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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 316, 330 and 332

Placement Programs for Displaced Federal Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing placement programs for employees displaced from their Federal positions through no fault of their own. These regulations set forth basic criteria for programs operated by OPM as well as Federal agencies.

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Sylvia Cole, (202) 632-6817.

SUPPLEMENTARY INFORMATION: Proposed regulations were published for comment on December 28, 1987 (54 FR 48824) to amend 5 CFR Parts 330 and 332 governing placement assistance for employees who will be displaced or have been separated from their Federal jobs as a result of agency work force reductions, compensable on-the-job injury, or discontinued services or disability retirement. The proposed regulations set forth criteria for two programs operated by OPM—the Interagency Placement Assistance Program (IPAP) and the Displaced Employee Program (DEP)—as well as agency responsibilities for operating positive placement programs and providing placement assistance to displaced employees.

Written comments on the proposed regulations were received from seven Federal agencies, two employee organizations, and one individual. The comments dealt primarily with the OPM operated placement programs. Several agencies suggested clarifications which are not appropriate for inclusion in the regulation, but will be incorporated into instructional material issued through the Federal Personnel Manual System. Since the final regulations contain a variety of editorial changes, and one section was divided into two, the section numbers below are different than those in the proposed regulations. Key comments are summarized below.

One agency felt that OPM placement assistance should be limited to the commuting area only, rather than nationwide. We do not agree with this approach. When Federal employees are displaced, we should provide maximum possible placement assistance for them (unless they have demonstrated they are not mobile), especially if the availability of jobs may be limited in the local commuting area.

One agency did not agree with the current practice of permitting employees to transfer their DEP eligibility to a new commuting area if they were separated from employment because they declined reassignment outside the current commuting area. When these employees register for OPM placement assistance, we do limit the assistance to the current commuting area. They are not permitted to register for nationwide referral. We did not alter our current procedure because we think it is fair to permit the registrants to take their eligibility with them to their new local area, should they later relocate. Placement assistance would still be limited to one commuting area, rather than nationwide.

Most agencies supported our proposal to exclude from the IPAP and DEP those employees who have a performance rating of unacceptable. Two agencies further suggested that individuals with a rating below "Fully Successful" be disqualified or that agencies be permitted to pass over them without going through the formal objection procedures in effect for the DEP. We retained the rating requirement as proposed. Under reduction in force procedures, employees with unacceptable performance ratings are denied displacement rights and are the first employees to be released. We believe our regulation balances that requirement with our efforts to maximize placement assistance for displaced Federal employees. Because some employees, such as administrative law judges, are exempt from performance evaluations, we revised § 330.302 (now numbered § 330.303) to exclude them from the rating requirement. We have also excluded individuals separated due to on-the-job injury, because we feel it is inappropriate to require performance appraisals from employees who, in many cases, have been off agencies' rolls for a long period of time and cannot provide a meaningful appraisal.

One employee organization suggested that registration for the IPAP should be in 6-month increments, renewable by the employee, rather than the current practice of registration in 120-day increments, renewable by the agency. We did not adopt this suggestion. IPAP registrants are employees who have a job but are faced with possible separation because they have been identified as surplus. It is the agency, not the employee, that decides if a person is surplus. The 120-day registration period ensures there is a continuing need for OPM placement assistance and we permit renewals until the employee is no longer surplus or has been separated.

That same organization also suggested that OPM placement assistance under the DEP should continue indefinitely for career employees or be extended in 6-month increments up to four years. In addition, the individual commenter suggested that the periods of eligibility for placement assistance should be extended during hiring freezes in the Federal Government. We believe the current time periods for OPM assistance are appropriate. To find a new job is primarily the employee's responsibility and also an obligation of the agency in which the separation occurs. OPM's placement programs only supplement these efforts and are not intended to relieve the employee or the agency of its responsibility to seek alternative employment.

One agency requested that we clarify the nature of assistance given to IPAP candidates who have no competitive status and cannot be appointed noncompetitively. Clarifying language has been added to § 330.304 (now numbered § 330.305).

Another agency disagreed with the provision permitting DEP candidates to reopen competitive registers at grades higher than the last job occupied. This privilege has been in effect for many years and we see no need to take this

benefit away. The candidates do not receive priority consideration on these registers. They are processed and certified as all other competitors are.

The final regulations contain two clarifications on the eligibility criteria for the IPAP. Since the program is designed to help employees under most types of appointments, including nonstatus employees, we have recorded § 330.302 (now numbered § 330.303) to indicate that any employee serving under an appointment not limited to one year or less is eligible for placement assistance. We have also updated the conditions under which IPAP eligibility will terminate. OPM placement assistance ceases not only under the conditions specified in the proposed regulations, but also when the registrants are placed in or decline an offer of continuing employment in State or local government, or in the private sector. This was inadvertently omitted from the proposed regulations.

After consideration of the comments received, we are adopting the proposed revisions to Parts 330 and 332 as final regulations, with modifications as discussed above and some editorial clarifications.

The final regulations for Part 330 no longer contain the provision that requires agencies to separate Tenure Group III employees when there are no suitable vacancies for DEP registrants. This provision is also cross referenced in Part 316, Subpart J. The subpart deals with the separation of temporary and term employees in response to specific displacement orders by OPM. Since this subpart contains outdated material, it has been removed.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation affects only the procedures used to provide placement assistance to certain Federal employees.

List of Subjects

5 CFR Part 316

Government employees, Veterans.

5 CFR Part 330

Government employees, Intergovernmental relations.

5 CFR Part 332

Government employees, Examination for government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Parts 316, 330 and 332 as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for Part 316 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, and E.O. 10577; § 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371, E.O. 12137), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585.

§ 316.80 (Subpart H) [Removed]

2. In Part 316, Subpart H is removed.

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

3. The authority citation for Part 330 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577; § 330.102 also issued under 5 U.S.C. 3327; Subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; Subpart H also issued under 5 U.S.C. 8337(h) and 8457(b).

4. Subpart C and its heading are revised to read as follows:

Subpart C—Placement Assistance Programs for Displaced Employees

Sec.

330.301 Coverage.
330.302 OPM programs.
330.303 Eligibility.
330.304 Period of eligibility.
330.305 Placement assistance.
330.306 Termination of eligibility.
330.307 Agency responsibilities.

Subpart C—Placement Assistance Programs for Displaced Employees

§ 330.301 Coverage.

This subpart covers placement programs for employees who will be displaced or have been separated from their Federal jobs as a result of agency work force reductions, compensable on-the-job injury, discontinued service retirement or disability retirement. Agencies have the primary responsibility for providing placement assistance to their surplus or displaced employees, and for operating positive placement programs as set forth in § 330.307 of this subpart. OPM supplements these agency efforts by administering placement programs which give surplus or displaced employees priority referral to positions in other agencies.

§ 330.302 OPM programs.

