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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. APHIS-2011-0009]

RIN 0579-AE19

Horse Protection; Licensing of Designated Qualified Persons and Other Amendments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the horse protection regulations to provide that the Animal and Plant Health Inspection Service (APHIS) will train and license horse protection inspectors (HPIs) to inspect horses at horse shows, exhibitions, sales, and auctions for compliance with the Horse Protection Act. Those changes to the regulations will strengthen enforcement of the Horse Protection Act and regulations and relieve horse industry organizations or associations of their regulatory burdens and responsibilities. We are also establishing a process by which APHIS can deny an application for a HPI license or revoke the license of a HPI who does not meet the minimum requirements, who fails to follow the designated inspection procedures, or who otherwise fails to carry out his or her duties and responsibilities in a satisfactory manner. In addition, we are making several changes to the requirements that pertain to the management of any horse show, exhibition, sale, and auction, as well as changes to the list of devices, equipment, substances, and practices that are prohibited to prevent the soring of horses. We are also revising the inspection procedures that inspectors are required to perform. These actions will help to

protect horses from the cruel and inhumane practice of soring and eliminate unfair competitive advantage that sore horses have over horses that are not sore.

DATES: This rule is effective January 1, 2018, except for §§ 11.2 and 11.14, which are effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Dr. Kay Carter-Corker, Director, National Policy Staff, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737; (301) 851-3751.

#### SUPPLEMENTARY INFORMATION:

Background

Executive Summary

#### I. Purpose of Regulatory Action

In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821-1831), referred to below as the Act or the HPA, to eliminate the practice of soring by prohibiting the showing or selling of sore horses. The regulations in 9 CFR part 11 implement the Act, including the amendments passed by Congress in 1976.

In the Act, Congress found and declared that the soring of horses is cruel and inhumane, and that sore horses compete unfairly with horses which are not sore. The Act states that the term “sore” when used to describe a horse means that:

- An irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse,
- Any burn, cut, or laceration has been inflicted by a person on any limb of a horse,
- Any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse,

- Any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse, and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was given.

The HPA establishes a multi-tiered structure to end the practice of soring. First, it makes it unlawful for any person to show, exhibit, sell, or transport sore horses, or to use any prohibited equipment, device, paraphernalia, or substance in horse shows, exhibitions, sales, or auctions. Second, it holds horse owners responsible for allowing such unlawful activities. Third, it entrusts management of horse shows, exhibitions, sales, and auctions (referred to as “management,” below) with ensuring that sore horses do not unfairly compete with horses that are not sore.

Shortly after the HPA was passed in 1970, APHIS established provisions to implement the Act, including restrictions on the use of certain equipment, devices, and substances to prevent the soring of horses. During the intervening decades, substantial noncompliance continues to exist among Tennessee Walking Horses and racking horses at horse shows and other regulated events. In addition, APHIS has observed from its experience in administering and enforcing the Act and regulations (including, among other things, thorough compliance inspections, investigations, enforcement of alleged violations, oversight of industry-based inspection programs, and outreach to the horse industry) that a relationship continues to exist between the

use of certain permitted items and soring in horses, such as the use of permitted action devices alone or in conjunction with prohibited substances.

In addition, the United States Department of Agriculture's (USDA's) Office of the Inspector General (OIG) evaluated APHIS' oversight of the program in September 2010 and concluded that the current inspection program, in which horse industry organizations or associations (HIOs) train and license private inspectors to conduct compliance inspections at horse shows, exhibitions, sales, and auctions, is not adequate to effectively enforce the Act and regulations. Among other recommendations made in its 2010 audit report, the OIG recommended that APHIS eliminate the current program and establish by regulation that inspectors will be independent, USDA-accredited veterinarians that perform inspections to assess whether horses are sore, as well as procedures for disciplining inspectors who do not inspect horses according to Agency standards.

The OIG's recommendation is consistent with findings of USDA's Office of the Judicial Officer, which issues final decisions on behalf of the Secretary of Agriculture for purposes of judicial review. The Secretary of Agriculture, through the Judicial Officer, has routinely found that inspections of horses conducted by private inspectors, referred to as Designated Qualified Persons (DQPs), are less probative than inspections conducted by USDA Veterinary Medical Officers (VMOs). In making such findings, the Secretary has noted that DQPs often conduct "short and cursory" inspections given the volume of horses they must inspect prior to HPA-covered events, that DQPs are not veterinarians and do not maintain the same qualifications, and that DQPs must engage with members of the industry on a daily basis, which may make them reluctant to notify management that a horse is sore.

