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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. APHIS-2026-0067]

RIN 0579-AE93

Horse Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: On May 8, 2024, the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture published in the *Federal Register* a final rule that amended the regulations promulgated under the Horse Protection Act (the May 2024 Horse Protection final rule). APHIS is proposing to remove the provisions of the May 2024 Horse Protection final rule that have been vacated by court order and proposing to withdraw the remaining non-vacated provisions of the May 2024 Horse Protection final rule to ensure that the regulations afford due process and better align with the Act. APHIS is also proposing to amend the regulations by revising, among other things, the certification requirements for training and licensing of designated qualified persons (DQPs); enhancing DQP inspection procedures and the process for appealing APHIS inspections before any possible disqualification by management; and clarifying that if a horse is determined to be sore, it is disqualified from participating in the class in which the inspection took place and not the entire event.

DATES: We will consider all comments that we receive on or before [Insert date 30 days after date of publication in the *Federal Register*].

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

- Federal eRulemaking Portal: Go to www.regulations.gov. Enter APHIS-2026-0067 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2026-0067, Regulatory Analysis and Development, PPD, APHIS, 5601 Sunnyside Ave, Beltsville, MD, 20740.

Supporting documents and any comments we receive on this docket may be viewed at Regulations.gov or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Martha Keller, DVM, Director of the Center for Animal Welfare, Animal Care, 2150 Centre Ave. Bldg. B, Mailstop 3W11, Fort Collins, CO 80526; (970) 821-5734.

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 necessary to carry out the purposes of the Act, which include eliminating the cruel practice of soring horses and promoting fair competition.

The Secretary has delegated responsibility for administering the Act to the Administrator of the U.S. Department of Agriculture's (USDA's) 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 established under the Act are contained in 9 CFR part 11 (referred to below as the regulations), and 9 CFR part 12 lists the rules of practice governing administrative proceedings.

In the three headings immediately below, we provide a summary, first, of the sections of the Act, then, of the sections of the current regulations, and lastly, of the sections of the final rule we published on May 8, 2024, referred to below as the May 2024 Horse Protection final rule (89 FR 39194-39251, Docket No. APHIS-2022-0004).

Summary of The Horse Protection Act

The current structure of the HPA is summarized below.

Section 1821 of the Act, "Definitions" (15 U.S.C. 1821), contains definitions of terms used in the Act. Saliently for this proposed rule, the Act defines a "sore" horse as follows: "The term 'sore' when used to describe a horse means that:

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

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

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

(D) any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse,

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

Section 1822 of the Act contains a Congressional statement of findings. In addition to declaring that the soring of horses is cruel and inhumane, Congress further finds 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.

Section 1823 of the Act contains requirements pertaining to horse shows, exhibitions, sales, and auctions. Paragraph (a) of the section requires the management of horse shows and exhibitions to disqualify any horse from being shown or exhibited if the horse is sore or if the management has been notified by a person appointed by the management in accordance with regulations issued by USDA or by USDA that the horse is sore.

Paragraph (b) of the section contains similar requirements directed to the management of horse sales or auctions and prohibits sore horses from being sold, auctioned, or exhibited for the purpose of sale.

Paragraph (c) of the section requires the Secretary 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 for the purposes of enforcing the Act (referred to as a designated qualified person, or DQP, below). The paragraph further prohibits the appointment of persons who, after notice and opportunity for a hearing, have been disqualified by the Secretary to make such detection, diagnosis, or inspection and prohibits any person appointed by management from conducting inspections in a manner other than that set forth in paragraph (e) of the same section, which contains conditions for USDA's inspection of horses.

Paragraph (d) of the section requires the management of horse shows, horse exhibitions, horse sales, and auctions to maintain records, make reports, and provide information, as the Secretary may by regulation reasonably require for the purposes of implementing or to determine compliance with the Act. It also requires management to permit entry of officers and employees duly designated by the Secretary, upon request and at all reasonable times, in order for the officers or employees to inspect or copy such records.

Finally, paragraph (e) of the section provides that the Secretary or any representative of the Secretary duly designated by the Secretary, may inspect any horse show, exhibition, sale, or auction or any horse at such events for purposes of enforcing the HPA.

Section 1824 lists prohibited acts under the Act. The following acts are prohibited:

- Shipping, transporting, moving, delivering, or receiving a horse which is sore and with reason to believe that such horse while it is sore may be shown, exhibited, entered for the purposes of being shown or exhibited, sold, auctioned, or offered for sale in any horse show, exhibition, sale, or auction, with exceptions for common or contract carriers and their employees;
- Showing or exhibiting at a horse show or exhibition any horse which is sore; entering any horse which is sore at a horse show or exhibition for the purpose of showing or exhibiting the horse; selling, auctioning, or offering for sale, in any horse show or auction, any horse which is sore; or allowing the owner of a sore horse to engage in any of the above activities;
- If management of a horse show or exhibition does not appoint and retain a designated qualified person, failing to disqualify a horse which is sore from being shown or exhibited;
- If management of a horse sale or auction does not appoint and retain a designated qualified person, failing to prohibit the sale, offering for sale, or auction of a horse which is sore;
- If management of a horse show or exhibition appoints and retains a designated qualified person, failing to disqualify a horse which is sore from being shown or exhibited, when management has knowledge that the horse is sore or after the management has been informed by the inspector or USDA that the horse is sore;
- Showing or exhibiting, selling or auctioning; allowing to be shown, exhibited, or sold; entering for purposes of showing or exhibiting; or offering for sale a horse that "is wearing or bearing any equipment, device, paraphernalia, or substance" that the Secretary by regulation prohibits to prevent the soring of horses;

- Failing to establish, maintain, or submit records, notices, reports, or other information as required by the Act and regulations established under the Act;
- Failing or refusing to permit access to or copying of records, or failing or refusing to permit entry or inspection as required by the Act;
- Removing any marking required by the Secretary to identify a horse as being detained; and
- Failing or refusing to provide USDA with adequate space or facilities, as prescribed by regulation, in which to conduct inspections or other authorized activities.

Section 1825 of the Act allows for the assessment of criminal and civil penalties for violations of the Act; provides for judicial review of civil penalties; allows USDA to disqualify from showing or exhibiting any horse, judging or managing any horse show, exhibition, sale, or auction persons who have been convicted in a criminal case for violating the Act, who have paid a civil penalty assessed under the Act, or who are subject to a final order assessing a civil penalty under the Act; and sets forth procedures for such a hearing. The section also allows USDA to detain for up to 24 hours a horse which is sore, or which USDA has probable cause to believe is sore, at a horse show, exhibition, or horse sale, or auction, for purposes of examination, testing, or taking of evidence; and to temporarily mark any detained horse. It also prohibits detained horses from being moved without authorization from the place they are detained. It also establishes a presumption that a horse is sore if it manifests abnormal sensitivity or inflammation in both of its forelimbs or both of its hindlimbs in any civil or criminal action to enforce the Act or regulations.

Section 1826 requires the Secretary to notify the Attorney General if the Secretary believes a willful violation of the Act has occurred and prosecution is needed to obtain compliance, while also allowing the Attorney General to take such action as deemed necessary.

Section 1827 directs the USDA to use, to the maximum extent practicable, existing USDA personnel and facilities in carrying out the purposes of the Act. With the consent of a

State, USDA may also use State officers and employees to assist in carrying out the Act. USDA is also authorized to provide technical and other nonfinancial assistance to a State to assist it in enforcing State laws that prohibit conduct that is also prohibited in the Act.

Section 1828 allows USDA to issue rules and regulations necessary to carry out the Act; section 1829 contains terms related to Federal preemption and concurrent jurisdiction; and section 1831 authorizes appropriations to carry out the Act. (Section 1830 is omitted).

Summary of Current Regulations

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

Section 11.1, "Definitions," lists the definitions for terms used throughout part 11. It contains definitions of the following terms: *Act, Action device, Administrator, Animal and Plant Health Inspection Service (APHIS), APHIS representative, APHIS Show Veterinarian, Department, Designated Qualified Person* or *DQP, Exhibitor, Horse, Horse exhibition, Horse industry organization or association, Horse sale or horse auction*, *Horse show, Inspection, Lubricant, Management, Person, Regional Director, Secretary, Show manager, Sore*, *Sponsoring organization*, and *State*.

Section 11.2, "Prohibitions concerning exhibitors," lists general and specific prohibitions for any device, method, practice, or substance used on any horse at any horse show, exhibition, sale, or auction, competition restrictions for 2-year-old Tennessee Walking Horses (TWHs) and racking horses; and horse-related information requirements under the Act and regulations.

In § 11.2(a), the general prohibitions state that, "Notwithstanding the provisions of paragraph (b) of this section, no chain, boot, roller, collar, action device, nor any other device, method, practice, or substance shall be used with respect to any horse at any horse show, horse exhibition, or horse sale or auction if such use causes or can reasonably be expected to cause such horse to be sore." Specific prohibitions regarding devices, equipment, or practices on any horse at any horse show, exhibition, sale, or auction are listed in paragraph (b) of § 11.2.

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

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

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

Under § 11.3, "Scar rule," horses that do not meet the scar rule criteria are considered sore and are subject to all prohibitions of the Act. Paragraph (a) of § 11.3 states that the "anterior and anterior-lateral surfaces of the fore pasterns (extensor surface)" are required to "be free of bilateral granulomas, other bilateral pathological evidence of inflammation, and, other bilateral evidence of abuse indicative of soring including, but not limited to, excessive loss of hair." This section includes a footnote defining a granuloma as "any one of a rather large group of fairly distinctive focal lesions that are formed as a result of inflammatory reactions caused by biological, chemical, or physical agents."

Paragraph (b) of § 11.3 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."

Section 11.4, "Inspection and detention of horses," includes requirements regarding inspection of horses by APHIS representatives, as well as detention of horses for inspection if an APHIS representative has probable cause to believe that a horse is sore. This section also includes provisions for maintaining the well-being of a horse in detention and for informing the owner, trainer, exhibitor, or other person having immediate custody of or responsibility for any horse allegedly found to be in violation of the Act or the regulations, of such alleged violation before the horse is released from detention. Provisions for requesting reexamination and testing of detained horses within a 24-hour period are also included in this section.

Under § 11.5, "Access to premises and records," paragraph (a) provides that the management "shall, without fee, charge, assessment, or other compensation, provide APHIS representatives with unlimited access to the grandstands, sale ring, barns, stables, grounds, offices, and all other areas of any horse show, horse exhibition, or horse sale or auction, including any adjacent areas under their direction, control, or supervision for the purpose of inspecting any horses, or any records required to be kept by regulation or otherwise maintained." Management must also provide "an adequate, safe, and accessible area for the visual inspection and observation of horses while such horses are competitively or otherwise performing at any horse show or horse exhibition, or while such horses are being sold or auctioned or offered for sale or auction at any horse sale or horse auction."

Paragraph (b) of § 11.5 states that, "Each horse owner, exhibitor, or other person having custody of or responsibility for any horse at any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, admit any APHIS representative or Designated Qualified Person appointed by management, to all areas of barns, compounds, horse vans, horse trailers, stables, stalls, paddocks, or other show, exhibition, or sale or auction grounds or related areas at any horse show, horse exhibition, or horse sale or auction,

for the purpose of inspecting any such horse at any and all reasonable times." Such persons must also promptly present their horses for inspection upon notification, orally or in writing, by any APHIS representative or DQP appointed by management for the purpose of determining whether such horse is in compliance with the Act and regulations.

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

Section 11.7, "Certification and licensing of designated qualified persons (DQP's)," sets forth the qualifications and requirements for DQPs and DQP programs. Paragraph (a) of § 11.7, "Basic qualifications of DQP applicants," lists basic professional qualifications required of DQP applicants and paragraph (b) lists certification requirements for DQP programs initiated and maintained by horse industry organizations or associations (HIOs). As part of maintaining a certified DQP program, HIOs are responsible for selecting, training, and licensing DQPs.

Paragraph (c) of § 11.7 contains DQP licensing requirements and paragraph (d) lists recordkeeping and other requirements to be met by HIOs and DQPs. Paragraph (d) provides that HIOs must submit records on a monthly basis to APHIS containing details of horse shows, exhibitions, sales, and auctions at which DQPs appointed by management inspect horses. Paragraph (e) of § 11.7 prohibits the management of any horse show, exhibition, sale, or auction

from appointing any person to detect and diagnose horses which are sore or to otherwise inspect horses for the purpose of enforcing the Act if such person does not hold a valid DQP license, if the license is canceled, or if, after notice and opportunity for a hearing, the person has been disqualified by the Secretary from performing diagnosis, detection, and inspection under the Act.

Paragraph (f) contains provisions for canceling a DQP license. Concluding this section, paragraph (g) provides the process for revoking the DQP program certification of an HIO after notice and opportunity for a hearing.

Sections 11.8 through 11.18 currently are omitted from Part 11.

Section 11.19 provides for the authorization and inspection of Horse Protection Inspectors (HPIs). This section was added to the regulations in May 2024 Horse Protection final rule to replace DQPs with HPIs. For reasons discussed below, it is the only section of the final rule in effect.

Paragraph (a) of § 11.20 lists the responsibilities and liabilities of the management of any horse show, exhibition, sale, or auction which does not appoint and retain a DQP to inspect horses, noting that in such cases, management is responsible for identifying all horses that are sore or otherwise in violation of the Act or regulations and disqualifying or disallowing any such horses from participating or competing in any horse show, exhibition, horse sale, or horse auction. In addition, 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 prior to the tyeing of the class or the completion of the exhibition. All horses tyed first in each TWH or racking horse class or event at any horse show or 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.

Paragraph (b) of § 11.20 also includes responsibilities for the management of any horse show, exhibition, sale, or auction which designates and appoints one or more DQPs to inspect

horses. In such case, management must afford the DQP access to all records and areas of the grounds of such show, exhibition, sale, or auction, and the same right to inspect horses and records as is afforded to any APHIS representative, and must not take any action which would interfere with or influence a DQP in carrying out his or her duties or making decisions concerning whether or not any horse is sore or otherwise in violation of the Act or regulations. This section also specifies procedures for management to follow should they be dissatisfied with a DQP's performance; identifies the horses DQPs must physically inspect at horse shows, exhibitions, sales, and auctions and when DQPs must report alleged violations of the Act or regulations to management; and establishes the minimum number of DQPs that management must designate and appoint, based on the number of horses entered in an event. The regulations currently provide that management must appoint and designate at least 2 DQPs when more than 150 horses are entered.

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

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

In § 11.23, "Inspection of records," paragraph (a) states that the management of any horse show, exhibition, sale, or auction must allow any APHIS representative, upon request, to examine and make copies of any record pertaining to any horse. Similarly, paragraph (b) requires that HIOs that train, maintain, and license DQPs under a certified DQP program

must permit any APHIS representative, upon request, to examine and copy any record relating to the DQP program that are required by any part of the regulations.

In § 11.24, "Reporting by management," paragraph (a) states that within 5 days following the conclusion of any horse show, exhibition, sale, or auction, containing TWHs or racking horses, management must submit to the Regional Director for the State in which the show, exhibition, sale or auction was held, information required in paragraphs (a)(1) through (a)(6) of § 11.22 for each horse excused or disqualified by management or its representatives from being shown, exhibited, sold or auctioned, and the reasons for such action. If no horses are excused or disqualified, the management shall submit a report so stating.

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

Section 11.25, "Minimum penalties to be assessed and enforced by HIOs that license DQPs," lists suspensions and minimum penalties for violations of the Act and regulations. As discussed more fully below, although § 11.25 continues to appear in Part 11, USDA has been enjoined from enforcing this provision since 2015. *Contender Farms, L.L.P. v. U.S. Dep't of Agric*., 779 F.3d 258, 274 (5th Cir. 2015), *remanded sub nom. Show, Inc. v. U.S. Dep't of Agric*., *No. 4:12-cv-429, slip op. (N.D. Tex. Apr. 22, 2015)* (referred to in this docket as "*Contender Farms*").

Sections 11.26 through 11.39 are currently omitted from Part 11. Section 11.40 lists prohibitions and requirements concerning persons involved in the transportation of certain horses, including providing APHIS with transportation information.

Section § 11.41 currently requires each HIO that sponsors or sanctions any horse show, exhibition, or horse sale or auction, to furnish the Department by March 1st of each year with all

HIO rulebooks, and disciplinary procedures for the previous year, pertaining to violations of the Act or regulations that apply to such horse shows, exhibitions, sales, or auctions. Each HIO must also furnish the Department with a quarterly report of all disciplinary actions, and the results thereof, taken against any exhibitor, any licensed DQP, or the management of any horse show, exhibition, sale, or auction for violation of the Act or regulations.

Part 12 of the regulations references the rules of practice for USDA as promulgated in 7 CFR part 1 and contains supplemental rules of practice under the HPA.

Section 12.1 addresses the scope and applicability of rules of practice. These rules of practice are applicable to adjudicatory, administrative proceedings under 15 U.S.C. 1825(a)-(c). Lastly, § 12.10, "Stipulations," provides that the Administrator may enter into a stipulation with any person notified of an apparent violation of the Act or regulations if that person is provided notice of the apparent violation, waives a hearing, and agrees to pay a specified civil penalty within a designated time.

Summary of the May 2024 Horse Protection Final Rule

On July 26, 2016, we published in the *Federal Register* (81 FR 49112-49137, Docket No. APHIS-2011-0009) a proposal to amend the regulations to provide that APHIS, rather than HIOs, would train and license inspectors to diagnose sored horses and determine compliance with the Act at horse shows, exhibitions, sales, and auctions. We also proposed in 2016 to amend the prohibitions on devices, equipment, substances, and practices that can cause or mask soring or can reasonably be expected to do so, particularly with respect to Tennessee Walking Horses and racking horses. On January 11, 2017, we submitted a final rule to the Office of the Federal Register (OFR) for publication. That rule was filed for public inspection, in advance of publication, on January 19, 2017. However, on January 20, 2017, the Chief of Staff for the President issued a memorandum instructing federal agencies to immediately withdraw all regulations awaiting publication at the OFR. In accordance with the memorandum, APHIS withdrew the rule from the OFR and it did not publish. APHIS subsequently withdrew the

proposed rule upon which the 2017 rule was based (86 FR 70755, Docket No. APHIS-2011-0009).

On August 13, 2019, the Humane Society of the United States and other non-governmental organizations filed a lawsuit, arguing that the 2017 rule had been duly promulgated and could not be withdrawn without first providing public notice in the *Federal Register* and an opportunity for public comment. On July 27, 2020, the U.S. District Court for the District of Columbia dismissed the suit, holding that a rule becomes final upon publication in the *Federal Register*. *Humane Soc'y of the United States v. United States Dep't of Agric*., 474 F. Supp. 3d 320 (D.D.C. 2020), rev'd and remanded, 41 F.4th 564 (D.C. Cir. 2022).

On July 22, 2022, the U.S. Court of Appeals for the D.C. Circuit reversed and remanded, ruling that APHIS must provide notice and an opportunity for comment before withdrawing a rule that was available for public inspection, but not yet published in the *Federal Register. Humane Soc'y of the U.S.* v. *U.S. Dep't of Agric., 41 F.4th 564, 565 (D.C. Cir. 2022)*.

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

One month later, on August 21, 2023, we published in the *Federal Register* a proposed rule (88 FR 56924-56962, Docket No. APHIS-2022-0004) to amend the horse protection regulations to provide that APHIS will screen, train, and authorize qualified persons to conduct inspections at covered events to ensure compliance with the Act; make APHIS representatives

available upon request by management to perform inspections at covered events; and prohibit the use of actions devices, non-therapeutic pads, wedges, artificial toe length extensions, and substances and substances on the pasterns of TWHs and racking horses, among other things.

On October 31, 2023, we published in the *Federal Register* a final rule withdrawing the 2017 final rule (88 FR 74336-74341, Docket No. APHIS-2011-0009). Among other reasons for the withdrawal, we cited the intervening issuance of the August 21, 2023 proposed rule.

On May 8, 2024, we published the May 2024 Horse Protection final rule in the *Federal Register* (89 FR 39194-39251, Docket No APHIS-2022-0004) amending the current regulations to comprehensively reorganize the regulations in 9 CFR part 11. The regulations under the May 2024 Horse Protection final rule are summarized below.

Section 11.1, "Definitions," lists the definitions for terms used throughout part 11. It contains definitions of the following terms: *Act*, *Action device*, *Administrator*, *Animal and Plant Health Inspection Service (APHIS)*, *APHIS representative*, *Custodian*, *Day(s)*, *Department*, *Event manager*, *Exhibitor*, *Horse, Horse exhibition*, *Horse Protection Inspector (HPI)*, *Horse sale or horse auction*, *Horse show*, *Inspection*, *Local area*, *Management*, *Participate*, *Person*, *Secretary*, *Sore*, *Sponsoring organization*, *State*, and *Therapeutic treatment*.

Section 11.2 is omitted.

Section 11.3, "Non-interference with APHIS representatives and HPIs," prohibits any person 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 or other individuals from doing the same.

Section 11.4, "Owners, trainers, exhibitors, custodians, transporters, and any other person who has been disqualified," provides that any person disqualified by the Secretary 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.

Section 11.5, "Appeal of disqualification," establishes a process for the appeal of disqualifications of horses at HPA-covered events based on inspection findings of APHIS representatives and HPIs. As discussed below, on January 31, 2025, a U.S. District Court issued a decision that vacated § 11.5 of the May 2024 Horse Protection final rule. *The Tennessee Walking Horse Nat'l Celebration Ass'n v. U.S. Dep't of Agric*., *765 F. Supp. 3d 534 (N.D. Tex. 2025)* (referred to as *Celebration* in this docket).

Section 11.6, "Prohibitions concerning exhibitors," lists general and specific prohibitions on devices, methods, practices, or substances used on horses at horse shows, exhibitions, sales or auctions; competition restrictions for 2-year-old TWHs and racking horses; and horse-related information requirements under the Act and regulations.

In § 11.6(a), the general prohibitions state that, notwithstanding other provisions of the 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."

Paragraph (b) lists specific prohibitions regarding action devices, equipment, or practices on any horse at any horse show, exhibition, sale, or auction.

Paragraph (c) lists specific prohibitions for TWHs and racking horses, including prohibitions on action devices, and non-therapeutic pads, non-therapeutic wedges, non-therapeutic artificial toe length extensions, and non-therapeutic substances. As discussed below, on January 31, 2025, the U.S. District Court in *Celebration* issued a decision that vacated § 11.6(c) of the May 2024 Horse Protection final rule.

Paragraph (d) of § 11.6 provides specific requirements for rest periods during horse show and horse exhibition workouts or performances for 2-year-old TWHs and racking horses and working exhibitions for 2-year-old TWHs and racking horses at sales or auctions.

Paragraph (e) of § 11.6 prohibits the failure to provide information or providing any false or misleading information required by the Act or regulations or requested by Department representatives, by any person that enters owns, trains, shows, exhibits, transports, or sells or has custody of, or direction or control over any horse shown, exhibited, sold, or auctioned or entered for the purpose of being shown, exhibited, sold, or auctioned at any horse show, exhibition, or horse sale or auction.

Section 11.7, "Dermatologic conditions indicative of soring," establishes a presumption of soreness when any limb of a horse displays one or more dermatologic conditions that an HPI or APHIS representative determine are indicative of soring. As discussed below, on January 31, 2025, the U.S. District Court in *Celebration* issued a decision that vacated § 11.7 of the May 2024 Horse Protection final rule.

Section 11.8, "Inspection and detention of horses," includes requirements regarding inspection of horses by APHIS representatives and HPIs (paragraphs (a), (b), and (g)), as well as detention of horses for inspection if an APHIS representative has probable cause to believe that a horse is sore (paragraphs (c) and (d)). This section also includes provisions for maintaining the well-being of a horse held in detention (paragraph (e)) and for HPIs and APHIS representatives 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 (paragraph (f)). Provisions for requesting re-inspection and testing of horses within a 24-hour period are also included in this section (paragraph (h)). As discussed below, on January 31, 2025, the U.S. District Court in *Celebration* issued a decision that vacated § 11.8(h) of the May 2024 Horse Protection final rule.

Section 11.9, "Access to premises and records," paragraph (a) provides 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 unlimited access to the grandstands, sale ring, barns, stables, grounds, offices, and all other areas of any horse show, horse exhibition, or horse sale or auction, including any adjacent areas under their direction, control, or supervision for the purpose of inspecting any horses, or any records required to be kept by regulation or otherwise maintained." Management must also provide "an adequate, safe, and accessible area for the visual inspection and observation of horses."

Paragraph (b) of § 11.9 provides that horse owners, trainers, exhibitors, and other persons having custody of or responsibility for horses at HPA-covered events must, "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." Such individuals are also required to "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."

Paragraph (a) of § 11.10, "Inspection space and facility requirements," requires the management of every horse show, exhibition, sale, or auction to 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. Space and facility requirements include sufficient and

well-lit space in a convenient location for inspecting horses; protection from the elements; a means to control crowds and onlookers; an accessible, reliable, and convenient 110-volt electrical power source; and appropriate inspection waiting and detention areas. Paragraph (b) of § 11.10 limits the number of individuals that may accompany a horse into the warmup area.

Sections 11.11-11.12 are reserved.

Paragraph (a) of § 11.13, "Responsibilities and liabilities of management," lists the responsibilities and liabilities of the management of any horse show, exhibition, sale, or auction which does not use an APHIS representative or an HPI to inspect horses, noting that in such cases, management is responsible for identifying all horses that are sore or otherwise in violation of the Act or regulations and disqualifying or prohibiting any such horses from participating or competing in any horse show, horse exhibition, horse sale, or horse auction. In addition, horses entered for sale or 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 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. All horses that placed first in each class or event at any horse show or 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.

Paragraph (b) of § 11.13 includes responsibilities for the management of any horse show, exhibition, sale, or auction which uses an APHIS representative or a HPI to inspect horses. This paragraph prohibits management using APHIS representatives or HPIs from taking any action which will interfere with or influence the APHIS representative or HPI in carrying out their duties (paragraphs (b)(1) and (b)(4)). Management must retain a minimum number of HPIs

(paragraph (b)(2)) and farriers (paragraph (b)(3)) based on the number of horses entered. This paragraph also describes the process for management to notify APHIS if it believes the performance of an HPI is inadequate or otherwise unsatisfactory (paragraph (b)(5) of the section). Finally, management that uses an APHIS representative or HPI must "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 do so, management is responsible for any liabilities arising from the showing, exhibition, sale, offering for sale, or auction of the horse (paragraph (b)(6)).

