a written form would further document the extent to which MIA's are being used and aid the Committees in their evaluation of supply and market conditions for the succeeding week. The comment further stated that, in evaluating shipments for the current week and in the process of developing recommendations to the Secretary for the succeeding week, without telephone notification it is probable that the Committees could be analyzing incomplete data due to the frequent occurrence of mail delays. These recommendations have merit and appropriate language has been included in this final rule requesting telephone as well as written notification.

The Committees also recommended deleting the last sentence in §§ 907.109(b) and 908.109(b) as proposed which stated: "Once this notice is submitted, the week specified therein shall constitute one of the three weeks per season during which the handler may use marketing incentive allotments." The Committees stated that deletion of this sentence would permit the greatest degree of flexibility in the use of MIA's and that the rule as proposed could limit the use of MIA's by handlers. For example, if a handler notifies a Committee of intention to use an MIA for the next week and an "act of God" occurs which prevents the handler from using the MIA, then the handler would lose one of the three MIA's permitted. The Committees feel that handlers should have greater latitude when using MIA's because forces beyond the handler's control should not adversely affect the handler's use of MIA's. These recommendations have merit and have been adopted in this final rule.

After consideration of all relevant matters presented, including the Committees' recommendations and other available information, it is found that the regulations, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 907 and 908

Arizona, California, Marketing agreements and orders, Navel, Oranges, and Valencia.

For the reasons set forth in the preamble, 7 CFR Parts 907 and 908 are amended by adding new §§ 907.109 and 908.109 to read as follows:

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESINGATED PART OF CALIFORNIA

2. Section 907.109 is added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Rules and Regulations

§ 907.109 Marketing incentive allotments.

(a) Handlers intending to use marketing incentive allotments shall notify the committee of such intention in writing and by telephone prior to noon on the Thursday immediately before the beginning of the week in which such allotments are to be used. The written notice shall be submitted on a form prescribed by the committee. A separate notice shall be filed for each week in which marketing incentive allotments are to be used.

(b) Marketing incentive allotments shall be used only during the week specified in the notice submitted by the handler, and may not be loaned or transferred.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

3. Section 908.109 is added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Rules and Regulations

§ 908.109 Marketing incentive allotments.

(a) Handlers intending to use marketing incentive allotments shall notify the committee of such intention in writing and by telephone prior to noon on the Thursday immediately before the beginning of the week in which such allotments are to be used. The written notice shall be submitted on a form prescribed by the committee. A separate notice shall be filed for each week in which marketing incentive allotments are to be used.

(b) Marketing incentive allotments shall be used only during the week specified in the notice submitted by the handler, and may not be loaned or transferred.

Dated: April 21, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–9149 Filed 4–25–88; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1940

Highly Erodible Land and Wetland Conservation; Correction

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule regarding erodible land and wetland conservation published March 8, 1988, [53 FR 7330]. In this final rule, a portion of Subpart G of 7 CFR Part 1940, Exhibit M, Paragraph 6.c.(2)(c)(i) was omitted. The intent of this action is to insert the missing portion.

FOR FURTHER INFORMATION CONTACT: John E. Hansel, Environmental Protection Specialist, Farmers Home Administration, U.S. Department of Agriculture, Room 6309, South Agricultural Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 382–9619.

SUPPLEMENTARY INFORMATION: The final rule that is being corrected by this action affects the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.421—Loans to Indian Tribes and Tribal Corporations

For the reasons set forth in 7 CFR Part 3015, Subpart V, *Intergovernmental Review of Department of Agriculture Programs and Activities* (December 1, 1983), all of the above programs are excluded from the scope of Executive Order 12372. This order requires intergovernmental consultation with State and local officials.

List of Subjects in 7 CFR Part 1940

Endangered and threatened wildlife, Environmental protection, Floodplains, National wild and scenic river system, National resources, Recreation, Water supply.