## Summary of Major Provisions in the Final Rule

The following changes to the regulations in 9 CFR part 11 will strengthen enforcement of the HPA and regulations, and help to protect horses from the cruel and inhumane practice of soring and eliminate the unfair competitive advantage that sore horses have over horses that are not sore:

- Prohibiting the use of action devices, other than certain boots, and associated lubricants on Tennessee Walking Horses and racking horses at horse shows, exhibitions, sales, and auctions.
- Prohibiting the use of pads and wedges on Tennessee Walking Horses and racking horses at horse shows, exhibitions, sales, and auctions, except for therapeutic pads and wedges.
- Amending existing access, space, and facility requirements for management.
- Having APHIS assume the training and licensing of third-party, independent inspectors (referred to as Horse Protection Inspectors or HPIs, below) that may be appointed and retained by management to conduct inspections at shows, exhibitions, sales, and auctions, and removing from the regulations all regulatory responsibilities specifically assigned to HIOs.
- Establishing the licensing eligibility and training requirements for HPIs and clarifying inspection procedures.
- Requiring management to have a farrier physically present to assist HPIs at horse shows, exhibitions, sales, and auctions that allow Tennessee Walking Horses or racking horses to participate in therapeutic pads and wedges if more than 150 horses are entered, and have a farrier on call if 150 or fewer horses are entered.

- Amending management recordkeeping and reporting requirements.

## II. Legal Authority for the Action

Section 1823 of the Act, as amended, requires the Secretary of Agriculture (Secretary) to prescribe by regulation requirements for the appointment by the management of a horse show, exhibition, sale, or auction of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for the purpose of enforcing the Act. Section 1824 prohibits the entry and participation of horses wearing or bearing any equipment, device, paraphernalia, or substance which the Secretary by regulation under Section 1828 prohibits to prevent the soring of horses. Section 1828 authorizes the Secretary of Agriculture to issue such rules and regulations as deemed necessary to carry out the provisions of the Act.

## III. Costs and Benefits

The benefits of the rule are expected to justify the costs, but we were not able to quantify them. We estimate the potential total annual costs to shows, exhibitions, sales, and auctions with Tennessee Walking Horses and racking horses for this farrier requirement may range from \$10,000 to \$50,000, but this is an upper bound. This potential cost is the only additional cost we anticipate affected entities incurring to comply with this rule. The changes to the horse protection regulations will help to eliminate the cruel and inhumane practice of soring horses and the unfair competitive advantage that sore horses have over horses that are not sore. The rule is not expected to adversely impact communities in which HPA-covered events are held because such events are expected to continue; owners are motivated to show their prized horses and will continue to participate in shows. Therefore, due to the reasons summarized here and explained in the analysis accompanying this rule, the Administrator of the Animal and Plant Health

Inspection Service certifies that this action will not have a significant economic impact on a substantial number of small entities.

#### IV. Discussion of Comments

On July 26, 2016, we published in the Federal Register (81 FR 49112-49137, Docket No. APHIS-2011-0009) a proposal<sup>1</sup> to amend the Horse Protection regulations to provide that APHIS will train and license inspectors to conduct inspections at horse shows, exhibitions, sales, and auctions for compliance with the Act. We also proposed to amend the prohibitions on devices, equipment, substances, and practices that can cause soring or are otherwise prohibited under the Act and regulations.

On September 22, 2016, we published a notice that extended the comment period on the proposal by 30 days and provided a clarification regarding weight restrictions on horseshoes (81 FR 65307, Docket No. APHIS-2011-0009). We also gathered public comments at four public hearings, in Murfreesboro, TN, on August 9, 2016; Lexington, KY, on August 10, 2016; Sacramento, CA, on August 16, 2016; and Riverdale, MD, on September 6, 2016, as well as a virtual public hearing on September 15, 2016.<sup>2</sup>

We received 130,975 comments on the proposed rule through electronic submission, U.S. mail, and courier, as well as comments included in the transcripts from the public hearings. We carefully reviewed the comments we received. The comments were from State and Federal elected officials, including current and former U.S. Senators and Representatives, State agricultural agencies, farm bureaus, gaited horse organizations, trotting horse federations and

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<sup>1</sup> To view the proposed rule, supporting documents, the comments we received, and the public hearing transcripts, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0009>.

<sup>2</sup> Transcripts for each of the public hearings are available at the Web address included in footnote 1 or by contacting the individual listed under FOR FURTHER INFORMATION CONTACT above.

organizations, other domestic and foreign horse industry organizations, veterinarians and veterinary associations, horse rescue and animal welfare advocacy organizations, horse owners and trainers, farriers, small business owners, and the general public. We address the issues in the order that the provisions to which they pertain appear in the regulatory text of the proposed rule. Comments on issues and data pertaining to the economic analysis have been responded to in the follow-up economic analysis published with, and summarized in, this final rule.

