

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. APHIS–2011–0030]

RIN 0579–AD43

Horse Protection Act; Requiring Horse Industry Organizations To Assess and Enforce Minimum Penalties for Violations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the horse protection regulations to require horse industry organizations or associations that license Designated Qualified Persons to assess and enforce minimum penalties for violations of the Horse Protection Act (the Act) and the regulations. The regulations currently provide that such penalties will be set either by the horse industry organization or association or by the U.S. Department of Agriculture. This action would strengthen our enforcement of the Act and the regulations by ensuring that minimum penalties are assessed and enforced consistently by all horse industry organizations and associations that are appointed under the Act by the U.S. Department of Agriculture to cooperate in our enforcement efforts.

DATES: We will consider all comments that we receive on or before July 26, 2011.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0030> to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment

to Docket No. APHIS–2011–0030, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2011–0030.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Rachel Cezar, Horse Protection National Coordinator, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737; (301) 734–5784.

SUPPLEMENTARY INFORMATION:

Background

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

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

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

inflammation, or lameness when walking, trotting, or otherwise moving. (The Act excludes therapeutic treatment by or under the supervision of a licensed veterinarian from the definition of soring.)

The practice of soring horses is aimed at producing an exaggerated show gait for competition. Typically, the forelimbs of the horse are sored, which causes the horse to place its hindlimbs further forward than normal under the horse’s body, resulting in its hindlimbs carrying more of its body weight. When the sored forelimbs come into contact with the ground, causing pain, the horse quickly extends its forelimbs and snaps them forward. This gait is known as “the big lick.”

Soring is primarily used in the training of Tennessee Walking Horses, racking horses, and related breeds. Although a gait similar to “the big lick” can be obtained using selective breeding and humane training methods, soring achieves this accentuated gait with less effort and over a shorter period of time. Thus, Congress found and declared that horses shown or exhibited which are sore, where such soreness improves the performance of such horse, compete unfairly with horses which are not sore. Congress further found and declared that the movement, showing, exhibition, or sale of sore horses in intrastate commerce adversely affects and burdens interstate and foreign commerce.

The Act and the regulations in § 11.2 prohibit the use of devices, methods, and substances that are used to sore horses. For example, a person who sores a horse may apply a substance such as mustard oil or kerosene above the horse’s front hooves, to cause lesions. When chains are used on a horse sored in this manner, the chains rub against the lesions, causing pain. Thus, the regulations prohibit the use of any substance above the hoof, except lubricants used in certain circumstances. The use of mechanical agents (also referred to as “action devices”) such as overweight chains or boots also cause lesions; the regulations only allow the use of specific types of action devices that scientific evidence indicates do not cause horses to be sore. Soring can also be accomplished by trimming the hoof to expose sensitive tissue, thus making it painful for the horse to touch its forelimbs to the ground. This practice is prohibited in

the regulations. In addition to prohibiting other methods and practices, § 11.2 also generally prohibits the use of any device, method, practice, or substance that causes or can reasonably be expected to cause a horse to be sore.

A 1976 amendment to the Act provided for the Secretary of Agriculture to prescribe by regulation requirements for the appointment by the management of any horse show, horse exhibition, or horse sale or auction (referred to below as “show management”) of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for the purpose of enforcing the Act.

In response to that amendment to the Act, we established the Designated Qualified Persons (DQP) program in a final rule that was published in the **Federal Register** on January 15, 1979 (44 FR 1558–1566), and effective on January 5, 1979. Under this program, DQPs are trained and licensed to inspect horses for evidence of soreness or other noncompliance with the Act and the regulations in programs sponsored by horse industry organizations or associations (HIOs). These programs must meet the requirements of § 11.7 of the regulations, which include requirements for licensing, training, recordkeeping and reporting, and standards of conduct, among other things. We certify and monitor these HIO programs.

