the VMO but nonetheless found in APHIS' favor.

We agree that the three cases cited were unsuccessful appeals of default judgments; they were not cited to illustrate that the OJO had found problems with the DQPs. Rather, as described in footnote 12 in the proposal, the cases were cited to provide examples of "Decisions for showing sored horses." The footnote directed the public to 3 resources that collectively contained more than 30 other OJO Decisions and Orders regarding the HPA.

Some commenters questioned whether APHIS will have the resources to enforce the proposed changes to the regulations under the new program.

APHIS will have the resources, including inspectors, necessary to enforce the changes we are making to the regulations and to conduct ongoing evaluation of the effectiveness of the

program. We are tasked under the HPA to enforce its provisions and APHIS will allocate resources to this end as needed.

Proposed § 11.19 includes the qualifications required of persons who are applying to APHIS as HPI candidates. Applicants will 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. In the proposal, we invited 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.

One commenter stated that there is no need to have a tiered process for narrowing down potential applicants to see if they meet the HPI requirements, adding that the requirements themselves are simple enough and that tiers imply inaccurately that there are two grades of inspectors.

We are finalizing the tiered process as proposed. Section 11.19(a) clearly explains that HPI applicants must meet Tier 1 qualifications first and will be further evaluated based on Tier 2 qualifications. We see no implication that two distinct grades of inspectors are being considered.

Prior to authorization, APHIS will 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 will be required to submit an HPI application to APHIS using guidance provided on the APHIS Horse Protection Program website.⁷⁷

⁷⁷ <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/hpa>.

We listed in paragraph (a)(1) of proposed § 11.19 the qualifications of Tier 1, which require that the applicant 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 HPIs and applicants to be HPIs. Tier 1 includes no special provision for HPI eligibility for farriers, horsemen, and other laypersons with industry experience.

A substantive number of commenters stated that due to a shortage of qualified equine veterinarians and veterinary technicians, USDA will be unable to secure qualified equine experts to conduct inspections. Some cited an American Association of Equine Practitioners study as evidence, noting that the study indicates by the year 2030 it is estimated the U.S. market will require 5,300 equine veterinarians just to stay even.

The commenter is referring to the total number of U.S. equine veterinarians estimated to be needed by the year 2030. As of 2022, there were 3,645 practicing equine vets in the United States.⁷⁸ We acknowledged in the proposal 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. Given this possibility, the proposal includes a provision for authorizing qualified veterinary technicians and local animal control officials with equine experience to conduct inspections if the numbers of licensed equine veterinarians applying are

⁷⁸ “From the President: Making the Work Fit the Workforce.” *Equine Veterinary Education* 12:3, December 2022: page iii.

insufficient. All qualified persons authorized as HPIs will receive the training sufficient to conduct accurate and objective inspections for soring.

Further, given the shortage of veterinarians cited by commenters, we have elected not to finalize the requirement that veterinarians be licensed under proposed § 11.19(a)(1) as a qualification for authorization. We are also basing this change on the fact that APHIS VMOs are not required to be licensed. As for the commenters' concern that there is also a shortage of veterinarians (whether licensed or not) or qualified veterinary technicians that have sufficient equine experience to meet the qualification requirements in the proposed regulation, we acknowledge the nationwide shortage of veterinarians and will authorize veterinary technicians and State/local animal control officers to conduct inspections if an insufficient number of veterinarians apply. This, however, does not preclude our duty under the Act to enforce its provisions accordingly and the Agency will allocate resources as needed to do so.

Some commenters asked that we expand the inspector pool to allow current DQPs to be considered, as they are skilled horsemen and capable of identifying a sore horse and succeeding in other inspection requirements.

Any person may submit an application to be considered for authorization. However, as indicated in the OIG audit, the NAS study, and in the view of all major veterinary organizations, 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, or whose judgment may be impaired by conflicts of interest. We intend to train and authorize HPIs to effectively detect soring in horses.

Some commenters stated that the Department needs to declare that only large animal veterinarians, specifically equine veterinarians, are allowed to be HPIs, as a licensed veterinarian may have no knowledge of horses. A few commenters stated that few State or local animal control officials have any experience with horses.

While our preference is to authorize qualified equine veterinarians as HPIs, we will ensure that other veterinarians with equine experience, as well as qualified veterinary technicians and local animal control officials with equine experience, receive the training required to conduct accurate and objections inspections for soring. The regulation does not require applicants to be equine veterinarians, just that the applicant meets the Tier 1 qualifications and, under Tier 2, “demonstrate[s] 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.” We acknowledge that many animal control officers do not regularly work with horses, but those who do apply with an appropriate amount of equine experience will be considered as needed.