Paragraph (c) of § 11.13 lists other responsibilities of management, including ensuring that no prohibited devices or substances are in the warmup area, reviewing orders of the Secretary disqualifying persons from showing, exhibiting, judging, or managing, and verifying the identity of all horses entered in the event.

Section 11.14, "Records required and disposition thereof," contains record retention requirements for management of events containing TWHs and racking horses. This section requires records, including copies of class and sale sheets, official judge's scoring cards, and event programs, to be maintained for a minimum of 90 days following the closing date of a horse show, exhibition, sale, or auction. This section also requires that management maintain information concerning horses that are shown, exhibited, or sold with therapeutic wedges, pads, substances, or toe extensions for at least 90 days following the event.

Section 11.15, "Inspection of records," provides that management must allow APHIS representatives and HPIs to examine and make copies of records that are required or otherwise maintained, upon request during business hours or such other times as may be mutually agreed upon, and to make facilities available for the copying of such records.

Section 11.16, "Reporting by management," requires management to notify APHIS of any horse show, exhibition, sale, or auction at least 30 days before the event, provide information on whether they are requesting an APHIS representative to perform inspections, or, alternatively, have appointed an HPI, and provide information regarding whether management will allow horses with action devices, equipment, or practices that would otherwise be prohibited under § 11.6 but are being allowed for therapeutic treatment. Changes to the above information must be submitted to APHIS at least 15 days before the event. In addition, this section states that, within 5 days following the conclusion of any horse show, exhibition, sale, or auction containing TWHs or racking horses, management must submit to APHIS the information required in § 11.14. If the event does not contain TWHs or racking horses, management must inform APHIS of 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 within 5 days following the conclusion of any horse show, exhibition, sale, or auction.

Section 11.17, "Requirements concerning persons involved in transportation of certain horses," lists prohibitions and requirements concerning persons involved in the transportation of certain horses, including providing APHIS representatives and HPIs with transportation information.

Section 11.18, "Utilization of inspectors," specifies, among other things, that management may use an APHIS representative or a currently authorized HPI to detect and diagnose horses which are sore or otherwise inspect horses for compliance with the Act or regulations.

Section 11.19, "Authorization and training of Horse Protection Inspectors," establishes the application process, qualifications, and training requirements of HPIs and states that APHIS will maintain a list of HPIs on its website.

Implementation and Postponement of the May 2024 Horse Protection Final Rule

The May 2024 Horse Protection final rule was to be effective on February 1, 2025, except for § 11.19 ("Authorization and training of Horse Protection Inspectors"), which had an effective date of (and became effective on) June 7, 2024.

On July 1, 2024, the Tennessee Walking Horse National Celebration Association (TWHNCA) and two individuals filed a lawsuit in the U.S. District Court for the Northern District of Texas (*Celebration*, as referenced in this docket), raising challenges to five specific aspects of the May 2024 Horse Protection final rule: (1) The prohibition of all action devices and nontherapeutic pads on TWHs and racking horses; (2) the prohibition of all nontherapeutic substances applied above the hoof on such horses; (3) the replacement of the scar rule with the DCIS provision; (4) the process created for appealing soreness determinations by APHIS before and after competition; and (5) the replacement of DQPs with HPIs. Plaintiffs alleged that these changes "bear no rational connection" to achieving the goal of eliminating soring and exceed the Agency's authority under the HPA. They challenged the May 2024 Horse Protection final rule under the HPA, the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*), the Fifth Amendment, and the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

On January 28, 2025, APHIS published in the *Federal Register* (90 FR 8253-8254, Docket No. APHIS-2022-0004), a postponement of the regulations in the May 2024 Horse Protection final rule, which delayed the effective date of sections 11.1 through 11.18 until April 2, 2025.

In the postponement, APHIS noted that the July 1, 2024 complaint had been amended on September 23, 2024. The amended complaint alleged, in part, that the May 2024 Horse Protection final rule exceeded APHIS' statutory authority and would have a significant economic impact on the TWH industry. The amended complaint requested vacatur of the final rule. The parties completed briefing on their cross motions for summary judgment on December 20, 2024.

In the postponement, APHIS explained that it was taking the action pursuant to section 705 of the APA to temporarily preserve the regulatory status quo during the pendency of the litigation.

On January 31, 2025, the U.S. District Court issued its decision in *Celebration*. The Court held that the prohibition on the use of action devices, pads, and substances in the May 2024 Horse Protection final rule had exceeded APHIS' statutory authority; that the DCIS provision intended to replace the "scar rule" failed to provide adequate due process; and that the rule's pre- and post-deprivation reviews failed to provide adequate due process. In its Order, the Court vacated the above provisions found in §§ 11.5, 11.6(c), 11.7, and 11.8(h) of the May 2024 Horse Protection final rule. However, the Court held that the final rule's replacement of the DQP program with HPIs was not in excess of statutory authority, arbitrary or capricious, or in violation of the RFA.

Following the Court's decision, on March 21, 2025, APHIS published in the *Federal Register* (90 FR 13273- 13276, APHIS-2022-0004) a document announcing a further delay of the effective date to February 1, 2026 and requesting comment regarding whether the length of the postponement should be extended. In that document, APHIS explained that postponement would allow it the necessary time to identify appropriate next steps regarding the regulations. We also stated that allowing the non-vacated portions of the rule to go into effect on the previously scheduled effective date would be untenable for APHIS and disruptive to the industry. We explained that we were taking the action pursuant to 5 U.S.C. 553(b)(B), 553(d)(1) and 553(d)(3).

We solicited comments concerning the length of the postponement for 60 days ending May 20, 2025. We received 6,124 submissions indicative of 93,734 total comments in response to our request. The comments were from members of Congress; State agricultural agencies and farm bureaus; HIOs; equine veterinarians and veterinary associations; animal welfare advocacy organizations; cattle grower associations; horse owners, trainers, and exhibitors; small business owners, and other interested persons.

After the close of the comment period, on June 30, 2025, a new complaint was filed in the U.S. District for the Northern District of Texas challenging aspects of the current regulations and associated guidance. *Gould v. U.S. Dep't of Agric., No. 2:25-CV-147-Z, 2025 WL 2402083 (N.D. Tex. Aug. 19, 2025)* (referenced in this docket as *Gould*). Specifically, the complaint challenged USDA's "No-Showback Rule," (i.e., a policy prohibiting horses found sore or otherwise noncompliant with the HPA or regulations from being "shown back" or competing in a subsequent class of the same show), the scar rule, and the adequacy of the due process protections when management disqualifies a horse based on USDA inspections conducted in accordance with § 11.4 of the regulations. Plaintiffs sought entry of a preliminary injunction to prevent USDA from enforcing these rules and policies, and on August 19, 2025, the Court granted plaintiffs' motion for preliminary injunction as to each named plaintiff.

Due to the pending lawsuit and the uncertainty of how it would affect the existing regulations, APHIS was unable to develop training content for HPIs that would have enabled it to recruit an adequate number of HPIs to provide coverage for the 2026 show season and train the HPIs to conduct inspections based on stable regulatory requirements, by the effective date of February 1, 2026. For this reason, on January 28, 2026, APHIS published in the *Federal Register* (91 FR 3633-3635, Docket No. APHIS-2022-0004) a document further delaying the effective date of the non-vacated portions of the May 2024 Horse Protection final rule, to December 31, 2026.

Additionally, in a report (H.R. Rep. 118-583) accompanying the FY 2026 Agriculture Appropriations Act, the House Appropriations Committee expressed concern regarding the May 2024 Horse Protection final rule, stating that: "The Committee has consistently recognized the need for APHIS and the Tennessee Walking Horse industry to communicate and work together to eliminate the soring of horses. The Committee is concerned that the final rule, Horse Protection Amendments, published May 8, 2024 (89 FR 39194), ignores the strong concerns of and comments submitted by industry experts, is based on out-of-date and unreliable data, and

exceeds the agency's legal authority under the Horse Protection Act. Further, the cost-benefit analysis accompanying the rule relies on data that is over a decade old and severely underestimates the impact the rule will have on the 20,000 jobs supported by the Tennessee Walking Horse industry. The Committee reiterates that an objective, science-based inspection system would provide assurance for both accuracy and fairness. Therefore, the Committee directs APHIS to withdraw the final rule and work with the industry to eliminate soring using objective, science-based protocols." In our January 28, 2026, document announcing the further delay of effective date, we stated that postponement would also allow APHIS to complete its ongoing review of the Committee's report.

Consistent with the January 2025 U.S. District Court order in *Celebration* vacating the May 2024 Horse Protection final rule's prohibitions on action devices, pads, and substances on TWHs and racking horses, the DCIS provision, and APHIS' re-inspection and appeals procedures, we are removing §§ 11.5, 11.6(c), 11.7, and 11.8(h) of the May 2024 Horse Protection final rule from the regulations. In addition, for the reasons discussed below, we are proposing to withdraw the non-vacated provisions of the May 2024 Horse Protection final rule, and proposing changes to the current regulations in part 11 that address the underlying concerns that led to that May 2024 Horse Protection final rule and the House Appropriations Committee's concerns, including enhancing inspection procedures and modernizing them to include diagnostic tools and techniques, and aligning the regulations with the HPA, minimizing burden on the horse industry, and involving the horse industry to achieve the purpose of Act, which is to eliminate soring and promote fair competition.

Withdrawal of the 2024 Horse Protection Final Rule

In the May 2024 Horse Protection final rule, APHIS recognized the potential for a legal challenge to the rule and considered the impact of vacatur of certain provisions of the rule. The Agency opined 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." The Agency went on to provide several scenarios: "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."

Although APHIS considered the impact of vacatur of certain provisions of the May 2024 Horse Protection final rule, it underestimated the scope of the vacatur, which impacted not just one provision but four provisions of the rule, including provisions the Agency did not consider as part of its severability analysis: The procedures for appealing a disqualification resulting from an inspection conducted by an APHIS representative or an HPI and procedures for requesting a re-inspection of a horse (§ 11.5 and § 11.8(h)). Collectively, the U.S. District Court vacated the DCIS provision; the prohibitions on the use of pads, action devices, and substances on TWHs and racking horses; the provision establishing a process for appealing disqualifications based on inspection findings of APHIS representatives and HPIs; and the provision for requesting re-inspection by APHIS representatives and HPIs. Although APHIS initially intended to proceed with any non-vacated provisions of the May 2024 Horse Protection final rule, it did not anticipate the extent of the vacatur or the unworkable patchwork of provisions that would remain

from the rule. Beyond this, the Agency did not anticipate the parallel litigation in *Gould* challenging the current regulations, or that Congress would not increase the HPA budget to provide funding necessary to implement the HPI program and the expanded scope of regulation under the May 2024 Horse Protection final rule. The District Court's broad vacatur resulted in gaps in the framework of the May 2024 Horse Protection rule. This vacatur, in combination with additional litigation and Congressional actions, has led us to reexamine the horse protection regulations in their entirety.

In considering appropriate next steps, we have carefully reviewed the House Appropriations Committee's report; prior rulemakings, public comments, and supporting analyses; the legislative and regulatory history of the HPA; APHIS' administration and enforcement of the Act; the horse industry's self-regulatory efforts; recommendations by the USDA Office of the Inspector General (OIG), the National Academies of Sciences, Engineering, and Medicine (NAS), the American Veterinary Medical Association (AVMA), and the American Association of Equine Practitioners (AAEP); and other horse sport oversight and inspection programs.

Like the House Appropriations Committee, APHIS has long recognized the need to communicate and work with the horse industry to eliminate soring so that individuals who carefully breed and patiently train their horses have a fair chance at competing in horse shows and exhibitions, and no horse is subjected to the cruel and inhumane practice of soring. Even before Congress enacted the HPA and assigned enforcement to USDA, concerns regarding soring initially led to self-regulatory efforts by the horse industry. It was only after these initial efforts failed to curb soring within the industry, and members of the horse industry and other organizations appealed to Congress for federal legislation, that Congress responded by passing the Horse Protection Act of 1970.

Although the original 1970 Act did not acknowledge the role of HIOs and third-party industry inspectors, USDA understood, from the beginning, that ending soring was a shared

responsibility. For example, in the first set of regulations issued on February 1, 1972 (37 FR 2426-2429), the USDA included provisions to relieve management of liability if the sponsoring organization or show manager identified and removed sore horses before tying the class or the end of the exhibition, or the sponsoring organization designated a veterinarian to examine and observe all horses at the show or exhibition to determine whether such horses are sore. By 1973, the Tennessee Walking Horse Commission (a private organization that was composed of the Tennessee Walking Horse Breeders Association, Trainers' Association, and TWHNCA) required that their approximately 400 affiliated shows appoint show stewards to examine all horses before they compete and to exclude those that appear to be sore. *Horse Protection Enforcement, 1973-74, Biennial Report of the Secretary of Agriculture to the President of the United States Senate and the Speaker of the House of Representatives*.

Congress reviewed the effects of the law against soring during oversight hearings in 1973. Testimony identified weaknesses in the Act that made enforcement difficult, particularly the Department's limited authority under the Act. By 1975, there was agreement among the Department, HIOs, and other organizations that the Act needed to be amended. *Horse Protection Enforcement, 1975-1976, Biennial report of the Secretary of Agriculture to the President of the United States Senate and the Speaker of the House of Representatives*.

Congress then amended the HPA in 1976 to make several important changes, including a provision that the USDA shall prescribe requirements for the appointment of persons qualified to inspect horses for the purpose of enforcing the Act.

In response to these amendments, on April 28, 1978, APHIS proposed to revise the HPA regulations (43 FR 18514-18531), and, in 1979, finalized this proposed rule in two stages ((44 FR 1558-1566, January 5, 1979) and (44 FR 25172-25184, April 27, 1979)). Among other changes, the revisions established a procedure to license DQPs to exclude sore horses on behalf of management, which was similar in design to the industry's self-regulatory efforts to use show stewards to inspect horses for signs of soring. Under the 1979 regulations, HIOs with

established training programs certified by USDA to meet the purposes of the HPA could grant licenses to DQPs. Regarding the use of nonveterinarian inspectors, APHIS explained in the 1978 proposed rule that it was "the intent of Congress, when the 1976 Act was passed, for the Department to develop minimum qualification standards for nonveterinarians who may be retained by show management for the purpose of inspecting horses for compliance with the Act." In the January 1979 final rule, APHIS went on to state that "a non-veterinarian DQP who is properly certified in accordance with 11.7 of the regulations should be fully qualified to detect and determine whether a horse is sore, as that term is defined in the Act" (44 FR 1559, January 5, 1979). This approach is consistent with other horse sport industries. Equestrian events across the spectrum – from Olympic disciplines like dressage and show jumping to breed-specific shows like Arabian and Quarter Horses – use industry stewards to monitor horse welfare and ensure a level playing field.

Almost immediately after implementing the DQP program, however, APHIS identified concerns regarding DQP performance. In its July 1980 report to Congress, APHIS stated that, "There indeed was evidence during 1979 that some DQP's were lax in excluding sore horses at shows not monitored by APHIS. APHIS officials insisted that the licensing organizations take responsibility for poor performance by DQP's and emphasized that certification would be withdrawn from organizations that do not police licensees properly." *Horse Protection Enforcement, 1979, Annual Report of the Secretary of Agriculture to the President of the United States Senate and the Speaker of the House of Representatives*. In 1980, APHIS noted the rate of noncompliance identified by DQPs was 2.364 percent at shows monitored by APHIS, compared to 1.247 percent when APHIS was not present. *Horse Protection Enforcement, 1980, Annual Report of the Secretary of Agriculture to the President of the United States Senate and the Speaker of the House of Representatives*. This discrepancy between the rate of noncompliance identified by DQPs when APHIS is present and when it is not has continued throughout the entirety of the program. For example, in 1991, the average rate of noncompliance identified by

DQPs was 2.220 percent at shows monitored by APHIS and 0.711 percent when APHIS was not present. *Horse Protection Enforcement, Fiscal Year 1991, Report of the Secretary of Agriculture to the President of the Senate and the Speaker of the House of Representatives*. And, a September 2010 OIG audit report (Audit Report 33601-2-KC, referred to below as the OIG audit) found that, from 2005 to 2008, APHIS veterinarians were present at only 6 percent of all shows, yet DQPs identified 49 percent of all noncompliance with the HPA and regulations at that small percentage of shows where APHIS was present.

APHIS and others have explored various explanations to address this discrepancy over the years. In its 1980 report to Congress, APHIS opined that "part of the reason for this discrepancy may be that APHIS monitors primarily large events. At these events, more prizes, more money, and more prestige are at stake for participants and the competition is keener. Another reason may be that DQPs feel freer to act decisively when APHIS inspectors are present, providing visible support and protection from owners and trainers who might protest their decision." On October 17, 1990, APHIS published a final rule in the *Federal Register* (55 FR 41989-41994, Docket No. 90-071) amending the regulations to expand and clarify the procedures for DQPs to follow when conducting inspections at horse shows, exhibitions, sales and auctions in response to concerns from both the horse industry and animal welfare organizations that the guidelines for preshow DQP examinations were not detailed enough to ensure uniform and adequate inspections of all horses examined by DQPs. On December 1, 1997, APHIS published a Horse Protection Strategic Plan (62 FR 63510, Docket No. 97-105-1) to address the discrepancy in DQP inspection findings by partnering with HIOs on enforcement and holding HIOs accountable for the results of DQP inspections through program audits, uniform rules and sanctions, and proper training of DQPs. Following the publication of the strategic plan, APHIS and certified HIOs entered into annual/bi-annual operating plans for the implementation and enforcement of the Act from 1999 through 2009. Notably, despite the emphasis in the strategic plan to implement uniform rules and sanctions (including revoking the

certification of an HIO or disqualifying a DQP from holding a license) and APHIS concerns about inspection discrepancies, available records indicate that USDA has only revoked the DQP program certification of two HIOs, and this action occurred in 1992. *Horse Protection Enforcement, Fiscal Year 1992, Report of the Secretary of Agriculture to the President of the Senate and the Speaker of the House of Representatives*. Aside from these actions, USDA has not revised the regulatory framework for the DQP program or modernized DQP inspection procedures since 1979.

In August 2008, the AAEP's Tennessee Walking Horse Taskforce issued a white paper entitled, "Putting the Horse First: Veterinary Recommendations for Ending Soring of Tennessee Walking Horses," which recommended ways to end soring. Among other things, the Taskforce recommended abolishment of the DQP program because of "conflicts of interest" in favor of APHIS Veterinary Medical Officers supervising a corps of veterinarians who would inspect walking horses using diagnostic tools and techniques for detecting noncompliant horses, such as thermography, digital radiography, drug testing, and swabbing for prohibited substances. While acknowledging the "significant financial resources" associated with implementing such a program, the Taskforce noted that "if the industry is serious in its intention to end this cruel and inhumane practice and restore the reputation of its breed and the integrity of its leadership, funding must be provided. The expense of these measures must be borne by the TWH industry."

In 2010, the OIG audit found that DQPs were not always inspecting horses in accordance with the Act and regulations, including failing to observe the movement of horses during preshow inspection as required by § 11.21(a)(1), inspect horses tyed first in their class as required by § 11.21(b)(2)(iv), and report to management all of the horses the DQP identified as sore required by § 11.21(b)(3). The OIG audit report quoted an APHIS official as stating that that "these problems often occur because the DQPs come from within the horse show industry and are paid by the horse industry organizations. Therefore, they associate themselves much more closely with the needs of the exhibitors than with the horses they are there to protect." The

audit acknowledged that APHIS collaborated with the industry to implement the DQP program because its limited resources do not cover the costs of sending APHIS veterinarians to all HPA-covered events and it allows the industry and DQPs to serve as the "primary parties responsible for issuing immediate penalties to individuals for violating the Horse Protection Act," when the Agency's own administrative enforcement "proceedings can be long, expensive, and have unpredictable results." With respect to the audit, a then-APHIS official explained, "We're not able to attend all these shows with our funding right now, so we negotiated with the OIG auditors to (have the USDA) take over the training and licensing of the inspectors. We would then have full authority over training, licensing, and reprimanding of the DPQs [sic]. At this time, they're licensed under the horse industry organizations, and we are only able to recommend that a DQP be reprimanded[.]" *The Journal of the American Veterinary Medical Association, High time for change. Further USDA crackdown on soring practices expected, (March 2012)*. Ultimately, the 2010 OIG audit report recommended that "APHIS abolish the DQP system and institute a system based on inspections by veterinarians independent of the horse industry."

More recently, a 2021 NAS consensus study found that, as seen from 61 DQP inspection videos, DQPs did not carry out a sufficient observation of horse movement and that "differences in training and experience account for the discrepancies between VMO and DQP inspection results in past years. This discrepancy will continue to affect inspection outcomes if DQPs are not trained adequately and evaluated for competency by experienced equine veterinarians. Conflicts of interest may also influence decisions of DQPs in finding whether a horse is in compliance with the HPA." *National Academies of Sciences, Engineering, and Medicine. 2021. A Review of Methods for Detecting Soreness in Horses, Washington, DC: The National Academies Press* (referred to in this docket as the "NAS study"). The NAS study also concluded by stating that physical examination methods are critical in detecting pain "when performed by an examiner with sufficient knowledge of normal versus abnormal horse movement and posture and the ways that horses react to palpation if they are in pain. To better detect soreness it is

important that these examinations be done thoroughly using proper techniques and used in conjunction with other diagnostic technologies, tools, and techniques." As such, the NAS study authors "strongly recommend the use of DQPs for inspections be discontinued and that only veterinarians, preferably with equine experience, be allowed to examine horses, as is done in other equine competitions."

In the August 2023 proposed rule that preceded the May 2024 Horse Protection final rule, APHIS stated that, "as expressed by the USDA-OIG audit report and NAS study and supported by all major veterinary organizations, licensed veterinarians with equine experience are best qualified to detect soring in horses. Among other advantages, their medical training in anatomy and physiology affords them the ability to discern signs of soring in a horse that may be missed by experienced inspectors who lack such intensive training. In addition, licensed veterinarians in the United States are bound by their profession to ethical codes of conduct established by the AVMA and supported by other veterinary organizations. Under the AVMA principles for veterinary medical ethics, veterinarians are required to avoid conflicts of interest that put financial or other considerations ahead of animal welfare and the best interests of the animal involved."

Ultimately, the May 2024 Horse Protection final rule removes the definition of HIO, explains that HIOs cannot have any involvement in any HPA-covered event, and replaces the DQP program with the HPI program by explaining, "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 . . . . [the] 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."

The May 2024 Horse Protection final rule then addresses the discrepancy in inspection findings by restricting third-party inspector eligibility to licensed veterinarians who are already ethically bound to avoid conflicts of interest (except for veterinary technicians and persons

employed by State and local government agencies to enforce laws or regulations pertaining to animal welfare who may be used if there is an insufficient pool of veterinarians) and providing that APHIS will assume responsibility for training the third-party inspectors. The rule makes APHIS representatives available to serve as functional equivalents to HPIs that may be appointed and retained by management – something neither OIG nor NAS recommended. Though the May 2024 Horse Protection final rule prioritizes the appointment of veterinarians as HPIs or APHIS representatives to perform inspections, it does not address concerns that the inspection procedures themselves and APHIS' administration of the Act contribute to the discrepancy in inspection findings; does not align with the Congressional statements behind the enactment of the 1976 HPA amendments, which, among other things, were intended to provide USDA and the industry with shared responsibilities for achieving the Act's purposes or the AAEP White Paper's overarching message that "the decision to develop realistic and effective means of eliminating individuals who perpetuate this culture [of soring] belongs to the TWH industry alone;" and does not describe how APHIS would carry out the HPI program (as supplemented with APHIS representatives) and expand the scope of regulation within the existing HPA budget if the funding increase to support implementation did not materialize.

For example, in response to the May 2024 Horse Protection final rule, the TWHNCA submitted a public comment asserting that APHIS' data from 2017-2022 is unreliable because the data does not match prior publicly reported data and includes data of all noncompliance (not just soring). The TWHNCA also stated that the data "resulted from a subjective inspection process that has been shown to be incapable of producing repeatable results," unless applied by experienced equine veterinarians. In addition, members of the horse industry have long raised statutory overreach and due process concerns involving the inspection program (as reflected in *Celebration*, *Gould*, and *Contender Farms* lawsuits), short-notice changes in inspection protocols at the start of show season, and changing enforcement strategies (including multiple rulemakings aimed at prohibiting the use of action devices and pads) that result in regulatory

uncertainty for DQPs and HIOs, and owners, trainers, exhibitors, and the entire horse industry at large.

Over the years, both the scar rule and the re-inspection procedures have been sources of discrepancies in inspection findings between APHIS representatives and DQPs, and, as discussed above, *Gould* found these provisions deficient because they likely exceeded statutory authority and lacked adequate due process, respectively. Even before *Gould*, APHIS was aware of the industry's concerns that its re-inspection procedures lacked adequate due process, *McSwain v. Vilsack*, Case 1:16-cv-01234-RWS (Order, May 25, 2016), and, although the Agency temporarily adjusted its inspection procedures to ensure two APHIS Veterinary Medical Officers concurred on a finding of HPA noncompliance, it later reversed course.

In addition, when replacing the DQP program with the HPI program, in the May 2024 Horse Protection final rule, APHIS explained that "[b]eginning 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." These nonregulatory approaches also required HIOs to immediately update their rulebooks by December 1, 2010 (in advance of the current regulation's due date for updating rulebooks by March 1), extend the disqualification of a horse from a class to the entire event (which *Gould* subsequently found likely exceeded HPA statutory authority), impose minimum penalties for noncompliance with the HPA (which *Contender Farms* subsequently found likely exceeded HPA statutory authority), and, for the first time, begin identifying horses with a coffin bone rotation of more than 5 degrees as sore (even though such conditions could only be identified when APHIS attended events and included radiographs as part of its inspections), among other things. "*2010 Points of Emphasis," Animal Care, APHIS USDA*.

The May 2024 Horse Protection final rule also failed to address an important aspect of the problem: the inspection procedures themselves. The rule did not incorporate in the

regulations any of the recommendations to enhance the inspection procedures to promote consistency among third-party inspectors or ensure that HPIs use current diagnostic tools, techniques, and tests consistent with advancements that have been implemented in other horse sport industries, including collecting blood samples to test for medications administered to horses to alter their response to palpation. Instead, the rule removed the inspection procedures currently found in § 11.21 from the regulations because "HIOs would no longer train DQPs in inspection procedures," without regard for notice to individuals participating in covered events or the need for transparent regulatory procedures to which the HPIs could be held accountable.