(a) OPM operates two placement programs—the Interagency Placement Assistance Program (IPAP) and the Displaced Employee Program (DEP). In general, the IPAP provides placement assistance in advance of an impending work force reduction to employees who have been identified by their agencies as surplus. The DEP provides assistance to employees who have received a specific notice of separation or who have been separated.

(b) The IPAP is also used as a referral mechanism when OPM is required by statute to provide placement assistance to certain individuals.

§ 330.303 Eligibility.

(a) For the *IPAP,* the registrant must:

(1) Be serving under an appointment not limited to one year or less, in an agency whose personnel system is subject to competitive service requirements (except individuals entitled to placement assistance by law);

(2) Have a rating above "unacceptable" on his or her most recent performance rating of record as described in § 351.203 of this chapter (except employees in positions excluded from any performance appraisal system by law, regulation or OPM administrative action);

(3) Have been identified as surplus under one of the following conditions:

(i) The employee is occupying a position scheduled to be abolished;

(ii) The employing agency, or one of its components, is scheduled to be abolished;

(iii) The activity in which the employee's position is located is undergoing an efficiency study under the provisions of OMB Circular A–76 and solicitation of bids has begun; or

(iv) The employee is otherwise targeted for involuntary separation; and

(4) Must register for the program within time limits specified by OPM.

(b) For the *DEP,* the registrant must:

(1) Be a present or former career or career-conditional employee, or excepted employee with competitive status and in tenure group I or II as defined in Part 351 of this chapter (except that an employee occupying a Schedule C position as defined in Part 213 of this chapter is not entitled to placement assistance);

(2) Be serving in or have been separated from a position in an agency whose personnel system is subject to competitive service requirements;

(3) Have a rating above "unacceptable" on his or her most recent performance rating of record as

described in § 351.203 of this chapter (except individuals qualifying under paragraphs (b)(4)(iii) and (b)(4)(v) of this section or those who are in positions excluded from any performance appraisal system by law, regulation or OPM administrative action);

(4) Must be subject to one of the following:

(i) Has received a specific notice of separation through reduction in force;

(ii) Has declined a transfer of function to another commuting area or has declined reassignment to another commuting area (as defined in Part 351 of this chapter);

(iii) Has been separated or furloughed because of a compensable injury in accordance with the provisions of Subchapter I of Chapter 81 of Title 5, United States Code;

(iv) Has applied for an annuity or has retired under the discontinued service retirement provision in section 8336(d)(1) or 8414(b)(1)(A) of Title 5, United States Code; or

(v) Has retired due to disability under section 8337, 8451 or 8457 of Title 5, United States Code; and

(5) Must register for the program within time limits specified by OPM.

§ 330.304 Period of eligibility.

IPAP registrants receive placement assistance in 120-day increments renewable by the registering agencies. For the DEP, tenure group II employees receive 1 year of placement assistance and tenure group I employees receive 2 years of assistance.

§ 330.305 Placement assistance.

(a) IPAP and DEP registrants are referred ahead of other candidates when they are qualified and available for vacancies expected to last more than 1 year and that are filled through competitive registers held by OPM or by an agency with delegated examining authority. (IPAP registrants without noncompetitive appointment eligibility for competitive service positions will be referred separately for consideration for positions in the excepted service.) No individual may be selected for such a vacancy from an OPM or agency competitive register as long as a qualified DEP registrant is available. Referrals are based on the qualifications of registrants and on the duties of the positions.

(b) Placement assistance under both programs is nationwide except that registrants who decline transfer or reassignment outside the commuting area may register for placement assistance only within the commuting area of the position from which they will be or were separated. However, these registrants may transfer their eligibility to another commuting area if they later relocate.

(c) A registrant will be referred to vacancies that are at or below the grade level of and have no more promotion potential than the position from which separated. Eligible registrants separated from positions above GS–15 will receive assistance at the GS–15 level and below.

(d) When an agency selects an IPAP or DEP registrant, it employs him or her under appropriate appointments such as reinstatement, transfer, position change, or excepted appointment.

§ 330.306 Termination of eligibility.

(a) Eligibility for assistance under the *IPAP* will be terminated if one of the following occurs:

(1) The registrant's 120-day period of eligibility expires and is not renewed by the agency;

(2) The registrant requests, in writing, that placement assistance be terminated;

(3) The agency notifies OPM that the employee is no longer surplus;

(4) The registrant is placed in a nontemporary position in the competitive or excepted service, in State or local government, or in the private sector;

(5) The registrant is enrolled in the DEP; or

(6) The registrant declines an offer of continuing employment in the competitive or excepted service, in State or local government, or in the private sector, under conditions (i.e., grade, salary, geographic location, or work schedule) the registrant previously indicated were acceptable, unless OPM determines that an exception is warranted.

(b) Eligibility for assistance under the *DEP* will be terminated if one of the following occurs:

(1) A tenure group I registrant's 2-year period of eligibility expires (except for preference eligibles who are eligible for up to 1 year of additional assistance as specified in § 330.407 of this part);

(2) A tenure group II registrant's 1-year period of eligibility expires (except for preference eligibles who are eligible for up to 1 year of additional assistance as specified in § 330.407 of this part);

(3) The registrant requests, in writing, that placement assistance be terminated;

(4) The registrant is placed in a nontemporary position in either the competitive or excepted service; or

(5) The registrant declines an offer of continuing employment in the competitive or excepted service under conditions (i.e., grade, salary, geographic location, or work schedule) the registrant previously indicated were acceptable, unless OPM determines that an exception is warranted.

§ 330.307 Agency responsibilities.

(a) *Agency programs.* (1) Each agency has a primary obligation to assist, to the maximum extent practical and in keeping with the requirements set forth in paragraph (a)(2) of this section, in the placement of its surplus and displaced employees. OPM's placement programs only supplement these efforts and are not intended to relieve an agency of its responsibility to provide the maximum placement assistance possible.

(2) Each agency is required to operate a positive placement program for its own surplus and displaced employees. The program must, at a minimum, provide for the establishment and maintenance of a reemployment priority list for the commuting area for those employees who have received a specific notice of separation through reduction in force, as provided for in Subpart B of this part. Additionally, each agency is expected to supplement this basic requirement with other forms of appropriate assistance to be given to employees prior to actual separation. An agency's positive placement program should include the following elements:

(i) Criteria of eligibility for assistance;

(ii) The duration of eligibility;

(iii) The types of assistance provided, including counseling, job referral, and training;

(iv) Consideration of the appropriateness of placing restrictions on filling vacancies by any means when qualified surplus or displaced employees are available in the agency's positive placement program.

(b) *Registration of eligible employees.* Agencies are encouraged to participate in the IPAP and inform their employees about this program as soon as they are reasonably sure that separations will be necessary. In accordance with Subpart H of Part 351 of this chapter, agencies must inform affected employees about the Displaced Employee Program at the same time that specific reduction-in-force notices are distributed. Agencies are responsible for assisting employees with their registration forms, for completing the information requested on the forms, and for sending them to appropriate offices as instructed by OPM.