In the proposed rule, we proposed to reorganize part 11 so that the requirements would be clearer and better organized. However, upon further review and in consideration of comments received that highlighted areas of confusion, we have decided to retain much of the existing organization of the regulations. The following chart provides the derivation of the sections from the existing regulations to the proposed rule and now to the final rule to assist the reader. The sections and paragraphs listed under the table heading “Final Rule” were derived either conceptually or specifically from the corresponding sections and paragraphs listed under the table headings “Existing Regulations” and “Proposed Rule.”

Derivation Table

Existing Regulations	Proposed Rule	Final Rule
§ 11.1	§ 11.1	§ 11.1
§ 11.2	§ 11.2 and 11.4	§ 11.2
§ 11.3	§ 11.3	§ 11.3
§ 11.4	§ 11.5 (except (b) and (c))	§ 11.4
§ 11.5	§ 11.5(a) – (c), § 11.9(a)	§ 11.5
§ 11.6	§ 11.9(b) (except for (b)(3)(ii))	§ 11.6(a)
§ 11.7	§ 11.6	§ 11.14
N/A	§ 11.9(b)(3)(ii)	§ 11.5(c)
§ 11.20	§ 11.10(b) and (c), § 11.12(a)	§ 11.9(a) and (b), and § 11.15(a)
N/A	§ 11.10(a)	§ 11.9(c) and § 11.12(a)



§ 11.21	§ 11.12(b)(2) – (d)	§ 11.6(b) and § 11.15(b) – (d)
§ 11.22	§ 11.11(a)	§ 11.10
§ 11.23	§ 11.11(b)	§ 11.11
§ 11.24	§ 11.11(c)	§ 11.12(b) and (c)
§ 11.25	Removed	Removed
§ 11.40	§ 11.13	§ 11.13
§ 11.41	Removed	Removed

Definitions (Proposed § 11.1, Final § 11.1)

We proposed to revise the definition of APHIS representative to mean any employee or official of APHIS. While the existing definition also includes “any officer or employee of any State agency who is authorized by the Administrator to perform inspections or any other functions authorized by the Act, including the inspection of the records of any horse show, horse exhibition, horse sale or horse auction,” we are unaware of APHIS utilizing State officers or employees to perform such inspections or functions. We received no comments on this proposed revision and are adopting the proposed revisions to this definition in this final rule.

We proposed no substantive changes to the definition of action device, but proposed to add two supplemental examples of such devices, namely, beads and bangles.

Several commenters asked if protective bell boots are defined as an action device.

As defined in the existing regulations, an action device means any boot, collar, chain, roller, or other devices which encircle or are placed upon the lower extremity of the leg of a horse in such a manner that it can either rotate around the leg, or slide up and down the leg so as to cause friction, or which can strike the hoof, coronet band, or fetlock joint. Boots, including protective bell boots, are included in the definition of action device. However, as we state in the discussion pertaining to proposed § 11.2 below, we are amending the regulations to prohibit the use of action devices, other than boots that meet certain requirements, on all horses at horse

shows, exhibitions, sales, and auctions. Because certain boots can be used to cause soring, we consider bell boots to fall within the definition of action device.

One commenter asked us to include a definition of "pad" in the regulations. The commenter expressed concern that trainers will create metal shoes that cover the foot and will call it a shoe instead of a pad, and that they will use the pad to hide evidence of soring.

As we state in the discussion of proposed § 11.2 below, we are prohibiting the use of pads and wedges on Tennessee Walking Horses and racking horses at horse shows, exhibitions, sales, and auctions, except for pads and wedges used for therapeutic purposes, and are retaining the existing regulations pertaining to the use of pads, including the prohibitions on the use of pads made of non-pliant material, for all horses. Accordingly, pads described by the commenter, i.e., a metal pad covering the underside of the hoof, will continue to be prohibited.

We proposed to add a definition for the term custodian, and to revise the definition for the term exhibitor to include the term custodian.

One commenter disagreed with adding the term custodian and its proposed definition, stating that it reasonably could be construed to cover an auctioneer or other persons who assist in facilitating the sale of a horse who are not the seller. The same commenter also disagreed with the revised definition of exhibitor as it could be construed to include an auctioneer or other persons who assist in facilitating the sale of a horse who are not the seller.

Upon further review and based on the comments received, we agree that the proposed definition of custodian may be confusing and in certain respects redundant with the definition of exhibitor. Accordingly, we are retaining the long-standing definition of exhibitor and not adding a new definition for the term custodian in this final rule.