In the August 2023 proposed rule, APHIS sought to address conflicts of interest by requiring veterinarian HPIs to hold an active license—ensuring they are bound by ethical standards—and by prohibiting HPI applicants, their immediate family members, and anyone providing them a financial benefit from participating in the showing, exhibition, sale, or auction of horses or from serving as a judge, farrier, or agent of management. However, the May 2024 Horse Protection final rule removed these safeguards, citing the national shortage of veterinarians as the reason for not finalizing the licensure requirement. It also removed the only horse-specific conflict-of-interest provision, stating that applying a "rigid regulatory qualification standard" without flexibility to assess individual circumstances could reduce the pool of eligible HPI applicants.

Instead of codifying provisions to address the conflicts of interest identified in the OIG audit and NAS study, the May 2024 Horse Protection final rule states that applicants will be asked to sign a code of conduct attesting to their freedom from "financial or professional" conflicts. Although the May 2024 Horse Protection final rule notes that APHIS will remove applicants and trainees from the program if conflicts are found, it does not establish regulatory criteria for denying an application or disqualifying an HPI on this basis, provide related due process procedures, or specify what constitutes a conflict of interest—an omission that contrasts with standard practice in other horse-sport organizations. For example, the Federation Equestre

Internationale (FEI), the U.S. Equestrian Federation (USEF), the Horseracing Integrity and Safety Authority (HISA), and other equestrian bodies maintain detailed, publicly available conflict-of-interest policies for stewards and officials to ensure impartiality and the integrity of competition.

As it stands, the training and authorization of HPIs is the only provision from the 2024 Horse Protection final rule in effect. In the regulatory impact analysis or RIA that accompanied the 2024 Horse Protection final rule, APHIS assumed that the rule would require the same number of HPIs as DQPs under the current regulations, which, at that time, was 59. Upon reflection, we believe APHIS may have underestimated the number of HPIs it would need to implement the 2024 Horse Protection final rule because the rule requires management to appoint two HPIs for shows or events when more than 100 horses are entered, when the current regulations require management to appoint two DQPs for shows or events when 150 horses are entered. Nevertheless, APHIS went on to explain that even though it estimated the rule would require 59 HPIs to serve as inspectors, it only anticipated receiving 30 applications per year for the HPI program and further acknowledged that it did not know the number of applicants who would meet regulatory requirements and be authorized to serve as HPIs. That is to say, from the inception of the HPI program, APHIS recognized that it would not draw an adequate pool of applicants to meet the projected needed for HPIs. Because of this shortfall in HPIs to serve as inspectors at over 200 covered events that occur each year, APHIS anticipated that it would need to expand its Animal Care Horse Protection program to make APHIS representatives available upon request by management to serve as inspectors, in addition to training and authorizing HPIs.

Despite accepting 67 applications from veterinarians, concerns remain about APHIS' ability to make inspectors available for more than 200 covered events. According to AAEP, veterinarians identifying as working with horses are a minority in the veterinary medical profession, estimated at 4,043 or 5.7 percent of the total number of private practice positions in the United States, with an additional 4,220 in mixed animal practice. *American Association of*

Equine Practitioners, Economic Report (April 1, 2019). Combined, this means that less than 1 percent of potentially qualified veterinarians expressed interest in becoming HPIs. We believe this may be related to the salary expectations of veterinarians, who may earn significantly more providing their services in other evening and weekend shiftwork settings (including as relief veterinarians) than working as HPIs. Regardless of the reason, APHIS designed a program around the concept of veterinarians serving as the primary pool of inspectors and did not contemplate that less than 1 percent of potentially qualified veterinarians would be interested in the program. Even if APHIS had received funding to hire additional APHIS representatives to supplement the HPI program —which it did not, as discussed below—APHIS would still need to rely more heavily than planned on veterinary technicians and State and local government personnel who enforce animal welfare laws to provide coverage for over 200 events annually.

As noted above, the May 2024 Horse Protection final rule declined to codify any safeguards to address the conflict of interest identified in the OIG audit and NAS study. Instead, the rule indicates APHIS will ask applicants to sign a code of conduct attesting to their freedom from financial or professional conflicts of interest, without defining in the regulations what constitutes a conflict of interest or establishing regulatory procedures to deny an application or disqualify an HPI if a conflict is identified.

As alluded to above, there are budgetary concerns with implementing the 2024 Horse Protection final rule. In the regulatory impact analysis that accompanied the May 2024 Horse Protection final rule, APHIS estimated that implementing the changes in the final rule would "result in additional costs to APHIS in terms of conducting inspections, screening, and training potential HPIs." APHIS estimated that its costs under the May 2024 Horse Protection final rule could increase by up to $3.2 million annually. Year-to-year funding for the HPA program has, however, not increased since the issuance of the May 2024 Horse Protection final rule; it has remained constant annually for FY 2024, 2025, and 2026. This means that the funding APHIS needs to implement the HPI program (including making APHIS representatives able to provide

inspection services at HPA-covered events upon management's request) exceeds the current HPA budget.

Thus, although the May 2024 Horse Protection final rule implemented some of the recommendations in the OIG audit report and NAS study to discontinue the use of DQPs, the rule did not incorporate any of the recommendations from NAS or AAEP (or the industry itself) to improve the inspection procedures used to detect soreness to promote consistency across all HPA inspections; did not anticipate or consider the broad vacatur that could result from a legal challenge; did not include in the regulations conflict-of-interest provisions specific to horse protection activities; and did not consider that APHIS may not receive an increase in funding to enable APHIS representatives to serve as third-party inspectors (even though both the OIG audit report and the NAS study acknowledged APHIS' limited HPA budget). With regard to the NAS study, the authors explained, "If the limited budget for HPA enforcement necessitates continued use of third-party inspectors, the committee recommends that they should be veterinarians or equine industry professionals who are screened for potential conflicts of interest and that they be trained to inspect by APHIS, not by HIOs…. Training should be done by experienced equine veterinarians, and strict competency evaluations should be conducted to assess the skills and knowledge of trainees before they are given license to inspect horses. Consequences for performing a substandard examination should be strictly enforced and reports of substandard performance and letters of admonishment should come from the APHIS, not HIOs."

After careful consideration, as recommended by the House Appropriations Committee , we propose a path forward that allows the Agency to better address the root causes of the identified deficiencies in the DQP program and to implement recommendations from AAEP, OIG, and NAS related to third-party inspector conflicts of interest; the NAS study findings and recommendations concerning the need for adequate training and evaluation of third-party inspectors; the recommendations by NAS and AAEP to use diagnostic technologies, tools, and techniques in conjunction with physical examinations consistent with other horse sports; and

alignment of the Horse Protection program with the intent of the HPA. Finally, we are mindful of the intent of the 1976 amendments to the HPA. When President Ford signed the 1976 amendments into law, he stated he was "committed to achieving meaningful reform by compelling this industry to police itself properly," and his Administration promised to work "to gain greater support from within the industry for self-policing and compliance with the Department's expanded program." *Statement on Signing the Horse Protection Act Amendments of 1976, 3 PUB. PAPERS 1999, 2013 (July 14, 1976)* and *Memorandum for the President from James M. Frey at 5, Office of Management and Budget (July 8, 1976)* (recommending President Ford approve the HPA amendments because "the key to a successful program centers around industry involvement").

In keeping with this promise and the intent and history of the HPA, we propose to withdraw the non-vacated portions of the May 2024 Horse Protection final rule and propose changes to the current regulations that more fully address the recommendations of OIG, AAEP, and NAS, support the industry's self-regulatory efforts and alignment with other horse sports, and modernize the inspection procedures in the regulations for the first time in 34 years. As part of this proposed rule and as discussed below, we would ensure that DQPs are screened for conflicts of interest to ensure objective inspection outcomes, trained and evaluated for competency by experienced equine veterinarians, and regularly monitored to ensure required inspection procedures are followed and inspections are performed consistently, whether APHIS is present or not.

Summary of the Withdrawal of the May 2024 Horse Protection Final Rule

Below, we provide a section-by-section summary of the withdrawal of the May 2024 Horse Protection final rule.

In § 11.1, "Definitions," the May 2024 Horse Protection final rule makes several changes to reflect changes to the Horse Protection program. Specifically, the final rule adds definitions for the terms *Custodian, Day(s), Horse Protection Inspector (HPI), Local area, Participate,* and

Therapeutic treatment; revises the existing definitions of *APHIS Representative, Person, Sponsoring organization,* and *State;* removes definitions of *APHIS Show Veterinarian, Designated Qualified Person or DQP, Horse industry organization or association, Lubricant,* and *Regional Director;* and retains with minor nonsubstantive or editorial changes the definitions of *Act, Action device, Administrator, Animal and Plant Health Inspection Service (APHIS), Exhibitor, Horse, Horse exhibition, Horse sale or auction, Horse show, Inspection, Management, Person, Secretary, Sore,* and *State*. Given the vacatur of the May 2024 Horse Protection final rule's prohibitions on action devices, pads, and substances on TWHs and racking horses, the DCIS provision, and APHIS' processes for responding to requests for re-inspection of a horse and appealing soreness determinations, and the proposed withdrawal of the remaining non-vacated portions of the May 2024 Horse Protection final rule, the addition of definitions for *Horse Protection Inspector (HPI), Local area,* and *Therapeutic treatment*, the revision of definitions for *APHIS representative,* and *Sponsoring organization,* and the removal of the definitions for *Designated Qualified Person or DQP, Horse industry organization or association,* and *Lubricant* are unnecessary and not aligned with the current regulations or the proposed definitions below. We are also proposing to withdraw the changes to the definition of *Action device* contained in the final rule because the current regulations both generally, in § 11.2(a), and specifically, in § 11.2(b)(1), prohibit the use of such action devices, and because the stated basis for establishing the definition was to clarify that the term *Action devices* includes beads and bangles, which have long been prohibited under current § 11.2(b)(1). In addition, we are proposing to withdraw the term *Custodian* because we would not use that term in the regulations under this proposed rule. Although the May 2024 Horse Protection final rule included a minimum age requirement for custodians, responsibilities and liabilities under the Act and regulations are role based, not age based. Minors (through their parents) can, and have been, held responsible for alleged violations of the HPA. The terms *Day(s)* and *Participate* are, likewise, unnecessary because our use of those terms in the current regulations carries the

meaning attributed to them by general usage as reflected by definition in a standard dictionary, such as "Webster's." Although the definition of *Day(s)* in the final rule excludes weekends and holidays due to short reporting deadlines, we are proposing instead to retain the current usage to avoid confusion and extend the deadlines for management, DQPs, and HIOs to submit their information, as discussed below. Also, as in the final rule, we propose, below, to remove the definition of *APHIS Show Veterinarian* and *Regional Director* and solicit public comment on that change in the context of this proposed rule. Therefore, we propose to withdraw the changes to the definitions in the May 2024 Horse Protection final rule. Where necessary, we propose and discuss changes to the current definitions below.

Section 11.2 was "reserved."

Section 11.3, "Non-interference with APHIS representatives and HPIs," prohibits any person 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, or other individuals to do the same. This section is based on current § 11.6(c), which requires management to control crowds so that APHIS representatives may carry out their duties without interference and reasonable safety, and Section 1825(a)(2)(C) of the HPA, which prohibits anyone from forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering with any person engaged in the performance of their official HPA duties. Current § 11.6(c) is still in effect and operative; hence retaining the parallel provisions from § 11.4 of the May 2024 Horse Protection final rule would be redundant and unnecessary. Additionally, because we propose to withdraw the HPI program, this provision would no longer be necessary to the extent it applied to HPIs. As discussed below, in this proposed rule, we propose to revise the existing prohibitions in the regulations concerning non-interference with APHIS representatives and DQPs.

Section 11.4, "Owners, trainers, exhibitors, custodians, transporters, and any other person who has been disqualified," provides 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. This provision relates to Section 1825(c) of the HPA, which outlines disqualifications the Secretary may order after notice and an opportunity for a hearing. These disqualifications apply to persons who have been convicted of or assessed a civil penalty for a violation of the Act. Such disqualification is separate and distinct from the process by which management disqualifies horses which are sore from participating or competing in covered events pursuant to Section 1824 of the Act. Because this provision relates to the scope of a Secretary's order and administrative proceedings, it is not within the scope of these regulations. In addition, we believe its inclusion in the regulations may cause confusion between disqualification periods for persons imposed by the Secretary and the disqualification of horses by management at HPA-covered events. Therefore, we propose to withdraw this provision.

Section 11.5, "Appeal of disqualification," establishes a process for the appeal of decisions to disqualify horses at HPA-covered events based on inspection findings of APHIS representatives and HPIs. As discussed above, this section was vacated by the District Court in *Celebration*; by operation of law, the section no longer is in effect, and its withdrawal removes it from the Code of Federal Regulations.

Section 11.6, "Prohibitions concerning exhibitors," lists general and specific prohibitions on devices, methods, practices, or substances used on horses at horse shows, exhibitions, sales or auctions; competition restrictions for 2-year-old TWHs and racking horses; and horse-related information requirements under the Act and regulations.

The 2024 Horse Protection final rule amended § 11.6(a) to add a general prohibition on the use of any device, method, practice, or substance that can be used to "mask previous or ongoing soring." In light of the vacatur of the DCIS provision in *Celebration* and the District Court's preliminary finding in *Gould* that the HPA prohibits only showing a horse that is

presently sore, we believe this provision may cause confusion because it prohibits devices, methods, practices, or substances that mask "previous" soring. Therefore, we are proposing to withdraw this provision of the final rule. However, we continue to find that the use of agents used to mask ongoing soring is a serious violation of the HPA and propose related changes to the regulations in this proposed rule, as discussed below.

Paragraph (b) of § 11.6 of the May 2024 Horse Protection final rule lists specific prohibitions regarding action devices, equipment, or practices on any horse at any horse show, exhibition, sale, or auction. Most of the prohibitions in that section were drawn from existing provisions in § 11.2 of the current regulations; § 11.2 of the current regulations is still in effect and operative; hence retaining the parallel provisions from § 11.6 of the May 2024 Horse Protection final rule would be redundant and unnecessary.

Section 11.6(b)(9) and (b)(10) of the May 2024 Horse Protection final rule also replaced "yearling horses" with "horses up to 2 years old." There is no need to define "yearling horse" as a "horse up to 2 years old" since this term is understood in the industry to mean a horse up to 2 years old. The rule also amended the existing regulation by specifying that, for horses up to 2 years old, kegs or similar conventional horseshoes must weigh 16 ounces or less; however, this is duplicative of what is in the current rule (§ 11.2(b)(9)) because the current rule already prohibits any horseshoe on yearling horses that weighs more than 16 ounces. Therefore, we are proposing to withdraw this provision.

Paragraphs 11.6(b)(14) and (b)(19) of the May 2024 Horse Protection final rule included prohibitions on acrylic and hardening substances as hoof packing, paring of the frog or sole, and bruising of the hoof or any other method of pressure shoeing. The use of acrylic and hardening substances as hoof packing, paring of the frog or sole, and bruising of the hoof are all examples of pressure shoeing. Current § 11.2(b)(18) already prohibits pressure shoeing of any kind. When proposing the current § 11.2(b)(18), the Agency explained that its purpose was to prohibit all practices that could result in pressure shoeing: "The Horse Protection Act Amendments of

1976 specifically prohibit any practice involving the limb of a horse that results in the horse suffering, or can reasonably be expected to result in the horse suffering pain, distress, inflammation, or lameness when walking, trotting, or otherwise moving. Consequently, the Department proposes to prohibit the shoeing or trimming of a horse's hoof in a manner that will cause such horse to suffer pain, distress, or inflammation when walking, trotting, or otherwise moving. Consequently, Department officials believe this prohibition is necessary to protect horses from unscrupulous horsemen and farriers who engage in practices such as, but not limited to, placing a pressure wedge between the shoe pad and the frog; deliberately trimming the hoof without properly trimming the sole, thereby causing the sole to act as a pressure plate; placing a tack or screw in the shoe pad in such a manner that it will slightly penetrate the frog of the horse's foot; and, deliberately "quicking" the hoof of a horse with the horseshoe nails." *43 FR 18514-18531 at 18518*. The use of acrylic and hardening substances as hoof packing, paring of the frog, and bruising of the hoof, which, again, are all examples of pressure shoeing, have thus been prohibited for decades. Additionally, current § 11.21(a)(4) prohibits stewarding practices during a DQP's inspection. As such, we are withdrawing this provision and proposing changes to the current regulations to prohibit stewarding during any inspection (whether performed by an APHIS representative or DQP), among other things.

The rule added a new paragraph 11.6(c) with specific prohibitions on the use of action devices, and non-therapeutic: pads, wedges, artificial toe length extensions, and substances on TWHs and racking horses. Paragraph (e) expanded the list of persons subject to the horse-related information requirements to include any person who enters or transports horses that are shown, exhibited, sold, or auctioned, and extended the provision to include information supplied to HPIs. As discussed above, paragraph (c) was vacated by the District Court in *Celebration*; by operation of law, the paragraph no longer is in effect and its withdrawal removes it from the Code of Federal Regulations. Below, we propose changes to clarify the specific prohibition on devices that strike the coronet band in paragraph (b) of existing § 11.2, align the prohibition on

substances in paragraph (c) with our statutory authority, and further clarify the application of paragraph (e), including as it relates to substances that mask soring.

Section 11.7, "Dermatologic conditions indicative of soring," establishes a presumption of soreness when any limb of a horse displays one or more dermatologic conditions that an APHIS representative or HPI determine are indicative of soring. As discussed above, this section was vacated by the District Court in *Celebration*. By operation of law, the section no longer is in effect, and its withdrawal removes it from the Code of Federal Regulations.

Section 11.8, "Inspection and detention of horses," extends the requirements of current § 11.4 to HPIs. As discussed above, paragraph (h) of this section, which contains provisions for requesting re-inspection by persons having custody of or responsibility for horses allegedly found to be in violation of the Act or regulation, was vacated by the District Court in *Celebration*; by operation of law, the paragraph is no longer in effect and its withdrawal removes it from the Code of Federal Regulations. In addition, with the proposed withdrawing of the HPI program, the extension of the requirements of this section to HPIs would no longer be necessary. Finally, as noted above, the remaining provisions of that section are also contained in the current regulations; retaining the provisions of this section would thus be redundant and unnecessary.

Section 11.9, "Access to premises and records," extends the requirements in current § 11.5 to HPIs. With the proposed withdrawal of the HPI program, the extension of this section to HPIs would no longer be necessary. The other provisions of this section are also found in current § 11.5; retaining these provisions would thus be redundant and unnecessary.

Section 11.10, "Inspection space and facility requirements," extends the requirements in current § 11.6 to HPIs, establishes an affirmative duty for management to provide protection from the elements and electrical power to APHIS representatives and HPIs, and restricts the number of individuals who may accompany a horse in the warmup area to no more than three individuals. With the proposed withdrawal of the HPI program, the extension of this section to HPIs would no longer be necessary. Further, § 11.21(b) in the current regulations already

restricts the number of individuals in the warmup area to three individuals (other than DQPs and APHIS representatives); specifically, the rider, groom, and trainer. Finally, because management already has an affirmative duty to provide proper facilities for inspection, including to provide protection from the elements and access to electrical power if requested by the APHIS representative, in the event of inclement weather or the need for electrical power or additional lighting, there are adequate provisions in the current regulations to ensure this occurs. Therefore, we are proposing to withdrawal this section of the 2024 Horse Protection final rule.

Section 11.11-11.12 are reserved.

Section 11.13, "Responsibilities and liabilities of management," includes requirements from current § 11.20 but replaces DQPs with HPIs. In addition, this section establishes a process for management to request that an APHIS representative conduct inspections instead of HPIs or a variance should no HPI or APHIS representative be available to conduct inspections. This section also lowers the threshold for the appointment of at least two inspectors from 150 to 100 horses entered and requires management to have a farrier physically present or on call, depending on the size of the event. This section also requires management to ensure the warmup area is free of prohibited devices, disallow the participation of any persons under an order of disqualification by the Secretary, and verify the identity of all horses entered in the event.

With the proposed withdrawal of the HPI program, the replacement of DQPs with HPIs in this section would no longer be needed. Further, below, we propose alternative thresholds for the appointment of DQPs in conformance with proposed inspection procedures for DQPs (i.e., we propose requiring management appoint and retain at least two DQPs when more than 100 horses are entered, rather than 150 horses entered). With the removal of the HPI program requirements, the requirement for management to have a farrier (§ 11.13(b)(3)) would no longer be prescribed, which would alleviate costs and burden on management. As discussed below, we propose to modernize inspection procedures for DQPs to require the removal of pads under certain circumstances. Under this proposal, the HIOs supplying the licensed DQP(s) and

management would be responsible for determining how they will fulfill the regulatory inspection requirements. Although the May 2024 Horse Protection final rule required management to retain a farrier for all shows, we recognize variation in classes and events, including some events that may not require an on-site farrier to fulfill the inspection procedures proposed in this rule. For these reasons, we are proposing to withdraw the provision that requires management to have a farrier available at all shows. The requirement in § 11.13(c)(1) that management ensure that no prohibited devices or substances are present in the warm-up area would be redundant with proposed provisions to prevent use of such devices in the warm-up area. With regard to § 11.13(c)(2), current § 11.7(d)(5) already establishes a process for ensuring DQPs receive a list of all persons that have been disqualified by the Secretary. The requirement in § 11.13(c)(3) for management to verify the identity of horses entered in the event is unnecessary. This verification provision in § 11.13(c)(3) was intended to mitigate the risk of entrants altering a horse's identity to enable further participation after having been disqualified. As discussed above, the District Court's *Gould* decision preliminarily enjoined APHIS, for each named plaintiff, from requiring management to disqualify a sore horse from the remainder of an event (rather than just the class in which the horse was presented for inspection) because it likely exceeds the HPA's statutory authority. Because the agency does not intend to enforce the former "No-Showback" policy, there is no longer an incentive to falsify a disqualified horse's identity later during the event. Therefore, we are proposing to withdraw the requirement that management verify horses' identities. Finally, as noted above, the other provisions of this section are also found in current § 11.20; retaining these provisions would thus be redundant and unnecessary.

Section 11.14, "Records required and disposition thereof," expands the record retention requirements in current § 11.22 by requiring that management retain for 90 days after an event a copy of the official judge's or scoring card(s) for each horse show class containing Tennessee Walking Horses and racking horses. In addition, this section adds new recordkeeping requirements for horses under the care of a licensed veterinarian and requiring therapeutic

treatment using pads or other prohibited devices. With the District Court's decision in *Gould* preliminarily enjoining APHIS, for each named plaintiff, from requiring management to disqualify a sore horse from the remainder of an event, and APHIS's decision to end the "No-Showback" policy, the retention of the official judge's or scoring cards is no longer needed to verify that a horse disqualified from a class does not compete in a later class at the same event. In addition, with the District Court's vacatur in *Celebration* of the specific prohibitions on pads and prohibited devices for TWHs and racking horses, the additional recordkeeping requirements pertaining to therapeutic exceptions to such prohibitions would no longer be required. Finally, as noted above, the other provisions of this section are also found in current § 11.22; retaining these provisions would thus be redundant and unnecessary.

Section 11.15, "Inspection of records," contains the requirements in current §11.23(a) that ensure management allows APHIS to examine and make copies of records that are required or otherwise maintained during business hours, and to make facilities available for the copying of such records. This section extended those requirements to include HPIs. With the proposed withdrawal of the HPI program, the extension of this section to HPIs would no longer be needed. Additionally, as noted above, the provisions of this section are also found in current § 11.23(a); retaining these provisions would thus be redundant and unnecessary.

Section 11.16, "Reporting by management," adds a new requirement for management to notify APHIS of any of its horse shows, exhibitions, sales, or auctions at least 30 days before the event is scheduled to begin, including whether management has appointed an HPI to inspect horses, requests an APHIS representative to perform inspections, or will have no inspector. In addition, this section expands the reporting requirements in current § 11.24 to include the records required in § 11.14 pertaining to horses under the care of a licensed veterinarian requiring therapeutic treatment using pads or other prohibited devices, which were required in the now-vacated prohibitions on pads and devices in § 11.6(c), and, thus, are no longer required.

Following publication of the May 2024 Horse Protection final rule, APHIS received calls and inquiries seeking clarification on the scope of the new provision requiring all horse shows, exhibitions, sales, and auctions to provide APHIS with advanced notification of their event. In response, APHIS published a now-rescinded Tech Note in December 2024, to clarify that races and other events where speed is the primary factor and rodeos, parades, and trail rides are excluded from the HPA and the new reporting requirements. However, rather than providing greater clarity, the Tech Note caused further confusion and concern, as compliance would require management of all other horse events to notify APHIS of their events, regardless of whether the breed or discipline has historically been subject to the practice of soring, including any score-based event, such as 4H Club events, Cart/Driving classes, Costume classes, Dressage events, Equitation, Pleasure classes, Halter/Showmanship, Hunter, Hunter Under Saddle, Polo, Ranch Horse Versatility, Ranch Riding, Reining, Trail classes, and Vaulting. There were also concerns raised by exhibitors of horses in noncompetitive environments. Neither the May 2024 Horse Protection final rule nor the accompanying supporting statement concerning its information collection or the regulatory impact analysis fully explained or justified the impact and burdens of the new expanded reporting requirement. After further consideration, including widespread public concern regarding this new requirement, we do not believe the requirement is necessary to enforce the HPA or justified in light of the burden on the horse industry. Furthermore, § 11.16(a) was intended to provide APHIS sufficient time to schedule an APHIS representative to inspect at an event if an APHIS representative is requested in lieu of an HPI or alert APHIS that management's choice was to have no inspector. Due to the proposal to withdraw the HPI program, including the option for management to request an APHIS representative, the requirement to provide advanced notice is not necessary. For these reasons, we are proposing to withdraw the new reporting requirement in § 11.16 of the May 2024 Horse Protection final rule. In addition, with the vacatur of § 11.6(c) in *Celebration*, expanding the

reporting requirements that already appear in current § 11.24 to include records pertaining to the therapeutic use of pads and other devices would no longer be necessary.

Section 11.17, "Requirements concerning persons involved in transportation of certain horses," relocated the list of prohibitions and requirements concerning persons involved in the transportation of certain horses from current § 11.40, and extended the requirement that such person provide information upon request to HPIs, in addition to APHIS representatives. With the proposed withdrawal of the HPI program, the extension of this section to HPIs would no longer be needed. Additionally, as noted above, the provisions of this section are also found in current § 11.40; retaining these provisions would thus be redundant and unnecessary.