(c) *Consideration of individuals*

referred. Agencies will give full consideration to individuals referred through OPM's placement programs. Full consideration is a careful and open review of the qualifications of the registrant as described in the individual's application forms, contact to determine interest and availability, and an interview, if possible, to further assess the registrant's ability to perform the duties of the position within a reasonable period of time. An appointing officer may not pass over a DEP eligible to select a non-DEP eligible unless an objection to the DEP eligible is sustained by OMP or an agency with delegated examining authority. The objection procedure does not apply to IPAP registrants.

§ 330.404 [Amended]

5. In § 330.404(c), the words "as specified in OPM issuances" are removed and the word "are" is substituted for "is".

6. In § 330.701, paragraph (b) is revised to read as follows:

§ 330.701 Coverage.

* * * * *

(b) Has been retired under sections 8337 or 8451 of title 5, United States Code.

PART 332—RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION

7. The authority citation following § 332.406 is removed. The authority citation for Part 332 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

8. Section 332.314 is revised to read as follows:

§ 332.314 Displaced employees eligible for placement assistance.

Subject to the time limits and other conditions published by OPM in Federal Personnel Manual Chapter 332, a person who is eligible for placement assistance through the Displaced Employee Program described in Subpart C of Part 330 of this chapter is entitled to file applications for competitive examinations after the closing date for receipt of applications when there is an existing register or a register is about to be established. Applications may be filed at any grade or level above the position from which the person is about to be or was displaced, for which such person is qualified.

[FR Doc. 88–17006 Filed 7–27–88; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 890

Federal Employees Health Benefits Program; Medically Underserved Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its Federal Employees Health Benefits (FEHB) Program regulations to specify (1) how it determines which states qualify as Medically Underserved Areas, and (2) how and when it will announce the results of this determination. This action is necessary to expedite notice of Medically Underserved Areas to the public.

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Myers, (202) 632–4634.

SUPPLEMENTARY INFORMATION: On January 14, 1988, OPM published proposed regulations in the **Federal Register** (53 FR 898) that specified how it determines which states qualify as Medically Underserved Areas under the FEHB Program. The regulations proposed a change to the method by which OPM announces the results of this annual determination. This change would begin with OPM's determination for calendar year 1989, which would be announced before the beginning of the November 1988 open season.

OPM received two written comments on the proposed regulations: One from an association and one from an FEHB carrier. While both were generally in favor of the proposed change, the FEHB carrier expressed concern about the timing of the public notice. The carrier believes that the results of OPM's determination should be announced by September 1 to be sure that the states are included in the plan brochures for the next calendar year. We acknowledge the importance of including this information in the brochures, but do not think it is necessary to require a specific date by which the states must be published in the **Federal Register**. As soon as the necessary data becomes available to us, we will make every effort to determine which states qualify as Medically Underserved Areas for the next calendar year and share this information with the carriers.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104.

2. In § 890.701, the following three sentences are inserted between the first and second sentences in the definition "Medically underserved area" to read as follows:

§ 890.701 Definitions.

* * * * *

"Medically underserved area" * * * OPM makes its annual determination by comparing the latest Department of Health and Human Services state-by-state population counts on primary medical care manpower shortage areas with U.S. Census figures on state resident population. The determination will be made prior to the annual FEHB open season and will be for the next calendar year. OPM will announce the results of this determination before each open season in a public notice in the **Federal Register.** * * *

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[FR Doc. 88–17009 Filed 7–27–88; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 88–125]

Horse Protection Regulations; Interim Rule and Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Horse Protection Regulations to revise the list of devices and equipment prohibited for use on horses at any horse show, exhibition, sale, or auction. We are removing provisions established by an earlier interim rule that would have phased in a maximum pad height of 1 inch, and are substituting a prohibition on the use of pads that exceed 50 percent of the horse's natural foot length or that fail to comply with other specified requirements. We are also prohibiting packing materials between pad and hoof, except for certain approved materials, and are expanding restrictions on the use of weights on horses. Additionally, we are amending the regulations to allow the use of pliant plastic pads on horses. These amendments are necessary to better protect horses under the Horse Protection Act.

DATE: This interim rule is effective August 1, 1988. Consideration will be given only to comments postmarked or received on or before October 31, 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. 88–125. 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 Information

On April 26, 1988, we published an interim rule in the **Federal Register** (FR 53 14778–14782, Docket No. 88–052) that amended the Horse Protection regulations in 9 CFR Part 11 (referred to below as the regulations) to prohibit and restrict certain devices and practices to prevent the soring of horses. On May 2, 1988, we published another interim rule in the **Federal Register** (FR 53 15640–15641), Docket No. 88–079) that amended the regulations with regard to weight added to a horse's foot, including the weight of horseshoes and certain boots.

Comments on Interim Rules

We invited written comments on our interim rules, stipulating that they had to be postmarked or received on or before June 27, 1988. The comment period was then reopened and extended, and closed July 15, 1988.

We received over 2,100 comments on the interim rules, and have carefully considered these comments in developing this new interim rule. Many of the comments we received dealt with matters outside the scope of the interim rules on which we requested comments. For example, some commenters requested amendments to the Horse Protection Act, or addressed enforcement of regulatory provisions not discussed in the interim rules. We are responding in this interim rule to comments on changes effected by the earlier interim rules.

The comments were from state agriculture officials, representatives of horse associations, representatives of animal protection associations, members of Congress, breeders, owners, exhibitors, veterinarians, farriers, and other interested persons. In terms of number of comments filed, the majority generally opposed one or more of the provisions of the interim rules, but a large minority either supported the interim rules or supported the intent of the interim rules but wanted stronger regulatory restrictions. All comments were carefully considered, and objections are discussed in this supplementary information section.

Pads

Among the provisions established by the April 26 interim rule was a schedule for phasing down the allowable height of pads on horses. The interim rule provided for a maximum pad height of 3 inches through July 31, 1988, and of 2 inches from August 1, 1988, through October 31, 1988. After October 31, 1988, full pads were to be limited to ½ inch, with total pad height including rim pads, limited to 1 inch.