Accordingly, the Farmers Home Administration is correcting Subpart G of 7 CFR, Part 1940, Exhibit M, Paragraph 6.c.(2)(c)(i) published March 8, 1988 [53 FR 7330], page 7334 as follows:

PART 1940—[CORRECTED]

1. The authority citation for Part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 16 U.S.C. 3844; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Environmental Program

2. Exhibit M is amended by correcting paragraph 6.c.(2)(c)(i) to read as follows:

Exhibit M—Implementation Procedures for the Conservation of Wetlands and Highly Erodible Land Affecting Farmer Program Loans and Loans to Indian Tribes and Tribal Corporations

* * * * *

6. * * *
c. * * *
(2) * * *
(c) * * *

(i) *Loan term exceeds January 1, 1990, but not January 1, 1995.* If the term of the proposed loan expires within this period and the applicant intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of this exhibit until either 1990 or two years after the SCS has completed a soil survey for the borrower's land, whichever is later, the County Supervisor will determine if it is financially feasible for the applicant, prior to loss of the exemption, to actively apply a conservation plan approved by SCS or the appropriate conservation district. See § 12.23 of Subpart A of Part 12 of Subtitle A of Title 7, which is Attachment 1 of this exhibit and is available in any FmHA office, for a definition of actively applying a conservation plan. Prior to loan approval, the applicant, the lender, (if a guaranteed loan is involved), FmHA and SCS will resolve any doubts as to what extent production would be able to continue under application of a conservation plan and as to the financial implications on loan repayment ability from both the potential costs of actively applying the conservation plan and the potential loss of revenues from any reduced acreage production base. The loan approval official will determine the financial implications of actively applying a conservation plan to the applicant's highly erodible land by developing a projected farm plan of operation or other farm financial projections that reflect adequate repayment on the full scheduled installments for all debt obligations at the time the conservation plan is being actively applied. If in making this determination, loan repayment ability cannot be demonstrated, FmHA will deny the loan application. If loan repayament ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing, coincident with the transmittal of Form FmHA 1940–1, "Request For Obligation of Funds," and using Form Letter 1940–G–1, "Notification of The Requirements of Exhibit M of FmHA Instruction 1940–G," that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from the SCS issued prior to either January 1, 1990, or two years after the SCS has completed a soil survey of the applicant's land (whichever is later) and stating that the applicant is actively applying an approved conservation plan will be considered adequate demonstration of compliance on the highly erodible land affected by the 1990 deadline.

* * * * *

Signed at Washington, DC, on April 19, 1988.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88–9152 Filed 4–25–88; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 88–052]

Horse Protection Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Horse Protection Regulations to expand the list of devices and equipment prohibited for use on any horse at any horse show, exhibition, sale, or auction. In addition to those devices already prohibited by the regulations, we are prohibiting: (1) Beads, bangles, rollers, and similar devices, except for rollers that meet the specifications in this document and that weigh no more than 6 ounces; (2) chains, boots, collars, or other devices that weigh more than 6 ounces; and (3) after a phase-in period, "full" pads more than one-half-inch high, and total pad height, including "rim" pads, of more than 1 inch. We are also prohibiting the use on any horse of weights other than horseshoes, and of horseshoes weighing more than 16 ounces each. Additionally, we are amending the regulations to clarify which horses are subject to the scar rule. These amendments are necessary to better protect horses under the Horse Protection Act.

DATE: This interim rule is effective April 25, 1988. Consideration will be given only to comments postmarked or received on or before June 27, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC, 20090–6464. Please state that your comments refer to Docket No. 88–052. Comments received may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7833.

SUPPLEMENTARY INFORMATION:

Background

This background material is presented in three sections. The first provides a brief discussion of the Horse Protection Act (15 U.S.C. 1821–1831 (1982)), referred to below as the Act, and of the regulations in 9 CFR Part 11, referred to below as the regulations, that were published under the Act. The second contains a summary of the events leading to the publication of this interim rule. The third details the amendments we are making to the regulations.

Horse Protection Act and Regulations

The practice known as "soring" is the injuring of show horses to improve their performance in the show ring. The pain caused by soring accentuates the gait of show horses. Soring can be accomplished in a variety of ways, including: (1) The application of irritating solutions to the horse's limbs; (2) the fastening of chains or similar equipment (commonly called "action devices") to the horse's limbs and forefeet; (3) the use of pads to elevate the horse's foot and to manipulate the angle of the horse's foot; (4) the trimming of a horse's hoof and the shoeing of its feet so as to cause pressure or irritation on the sole of the foot (commonly called "pressure shoeing"); and (5) the insertion of an object between a pad and the sole of the foot to cause discomfort.

