Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatability.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on February 14, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.953 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.953 Lemon Regulation 653.

The quantity of lemons grown in California and Arizona which may be handled during the period February 19, 1989, through February 25, 1989, is established at 350,000 cartons.

Dated: February 15, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–3927 Filed 2–16–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 299 and 499

[INS Number: 1130–89]

Immigration and Nationality Forms; Display of Control Numbers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule revises the listing of forms contained in 8 CFR 299.1, 299.5, and 499.1, by adding newly developed forms, revising edition dates for existing forms, and by adding those forms omitted from the previous revision. This revision is necessary to ensure that the Immigration and Naturalization Service uses and accepts only the current editions of forms listed in Parts 299 and 499 of this chapter.

EFFECTIVE DATE: February 17, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cook, Senior Immigration Examiner, Immigration and Naturalization Service, 425 "I" Street NW., Washington, DC 20536, Telephone: (202) 633–3320.

SUPPLEMENTARY INFORMATION: Sections 299.1 and 499.1 list the prescribed forms to be used in compliance with subchapters A, B, and C of this chapter. This revision is necessary to ensure that the forms listings remain current. Section 299.5 is updated to maintain the centralized listing of current public use forms and their respective control numbers as issued by the Office of Management and Budget (OMB).

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule provides an up-to-date listing of approved Immigration and Nationality Forms to be used and accepted by the Immigration and Naturalization Service.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment Analysis in accordance with E.O. 12612.

List of Subjects in 8 CFR Parts 299 and 499

Forms, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 299—IMMIGRATION FORMS

1. The authority citation for Part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR Part 2.

2. Section 299.1 is amended by revising the entry for Form I–601 and by adding the following forms in numerical sequence, immediately before the entry ICAO.

§ 299.1 Prescribed forms.

* * * * *

I-291 (11-1-83)—Decision on Application for Status as Permanent Resident.
I-320B (9-1-75)—Agreement Between Employer of Alien Labor and the United States.
I-327 (10-1-82)—Permit to Reenter the United States.
I-488 (10-1-78)—Affidavit of Witness.
I-515 (8-2-83)—Notice to Student or Exchange Visitor Admitted Without I-20 or IAP-66.
I-516 (8-1-83)—Notice of Approval or Continuation of School Approval.
I-517 (8-1-83)—Review of School Approval.
I-541 (12-1-83)—Order of Denial of Application for Extension of Stay or Student Employment or Student Transfer.
I-543 (12-1-83)—Order of Denial of Application for Change of Nonimmigrant Status.
I-564 (10-1-82)—Form Letter—Reply to General Inquiries.
I-567 (9-21-79)—Approval of Application for Employment by G-4 Dependent.
I-594 (11-1-83)—Notice to Appear for Adjustment of Status.
I-601 (4-24-85)—Application for Waiver of Grounds of Excludability.
I-607 (2-1-72)—Order Re Waiver of Excludability Pursuant to Section 212 (h), (i) and Permission to Reapply.
I-644 (11-1-82)—Supplementary Statement for Graduate Medical Trainees.
I-762 (11-30-87)—Citation Pursuant to Section 274A of the Immigration and Nationality Act.
I-772 (7-7-87)—Declaration of Intending Citizen.
I-775 (5-26-88)—Visa Waiver Pilot Program Agreement.
I-777 (6-16-88)—Application for Issuance or Replacement of Northern Mariana Card.
I-791 (5-26-88)—Visa Waiver Pilot Program Information Form.