Among the comments we received was one that was jointly signed and submitted by the American Horse Council (AHC), on behalf of its member organizations, and by the American Horse Protection Association (AHPA). The AHC represents over 150 horse industry associations, councils, establishments, and suppliers. Its membership represents a large majority of the major horse organizations in the country. We understand that the joint comment was the result of intensive study and discussion among AHPA officials and officials and representatives of the AHC, and its constituent organizations affected by these rules. Among the issues addressed by the joint comment was the issue of pads used on horses. The joint commenters stated that pads serve the following legitimate needs: (1) To protect the hoof from abrasions or penetration on hard or uneven surfaces; (2) to provide a cushioning agent for the hoof and limb when working or showing surfaces are unduly hard or rough; (3) to maintain the natural angle of the foot and pastern; (4) to compensate for conformation abnormalities of the foot and limb; (5) to aid in keeping the shoes intact on those horses with thin-walled or brittle feet; (6) to permit the use of packing under the pad to maintain proper softness and flexibility of the hoof; (7) to protect the foot from the development of septic processes; (8) to facilitate the application of therapeutic medication to the hoof; (9) to increase or decrease support to the foot and limb as an aid in the treatment of lameness; and (10) to build up the proper matching length and angle of any foot that has been broken or damaged.

According to the joint commenters, pads used in these ways are applied in such a manner as to maintain or achieve normal hoof-pastern axis; therefore pads used in a protective/therapeutic manner are in the best interest of the horse's health and soundness. For these reasons, the joint commenters stated, the use of pads should not be prohibited or arbitrarily limited. The joint commenters additionally stated that the length of the natural hoof of a horse is an important consideration with regard to the use of pads, and that due to the varying sizes of different breeds, ages, and uses of horses, it is inappropriate to set an absolute limit on an acceptable or appropriate pad height to be used on all horses' feet. The joint commenters noted that pads are also used to facilitate certain gaits in show horses, stating that this is a legitimate use as long as the pad does not otherwise cause or result in a violation of the Horse Protection Act (Act). Through their intensive discussion, and in consultation with experienced veterinarians and farriers, the joint commenters developed and submitted guidelines that they believe would assure compliance with the Act while facilitating legitimate uses of pads.

According to the joint commenters, a pad that is no longer than 50 percent of the length of the horse's natural hoof at the toe cannot reasonably be expected to sore the horse, if the horse is properly shod. They stated that the proper use of pads depends on a variety of factors, including maintenance of the appropriate hoof-pastern axis, proper trimming of the hoof wall and the sole, and the avoidance of any practice that inflicts pressure or pain to the sensitive tissues of the foot. The joint commenters noted that the current prohibitions in

§ 11.2(b)(18), redesignated by this interim rule as § 11.2(b)(17), are important determinations in determining if a horse is properly shod with pads. For this reason, the joint commenters suggested that we amend the 1-inch maximum on pad height to permit the use of a pad that is no longer than one-half the length of the horse's natural hoof.

This recommendation, and all other recommendations made by the joint commenters regarding pads, as explained below, were supported in separate comments submitted by the Humane Society of the United States, representing 800,000 members and constituents, and by the Friends of the Show Horse Association, Inc. (Friends Association), a non-profit corporation of owners, trainers, and breeders of Tennessee Walking Horses that participate in approximately 480 horse shows annually. Additionally, we received a supplementary comment and supporting material regarding pads from the Tennessee Walking Horse Breeders' and Exhibitors' Association (TWHBEA, Inc.), a member organization of the AHC that represents a major segment of the industry. It is unclear from its comments what the ultimate position of the TWHBEA, Inc, is. Although the comment states that the TWHBEA, Inc., supports a 4-inch limit on pad height, it also states that the association supports the AHC/AHPA joint recommendation on pads, at least as far as it will facilitate the current show season. Because we are requesting comments on this interim rule, the TWHBEA, Inc., will have an opportunity to clarify its position before any action is taken to make this interim rule final.

We believe that the recommendation presented in the AHC/AHPA joint comment would serve to prevent soring due to excessive pad heights, while allowing the legitimate use of pads in excess of 1-inch. Therefore, we are amending the regulations to prohibit artificial extension of the toe length that exceeds 50 percent of the natural hoof length. Any artificial extension of the toe length must assume the slope of the dorsum (front) of the hoof wall. The natural hoof length is to be measured from the coronet band, at the center of the front pastern along the front of the hoof wall, to the distal portion of the hoof wall at the tip of the toe. The artificial extension is to be measured from the distal portion of the hoof wall at the tip of the toe to the proximal (foot/hoof) surface of the shoe at the toe.

In a separate supplementary comment, the AHPA indicated that it does not anticipate a problem with horses' feet being grown to excessive lengths merely to accommodate high pads. The AHPA stated that as a practical matter, those breeds of horses, including the Tennessee Walking Horse, that have historically used high pads, are not known for their ability to grow hoof and are not likely to be able to grow natural toe length in excess of 4 to 5 inches. AHPA maintained that beyond that length, the hoof wall will not support the weight of the pad assembly allowed by this interim rule, or the concussion of the horse's stride, without cracking or crumbling.

The AHPA further stated that the requirement that the pad assembly conform to the slope of the hoof wall at the toe will be a limiting factor on those breeds, including the Tennessee Walking Horse, that have historically used high pads. The AHPA stated that this "slope" requirement will, as a practical matter, increase the length of the foot (measured from tow to heel) as more pad is added—contrary to the current practice among the breeds that have used high pads, which is to trim the toe of the pad assembly more or less perpendicular to the ground. The longer the foot becomes as pads are added, the slower the horse will "break over" as it strides. In gaited horses such as the Walking Horses, a slow "breakover" is undesirable, because it allows the overstriding rear foot to interfere with the front foot as it leaves the ground. Therefore, according to the AHPA, the new regulations regarding pads will discourage the use of excessively high pads where a flat walk and running walk are being performed.

A large number of commenters, including, as noted, the TWHBEA, Inc., requested either a 3- or 4-inch maximum height on pads. Several requested a 2-inch maximum. Because we agree with the AHC/AHPA joint comment that the most appropriate way to govern pad height is to base that height on the natural hoof of the individual horse, we are not adopting the recommendations to establish a specific maximum pad height for all horses.

In their joint comment, the AHC and AHPA acknowledged that with a flexible limit on pads, based on the length of the natural hoof, it is possible that the pad height may exceed 1 inch. The joint commenters therefore stated that our existing provisions governing a horse's heel/toe ratio, which provides that tow length must exceed the height of the heel by 1 inch or more, be retained permanently with respect to the use of pads less than two inches in length at the toe. With respect to pads that may measure 2 inches or more in length, the joint commenters recommended that the height of such a pad at the heel be limited to no more than 1½ inches greater than the length of the pad at the toe. We agree with these recommendations and are adopting them in this interim rule. The tow length will be measured from the coronet band at the center of the front pastern along the front of the hoof wall to the ground. The heel will be measured from the coronet band, at the most lateral portion of the rear pastern, at a 90 degree angle to the ground, not including normal caulks at the rear of a horseshoe that are not more than ¾ of an inch in length. That portion of caulk at the rear of a horseshoe that is more than ¾ of an inch will be added to the height of the heel in determining the heel/toe ratio.