One commenter noted that some veterinary technicians are not accredited and as a result probably do not “possess a level of medical training” necessary to be authorized as an HPI. The commenter recommended that we add “accredited” to the veterinary technician requirement in proposed § 11.19(a)(1). Another commenter stated that APHIS must clarify and strengthen the criteria for seeking accredited veterinary technicians.

We are making no changes in response to the comment. Veterinary technicians applying for authorization as HPIs will be evaluated based on their knowledge and experience, and whether they are likely to be able to successfully perform the duties required. APHIS’ internal criteria for selecting candidates will take into account accreditation status and types of

accreditations earned, as well as equine experience, so we do not see a need to expressly include “accredited” to the requirement.

A commenter asked what criteria APHIS will use when determining to open the HPI applicant pool to credentialed veterinary technicians.

While APHIS will prioritize authorizing veterinarians with equine experience as HPIs, we will consider authorizing qualified veterinary technicians and animal welfare officials with equine experience if insufficient numbers of qualified veterinarians with equine experience apply. All qualified persons whom APHIS authorizes as HPIs to conduct inspections will be trained to have the knowledge and skills necessary to accurately diagnose soring in horses.

If an applicant meets the qualifications in Tier 1, we will then evaluate whether a candidate meets the qualifications listed in Tier 2, which we include in proposed paragraph (a)(2). In order for APHIS to consider the applicant as a candidate to be an HPI, all qualifications must be met. Guidance explaining details of these qualifications will be posted to the APHIS Horse Protection website.

We proposed in § 11.19(a)(2)(i) of the Tier 2 qualifications that the applicant must 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.

A commenter asked how applicants will be required to demonstrate this knowledge.

On the HPI application submitted to APHIS, applicants will be asked to describe their applicable knowledge and experience. Throughout the application process, APHIS will request additional information to determine an applicant's suitability as needed. APHIS will ensure that authorized HPIs, with confirmed prior equine experience, have the knowledge necessary to perform effectively in the role. We are finalizing paragraph (a)(2)(i) as proposed.

For an applicant to be considered for HPI authorization, we proposed in § 11.19(a)(2)(ii) that the applicant must not have been found to have violated any provision of the Act or the regulations in 9 CFR part 11 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. 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. We received no comments specifically on this provision and are finalizing as proposed.

We proposed in § 11.19(a)(2)(iii) the qualification requirement that 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. 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 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 provision identifies conflicts of interest

at the application stage, rather than applying them after the inspector has already been authorized to conduct inspections.

One commenter stated that the prohibition against HPIs, their family members, or their employers participating in the showing, exhibition, sale, or auction of horses or acting as a judge, farrier, or management is too broad, and suggested that the prohibition would eliminate people who exhibit or show horses in dressage, jumping, and reining events that do not use Tennessee Walking Horses or racking horses. Similarly, another commenter asked if this requirement refers to all horses or just to Tennessee Walking Horses and racking horses, adding that if it refers to all horses, it might eliminate many equine veterinarians as HPI candidates as many will have family members involved in their respective horse world. The commenter asked that we limit the prohibition to involvement with the two breeds mentioned. Another commenter asked if proposed § 11.19(a)(2)(iii) will prohibit an HPI from buying or selling a horse.

We have reviewed commenter concerns over this HPI qualification requirement in proposed paragraph (a)(2)(iii) and agree that it is unnecessarily broad in scope. The requirement potentially excludes persons having a financial or other association with horse breeds and events in which soring confers no competitive advantage, and extends to their immediate families and anyone from whom the applicant receives a financial benefit, as well as persons wanting to buy or sell horses. Holding all applicants to a such a rigid regulatory qualification standard, without APHIS having the flexibility to assess their individual circumstances, would potentially shrink the pool of qualified persons otherwise eligible to apply to be HPIs. Accordingly, we are removing this qualification requirement from the regulations and in its place will ask applicants to sign a code of conduct attesting to their freedom from financial or professional conflicts of interest, subject to screening and verification by APHIS. Under this code of conduct, applicants

and trainees can be denied continuation in the program and HPIs can be disqualified if found to have conflicts of interest.

Another commenter asked how APHIS can screen HPI applicants for biases and conflicts of interest against Tennessee Walking or racking horses, adding that applicants could have preconceived ideas that all Tennessee Walking Horses and racking horses are sore.