* * * * *

3. Section 299.5 is amended by adding Forms I-775, I-777, and I-791 immediately before the entry "User Fee", and adding Forms N-642 and N-643 immediately after the entry N-610 in numerical sequence to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
I-775	Visa Waiver Pilot Program Agreement	1115-0149
I-777	Application for Issuance or Replacement of Northern Mariana Card	1115-0151
I-791	Visa Waiver Pilot Program Information Form	1115-0148
N-642	Data Sheet for Derivative Citizenship	1115-0153
N-643	Application for Certificate of Citizenship in behalf of an Adopted Child	1115-0152

* * * * *

PART 499—NATIONALITY FORMS

4. The authority citation for Part 499 is revised to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR Part 2.

5. Section 499.1 is amended by adding Forms N-642 and N-643 as the last entry in numerical sequence to read as follows:

§ 499.1 Prescribed forms.

* * * * *

N-642 (4-14-88)—Data Sheet for Derivative Citizenship.
N-643 (4-14-88)—Application for Certificate of Citizenship in behalf of an Adopted Child.

Dated: February 2, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-3826 Filed 2-16-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 88-201]

Horse Protection Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: In this final rule, we are making permanent certain provisions of four interim rules that amended the Horse Protection Act regulations (referred to below as the regulations). Additionally, we are amending the regulations to reinstate a 1-inch heel/toe ratio for all horses, to remove a requirement that any artificial extension of the hoof length assume the slope of the front of the hoof wall, and to remove a provision that exempts a hoof from certain provisions of the regulations as long as its contralateral hoof meets those provisions. We are also clarifying the term "yearling" as used in the regulations. These amendments are necessary to better protect horses under the Horse Protection Act.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, Room 269, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8790.

SUPPLEMENTARY INFORMATION: In this document we are making final certain changes to 9 CFR Part 11, referred to below as the Horse Protection regulations (the regulations), that were made in four interim rules between April and October, 1988. In addition, based on comments from the public on those interim rules, we are amending the regulations to reestablish a heel/toe ratio for all horses, to remove a requirement that any artificial extension of toe length on horses assume the slope of the front of the hoof wall, and to remove a provision that exempts a hoof from pad height and heel/toe ratio requirements as long as its contralateral hoof meets those requirements. Additionally, we are clarifying the term "yearling" as used in the regulations.

Background Information

On April 26, 1988, we published in the **Federal Register** (53 FR 14778-14782, Docket No. 88-052) an interim rule that amended the regulations by expanding the list of devices and equipment prohibited for use on any horse at any horse show, exhibition, sale, or auction. Additionally, the interim rule prohibited the use of weights other than horseshoes on any horse, and prohibited the use of horseshoes weighing more than 16 ounces each. The interim rule also clarified which horses are subject to the scar rule.

On May 2, 1988, we published in the **Federal Register** (53 FR 15640-15641, Docket No. 88-079) an interim rule that removed certain restrictions on weights, horseshoes, and boots imposed by the April 26 interim rule, and that reinstated certain restrictions on the placement of lead and other weights on horses. Comments on both the April 26 and May 2 interim rules were required to be postmarked or received on or before June 27, 1988. However, those comment periods were extended until July 15, 1988, and then were subsequently reopened and extended again, as explained below.

On July 28, 1988, we published in the **Federal Register** (53 FR 28366-28373, Docket No. 88-125) a third interim rule that revised the list of devices or equipment prohibited for use on horses at any horse show, exhibition, sale, or auction. We removed provisions established by the April 26 interim rule that would have phased in a maximum pad height of 1 inch, and established, in their place, 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 prohibited packing materials between pad and hoof, except for certain approved materials, and expanded the restrictions on the use of weights on horses. We also amended

the regulations to allow the use of pliant plastic pads on horses. Additionally, in the July 28 interim rule, we reopened and extended the comment periods for the April 26 and May 2 interim rules by inviting comments on those two interim rules for the duration of the comment period established for the July 28 interim rule. Comments on all three interim rules were required to be postmarked or received on or before October 31, 1988.

Shortly before the comment periods closed, we received a request to extend the comment period on the July 28 interim rule until November 22, 1988. In response, we extended the comment periods on Docket No. 88–052, Docket No. 88–079, and Docket No. 88–125, so that we could consider all written comments postmarked or received on or before November 22, 1988.