One commenter suggested that the angle of the pastern and the hoof should remain constant, with no deviation at the coronet band. In other words horses should not walk on their toes. Another commenter expressed concern that horses that wear high pads and heavy shoes often have foot angles that are too low for the horse's bone structure, even when overall angles of the pad and shoe package are normal or high. The commenter suggested that hoof angles be required to be between 48 degrees and 60 degrees. We agree that an unnatural hoof angle can be harmful to a horse. However, for purposes of measurement and inspection, it would be impracticable to establish requirements based on specific angles.

The joint commenters also recommended that to allow for corrective shoeing, the requirements described above not apply to a broken or damaged hoof, as long as its contralateral hoof meets the above requirements. We agree and are amending the regulations to include such a provision. One commenter suggested that any horse that has undergone corrective shoeing should be considered unsound and be prohibited from taking part in shows, exhibits, sales, or auctions. We do not believe such action is necessary. In many cases, corrective shoeing is done to remedy something as simple as a cracked hoof. In other cases horses, such as those with one leg shorter than the others, are more sound when shown with corrective shoeing than without. Another commenter stated that if a horse needs corrective shoeing in violation of the regulations, that horse should be considered unsound and not be allowed to compete in the show ring, or be exhibited or ridden at auction. We

agree and will enforce the regulations uniformly for all horses.

Several commenters stated that pads change a horse's center of balance and cause a greater percentage of a horse's weight to be shifted to its hind end. The commenters indicated that such a change in angulation can cause problems such as bone spavin and bog spavin. As we stated in our April 26 interim rule, we agree that excessive pad height can cause injurious changes in angulation. However, no scientific research has been conducted to determine precisely when a change in angulation becomes harmful. Based on the evidence available to us at this time, we believe that the regulations we are establishing that base permissible pad height on hoof length, and that control the buildup of the heel, will ensure that horses are not subjected to harmful changes in angulation.

A number of commenters stated that 4-inch pads should be allowed on all horses, because, historically, horses wearing pads of that height have been able to perform in the show ring, and therefore could not be sore. According to the commenters, a sore horse could not go, and therefore would be useless in the ring. We disagree that the test of whether a horse has been sored should be whether it can go or not. A horse will not go only if it is subjected to acute or chronic pain. The pain caused by soaring is often temporary, inflicted only for a particular show. Following the show, the horse is administered to. For evidence that sore horses will perform in the show ring, it is only necessary to look to the period before passage of the Horse Protection Act, when many horses were sored badly, yet still performed at shows.

In our April 26 interim rule, as one of the reasons for establishing a 1-inch maximum pad height, we stated that high pads make it difficult to detect pressure shoeing and the insertion of objects between the pad and the foot to cause soring. Several comments, including the joint comment from the AHC and the AHPA, suggested that the most appropriate way of dealing with pressure shoeing and the insertion of objects is through enhanced enforcement, rather than through establishment of a specific maximum pad height. In their joint comment, the AHC and AHPA stated that a thorough preshow inspection of a horse, including a visual inspection of the way a horse moves, is an effective means of detecting soreness in the horse. The joint commenters point out correctly that APHIS officials and Designated Qualified Persons (DQPs) have the authority to direct that pads and shoes be removed to permit visual inspection of the bottom of the hoof, when there is in their view a reasonable basis to suspect the presence of pressure shoeing or foreign objects other than acceptable packing material on a particular horse. We agree that a thorough inspection of a horse improves an inspector's ability to detect soreness. We also agree that the problem of pressure shoeing and like violations can be dealt with through enforcement rather than through the establishment of a particular maximum pad height. Department inspectors will continue to carry out through inspections and we will continue to emphasize that all individuals carrying out inspections under the DQP program follow similar procedures. Also, as recommended by the AHC/AHPA joint comment, we are adding provisions at new § 11.2(b)(12) to specify those materials, used for the well-being of the horse, that can be placed between the pad and the hoof. All other materials will be prohibited. Further, as noted by the AHPA in its supplementary comment, it is likely that the provisions of this interim rule regarding pad height will tend to limit pressure shoeing, by encouraging the growth of natural hoof as a condition of pad use.

Several commenters suggested that requiring a minimum hoof length would make pressure shoeing impossible. While we agree that hoof length can be a factor in protecting a horse from pressure shoeing, the length of hoof that would provide this protection will vary from breed to breed, and even from horse to horse within a breed. For this reason, it would be inappropriate for us to establish a minimum hoof length in order to minimize pressure shoeing. As noted above, it is likely that the regulations regarding pad height established by this interim rule will limit pressure shoeing by encouraging the growth of the natural hoof.

Two commenters expressed concern that our requirement that pads be made of leather or some similar material would lead to an increase in cases of thrush, a degenerative condition of the foot, due to leather pads soaking up and retaining moisture. One commenter stated that leather pads wear out faster than other pads and would therefore necessitate more frequent shoeing of horses than would pads of other materials. Another commenter stated that leather pads tend to soak up water and become heavy and warped. The AHC/AHPA joint comment stated that a requirement that leather or similar material be used for pads would prohibit the use of plastic, which is lighter and sometimes more flexible than leather. We believe that these are legitimate concerns and are therefore including plastic among the materials that may be used for pads, and are removing the requirement that pad materials be made of soft materials.

Several commenters suggested that we require that any pads used on a horse be rim pads, to allow for better detection of pressure shoeing. While there would be obvious inspection advantages to the use of rim pads, their exclusive use would eliminate the protection from stones and other objects the horse is provided by a sole pad. Additionally, the use of rim pads alone would reduce the stability of a horse that steps down on the pad heavily. We are therefore making no changes based on these comments.

Other commenters suggested that transparent pads would allow better detection of pressure shoeing and foreign objects. We agree, but we are unaware of any transparent material appropriate for pads that would not quickly become opaque when subjected to the scuffing and abrasion pads must endure. We are therefore making no changes based on these comments.

One commenter stated that full pads—those that cover the entire sole of a horse's foot—can cause pathological conditions in the horse if not replaced, and that therefore any padding used should be limited to rim pads. According to the commenter, the sole and frog of the foot may become soft and flaky and be eroded when full pads are worn. The commenter stated that a full pad supports an excessive growth of horn and sole that is soft and flaky dead tissue that makes the horse's foot longer and weaker than nature intended. We agree that pads, improperly maintained, can cause foot problems in a horse. However, a horse with pathological problems is not necessarily a sore horse. We strongly agree that horse caretakers should strictly follow a maintenance regimen that protects each horse from the problems described above, from thrush, and from other foot problems. If there is evidence that such pathological conditions have resulted in a horse being sored, we will take appropriate action under the regulations.

In discussing in our April 26 interim rule the relationship between excessively high pads on horses and soring, we referred to the Auburn University study's findings that altering the angulation of a horse's feet and legs can cause lameness, soreness, and inflammation. Several commenters stated that, following the study's release, its author indicated that "horses

with normal shoeing and padding, when examined by three evaluation procedures, did not provide any evidence of soreness or induced inflammation in response to normal use of the pad." Based on this statement, the commenters asked that we remove our restrictions on pad height.