We reply that the stated purpose of screening applicants for conflicts of interest is not to determine any personal biases an applicant may or may not have, but whether the applicant is situated in any financial or other relationship or otherwise has engaged in actions that would affect his or her ability to inspect horses objectively. If an applicant has behaved or communicated in such a way that indicates an unwillingness to perform unbiased inspections, we believe the screening provisions we proposed in paragraph (a)(2)(v) and adherence to the code of conduct will address such disqualifying behaviors. Furthermore, the training HPIs receive will allow them to distinguish sore from non-sore horses using techniques validated by veterinary best practices.

A few commenters recommended that in addition to the screening proposed in the rule to check for criminal and professional breaches of conduct, veterinarian HPIs should be restricted from servicing covered events within a 30- to 50-mile radius of their veterinary practice. The latter should also apply to non-veterinarian HPIs.

We are making no changes in response to the comment. In the event that a relationship exists between an HPI or veterinarian and event management resulting in a conflict of interest, the number of miles in distance the practice may be from the event is immaterial. Veterinarians typically travel at or beyond this radius to serve their clients.

A commenter stated that HPIs should not be permitted to inspect a horse if family or business relationships could impair the HPI's objectivity. The commenter suggested that APHIS include a recusal requirement if an HPI is presented with a horse owned, trained, or exhibited by or in the custody of a family member, co-worker, or client, as well as a requirement that show management provide copies of show entries to HPIs at least 2 business days prior to the show so that HPIs can identify potential recusal situations in advance.

We note that authorized HPIs will undergo screening for conflicts of interest and will be required to sign a code of conduct, which should preclude a recusal requirement. As to providing HPIs with a list of show entries before the date of the show, we do not see the utility of this as some horses are typically entered on the day of the show. HPIs, however, are free to request an advance entry list from a show if they wish.

We proposed in paragraph (a)(2)(iv) 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 requirement in current § 11.7(c)(6) in which HIOs must not license such persons. We received no comments specifically on this requirement and are finalizing as proposed. With the removal of proposed § 11.19(a)(2)(iii), we are redesignating proposed paragraph (a)(2)(iv) as (a)(2)(iii).

We proposed in paragraph (a)(2)(v) 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. We proposed that applicants screened under Tier 2 will 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. We received no comments specifically on this provision and are finalizing as proposed. With the removal of proposed § 11.19(a)(2)(iii), we are redesignating proposed paragraph (a)(2)(v) as (a)(2)(iv).

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

One commenter recommended that this paragraph be expanded to make any conviction under State or Federal law for animal cruelty or neglect, or any administrative penalty or suspension imposed for violating professional licensure requirements, a disqualifying factor for authorization as an HPI.

We are making no change in response to the commenter. Disqualifying factors for authorization as listed by the commenter are already addressed under proposed § 11.19(a)(2)(v)(D), which covers any other evidence reflecting on the honesty, reputation, integrity, and reliability of the applicant. We are finalizing this change as proposed.

Under proposed paragraph (a)(2)(v)(B), APHIS will 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. Also, under proposed paragraph (a)(2)(v)(C), APHIS will review judicial determinations in any type of litigation adversely reflecting on the honesty, reputation, integrity, and reliability of the applicant. Finally, we proposed in paragraph (a)(2)(v)(D) to review any other evidence reflecting on the honesty, reputation, integrity, and reliability of the applicant to perform HPI duties.

We received no comments specifically on these provisions and are finalizing as proposed. With the removal of proposed § 11.19(a)(2)(iii), proposed paragraphs (a)(2)(v)(A) through (a)(2)(v)(D) will become (a)(2)(iv)(A), (a)(2)(iv)(B), (a)(2)(iv)(C), and (a)(2)(iv)(D) respectively.

Current § 11.7(b) contains several specific training requirements that HIOs are required to provide to DQPs. As APHIS will train all HPIs to perform inspection duties, we proposed 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 will train HPIs using professionally recognized, science-based approaches to detecting sorning, many of which were evaluated and recommended in the above-mentioned NAS study. Continual training of HPIs as APHIS determines to be necessary will be a condition of maintaining authorization to inspect horses. Additional details of the training program will be available on the APHIS Horse Protection website.

A commenter recommended that APHIS include the list of training subjects from the 2016 proposed rule and 2017 final rule and exam requirement in this final rule. The commenter added that including these training topics will provide transparency that APHIS will instruct HPIs on relevant subject areas for diagnosing and detecting sorning and enforcing the HPA.

APHIS will determine subject areas needs and training necessary for the program, which may differ from what was published in 2016. We intend to make publicly available an inspection guide that includes training procedures by this rule's effective date. We are finalizing § 11.19(b) as proposed.