In 1970, Congress passed the Act to eliminate the practice of soring, by forbidding the showing or selling of sored horses. Exercising our rulemaking power under 15 U.S.C. 1824 and 1828, we issued regulations that prohibit soring devices and soring methods.

Section 11.2(a) of the regulations provides that:

> Notwithstanding the provisions of paragraph (b) of this section, no chain, boot, roller, collar, action 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.

Section 11.2(b) then lists specific prohibitions. These prohibitions make it a violation of the Act for someone to show a horse using any of the prohibited devices or practices, whether or not its use causes the horse to be sore.

Based in part on three test clinics to determine the effect of various chains and other devices on horses, we amended the regulations in 1979 (44 FR 25172–25184) to make it a violation of the Act to show a horse wearing chains weighing more than 10 ounces (8 ounces for horses under 3 years old).

Additionally, the regulations in § 11.2(b)(1), until invalidated by the Court as explained below, prohibited the use of beads, bangles, rollers, and similar action devices, except for specifically described rollers weighing no more than 14 ounces. Among other devices and practices, the regulations also prohibit the use of boots and collars that by their construction might irritate a horse's leg. However, before the publication of this interim rule, there was no weight limit on these devices. The regulations also banned the use on yearling horses of weights other than horseshoes, and of horseshoes heavier than 16 ounces. No such restrictions existed for horses other than yearlings.

Before publication of this interim rule, with one exception at 9 CFR 11.2(b)(8), the regulations did not limit the height of pads on horses. These pads are used to elevate a horse's foot to achieve the desired gait, and may be used to conceal practices that produce soring, such as pressure shoeing, or to conceal objects inserted under a horse's foot to cause discomfort. Pads may also be used to protect a horse's feet and limbs during showing and training.

Genesis of Amendments Being Made

On October 26, 1984, the American Horse Protection Association, Inc. (AHPA) filed a complaint in the U.S. District Court for the District of Columbia, asking that we be required to propose regulations banning all action devices and built-up shoes. In its complaint, the AHPA referred to a study conducted by the Auburn University School of Veterinary Medicine,[1] which indicates that the use of 10-ounce action devices will cause a horse to become sore under certain conditions. Additionally, the Auburn University study indicates that built-up shoes can cause pain and inflammation under certain conditions.

On October 30, 1985, the District Court ruled that the fact that we had not amended the regulations as the complainant had requested was not "arbitrary, capricious, or an abuse of discretion, or otherwise not in accordance with the law." (*American Horse Protection Association* v. *Block*, No. 84–3298, mem. op. at 14 (D.D.C., October 30, 1985)). The AHPA appealed the Court's decision on November 26, 1985.

[1] Purohit, Ram C. "Thermography in Diagnosis of Inflammatory Processes in Horses in Response to Various Chemical and Physical Factors (Summary of the Research from September, 1978 to December, 1982)." School of Veterinary Medicine, Auburn University.

On February 24, 1987, the U.S. Court of Appeals for the District of Columbia Circuit vacated the judgment of the District Court, remanding the case to that Court with instructions to remand the case to the Secretary of Agriculture for further consideration. (*American Horse Protection Association* v. *Lyng*, 812 F.2d 1, 258 U.S. App. D.C. 397 (D.C. Cir Feb. 24, 1987)).

After reviewing material submitted by the parties, the District Court, in an opinion filed on March 21, 1988, ordered that we intitiate rulemaking to amend and expand the list of devices prohibited by § 11.2(b). In its decision, the Court declared the Provisions of § 11.2(b)(1), (2), and (10) invalid, and ordered the Secretary of Agriculture to initiate proceedings to promulgate replacement regulations. (*American Horse Protection Association Inc.* v. *Lyng*, —— F. Supp. ——, 1988 (D.D.C., March 21, 1988)).

In its decision, the Court relied heavily on the Auburn University study, which the Court stated "clearly found that the use of 10-ounce weights caused soreness to the test horses." The Court also cited the study's finding that both pressure shoeing and the use of padded shoes to manipulate the angle of a horse's foot can cause inflammation and soreness.