We agree that the Auburn University study did not include the study of the effect of pad height, other than the effect of changes in angulation. However, the commenters who stated that the Auburn study did not address pad height did not address our additional evidence that pads can cause soring by altering the angulation of a horse. Therefore, while we are removing our prohibition of pads totalling more than one inch, we are continuing to regulate maximum pad height, through the 50 percent of natural foot length standard discussed above.

We received comments from a number of veterinarians who had conducted small-scale studies of horses that were given workouts while wearing 3-inch pads. Each of the veterinarians reported no evidence of soring in the horses tested. While we welcome all information regarding the effects of pads on horses, we are unable to accept these studies as scientifically sound. We cannot tell from the comments how the horses were selected for testing; nor do we know what level of sensitivity was used to gauge soreness. Further, certain types of soreness are difficult to detect by visual inspection or palpation alone, and are apparent only through the use of thermography. No indication is given of whether thermography was used in these studies.

Chains

Our April 26 interim rule restricted the maximum weight of chains and rollers to 6 ounces. The joint comment of the AHC and the AHPA did not address the issue of chains. Several commenters stated that we should prohibit the use of all chains because allowing any chains contributes to the practice of soring. These commenters, including the AHPA and other animal protection organizations, stated that the use of chains will not alter a horse's gait unless the horse's pastern area has already been sensitized to cause the horse pain when the chain is used. In a separate comment, the Humane Society of the United States (HSUS) stated that while 6-ounce chains and rollers may not, in and of themselves, cause soreness to horses, the constant rubbing of these devices against chemically sensitized skin will serve to keep horses sore. According to the AHPA, the HSUS, and other commenters, this sensitizing can be accomplished with a number of substances, ranging from commercial skin softeners to mustard oil, and can be masked by anesthetics, ointments, and other materials. Several commenters stated that a chain will not create a "show gait" in a horse, unless the horse has at some time been sored. They argued that a horse will soon grow accustomed to and ignore an action device on its pasterns, unless it reminds the animal of pain caused by such a device in the past.

A large number of commenters requested that chains weighing more than 6-ounces be permitted. Most of these commenters requested a 10-ounce chain; some requested an 8-ounce chain; four requested a 12-ounce chain; one asked for chains up to 14 ounces. The TWHBEA, Inc., stated that in their opinion scientific evidence indicates that 9-ounce action devices are unlikely to cause soring and should not be prohibited.

A comment submitted by the Friends Association supported the prohibition on chains and rollers weighing more than 6 ounces. In addition to referencing the Auburn University study referenced in our April 26 interim rule, the Friends Association cited the conclusions of a clinic conducted by the Department in Shelbyville, Tennessee in 1973, and Department inspection records, as evidence that chains weighing 6 ounces or less do not cause soring.

Although we agree that the use of any chain on a pastern that is already sensitive will cause a horse discomfort, the best evidence available to us, including the Auburn University study and a Department study conducted at the National Veterinary Services Laboratories in Ames, Iowa in 1975, shows that while chains and other action devices weighing more than 6 ounces can sore horses, those weighing 6 ounces or less are not themselves likely to cause soring. Therefore, we are retaining the provisions in the regulations that limit chains and rollers to 6 ounces or less. We believe that inspection procedures, properly conducted, should identify those horses whose pasterns are already sore before entering a show ring. However, we acknowledge and share the commenters' concern that substances and techniques may be used in some cases to mask soreness in a horse. We will carefully review the information made available to us regarding these practices, and once again we are requesting comments on when and where they are occurring, and how prevalent they are, to help determine what action, if any, we should take.

As noted, in formulating the provisions in our interim rule regarding chains, we relied in part on the findings of the Auburn University study. Several commenters stated that following publication of the study, its author indicated that the study had not shown 10-ounce chains can sore horses. Several commenters questioned the soundness of the Auburn University study, based on the number of horses tested. These commenters stated that the use of only three horses to test 10-ounce chains made the study scientifically unreliable. We are making no changes based on these comments. Although the use of more horses might have provided statistically more reliable results, the Auburn University Study clearly indicates that 10-ounce chains can cause soring. Further, as noted, a study conducted by the Department in 1975 also concluded that 10-ounce chains can cause soring.

Several commenters stated that 10-ounce chains will not cause soring if the horse's pasterns are adequately lubricated with grease or some other ointment. Commenters also stated that the Auburn University study of chains was flawed because the researchers used no lubrication on the horses. We are making no changes based on these comments. We agree that lubricating a horse's pasterns will in some cases protect it from abrasion from action devices. However, this lubrication does not lessen the damage caused by an action device striking a horse's pastern, rather than sliding along it. Additionally, the lubrication can contribute to abrasion if it retains sand or dirt picked up in a show ring.

A number of commenters stated that 10-ounce chains can not sore horses, basing their assertion on the fact that a man or woman can wear bracelets, watches, or wrist and ankle weights, without harm. The commenters reasoned that because a human weighs approximately 10 times less than a large horse, the horse should be able to wear chains that weigh as much as or more than the devices worn by humans. We disagree that chains used as action devices on horses are directly comparable to bracelets, watches, or wrist and ankle weights on humans, and believe it is inappropriate to compare the anatomy of a human to that of a horse. A human wearing jewelry on an arm or wrist does not subject that limb to the constant and forceful pounding that a horse's limb undergoes; weights worn on a human's ankle do not move in the same way as chains on a horse's limb.

Many commenters based their objections to restrictions on pad height and to a 6-ounce limit on action devices on the fact that many horses that have been trained with 10-ounce chains and 4-inch pads are being shown into their late teens and beyond. According to the commenters, this is evidence the horses have not been sored. We disagree. Soring often has no effect on the longevity of a horse. It is important to distinguish between soreness and lameness. Lameness is only one of the possible results of soring; others include physical distress and inflammation. Soring can be a temporary condition brought about for a particular show. A sored horse that is well cared for between shows may never become lame.

Horseshoes and Other Weights

The provisions of our April 26 interim rule limited the weight of horseshoes on all horses to 16 ounces. However, based on infomation we subsequently received that suggested that a 16-ounce limit might be inappropriate for some horses, we amended the regulations in our May 2 interim rule to remove the 16-ounce horseshoe weight limit for horses other than yearling horses. At that time we requested comments concerning necessary limits on the use of weights, including horseshoes, both to prevent soring and to accommodate the needs of different breeds and sizes of horses. Several commenters suggested that we regulate horseshoe size, not weight. Others suggested maximum horseshoe weights according to breed or size of horse. A number of comments, including the joint comment of the AHC and AHPA, recommended that we establish no specific size or weight limit on horseshoes. In their joint comment, the AHC and the AHPA based their opposition to a specific limit on the great variation of hoof size between different breeds and sizes (heights and weights) of horses. The joint commenters stated that farriers show horses with different shoes based upon the size of the horse, its foot, the width of the hoof wall, the use of the horse, and the condition of the hoof. The joint commenters stated further that horse shoeing manuals recommend that a shoe be twice the width of the hoof wall, and that the width of the shoe is related to the natural bearing surface of the foot and should cover the wall, white line and outer border of the sole, which varies according to the size of the horse. The joint commenters noted that many breed associations have adopted rules regarding shoe dimensions, which have proved helpful in regulating horseshoe weight. Because we agree with the reasoning and recommendations jointly submitted by the AHC and AHPA, we are establishing no restrictions on the weight or size of horseshoes used on horses other than yearlings.