Under the regulations, show management has the option to either assume liability for any sore horses that are shown, exhibited, sold, or auctioned, or to hire DQPs to conduct preshow inspections of each horse entered in an event. Any horses found by the DQP to be sore, found to be subject to the scar rule in § 11.3, or found to have been subjected to any of the prohibited practices or devices listed in § 11.2 must be reported to show management. (The scar rule is used to determine whether a horse bears evidence of past soring, such as bilateral lesions or inflammation, which are indicative of abuse. If the horse does not meet the requirements of the rule, the horse is considered to be sore for the purposes of the Act and the regulations.) Show management must then exclude those horses from being shown, exhibited, sold, or auctioned.

Rather than contract with DQPs directly, show management typically contracts with an HIO to provide inspections at its show, exhibition, sale, or auction. The HIO provides as many DQPs as are needed to provide inspections and pays the DQPs for their services.

DQPs inspect horses according to procedures set out in § 11.21 of the regulations. This section provides detailed instructions on how to examine a horse for signs of soring, requires the DQP to examine the horse to ensure that no devices and methods used on the horse are prohibited by the regulations in § 11.2, and sets out the conditions under which horses must be inspected. It also allows DQPs to carry out additional inspection procedures as deemed necessary to determine whether a horse is sore.

The Act provides us with the authority to pursue civil and criminal penalties against persons who violate the Act. However, such proceedings may be time-consuming and expensive, and our resources for prosecuting such cases are limited. In addition to statutory penalties, HIOs may also enforce their own penalties against persons who are found by a DQP licensed by the HIO to be in violation of the Act or the regulations. This allows for greater enforcement of the Act and the regulations. We do not typically pursue civil or criminal penalties against violators of the Act or the regulations when we determine that an HIO-imposed penalty is adequate to effectuate the purposes of the Act and the regulations.

Accordingly, paragraph (d) of § 11.21 requires the certified DQP organization (*i.e.*, the HIO) under which the DQP is licensed to assess appropriate penalties for violations, as set forth in the rule book of the certified program under which the DQP is licensed, or as set forth by the U.S. Department of Agriculture (the Department). In addition to the DQP’s report to show management, the HIO must also report all violations to show management.

Office of the Inspector General Audit Report and Recommended Minimum Penalties

In September 2010, the Department’s Office of the Inspector General (OIG) issued an audit report¹ regarding the Animal and Plant Health Inspection Service’s (APHIS) administration of the Horse Protection Program and the Slaughter Horse Transport Program. The audit found that APHIS’ program for inspecting horses for soring is not adequate to ensure that these animals are not being abused. Due to this ineffective inspection system, the report stated, the Act is not being sufficiently enforced, and the practice of abusing show horses continues.

¹ Available at <http://www.usda.gov/oig/webdocs/33601-02-KC.pdf>.

One of the recommendations in the audit report was that APHIS develop and implement protocols to more consistently negotiate penalties with individuals who are found to be in violation of the Act. Having consistent penalties would result in more effective enforcement of the Act and its regulations.

We agreed with this recommendation. We had recognized this problem before the issuance of the audit report and developed a minimum penalty protocol that we intended for every HIO to include in its rule book. In developing the protocol, APHIS took into account the civil and criminal penalties set forth in the Act, those penalty structures used in previous years, rulings of the Department’s Administrative Law Judges and the Department’s Judicial Officer, and input we received from industry stakeholders. In most cases, the penalties provided in the protocol are substantially less than those set forth in the Act.

We began notifying HIOs as early as May 2010 that the new protocol should be added to 2011 rule books by the end of 2010. We wrote to the HIOs formally twice and engaged in numerous meetings and conversations with them during 2010 in an attempt to reach an agreement on a protocol that all of them would adopt. Eight of the 12 HIOs that license DQPs agreed to adopt the minimum penalty protocol we proposed; unfortunately, we were unable to reach an agreement with the remaining HIOs. We have determined to seek public input on the penalties contained in the protocol before implementing the protocol as a mandatory minimum set of penalties for every HIO that licenses DQPs.