On October 24, 1988, we published in the **Federal Register** (53 FR 41561–41562, Docket No. 88–160) a fourth interim rule that removed language that would have inadvertently terminated, after October 31, 1988, provisions that prohibit heel buildup in excess of 1 inch on yearling horses. Comments on that interim rule were due on or before November 23, 1988.

Comments Received

We received no comments on Docket No. 88–160, regarding heel buildup on yearling horses, and, except for a clarification we discuss below under the heading "Miscellaneous," we are making permanent the provisions of that interim rule without change.

In the third rule, Docket No. 88–125, published in the **Federal Register** July 28, 1988, we addressed all timely comments we received before that date regarding Docket No. 88–052 and Docket No. 88–079. After publication of Docket No. 88–125, we received slightly more than 300 comments that addressed either Docket No. 88–052, Docket No. 88–079, or Docket No. 88–125. Because the issues raised in those three dockets are interrelated, we discuss in this final rule all comments received since July 28 according to issues raised, rather than according to docket number.

Pads

In our July 28 interim rule, we amended the regulations, based in part upon our review and analysis of a joint recommendation of the American Horse Council (AHC) and the American Horse Protection Association (AHPA), to restrict pads used on horses to no longer than 50 percent of the length of the horse's natural hoof. Additionally, with respect to the use of pads less than 2 inches in length at the toe, we retained our existing regulations governing the heel/toe ratio, which provided that toe length must exceed the height of the heel by 1 inch or more. With respect to pads measuring 2 inches or more in length, we established provisions requiring that the height of such a pad at the heal be limited to no more than 1½ inches greater than the length of the pad at the toe.

Three commenters, including the American Morgan Horse Association, supported, without change, our July 28 interim rule with regard to pads.

Among the other comments we received regarding our July 28 interim rule was one that was jointly signed and submitted by the AHC, on behalf of its member organizations, and by the 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. The joint comment addressed the issue of pads on horses, with specific reference to hoof/pastern axis. According to the joint commenters, the recommendations in the comment were the result of extensive on-site observations they made at a number of horse shows that were held after the interim rule was published July 28.

The joint commenters stated that, based on their observations, one problem with the amended regulations is apparent. They stated that on some performance horses, the 1½-inch toe-length/heel-height differential for pads has produced excessive heel height and an abnormal hoof-pastern axis. The joint commenters noted that, in a few cases, the heel of a horse was so high that the coronary band was lower at the toe than at the heel—the reverse of normal.

According to the joint commenters, the problem seems to be due, at least in part, to the decision of some trainers to shoe their horses to the maximum toe-length/heel-height differential permitted by the regulations, without considering whether that would preserve the normal hoof/pastern axis. The commenters stated that the problem may also be a response to that provision in the regulations requiring that pads conform to the slope of the natural toe. According to the joint commenters, as overall toe length increases, breakover time slows because the length of the foot from toe to heel is greater. The joint commenters stated that raising the heel height, and thereby steepening the angle of the hoof, tends to shorten the overall length of the foot and increase breakover speed.

The joint commenters suggested that, because of the problems observed with hoof/pastern axis, the regulations be amended to help achieve or maintain a normal hoof/pastern axis, and to discourage shoeing practices that result in an abnormal axis. They stated that they believe that the Department's original heel/toe ratio, deleted in the July 28 interim rule, is an essential element of all shoeing practices incorporating pads. The joint commenters therefore suggested that the distinction in the regulations between artificial extensions less than and greater than 2 inches at the toe be abandoned. They stated that their measurements of a variety of show breeds that would be affected by the regulations indicated that, for nearly all horses, toe length exceeded heel height by 1 inch or more.