We proposed no changes to the definition for horse, which means any member of the species Equus caballus. One commenter representing a Tennessee Walking Horse organization asked that we modify the definition of horse by adding to it “or offspring of Equus caballus, such as a mule,” to reflect the increasing involvement of mules in gaited events.

We proposed no changes to the definition of horse and are therefore making no changes to that definition based on this comment.

The same commenter also stated that the vulnerability to soring, and not a specific breed, is the true focus of the proposed rule. For this reason, the commenter suggested that we add to the regulations a definition of “focal horse” to mean “any horse that performs with an accentuated gait that raises concerns about soring. Focal horses are often, but not always, of Tennessee Walking Horse, Racking horse, or related breed ancestry,” and suggested that we substitute this language for the phrase “Tennessee Walking Horses, racking horses, and related breeds” throughout the rule.

As we explain below, we are not adopting the term “related breeds” or similar terms in this final rule. The HPA makes it unlawful for any person to show, exhibit, sell, or transport a sore horse, regardless of breed, or to use any equipment, device, paraphernalia, or substance that the Secretary prohibits by regulation to prevent the soring of horses in horse shows, exhibitions, sales, or auctions. To help effectuate these provisions, the regulations have long contained requirements that apply to all horses, as well as additional requirements for Tennessee Walking Horses and racking horses. While we are strengthening the requirements pertaining to Tennessee Walking Horses and racking horses in this final rule to address the substantial noncompliance that continues to exist among those horses at HPA-covered events, we continue to consider what additional requirements are necessary, if any, for other breeds of horses that present a concern of

soring. If, in the future, APHIS determines that additional requirements are needed for other breeds of horses, we will initiate a rulemaking and solicit public comment on any proposed amendments.

We proposed no substantive changes to the definition in the current regulations for horse exhibition, which means a public display of any horses, singly or in groups, but not in competition. Similarly, we proposed no substantive changes to the definition of horse show to mean a public display of any horses, in competition. Neither definition includes events where speed is the prime factor, rodeo events, parades, or trail rides.

A commenter representing a Tennessee Walking Horse organization asked APHIS to narrow the definitions of horse exhibition and horse show to exclude all events “where soring intrinsically conveys no advantage, in any aspect or element, and is therefore naturally absent.” They asked APHIS to incorporate this exclusion into the proposed definition to go along with the exclusion of events where speed is a prime factor. Another commenter representing a national equestrian federation suggested that we add to the definition an exclusion for any competitions licensed or endorsed by the National Governing Body for equestrian sport under the Ted Stevens Olympic and Amateur Sports Act. Another commenter asked why racing events are excluded.

Because we proposed no substantive changes to these definitions, we are making no changes in response to these comments.

We also proposed to clarify the definition of inspection to revise it to mean any visual, physical, and diagnostic means approved by APHIS to determine compliance with the Act and regulations.

One commenter disagreed with our inclusion of “approved by APHIS” in the proposed definition. The commenter stated that it is vague and intrusive, and should be included only if

APHIS adds language to qualify that its inspection procedures “are lawful and scientifically/medically reasonable and accepted.” The commenter also stated that any such means to be approved or used by APHIS should be adopted through a separate rulemaking.

We are making no changes in response to the comment. The proposed definition of inspection is authorized by Section 1823 of the HPA, which provides that an inspection extends “to all things (including records) bearing on whether the requirements of the Act have been complied with.” The proposed definition is lawful and valid for detecting soring in horses and otherwise determining compliance with the HPA. We also consider the phrase “approved by APHIS” to be sufficiently clear within the context of the proposed definition.

We proposed to remove the definition for lubricant because such substances are frequently used to reduce friction caused by action devices on the limbs of horses bearing chains and other action devices. Because we proposed to prohibit all action devices, except for certain boots which do not require lubricants, a definition for lubricants would no longer be necessary.

One commenter disagreed with our proposal to consider lubricants as a prohibited substance, noting that some lubricants are applied to the hooves of trotting breeds to prevent cracking.

While we agree that some lubricants are applied to the hooves of horses to prevent cracking, based on our observations made in enforcing the Act and regulations, lubricants have also been used in ways that have caused soring of horses, when applied to the extremities above the hoof. Therefore, in this final rule, we clarify that all substances are prohibited on the extremities above the hoof of Tennessee Walking Horses and racking horses.

We proposed to retain the definition for the term sore as it exists in the current regulations, which closely follows the wording of the definition contained in the Act.