Section 11.18, "Utilization of inspectors," specifies, among other things, that management may use an APHIS representative or a currently authorized HPI to detect and diagnose horses which are sore or otherwise inspect horses for compliance with the Act or regulations. With the proposed withdrawal of the HPI program, which we discuss at greater length below, this section would no longer be needed.

Proposed Revisions to the Current Regulations

Definitions (§ 11.1)

We would remove and add definitions in § 11.1 to simplify and streamline the regulations and reflect proposed changes to the Horse Protection program.

Currently, the regulations define seven terms to refer to various Department offices and personnel. Specifically, the regulations define the terms *Administrator*, *APHIS*, *APHIS representative*, *APHIS Show Veterinarian*, *Department*, *Regional Director*, and *Secretary*. Wherever possible, we propose to simplify and streamline the use of these terms throughout the regulations, including removing the term *APHIS Show Veterinarian* from § 11.1 and referring to them by the general term *APHIS representative*, which means "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."

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

Finally, we would add a definition of *Appeals Official* in § 11.1 that reflects our proposed changes to the Horse Protection program, as discussed below. An Appeals Official would mean "a special Government employee as defined in 18 U.S.C. § 202 meeting the qualifications in § 11.8 and appointed by APHIS to provide decisions on appeals of APHIS inspection findings at any horse show, exhibition, sale, or auction."

Prohibitions Concerning Exhibitors (§ 11.2)

Section 11.2, "Prohibitions concerning exhibitors," lists general and specific prohibitions for any device, method, practice, or substance used on any horse at any horse show, exhibition, sale, or auction, competition restrictions for 2-year-old TWHs and racking horses, and information requirements under the Act and regulations.

Under the current regulations, paragraph (b)(17) of § 11.2 prohibits the use of "any action device or any other device that strikes the coronet band of the foot of a horse except for soft rubber or soft leather bell boots that are used as protective devices." When this requirement was proposed in 1978, APHIS explained that the intent was to prohibit devices "from being placed on a horse's leg in a manner that will allow such device to strike the coronet band of a horse's foot while such horse is in motion or at rest."

Although the intent of this requirement has been clear for decades, APHIS representatives have received questions regarding whether chains and other devices must be

fitted to avoid landing on or striking any location around the circumference of the coronet band. To reaffirm the intent of the requirement, we are proposing to clarify that the device cannot strike "any location on" the coronet band of the foot of the horse when the horse is in motion or at rest. Thus, for purposes of HPA inspections, the APHIS representative or DQP will evaluate any chain or action device placed on a horse to ensure it does not land on or strike any location around the circumference of the coronet band. To ensure this evaluation occurs during DQP inspections, we would also add a conforming change to the inspection procedures in § 11.21.

Since the 1970s, the Department has been concerned about the veracity of inspections under the HPA due to the use of medications and other substances that conceal soring in TWHs and racking horses. For example, in its 1975-1976 report to Congress, the Department explained that "new and devious means" are being used to sore horses that are difficult to detect and that "anti-inflammatory agents and painkillers are used to mask soring." Calling the practice of soring "one of the most significant welfare issues affecting any equine breed or discipline," the AAEP's 2008 White Paper recommended that APHIS adopt drug testing based on the methodology and practices established by the USEF and swabbing of limbs to test for the presence of prohibited substances using current standard methodology.

In 2014, the TWHNCA created a veterinary advisory committee (VAC) that oversaw the collection and testing of blood samples taken from TWHs during the 2014, 2015, and 2016 National Celebrations to determine compliance with medication withdrawal guidelines set by the VAC. According to the NAS study, "one of the documents provided by the TWH industry representative, the number of samples taken in 2014, 2015, and 2016 were 407, 88, and 84, respectively. Of these samples 230, 88, and 26 were selected for testing. The numbers of samples that tested positive for prohibited medications were 51 out of 230 in 2014, 0 out of 88 in 2015, and 17 (9 were from pleasure horses) out of 26 in 2016. In 2014 the medications most prevalent in the samples were methylprednisolone, a steroid primarily used for treating joint and soft tissue inflammation (26 samples); triamcinolone acetonide, a corticosteroid for treating skin

and joint conditions (14 samples); and diclofenac, a nonsteroidal anti-inflammatory drug (NSAID) (12 samples). Some samples were found to contain at least two anti-inflammatory medications. The results of the testing in 2015 indicated that all samples were in compliance with the VAC's medication withdrawal guidelines. In 2016 some samples were found to be noncompliant with withdrawal guidelines for some compounds, namely romifidine, a sedative; phenylbutazone, an NSAID; and stanozonol, a synthetic steroid with anabolic and androgenic properties." Similarly, APHIS' own blood samples from 80 horses at 6 horse shows in 2015 found that 20 percent of those horses tested positive for sedatives or NSAIDs.

The NAS study reviewed the methods of detecting soring in horses. Based on its review, the NAS study recommended that APHIS adopt blood testing as a component of its process for evaluating horses for compliance with the HPA. In making this recommendation, the NAS study cited research indicating that NSAIDs, opioids, and local anesthetics may "abolish a sore horse's response to palpation by decreasing mechanical nociceptive thresholds to palpation." In addition, topically applied substances can be used to mask inflammation (e.g., redness of skin, edema of the skin, and loss of skin integrity).

As discussed in the NAS study, blood sampling to test for prohibited medications and medications conditionally permitted but given above therapeutic levels is common in horse sports around the world to protect horse welfare and to ensure fair competition. Testing is done according to medication rules and guidelines set by a regulatory body, based on data on how the use or overuse of these medications can adversely affect the horse or alter its performance. For example, the USEF has established a protocol for testing and a policy on prohibited drugs and permitted medications, including concentrations allowed for permitted medications. However, the current regulations do not require blood testing as a component of the process followed by DQPs for evaluating horses for compliance with the HPA. Although APHIS has collected and tested blood samples from horses at some of the HPA-covered events it has attended, to achieve

the dual purposes of the Act, it is critically important that the inspection process is consistent at all covered events.

In recent years, APHIS representatives have observed an increase in horses exhibiting signs of sedation during inspection. APHIS has found syringes and containers with sedatives and other prohibited substances in the warmup area and during barn walks, and been made aware of DQPs removing syringes from the warmup area and of individuals using syringes to inject reversal agents in horses in the warmup area after inspection, so that horses that pass inspection may suffer physical pain or distress while being shown and compete unfairly with horses that are not sore. In addition, we anticipate one of the changes proposed in this rulemaking may increase the use of medications and substances to mask soring. Specifically, as discussed below, we intend to clarify that, due to the Court's preliminary decision in *Gould*, management must disqualify any horse which is sore only from participating or competing in the class in which the horse was inspected for entry, showing, exhibition, sale or auction, or being offered for purchase. This change would allow the horse to be presented for inspection in a subsequent class of an event (whether later in the day or on a different day for a multi-day event) after being disqualified by management from a previous class at the same horse show, exhibition, sale, or auction. Individuals wishing to conceal signs of soring to pass preshow inspection in subsequent classes may try to apply masking agents to a horse's pasterns or sedate the horse to alter its response to palpation and compete unfairly with horses that are not sore. The use of medications and substances that mask soring during inspection directly interferes with the primary mechanism of enforcement under the Act, causes DQPs and APHIS representatives to make false entries or statements in required reports and records because the use of such masking agents may interfere with accurate inspection findings, and constitutes a grave violation of the Act.

Relatedly, although the current regulations contain prohibitions on substances, the regulations do not require swabbing to test for prohibited substances as a component of the process that DQPs must follow for evaluating horses for compliance with the Act and

regulations, including for those substances that conceal signs of soring. Swabs collected by APHIS during its inspections have regularly detected prohibited substances, including a high prevalence of prohibited substances on padded horses. For example, APHIS continued to detect analgesic and anesthetic agents throughout FYs 2017-2023. Of these agents, Benzocaine and Lidocaine were the primary agents detected by laboratory analysis, with Camphor, Diclofenac, Dimethyl Sulfoxide (DMSO), and Menthol also being detected. The average percentage of swabs over this 7-year period that tested positive for these agents was 37 percent. Performance horses overwhelmingly accounted for the horses that tested positive for prohibited substances, consisting of 90.4 percent of horses testing positive during that period. Additionally, the average percentage of performance horses sampled that tested positive for a prohibited substance during fiscal years 2017-2023 was 35.2 percent. Although APHIS swabs horses for prohibited substances at some of the HPA-covered events it attends, to achieve the dual purposes of the Act, it is critically important that the inspection process is consistent at all events.

For these reasons, and to promote consistency of the inspection process at all HPA-covered events, we propose to revise paragraphs (c) and (e) of this section to make clear that the use of masking agents (such as, but not limited to, sedatives or topical numbing agents) and other substances that conceal evidence of soring are prohibited. Specifically, paragraph (c) of this section currently prohibits all substances, except for lubricants used under certain conditions, on the extremities above the hoof on any TWH or racking horse while being shown, exhibited, or offered for sale at any horse show, exhibition, sale, or auction. Notably, requirements depart from the prohibition on the use of substances in the HPA in two respects: (1) In addition to prohibiting the showing, exhibition, sale, and auction of horses wearing or bearing prohibited substances, the HPA also prohibits the entering of such horses; and (2) the HPA authorizes the USDA to prohibit substances to prevent the soring of horses.

To better align § 11.2(c) of the regulations with the HPA and for the reasons discussed above, we would revise this paragraph to narrow the list of prohibited substances applicable to

Tennessee Walking Horses and racking horses to only those that cause or can reasonably be expected to cause any horse to be sore or that mask or can reasonably be expected to mask evidence of soring. Examples of substances that can mask or reasonably be expected to mask evidence of soring include sedatives, topically applied numbing agents, and topically applied substances that mask inflammation (e.g., redness of skin, edema of the skin, and loss of skin integrity). Prohibiting substances that can mask or are reasonably expected to mask evidence of soring is necessary to prevent the soring of horses. In addition, we would continue to prohibit the application of all substances on the extremities above the hoof of any TWH or racking horse after the horse has been inspected by management or by a DQP, except that lubricants such as glycerine, petrolatum, and mineral oil, or mixtures thereof may be used if management agrees to furnish the lubricants, maintain control over them, and the use otherwise meets the conditions of the regulations.

In addition, we are proposing to revise the horse-related information requirements under § 11.2(e). Paragraph (e) currently prohibits "[f]ailing to provide information or providing any false or misleading information required by the Act or regulations or requested by Department representatives, by any person that owns, trains, shows, exhibits, or sells or has custody of, or direction or control over any horse shown, exhibited, sold, or auctioned or entered for the purpose of being shown, exhibited, sold, or auctioned at any horse show, horse exhibition, or horse sale or auction[.]" The current regulations list examples of such information, including "Information concerning the registered name, 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, any other exhibitor, or other legal entity bearing responsibility for the horse; the class in which the horse is entered or shown; the exhibitor identification number; and, any other information reasonably related to the identification, ownership, control, direction, or supervision of any such horse."

In paragraph (e), we are proposing to prohibit the use of masking agents (such as, but not limited to, sedatives or topical numbing agents) and other substances that conceal evidence of soring that may cause false entry or statement in a report or other record required under the Act or regulations. This proposed change is consistent with the proposed § 11.2(c), which also prohibits the use of masking agents under Section 1824(7) of the HPA. As discussed below, we are also proposing related changes in §§ 11.4, 11.7, and 11.21 of the regulations to ensure regular blood testing and swabbing of horses at covered events in accordance with the uniform inspection procedures of the DQP's certified organization or association, and otherwise make clear that horses that are sore may not be presented for inspection in a manner that might cause the horse not to respond to inspection by DQPs or APHIS representatives. These prohibitions are narrowly tailored to prevent the soring of horses.

In addition, we would also make changes to paragraph (e) for clarity. The information required in paragraph (e) is necessary for enforcing the Act. In the May 2024 Horse Protection final rule, we supplemented the horse-related information requirements to expand the examples of individuals who must provide information required by the Act or regulations or requested by APHIS to include any person who enters or transports any horse shown, exhibited, sold, or auctioned in HPA-covered events, and specified that such individuals must not provide any false or misleading information. Our proposed revisions in this rule would incorporate the persons included in the May 2024 Horse Protection final rule and would further clarify the list of individuals who must follow the requirements by generalizing it to all persons subject to the Act and regulations. This is because there are other entities that have horse-related information responsibilities under the Act and regulations. Specifically, management of horse shows, exhibitions, sales, and auctions, DQPs, and HIOs with certified DQP programs are also required to provide information related to horses. Failing to do so, or providing false or misleading information, is prohibited by law. Moreover, Section 1825(a)(2)(B) of the HPA prohibits anyone from knowingly making, or causing to be made, false statements or records required under the

HPA or regulations, and to knowingly cause another person to do the same. To more fully capture the horse-related information requirements that individuals must provide to APHIS under the HPA and regulations, we propose to revise this paragraph by stating that failing to provide information, providing any false or misleading information, or causing another person to provide false or misleading information required by the Act or regulations or requested by APHIS representatives to enforce the Act or regulations is prohibited regardless of the party doing so. We would retain the examples of information related to identification, ownership, control, direction, and supervision of horses, and add that such information would also include information bearing on compliance with the requirements of the Act or regulations. To be clear, the net result of these proposed changes simply affirms what is already required by law; that is, persons must provide truthful and accurate information required by the Act or regulations or upon request by APHIS representatives.

Scar Rule (§ 11.3)

Under current § 11.3 of the regulations, all horses subject to the "scar rule" that do not meet certain criteria are considered sore and are subject to all prohibitions of section 5 of the Act. Paragraph (a) states that "the anterior and anterior-lateral surfaces of the fore pasterns (extensor surface) must be free of bilateral granulomas, other bilateral pathological evidence of inflammation, and, other bilateral evidence of abuse indicative of soring including, but not limited to, excessive loss of hair." A footnote is also appended to paragraph (a). It defines "granuloma" as "any one of a rather large group of fairly distinctive focal lesions that are formed as a result of inflammatory reactions caused by biological, chemical, or physical agents."

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

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

Long before the scar rule was added to the regulations in 1979, the organized horse industry had agreed that bilateral scars on the front pasterns are clear evidence that a horse has been sored. By 1974, the Tennessee Walking Horse Commission established its own scar rule, "under which scarred horses 2 years old were supposed to be excluded from competition. The rule was to be expanded to include 3-year-olds in 1975, 4-years-olds in 1976, and so on incrementally in future years." *Horse Protection Enforcement, 1979: Annual Report of the Secretary of Agriculture to the President of the United States Senate and the Speaker of the House of Representatives*. Despite this effort, the industry's rule was not applied uniformly and "young horses new to competition continued to be entered with scars on the pasterns."

As a result, the horse industry said it would support a uniform, nationwide scar rule, and APHIS established the scar rule in the regulations for all horses foaled during or after 1976. By applying the scar rule only to horses born and trained after the 1976 amendments to the HPA, APHIS explained in its 1979 final rule that these horses should have no scars at all if the law is being followed.

Even though more than a generation of horses have come and gone since the scar rule was first introduced, some horses entered in horse shows and other covered events continue to show evidence indicative of soring. As training techniques have changed over the past 47 years, so too has the appearance of inflammation associated with soring practices and "scar" does not accurately describe the pathological evidence of inflammation and other changes that appear on some horses today. As part of the NAS study, a board-certified veterinary pathologist reviewed

24 pairs of skin samples taken from TWHs that had been disqualified for noncompliance with the scar rule at the 2015 and 2016 National Celebrations and found pathological changes indicative of repeated trauma that correlated to the unnatural thickening of the skin visible on gross examination.

In the May 2024 Horse Protection final rule, APHIS revised the scar rule based on recommendations from the NAS study and advances in veterinary science and technical innovations in imaging and diagnostics that have improved our understanding of how soring occurs and our ability to detect it. The revised scar rule, referred to as the DCIS provision, provided that: "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."

As noted above, in *Celebration*, the court vacated the DCIS provisions of the May 2024 HPA final rule. Additionally, on August 19, 2025, the same court in *Gould* found that the existing scar rule likely exceeds statutory authority because "a horse could be disqualified as sore under the Scar rule without any proof of specific misconduct of soring" and "evidence of past soring is not—and should not be—a basis for a horse not found to be currently sore." In so ruling, the court concluded that plaintiffs are likely to succeed on the merits of their claim that the existing scar rule exceeds the HPA statutory authority. Regarding the DCIS provision in the May 2024 final rule, the court in *Celebration* vacated the regulation because it lacked clear standards for what dermatologic conditions would disqualify a horse and, thus, failed to provide owners and trainers with adequate due process.

We are proposing to remove the scar rule from the current regulations based on the court's preliminary finding that evidence of past soring cannot be used as a basis for finding a

horse sore at the time of inspection. We would continue to apply the statutory definition of "sore" when evaluating horses for compliance with the HPA, including identifying horses that exhibit inflammation (such as redness and swelling) associated with soring practices.

Although we are removing the scar rule from the current regulations, we plan to reserve § 11.3. We are not proposing a new replacement to the existing scar rule at this time because we are undertaking additional study, as recommended by the NAS study, to, among other things, determine if "training practices that can cause soreness in TWHs also result in lichenification" and "epidermal thickening (hyperplasia) and lichenification are solely caused by the action devices worn by TWHs." As noted in the NAS study, the skin changes seen on the pasterns of TWHs "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. Action devices used in other breeds are not limited by weight and usually of lower weight than those used in TWHs. Walking 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" seen on the pasterns of TWHs. Additional study will enable APHIS to better understand the physiological and dermatological changes associated with the use of action devices to train TWHs and racking horses, and whether it is possible to develop a regulatory provision like the scar rule that aligns with the HPA's statutory authority, can be consistently applied, and effectively conveys clear standards for dermatologic conditions that are indicative of present soreness.

In the meantime, as noted above, the horse industry enforced its own scar rule long before the USDA added it to the regulations in 1979. As such, the industry –through show managers, HIO leadership, judges, owners, trainers, farriers, riders, and exhibitors of horses – could again decide to align on self-regulation to address the issue of horses that bear scars and

other evidence of past abuse indicative of soring to ensure fair competition for individuals who carefully breed and patiently train their horses.

Inspection of Horses by APHIS (§ 11.4)

In this section, we are proposing to make two substantive changes. First, we are proposing to add a provision to paragraph (b) to ensure that the person having custody of the horse during an inspection by an APHIS representative does not interfere with the examination procedures. Since 1990, the inspection procedures for DQPs in § 11.21(a)(4) have provided that the DQP shall instruct the person having custody of the horse to control it by holding the reins approximately 18 inches from the bit shank and that a horse shall not be inspected if whips, cigarette smoke, or other actions or paraphernalia are used to distract the horse during examination. We propose to incorporate these same requirements during an inspection by an APHIS representative. In conformance with proposed § 11.2, we would also add the use of masking agents, such as but not limited to sedatives or topical numbing agents, to the list of actions and paraphernalia that may not be used to cause the horse not to respond to APHIS' examination. It is our intent to prohibit any activities that interfere in any way with the proper and reliable identification of a sore horse.

Specifically, the proposed addition to paragraph (b) would state: "During the inspection, the person having custody of the horse shall control the horse by holding the reins approximately 18 inches from the bit shank. Such person shall not present the horse in a manner that might cause the horse not to respond to APHIS' examination, including use of masking agents (such as, but not limited to, sedatives or topical numbing agents), whips, cigarette smoke, or other actions or paraphernalia to distract the horse during examination."

Second, we propose to revise the procedures for reexamination of horses allegedly found to be in violation of the Act or regulations by an APHIS representative. Currently, the regulations in § 11.4(h) provide that the owner, trainer, exhibitor, or other person having custody of such a horse may request reexamination and testing of the horse within a 24-hour period,

provided such request is made to the APHIS Show Veterinarian immediately after the horse has been examined by APHIS representatives and before the horse is removed from the inspection area. The APHIS Show Veterinarian will reexamine the horse if he or she determines that sufficient cause for reexamination exists and the horse is maintained under APHIS supervisory custody during the reexamination.

As discussed above, the U.S. District Court in *Gould* issued an order preliminarily enjoining enforcement against plaintiffs of the "disqualification rules that fail to provide adequate due process" in the current regulations, and in *Celebration*, it vacated the reexamination and appeal procedures in the May 2024 Horse Protection final rule.

To address the deficiencies with the reexamination and appeal procedures, we are proposing two interlocking mechanisms to ensure adequate pre-deprivation review of findings by an APHIS representative that a horse is allegedly in violation of the Act or regulations before notification to management for purposes of disqualifying or excusing the horse from competition. First, we would revise the reexamination procedure in current § 11.4 to require a second APHIS veterinarian to independently inspect the horse. Thus, two APHIS veterinarians who independently inspected the horse must concur on a finding of an alleged violation of the Act or regulations before notifying the person having custody of the horse of the alleged violation.

As noted, the two APHIS veterinarians must concur as to the type of finding. If one APHIS veterinarian found the horse sore and the other APHIS veterinarian found an equipment noncompliance, they would not "concur" on a finding. Alternatively, if one APHIS veterinarian found the horse bilaterally sore on the forelimbs and the other APHIS veterinarian found the horse unilaterally sore on a forelimb, they would concur on the finding of a unilateral sore horse. This approach is consistent with FEI Sports Limb Sensitivity Testing Procedure. As noted in the NAS study, the FEI procedure provides that "[a]ll veterinarians and the ground jury must agree that the horse shows altered sensitivity, although they do not have to agree on precisely where

the horse is sensitive." By requiring two APHIS veterinarians to concur as to type of finding, this proposed provision would remove the APHIS Show Veterinarian's discretion to grant or deny a request for reexamination based on their determination of whether sufficient cause for reexamination exists and alleviate the burden of requesting a reexamination on the part of the person having custody of or responsibility for the horse.

To be clear, we are proposing these revisions to the reexamination procedures specifically to address the due process concerns identified by the U.S. District Court in *Gould* and *Celebration*. APHIS representatives who conduct inspections at covered events are highly trained, experienced veterinarians who follow established examination protocols to assess compliance with the HPA and its regulations. While inspections conducted by APHIS veterinarians are reliable, the NAS study highlighted limitations in prior procedures requiring two APHIS veterinarians to concur on findings of noncompliance. As the NAS noted, these procedures may not account for changes that can occur between examinations, the horse's response to repeated palpation, or the influence of prohibited substances—whether applied parenterally or topically—on findings over time.

However, given the court's due process concerns, we believe it is necessary to adopt clear, standardized, and nondiscretionary reexamination procedures that ensure owners, trainers, exhibitors, and other persons having responsibility for a horse receive adequate pre-deprivation process. We recognize that this approach may introduce some risk that a horse could respond differently between examinations by APHIS veterinarians, but we conclude that the benefit of providing procedural protections outweighs the potential for changes in a horse's response that could lead APHIS veterinarians to reach different findings. In addition to requiring two APHIS veterinarians to independently inspect any horse allegedly in violation of the Act or regulations, we would also allow the owner, trainer, exhibitor, or other person having custody of or responsibility for the horse the opportunity to appeal the finding to a qualified Appeals Official

before the horse is removed from the inspection area (the qualifications of Appeals Officials is discussed in "Qualifications of Appeals Officials (§ 11.8)," below).

The Appeals Official would be responsible for independently reviewing the evidence or facts offered by the person who submitted the appeal and APHIS, considering the relevance, reliability, and credibility of such evidence and information, and applying the provisions of the Act and the regulations. Following his or her review, the Appeals Official may set aside the APHIS inspection finding or affirm the finding in whole or in part, while taking care to make his or her decision expeditiously so as not to delay or interrupt individual classes or performances at the horse show, exhibition, sale, or auction. At the event, the Appeals Official would provide an oral decision on the appeal to APHIS and the person who submitted the appeal.

Under this proposal, APHIS would only notify management of a horse allegedly found in violation of the Act or the regulations if: (1) The two inspecting APHIS veterinarians independently inspected the horse and concur on the finding of an alleged violation of the Act or the regulations, and no appeal was submitted before the horse was removed from the APHIS inspection area; or (2) the Appeals Official provided an oral decision affirming, in whole or in part, the finding of an alleged violation or violations of the Act or the regulations.

Certification and Licensing of DQPs (§ 11.7)

Section 11.7, "Certification and licensing of designated qualified persons (DQP's)," sets forth the qualifications and requirements for DQPs and DQP programs. Paragraph (a) of § 11.7, "Basic qualifications of DQP applicants," lists basic professional qualifications required of DQP applicants and paragraph (b) lists certification requirements for DQP programs certified by the Department and initiated and maintained by HIOs. As part of maintaining a certified DQP program, HIOs are responsible for delivering the training curriculum as well as ensuring that criteria for selecting and licensing DQPs are met. In addition, paragraphs (c) and (d) establish licensing requirements for DQPs and requirements that must be met by DQPs and HIOs. Finally, paragraphs (e), (f), and (g) establish prohibitions on the appointment of certain persons

to detect and diagnose horses which are sore or to otherwise inspect horses for the purpose of enforcing the Act, and procedures for cancelling DQP licenses and revoking DQP program certifications of HIOs, respectively.

In this section, we propose changes to address the root causes of discrepancies in inspections: Third-party inspector qualifications, third-party inspector training and oversight, and the thoroughness and consistency of inspection procedures. First, based on recommendations from the OIG audit report and NAS study regarding DQP performance, we propose changes related to:

- Conflict of interest – DQPs should be screened for conflicts of interest to ensure objective inspection outcomes.
- Training and evaluation – DQPs should be trained and evaluated for competency by experienced equine veterinarians.
- Performance monitoring – DQP performance should be monitored to ensure inspection procedures are followed and inspections are performed consistently, whether APHIS is present at the event or not.

Second, we propose changes to enhance the certification requirements for DQP programs and strengthen the inspection procedures that will occur at HPA-covered events. As noted above, in the May 2024 Horse Protection final rule, APHIS removed all HPA enforcement-related responsibilities from HIOs and restricted HIOs from providing services at events that fall under the regulations. This means that, if APHIS were to retain the HPI program, APHIS would have to fund enhancements to the inspection process (which would be cost prohibitive), continue to use enhanced inspection techniques on an event-by-event basis (which has led to the inconsistencies and discrepancies in inspection findings), or make no changes to the inspection process and, thus, not address important aspects of the problem related to the adequacy of inspections at HPA-covered events (which is the course the Agency took in the May 2024 Horse Protection final rule). By retaining and enhancing the certification requirements for DQP

programs, APHIS can address recommendations from TWHNCA's VAC Report,[1] the AAEP's White Paper on Putting the Horse First, and the NAS study to improve the HPA inspection procedures at HPA-covered events.