Our experience in enforcing the Horse Protection Act since issuance of the July 28 interim rule is consistent with the recommendation of the joint commenters. We believe that the recommendation presented in the AHC/AHPA joint comment would serve to maintain a normal hoof/pastern in animals governed by the regulations and better protect horses. Therefore, we are amending the regulations to remove the provision that states that the 1-inch heel/toe ratio applies only when pads are used that are less than 2 inches in length at the toe. We are also removing the provision that states that for pads that measure 2 inches or more in length, the height of the pad at the heel is limited to no more than 1½ inches greater than the length of the pad at the toe. In place of those provisions, we are requiring that overall toe length must exceed the total height of the heel by 1-inch or more.

With regard to heel/toe ratio, the joint commenters suggested that different heel/toe ratios be established for "full-sized" horses and for "ponies." They stated that their measurement of ponies, which they defined as animals 14 hands, 2 inches high or smaller at the withers, indicated that when properly trimmed and shod, short-hooved ponies may have a "normal" heel/toe ratio of only about ¾ inch. The joint commenters therefore suggested that different heel/toe ratios be established for "full-sized" horses and for "ponies." We are not making this suggested change in the regulations. Because the measurement difficulties in differentiating between different sizes of equines would make implementation of two different heel/toe ratios unworkable, and because the application of a 1-inch heel/toe ratio to ponies will not be harmful to animals of that size, and indeed will be beneficial to those animals, we are applying the 1-inch heel/toe ratio to all animals covered by the regulations.

Two commenters suggested that we require a 1½-inch heel/toe ratio for all horses. One of these commenters stated that a 1-inch heel/toe ratio has historically been insufficient to protect horses from being sored by "being stood straight up on their toe." We are making no changes based on this comment. Based on inspections we have conducted under the regulations, the evidence available to us at this time indicates that a 1-inch heel/toe ratio is sufficient to maintain a normal hoof/pastern axis in horses.

In our July 28 interim rule, we added a provision to the regulations requiring that any artificial extension of the toe length must assume the slope of the dorsum (front) of the hoof wall. As the basis for this provision, we explained that such a requirement would tend to limit the height of pads by increasing the length of the foot as more pads are added. This would cause the horse to "break over" more slowly as pad height increased. As noted in a comment submitted by the AHPA in response to our April 26 interim rule, a slowed breakover is undesirable in gaited horses, such as Walking Horses, because it allows the overstriding rear foot to interfere with the front foot as it leaves the ground.

However, a number of commenters, including APHIS veterinary medical officers responsible for administering and enforcing the Horse Protection Act, have submitted evidence indicating that such a requirement has been harmful, rather than beneficial to horses, and have recommended that we remove the "natural slope" requirement from the regulations. The commenters stated that many horses are striking the heel area of the front foot due to the increase in size of the pad at its base. The commenters also stated that many horses have developed swelling in their flexor tendons due to the extended toe, and are striking their elbow and rib area due to this increased length. As a result of these problems, we are removing the provision in the regulations that requires that pads on all horses subject to the regulations must assume the slope of the front of the hoof wall. Because pads will no longer be required to follow such a slope, we are also clarifying the regulations to indicate that the artificial extension of the toe length shall be measured from the distal portion of the hoof wall at the tip of the toe at a 90 degree angle to the proximal (foot/hoof) surface of the shoe. With regard to whether pad height can now be expected to be limited naturally under the amended regulations, we agree with the comment submitted by the AHPA in response to our April 26 interim rule, in which the commenter 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. As the AHPA correctly pointed out, beyond that length, the hoof wall will not support the weight of the pad assembly allowed by this rule, or the concussion of the horse's stride, without cracking or crumbling. We believe this natural limitation on hoof length will serve as a limiting factor on pad height.

Two commenters, who suggested that we remove the requirement that any artificial extension of toe length assume the slope of the front of the hoof, recommended that we not allow the pad assembly to be "chopped off" perpendicular from the toe of the natural hoof to the ground. The commenters suggested that in order to ensure an adequate foundation for the foot, the front of the pad assembly should be required to extend at least ½-inch in front of the horse's natural toe. We are making no changes based on this comment. Our experience in inspecting horses prior to the July 28 interim rule provided no evidence that horses were being sored because they were wearing pads that were cut off perpendicular from the horse's natural toe to the shoe.