Accordingly, we are proposing to amend the regulations by removing the reference in § 11.21(d) to assessing penalties set forth in the rule book of the certified program under which the DQP is licensed. Instead, that paragraph would require HIOs to assess and enforce penalties for violations in accordance with a new § 11.25, which we are proposing to add to the regulations and which would contain the penalty protocol. The reporting requirement in § 11.21(d) would remain unchanged.

Minimum Penalty Protocol

Proposed § 11.25 would be headed “Minimum penalties to be assessed and enforced by HIOs that license DQPs.”

Paragraph (a) of proposed § 11.25 would require each HIO that licenses DQPs in accordance with § 11.7 to include in its rulebook, and assess and enforce, penalties for the violations

listed in proposed § 11.25 that equal or exceed the penalties listed in that section. Section 11.41 of the regulations requires each HIO to submit its rulebook to APHIS.

Paragraph (b) of proposed § 11.25 would provide information about suspensions, which is one type of penalty we are proposing to require that HIOs assess and enforce. For violations that require a suspension, we are proposing to require the suspension of individuals including, but not limited to, the owner, manager, trainer, rider, custodian, and seller, as applicable, who are responsible for showing the horse, exhibiting the horse, entering or allowing the entry of the horse in a show or exhibition, selling the horse, auctioning the horse, or offering the horse for sale or auction.

If a horse is found to be bilaterally sore (*i.e.*, sore on both forelimbs or hindlimbs), unilaterally sore, in violation of the scar rule in § 11.3, or in violation of the prohibition against the use of foreign substances in § 11.2(c), we would provide that transporters may be suspended as well, if the transporter had reason to believe that the horse was to be shown, exhibited, entered for those purposes, sold, auctioned, or offered for sale. The violations listed may be evident during transportation of a horse, and section 1824 of the Act prohibits the shipping, transporting, moving, delivering, or receiving of any horse which is sore with reason to believe that such horse while it is sore may be shown, exhibited, entered for those purposes, sold, auctioned, or offered for sale.

We are proposing to require that a person who is suspended not be permitted to show or exhibit any horse or judge or manage any horse show, horse exhibition, or horse sale or auction for the duration of the suspension. This proposed change is consistent with the Act and would ensure that any suspension imposed by an HIO would not be circumvented by the suspended person.

We are also proposing to require any person with multiple suspensions to serve them consecutively, not concurrently. Allowing suspensions to be served concurrently would limit the deterrent effect of the suspensions.

Paragraph (c) of proposed § 11.25 would set out the minimum penalties for each type of violation. We note the Act provides for various civil penalties, among other things, disqualification from showing or exhibiting any horse and from judging or managing any horse show, horse exhibition, or horse sale or auction for a period of not less than 1 year for the first violation and not less

than 5 years for any subsequent violation.

A bilateral sore violation occurs when a horse is inspected in accordance with § 11.21 and found to be sore in both its front forelimbs or hindlimbs. This is strong evidence of soring to produce the exaggerated gait mentioned earlier, since the horse is unlikely to have developed sores in either both of its forelimbs or hindlimbs naturally. For bilateral sore violations, we propose to require a minimum suspension of 1 year for the first offense, 2 years for the second offense, and 4 years for the third and any subsequent offenses.

A unilateral sore violation occurs when a horse is inspected in accordance with § 11.21 and found to be sore in one of its forelimbs or hindlimbs. Such soring is a violation of the Act. For unilateral sore violations, we propose to require a minimum suspension of 60 days for the first offense, 120 days for the second offense, and 1 year for the third and any subsequent offenses.

A scar rule violation occurs when a horse is inspected in accordance with § 11.21 and found to be in violation of the scar rule in § 11.3. For scar rule violations, we propose to require a minimum suspension of 2 weeks for the first offense, 60 days for the second offense, and 1 year for the third and any subsequent offenses. If a DQP inspects a horse and finds it to be both in violation of the scar rule and bilaterally sore, the HIO would be required to impose the penalty for bilateral soring.