A commenter noted that in our proposed definition of sore we excluded the phrase “by a person” with reference to application, infliction, and use of soring agents and practices. The commenter noted that “by a person” is included in the current definition of sore in the regulations and requested that we restore the existing phrase to the proposed regulations. Similarly, another commenter stated that USDA has violated the constitutional right for owners to show their horses by proposing to implement a definition of soring not countenanced by the Act.

The changes to the definition of sore in the proposed rule were inadvertent. In this final rule, we are mirroring the phrasing for sore as it appears in the Act.

A commenter suggested that we amend the definition of sore so that it reflects gaits more characteristic of events for which soring is a concern. Noting that horses subject to soring do not typically perform a trot, the commenter recommended that we replace the phrase in the definition “when the animal is walking, trotting, or otherwise moving” with the phrase “at the halt or in motion at the walk or any faster gait.”

We are making no changes in response to the commenter’s recommendation because the definition of sore is defined in the Act itself. Congress would need to amend the statute to effectuate the change contemplated.

Another commenter asked us to add pressure shoeing and hoof trimming practices to the definition of sore, stating that these are methods that are not covered by the proposed definition, while another commenter suggested we add a definition of “pressure shoeing” to the regulations.

We are making no changes in response to the commenter’s recommendation. The definition of sore includes a person who has engaged in a practice that results in a horse suffering, or a horse that can reasonably be expected to suffer, physical pain, distress, inflammation, or lameness while walking, trotting, or otherwise moving. Pressure shoeing and

hoof trimming practices that have, or can reasonably be expected to have, such a result are included in this definition. This final rule discusses these practices in further detail below.

In the proposed regulations, we defined sponsoring organization to mean any person or entity under whose responsibility a horse show, exhibition, sale, or auction is conducted.

One commenter noted that the current regulations employ the phrase “any person or entity under whose immediate auspices and responsibility” and asked that we retain the phrase as it exists in the current regulations.

We acknowledge the commenter’s observation and are retaining the phrasing for sponsoring organization as it appears in the existing regulations.

Finally, we proposed defining substance as any agent applied to a horse’s limbs while a horse is shown, exhibited, or offered for sale, or otherwise present on the grounds at any horse show, horse exhibition, or horse sale or auction. This definition also includes any agent applied to a horse’s limbs before or after a horse is shown, exhibited, or offered for sale, or otherwise present on the grounds at any horse show, horse exhibition, or horse sale or auction.

Several commenters stated that the proposed definition of substance is overly broad and noted that many substances applied to the limbs of horses, such as fly spray and liniments, are beneficial or therapeutic. A commenter representing a national equine federation stated that by imposing a total prohibition of all substances on limbs of horses, the USDA is barring the use of all potentially therapeutic substances. One commenter added that the use of fly sprays reduces the risk of horses being infected with mosquito and fly-borne diseases, including encephalitis. Other commenters noted that trainers or other persons could be in noncompliance with the regulations by inadvertently transferring commonly used substances such as soap and hand lotion from their hands to the horse. Some commenters opposed our inclusion of language applying the

prohibition to “any horse on the grounds of a show, exhibition, sale, or auction,” with one noting that dirt and dust can collect on the limbs of a horse while simply walking the grounds at such events. Another commenter stated that liniments and other therapeutic substances are often applied to horses that are still on the grounds after they compete. Finally, one commenter representing a Tennessee Walking Horse organization objected to the use of the term “agent” in the proposed definition of substance, stating that the term is vague and that virtually anything could be construed as an agent, including water.

Upon further review, we have reconsidered adding a definition of substance to the regulations. Aside from the proposal to remove the definition of “lubricant,” as discussed above, the Department’s current definition of substance has been long standing (44 FR 25172, 25179-25180). The Department received similar comments to those described above at the time it originally adopted the definition, and explained, “Others commented that this proposal is too restrictive and should allow the use of more substances. The prohibition of substances such as sprays, dyes, and greases has received considerable attention. It is recognized that dyes could aid in changing the identity of a horse and could act as a camouflage to signs or soring. Colored substances, sprays, greases, and clear substances can act as vehicles to soring chemicals and serve as an adhesive to foreign material which could be abrasive in nature. These substances could then cause soring by direct or indirect means. For these reasons the Department will continue to prohibit all substances on the legs of Tennessee Walking Horses and racking horses, except as allowed under § 11.2(c).” (44 FR 25172, 25175).