As noted above, the Court invalidated the provisions of § 11.2(b)(10), which govern a horse's heel/toe ratio. In view of our decision to proceed with this interim rule, which will restrict the use of pads, the Secretary of Agriculture believes that the provisions in question are necessary under the Act, and that their retention in the regulations is consistent with the Court's opinion. Therefore, the provisions that were contained in § 11.2(b)(10) prior to publication of this interim rule shall remain in effect, and are now contained in § 11.2(b)(12).

Changes to the Regulations

We are amending the Horse Protection Regulations as described below. For purposes of clarity, we will address first the changes to § 11.2(b)(2), then the changes to § 11.2(b)(1) and other provisions of Part 11.

Action Devices

Before being invalidated by the Court, § 11.2(b)(2) of the regulations prohibited chains weighing more than 8 ounces each on 2-year-old horses, and chains weighing more than 10 ounces each on horses 3 years old or older. Based on review of the Auburn University study, we have determined that proper enforcement of the Act requires that a lower weight limit for chains be included in the regulations.

As part of the Auburn University study, three horses were fitted with 10-ounce chains, and were exercised for 10 consecutive workdays, with weekends off. One of the horses had a chain on each pastern; the other two horses had a chain on only one pastern. The study found that altered thermal patterns were detectable as early as the second day of exercise with the chains. Lesions were produced by the 7th day, becoming more visible by the 10th day. Based on the study, it is apparent that 10-ounce chains can sore a horse under certain circumstances.

The study also monitored the effects of using chains and rollers on horses with scarred pasterns, finding that 14-ounce rollers and 8- and 10-ounce chains caused lesions in less than two weeks on scarred horses that were exercised in the devices for 15–30 minutes per day.

We are amending the regulations in § 11.2(b)(2) to prohbit the use—on horses at any horse show, horse exhibition, or horse sale or auction—of chains weighing more than 6 ounces, including the weight of the fastener. While the Auburn University study found that 10-ounce chains can cause soring on unscarred horses under certain conditions, and that 8-ounce chains can sore scarred horses under certain conditions, the study found no harmful effects from the use of 6-ounce chains, except for some loss of hair in the pastern areas.

This interim rule also prohibits, in § 11.2(b)(1), the use of beads, bangles, rollers, and similar devices, with the following exception. Rollers are permitted if they are made of lignum vitae (hardwood), aluminum, or stainless steel, with individual rollers of uniform size, weight, and configuration, provided each device does not weigh more than 6 ounces, including the weight of the fastener. The provisions in § 11.2(b)(1) made effective by this interim rule are identical to those invalidated by the Court, except that we are requiring that each roller weigh 6 ounces or less.

Inspections by our personnel and members of the horse industry at horse shows, exhibitions, and sales and auctions have shown that each of the devices we are prohibiting in § 11.2(b)(1) can cause soring. We have determined it is necessary to limit the maximum weight of rollers to 6 ounces, based on the Auburn University study, which detected soring from action devices weighing more than 6 ounces, but no soring following the use of 6-ounce action devices. Similarly, we are

amending § 11.2(b)(7) to limit boots and collars to 6 ounces each.

Weights

In amended § 11.2(b)(9), we are applying to all horses the provisions of previous § 11.2(b)(9), which prohibited the use of any weight, other than the horseshoe, on yearling horses, and limited the weight of horseshoes used on yearling horses to 16 ounces. During our inspections at horse shows, exhibits, sales and auctions, we have observed the use of weights to accentuate a horse's gait. These weights were usually placed either in pads that were attached to the horse's hooves or below the pads and between the shoe bars, or were used as part of a heavy horseshoe. When these weights were used, our inspectors, using thermographic examination, noted increased inflammation in the tendons, and increased sensitivity in the joints and in other parts of the legs above the fetlocks. Therefore, we have determined it is necessary under the Horse Protection Act to prohibit the use of weights on all horses. Experienced farriers have informed us that a standard horseshoe used solely to protect a horse's hoof need not weigh more than 16 ounces.

The provisions of amended § 11.2(b)(9) make unnecessary the provisions in § 11.2(b)(17), which restrict where on a horse's foot lead or other weights can be placed. We are therefore deleting that section.