For the soring and scar rule violations, we are also proposing to require the horse to be dismissed from the remainder of the horse show, exhibition, sale, or auction. This dismissal would not be limited to the individual class in which the horse was to be entered; rather, the horse would be ineligible to participate in the entire event.

Foreign substance violations occur when the prohibition in § 11.2(c) against the use of foreign substances other than lubricants is violated. Equipment violations occur when the prohibitions against use of certain types of equipment in § 11.2(b)(1) through (b)(10) and (b)(12) through (b)(17) are violated. These prohibitions can be violated after inspection by a DQP, for example, by adding a foreign substance or a chain weighing greater than 6 ounces in the warmup ring.

For foreign substance violations and equipment violations found before or during the inspection before the show, exhibition, sale, or auction, we are proposing to require the horse to be dismissed from the remainder of the horse show, exhibition, sale, or auction.

This dismissal prevents the horse from being shown, exhibited, sold, or auctioned in violation of the Act.

However, § 11.20 of the regulations requires the DQP to reinspect all Tennessee Walking Horses or racking horses tied first in their class or event at any horse show, horse exhibition, horse sale, or horse auction, to determine whether the horse is sore or otherwise in violation of the Act or the regulations. When a violation is discovered after the show, the horse has been shown, exhibited, sold, or auctioned while in violation of the Act or the regulations promulgated under the Act, and the violation has taken place after the inspection. Therefore, we are proposing to require that any violation discovered after the show, exhibition, sale, or auction result in the imposition of a 2-week suspension in addition to dismissal of the horse from the remainder of the horse show, exhibition, sale, or auction.

Shoeing violations occur when the prohibitions regarding the shoeing of horses in § 11.2(b)(18) are violated. Heel-toe ratio violations occur when the requirement in § 11.2(b)(11) that a horse's toe length not exceed the height of the heel by 1 inch or more is violated. These violations are not practical to commit in the warmup ring, and therefore it is not necessary to differentiate between preshow and postshow violations. Accordingly, when these violations are found, we are proposing to require the horse to be dismissed from the remainder of the horse show, exhibition, sale, or auction.

If a horse is unruly or fractious and cannot be inspected by a DQP in accordance with § 11.21, there is no way to determine through inspection that it is not in violation of the Act and the regulations. Therefore, we are proposing to require such a horse to be dismissed from the individual class for which it was to be inspected. Such a horse would be able to attempt inspection again in another class in the horse show, exhibition, sale, or auction, and if it could be inspected, it could be entered in that class.

Finally, we are proposing to require that any person who in any way violates a previously issued suspension penalty be suspended for an additional 6 months.

Paragraph (d) of proposed § 11.25 would discuss appeals of penalties. We believe it is essential for each HIO that would assess and enforce penalties in accordance with proposed § 11.25 to have an adequate appeal process in place. Therefore, we are proposing to require the HIOs to develop such a process, which we would need to

approve. For all appeals, the appeal would have to be granted and the case heard and decided by the HIO or the violator would have to begin serving the penalty within 60 days of the date of the violation. This would mean that an appeal would need to be filed and a decision made with respect to that appeal within 60 days. HIOs would be free to set whatever policies they determine to be necessary to meet that requirement. We are proposing this requirement to ensure that suspensions have the proper deterrent effect and that appeals are not used solely to delay suspensions.

We would require HIOs to submit to the Department all decisions on penalty appeals within 30 days of the completion of the appeal, so we could monitor the appeal process.

Paragraph (e) would state that the Department retains the authority to initiate enforcement proceedings with respect to any violation of the Act, including violations for which penalties are assessed in accordance with proposed § 11.25, and to impose the penalties authorized by the Act if the Department determines that such actions are necessary to fulfill the purpose of the Act and the regulations. In addition, paragraph (e) would indicate that the Department reserves the right to inform the Attorney General of any violation of the Act or of the regulations. The latter provision is consistent with section 1826 of the Act.