All three groups have stressed the need for consistent inspection procedures at HPA-covered events that align more closely with inspection procedures used in other horse sports, such as blood testing to test for sedatives and improved testing for topical prohibited substances. Although APHIS has, at times, tested blood samples and swabs for prohibited substances and used diagnostic techniques, such digital radiography, when carrying out HPA compliance inspections, APHIS has not modernized the DQP inspection procedures in the regulations that apply at all HPA-covered events since 1992. When APHIS and third-party inspectors use different techniques to assess horses for compliance with the HPA, it results in variability in inspection, discrepancies in inspection findings, and inconsistent application of the HPA. For these reasons, APHIS is proposing changes to enhance the certification requirements for DQP programs and strengthen the HPA inspection procedures.

Basic Qualifications of DQP Applicants

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) Accredited veterinarians who are members of AAEP, large animal practitioners with substantial equine experience, or are otherwise knowledgeable in the area of equine lameness as related to soring and soring practices; or (2) farriers, horse trainers, or other individuals knowledgeable about horses whose experience and training qualify them for positions as HIO stewards or judges and who have been formally trained and licensed as DQPs by a certified HIO. Accredited veterinarians who meet the listed criteria do not need to undergo formal training.

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[1] The VAC's Initial Report details its processes for taking blood samples, conducting digital radiography, and removing shoes from horses, https://www.walkinghorsereport.com/pdf_0/Initial%20VAC%20Report.pdf.

In contrast to the current requirements, the May 2024 Horse Protection final rule affirmatively required that veterinarians, as well as all other applicants, complete a formal training program administered by APHIS. In addition, the rule specified continual training of HPIs as APHIS determines to be necessary as a condition of maintaining authorization to inspect horses.

We continue to believe that it is important that all third-party inspectors have substantial equine experience and receive formal training on the HPA before conducting inspections of horses, including veterinarians, who do not typically receive training on the HPA and regulations and their interpretation, the history of soring, the procedures for monitoring horses at HPA-covered events, or the HIO-specific procedures or standards for DQPs within DVM programs. Therefore, we are proposing to revise the basic qualifications of DQP applicants to require that all DQP candidates undergo the formal training requirements set forth in this section. In addition, we are proposing to streamline the qualifications for DQP applicants who are veterinarians. We believe that veterinarians with extensive equine experience are well qualified to be DQPs and that the additional requirements pertaining to AAEP membership and veterinary accreditation are unnecessary and overly restrictive. In addition, these proposed changes are intended to complement the academic and professional experiences of veterinarians by ensuring that all DQPs possess the specialized knowledge and skills needed to conduct inspections under the HPA.

In addition, we are also proposing to make clarifying edits to the second category of persons who may be eligible to be licensed as DQPs. The amended provision would state that, "Individuals who are knowledgeable about equine husbandry or science and whose experience or training would qualify them for positions as stewards or judges for recognized breed associations or equestrian organizations" may be eligible to be licensed as DQPs. The proposed changes to this provision are intended to clarify what kind of knowledge about horses is relevant (husbandry or science) and allow for either experience or training (not necessarily both) as a basis for the

basic qualification of DQP applicants. In addition, because the reference to HIOs could be read as circular (insofar as DQP candidates are seeking training and licensure from HIOs), we are clarifying that, by horse industry organizations and associations in this provision, we mean recognized breed associations or equestrian organizations. We anticipate that farriers, trainers, horse stewards, judges, veterinary students, veterinary technicians, and other individuals may also meet this basic qualification, depending on their equine knowledge, experience, and training.

Certification Requirements for DQP Programs

Under § 11.7(b), HIOs desiring a USDA certification to train and license DQPs must submit a formal request for certification and a detailed outline of their program for approval. The outline must include the organizational structure of the HIO and, in brief, must contain:

- The criteria to be used in selecting DQP candidates and the minimum qualifications and knowledge regarding horses each candidate must have to be admitted to the program;
- A copy of the formal training program, classroom and practical, required to be completed by each DQP candidate before being licensed by the HIO;
- A sample of a written examination which must be passed by DQP candidates;
- The criteria to be used to determine the qualifications and performance abilities of DQP candidates selected for the training program and the criteria used to indicate successful completion of the training program;
- The criteria and schedule for a continuing education program and the criteria and methods of monitoring and evaluating performance for continued licensing of DQPs;
- Procedures for monitoring horses in the unloading, preparation, warmup, and barn areas, or other such areas;
- The methods to be used to ensure uniform interpretation and enforcement of the HPA and regulations by DQPs and uniform procedures for inspecting horses for compliance with the Act and regulations;

- Uniform inspection procedures based on currently accepted methodology and practices in the horse industry for swabbing pasterns and testing the samples for prohibited substances, and for the collection and testing of blood samples for sedatives and other drugs that may cause a horse not to respond to a DQP's examination; and
- Standards of conduct for DQPs.

As discussed above, one of the principal concerns that has been identified regarding DQP performance is the need for enhanced training and evaluation. To ensure that DQP candidates are adequately trained and evaluated by experienced equine veterinarians, we are proposing to require that APHIS furnish such instructors for portions of the formal training program. Specifically, we propose that APHIS furnish the instructors who are experienced equine veterinarians for the classroom instruction on the HPA and regulations and their interpretation, the history of soring, the inspection procedures necessary to detect soring, the detection and diagnosis of soring, and related subjects. In addition, APHIS would furnish such instructors for the practical instruction in clinics and seminars using live horses with actual application of the knowledge gained in the classroom. Requests for such instructors and notifications of other courses would have to be made to APHIS in writing at least 60 days in advance of the training.

To ensure candidates demonstrate the knowledge and skills required to be a DQP before obtaining a license, we would require that each candidate pass a practical examination, in addition to a written examination, administered by the HIO and achieve a minimum score of 85 percent on each examination, which demonstrates sufficient mastery of the required knowledge and skills and is the same standard required to become a USEF-licensed steward.

Another principal concern that has been identified regarding DQP performance is the need for sufficient monitoring to ensure DQPs follow inspection procedures and perform inspections consistently, whether APHIS is present or not. To address this concern, we are proposing that HIOs include in their outline for certification the criteria and methods of

monitoring and evaluating the performance of DQPs. This outline would need to include methods to ensure each DQP is consistently carrying out his or her duties, including on-site observations by the HIO of the DQP's performance and a description of the procedures the HIO will follow to address situations where a DQP is failing to perform his or her duties in a satisfactory manner and consistently from event-to-event. At no time, however, may an HIO take any action that would interfere with or influence a DQP in carrying out his or her duties or making decisions concerning whether or not any horse is sore or otherwise in violation of the Act or regulations during the DQP's appointed tour of duty.

As discussed above, APHIS has long been concerned about the veracity of inspection under the HPA due to the use of medications and substances that interfere with compliance inspections by concealing signs of soring. Based on recommendations from AAEP and the NAS study, the industry's urging that APHIS include diagnostic methods for evaluating HPA compliance, and the unlawful use of certain medications and substances at HPA-covered events, we are proposing to require that DQPs ensure the collection of pastern swabs and blood samples, in accordance with proposed § 11.21 and the uniform inspection procedures established by their HIOs. HIOs seeking USDA-certified DQP programs would need to include in the outline for their DQP program their uniform inspection procedures based on currently accepted methodology and practices in the horse industry for swabbing pasterns and testing the samples for prohibited substances, and for the collection and testing of blood samples for sedatives and other drugs that may cause a horse not to respond to a DQP's examination. HIOs would need to submit the data and references they relied upon to establish their proposed testing procedures, thresholds, and any sampling methodologies.

As an alternative, we considered specifying which substances are banned, the level at which a substance would cause a violation, and minimum numbers of horses to test. As part of this alternative, we reviewed prohibited substance testing results obtained from horses at HPA-covered events and lists of substances prohibited in horse sports, including the USEF Guidelines

& Rules on Drugs and Medications and HISA's list of banned and controlled substances. Although these lists include many of the masking agents we have detected on horses at HPA-covered events, they do not include all substances that cause or can reasonably be expected to cause a horse to be sore. In addition, we found that the lists are overbroad, insofar as they include substances that bear no relation to preventing soring. Further, we are aware that the substances used to sore horses have changed over the years, and new substances and new uses for substances continue to be invented. In addition, we anticipate certified HIOs may adopt different testing strategies, including testing a statistically reliable sample of swabs and blood from horses entered in each event or across all affiliated events to which they provide DQP services. To ensure diagnostic testing keeps pace with scientific and technological advances, we believe establishing a performance-based standard, rather than an engineering standard, would be more effective and responsive to emerging trends revealed in testing results. However, we welcome comment on this alternative, including data and information bearing on substances that should be banned or controlled and at what level to prevent soring.

In addition to this proposed action, we considered requiring collection and testing of urine samples for masking agents. However, we elected not to include such procedures in this proposed rule because urine testing often poorly correlates with the actual blood concentration of drugs, making it difficult to determine their impact. However, we welcome comment on this alternative, including data and information regarding its potential use under the HPA.

In addition, we are proposing to add that the uniform procedures established by HIOs must include procedures for 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 by a DQP to contest the DQP's finding. Such procedures could include having a second DQP independently inspect the horse upon request. This proposed change would ensure owners, trainers, and other individuals have an opportunity to appeal both APHIS inspection findings and inspection findings of DQPs, who attend significantly more events than APHIS representatives.

Under the current regulations, HIOs desiring a Department certification to train and license DQPs must submit an outline of their program once for approval. Once approved, an HIO's DQP program is certified indefinitely, unless the program is revoked in accordance with § 11.7(g).

Many HIOs with Department certified DQP programs have been certified for decades. Even though the regulations have been amended and science and technology have advanced in the intervening years, there is currently no mechanism to ensure that the HIO training programs have kept pace with these changes. In addition, APHIS has found it difficult to remove DQP program certifications when an HIO becomes inactive, as there is no process to cancel certifications if the HIO becomes inactive or defunct.

To address these concerns, we are proposing to specify that Department certifications of DQP programs would be valid for 10 years from the date of issuance, unless the certification is revoked in accordance with § 11.7(g) or cancelled due to inactivity. Any HIO wishing to obtain a new DQP program certification from the Department for an additional period of certification may submit a new request in advance of the expiration date of the certification. As an alternative to this action, we considered specifying that DQP program certifications would be valid for 5 years from the date of issuance but determined that a 10-year duration was sufficient to ensure the DQP programs keep pace with changes to the regulations and advances in science and technology. If this provision is adopted, in the final rule we would provide that all existing DQP program certifications and any DQP licenses issued thereunder would expire 1 year after the effective date of the final rule to allow any and all HIOs desiring a Department certification ample time to submit an application for certification and train and license DQPs in accordance with the regulations.

In addition, we would establish a process for cancelling DQP program certifications due to inactivity. Specifically, APHIS will cancel an HIO's certified DQP program if, for at least 5 consecutive years, the HIO has not: Trained or licensed DQPs; had its licensed DQPs appointed

by the management to inspect horses; or otherwise met any of the reporting or other requirements. Before cancelling the certification, APHIS will provide the HIO written notification and an opportunity to provide information sufficient to demonstrate maintenance and compliance of its DQP program.

Licensing of DQPs

In addition to requiring that DQP candidates be trained by instructors who are experienced equine veterinarians furnished by APHIS and pass written and practical examinations administered by HIOs with a minimum score of 85 percent on each examination, we are proposing to ensure DQP candidates are evaluated for competency by experienced equine veterinarians, as recommended in the NAS study. Specifically, we would revise the current requirement that prohibits the licensing of any person as a DQP "until such person has attended and worked two recognized or affiliated horse shows, horse exhibitions, horse sales, or horse auctions as an apprentice DQP and has demonstrated the ability, qualifications, knowledge and integrity required to satisfactorily execute the duties and responsibilities of a DQP." We would revise this requirement by increasing the number of shows that the DQP must attend as an apprentice from two shows to four shows, and require that the DQP demonstrate the ability, qualifications, knowledge and integrity required to satisfactorily execute the duties and responsibilities of a DQP to an APHIS representative at one show after his or her apprenticeship.

Under the current regulations, after DQP candidates complete the formal training program, they participate in continuing education every year thereafter but are not required to complete the formal training program again, even if they are licensed for decades. Similar to the concerns expressed above regarding indefinite DQP program certifications, we believe it is critical that DQPs complete regular training to ensure they stay current on the law and regulations and science and technology, and are regularly evaluated to ensure they can accurately detect and diagnose soring in compliance with the Act. Accordingly, we are proposing to prohibit HIOs from issuing a license to any person as a DQP that is valid for longer than 5 years

from the date of issuance. Any licensed DQP wishing to obtain a new license for an additional period of licensure would need to complete all training and licensing requirements for candidate DQPs.

As discussed above, another serious concern that has been raised about DQP performance relates to the need for enhanced screening for conflicts of interest to ensure objective inspection outcomes. As noted in the 2010 OIG audit, DQPs are known to have close ties to the industry and may have conflicts of interest that are not adequately addressed by the current regulations. To address this concern, we propose to strengthen the conflict-of-interest provisions pertaining to DQPs and ensure the integrity of the inspection process. Specifically, we are proposing enhanced minimum standards of conduct for DQPs, which would more closely align with the standards of conduct for stewards and judges in other horse sports and include the following:

- A DQP shall not exhibit any horse at any horse show or horse exhibition, or sell, auction, or purchase any horse sold at a horse sale or horse auction that includes gaited horse breeds or at which he or she has been appointed to inspect horses.
- A DQP shall not have or had within the immediately preceding 5 years any personal, professional, or financial interest in showing, exhibiting, selling, or auctioning TWHs or racking horses, including but not limited to owning, training, riding, or caring for such horses that are shown or exhibited, either for him or herself or for those with whom he or she has immediate family (including a parent, child, spouse, in-laws, and grandparent) or business ties (including as a business partner, employer, or employee).
- A DQP shall not inspect horses at any horse show, exhibition, sale or auction that are owned, trained, are being exhibited by, or are being offered for sale by a member of the DQP's immediate family, the DQP's employer, or an officer or board member of the DQP’s HIO.
- A DQP shall not accept a gift, favor, or employment from anyone (including an owner, trainer, exhibitor, or person having custody of or responsibility for a horse) who has an

interest in a horse that is presented for inspection at a horse show, exhibition, sale, or auction containing TWHs or racking horses.

- A DQP shall not have an immediate family member, or business partner who works for or is an owner, trainer, exhibitor, or person having custody of or responsibility for a horse who participates in horse shows, exhibitions, sales, or auctions containing TWHs or racking horses.
- A DQP shall not participate in the sale, purchase, or ownership of a TWH or racking horse, or supply or provide goods or services related to such horses.
- A DQP shall not interact with owners, trainers, exhibitors, or any person having custody of or responsibility for a horse in a manner that creates a potential appearance of a conflict of interest, favoritism, or bias. (Examples of such interactions include, but are not limited to: providing preferential treatment at a show by beginning class inspections early; conducting less thorough, more thorough or different inspections for certain horses (based on trainer or owners); avoiding walking by certain barns while monitoring show grounds; overlooking noncompliance for certain trainers/barns or competitors while enforcing the regulations strictly for others, especially when personal relationships are involved; overlooking noncompliance while attending shows in certain locations and strictly enforcing the regulations in other locations; using non-public information about upcoming HIO rule changes, inspections, or enforcement priorities to benefit trainers, owners, etc.; and putting in a good word to a potential buyer for related to the purchase of a horse in a sale where they quietly receive a commission from the trainer, owner, etc.)
- A DQP shall not consume or be under the influence of alcohol or illegal drugs while performing official duties.

HIOs would be required to cancel the license of any DQP that violates these standards of conduct. As provided in the current regulations, the DQP may request a hearing before a review committee of not less than three individuals appointed by the HIO within 30 days of cancellation.

If the review committee sustains the cancellation of the license, the DQP may appeal the decision of the committee to APHIS within 30 days from the date of their decision, and APHIS will make a final determination in the matter. If APHIS finds, after providing the DQP whose license has been cancelled with a notice and an opportunity for a hearing, that there is sufficient cause for the committee's determination regarding license cancellation, APHIS will issue a decision sustaining such determination. If APHIS does not find that there was sufficient cause to cancel the license, the HIO must reinstate the license.

Requirements to be met by DQPs and Licensing Organizations or Associations

Under the current regulations, APHIS requires DQPs to submit records concerning any horse they recommend management disqualify or excuse at a horse show, exhibition, sale, or auction, within 72 hours after the event is over. HIOs must then submit a report to the Department on a monthly basis, based on the information the DQP submitted to them. APHIS is aware the DQPs have encountered postal delays in submitting records to HIOs. In addition, HIOs often submit information on behalf of management, which must be submitted within 5 days of the event. Although HIOs meet their current monthly reporting requirements under § 11.7(d)(3), they routinely encounter challenges with meeting the 5-day deadline required of management, especially regarding the requirement that management must provide copies of each class or sale sheet, as described in § 11.22(a)(6). To better ensure compliance, we are proposing to lengthen the timeframe DQPs have to submit their records to not later than 5 days after the event and the timeframe management has to submit information to 30 days after the event. Concurrently, we would require that HIOs also submit the records they are responsible for providing under § 11.7(d)(3) within the same 30-day timeframe to eliminate any confusion regarding these reporting requirements. As an alternative to this action, we considered setting this deadline to monthly, to match the existing HIO reporting requirements, but determined that 30 days from the date of the event would ensure HIOs adequate time to obtain test results from

pastern swabs and blood collection while also allowing for timely monitoring of compliance information and effective enforcement of the HPA.

In addition to lengthening the amount of time DQPs have to submit records to HIOs, we are proposing to expand the information that DQPs must submit to HIOs to ensure HIOs receive information regarding the horses that were swabbed for prohibited substances and from which blood samples were collected in accordance § 11.21, as well as the test results from such inspection. This change would help to ensure HIOs can adequately monitor DQP performance at horse shows, exhibitions, sales, and auctions.

Qualifications of Appeals Officials (§ 11.8)

We are proposing to establish a new § 11.8 that would delineate the qualifications of Appeals Officials who may be appointed by APHIS to provide decisions on appeals of APHIS inspection findings at any horse show, exhibition, sale, or auction.

Under this proposal, Appeals Officials would need to be neutral decision-makers with the subject matter expertise necessary to provide decisions on the appeals. Accordingly, we are proposing that an Appeals Official would have to be:

- A special Government employee (SGE) as defined in 18 U.S.C. § 202; and
- A Doctor of Veterinary Medicine (or equivalent) who has no fewer than 5 years of direct experience providing veterinary care to horses; and
- Free of the conflicts specific to horse protection activities covered under the HPA.

Appeals Officials Must Be SGEs

Routinely, the Department hires experts, consultants, and advisors for specific projects from the private sector under an SGE appointment. These individuals are appointed to perform temporary duties for no more than 130 days during a period of 365 days. As SGEs, Appeals Officials would be required to comply with all applicable rules and laws, including financial disclosure and ethics training requirements and conflicts of interest and outside payment, income, and gift prohibitions, and limitations on representational activities.

The time-limited nature of SGE appointments would fit well with the seasonal work of Appeals Officials. The horse show season typically runs from March through November, and events are often held in the evenings and on weekends. To ensure coverage throughout the full season, APHIS would appoint up to four SGEs with staggered schedules over the course of the season. In addition, the standards of conduct and ethics restrictions applicable to SGEs are important for ensuring neutral decisionmakers to hear appeals of APHIS inspection findings at covered events.

Appeals Officials Must Be Veterinarians With No Fewer Than 5 years of Direct Experience Providing Veterinary Care to Horses

Appeals Officials would be expected to independently review evidence and facts pertaining to APHIS findings of alleged violations of the HPA or regulations, consider the relevance, reliability, and credibility of such evidence and information, and apply the provisions of the Act and the regulations to novel facts and circumstances. This work will require expert knowledge of equine husbandry and science, the HPA and regulations and their interpretation, the history of soring, the inspection procedures necessary to detect soring, the detection and diagnosis of soring, and related subjects. Accordingly, we propose that Appeals Officials be veterinarians with no fewer than 5 years of direct experience providing veterinary care of horses. In addition to this knowledge and experience, Appeals Officials would also be required to complete annual training on the HPA and regulations, and related subjects administered by APHIS prior to serving at any horse show, exhibition, sale, or auction.

Appeals Officials Must Be Free of Horse Protection-specific Conflicts of Interest

In addition to the general conflict of interest restrictions applicable to all SGEs, Appeals Officials would have to be free of conflicts specific to horse protection activities covered under the HPA.

As discussed above, APHIS has long held concerns regarding conflicts of interest by licensed DQPs. The 2010 OIG audit determined that DQPs often failed to inspect horses in

accordance with the HPA and disqualify sore horses, likely due to conflicts of interest. The USDA Office of the Judicial Officer and the NAS study reached similar findings, concluding that "DQP examinations are found to be less probative than [USDA] examinations" and that it is "strongly recommended that the use of DQPs for inspections under the current regulations be discontinued." *In Re: Justin Jenne, Respondent*, 74 Agric. Dec. 118, 132, n.16 (U.S.D.A. Apr. 13, 2015) (noting, "[r]outinely, DQP examinations are found to be less probative than United States Department of Agriculture examinations and the Judicial Officer has accorded less credence to DQP examinations than to United States Department of Agriculture examinations.") (citing Oppenheimer, 54 Agric. 221, 269 (U.S.D.A. 1995) (Decision as to C.M. Oppenheimer); Sparkman (Decision as to Sparkman and McCook), 50 Agric. Dec. 602, 610 (U.S.D.A. 1991); Edwards, 49 Agric. Dec. 188, 200 (U.S.D.A. 1990), *aff'd per curiam*, 943 F.2d 1318 (11th Cir. 1991) (unpublished), *cert. denied*, 503 U.S. 937 (1992)). In this proposed rule, we are addressing these concerns by proposing additional standards of conduct for DQPs that include enhanced conflict of interest prohibitions, consistent with those applied to stewards and judges in other horse sports.

As with DQPs, we believe it is critical to ensure Appeals Officials are free of conflicts specific to HPA-covered activities to ensure the integrity of the inspection and appeals process. Under this proposal, no person would be able to serve as an Appeals Official that has or had within the preceding 5 years exercised any functions or responsibilities for any horse show, exhibition, sale, or auction containing TWHs or racking horses, including but not limited to the management, show manager, DQP, judge, farrier, steward, or HIO for such events. Further, no person could serve as an Appeals Official that has or had within the same period any personal, professional, or financial interest in showing, exhibiting, selling, or auctioning TWHs or racking horses, including but not limited to owning, training, riding, or caring for such horses that are shown or exhibited, either for himself or herself or for those with whom he or she has immediate family or business ties.

Authorization and Training of Horse Protection Inspectors (§ 11.19)

Section 11.19, "Authorization and training of Horse Protection Inspectors," establishes the application process, qualifications, and training requirements of HPIs and states that APHIS will maintain a list of HPIs on its website. As discussed above, this is the only provision of the May 2024 Horse Protection final rule currently in effect. With the proposed withdrawing of the HPI program, this section would no longer be needed.

Responsibilities and Liabilities of Management (§ 11.20)

Under the HPA, it is unlawful to show, exhibit, or enter for the purpose of showing or exhibiting any sore horse in a horse show or exhibition, or to sell, auction, or offer to sell any sore horse in a horse sale or auction. The HPA also prohibits the horse's owner from allowing such activities to occur. In addition, it is also unlawful to show, exhibit, or enter for the purpose of showing or exhibiting, sell, auction, or offer for sale any horse which is wearing or bearing any equipment, device, paraphernalia, or substance that the Department has prohibited by regulation to prevent the soring of horses. The HPA also prohibits anyone from allowing any horse wearing or bearing such items to be shown, exhibited, or sold at a horse show, exhibition, sale, or auction.

The management of each horse show, exhibition, sale, or auction serves as primary enforcer of the HPA. The HPA provides management a choice: (1) Hire a DQP and face liability only if management allows the horse to compete after being notified that it is a sore or otherwise in violation of the Act or regulations; or (2) decline to hire DQPs and accept liability for failing to disqualify a horse that is sore or disallow a horse that is otherwise in violation of the Act or regulations from participating in an event, irrespective of whether such management knows that the horse is a sore.

Among other things, § 11.20 of the current regulations lists the responsibilities and liabilities of management, specifies procedures for management to follow should they be dissatisfied with a DQP's performance, identifies the horses DQPs must physically inspect at

horse shows, exhibitions, sales, and auctions and when DQPs must report alleged violations of the Act or regulations to management, and establishes the minimum number of DQPs management must designate and appoint based on the number of horses entered in a covered event.

In *Gould*, the court considered a challenge to USDA's "No-Showback Rule," (i.e., a policy prohibiting horses found sore or otherwise noncompliant with the HPA or regulations from being "shown back" or competing in a subsequent class of the same horse show). The court found that the "No-Showback Rule" likely constitutes an excess of statutory authority because the HPA only requires management to disqualify a horse that is sore or reasonably expects to be sore. The court explained that this "language of the HPA concerns only the present and future existence of soreness—not soreness of the past" and that "allowing for the disqualification of horses that used to be sore flouts the plain text of the HPA." The court issued an order preliminarily enjoining enforcement of the "No-Showback Rule."

To align with the court's reasoning in this case, we are proposing to revise § 11.20 to clarify that management must disqualify any horse which is sore from participating or competing in the class in which the horse is entered or shown or the sale or auction in which the horse is being offered for purchase. This change would allow a person having custody of a horse the opportunity to present their horse for inspection after being disqualified by management from a previous class at the same horse show, exhibition, sale, or auction.

APHIS adopted the "No-Showback Rule" at the recommendation of the 2010 OIG audit report that found that exhibitors could use numbing or masking agents on the horse's legs or hooves to prevent the horse from exhibiting pain when being inspected the second time, which could result in the showing, exhibiting, sale, or auction of sore horses. As discussed above, the use of masking agents continues to be a serious concern for APHIS and this proposed rule includes several measures designed to deter and prevent the use of masking agents that interfere with inspection of horses.

In addition, we are proposing technical changes for consistency and to better align this section with the statute. Specifically, we would revise this section to clarify that management must disallow (not disqualify) any horse wearing or bearing any equipment, device, paraphernalia, or substance prohibited under the regulations, while also continuing to make clear that no person shall show or exhibit at a horse show or horse exhibition; sell or auction at a horse sale or auction; allow to be shown, exhibited, or sold at a horse show, horse exhibition, or horse sale or auction; enter for the purpose of showing or exhibiting in any horse show or horse exhibition; or offer for sale at a horse sale or auction any horse which is wearing or bearing any prohibited equipment, device, paraphernalia, or substance. As such, management would have the discretion to allow any person having custody of a horse to address certain equipment or other noncompliance that can be adjusted on the spot (such as adjusting a high band), while ensuring that unlawful equipment, devices, paraphernalia, or substances are not used on horses while being shown, exhibited, sold, or auctioned. In addition, we would clarify that management, regardless of whether they appoint and retain a DQP, must remove any horses found to be sore or otherwise in violation of the Act or regulations during actual participation in the show or exhibition from further participation prior to the tyeing of the class or the completion of the exhibition.