Several commenters requested a specific maximum height on pads. The maximum heights recommended by the commenters ranged from ½ inch to 4 inches. Most of these commenters submitted no evidence to support their recommendations. One commenter, who recommended a maximum pad height of ½ inch, stated that a pad of that height would be adequate to meet the protective purposes of pads. The commenter stated that a ½ inch pad will protect a horse's hoof from hard or uneven surfaces, adequately cushion the hoof or limb, and permit the use of standard packing materials. Another commenter, who recommended a maximum pad height of 4 inches, stated that the "50-percent-of-hoof" formula may encourage the growth of an excessively long toe on the hoof. Two commenters suggested we retain the "50-percent-of-hoof" formula, but that we amend it to allow a maximum pad height of 2 inches at the toe. We do not agree with these suggestions and have concluded that the formula for pad height we established in the July 28 interim rule is appropriate. We also believe that the wide variety of breeds, ages, and uses of horses makes a maximum pad height based on the length of a horse's natural foot more appropriate than an absolute limit on pad height, and that such a formula will uniformly protect horses subject to the regulations. We are therefore making no changes to the regulations based on these comments.

Several commenters stated that pads of either 3 or 4 inches in height should be allowed until sufficient scientific evidence is gathered to support a "formula" for maximum pad height. We are making no changes based on these comments. The fact that no scientific research has determined precisely when a change in angulation becomes harmful makes it all the more appropriate to base maximum pad height on the foot configuration of each individual horse, rather than to impose an absolute limit on all horses.

One commenter stated that any pads, when left on for too long or without adequate care, can lead to maggot infestation and sole diseases. Another commenter stated that a prohibition of all pads would allow for frequent cleaning of a horse's foot, and for more frequent application of therapeutic medicine than is possible when pads are worn. As we stated in our July 28 interim rule, we agree that pads, improperly maintained, can cause foot problems in a horse. However, we believe that 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. If there is evidence that pathological conditions have resulted in a horse being sore, we will take appropriate action under the regulations.

Several commenters recommended a prohibition on all pads, because pads can hide objects inserted between the pad and the foot to cause soring. In our July 28 interim rule, we addressed similar comments. In that interim rule, we stated that we agreed with a joint comment of the AHC/AHPA, submitted in response to our April 26 interim rule, which stated that a thorough preshow inspection of a horse, including a visual inspection of the way it moves, is an effective means of detecting soreness in the horse. We noted at that time 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 continue to believe that the most

appropriate way of dealing with the insertion of objects is through enhanced enforcement, rather than through prohibition of all pads. Therefore, we are making no changes to the regulations based on this comment.

One commenter stated that we were incorrect in the July 28 interim rule to concur with the AHC/AHPA joint statement that pads can legitimately be used: (1) To maintain the natural angle of the foot and pastern; (2) to compensate for conformational abnormalities of the foot and limb; (3) to aid in keeping the shoes intact on those horses with thin-walled or brittle feet; (4) to increase or decrease support to the foot and limb as an aid in the treatment of lameness; and (5) to build up the proper matching length and angle of a foot that has been broken or damaged. The commenter stated that (1) maintaining a natural angle is done by a farrier and requires no pad; (2) adding pads to a horse with thin-walled or brittle feet will cause hooves to break; and (3) horses with conformational abnormalities, lameness, or a broken or damaged foot should not show. We continue to agree with the view of the joint commenters that pads may serve several legitimate purposes, including that of corrective shoeing. It is clear that in many cases corrective shoeing is an effective remedy to what would otherwise be a conformational abnormality or deficiency in a horse. Therefore, we are not prohibiting the use of pads on a horse because the pads are used for corrective purposes. However, we agree that a horse that needs corrective shoeing in violation of the regulations should not be allowed to compete in the show ring, or be exhibited or ridden at auction, and we believe that this prohibition should apply to horses that have one or more feet shod in violation of the regulations. Therefore, we are removing the provision in the regulations that exempts a hoof, for the purpose of corrective shoeing, from the provisions regarding pad height and heel/toe ratio as long as its contralateral hoof meets those provisions.