Pads

In § 11.2(b)(10), we are prohibiting, after a phase-in period explained below, the use of all "full" pads that are more than one-half-inch high at any point, and that are not placed directly adjacent to the sole of the horse's foot. We define a full pad as one that covers the entire sole of the horse's foot. Additionally, after the phase-in period, we are limiting maximum total pad height, including "rim" pads, to 1 inch. We define a rim pad as one that conforms with the configuration of the horse's shoe and does not protrude beyond the inner rim of the shoe. We are also prohibiting, as of April 25, 1988, the use of pads that are not made of leather or some similar soft, pliant material.

It would be harmful to horses to eliminate the use of all pads, because small pads are often used to prevent problems such as bruises from stones, and to absorb some of the concussive shock of the foot striking the ground. Allowing maximum pad height of 1 inch will permit continued use of pads used solely to protect a horse. Limiting full pads to one-half inch and allowing them to be placed only directly adjacent to the sole of the horse's foot will help our inspectors better detect, through palpation, pressure shoeing and the presence of objects inserted between the pad and a horse's foot to cause irritation.

We are basing our limitation on the total height of pads on a number of factors. Elevating a horse's hooves with high pads changes the normal angulation of a standing horse's body and legs, and thus changes the angulation of the normal weight-bearing surfaces of the horse's legs and the angulation of the horse's weight-bearing muscles. The use of high pads also changes the angle at which the horse's foot hits the ground, and the angle at which the toe "breaks over" when picking up the foot to go forward.

The Auburn University study and other veterinary research indicates that altering the angulation of a horse's feet and legs can cause lameness, soreness, and inflammation, by transferring concussive impact and weight-bearing pressures to joints and other parts of the horse not normally subjected to these forces. Additionally, experts in the horse industry have advised us that elevating the foot can cause an increase in tension in the tendons, which can lead to inflammation. A high pad can also contribute to stresses caused by extra weight on a horse's foot. Additionally, elevating only the front feet, as is typically done, causes an unnatural angulation of the back and body of the horse, and changes the alignment of the shoulder muscles, the vertebrae, and the pelvis, all of which are then subject to stress, irritation, and inflammation.

We have determined that pads 1 inch or less in height offer adequate protection from concussive shock and bruises from stones, without adding excessive weight or altering the natural angle of the horse's body in a way that can cause soring. By requiring that pads be made of leather or some similar soft, pliant material, the regulations will ensure that only pads that offer protection from concussive forces are used. Further, requiring that pads be of a pliant material will facilitate inspection by palpation, as described above.

It would be harmful to some horses currently on high pads to be placed on 1-inch pads without a "phasing-in" period. APHIS veterinarians, and farriers and other members of the horse industry, have indicated that horses can be moved without harm from high pads to pads 1-inch high or less, if the change is done gradually. A gradual reduction in pad size will minimize physiological stress to horses, and will allow horses who have had their feet trimmed in conjunction with the use of high pads to grow a naturally configured foot before being placed on pads 1-inch high or less. Additionally, the phase-in period we are establishing, with a reduction in maximum pad size at 3-month intervals, will allow horses to be reshod as necessary without damage to their hooves. Experienced farriers have indicated to us that a horse can be reshod every 6 to 8 weeks without harm to the horse's hooves.

Accordingly, the provisions in § 11.2(b)(10) will limit the height of pads according to the following schedule. From April 25, 1988 through July 31, 1988, pads more than 3 inches high are prohibited. From August 1, 1988 through October 31, 1988, pads more than 2 inches high will be prohibited. After October 31, 1988, full pads will be limited to one-half-inch in height, and total pad height, including rim pads, will be limited to 1 inch. During and following this phasing-in period, the requirements in the regulations regarding heel/toe ratio must be observed.

Because the provisions regarding a 1-inch-maximum pad height will apply to all horses after October 31, 1988, we are amending the provisions of § 11.2(b)(8), which prohibits the use on yearling horses of pads that elevate or change the angle on the horses' hooves more than 1 inch at the heel, to make them effective only through October 31, 1988.

We emphasize that the regulations continue to prohibit the soring of a horse by any device, regardless of weight or height, and we will take action against any person responsible for soring a horse.

The comment period regarding this interim rule is intended to provide all interested and affected parties adequate opportunity to compile and supply us with as much data as possible regarding the issues raised in this document. In addition, we invite any sound scientific studies that may augment the information currently available regarding the use of action devices, pads and weights on show horses. All information received will be carefully considered in preparing a final rule.