Finally, we are removing the requirement that, if event management does not appoint a DQP, they must personally inspect all first-place Tennessee Walking Horses and racking horses to determine whether the horses are sore. Instead, as the Horse Protection Act already requires, event management that chooses not to appoint a DQP will be held responsible if any sore or otherwise noncompliant horse is allowed to compete or participate in the event..

Among other things, paragraph (b)(1) of this section prohibits management from dismissing or otherwise interfering with DQPs during their appointed tour of duty even when management is dissatisfied with their performance. As explained in the 1978 proposed rule, APHIS established this requirement to “protect any DQP from coercion, intimidation, threat, or

any other pressure, in order to protect the integrity and credibility of any DQP program." We have become aware of management contacting DQPs during their tour of duty to discuss inspections of specific horses. Although we believe this activity is clearly prohibited under the current regulations, we are proposing to revise this sentence to expressly state that management shall not contact a DQP regarding his or her inspections during the DQP's tour of duty. Management will continue to have the prerogative of notifying APHIS and the certified HIO that licensed the DQP concerning the reasons management is dissatisfied with the DQP's performance.

Currently, paragraph (b)(2) and (b)(3) contain inspection procedures for DQPs. We propose to consolidate these requirements with the other DQP inspection procedures contained in § 11.21. In addition, we are proposing to revise the requirements currently contained in paragraph (b)(2) which require, among other things, that DQPs observe horses in the warmup ring "whenever possible." Section 11.7(b)(6) requires HIOs to have procedures for monitoring horses in the warmup area, and § 11.21(b) requires horses to be held in a designated area after inspection that is under observation by the DQP. Because horses are only allowed into the warmup area after DQP inspection, there should be no unlawful devices, equipment, substances or paraphernalia available for use in that area. Nevertheless, while present at shows, APHIS has identified prohibited activities and devices (such as overweight chains) and found syringes and containers with sedatives and other prohibited substances in the warmup area and has been made aware of DQPs removing syringes from the warmup area and of individuals using syringes to inject reversal agents in horses in the warmup area after inspection. Accordingly, we are proposing to require that DQPs inspect any chain carts before allowing them into the warmup area and affirmatively ensure the warmup area and horses in the warmup area are free of unlawful devices, equipment, substances, or paraphernalia after inspection. Examples of such unlawful items include overweight or irregular shaped action devices, syringes, medications, or

ointments. If the DQP finds such items in the warmup area, he or she must promptly remove them.

Finally, § 11.20(c) currently requires management that designates and appoints a DQP to inspect horses to use at least two DQPs when more than 150 horses are entered. We are proposing to change this provision to require at least two DQPs when more than 100 horses are entered. This proposed rule enhances the inspection requirements for DQPs, including requiring more thorough inspections and monitoring of the warmup area and ensuring that pastern swabs and blood samples are collected in accordance with § 11.21. We anticipate management of mid-sized shows will need at least two DQPs to perform their inspections in a timely fashion so as not to delay or interrupt actual individual classes or performances in light of these enhanced requirements. Concurrent with this proposed change, we would make conforming edits to the requirement in § 11.21(b) that DQPs shall inspect horses no more than 2 classes ahead of time in shows fewer than 150 horses by changing 150 horses to 100 horses.

As an alternative to this proposed change, we also considered setting the threshold at 75 horses entered in the event, and welcome data and information on both options as part of this rulemaking. In particular, we welcome comments on the potential impact of this change on HPA-covered events that involve primarily pleasure horses, which historically have not presented the same level of concern regarding the potential unlawful devices and activities in the warmup area.

Inspection Procedures for DQPs (§ 11.21)

As discussed above, we are proposing changes throughout the regulations to address recommendations to improve the adequacy of the DQP program and strengthen HPA inspections. In § 11.21, we focus our proposed changes on expanding and clarifying DQP inspection procedures to ensure uniform and adequate inspections of all horses examined by DQPs, regardless of whether APHIS is present at the event or not.

Preshow Observation of Horses' Movement

In response to concerns of both the horse industry and animal welfare organizations that the preshow DQP examination procedures were not detailed enough to ensure a uniform and adequate inspection of horses, APHIS amended the regulations in 1990 to expand and clarify the procedures to be followed by DQPs in conducting inspections of horses. These changes included specifying procedures in § 11.21(a) for observation of a horse's movement so the DQP could assess whether the horse moves in a free and easy manner and whether the horse is free of any signs of soreness, such as unusual posture, distressed expression, or a reluctance to move. At that time, APHIS received comments recommending the horse walk in a serpentine or "figure-8" pattern because "indicia of soreness are very likely to appear when a horse is forced to cross over its forelegs when turning." APHIS agreed with this comment in its October 1990 final rule but stated that the wording of the proposal was sufficient to ensure the DQP required such movement when necessary to help determine if a horse is sore.

However, the NAS study found that current inspection procedures are not sufficiently detailed to allow for sufficient observation of horse movement during preshow inspections because "the distance between the two cones is too short and not all horses complete an entire figure 8. The horse takes three or, rarely, four steps around the right cone and may pivot toward the cone on the left. Furthermore, the horse may not complete a sufficient straight-line walk." Accordingly, the NAS study recommended that horses should be required to walk around cones in an expanded figure-8 pattern consisting of two adjoining circles, each with a 10-foot radius to allow for better observation of horse movement. The required straight-line evaluation could be done as the horse is walking to the top of the first circle and then back from the figure-8. APHIS agrees with this recommendation of the NAS study and is proposing to amend the regulations accordingly.

Digital Palpation and Examination

Currently, § 11.21 requires DQPs to digitally palpate the front limbs of the horse from knee to hoof, with particular emphasis on the pasterns and fetlocks. The DQP must examine the

posterior surface of the pastern by picking up the foot and examining the posterior (flexor) surface. The DQP must apply digital pressure to the pocket (sulcus), including the bulbs of the heel, and continue the palpation to the medial and lateral surfaces of the pastern, being careful to observe for responses to pain in the horse. While continuing to hold onto the pastern, the DQP shall extend the foot and leg of the horse to examine the front (extensor) surfaces, including the coronary band. The DQP may examine the rear limbs of all horses inspected after showing, and may examine the rear limbs of any horse examined preshow or on the showgrounds when he or she deems it necessary, except that the DQP must examine the rear limbs of all horses exhibiting lesions on, or unusual movement of, the rear legs.

As noted in the NAS study, APHIS veterinarians are trained on where to stand and to follow a prescribed pattern of palpation and apply a prescribed amount of pressure using the pad of the thumb. The palpation protocol specifically instructs APHIS veterinarians to use the flat part of their thumb to apply enough pressure to flatten the flesh of the thumb, thus blanching the thumbnail. Referencing a 2008 study on mechanical nociceptive thresholds within the pastern region of TWHs, the NAS study noted that this amount of pressure is well below the threshold to produce a flinch response indicating limb sensitivity in normal TWH limbs. *Haussler, K. K., T. H. Behre, and A. E. Hill. 2008. Mechanical nociceptive thresholds within the pastern region of Tennessee walking horses. Equine Veterinary Journal*. Specifically, the 2008 study evaluated the minimum amount of pressure required to establish reference values within the pastern region of TWHs and found that the amount of pressure needed to flatten the flesh of the thumb or partially blanch the thumbnail is approximately 0.4-0.6 kg/cm^2, whereas none of the horses studied, which were not sore, responded to pressure less than 6.4 kg/cm^2 using pressure algometry. The study suggested that "a more stringent pressure threshold" could be used to detect soring "with a low risk of false positive tests." In addition to this study, a 2020 literature review of pressure algometry for the detection of mechanical nociceptive thresholds in horses found that pressure algometry is a reliable and objective method to measure pain responses and

found that intra-examiner repeatability is reported to be good but often depends on the level of operator experience using the instrument. *Haussler, K. K. 2020 Review: Pressure Algometry for the Detection of Mechanical Nociceptive Thresholds in Horses. Animals 10, no. 12.*

In developing this proposed rule, we considered prescribing the palpation protocol followed by APHIS veterinarians, but this study indicates that the amount of pressure applied under that protocol may be insufficient given the mechanical nociceptive thresholds of the study horses, which had not been sored. We also considered whether to propose the use of pressure algometry as an additional diagnostic tool for assessing compliance with the HPA. However, the 2008 study authors noted that additional study is necessary to establish ranges for padded horses because their shoeing and toe length could result in lower mechanical nociceptive thresholds and to assess the use of the tool in novel environments to determine whether the setting may impact horses' tolerance levels. For these reasons, we believe it would be premature to propose the use of pressure algometry in the inspection of horses under the HPA. However, we welcome additional data and research on this topic.

We are proposing to clarify when a DQP must examine the rear limbs of horses. Currently, the regulations states that a "DQP may examine the rear limbs of all horses inspected after showing, and may examine the rear limbs of any horse examined preshow or on the showgrounds when he or she deems it necessary, except that the DQP shall examine the rear limbs of all horses exhibiting lesions on, or unusual movement of, the rear legs." With the removal of the scar rule, we believe there may be questions regarding what the regulations mean by "lesion" as used in this provision. We are proposing to clarify that DQPs must examine the rear limbs of horses when the horse exhibits abnormal inflammation on or unusual movement of the rear legs. Abnormal inflammation may include redness of skin, edema of the skin, and loss of skin integrity on both hindlimbs in the same approximate degree and in the same approximate area on each leg.

Inspection of Tack

Currently, § 11.21 requires the DQP to instruct the person having custody of a horse to control it by holding the reins approximately 18 inches from the bit shank. Further, the DQP is not required to inspect the horse if a horse is presented in a manner that might cause the horse not to respond to the DQP's examination or if whips, cigarette smoke, or other actions or paraphernalia are used to distract a horse during examination. These provisions were established in the 1990 final rule referenced above and were intended to ensure the integrity and consistency of the inspection process.

Despite these provisions, we continue to be aware of efforts to distract horses during inspection to inhibit their response to pain. In 2011, an owner and operator of a stable that trained TWHs was sentenced for a HPA criminal conviction when a horse trained at the stable was discovered wearing a nerve cord – in this case, a plastic zip tie that distractingly stimulated the horse's gums – in its mouth and found bilaterally sore during inspection. In 2012, the AVMA issued a fact sheet on soring that identified several unethical methods that trainers and owners use to thwart inspections, including the use of a bit burr under the saddle, hand twitch, or surgical staples under the mane just before inspection. In a 2018 open letter to the horse industry, APHIS reiterated the need for DQPs to request the person having custody of the horse to remove tack for inspection when warranted due to these unlawful practices. Most recently, in 2025, a DQP discovered a burr under the saddle of a horse as a means of stewarding the horse during its preshow inspection. To ensure that horses are consistently checked for these and other unlawful devices that may distract them during inspection, APHIS is proposing to require all DQPs to affirmatively inspect under the horse's mane and around and under any tack, including the bit and saddle, for such devices before beginning the physical examination.

Inspection for Prohibited Substances and Masking Agents

As discussed above, APHIS has long been concerned about the veracity of inspection under the HPA because of the use of medications and substances that interfere with compliance inspections by concealing signs of soring. Based on recommendations from AAEP and the NAS

study, the fact that there is a common, established practice of blood sampling to test for prohibited medications and medications above therapeutic levels in horse sports around the world, and the unlawful use of such medications and substances at HPA-covered events, we are proposing to amend § 11.2 to expressly prohibit the use of masking agents (such as, but not limited to, sedatives or topical numbing agents) and substances that conceal evidence of soring. In addition to masking soring, such actions may cause a false entry or statement in a report or other required record that DQPs or APHIS representatives prepare and are a grave violation of the Act.

To ensure that horses are consistently inspected for masking agents and substances at HPA-covered events, we are proposing four changes to the DQP inspection procedures. First, we propose to require that DQPs ensure the swabbing of the front pasterns of a percentage of other horses in accordance with the uniform inspection procedures of the DQP's certified organization or association. Second, we propose that, for all horses presented for preshow inspection, DQPs wipe all aspects of the front pastern using a clean cotton pad or cloth and inspect the pad for signs of substances prohibited in § 11.2(c) of the regulations, including dyes, ointments, hair filler, and chemical smells, in accordance with the uniform inspection procedures of the DQP's certified organization or association. Third, we propose that DQPs must ensure the collection of blood samples of any horse that is sore or otherwise not in compliance with the Act or regulations and a percentage of other horses in accordance with the uniform inspection procedures of the DQP's certified organization or association. And fourth, we propose that DQPs ensure the collection of blood samples on TWHs and racking horses tyed first in their class or event.

Consistent with this change, we also would revise the provision in § 11.21(a)(4) for DQPs to decline to examine a horse if it is presented in a manner that might cause the horse not to respond to examination by adding the use of masking agents to the list of actions and paraphernalia that could distract a horse during examination. If the DQP inspects a horse

preshow that appears to be or could be sedated, the DQP would be required to inspect the horse after it is shown or exhibited for compliance with the Act and regulations. Moreover, we would make it clear that a DQP may decline to examine a horse if the owner, trainer, exhibitor or other person having custody of or responsibility for a horse takes any other action to interfere or influence the DQP in carrying out his or her duties or making decisions concerning whether or not any horse is sore or otherwise in violation of the Act or regulations.

Inspection of Devices

As discussed above, we are proposing to amend § 11.2(b)(17) to reaffirm the original intent of the prohibition on devices striking the coronet band of the foot of a horse except for soft rubber or soft leather bell boots that are used as protective devices. The intent of this requirement is to prevent the use of devices from being placed on a horse's leg in a manner that will allow such device to strike the coronet band of a horse's foot while such horse is in motion or at rest. Thus, for purposes of HPA compliance inspections, the APHIS representative or DQP will evaluate any chain or action device placed on a horse to ensure it does not land on or strike any location around the circumference of the coronet band. To ensure this evaluation occurs during DQP inspection, we are also proposing to add a conforming change to the inspection procedures in § 11.21. Specifically, we propose that the DQP must verify that any action device or any other device will not strike any portion of the coronet band when the horse is standing or moving during preshow inspection.

Postshow Inspection of Pads

For nearly four decades, the agency has faced challenges with assessing horses shown or exhibited wearing padded shoes for compliance with the HPA. As early as 1979, APHIS observed from its experience in enforcing the Act and regulations that a relationship exists between the use of pads and soring in horses. In its 1979 final rule, 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 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 . . . pads."

In 1988, after remand from the Court of Appeals, the U.S. District Court for the District of Columbia recognized that the results of a study conducted by the Auburn University School of Medicine supported a finding that the use of padded shoes resulted in soring and ordered the USDA to institute rulemaking proceedings to promulgate regulations conforming to the requirements of the Act. *Am. Horse Prot. Ass'n, Inc. v. Lyng*, 681 *F.Supp. 949 (D.D.C. 1988).* Among other things, the court stated that the Auburn Study strongly indicated padded shoes "not only can reasonably be expected to cause soreness to a horse, but also can evade detection [of soreness] through the examination techniques employed at horse shows." In compliance with the court's order, APHIS issued four interim rules and a final rule between 1988 and 1989 that considered various amendments to the list of prohibited devices and equipment, including prohibitions on the use of padded shoes. Ultimately, however, APHIS did not retain certain proposed prohibitions on the use of pads in the 1989 final rule because some pads may be used for corrective purposes. At that time, in response to comments recommending a prohibition on all pads because they can hide objects inserted between the pad and the foot, APHIS also stated that a thorough preshow inspection of a horse combined with the removal of pads to permit visual inspection was an appropriate way of dealing with the insertion of objects, rather than the prohibition of all pads.

More than two decades later, in the May 2024 Horse Protection final rule, APHIS amended the regulations to prohibit the use of pads and wedges on TWHs and racking horses at horse shows, exhibitions, sales, and auctions, unless the horse has been prescribed and is receiving therapeutic treatment using pads or wedges as approved in writing by a licensed veterinarian. That amendment followed decades of disproportionately high rates of noncompliance found in TWHs and racking horses that compete in padded classes at horse shows and concerns that soring continues to occur through the use of performance packages that

can introduce unnatural angulations of the foot or hide signs of pressure shoeing, among other things.

In *Celebration*, the U.S. District Court considered a challenge to the prohibition on all nontherapeutic pads on TWHs and racking horses at horse shows, exhibitions, sales, and auctions. The court found that the prohibition exceeded USDA's statutory authority because pads "do not cause soring and can be used in an appropriate way." The court vacated the prohibition on nontherapeutic pads in the May 2024 Horse Protection final rule.

While being mindful of the U.S. District Court's order in *Celebration* regarding the HPA's statutory scope of authority, APHIS remains concerned about the disproportionately high rates of noncompliances found in TWHs and racking horses that compete in padded classes at horse shows and the use of performance packages to hide signs of pressure shoeing (including trimming the hoof to expose sensitive tissues and tightly nailing on a shoe or inserting a hard object between the pad and the sole to exert pressure on the sensitive tissue) to cause it to be sore and gain an unfair advantage in competition.

Although DQPs currently have the authority to remove pads as part of their inspection, we are aware that such examinations rarely, if ever, occur. The AAEP, in its 2008 recommendations for the elimination of soring within the TWH industry, recommended the reexamination of selected horses as they exit the ring to include "removal of both front shoes of randomly selected horses" and "visual and hoof tester examination of unshod feet for evidence of methods directed at inducing pain, such as pressure devices and excessive paring of the sole and frog." Following this recommendation, from 2014 through 2016, the TWHNCA's VAC included shoe removal as a component of its inspection procedures for assessing HPA compliance.

In this proposed rule, we are proposing to require the removal of pads in certain circumstances so that DQPs will consistently inspect for pressure shoeing. Specifically, we would require DQPs to, at minimum, remove the pads on any TWHs and racking horses tyed

first in their class or event and any time a DQP deems necessary to assure such horses are in compliance §§ 11.2(b)(13), (b)(18), and (b)(19), except that the DQP may require the removal of any pads on Tennessee Walking and racking horses tyed first in their class or event once per day if such horse tyed first in more than one class or event on a single day. In addition, if a horse tyed first is disqualified following inspection and the class is re-tyed, the DQP would be required to inspect the horse that is subsequently tyed first and require the removal of any pads to assure the horse is in compliance with §§ 11.2(b)(13), (b)(18), and (b)(19). This proposed change aligns with the purpose of the Act (i.e., eliminating soring to promote fair competition) by confirming that top-placed horses are compliant and free of unfair competitive advantages that could be gained through pressure shoeing.

As alternatives to this proposed requirement, we considered having DQPs require the removal of pads on a random basis of a certain percentage of horses during their postshow inspections or all first place horses, including any horse that placed first in two classes on the same day. However, we elected to propose a more flexible standard because of cost, the likelihood of reduced risk of noncompliant alterations occurring between classes, and welfare concerns about repeat pad removal and replacement in the same day. We also considered whether certification requirements for DQP programs should include digital radiography as part of the inspection procedures for DQPs as a means of evaluating horses for prohibited objects and practices that may occur within the pad and shoeing of a horse. We recognize that, although digital radiography is less time-consuming because it generally does not require the removal of the pad, it also has its limitations in that it does not allow the DQP to visually inspect the horse's natural hoof or examine it with hoof testers. In this regard, digital radiography may not detect all causes of pressure shoeing, including trimming the hoof to expose sensitive tissues and certain hard objects that are not visible on radiograph. We welcome comments on these alternatives and the proposed requirements for postshow inspection of pads.

Reporting by Management (§ 11.24)

Under the current regulations, paragraph (a) of § 11.24 requires management to submit information required by § 11.22(a)(1) through (6) within 5 days following the conclusion of any horse show, exhibition, sale, or auction containing TWHs or racking horses for each horse excused or disqualified from being shown, exhibited, sold or auctioned and the reasons for such action. If management does not excuse or disqualify any horse, the management shall submit a report so stating. Similarly, paragraph (b) of this section requires management to inform APHIS within 5 days following the conclusion of any horse show, horse exhibition, or horse sale or auction which does not contain TWHs or racking horses of any case where a horse was excused or disqualified by management or its representatives from being shown, exhibited, sold or auctioned because it was found to be sore. This provision has existed in the regulations since 1979.

In situations where management appoints and retains DQPs, APHIS is aware that some HIOs with certified DQP programs that provide licensed DQPs for an HPA-covered event will submit the information required under this section on behalf of management. Although such HIOs meet their current monthly reporting requirements under § 11.7(d)(3), they routinely encounter challenges with meeting the 5-day timeframe established under this part, especially regarding the requirement that management must provide copies of each class or sale sheet, as described in § 11.22(a)(6). Other challenges HIOs have encountered include postal delays in obtaining DQP records and other unforeseen circumstances, such as staff taking personal leave for a death in the family. We believe that lengthening the timeframe for management to submit the information required under this part is warranted and would not adversely affect APHIS' ability to review this information to assess compliance with the Act and regulations. Accordingly, we propose to lengthen the time management has to provide the information required under this section from 5 days to 30 days. Concurrently and as discussed above, we would require that HIOs with certified DQP programs also to submit the records they are

responsible for providing under § 11.7(d)(3) within the same 30-day timeframe to eliminate any confusion regarding these reporting requirements.

As an alternative to this action, we considered lengthening this time to monthly, to match the existing HIO reporting requirements, but determined that 30 days would ensure HIOs adequate time to obtain test results from pastern swabs and blood collection while also allowing for timely monitoring of compliance information and ensure effective enforcement of the HPA.

Minimum Penalties to Be Assessed and Enforced by HIOs That License DQPs (§ 11.25)

As indicated above, APHIS was enjoined in 2015 from enforcing § 11.25. In *Contender Farms*, the U.S. Court of Appeals for the Fifth Circuit held that this section is not "a valid application of USDA regulatory authority under the HPA," and, on remand, the U.S. District Court for the Northern District of Texas ruled that USDA is enjoined from enforcing section 11.25.[2] For this reason, we propose to remove § 11.25 from the regulations. In addition, we would make conforming changes to § 11.21 by removing paragraph (d), which requires HIOs that license DQPs to assess and enforce penalties for violations in accordance with § 11.25 and report all violations in accordance with § 11.20(b)(3).

Reporting Required of Appeals Officials and Access to Appeals Officials' decisions (§ 11.42)

Finally, this proposed rule would require that Appeals Officials appointed by APHIS provide decisions on appeals of APHIS findings to submit information concerning any decisions on appeals to APHIS within 5 days after the horse show, exhibition, sale or auction. This information would include the name and address of the show and the show manager; the exhibitor's number and class number, or the sale or auction tag number of said horse; the name, age, sex, color, and markings of the horse; the date and time of the appeal review; a written response to the appeal and reasons for the decision; and copies of any evidence considered in

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[2] *Contender Farms, L.L.P. v. U.S. Dep't of Agric.*, 779 F.3d 258, 274 (5th Cir. 2015), *remanded sub nom. Show, Inc. v. U.S. Dep't of Agric.*, No. 4:12-cv-429, slip op. (N.D. Tex. Apr. 22, 2015).

providing a decision on each appeal. APHIS would require this information to evaluate the effectiveness of its inspection program, monitor the incidences of violations of the Act and regulations, and for use in its enforcement of the Act. APHIS would provide information to the trainer and owner of each horse allegedly found in violation of the Act or its regulations after appeal, including the name and date of the show, exhibition, sale, or auction and the name of the horse and the reason for the finding. Upon request, APHIS would also provide a copy of the Appeals Official's written response to the appeal to any person who had responsibility for the horse at the time of appeal, including the groom, exhibitor, or other person having custody of or responsibility for a horse, in accordance with any applicable laws or regulations, including the Freedom of Information Act (5 U.S.C. 552).

Miscellaneous Changes

In addition to the above changes, we are proposing several nonsubstantive and editorial changes to update APHIS' contact information, incorporate modern information sharing practices, simplify references to Department offices and representatives, replace antiquated spelling, punctuation, and drafting conventions, correct formatting and terminology errors, and enhance readability. For example, we are proposing to update APHIS' contact information used throughout the regulations. APHIS is no longer located at the address listed in the regulations. In its place, we propose to list our current email address (horseprotection@usda.gov) and mailing address (USDA/APHIS/AC, 2150 Centre Ave., Building B, Mailstop 3W11, Fort Collins, CO 80526-8117). To cite another example, we propose to simplify references to Department offices and representatives to improve readability. Currently, the regulations define seven terms to refer to various Department offices and personnel. Wherever possible, we use the terms APHIS and APHIS representative to standardize references to Agency activities and representatives. To the extent more specific or different terms are needed, we retained them in this proposal.

Executive Orders 12866 and 13563, Executive Order 14192, and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866, and, therefore, has been reviewed by the Office of Management and Budget. As a proposed rule, however, it is not subject to Executive Order 14192.

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

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

The Horse Protection Act (HPA, or Act, 44 U.S.C. 1821 *et seq*.) prohibits sore horses from participating in horse exhibitions, sales, shows, or auctions covered under the Act. The term "sore" when used to describe a horse includes applying an irritating or blistering agent to the any limb of a horse; inflicting a burn, cut, or laceration on any limb of a horse; injecting a

tack, nail, screw, or chemical agent into any limb of a horse; or using any other substance or device on or engage 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, with limited therapeutic exemptions.

The Secretary of USDA is authorized to issue regulations to carry out the purposes of the Act. The Secretary has delegated such authority to the Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the Act has been delegated to the Deputy Administrator for Animal Care. Regulations and standards established under the Act are contained in 9 CFR part 11 (referred to below as the regulations), and 9 CFR part 12 lists the rules of practice governing administrative proceedings.

On May 8, 2024, APHIS issued a final rule that significantly revised the HPA regulations (referred to as the May 2024 Horse Protection final rule), which was subsequently challenged in the U.S. District Court for the Northern District of Texas and partially vacated on January 21, 2025. We subsequently delayed the effective date of the non-vacated provisions of the May 2024 Horse Protection final rule on three separate occasions.