Under proposed § 11.19(c), APHIS will maintain a list of all HPIs on the APHIS Horse Protection website. The list will also be available by writing to APHIS via email or U.S. mail.

Event management can appoint an HPI of their choosing from the list for a given date as availability allows.

Several commenters stated that the rule appears to allow show management to select which USDA-authorized inspector(s) will examine horses and that further clarity is needed concerning this point and how it will work in practice. They added that the department should directly assign USDA licensed-and-trained inspectors to shows.

Section 4 (15 U.S.C. 1823(c)) of the Act allows for event management to appoint persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for the purposes of enforcement. This new rule is consistent with what is required in the Act itself and describes the process in which event management may either appoint an HPI or request an APHIS representative to inspect horses. All HPIS available for appointment will be trained and authorized by APHIS and if event management elects to have an APHIS representative attend the event, APHIS will determine who that representative will be.

One commenter stated that, contrary to APHIS' contention, section 4 of the Act does not require that management be granted the choice of which inspector to utilize. The commenter suggested that to the extent section 4 of the HPA requires some element of choice, that requirement is satisfied by the choices already presented: 1) to appoint an inspector in the first place and, if so, 2) the choice to request an APHIS representative or an HPI.

We disagree with the commenter. Section 4 (15 U.S.C. 1823(c)) of the Act states that “[t]he Secretary shall prescribe by regulation requirements for the appointment by the management...of persons qualified to detect and diagnose a horse which is sore....” The first choice presented by the commenter does not include the act of appointing a specific inspector.

The second choice is a request for APHIS to appoint an inspector rather than allowing management to appoint one as the Act requires.

One commenter expressed concern that allowing management to choose an HPI from a list provided to them raises the potential for abuse, as show management could select an HPI that is more lenient to show management and perpetuate problems with conflicts of interest. Another commenter agreed and expressed concern that a group of HPIs sympathetic to “big lick” proponents could control the process by which those HPIs are assigned to and paid by horse shows affiliated with the HIO.

We have proposed a screening component for HPI applicants and a code of conduct for authorized HPIs sufficient to address the concerns of the commenters. APHIS will regularly evaluate authorized HPIs for conflicts of interest and can permanently disqualify any such HPI that fails to perform his or her duties satisfactorily. We are finalizing § 11.19(c) as proposed.

We proposed in § 11.19(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 will 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 will 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 will grant or deny the appeal, in writing, stating the reasons for the decision. We also proposed 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 will 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. We received no comments specifically on these provisions and are finalizing as proposed.

General Comments

A substantial number of commenters expressed trust that APHIS will expeditiously finalize a new HPA rule in order to protect horses from abuse.

This final rule does such.

Other commenters opposed to the proposed action stated that it constituted an overreach of the USDA through excessive regulation of the gaited horse industry.

The Horse Protection Act, enacted by Congress, gives the Secretary of USDA the authority to issue such rules and regulations as he deems necessary to carry out its provisions, including preventing sore horses from participating in horse shows, exhibitions, sales, and auctions. The proposed rule and this final rule provide ample evidence that the regulatory revisions in this final rule are warranted based on the practices of the industry that is regulated.

Several commenters noted that the racking horse is a specific breed and should not be confused with other gaited breeds that perform a rack, and recommended that the term ‘racking horse’ be changed to “Racking Horse,” in order to avoid confusion between the specific breed and other breeds that perform a rack.

As we noted earlier in this final rule, the racking horse is a breed derived from the Tennessee Walking Horse with a natural gait known as the “rack,” a four-beat gait with only one foot striking the ground at a time. We are making no change, as we do not consider the lower-case usage of the term to be a point of confusion about this breed with other breeds.

One commenter stated that a recent study reported a genetic mutation in horses that affects gait and makes them more susceptible to soring, adding that the mutation can occur in

any horse breed, not just those listed in the rule. The commenter recommended that APHIS expand the scope of the rule to include all gaited horse breeds or types that have the genetic mutation that predisposes them to soring.

We are making no changes based on the commenter's recommendation. The commenter did not cite a specific article but apparently is referring to a mutation in the DMRT3 gene (also referred to as the "gait keeper" mutation) that can affect locomotion in horses.⁷⁹ The mutation occurs naturally, and its presence does not make a horse more predisposed to being sored.

Some commenters stated that the USDA should work with the industry rather than try to impose additional regulations supported by radical animal rights groups.