Miscellaneous Changes

As noted earlier, the regulations in § 11.21(d) refer to the “certified DQP organization.” Such an organization is commonly referred to as an HIO; references to organizations that certify DQPs in § 11.7 refer to HIOs having a Department-certified DQP program. In order to be consistent with common usage and other regulations, we are proposing to change the reference to “certified DQP organization” in § 11.21(d) to instead refer to “the HIO that licensed the DQP.”

The regulations in paragraph (g) of § 11.7 provide a process for revoking the DQP program certification of HIOs. That paragraph describes the reason for revoking a DQP program certification as a failure to comply with the requirements of § 11.7. As additional requirements for HIOs with DQP program certifications would now be found in § 11.25, we are proposing for clarification to amend § 11.7(g) to refer to failure to comply with the requirements of 9 CFR part 11 in general as a reason for revoking DQP program certification.

Future Changes

As noted earlier, the OIG audit found that APHIS’ program for inspecting horses for soring is not adequate to ensure that these animals are not being abused. Our responses to the audit report’s recommendations included commitments to make several changes to the regulations besides those proposed in this document. We intend to propose those changes in a separate document, which is currently under development.

After establishing the DQP program in the January 1979 final rule mentioned earlier, we made several other changes to the regulations in a final rule published in the **Federal Register** on April 27, 1979 (44 FR 25172–25184), and effective on May 17, 1979. Some commenters on the proposed rule that preceded these final rules, which was published in the **Federal Register** on April 28, 1978 (43 FR 18514–18531), stated that APHIS should ban the use of all devices except protective boots.

We stated in the April 1979 final rule that such action was unwarranted at that time. However, we continued, if the horse industry made no effort to establish a workable self-regulatory program for the elimination of sore horses, or if such a program was established but did not succeed in eliminating the sore horse problem within a reasonable length of time, we would give serious consideration to the prohibition of all action devices and pads.

Thirty-two years after the publication of the April 1979 final rule, the state of the industry suggests that it has not eliminated the cruel and inhumane practice of soring horses to alter their natural gait in order to gain a competitive advantage. We are proposing the changes in this document, as well as the changes in the forthcoming separate proposal, with the expectation that they will enable the Horse Protection program to successfully eliminate what Congress identified as the cruel and inhumane practice of soring. However, if these regulatory changes and the resulting changes in the Horse Protection program do not result in the elimination of soring, we will seriously consider taking substantially more restrictive action, including, but not limited to, prohibiting the use of all action devices and pads, to accomplish the goal set forth by Congress in the Act.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the

purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

This proposed rule would amend the regulations to set a uniform minimum penalty protocol, which would ensure the uniform application of penalties by HIOs. The rule would also give USDA the authority to decertify HIOs that refuse to implement the minimum penalty protocol.

Since the HIOs already administer their own individual penalty protocols for violations of the Horse Protection Act, the proposed rule is not expected to impose additional costs upon HIOs or show participants (other than those individuals who incur more severe penalties because of the rule).

The proposed uniform penalty protocol may benefit the walking horse industry by:

- Helping to ensure more humane treatment of the horses;
- Reducing uncertainty about penalties for infractions of the Horse Protection Act;
- Enhancing the reputation and integrity of the walking horse industry;
- Providing for more fair competition at shows, which may positively impact attendance and regional economies; and
- Improving the value of the walking horse breeds.

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

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 7 CFR part 3015, subpart V.)

Executive Order 12988

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

judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 9 CFR 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.

§ 11.7 [Amended]

2. In § 11.7, paragraph (g), the first sentence is amended by removing the word “section” the second time it appears and adding the word “part” in its place.

3. In § 11.21, the section heading and paragraph (d) are revised to read as follows:

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

* * * * *

(d) The HIO that licensed the DQP shall assess and enforce penalties for violations in accordance with § 11.25 and shall report all violations in accordance with § 11.20(b)(4).

4. A new § 11.25 is added to read as follows:

§ 11.25 Minimum penalties to be assessed and enforced by HIOs that license DQPs.

(a) *Rulebook.* Each HIO that licenses DQPs in accordance with § 11.7 must include in its rulebook, and enforce, penalties for the violations listed in this section that equal or exceed the penalties listed in paragraph (c) of this section.