Action Devices

In our April 26 interim rule, we restricted the maximum weight of chains and rollers to 6 ounces, and subsequently made no changes to that provision. Several commenters supported that interim rule with regard to action devices without change. One commenter, the Walking Horse Trainers Association (WHTA), submitted results of a study the WHTA commissioned with regard to the use of action devices on horses. According to the WHTA, the study, which the WHTA stated did not include enough controls to be termed a "scientific" study, demonstrated that the use of action devices up to 9.87 ounces did not cause any sensitivity or inflammation to the pastern when used on a regular basis. The WHTA therefore recommended that the weight limit for action devices be no less than 6 ounces.

Many commenters, including the AHPA in a supplementary comment to its comment issued jointly with the AHC, recommended the prohibition of all action devices. In its supplementary comment, the AHPA stated that the issue that should be addressed is not the effect of a 6-ounce chain in itself, but rather the impact of a 6-ounce chain on a sore pastern. The AHPA, and many other commenters, stated that the use of action devices encourages the use of chemical substances on a horse's pasterns. According to the commenters, the objective of soring the pastern with chemical irritants is to make the horse more responsive to the action device through pain, and therefore more animated in its gait.

One commenter stated that the reduction in chain weight from 10 ounces to 6 ounces has led to deeper soring of horses' pasterns, to enable the lighter chains to produce the desired, gait-enhancing, irritation. Another commenter recommended a 3-ounce limit on chain weight, but included no evidence to support that recommendation.

We are making no changes to the regulations based on these comments. As we stated in our July 28 interim rule, we agree that the use of any action device on a pastern that is already sore will heighten a horse's discomfort. However, the best evidence available to us—including a study conducted by Auburn University (discussed in our April 26 interim rule), as well as a Department study conducted at the National Veterinary Services Laboratories in Ames, Iowa in 1975—indicates that while chains and other action devices weighing more than 6 ounces can sore horses, those weighing 6 ounces or less are not likely to sore horses. We continue to believe that properly conducted inspections are an effective means of detecting a horse with sore pasterns. Department inspectors will continue to carry out thorough inspections, and we will continue to emphasize that all individuals carrying out inspections under the DQP program must follow similar procedures.

One commenter stated that the lack of crippled, broken down, or maimed horses over the past 13 years proves that 10-ounce chains do not sore horses. We disagree with this conclusion. As we stated in our July 28 interim rule, a horse can be sore without becoming lame. 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. Another commenter questioned the conclusiveness of Department evidence that showed that 10-ounce chains can cause soring, but submitted no evidence refuting the Department's conclusions.

Horseshoes and Other Weights

One commenter recommended that a 16-ounce limit be placed on horseshoes used on "medium" horses, and that heavier horseshoes be allowed on "draft or large-hoofed work horses." In our July 28 interim rule, we addressed the issue of a maximum horseshoe weight for all horses, stating that we agreed with the AHC/AHPA joint comment submitted in response to our April 26 interim rule that the variation among horses with regard to overall size, foot size, use, and hoof condition makes a specific size or weight limit on horseshoes inappropriate. We continue to hold this position, and believe that even a horseshoe weight limit that differentiates between "medium" and "large-hoofed" horses cannot adequately allow for the wide variety of shoeing needs among horses. We are therefore establishing no restrictions on the weight or size of horseshoes used on horses other than yearlings.

Two commenters addressed the issue of weights other than horseshoes used on horses. One of these commenters stated that adding weights of any kind to horseshoes is unnecessary, with the possible exception of borium for traction and skid resistance for horses ridden on cement and pavement. The other commenter suggested that we establish "weight restrictions," but included no specific recommendations. We agree that the use of weights on horses should be restricted, and have already established regulations restricting their use. We have not restricted the use of added weight between the bars of horseshoes, however, because this 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.