USDA seeks to enforce provisions of the HPA objectively and acknowledges the importance of working with the industry toward that end. USDA collaborated closely with the gaited horse industry to develop the Designated Qualified Persons program in 1979, and since that time we have continued to work with the industry in developing regulatory policy, procedures, and methods of inspection to eliminate soring. This work is described in the proposed rule. As the industry under the current regulations has not made adequate progress in eliminating soring in horses, we are revising the regulations so that APHIS has greater oversight over inspections and enforcement. The revisions were made by the Agency on its own accord based on our experiences and data, as corroborated by third parties that had no inherent bias towards the industry or the Agency.

A commenter asked if APHIS has a hierarchical matrix to sort out owners from trainers, grooms, and transporters so as to assign responsibility for prosecution.

⁷⁹ One such discussion of this topic is Andersson, L., Larhammar, M., Memic, F. et al. *Mutations in DMRT3 affect locomotion in horses and spinal circuit function in mice*. Nature 488, 642–646 (2012). <https://doi.org/10.1038/nature11399>.

APHIS maintains no such matrix, but we follow section 5 (15 U.S.C. 1824) of the Act, which lists unlawful acts by those transporting, showing, exhibiting, entering, selling, auctioning, or offering for sale any horse which is sore and includes owners who allow such activities. These activities do not include groomers unless a groom also fulfills one of the aforementioned roles.

Several commenters stated that the USDA has ignored due process and violated property rights by not allowing horses to be shown or exhibited, regardless of whether they are considered by APHIS representatives to be sore.

While APHIS officials may inspect horses and notify management of its reasonable belief that a horse is sore or otherwise in noncompliance with the Act and regulations, it is management's decision alone whether to disqualify or prohibit the horse from being shown, exhibited, sold, or auctioned. Management that does not disqualify a horse that has been diagnosed as sore at the event by an APHIS representative or HPI are subject to possible criminal and civil penalties.

Some commenters stated generally that APHIS lacks an understanding of the Tennessee Walking Horse and racking horse industries.

Commenters provided no support for this statement. From 1979 to the present, APHIS has administered the Horse Protection program under which the Agency certifies HIOs to train and license DQPs to conduct inspections. As we noted in the proposed rule, APHIS has also conducted collaborative outreach and training programs with the industry. Despite our efforts, the industry has shown scarce improvement in enforcing the HPA. Our oversight of the program has provided us with ample data regarding soring and an ever-evolving familiarity with industry practices and activities.

Several commenters stated that the current self-regulatory approach and program inspection structure are sufficient to prohibit soring.

We disagree with the commenters. As detailed in the proposed rule and this final rule, the results of APHIS inspections of horses at HPA-covered events, corroborated by the findings of the earlier cited USDA-OIG audit and NAS study, as well as findings by the USDA Judicial Officer, indicate that the current inspection program is inadequate to reduce instances of soring.

Many commenters, including Members of Congress and a national veterinary organization, asked that APHIS not extend the comment period for the rule, while other Members of Congress and stakeholders in the gaited horse industry asked us to extend it by 60 days. Commenters requesting a 60-day extension stated that the current comment end date does not allow enough time for the industry to obtain its own economic analysis of the proposed rule, retain and meet with an expert, provide data, and secure a completed analysis.

We made no changes to the 60-day comment period for the proposed rule. We determined this number of days to be sufficient for persons to prepare and submit substantive comments, particularly as the industry had already completed the groundwork necessary for drafting and submitting a detailed economic analysis on the 2016 HPA proposal.⁸⁰ That proposal included many of the same major revisions in this current rulemaking, including APHIS assuming the training and authorizing of inspectors, a farrier requirement, and prohibition of action devices and pads for Tennessee Walking Horses and racking horses.

APHIS provides statistical information on its inspection activities, regulatory correspondence, and enforcement actions under the HPA to serve the public interest in the

⁸⁰ For one example, see National Celebration comment, page 95: <https://www.regulations.gov/comment/APHIS-2011-0009-11184>.

actions and functions of the Federal government and in compliance with applicable laws. One commenter stated that the Tennessee Walking Horse industry has a 98 percent compliance rate with the Act and regulations. Several other commenters, including a few referring to compliance rates “documented by Rood and Riddle,” cited rates of 90 percent or higher.

The compliance percentages cited by the commenters appear to consist of combined data from inspections at both flat-shod and performance horse shows, including many events at which no APHIS officials were present to oversee DQP inspections. The commenters provided no data on compliance rates from the Rood and Riddle Equine Hospital and APHIS was unable to locate any data issued by Rood and Riddle regarding HPA compliance rates.

A few commenters stated that the swabbing of horses with alcohol by APHIS officials at the 2023 Tennessee Walking Horse National Celebration was a form of harassment and abuse.