Several commenters expressed concern that prohibiting 10-ounce chains and restricting pad height would encourage some trainers to attach excessive amounts of lead weights to a horse's foot to help the horse achieve a desired gait. The commenters suggested that we therefore prohibit the use of weights other than horseshoes on a horse. We agree that the use of weights on horses should be restricted, and have already established regulations restricting such use. We have not restricted the use of added weight between the bars of horseshoes, however, because such weight can be useful in corrective shoeing and, based on our inspections at horse shows, exhibits, sales and auctions, has not contributed to the soring of horses.

In their joint comment, the AHC and AHPA suggested that our regulations restricting the addition of weight were in part unclear and should be rewritten for clarity. We agree and therefore are amending those provisions, which appear in new § 11.2(b)(18), to make them clearer. As suggested by the joint comment, we are also specifying that pads may not be hollowed out for the purpose of inserting or affixing weights, and that hollow shoes or artificial extensions filled with mercury or similar substances are prohibited.

One commenter stated that most of the horses she has owned that have been heavy shod or padded have developed sheared heels as a result of these shoeing techniques. She stated that sheared heels cause an excessive proportion of support to be thrown onto one side of the heel, resulting in a tearing of the laminae of the hoof wall and bars on either side. She indicated that these problems are precipitated by too much sole pressure by the branch of a shoe, pads, objects placed between pads and the foot, and accumulation of debris under the pads. We agree that horses that are improperly shod or maintained can develop pathological conditions in the foot. However, there is no scientific evidence to indicate that heavy shoeing or pads themselves are a direct cause of the problems described above. If those problems should lead to a horse being sore, however, we will take appropriate action under the Act and the regulations.

Bands

Two commenters requested that we prohibit the use of bands on horses, based on the possibility that, improperly applied, they could cause soring. Although we agree that improper application of bands can cause soring by bringing the bands in contact with sensitive areas of a horse's foot, a provision already exists at newly redesignated § 11.2(b)(14) that prohibits metal hoof bands that are placed less than ½ inch below the coronet band. We believe that this provision is adequate to ensure that bands do not cause soring.

Boots

According to one commenter, rubber bell boots have sometimes been used to hide chains on certain breeds of show horses. Because of this, the commenter called for a prohibition of any devices that hide the pastern. We are making no changes based on this comment. Normal inspection procedures by DQPs or Department inspectors will include a check for any items that might be concealed by boots. The commenter also suggested that breeds that use hinged quarter boots and bell boots in the show ring be restricted to using quarter boots or heel boots that do not touch the horse's coronary band. The commenter further requested that Tennessee Walking Horses and Racking Horses not be permitted to be shown in bell boots, or in fixed boots such as quarter boots or heel boots, alleging that the Walking Horse industry has a history of abusing any equipment allowed by the regulations. We believe that the current regulations regarding boots are sufficient to prevent soring by such equipment, and are therefore making no changes based on this comment.

Miscellaneous

Many commenters addressed issues unrelated to the provisions of the interim rules. Among the topics discussed were suggested improvements to the DQP inspection program, and the practices of masking a horse's pain during inspection and stewarding a horse not to react to pain during inspection. We will carefully review the information we received and take whatever action is appropriate.

Scar Rule

In our April 26 interim rule, we amended § 11.3 of the regulations to make it clear that our intent was to apply the "scar rule" to all horses 3 years old or younger in 1979, 4 years old or younger in 1980, 5 years old or younger in 1981, and so forth. However, in making that clarification, we inadvertently added language that stated that the scar rule applies to all horses born "on or after October 1,

1976," rather than "on or after October 1, 1975," as we had intended. Therefore, in this interim rule, we are amending § 11.3 to read that the scar rule applies to all horses born on or after October 1, 1975.

Request for Comments

The comment period for this interim rule extends through October 31, 1988. During that period, we invite and will accept comments relating to the issues raised in this interim rule and the interim rules published in the **Federal Register** on April 26, 1988 (FR 53 14778–14782, Docket No. 88–052) and May 2, 1988 (FR 53 15640–15641, Docket No. 88–079).

Emergency Action

The 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 April 26, 1988, we published an interim rule in the **Federal Register** that restricted, after a phasedown period, the total allowable height of pads on horses to 1 inch. Under the phasedown, maximum pad height was restricted to 3 inches until July 31, 1988 and was to be restricted to 2 inches beginning August 1, 1988. However, information we have received since publication of that interim rule indicates that such a restriction is not the most appropriate method of restricting pad height. We are therefore establishing more appropriate provisions in this interim rule. These provisions would among other things, restrict artificial extension of a horse's toe length to no more than 50 percent of the horse's natural hoof length. Because it may be injurious to some horses to be reshod and subjected to varying pad heights over too short a period of time, it is necessary for the well-being of affected horses that the provisions of this interim rule become effective before the August 1 phasedown to 2 inches established by the April 26 interim rule.

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 on August 1, 1988. We will consider comments postmarked or received on or before October 31, 1988.

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.

The changes to the regulations made by this interim rule will affect all horses equally, and will allow continued equitable competition among show horses.

Under these circumstances, the 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.

PART 11—HORSE PROTECTION REGULATIONS

Accordingly, 9 CFR Part 11 is amended as follows:

1. The authority citation for Part 11 continues 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 the definitions of "full pad" and "rim pad".

3. Section 11.2 is amended by revising paragraphs (b) (10), (11) and (12); removing (b)(13) and (b)(19); redesignating paragraphs (b)(14) through (b)(18) as (b)(13) through (b)(17) respectively, and adding new paragraph (b)(18) to read as follows:

§ 11.2 Prohibitions concerning exhibitors.

* * * * *

(b) * * *

(10)(i) Artificial extension of the toe length, which must assume the slope of the dorsum (front) of the hoof wall, whether accomplished with pads, acrylics or any other material or combinations thereof, that exceeds 50 percent of the natural hoof length, as measured from the coronet band, at the center of the front pastern along the front of the hoof wall, to the distal portion of the hoof wall at the tip of the toe. The artificial extension shall be measured from the distal portion of the hoof wall at the tip of the toe to the proximal (foot/hoof) surface of the shoe at the toe.