(b) *Suspensions.* (1) For the violations listed in paragraph (c) of this section that require a suspension, individuals including, but not limited to, the owner, manager, trainer, rider, custodian, or seller, as applicable, who are responsible for showing the horse, exhibiting the horse, entering or allowing the entry of the horse in a show or exhibition, selling the horse, auctioning the horse, or offering the horse for sale or auction must be suspended.

(2) If a horse is found to be bilaterally sore or unilaterally sore as defined in paragraph (c) of this section, in violation

of the scar rule in § 11.3, or in violation of the prohibition against the use of foreign substances in § 11.2(c), the transporter of the horse may also be suspended if the transporter had reason to believe that the horse was to be shown, exhibited, entered for those purposes, sold, auctioned, or offered for sale.

(3) A person who is suspended must not be permitted to show or exhibit any horse or judge or manage any horse show, horse exhibition, or horse sale or auction for the duration of the suspension.

(4) Any person with multiple suspensions must serve them consecutively, not concurrently.

(c) *Minimum penalties—(1) Bilateral sore.* A horse is found to be sore in both its forelimbs or hindlimbs. The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction. First offense: Suspension for 1 year. Second offense: Suspension for 2 years. Third offense and any subsequent offenses: Suspension for 4 years.

(2) *Unilateral sore.* A horse is found to be sore in one of its forelimbs or hindlimbs. The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction. First offense: Suspension for 60 days. Second offense: Suspension for 120 days. Third offense and any subsequent offenses: Suspension for 1 year.

(3) *Scar rule violation.* A horse is found to be in violation of the scar rule in § 11.3. The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction. First offense: Suspension for 2 weeks. Second offense: Suspension for 60 days. Third offense and any subsequent offenses: Suspension for 1 year.

(4) *Foreign substance violations.* Violations of the prohibition against the use of foreign substances in § 11.2(c).

(i) *Before or during the show, exhibition, sale, or auction.* The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction.

(ii) *After the show, exhibition, sale, or auction.* Suspension for 2 weeks (14 days). The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction.

(5) *Equipment violation.* Violations of the equipment-related prohibitions in § 11.2(b)(1) through (b)(10) and (b)(12) through (b)(17).

(i) *Before or during the show, exhibition, sale, or auction.* The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction.

(ii) *After the show, exhibition, sale, or auction.* Suspension for 2 weeks (14

days). The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction.

(6) *Shoeing violation.* Violation of the shoeing-related prohibitions in § 11.2(b)(18). The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction.

(7) *Heel-toe ratio.* Violation of the heel-toe ratio requirement in § 11.2(b)(11). The horse must be dismissed from the remainder of the horse show, exhibition, sale, or auction.

(8) *Unruly or fractious horse.* A horse that cannot be inspected in accordance with § 11.21. The horse must be dismissed from the individual class for which it was to be inspected.

(9) *Suspension violation.* A violation of any suspension penalty previously issued. Suspension for an additional 6 months (180 days) for each occurrence.

(d) *Appeals.* The HIO must provide a process in its rulebook for alleged violators to appeal penalties. The process must be approved by the Department. For all appeals, the appeal must be granted and the case heard and decided by the HIO or the violator must begin serving the penalty within 60 days of the date of the violation. The HIO must submit to the Department all decisions on penalty appeals within 30 days of the completion of the appeal.

(e) *Departmental prosecution.* The Department retains the authority to initiate enforcement proceedings with respect to any violation of the Act, including violations for which penalties are assessed in accordance with this section, and to impose the penalties authorized by the Act if the Department determines that such actions are necessary to fulfill the purpose of the Act and this part. In addition, the Department reserves the right to inform the Attorney General of any violation of the Act or of this part, including violations for which penalties are assessed in accordance with this section.

Done in Washington, DC, this 23rd day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–13231 Filed 5–26–11; 8:45 am]

BILLING CODE 3410–34–P