Our concerns about the use of substances remain unchanged. In the proposed rule, we published a table describing HPA-covered event inspection data from FY 2010-2015, including results from testing for prohibited substances that are considered irritants or numbing and



masking agents. In FY 2015, for example, 500 horses were positive out of 768 tested, and over the 5 year period the average rate of positives was 69 percent. In this final rule, we are not codifying the proposed definition of substance, and, instead, will continue to rely on the Agency's long-standing interpretation of the term "substances" that has existed in the regulations since 1979. Aside from removing the allowance for lubricants provided by management to reduce friction caused by action devices on the limbs of horses, which is no longer necessary in light of the prohibitions on such devices, and the addition of the phrase "otherwise on the grounds" of a horse show, exhibition sale, or auction, the prohibition on substances is relatively unchanged. Because of our continued detection of substances on the extremities of horses, the Department will prohibit all substances on the extremities above the hoof of any Tennessee Walking Horse or racking horse while being shown, exhibited, or offered for sale, or otherwise present on the grounds at any horse show, exhibition, sale, or auction.

One commenter suggested that we modify the definition of substance to mean "any agent applied to the horse's limbs while a horse is shown... for which the Material Safety Data Sheet indicates irritation of the skin or mucous membranes." Another commenter asked that we clarify the definition to refer to any substance on the USDA prohibited substance list and incorporate the list by reference into the regulations.

We are making no change in response to the comment. Data sheets and an official "prohibited substance" list are not able to provide an exhaustive account of all possible prohibited substances, including substances to mask pain and cover lesions.

Prohibited Actions, Practices, Devices, and Substances (Proposed § 11.2, Final § 11.2).

We proposed to make two editorial changes to the current § 11.2, “Prohibitions concerning exhibitors,” which we are not adopting in this final rule. Specifically, we proposed to retitle this section as “Prohibited actions, practices, devices, and substances.” However, based on the organization of this final rule, we believe the current title more accurately captures the content of this section and are making no changes to it in this final rule. In addition, we proposed to combine the content of current paragraph (a) of § 11.2 with proposed paragraph (b). However, for clarity and based on the organization of this final rule, we have retained the current paragraph (a).

We proposed to add a new paragraph (a)(1) to § 11.2 that prohibits using any action device as defined in proposed § 11.1 with respect to any Tennessee Walking Horse, racking horse, or related breed that performs with an accentuated gait that raises concerns about soring while being shown, exhibited, or offered for sale at any horse show, exhibition, sale, or auction. We also proposed to add a new paragraph (a)(2) that prohibits using any hoof bands, wedges, and pads with respect to any Tennessee Walking Horse, racking horse, or related breed that performs with an accentuated gait that raises concerns about soring at any horse show, exhibition, sale, or auction.

We noted in the proposed rule that, based on our observations, chains, rollers, and similar action devices placed on a horse’s feet, when used alone or in combination with prohibited substances on the pasterns of a horse can cause soring. Our observations are consistent with the position held by the American Veterinary Medical Association (AVMA) and the American Association of Equine Practitioners (AAEP), that “when used in conjunction with chemical irritants on the pastern of the horse’s foot, the motion of the action device creates a painful

response, resulting in a more exaggerated gait.”<sup>3</sup> We also cited a study<sup>4</sup> conducted at the Auburn University School of Veterinary Medicine from 1978 to 1982 (“the Auburn study”), which was a multi-phased study conducted from September 1978 to December 1982 that evaluated the effects of acute and chronic inflammatory responses on the front and hind limbs of horses. Specifically, commenters opposed to the prohibition on action devices referred to Phase 11 of the study, the objective of which was to evaluate 2, 4, and 6 ounce chains without using any other chemical or mechanical technique to induce inflammation. Horses were exercised for 2-3 weeks wearing 2, 4, and 6 ounce chains, after which it was determined that the use of 2, 4, and 6 ounce chains for a duration of 2 to 3 weeks “did not produce any harmful effects to the horses’ legs, with exception to some loss of hair from 6 oz. chains in the pastern areas.” Over the decades since the completion of this study, our observations from administering and enforcing the Act have indicated that soring can and does occur with the use of prohibited substances and/or action devices such as chains and rollers of nearly any weight, including the 6 ounce weight limit currently in the regulations.

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<sup>3</sup> See [https://www.avma.org/KB/Resources/Reference/AnimalWelfare/Documents/AVMA-and-AAEP-Position-on-the-Use-of-Action-Devices-and-Performance-Packages-for-Tennessee-Walking-Horses.pdf?utm\\_source=press-release&utm\\_medium=160812&utm\\_campaign=policy&utm\\_term=link2&utm\\_content=action-devices](https://www.avma.org/KB/Resources/Reference/AnimalWelfare/Documents/AVMA-and-AAEP-Position-on-the-Use-of-Action-Devices-and-Performance-Packages-for-Tennessee-Walking-Horses.pdf?utm_source=press-release&utm_medium=160812&utm_campaign=policy&utm_term=link2&utm_content=action-devices)

<sup>4</sup> Thermography in Diagnosis of Inflammatory Processes in Horses in Response to Various Chemical and Physical Factors: Summary of the Research from September 1978 to December 1982. Submitted to the U.S. Department of Agriculture by Dr. Ram C. Purohit, Associate Professor, Department of Large Animal Surgery and Medicine, School of Veterinary Medicine, Auburn University. The Auburn study is available at the Web address included in footnote 1 or by contacting the individual listed under FOR FURTHER INFORMATION CONTACT above.