We disagree with the commenters. The swabbing, which is harmless to horses, was in conjunction with testing for prohibited substances that can cause or mask the effects of soring. APHIS swabs with alcohol because it helps to lift the substance to be tested off the skin. APHIS is authorized to perform such testing under its statutory obligation to enforce compliance with the Act. The swabbing allows us to specifically identify the substance on the pasterns but is not required to identify a horse as noncompliant, as any Tennessee Walking Horse or racking horse with a substance on its limbs is in noncompliance under current § 11.2(c) and the proposed regulations.

Some commenters suggested that APHIS file animal abuse charges in cases of soring.

The Act and regulations are enforced at the Federal level by USDA. Civil and criminal proceedings are initiated under the Act. We note that many local jurisdictions have animal cruelty laws that cover animal abuse.

A commenter suggested the proposed rule should become effective as soon as possible following APHIS's consideration of public comments and development of final prohibited actions, practices, devices, and substances, and should, if at all possible, be accomplished well in advance of the 2024 horse show season.

We are making no such change, but we acknowledge the commenter's interest and have worked to complete this rulemaking in as timely a manner as possible under the rulemaking process. There are legal and procedural requirements that we must follow regarding any regulatory action including, but not limited to, the need for review of all comments received to fulfill the requirements of the Administrative Procedure Act; the need to review, and, as necessary, revise regulatory text and supporting documentation in response to comments; and the need to comply with Executive Orders governing the regulatory process.

A commenter stated that a digital directory with contact information for HPIs and disqualified persons would improve compliance and enforcement for both APHIS and event managers. Another commenter recommended that APHIS collaborate with the USEF and commercial horse show software companies to develop an integrated software database system to furnish up-to-date lists of disqualified horses, owners, and custodians.

We acknowledge the commenters' suggestions and will consider them as the Horse Protection program continues to enhance enforcement efforts. We note that we intend to make a list of HPIs available on the Horse Protection website, where lists of disqualifications can currently be found.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule with the changes discussed in this document.

Executive Orders 12866, 13563, and 14094 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866, as amended by Executive Order 14094, “Modernizing Regulatory Review,” and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rulemaking. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides a final regulatory flexibility analysis that examines the potential economic effects of this rulemaking on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov website (see footnote 10 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. A proposed rule was published 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. This final rule will codify most of the provisions of the proposed rule. The objective of the final rule is more effective enforcement of the Horse Protection Act.

The principal amendment to the Horse Protection regulations is that 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 HPA. APHIS will authorize applicants, preferably veterinarians, as Horse Protection Inspectors (HPI⁸¹) after screening them for potential conflicts of interest and conducting training. APHIS will 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. Another provision of the final rule is that the event management may elect instead to have an APHIS representative conduct inspections. The final rule will remove all regulatory responsibilities and requirements for horse industry organizations and associations (HIOs).

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 exhibitions that contract with HIOs to provide DQPs. The OIG audit noted that at times DQPs fail to inspect horses adequately or to

⁸¹ The term Designated Qualified Persons or DQPs, would be replaced by HPIs or horse protection inspectors under the proposed rule.

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 years (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, including 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.

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 only by DQPs during the same period, DQPs detected just 321 instances of noncompliance with the HPA out of the 13,198 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 final rule will also prohibit all action devices, and all non-therapeutic pads, wedges, toe extensions, and lubricants at all events involving Tennessee Walking Horses and racking horses, as these items are used to induce or hide soring. The rule will 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 will 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 utilizes an APHIS representative or HPI. Also, for horse shows that utilize an HPI, if there are more than 100 horses participating in the show, there must be an additional HPI.

The prohibition of pads, wedges, toe extensions, and action devices does not impose costs on show management or participants. However, performance horses would potentially have to be retrained. It may take two to six months resulting in potentially forgone revenue of \$53 to \$163 per horse. Most of the income generated from these horses are from other sources such as breeding.

Of these 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, along with recordkeeping, for show management and participants. The amendments requiring an inspection shelter and a backup power source may also result in additional costs. The requirement for shelter would potentially impact the other classes of horses as it is currently a requirement of the Tennessee Walking Horses and racking horses.

In the final rule, event managers have the option to have an APHIS inspector present at no cost to them. This means that there will be no additional expenses incurred by event managers in terms of hiring inspectors. However, if an APHIS inspector is not available, event management can still proceed with the event but will assume full liability if any horses entered in the event are found to be sore. Alternatively, event management can choose to hire and pay an inspector as under the current regulations. Event management may have the ability to pass on the cost of hiring an inspector to the exhibitors. This allows management to allocate the expenses associated with the inspector to the exhibitors, as per their discretion.