Scar Rule

Section 11.3 of the current regulations provides that a horse will be considered sore if its legs show bilateral scarring or loss of hair that can reasonably be identified with the practice of soring. These provisions are commonly known as the "scar rule." The regulations regarding the scar rule prior to publication of this interim rule were established in 1979. The rule was

intended to apply during the 1979 show season to all horses 3 years old or younger at the time. Our intent was then to apply the scar rule provisions to horses 4 years old or younger in 1980, 5 years old or younger in 1981, and so forth. Since 1979, we have been enforcing the scar rule provisions according to that formula. However, until publication of this interim rule, § 11.3 stated that it applied to "all 3-year-old horses during the 1979 season; 4-year-old horses during the 1980 season, 5-year-old horses during the 1981 season, etc." As written, the rule might have been interpreted to apply only to horses of the exact age specified for a given year. We are amending that section to read: "The scar rule applies to all horses born on or after October 1, 1976." With this change, the scar rule is corrected to conform with our intention.

Request for Comments on Additional Subjects

We recognize that some horses may have a faulty way of "going"—*i.e.*, some abnormality in the way they move, such as interfering, or overreaching—or may have a condition such as Navicular Disease or Bone Spavin that causes pain if corrective shoeing is not done. These conditions may require the use of pads or wedges in excess of 1 inch, or weights on the foot to correct the horse's gait and prevent possible harm to the horse. Based on our inspections at horse shows and other events, however, we believe that these defects are limited to a small number of horses presented for showing. By recognizing that a need for correction sometimes exists, we do not intend to allow built-up pads or other devices for the purpose of accentuating a horse's gait, nor do we intend to allow the excessive build-up of the feet of horses with a faulty way of going. At this time, we are requesting comments that address these problems. Specifically, we are inviting comments on the following questions: (1) What conditions should make a show horse eligible for corrective shoeing; (2) what limits should be placed on the pads, wedges, and weights used for corrective shoeing; and (3) how can corrective shoeing, if allowed, be documented or controlled?

In addition to requesting comments on this interim rule and on corrective shoeing, we are requesting comments on methods used to mask the pain caused by soring. In its petition for rulemaking, the AHPA alleged that some horse trainers and exhibitors are concealing soring by using anesthetics or analgesics on the animals. Further, the AHPA expressed concern that the practice of "stewarding," or conditioning horses not to react to pain, can make it difficult to detect soring. We believe that these practices, if and where they exist, should be stopped. At this time, we need more information on the use of these practices, including when and where they are occurring, and how prevalent they are, to help determine what action, if any, we should take.

Emergency Action

The Acting Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists, which warrants publication of this interim rule without prior notice and opportunity for public comment.

On March 21, 1988, the United States District Court for the District of Columbia issued an order invalidating certain provisions of the Horse Protection Regulations that prohibited or restricted the use on horses—at horse shows, exhibits, and sales and auctions—of chains and other action devices that can cause soring. The Court also invalidated provisions governing the heel/toe ratio of horses at the above events. The Court determined that the invalidated regulations did not properly protect horses from soring under the Horse Protection Act, and directed us to initiate rulemaking proceedings immediately to establish replacement regulations.

On March 25, 1988, we issued a letter to members of the horse industry, in light of the Court's decision, setting forth the enforcement position we were adopting for the period between issuance of the letter and publication of replacement regulations. On April 13, 1988, the Court emphasized that its invalidation of the above-specified provisions of the Horse Protection Regulations had taken effect on March 21, 1988.

In the absence of replacement regulations, there has been substantial confusion among members of the horse industry concerning their obligations under the Horse Protection Act. To eliminate this confusion, and to establish as quickly as possible replacement regulations that prohibit practices and devices to prevent soring, we are publishing this interim rule and request for comments. This rule is consistent with the Court's opinion and is based on sound veterinary principles. Making it effective without prior comment will enable the Secretary to better enforce the Act.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective April 25, 1988. We will consider comments postmarked or received within 60 days of the publication of this interim rule in the **Federal Register.** Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291 and Departmental Regulation 1512–1, and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This interim rule is intended to prevent the soring of horses, and specifically prohibits devices that could reasonably be expected to cause soring. Some of the devices that are being prohibited are currently used on horses to accentuate the natural gait of show horses. Prizes for competition among these show horses are awarded based largely on evaluation of this gait. The new prohibitions of this interim rule will not prohibit equitable competition among these show horses.