A substantial number of persons commented on the changes we proposed to § 11.2. Commenters mainly asked about what we proposed to prohibit and which breeds of horses would be covered under the proposed regulations.

A considerable number of commenters supported our proposal to prohibit the application of action devices and pads on a horse's limbs for animal welfare reasons, while others supported the prohibition because such items allowed sore horses to gain a competitive advantage.

Some commenters asked if the prohibition could be extended to horses at their home stables where horses could be sore using action devices and pads.

On the other hand, many commenters opposed the prohibition of action devices and pads for Tennessee Walking Horses and racking horses, some stating that pads, chains, and other action devices currently allowed under the regulations do not cause sores. As support, a number of these commenters cited the Auburn study referenced above. Many of these commenters suggested that wearing action devices and pads enhances the horse's performance, with one stating that action devices cause no more harm than a saddle or a bridle. A few commenters stated that through the process of proprioception, chains and other action devices only accentuate the underlying natural action of the horse and cause it to become more aware of its foot action, leading to a longer stride and higher leg lift.

In addition, one commenter representing a Tennessee Walking Horse organization stated that APHIS does not have authority under the Act to ban the use of pads and action devices. The commenter argued that pads and action devices can only indirectly result in a horse being sore, as the Auburn study and the Ames study conducted by H.A. Nelson, DVM, and D.L. Osheim, B.A. (1975) did not indicate that the use of such devices causes a horse to become sore. The

commenter concluded that APHIS only has authority under the Act to prohibit devices and practices that directly cause soreness in a horse.

As APHIS discussed in a previous rulemaking, “Elevating a horse’s hooves with high pads changes the normal angulation of a standing horse’s body and legs, and thus changes angulation of the normal weight-bearing surfaces of the horse’s legs and the angulation of the horse’s weight-bearing muscles. The use of high pads also changes the angle at which the horse’s foot hits the ground, and the angle at which the toe ‘breaks over’ when picking up the foot to go forward. The Auburn University study and other veterinary research indicates that altering the angulation of a horse’s feet and legs can cause lameness, soreness, and inflammation, by transferring concussive impact and weight-bearing pressures to joints and other parts of the horse not normally subjected to these forces. Additionally, experts in the horse industry have advised us that elevating the foot can cause an increase in tension in the tendons, which can lead to inflammation. A high pad can also contribute to stresses caused by extra weight on the horse’s foot. Additionally, elevating only the front feet, as is typically done, causes an unnatural angulation of the back and body of the horse, and changes the alignment of the shoulder muscles, the vertebrae, and the pelvis, all of which are then subject to stress, irritation, and inflammation.” (See 53 FR 14780 (Apr. 26, 1988)).

Moreover, while we acknowledge the findings of the Auburn study with respect to the use of 2, 4, and 6 ounce chains alone during a two-week observation period, APHIS officials continue to routinely detect during inspections of horses evidence of soring on those areas of the pastern where action devices, including chains that weigh 6 ounces or less, are commonly worn. The evidence of soring includes, among other things, a horse’s repeated and consistent pain withdrawal responses upon digital palpation, and/or evidence of inflammation (such as

proliferating granuloma tissue on the posterior aspect of the pasterns) beyond “some loss of hair,” as observed in the Auburn study. In addition, APHIS officials have regularly detected soring in horses wearing action devices in combination with prohibited substances. For example, in the FY 2010-2015 show inspection data we included in the proposed rule, all horses testing positive on inspection for substances prohibited under the existing regulations wore action devices while being shown or exhibited. Moreover, based on our experience in administering and enforcing the Act and regulations, we have determined that the extent and gravity of the effects of using chains weighing 6 ounces or less on the horses is far greater than “some hair loss,” as described in Phase 11 of the Auburn study. To illustrate this point, we have provided in Exhibit 1 (see footnote 1 for a link to the document) photographic samples of scar rule noncompliances which were identified during routine inspections in 2016 of horses wearing chains weighing 6 ounces or less. These photographs depict pasterns with proliferating granuloma tissue and, in some instances, other evidence of inflammation.