Currently, horse shows either assume responsibility for conducting preshow inspections for evidence of soreing or contract with an APHIS-approved HIO to provide DQPs to conduct inspections. HIOs may be able to pass this cost on to the exhibitors and participants in the show. Under the final rule, if an APHIS inspector is used, they will 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 final 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.

Based on the estimates of an expert elicitation commissioned by APHIS⁸², 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. 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 rulemaking are small.

The final rule would result in foregone revenue for most current DQPs, who would not meet APHIS' requirements for HPIs under the terms of the 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 new requirements. For new HPIs who were not previously DQPs, this final rule will result in new income.

Management of horse shows may incur an additional \$200 to \$500 to provide an inspection tent to protect the horses from the elements. This is currently a requirement for the performance horses so the other horse classes will be affected.

⁸² Expert Elicitation in Support of the Economic Analysis of the Tennessee Walking and Racking Horse Industry; RTI International, 3040 Cornwallis Road, Research Triangle Park, NC 27709: November 2012.

While the final rule will result in better enforcement of the HPA, implementation of the changes will result in additional costs to APHIS in terms of conducting inspections, screening, and training potential HPIs. We expect that APHIS costs will increase by approximately \$6.4 million. This assumes that APHIS inspectors will 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. There is also a one-time rule familiarization cost of about \$2,047 per entity. Training costs will 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 will 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 will pay travel expenses and other costs associated with attending training.

The benefits of the final rule are expected to justify the costs. The final-rule changes to the Horse Protection regulations will 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 final 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 final 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 will 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 final 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 the number of VMOs available at any given time and their geographic distribution. Further, section 1823, paragraph (c) 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 final 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 HPIs could be cost-prohibitive for smaller shows.

The Small Business Administration's (SBA) small-entity standard for business associations that promote horses through the showing, exhibiting, sale, auction, registry, or any activity which contributes to the advancement of the horse, is not more than \$15.5 million in annual receipts (North American Industry Classification System (NAICS) 813910). Based on information obtained from the Census of Agriculture and the Economic Census we infer that the entities affected by this final rule are likely small by SBA standards.

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

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

Executive Order 12372

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

Executive Order 12988

This final 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 final rule.

Paperwork Reduction Act

In accordance with Section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), some of the reporting and recordkeeping requirements included in the proposed rule and this final rule were previously approved under Office of Management and Budget (OMB) control number 0579-0056. The remaining reporting and recordkeeping requirements that were solely associated with the proposed rule and this final rule were submitted to OMB as a new information collection and were assigned OMB comment-filed number 0579-0490. After approval, this information collection will be merged into 0579-0056 in the future.

New information collection requirements created by the regulations of this final rule include Unsatisfactory Performance Notices; Retention of Records for Horse Therapeutic Treatment; Providing Show, Exhibition, Sale, or Auction Information to APHIS Within 30 Days; Providing Changed Show, Exhibition, Sale, or Auction Information to APHIS Within 15 Days; Post-Show Reports; and Authorization of HPI Applicants. As described above, APHIS received several public comments on a seventh information collection requirement in the proposed rule, Requests for Variance, and it has chosen not to finalize this activity.

The remaining information collection procedures are unchanged. The six activities in this final rule present a new total of 530 estimated respondents, 1,135 estimated responses, and 610 hours of estimated burden. The estimated time per response changed slightly from 33 minutes per response to 32 minutes per response.

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. Specific details about forms for reportable activities can be found in the information collection request supporting statement.

The use of electronic email submissions affords a decrease in notification time, record of submission, and reduction of paperwork, costs, and mailing activities. Respondents are free to maintain required records as best suited for their organization. APHIS removed fax submissions as a routine option deeming the technology obsolete.

For assistance with E-Government Act compliance related to this final rule, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851-2533, or the Animal Care contact listed above under FOR FURTHER INFORMATION CONTACT.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act, 5 U.S.C 801 *et seq.*) OIRA has determined that this rule does not meet the criteria set forth in 5 U.S.C. 804(2).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104.4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, tribal governments, and the private sector. Under section 101 of the UMRA, APHIS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires APHIS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

APHIS has reviewed this rule in accordance with Executive Order 13132 regarding Federalism and has determined that it does not have “federalism implications.” The rule does not “have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Reporting and recordkeeping requirements.

Accordingly, we are revising 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 HPAs.

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

11.5 Appeal of disqualification.

11.6 Prohibitions concerning exhibitors.

11.7 Dermatologic conditions indicative of soring.

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.

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 adult person, age 18 or older, who has control of and presents a horse for inspection at any horse show, horse exhibition, horse sale, or horse 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 soreing. HPIs are not employees of APHIS.