APHIS is now removing the vacated provisions of the May 2024 Horse Protection final rule, and proposing to withdraw the remaining non-vacated provisions. The reasons for the withdrawal are articulated in the preamble of the proposed rule that this economic analysis evaluates. The non-vacated provisions of the May 2024 Horse Protective final rule include that APHIS would screen, train, and authorize inspectors to conduct inspections at all HPA-covered events; relieve horse industry organizations (HIOs) from regulatory responsibilities; establish new reporting and recordkeeping requirements, including advance notice to APHIS of event details and post-event reporting; and affirmatively require event managers to provide a farrier at events with more than 100 entered horses (or on call for smaller shows), appoint an additional

inspector when an event has more than 100 entered horses, and provide HPIs and APHIS representatives with adequate shelter, lighting and access to electricity.

Overall, the non-vacated provisions of the May 2024 Horse Protection final rule introduced modest costs for the industry—including additional costs associated with recordkeeping, familiarization with the new requirements, retaining and appointing an additional inspector when more than 100 horses are entered in a covered event, and costs for equipment like inspection shelters and generators, and a farrier, when needed. In terms of costs to APHIS, the agency estimated that its costs under the May 2024 Horse Protection final rule could increase by up to $3.2 million annually.

The withdrawal of the non-vacated provisions of the 2024 Horse Protection final rule is expected to have negligible economic impact because the rule's major cost-generating provisions—such as establishing a new APHIS-run inspection program, expanding APHIS staff to serve as alternative inspectors, establishing new reporting systems, and implementing nationwide recordkeeping changes—were intended to be funded by APHIS. Additionally, as noted, the 2024 Horse Protection final rule would have imposed modest increase in costs for event managers who already fulfill similar requirements as those contained in the rule. If the proposed rule were adopted, the costs and benefits associated with the non-vacated provisions of the May 2024 Horse Protection final rule would not be realized.

In addition to the withdrawal, APHIS is also proposing several revisions to the current Horse Protection regulations (current regulations) to ensure that the regulations afford due process and better align with the Act. Key proposed updates include:

- Addressing longstanding concerns with the adequacy of the Designated Qualified Persons (DQPs) program through enhanced training, evaluation, monitoring and standards of conduct provisions;

- Enhancing and modernizing the DQP inspection procedures to better ensure that only compliant horses enter the show ring or otherwise compete or participate in HPA-regulated events;
- Strengthening provisions to ensure that exhibitors, management, horse industry organizations and associations (HIOs), and other individuals do not interfere with APHIS or DQP inspections of horses;
- Prohibiting the use of masking agents and other substances that conceal evidence of soring (such as sedatives or topical numbing agents);
- Removing the scar rule;
- Revising APHIS' inspection procedures to require two APHIS veterinarians to independently inspect and concur on a finding of a noncompliance before notifying the individual having responsibility for the horse;
- Establishing a process for individuals who are responsible for a horse to immediately appeal APHIS inspection findings to a neutral Appeals Official at the event; and
- Clarifying the responsibilities of management for disqualification of sore horses and the prohibitions on horses otherwise not in compliance with the Act or regulations.

The overall objective of the proposed rule is to align the regulations with the HPA and promote more effective and consistent enforcement of the Act and regulations. The principal proposed amendment to the current regulations is designed to address longstanding concerns with the adequacy of the DQP program through enhanced training, evaluation, monitoring, and conflicts of interest provisions. Currently, candidate DQPs must complete 14 hours of training and other requirements before the candidates can obtain a license. Once licensed, DQPs must complete at least 4 hours of continuing education each year thereafter. Under the proposed rule, DQPs would need to obtain a new license every 5 years, which means they would need to complete the 14 hours of training and other requirements every 5 years. Licensed DQPs would still need to complete at least 4 hours of continuing education annually under the proposed rule.

The proposed rule would also reduce burden on HIOs with Department-certified DQP programs by having APHIS furnish experienced equine veterinarians to serve as instructors for 10 hours out of the 14 hours of candidate DQP training and the 4 hours of annual continuing education. For DQP candidate training, the HIO would continue to provide an instructor for 2 hours of classroom on the anatomy and physiology of the limbs of horses, one hour of classroom instruction on DQP standards of conduct, and one hour of classroom instruction on recordkeeping and reporting requirements and procedures.

The proposed training changes include provisions that may have offsetting impacts on the total cost for HIOs. Although HIOs will incur lower costs for each individual training session as APHIS assumes responsibility for more instruction hours, the new 5-year licensing program introduces a recurring training cost that does not currently exist. The net economic impact of these changes is uncertain, as it depends on factors such as the average tenure of a DQP, for which we do not have data. It is possible that the increased frequency of training could be largely offset by the reduced cost per session, resulting in a minimal net change to overall training expenditures over time.

HIOs would still be responsible for developing and implementing the DQP training program (aside from the training curriculum APHIS would cover related to the HPA, history of soring, practical instruction, and annual continuing education). We anticipate that these changes will reduce costs for HIOs associated with the provision of instructors and training of DQPs because APHIS would assume responsibility for providing most of the instructors and developing the training for those courses. However, there will be additional costs to HIOs in developing the training program to fit the new requirements, including costs associated with training DQPs to ensure the collection of prohibited substance and blood samples, and monitoring of the warmup area at HPA-covered events. Under the proposed rule, DQPs would have to apprentice at four covered events before being eligible for licensure, whereas the current regulations require apprenticeship at two covered events before being eligible for licensure.

HIOs would also be responsible for developing methods to assess DQP performance to ensure consistency across all HPA-covered events affiliated with the HIO, and providing a process that would allow the person having responsibility for or custody of a horse to contest a DQP's inspection finding. Additionally, APHIS would certify HIO DQP programs for a period of 10 years. Currently the programs are certified indefinitely, unless revoked. APHIS invites public comments on the costs to the HIOs and DQPs associated with these changes in the proposed rule.

Given that the proposed rule would involve establishing a new practical examination, DQP performance monitoring, and inspection procedures, it could take HIOs 4-6 weeks to establish compliant procedures and programs. Once they have developed their procedures and programs, it could take HIOs approximately 16 hours to update their outlines accordingly. Developing and implementing the compliant procedures and programs required by this proposed rule could involve some one-time costs for HIOs with DQP programs. The resources and time required to achieve compliance would likely vary across organizations, depending on the degree to which their existing procedures already align with the requirements for a DQP training program under the proposed rule. While it is reasonable to assume some HIOs have robust DQP training programs that are closer to meeting these new requirements, others would likely need to undertake more substantial changes to their programs under the proposed rule. Because neither the number of entities that would need to make significant changes nor the full extent of those changes is known, the overall cost that could be incurred due to this proposed rule is also unknown. We welcome data and information from the public regarding these estimates.

APHIS has historically found that events attended only by DQPs have reported lower rates of noncompliance than events that APHIS attended as well. The proposal includes several provisions designed to ensure consistent DQP inspections whether APHIS is in attendance or not, including enhanced and modernized inspection training and procedures, standards of conduct (including conflict of interest provisions), and procedures for HIOs to monitor DQP performance and follow up on performance problems. Considering the historical trends and

contributing factors that are unrelated to the adequacy of DQP performance, it is possible that some DQPs may continue to report lower rates of noncompliance under the provisions of the rule, with costs accruing from missed detections. However, as noted above, APHIS is proposing changes to ensure clear guidelines and processes for conducting inspections, monitoring performance, and addressing DQP performance deficiencies.

With the removal of the scar rule, APHIS anticipates there may be an increase in the number of horses identified as "sore" after showing because the use of otherwise permissible devices (such as action devices) may aggravate preexisting conditions such that, postshow, a horse may exhibit abnormal sensitivity or inflammation on both forelimbs or hindlimbs or otherwise meet the statutory definition of "sore." In addition, we believe that individuals wishing to gain an unfair competitive advantage may try to conceal signs of soring to pass preshow inspection in subsequent classes by applying masking agents to a horse's pasterns or sedating a horse to alter its response to palpation. However, the proposal includes several measures that will mitigate against these potential adverse outcomes, including prohibitions on masking agents and enhanced preshow and postshow inspection procedures. Overall, we believe these changes would better align the regulations with the statute, provide exhibitors with more opportunities to potentially show or exhibit horses that are not sore, and promote fair competition.

Finally, this rule would strengthen due process protections for participants by providing that APHIS will only notify management of a noncompliance if two APHIS veterinarians independently inspect the horse and concur on the finding. In addition, participants would have the option of immediately appealing the finding to a neutral Appeals Official before disqualification. If the participant did not submit an appeal in time or if the Appeals Official affirms APHIS' finding in whole or in part, APHIS would notify management of its finding. The proposed rule would also clarify the responsibilities of management regarding the disqualification of horses. The proposed rule would make clear that management is required to

disqualify a sore horse from the specific class for which it was inspected only, rather than disqualifying the horse from the entire event. The proposal also clarifies that management may permit certain equipment corrections that can be fixed on the spot, thus allowing a horse to be re-inspected for and compete in that same class.

APHIS will incur additional costs associated with the hiring and provision of Appeals Officials at HPA-covered events where APHIS representatives conduct inspections, but we believe the benefits of ensuring due process and better alignment with the Act outweigh these costs to the government. Overall, the benefits of the proposed rule are expected to justify the costs. The proposed changes to the current regulations would promote the humane treatment of horses and fair competition by more effectively ensuring that horses that participate in covered events are consistently inspected and that only horses that are compliant with the HPA and regulatory requirements participate in covered events. This benefit is an unquantifiable animal welfare enhancement and would result in greater public confidence that the animals are being treated humanely.

The proposed rule is not expected to adversely impact the communities in which covered events are held because such events are expected to continue. Owners are motivated to show their prized horses and are likely to continue participating in horse shows. Strengthened enforcement of the HPA is expected to also benefit shows, exhibitions, sales, auctions, and participants by improving the reputation of the Tennessee Walking Horse and racking horse industry. Participation in events may increase if the proposed rule were to result in increased confidence by owners in consistent inspections across all HPA-covered events and assurance that individuals who sore horses to gain a competitive advantage are likely to be prevented from participating.

We also estimate that approximately 80 DQPs would require training under the new provisions, which require an increase in DQP services in connection with the proposed requirement that management of covered events with more than 100 horses entered to appoint

and retain at least two DQPs compared to the current 150 horses entered. In addition, approximately 12 HIOs would be eligible to submit applications to maintain their DQP program certifications if they were able to meet the enhanced requirements in the proposed rule. The entities affected by this proposed rule are likely small by SBA standards.

APHIS invites public comments on the potential impact of the proposed rule.

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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Executive Order 13175

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.), the information collection or recordkeeping requirements included in this

proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments and recommendations for the proposed information collection should be sent within 60 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review - Open for Public Comments" or by using the search function. Please send a copy of your comments to: (1) Docket No. APHIS-2026-0067, Regulatory Analysis and Development, PPD, APHIS, 5601 Sunnyside Ave., #AP760, Beltsville, MD 20705, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Under this proposed rule, proposed § 11.7(b) would require horse industry organizations and associations seeking a new Department certification of their Designated Qualified Persons (DQP) programs to submit additional information on their detailed outline. Specifically, HIOs would be required to add more detail regarding how they will address situations where DQPs fail to perform their duties in a satisfactory manner and the methods used to ensure uniform procedures for inspecting horses for compliance with the Act, including procedures based on currently accepted methodologies and practices in the horse industry for swabbing pasterns and testing samples for prohibited substances and for collecting and testing blood samples for sedatives and other drugs that may mask soring. In addition, HIOs would have to add their procedures for individuals having responsibility for a horse to contest a DQP's finding of a noncompliance in their outline for certification. Certifications would be valid for 10 years under the proposed rule.

In addition, the proposed rule would revise § 11.7(d) to lengthen the time DQPs have to submit copies of information concerning horses inspected at covered events to their licensing HIOs from 72 hours to 5 days and require DQPs to submit new information regarding any horses

whose pasterns were swabbed for prohibited substances or from whom blood was collected for testing purposes.

Similarly, this proposed paragraph would also lengthen the time HIOs have to submit information regarding DQP inspections to APHIS from monthly to 30 days following the conclusion of each horse show, exhibition, sale, or auction and make other changes to align the HIO reporting with the DQP reporting requirements concerning prohibited substances and masking agents.

Please note that proposed § 11.24 would lengthen the time management has to submit information to APHIS concerning their horse shows, exhibitions, sales, and auctions from 5 days to 30 days. Accordingly, this proposed change would impose no new burden but would rather allow additional time to fulfill the existing reporting requirements. In addition, the records required for Appeals Officials under proposed § 11.42 pertain to government employees and are thus not subject to the Paperwork Reduction Act.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed reporting and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: The public burden for this collection of information is estimated to average 3.644 hours per response.

Respondents: Designated Qualified Persons (DQPs); and Horse Industry Organizations and Associations seeking or holding a USDA-certification of their DQP programs.

Estimated annual number of respondents: 79.

Estimated annual number of responses per respondent: 6.

Estimated annual number of responses: 494.

Estimated total annual burden on respondents: 1,799 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

A copy of the information collection may be viewed on the Regulations.gov website or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading ADDRESSES at the beginning of this proposed rule.) Copies can also be obtained by contacting APHIS.PRA@usda.gov. APHIS will respond to any ICR-related comments in the final rule. All comments will also become public record.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact APHIS.PRA@usda.gov.

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Reporting and recordkeeping requirements.

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

PART 11—HORSE PROTECTION REGULATIONS

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

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

2. Amend § 11.1 by:

a. In the introductory text of the section, removing the words "and the masculine form shall also impart the feminine."

b. Revising the definition for "Animal and Plant Health Inspection Service";

c. Removing the definition for "APHIS Show Veterinarian";

d. Adding a definition for "Appeals Official";

e. Revising the definition for "Exhibitor";

f. Removing the definition for "Regional Director";

g. Revising the definition for "Secretary";

h. Revising the definition for "Sore";

i. Removing footnote 1.

The addition and revisions read as follows:

§ 11.1 Definitions.

* * * * *

Appeals Official means a Special Government employee as defined in 18 U.S.C. 202 meeting the qualifications in § 11.8 of this chapter and appointed by APHIS to provide decisions on appeals of APHIS inspection findings at any horse show, exhibition, sale, or auction.

* * * * *

Animal and Plant Health Inspection Service or APHIS means the Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator. For purposes of this part, APHIS may be contacted by email at horseprotection@usda.gov or U.S. mail at USDA/APHIS/AC, 2150 Centre Ave., Building B, Mailstop 3W11, Fort Collins, CO 80526-8117.

* * * * *

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 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 horse 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.

* * * * *

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 by a person on any limb of a horse, or

(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.

* * * * *

3. Amend § 11.2:

a. In paragraph (b)(17), by adding the words "any location on" after the word "strikes".

b. By revising paragraph (c), including its subparagraphs.

c. By revising paragraph (e), including its subparagraphs.

b. By redesignating footnote 2 as footnote 1.

The revision reads as follows:

§ 11.2 *Prohibitions concerning exhibitors*.

* * * * *

(c) *Substances*. (1) No substance shall be used with respect to any Tennessee Walking Horse or racking horse at any horse show, horse exhibition, or horse sale or auction if such use causes or can reasonably be expected to cause such horse to be sore or masks or can reasonably be expected to mask evidence of soring.

(2) All substances are prohibited on the extremities above the hoof of any Tennessee Walking Horse or racking horse after the horse has been inspected by management or by a DQP, except that lubricants such as glycerine, petrolatum, and mineral oil, or mixtures thereof may be used: *Provided,* That:

(i) 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.

(ii) 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.

(iii) Horse show, exhibition, sale, or auction management makes such lubricants available to APHIS representatives for inspection and sampling as they deem necessary.

* * * * *

(e) *Information requirements—horse related*. Failing to provide information, providing any false or misleading information, or causing another person to provide false or misleading information required by the Act or regulations or requested by APHIS representatives to enforce the Act or regulations is prohibited.

(1) Such information shall include, but is not limited to:

(i) Information reasonably related to the identification, ownership, control, direction, or supervision of any horse shown, exhibited, sold, or auctioned or entered for the purpose of being shown, exhibited, sold, or auctioned at any horse show, horse exhibition, or horse sale or auction, including the registered name, 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, exhibitor, transporter, or other person having custody of or responsibility for the horse; the class or event in which the horse is entered or participated; and the exhibitor identification number; and

(ii) Information bearing on compliance with the requirements of the Act or regulations.

(2) The use of masking agents (such as, but not limited to, sedatives or topical numbing agents) and other substances that conceal evidence of soring may cause false entry or statement in a report or other record required under the Act or regulations and is thereby prohibited.

§ 11.3 [Removed and Reserved]

4. Remove and reserve § 11.3.

5. Revise and republish § 11.4 to read as follows:

§ 11.4 *Inspection and detention of horses*.

For the purpose of effective enforcement of the Act:

(a) 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 allow any APHIS representative to inspect such horse at all reasonable times and places the APHIS representative 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 auction, whether or not such horse has or has not been shown, exhibited, or sold or auctioned, or has or has not been entered for the purpose of being shown or exhibited or offered for sale or auction at any such horse show, horse exhibition, or horse sale or auction. APHIS representatives will not generally or routinely delay or interrupt actual individual classes or performances at horse shows exhibitions, 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 APHIS 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)(1) When any APHIS representative notifies the owner, trainer, exhibitor, 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 such horse, it shall not be moved from the horse show, horse exhibition, or horse sale or auction until the APHIS representative has completed the inspection and permitted the horse to be removed from the inspection area.

(2) During the inspection, the person having custody of the horse shall control the horse by holding the reins approximately 18 inches from the bit shank. Such person shall not present the horse in a manner that might cause the horse not to respond to APHIS' examination,

including the use of masking agents (such as, but not limited to, sedatives or topical numbing agents) and whips, cigarette smoke, or other actions or paraphernalia to distract the horse during examination.

(c) For the purpose of examination, testing, or taking of evidence, APHIS representatives may detain for a period not to exceed 24 hours any horse, at any horse show, exhibition, 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 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. APHIS will 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) Provided that the conditions in paragraphs (e)(1) and (e)(2) of this section are adhered to, the owner, trainer, exhibitor, or other person having custody of or responsibility for any horse detained by APHIS for further examination, testing, or the taking of evidence shall be allowed to feed, water, and provide other normal custodial and maintenance care, such as walking, grooming, etc., for such detained horse.

(1) Such feeding, watering, and other normal custodial and maintenance care of the detained horse must be 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 must be 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 must be furnished in writing to the APHIS representative prior to such use, application, or injection by the Doctor of Veterinary Medicine attending the horse. The use, application, or injection of such drug or other medication must be approved by the APHIS representative.

(f) When two APHIS veterinarians independently inspect a horse and concur on a finding of an alleged violation of the Act or regulations, APHIS will notify the person having custody of the horse of such alleged violation before the APHIS representative permits the horse to be removed from the inspection area.

(g) The person having custody of any horse or horses that an APHIS representative determines shall be detained for examination, 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 examination, testing, or gathering of evidence, or until the 24-hour detention period expires.

(h)(1) 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 by an APHIS representative as stated in paragraph (f) of this section, may appeal the finding if the appeal is made:

(i) To the Appeals Official after notification of the alleged violation by APHIS; and

(ii) Before the horse has been removed from the inspection area.

(2) In considering appeals submitted in accordance with this paragraph, the Appeals Official shall independently review the evidence or facts offered by the person who submitted

the appeal and offered by APHIS; consider the relevance, reliability, and credibility of such evidence or facts; and apply the provisions of the Act and the regulations.

(3) Following the review described in paragraph (h)(2), the Appeals Official may set aside the APHIS inspection finding or affirm the finding in whole or in part. The Appeals Official shall render his or her decision expeditiously so as not to delay or interrupt individual classes or performances at the horse show, exhibition, sale, or auction. The Appeals Official will provide an oral decision on the appeal to APHIS and the person who submitted the appeal.

(i) APHIS shall notify the show manager or other management representative of any horse allegedly found in violation of the Act or the regulations if:

(1) Two APHIS veterinarians independently inspected the horse and concurred on a finding of an alleged violation of the Act or the regulations, and the owner, trainer, exhibitor, or other person having custody of or responsibility for the horse did not submit an appeal before the horse was removed from the inspection area; or

(2) The Appeals Official provides an oral decision affirming, in whole or in part, the finding of an alleged violation or violations of the Act or the regulations, in accordance with this section.

§ 11.5 [Amended]

6. Amend § 11.5:

a. In paragraph (b)(1), by removing the words “horse owner, exhibitor, or other person having custody of or” and adding the words “horse owner, trainer, exhibitor, or other person having custody of or” in their place.

§ 11.6 [Amended]

7. Amend § 11.6 by removing the words “APHIS Show Veterinarian” wherever they appear and adding, in their place, the words “APHIS representative”.

8. Revise and republish § 11.7 to read as set forth below:

§ 11.7 *Certification and licensing of designated qualified persons (DQPs)*.

(a) *Basic qualifications of DQPs*. DQPs holding a valid, current DQP license issued in accordance with this part may be appointed by the management of any horse show, exhibition, sale, or auction, as qualified persons in accordance with section 4(c) of the Act, to inspect horses to detect or diagnose soring and to otherwise inspect horses or any records pertaining to any horse for the purpose of enforcing the Act. Individuals who may be licensed under this part must be:

(1) Doctors of Veterinary Medicine with substantial equine experience; or

(2) Individuals who are knowledgeable about equine husbandry or science and whose experience and training would qualify them for positions as stewards or judges for recognized breed associations or equestrian organizations.

(b) *Certification requirements for DQP programs*. The Department will not license DQPs on an individual basis. Licensing of DQPs will be accomplished only through DQP programs certified by the Department and initiated or maintained by horse industry organizations or associations. Any horse industry organization or association desiring a Department certification to train and license DQPs under the Act must submit to APHIS a formal request in writing for certification of its DQP program and a detailed outline of such program for APHIS approval. Such outline shall include the organizational structure of such organization or association and the names of the officers or persons charged with the management of the organization or association. The outline shall also contain at least the following:

(1) The criteria to be used in selecting DQP candidates and the minimum qualifications and knowledge regarding horses each candidate must have in order to be admitted to the program.

(2) A copy of the formal training program, classroom and practical, that each DQP candidate must complete before being licensed by such horse industry organization or association, including the minimum number of hours, classroom and practical, and the subject

matter of the training program. Such training program must meet the following minimum standards in order to be certified by the Department under the Act:

(i) Two hours of classroom instruction on the anatomy and physiology of the limbs of a horse. The instructor teaching the course must be specified, and a resume of said instructor's background, experience, and qualifications to teach such course shall be provided to APHIS in writing at least 60 days prior to such course.

(ii) Six hours of classroom instruction on the Horse Protection Act and regulations and their interpretation, the history of soring, the inspection procedures necessary to detect soring, the detection and diagnosis of soring, and related subjects. Instructors for this course must be experienced equine veterinarians furnished by APHIS. Requests for instructors to be furnished must be made to APHIS in writing at least 60 days prior to such course.

(iii) Four hours of practical instruction in clinics and seminars using live horses with actual application of the knowledge gained in the classroom subjects covered in paragraphs (b)(2)(i) and (ii) of this section. Methods and procedures required to perform a thorough and uniform examination of a horse shall be included. Instructors for this course must be experienced equine veterinarians furnished by APHIS. Requests for instructors to be furnished must be made to APHIS in writing at least 60 days prior to such course.

(iv) One hour of classroom instruction regarding the DQP standards of conduct promulgated by the licensing organization or association pursuant to paragraph (d)(7) of this section.

(v) One hour of classroom instruction on recordkeeping and reporting requirements and procedures.

(3) A sample of a written examination and practical examination, which must be passed with a minimum score of 85 percent on each examination by DQP candidates for successful completion of the program. The sample written examination and practical examination must

include sample questions and answers and the scoring thereof for the written examination, and sample criteria for conducting the practical examination.

(4) The criteria to be used to determine the qualifications and performance abilities of DQP candidates selected for the training program and the criteria used to indicate successful completion of the training program, in addition to the written examination and practical examination required in paragraph (b)(3) of this section.

(5) The criteria and schedule for a continuing education program for continued licensing of DQPs by such organization or association. A continuing education program for DQPs shall include 4 hours of instruction per year. Instructors for this program must be experienced equine veterinarians furnished by APHIS. Requests for instructors to be furnished must be made to APHIS in writing at least 60 days prior to such instruction.

(6) The criteria and methods of monitoring and evaluating performance for continued licensing of DQPs by such organization or association.

The criteria and methods of monitoring and evaluating performance of DQPs shall include:

(i) Methods to ensure that each licensed DQP is consistently carrying out his or her duties during all appointed tours of duty at horse shows, exhibitions, sales, and auctions, including on-site observations by the HIO of the DQP's performance at such events; and

(ii) A description of the procedures the HIO will follow to address situations where a licensed DQP fails to perform his or her duties in a satisfactory manner, except that such procedures shall not authorize the horse industry organization or association or its officers or employees to take any action that would interfere with or influence a DQP in carrying out his or her duties or making decisions concerning whether or not any horse is sore or otherwise in violation of the Act or regulations during the DQP's appointed tour of duty at a horse show, exhibition, sale, or auction.

(7) Procedures for monitoring horses in the unloading, preparation, warmup, and barn areas, or other such areas. Such monitoring may include any horse that is stabled, loaded on a trailer, being prepared for show, exhibition, sale, or auction, or exercised, or that is otherwise on the grounds of, or present at, any horse show, exhibition, sale, or auction.

(8) The method to be used to ensure uniform interpretation and enforcement of the Horse Protection Act and regulations by DQPs and uniform procedures for inspecting horses for compliance with the Act and regulations, including:

(i) Uniform procedures based on currently accepted methodologies and practices in the horse industry for swabbing pasterns and testing samples for substances prohibited under § 11.2;

(ii) Uniform procedures based on currently accepted methodologies and practices in the horse industry for the collection and testing of blood samples for sedatives and other drugs that may cause a horse which is sore to not respond to a DQP's examination; and

(iii) Uniform procedures for 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 by a DQP to contest the finding.

(9) Standards of conduct for DQPs promulgated by the organization or association in accordance with (d)(7) of this section.