One commenter recommended that the term "normal caulk," as used in the current regulations, be defined. The current regulations provide that "normal caulks at the rear of a horseshoe that do not exceed ¾ of inch in length" need not

be included when measuring the height of the horse's heel. Because "normal" caulks act as cleats and sink into the ground, there is no need to consider them when measuring heel height. However, according to the commenter, some horses are wearing caulks that are of excessive surface area, and that consequently cannot sink into the ground. The commenter recommended that, to prohibit such practices, a specific maximum surface size for "normal" caulks be established. We agree that the problem as alleged is worthy of further review. However, we believe that more evidence is needed regarding any such abuse of caulks—and regarding appropriate ways of dealing with such practices—before a change in the regulations is warranted. We therefore will review all information available to us regarding such practices, and will take whatever action is appropriate based on the evidence received.

Miscellaneous

A number of commenters addressed issues unrelated to the provisions of the interim rules. Among the topics discussed were two that also received considerable comment following publication of the April 26 interim rule—i.e., suggested improvements to the DQP inspection program and the practice of masking a horse's pain during inspection. We will carefully review the information we received and take whatever action we determine is appropriate.

In our October 24 interim rule, we removed language that would have terminated after October 31, 1988, provisions that prohibit heel build-up in excess of 1 inch on yearling horses. Until publication of that interim rule, § 11.2(b)(8) of the regulations, using a criterion that is standard to the horse industry, referred to yearling horses as those "up to 2 years old." However, in the October 24 interim rule, the language specifically referring to yearling horses as those "up to 2 years old" was omitted. Therefore, in this interim rule, we are once again clarifying the meaning of the term "yearling horses" in § 11.2(b)(8) by reinstating language that indicates that yearling horses are those up to 2 years old.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this final 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 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.

Accordingly, we are adopting as a final rule the interim rules amending 9 CFR Part 11 as published at 53 FR 14778–14782 on April 26, 1988; 53 FR 15640–15641 on May 2, 1988; 53 FR 28366–28373 on July 28, 1988; and 53 FR 41561–41562 on October 24, 1988; with the following changes:

PART 11—HORSE PROTECTION REGULATIONS

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 11.2 is amended by redesignating paragraphs (b)(11) through (b)(18) as (b)(12) through (b)(19) respectively; by removing paragraphs (b)(8) and (b)(10); and by adding new paragraphs (b)(8), (b)(10) and (b)(11) to read as follows:

§ 11.2 Prohibitions concerning exhibitors.

* * * * *

(b) * * *

(8) 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.

* * * * *

(10) Artificial extension of the toe length, whether accomplsihed with pads, acrylics or any other material or combinations thereof, that exceeds 50 percent of the natural hoof length, as measured from the coronet band, at the center of the front pastern along the front of the hoof wall, to the distal portion of the hoof wall at the tip of the toe. The artificial extension shall be measured from the distal portion of the hoof wall at the tip of the toe at a 90 degree angle to the proximal (foot/hoof) surface of the shoe.

(11) Toe length that does not exceed the height of the heel by 1 inch or more. The length of the toe shall be measured from the coronet band, at the center of the front pastern along the front of the hoof wall to the ground. The heel shall be measured from the coronet band, at the most lateral portion of the 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 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.

* * * * *

Done in Washington, DC, this 14th day of February 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-3805 Filed 2-16-89; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Licensee Action During National Security Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to allow a licensee to take action that departs from approved technical specifications in a national security emergency. The amendment is necessary to specify in the regulations that for a national security emergency a licensee is permitted to take a needed action although it may deviate from technical specifications. This amendment will allow the licensee to implement national security objectives as designated by the national command authority through the NRC.

EFFECTIVE DATE: March 20, 1989.