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 disqualification.

Any horse owner, trainer, exhibitor, custodian (or any other person responsible for entering the horse in an event), or transporter may appeal to the Administrator on whether a disqualification decision concerning a horse at a horse show, horse exhibition, horse sale, horse auction, or other covered event was justified. The APHIS representative or HPI will provide the inspection report to the custodian following the disqualification. There may only be one appeal per disqualified horse per event; however, all parties with interest in the disqualification may contribute to the appeal. To appeal, the horse owner, trainer, exhibitor, custodian (or any other person responsible for entering the horse in an event), or transporter must send a written statement contesting the disqualification and include any documentation or other information in support of the appeal. To receive consideration, the appeal must be received¹ by the Administrator, preferably by electronic mail, to horseprotection@usda.gov within 21 days of the date the horse owner, trainer, exhibitor, custodian (or any other person responsible for entering the horse in an event), or transporter received the disqualification that is the subject of the appeal. If expedited review of the appeal is requested, this must be noted as such, and information in support of this request must accompany the appeal. The Administrator will send a

final decision, in writing via either electronic mail or postal mail, to the person requesting the appeal as promptly as practicable.

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

§ 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 soring.

(b) *Prohibited devices, equipment, and practices.* The use of the following action devices, equipment, or practices on any horse, at any horse show, horse exhibition, horse sale, or horse 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 that weighs 16 ounces or less, 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 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 3/4 inch in length. That portion of caulk at

the rear of a horseshoe in excess of 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 1 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 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.

(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, horse exhibition, horse sale, or horse 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, horse sale, or horse auction, unless such horse has been prescribed and is receiving therapeutic treatment using substances as approved in writing by a licensed veterinarian.

(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 Dermatologic conditions indicative of soring.

If an HPI or APHIS representative, upon inspection, finds that any limb of a horse displays one or more dermatologic conditions that they determine are indicative of soring as that

term is defined in 15 U.S.C. 1821, the horse shall be presumed to be sore and subject to all prohibitions set forth in 15 U.S.C. 1824. Examples of dermatologic conditions that will be evaluated in determining whether a horse is sore shall include, but are not limited to, irritation, moisture, edema, swelling, redness, epidermal thickening, and loss of hair (patchy or diffuse).

§ 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, and an APHIS representative will grant the request: 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.

(Approved by the Office of Management and Budget under control number 0579-0056)

§ 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, horse exhibition, horse sale, or horse 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, horse exhibition, horse sale, or horse 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 be on call within the local area. Management must ensure that the farrier appear promptly at the horse show, horse exhibition, horse sale, or horse auction 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, horse exhibition, horse sale, or horse 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, horse exhibition, horse sale, or horse 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.

(Approved by the Office of Management and Budget under control numbers 0579-0056 and 0579-0490)

§ 11.14 Records required and disposition thereof.

(a) The management of any horse show, horse exhibition, horse sale, or horse 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 wedges, pads, substances, or toe extensions 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 horse show, horse exhibition, horse sale, or horse 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.

(c) The Administrator may, in specific cases, require that a horse show, horse exhibition, or horse sale or auction records be maintained by management for a period in excess of 90 days.

(Approved by the Office of Management and Budget under control numbers 0579-0056 and 0579-0490)

§ 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.

(Approved by the Office of Management and Budget under control number 0579-0056)

§ 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 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, horse exhibition, horse sale, or horse 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, horse exhibition, horse sale, or horse 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.

(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 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 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.

(Approved by the Office of Management and Budget under control numbers 0579-0056 and 0579-0490)

§ 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, horse exhibition, horse sale, or horse 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.

(Approved by the Office of Management and Budget under control number 0579-0056)

§ 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 February 1, 2025, 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 February 1, 2025, 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, horse exhibition, horse sale, or horse 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 located 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 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 must not have been disqualified by the Secretary from performing diagnosis, detection, and inspection under the Act.

(iv) 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 must 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.¹

(d) *Denial of an HPI application and disqualification of HPIs--(1) Denial.* APHIS may deny an application for authorization of an HPI, or deny continuation in the program to an HPI trainee not yet authorized, 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.

(Approved by the Office of Management and Budget under control number 0579-0490)

1Send email to horseprotection@usda.gov, or U.S. mail to USDA/APHIS/AC, 2150 Centre Ave. Building B, Mailstop 3W11, Fort Collins, CO 80526-8117.

Done in Washington, DC, this 26th day of April 2024.

Jennifer Moffitt

Under Secretary for Marketing and Regulatory Programs.