(c) *Department certification of HIOs and HIO licensing of DQPs*. The horse industry organizations or associations that have formally requested Department certification of their DQP training, enforcement, and maintenance programs will receive a formal notice of certification from the Department, or the reasons, in writing, why certification of such program cannot be approved. Department certifications of DQP programs shall be valid for 10 years from the date of issuance, unless the certification is revoked in accordance with paragraph (g) of this section or canceled due to inactivity in accordance with paragraph (h) of this section. Any organization wishing to obtain a new DQP certification from the Department for an additional period of certification must submit a new request in accordance with this section. A current list of

certified DQP programs and licensed DQPs will be published on APHIS' website at https://www.aphis.usda.gov/hpa at least once a year, and as further may be required for the purpose of deleting programs and names of DQPs who are no longer certified or licensed and adding the names of programs and DQPs who have been certified or licensed subsequent to the publication of the previous list. Additionally, each horse industry organization or association receiving USDA certification for the training and licensing of DQPs under the Act shall:

(1) Issue each DQP licensed by such horse industry organization or association a numbered identification card bearing the name and personal signature of the DQP, a picture of the DQP, the expiration date of the license, and the name and address, including the street address or post office box and zip code, of the licensing organization or association;

(2) Submit a list to APHIS of names and addresses, including email addresses (if available) and street addresses or post office boxes and zip codes, of all DQPs that have successfully completed the certified DQP program and have been licensed under the Act and regulations by such horse industry organization or association;

(3) Notify APHIS within 10 days of any additions or deletions of names of licensed DQPs from the licensed DQP list submitted to APHIS, any change in the address of any licensed DQP, or any warnings and license cancellations issued to any DQP licensed by such horse industry organization or association;

(4) Not license any person as a DQP if such person has been convicted of any violation of the Act or regulations occurring after July 13, 1976 or paid any fine or civil penalty in settlement of any proceeding regarding a violation of the Act or regulations occurring after July 13, 1976, for a period of at least 2 years following the first such violation, and for a period of at least 5 years following the second such violation, and any subsequent violation;

(5) Not license any person as a DQP until such person has attended and worked four recognized or affiliated horse shows as an apprentice DQP and has demonstrated the ability,

qualifications, knowledge, and integrity required to satisfactorily execute the duties and responsibilities of a DQP to an APHIS representative at one show after his or her apprenticeship;

(6) Not license any person as a DQP if such person has been disqualified by the Secretary from making detection, diagnosis, or inspection for the purpose of enforcing the Act, or if such person's DQP license is canceled by another horse industry organization or association; and

(7) Not issue a license to any person as a DQP that is valid for longer than 5 years from the date of issuance. Any licensed DQP wishing to obtain a new license for an additional period of licensure must complete all training and licensing requirements for candidate DQPs.

(d) *Requirements to be met by DQPs and Licensing Organizations or Associations*.

(1) Any licensed DQP appointed by the management of any horse show, horse exhibition, or horse sale or auction to inspect horses for the purpose of detecting and determining or diagnosing horses which are sore and to otherwise inspect horses for the purpose of enforcing the Act and regulations, shall keep and maintain the following information and records concerning any horse which said DQP inspects at such horse show, horse exhibition, or horse sale or auction, in a uniform format required by the horse industry organization or association that has licensed said DQP and submit copies to the horse industry organization or association not later than 5 days after the horse show, horse exhibition, horse sale, or horse auction is over:

(i) The name and address, including street address or post office box and zip code, of the show and the show manager.

(ii) The exhibitor number and class number, or the sale or auction tag number of said horse and whether the DQP:

(A) Determined the horse was in compliance with the HPA and regulations or recommended the horse be disqualified or excused for any reason.

(B) Ensured the pasterns of the horse were swabbed for prohibited substances in accordance with § 11.21.

(C) Ensured the collection of blood from the horse in accordance with § 11.21.

(iii) For any horse the DQP recommended be disqualified or excused for any reason:

(A) The name and address, including street address or post office box and zip code, of the horse owner.

(B) The name and address, including street address or post office box and zip code, of the horse trainer.

(C) The name and address, including street address or post office box and zip code, of the horse exhibitor.

(D) The exhibitor number and class number, or the sale or auction tag number of said horse.

(E) The date and time of the inspection.

(F) A detailed description of all the DQP's findings and the nature of the alleged violation, or other reason for disqualifying or excusing the horse, including said DQP's statement regarding the evidence or facts upon which the decision to disqualify or excuse said horse was based.

(G) The name, age, sex, color, and markings of the horse; and

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

(iv) For any horse the DQP ensured the pasterns were swabbed for prohibited substances and/or the collection of blood from:

(A) The registered name and the exhibitor number and class number, or the sale or auction tag number of each horse.

(B) The name and address of the owner, trainer, exhibitor, or other person having custody of or responsibility for the care of each such horse.

(2) The DQP shall inform the person having custody of each horse allegedly found in violation of the Act or its regulations, or disqualified or excused for any other reason, of such action and the specific reasons for such action.

(3) Each horse industry organization or association having a Department-certified DQP program shall submit a report containing the following information, from records required in paragraph (d)(1) of this section and other available sources, to APHIS within 30 days following the conclusion of any horse show, horse exhibition, or horse sale or auction.

(i) The identity of the horse show, horse exhibition, sale, or auction that has retained the services of the DQPs licensed by said organization or association covered by the report. Information concerning the identity of such horse show, exhibition, sale, or auction shall include:

(A) The name and location of the show, exhibition, sale, or auction.

(B) The name and address of the show manager.

(C) The date or dates of the show, exhibition, sale, or auction.

(ii) The identity of all horses at each horse show, exhibition, sale, or auction that the licensed DQP recommended be disqualified or excused for any reason and the name of the licensed DQP that made each recommendation. The information concerning the identity of such horses shall include:

(A) The registered name and the exhibitor number and class number, or the sale or auction tag number, of each horse.

(B) The name and address of the owner, trainer, exhibitor, or other person having custody of or responsibility for the care of each such horse disqualified or excused.

(iii) The identity of all horses at each horse show, exhibition, sale, or auction that the licensed DQP ensured was swabbed for prohibited substances and from which blood samples were collected in accordance with § 11.21, the name of the person who performed those procedures, and the test results from those inspections. The information concerning the identity of such horses shall include:

(A) The registered name and the exhibitor number and class number, or the sale or auction tag number of each horse.

(B) The name and address of the owner, trainer, exhibitor, or other person having custody of or responsibility for the care of each such horse.

(4) Each horse industry organization or association having a Department certified DQP program shall provide, by certified mail if personal service is not possible, to the trainer and owner of each horse allegedly found in violation of the Act or its regulations or otherwise disqualified or excused for any reason, the following information:

(i) The name and date of the show, exhibition, sale, or auction.

(ii) The name of the horse and the reason why said horse was excused, disqualified, or alleged to be in violation of the Act or its regulations.

(5) Each horse industry organization or association having a Department certified DQP program shall provide each of its licensed DQPs with a current list of all persons that have been disqualified by order of the Secretary from showing or exhibiting any horse, or judging or managing any horse show, exhibition, sale, or auction. APHIS will make such list available, on a current basis, to organizations and associations maintaining a certified DQP program.

(6) Each horse industry organization or association having a Department certified DQP program shall develop and provide a continuing education program for licensed DQPs that includes 4 hours of instruction per year to each licensed DQP by experienced equine veterinarians furnished by APHIS.

(7) Each horse industry organization or association having a Department certified DQP program shall promulgate standards of conduct for its DQPs and shall provide administrative procedures within the organization or association for initiating, maintaining, and enforcing such standards. The procedures shall include the causes for and methods to be used for canceling the license of any DQP who fails to properly and adequately carry out his or her duties. Minimum standards of conduct for DQPs shall include the following:

(i) A DQP shall not exhibit any horse at any horse show or horse exhibition, or sell, auction, or purchase any horse sold at a horse sale or horse auction that includes gaited horse breeds or at which he or she has been appointed to inspect horses;

(ii) A DQP shall not have or had within the immediately preceding 5 years any personal, professional, or financial interest in showing, exhibiting, selling, or auctioning Tennessee Walking Horses or racking horses, including but not limited to owning, training, riding, or caring for such horses that are shown or exhibited, either for him or herself or for those with whom he or she has immediate family or business ties;

(iii) A DQP shall not inspect horses at any horse show, exhibition, sale, or auction in which a horse owned, trained, or exhibited by a member of the DQP's immediate family, or the DQP's employer, or an officer or board member of the DQP's horse industry organization or association are competing or are being offered for sale;

(iv) A DQP shall not accept a gift, favor, or employment from anyone (including an owner, trainer, exhibitor, or other person having custody of or responsibility for a horse who has an interest in a horse that is presented for inspection at a horse show, exhibition, sale, or auction containing Tennessee Walking Horses or racking horses);

(v) A DQP shall not have an immediate family member, or business partner who works for or is an owner, trainer, exhibitor, or other person having custody of or responsibility for a horse who participates in horse shows, exhibitions, sales, or auctions containing Tennessee Walking Horses or racking horses;

(vi) A DQP shall not participate in the sale, purchase, or ownership of a Tennessee Walking Horse or racking horse, or supply or provide goods or services related to such horses;

(vii) A DQP shall not interact with owners, trainers, exhibitors, or other person having custody of or responsibility for a horse in a manner that creates a potential appearance of a conflict of interest, favoritism, or bias;

(viii) A DQP shall not consume or be under the influence of alcohol or illegal drugs while performing official duties;

(ix) A DQP shall follow the uniform inspection procedures of his or her certified organization or association when inspecting horses; and

(x) The DQP shall immediately inform management of each case regarding any horse which, in his or her opinion, is in violation of the Act or regulations.

(e) *Prohibition of appointment of certain persons to perform duties under the Act*. The management of any horse show, horse exhibition, horse sale, or horse auction shall not appoint any person to detect and diagnose horses which are sore or to otherwise inspect horses for the purpose of enforcing the Act, if that person:

(1) Does not hold a valid, current DQP license issued by a horse industry organization or association having a DQP program certified by the Department.

(2) Has had his or her DQP license canceled by the licensing organization or association.

(3) Is disqualified by the Secretary from performing diagnosis, detection, and inspection under the Act, after notice and opportunity for a hearing in accordance with the Uniform Rules of Practice for the Department of Agriculture in subpart H of part 1, subtitle A, title 7, Code of Federal Regulations (7 CFR 1.130 *et seq*.), when the Secretary finds that such person is unfit to perform such diagnosis, detection, or inspection because he or she has failed to perform his or her duties in accordance with the Act or regulations, or because he or she has been convicted of a violation of any provision of the Act or regulations occurring after July 13, 1976, or has paid any fine or civil penalty in settlement of any proceeding regarding a violation of the Act or regulations occurring after July 13, 1976.

(f) *Cancellation of DQP license*.

(1) Except as provided in paragraph (f)(2), each horse industry organization or association having a DQP program certified by the Department shall issue a written warning to any DQP whom it has licensed who violates the rules, regulations, by-laws, or standards of

conduct promulgated by such horse industry organization or association pursuant to this section, who fails to follow the procedures set forth in § 11.21 of this part, or who otherwise carries out his or her duties and responsibilities in a less than satisfactory manner, and shall cancel the license of any DQP after a second violation.

(2) Each horse industry organization or association having a Department certified DQP program shall cancel the license of any DQP licensed under its program who:

(i) Has been convicted of any violation of the Act or regulations or who has paid a fine or civil penalty in settlement of any alleged violation of the Act or regulations if such alleged violation occurred after July 13, 1976.

(ii) Has been disqualified by the Secretary from performing diagnosis, detection, and inspection under the Act.

(iii) Has not completed the continuing education requirements of paragraph (d)(6).

(iv) Has violated the minimum standards of conduct for DQPs listed in paragraph (d)(7).

(3) Upon cancellation of a DQP's license, the DQP may, within 30 days thereafter, request a hearing before a review committee of not less than three persons appointed by the licensing horse industry organization or association. If the review committee sustains the cancellation of the license, the DQP may appeal the decision of such committee to APHIS within 30 days from the date of such decision, and APHIS shall make a final determination in the matter. If APHIS finds, after providing the DQP whose license has been cancelled with a notice and an opportunity for a hearing in accordance with the Uniform Rules of Practice for the Department of Agriculture in subpart H of part 1, subtitle A, title 7, Code of Federal Regulations (7 CFR 1.130 *et seq*.), that there is sufficient cause for the committee's determination regarding license cancellation, APHIS shall issue a decision sustaining such determination. If APHIS does not find that there was sufficient cause to cancel the license, the licensing organization or association shall reinstate the license.

(g) *Revocation of DQP program certification of horse industry organizations or associations*. Any horse industry organization or association having a Department-certified DQP program that has not received Department approval of the inspection procedures provided for in paragraph (b)(8) of this section, that fails to cancel the license of a DQP as required under paragraph (f) of this section, or that otherwise fails to comply with the requirements contained in this part, may have such certification of its DQP program revoked, unless, upon written notification from the Department of such failure to comply with the requirements in this section, such organization or association takes immediate action to rectify such failure and takes appropriate steps to prevent a recurrence of such noncompliance within the time period specified in the notification, or otherwise adequately explains such failure to comply to the satisfaction of the Department. Any horse industry organization or association whose DQP program certification has been revoked may appeal such revocation to the Administrator in writing within 30 days after the date of such revocation and, if requested, shall be afforded an opportunity for a hearing in accordance with the Uniform Rules of Practice for the Department of Agriculture in subpart H of part 1, subtitle A, title 7, Code of Federal Regulations (7 CFR 1.130 et seq.). All DQP licenses issued by a horse industry organization or association whose DQP program certification has been revoked shall expire 30 days after the date of such revocation, or 15 days after the date the revocation becomes final after appeal, unless they are transferred to a horse industry organization or association having a program currently certified by the Department.

(h) *Cancellation of DQP program certification of horse industry organizations or associations due to inactivity*. Any horse industry organization or association having a Department-certified DQP program that has not trained or licensed DQPs, had its licensed DQPs appointed by the management of any horse show, horse exhibition, horse sale or auction to inspect horses, or otherwise met the reporting or other requirements of this part for at least 5 consecutive years may have such certification canceled for inactivity, unless, upon written notification from the Department, such organization or association provides information within

30 days of the notification sufficient to demonstrate maintenance and compliance of its DQP program in accordance with this part.

9. Add § 11.8 to read as follows:

§ 11.8 *Qualifications of Appeals Officials*.

(a) Individuals who may serve as Appeals Officials under § 11.4 must be:

(1) A special Government employee as defined in 18 U.S.C. 202; and

(2) A Doctor of Veterinary Medicine who has no fewer than 5 years of direct experience providing veterinary care to horses; and

(4) Free of the conflicts specific to horse protection activities covered under this part as specified in paragraph (c).

(b) Appeals Officials must comply with all rules and laws applicable to special Government employees.

(c) No person may serve as an Appeals Official that has or had within the previous 5 years:

(1) Exercised any functions or responsibilities for any horse show, exhibition, or sale, or auction containing Tennessee Walking Horses or racking horses within the previous 5 years, including but not limited to the management, show manager, DQP, judge, farrier, steward, or horse industry organization or association for such events.

(2) Any personal, professional, or financial interest in showing, exhibiting, selling, or auctioning Tennessee Walking Horses or racking horses, including but not limited to owning, training, riding, or caring for such horses that are shown or exhibited, either for himself or herself or for those with whom he or she has immediate family or business ties.

(d) Appeals Officials must complete annual training on the Horse Protection Act and regulations and related subjects administered by APHIS prior to serving as an Appeals Official at any horse show, exhibition, sale, or auction.

§ 11.19 [Removed and Reserved]

10. Remove and reserve § 11.19.

11. Revise and republish § 11.20 to read as set forth below:

§ 11.20 *Responsibilities and liabilities of management.*

(a)(1) The management of any horse show, horse exhibition, or horse sale, or horse auction which does not appoint and retain a DQP must:

(i) Identify all horses that are sore and disqualify any such horse from participating or competing in the class in which the horse is entered or shown or the sale or auction in which the horse is being offered for purchase; and

(ii) Identify all horses that are otherwise in violation of the Act or regulations and disallow any such horse from participating or competing in the class in which the horse is entered or shown or the sale or auction in which the horse is being offered for purchase. No person shall show or exhibit at a horse show or horse exhibition, sell or auction at a horse sale or auction, allow to be shown, exhibited, or sold at a horse show, exhibition, sale, or auction, enter for the purpose of showing or exhibiting in any horse show or horse exhibition, or offer for sale at a horse sale or auction, any horse which is wearing or bearing any equipment, device, paraphernalia, or substance prohibited under this part.

(b)(1) The management of any horse show, exhibition, sale, or auction which designates and appoints a Designated Qualified Person (or persons) to inspect horses shall accord said DQP access to all records and areas of the grounds of such show, exhibition, sale, or auction and the same right to inspect horses and records as is accorded to any APHIS representative. Further, management shall not take any action which would interfere with or influence said DQP in carrying out his or her duties or making decisions concerning whether or not any horse is sore or otherwise in violation of the Act or regulations. In the event management is dissatisfied with the performance of a particular DQP, including disagreement with the DQP's inspection findings, management shall not contact the DQP regarding his or her inspections, dismiss the DQP, or otherwise interfere with the DQP during the DQP's appointed tour of duty (i.e., the duration of

the show, exhibition, sale, or auction). However, management should immediately notify, in writing, APHIS and the organization or association that licensed the DQP, as to why the performance of said DQP was inadequate or otherwise unsatisfactory.

(2) Management which designates and appoints a DQP shall immediately:

(i) Disqualify any horse identified by the DQP to be sore or any horse otherwise known by management to be sore from participating or competing in the class the horse is entered or shown or the sale or auction the horse is being offered for purchase;

(ii) Disallow any horse identified by the DQP to be otherwise in violation of the Act or regulations from participating or competing in the class in which the horse is entered or shown or the sale or auction in which the horse is being offered for purchase. No person shall show or exhibit at a horse show or horse exhibition, sell or auction at a horse sale or auction, allow to be shown, exhibited, or sold at a horse show, exhibition, sale, or auction, enter for the purpose of showing or exhibiting in any horse show or horse exhibition, or offer for sale at a horse sale or auction, any horse which is wearing or bearing any equipment, device, paraphernalia, or substance prohibited under this part.

(3) The management of any horse show, exhibition, sale, or auction that designates and appoints a DQP to inspect horses shall appoint and designate at least two DQPs to conduct inspections when more than 100 horses are entered to be shown, exhibited, sold, or auctioned.

(c) The management of any horse show, exhibition, sale, or auction shall ensure that any horses found to be sore or otherwise in violation of the Act or regulations during actual participation in the show or exhibition be removed from further participation prior to the tyeing of the class or the completion of the exhibition.

11. Revise and republish § 11.21 to read as set forth below.

§ 11.21 *Inspection procedures for designated qualified persons (DQPs)*.

(a)(1) DQPs shall physically inspect the following horses for the purpose of determining whether any such horses are in violation of the Act or regulations and conducted in accordance with the inspection procedures provided for in this part:

(i) All Tennessee Walking Horses and racking horses entered for sale or auction,

(ii) All Tennessee Walking Horses and racking horses entered in any animated gait class (whether under saddle, horse to cart, or otherwise),

(iii) All Tennessee Walking Horses and racking horses entered for exhibition before they are admitted to be shown, exhibited, sold, or auctioned, and

(iv) All Tennessee Walking Horses and racking horses tyed first in their class or event at any horse show, horse exhibition, horse sale, or horse auction.

(2) The DQP shall inspect chain carts before allowing them into the warmup area and ensure the warmup area and horses in the warmup area are free of unlawful devices, equipment, substances, or paraphernalia after inspection, including, for example, overweight or irregular shaped action devices, syringes, medications, or ointments. The DQP shall require the removal of any such devices from the warmup area.

(3) The DQP shall observe horses during actual performances whenever possible.

(4) The DQP shall inspect any Tennessee Walking Horse or racking horse at any time he or she deems necessary to determine whether any such horse shown, exhibited, sold, or auctioned is in violation of the Act or regulations.

(5) If present at shows, exhibitions, sales, or auctions other than those listed in paragraph (a)(1) of this section, the DQP shall examine any horse which he or she determines should be examined for compliance with the Act and regulations.

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

(b)(1) During the preshow inspection, and before beginning a physical examination of a horse's limbs, the DQP shall:

(i) Direct the person having custody of the horse to walk and turn the horse in a manner that allows the DQP to determine whether the horse exhibits signs of soreness, including directing the person to walk the horse in a straight line and a figure-8 pattern that consists of two adjoining circles, each with at least a 10-foot radius. The DQP shall determine whether the horse moves in a free and easy manner and is free of any signs of soreness.

(ii) Inspect under the horse's mane and around and under any tack, including the bit and saddle, for devices that may distract the horse during examination.

(iii) Ensure the swabbing of the front pasterns of a percentage of other horses in accordance with the uniform inspection procedures of the DQP's certified organization or association.

(iv) Wipe all aspects of the front pasterns using a clean cotton pad or cloth and inspect the pad for signs of substances prohibited in § 11.2(c) of this part, including dyes, ointments, hair filler, and chemical smells, in accordance with the uniform inspection procedures of the DQP's certified organization or association.

(v) Ensure the collection of blood samples of any horse that is sore or otherwise not in compliance with the Act or regulations and a percentage of other horses in accordance with the uniform inspection procedures of the DQP's certified organization or association.

(2) The DQP shall digitally palpate the front limbs of the horse from knee to hoof, with particular emphasis on the pasterns and fetlocks. The DQP shall examine the posterior surface of the pastern by picking up the foot and examining the posterior (flexor) surface. The DQP shall apply digital pressure to the pocket (sulcus), including the bulbs of the heel, and continue the palpation to the medial and lateral surfaces of the pastern, being careful to observe for responses to pain in the horse. While continuing to hold onto the pastern, the DQP shall extend the foot and leg of the horse to examine the front (extensor) surfaces, including the coronary band. The

DQP may examine the rear limbs of all horses inspected after showing, and may examine the rear limbs of any horse examined preshow or on the showgrounds when he or she deems it necessary, except that the DQP shall examine the rear limbs of all horses exhibiting abnormal inflammation on, or unusual movement of, the rear legs.

(3) The DQP shall observe and inspect all horses for compliance with the provisions set forth in § 11.2(a) through § 11.2(c) of this part.

(i) The DQP shall observe and/or examine all action devices, pads, and other equipment to ensure that they are in compliance with the Act and regulations. All such equipment on horses examined postshow, and on horses examined preshow that are not clearly in compliance, shall be weighed and/or measured.

(A) The DQP shall verify that any action device or any other device will not strike any portion of the coronet band when moving.

(B) The DQP shall ensure the collection of blood samples on Tennessee Walking Horses and racking horses tyed first in their class or event.

(C) The DQP shall require, at minimum, the removal of any pads on Tennessee Walking Horses and racking horses tyed first in their class or event and any time he or she deems necessary to assure such horses are in compliance with § 11.2(b)(13), (b)(18), and (b)(19), except that the DQP may require the removal of any pads on Tennessee Walking and racking horses tyed first in their class or event once per day if such horse tyed first in more than one class or event on a single day. If the horse tyed first is disqualified following inspection and the class is re-tyed, the DQP shall inspect the horse that is subsequently tyed first and require the removal of any pads to assure the horse is in compliance with § 11.2(b)(13), (b)(18), and (b)(19).

(4) The DQP shall instruct the person having custody of the horse to control it by holding the reins approximately 18 inches from the bit shank. The DQP shall not examine a horse if it is presented in a manner that might cause the horse not to respond to a DQP's examination, including use of masking agents (such as, but not limited to, sedatives or topical numbing

agents), whips, cigarette smoke, or other actions or paraphernalia used to distract a horse during examination, or if the owner, trainer, exhibitor or other person having custody of or responsibility for the horse takes any action which would interfere with or influence said DQP in carrying out his or her duties or making decisions concerning whether or not any horse is sore or otherwise in violation of the Act or regulations. If the DQP inspects a horse preshow that appears to be or could be sedated, the DQP shall inspect the horse after it is shown or exhibited for compliance with the Act and regulations. All such incidents shall be reported to the show management and the DQP licensing organization.

(c) The DQP shall inspect horses no more than three classes ahead of the time the inspected horses are to be shown except that, in shows with fewer than 100 horses, the DQP shall inspect horses no more than two classes ahead of the time the inspected horses are to be shown. Inspected horses shall be held in a designated area that is under observation by the DQP or APHIS representative if present. Horses shall not be permitted to leave the designated area before showing. Only the horse, the rider, the groom, the trainer, the DQP(s) and APHIS representatives shall be allowed in the designated area.

(d) The DQP may carry out additional inspection procedures as he or she deems necessary to determine whether the horse is sore.

§ 11.22 [Amended]

13. Amend § 11.22 by:

a. In paragraph (a)(6), removing the words “each class or sale” and adding, in their place, the words “each entry, class, or sale”.

b. In paragraph (d), removing the words “The Administrator,” and adding the word “APHIS” in their place.

§ 11.23 [Amended]

14. Amend paragraph (b) of § 11.23 by removing the word “DQP’s” and adding, in its place, the word “DQPs”.

15. Amend § 11.24 by:

a. In paragraph (a), removing the number "5" and adding, in its place, the number "30", and removing the words "the Regional Director[1] for the State in which the show, exhibition, sale or auction was held," and adding, in their place, the word "APHIS";

b. Removing footnote 1; and

c. In paragraph (b), removing the number "5" and adding, in its place, the number "30", and removing the words "the Regional Director for the State in which the show, exhibition, sale or auction was held," and adding, in their place, the word "APHIS".

§ 11.25 [Removed and Reserved]

16. Remove and reserve § 11.25.

§ 11.40 [Amended]

17. Amend paragraph (a) of § 11.40 by removing the word "his".

§ 11.41 [Amended]

18. Amend § 11.41 by:

a. Removing the words "the Department" each time they occur and adding the word "APHIS" in their place.

b. Removing footnote 6.

19. Add § 11.42 to read as follows:

§ 11.42 *Reporting required of Appeals Officials and access to Appeals Officials' decisions*.

(a) Each Appeals Official appointed by APHIS to provide decisions on appeals of APHIS findings shall submit information concerning any decisions on appeals to APHIS within 5 days after the horse show, exhibition, sale or auction, including:

(i) The name and address of the show and the show manager;

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

(iii) The name, age, sex, color, and markings of the horse;

(iv) The date and time of the appeal review;

(v) A written response to the appeal and reasons for the decision; and

(vi) Copies of any evidence considered in providing a decision on each appeal.

(b) APHIS will provide to the trainer and owner of each horse allegedly found in violation of the Act or its regulations after appeal, the following information:

(1) The name and date of the show, exhibition, sale, or auction; and

(2) The name of the horse and the reason why said horse was alleged to be in violation of the Act or its regulations.

(c) Upon request, APHIS will provide a copy of the Appeals Official's written response to the appeal to any person who had responsibility for the horse at the time of the appeal, including the exhibitor, other person having custody of or responsibility for the horse.

Done in Washington, DC, this 9th day of November 2026.

Dudley Hoskins,

Under Secretary for Marketing and Regulatory Programs.

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