(ii)(A) If the artificial extension of the toe length is less than 2 inches, the toe length must exceed the height of the heel by 1 inch or more. The length of the toe shall be measured from the coronet band at the center of the front pastern along the front of the hoof wall to the ground. The heel shall be measured from the coronet band, at the most lateral portion of the rear pastern, at a 90 degree angle to the ground, not including normal caulks at the rear of a horseshoe that do not exceed ¾ of an inch in length. That portion of caulk at the rear of a horseshoe in excess of ¾ of an inch shall be added to the height of the heel in determining the heel/toe ratio.

(B) If the artificial extension of the toe length is 2 inches or more, the height of the artificial extension at the heel cannot exceed the length of the artificial extension at the toe by more than 1½ inches.

(iii) Nothing in paragraphs (b)(10) (i) and (ii) of this section shall limit the repair or reconstruction of a broken or damaged hoof as long as its contralateral hoof complies with paragraphs (b)(10) (i) and (ii) of this section.

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

(12) Any object or material inserted between the pad and the hoof other than acceptable hoof packing, which includes pine tar, oakum, live rubber, sponge rubber, silicone, commercial hoof packing or other substances used to maintain adequate frog pressure or sole consistency.

* * * * *

(18) Lead or other weights attached to the outside of the hoof wall, the outside surface of the horseshoe, or any portion of the pad except the bottom surface within the horseshoe. Pads may not be hollowed out for the purpose of inserting or affixing weights, and weights may not extend below the bearing surface of the shoe. Hollow shoes or artificial extensions filled with mercury or similar substances are prohibited.

* * * * *

4. Section 11.3 is amended by revising the first sentence in the introductory text to read as follows:

§ 11.3 Scar rule.

The scar rule applies to all horses born on or after October 1, 1975. * * * * * * * * *

Done in Washington, DC, this 25th day of July, 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-17024 Filed 7-27-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 35

[Docket No. 88-11]

Agricultural Loan Loss Amortization

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is issuing this final rule to implement Title VIII of the Competitive Equality Banking Act of 1987 ("CEBA"). CEBA permits national agricultural banks to amortize losses on qualified agricultural loans. This final rule describes the procedures and standards applicable to national banks desiring to amortize those losses. It also describes the manner in which amortizations are to be done.

This final rule is intended to benefit small, agricultural banks by providing a form of capital relief and, thereby, added time to work out problems brought about by the extended downturn in the agricultural industry.

This action is needed to make final the temporary rule issued on November 2, 1987. After consideration of comments received, the OCC is making one substantive change and several technical changes to its temporary rule. The substantive change allows eligible national banks to amortize losses on the reappraisal or sale of real or personal property acquired in connection with a qualified agricultural loan and that the bank owned on January 1, 1983, or acquires prior to January 1, 1992, whether or not that property is "currently owned." Under the temporary rule, property had to be currently owned for the loss to qualify for deferral. The technical changes: (1) Amend the definition of "qualified agricultural loan" and "qualified agricultural bank" to clarify that the OCC intends to construe the phrases broadly; (2) add a definition of "agriculturally related other property"; (3) clarify the relationship between 12 CFR Part 35 and the alternative legal lending limit in 12 CFR 32.8; and (4) include various minor wording changes intended to enhance clarity.

EFFECTIVE DATE: August 29, 1988.

FOR FURTHER INFORMATION CONTACT: James F.E. Gillespie, Jr., Senior Attorney, Legal Advisory Services Division (202) 447-1880; Jon A. Nagy, National Bank Examiner, Commercial Activities Division (202) 447-1164; or Lance Cantor, Analyst, Special Supervision Division (202) 447-1719.

SUPPLEMENTARY INFORMATION:

Background

CEBA permits an agricultural bank to amortize: (1) Losses on qualified agricultural loans shown on its annual financial statement for any year between December 31, 1983, and January 1, 1992; and (2) losses suffered as the result of an appraisal or sale of agriculturally related other property (related to a qualified agricultural loan) owned on January 1, 1983, or acquired prior to January 1, 1992.

CEBA also required that the federal banking agencies issue implementing regulations no later than November 9, 1987. The OCC initially published this regulation as a temporary rule on November 2, 1987 (52 FR 41959), effective November 9, 1987, in order to comply with this statutory requirement. Interested parties had the opportunity to comment by January 4, 1988. The Board of Governors of the Federal Reserve System, on November 3, 1987 (52 FR 42087), and the Federal Deposit Insurance Corporation ("FDIC"), on November 2, 1987 (52 FR 41966), proposed substantially identical regulations containing only those variations necessary to accommodate their own regulatory and organizational systems.

The intent of CEBA was to provide agricultural banks with added time to work out problems brought about by the extended downturn in the agricultural industry.

Discussion of Comments Received

Eight comments were received on the temporary rule. Comments were received from three banks, three banks trade associations (two national and one state-level), one law firm, and one Congressman. Comments were supportive of agricultural loan loss amortization, while suggesting that the OCC liberalize certain of the provisions in the temporary rule.

Specific Comments

The OCC received comments regarding the following specific items:

Definition of "Agricultural Bank"

Section 35.2(a) of the rule defines an agricultural bank as any bank: (1) With FDIC insured deposits; (2) located in an area of the country with an economy dependent on agriculture; (3) with total assets of $100 million or less; and (4) with at least 25 per cent of its total loans in qualified agricultural loans and agriculturally related other property or with less than 25 per cent of its total loans in qualified agricultural loans and agriculturally related other property but which the OCC still recommends to the FDIC as eligible.

Identification of Agricultural Areas

Some commenters urged that the OCC list specific criteria to identify agricultural areas. The OCC believes that the normal means of identifying agricultural areas—income levels, revenue flows, acreage in production—are abnormally depressed due to the current state of the agricultural economy. Adopting a list of acceptable counties or geographic regions could leave the erroneous impression that a bank located outside such an area could not qualify even though it met the other requirements of an "agricultural bank". Additionally, the relatively low level of farm income compared to other income could artificially mask local areas that traditionally are dependent upon agriculture but currently have a depressed level of income from agriculture.

Consequently, each application should include a description of the bank's location, dominant lines of commerce in its service area, and any other information to support the bank's belief that it is located in an agricultural area. This information will be used to insure that no bank qualified for participation will be excluded due to arbitrary geographic demarcation.

Bank Size

The definition of an agricultural bank includes the statutory requirement that the bank have total assets of $100 million or less. Comments were received by the other federal regulators asking for clarification as to what happens if a bank is approved for loss deferral and subsequently exceeds the size limitation. Congress did not intend for banks larger than $100 million to defer loan losses. If size was unimportant, the law could have easily excluded it as a factor.

At the same time, it is of little value for a bank to defer a loss one year if it must reverse that deferral the next year because it grew to over $100 million in assets. Therefore, the OCC expects a