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

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Humane animal handling, Soring of horses.

Accordingly, 9 CFR Part 11 is amended as follows:

PART 11—HORSE PROTECTION REGULATIONS

1. The authority citation for Part 11 is revised to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

2. Section 11.1 is amended by removing all paragraph designations, by placing all definitions in alphabetical order, and by adding definitions of "full pad" and "rim pad" to read as follows:

§ 11.1 Definitions.

* * * * *

"Full Pad" means a pad that covers the entire sole of a horse's foot.

* * * * *

"Rim Pad" means a pad that conforms with the configuration of a horse's shoe, and does not protrude beyond the inner rim of the shoe.

* * * * *

3. Section 11.2 is amended by removing paragraph (b)(17), by redesignating paragraphs (b)(10) through (b)(16) as (b)(12) through (b)(18) respectively; and by adding new paragraphs (b)(10) and (b)(11) and revising paragraphs (b)(1), (b)(2), (b)(7), (b)(8) and (b)(9) to read as follows:

§ 11.2 Prohibitions concerning exhibitors.

* * * * *

(b) * * *

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

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

* * * * *

(7) Boots, collars, or any other device, with protrusions or swellings, or rigid, rough, or sharp edges, seams or any other abrasive or abusive surface that may contact a horse's leg, or that weigh more than 6 ounces each.

(8) Through October 31, 1988, pads or other devices on yearling horses (horses up to 2 years old) that elevate or change the angle of such horses' hooves in excess of 1 inch at the heel.

(9) Any weight, except a keg or similar conventional horseshoe, and any horseshoe that weighs more than 16 ounces.

(10) Pads between the bottom of the foot and the horseshoe, according to the following schedule:

(i) From April 25, 1988 through July 31, 1988, pads more than 3 inches high at any point;

(ii) From August 1, 1988 through October 31, 1988, pads more than 2 inches high at any point; and

(iii) After October 31, 1988, full pads more than one-half-inch high at any point and full pads not directly adjacent to the sole of a horse's foot, and total pad height, including rim pads, exceeding 1 inch.

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

* * * * *

4. Section 11.3 is amended by revising the introductory text to read as follows (footnote 3 is removed and reserved):

§ 11.3 Scar rule.

The scar rule applies to all horses born on or after October 1, 1976. Horses subject to this rule that do not meet the following scar rule criteria shall be considered to be "sore" and are subject to all prohibitions of section 5 of the Act. The scar rule criteria are as follows:

* * * * *

Done in Washington, DC, this 22nd day of April, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-9265 Filed 4-25-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 048CE, Special Condition 23-ACE-39]

Special Conditions; Dornier 228-200 Airplanes With Electronic Flight Instrument Systems (EFIS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued to become part of the type certification basis for the Dornier 228-200 Airplanes that incorporate an electronic flight instrument system (EFIS). These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards applicable to these airplanes when EFIS is installed. These novel and unusual design features include the use of a cathode-ray tube electronic flight instrument system for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: April 26, 1988.

FOR FURTHER INFORMATION CONTACT: Ervin E. Dvorak, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 1987, AAR Oklahoma, Inc., Oklahoma City, Oklahoma submitted an application for supplemental type certificate (STC) approval of the design changes necessary to install a Collins 85B Electronic Flight Instrument System (EFIS) on the Dornier 228-200 Airplane. This installation incorporates an electronic attitude director indicator (EADI) and electronic horizontal situation indicator (EHSI) in lieu of the traditional mechanical or electro-mechanical displays providing similar information to the flightcrew.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

The proposed type design of the Collins 85B EFIS installation in the Dornier 228-200 Airplane contains a number of novel and unusual design features not envisaged by the applicable Part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the Collins 85B EFIS installation in the Dornier 228-200 Airplane.

AAR Oklahoma, Inc. has proposed cathode-ray tube (CRT) electronic display units for primary attitude, heading, and navigation cockpit displays. The cockpit instrument panel