Both the Ames study and the Auburn study, which occurred between 1975 and 1982, assessed the use of thermography to diagnose inflammatory responses in horses when, among other things, wearing action devices, substances, and/or pads. However, neither the Ames study nor the Auburn study considers the evolution of soring or changes in the HPA regulations since the studies occurred. For example, in 2013, a Tennessee Walking Horse trainer pled guilty to conspiring to violate the HPA. In a sentencing memorandum submitted to the court, the government explained: “. . . soring methods are being masked and camouflaged to circumvent the law, leaving fewer outward and obvious physical signs of abuse. These methods include coloring in scars on the horses’ legs using markers and ‘stewarding’ horses to train them not to react in pain to manipulations of their sore feet by show inspectors. As a result, detection of

abuse and illegal conduct has become even more difficult, but the continual pain these show horses endure has only escalated. After caustic chemicals are applied to horses' front legs, their legs are wrapped in plastic wrap to 'cook' the chemicals into the flesh. In addition to the chemicals used to cook into the horses' front legs to cause sensitivity to the chains they wear (the method primarily employed by the defendant), pressure shoeing is used to cause pain in the horses' hoof capsules each time they step on their front feet.”

Even though the existing regulations prohibit the use of chains weighing more than 6 ounces and the use of more than one action device on any one limb of a horse, we also have evidence indicating that trainers use heavy chains, double chains, and other action devices that are prohibited under the existing regulations if they were used at a horse show, exhibition, sale, or auction. As we noted in the proposed rule, Phase 7 of the Auburn study (“Simultaneous Use of Chemical and Chains for Soring Horses”) determined that the combined use of prohibited substances and chains on the pasterns of horses caused lesions, tissue damage, and visible alterations of behavior consistent with soring. Although this phase used 10 ounce chains, 4 ounces heavier than what is currently allowed, if a horse may be trained sore using 10 ounce chains (or other weight and/or substance combinations), when subsequently shown in 6 ounce chains, the use of a 6 ounce chain may reasonably be expected to cause the horse to experience pain while walking, trotting, or otherwise moving.

Section 1824 of the Act prohibits the participation in horse shows, exhibitions, sales, and auctions of any horse which is wearing or bearing any equipment, device, paraphernalia, or substance which the Secretary by regulation prohibits to prevent the soring of horses. In addition, Section 1828 of the Act provides the Secretary with broad authority to “issue such rules and regulations as he deems necessary to carry out the provisions” under the HPA. Based on

APHIS' knowledge and experience administering and enforcing the Act since the completion of the Ames and Auburn studies, the recommendations of the AVMA and AAEP, and leading industry standards for equestrian sports,<sup>5</sup> APHIS has determined that prohibiting the use of action devices (with the exception of certain protective boots, as discussed below) on Tennessee Walking Horses and racking horses is necessary to prevent the showing, exhibition, sale, and auction of such horses which are sore. For all other horses, we are retaining the existing prohibitions contained in § 11.2 while we continue to consider what, if any, additional restrictions are necessary to ensure their compliance with the HPA. If, in the future, APHIS determines that additional restrictions should be established, we will initiate a rulemaking and solicit public comment on any proposed amendments.

A few commenters stated that action devices have been recommended by veterinarians to help strengthen and keep joints limber. Two commenters stated that a recent study found action devices to help horses during rehabilitative therapy.

While we are aware of a small number of studies evaluating the short-term use of lightweight tactile stimulation devices attached to the fore or hind pasterns of horses to restore locomotor function following injury or immobilization, we would not expect a horse to participate in an HPA-covered event during rehabilitative therapy.

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<sup>5</sup> For example, the United States Equestrian Federation, which is the governing body for most equestrian sports in the United States, prohibits “soring and/or the use of an action device on any limb of a Tennessee Walking Horse, Racking Horse, or Spotted Saddle Horse (each a breed not recognized by the Federation) in any class at a Federation Licensed Competition ....” In addition, USEF prohibits the “use of a weighted shoe, pad, wedge, in conjunction with a hoof band or other device or material (commonly referred to as a performance package) placed on, inserted in, or attached to any limb of a Tennessee Walking Horse, a Racking Horse, or Spotted Saddle Horse (each a breed not recognized by the Federation) constructed to artificially alter the gait of such a horse, and which are not protective or therapeutic in nature, in classes at a Federation Licensed Competition....” <https://www.usef.org/IFrames/RuleBook/rules.aspx>.



A few commenters asked that we allow the use of weighted leathers and rubber exercise bands, as they and other owners of trotting horses use such devices to strengthen and condition their horses.

We are making no changes in response to this comment. Such items have long been prohibited on the limbs of any horse at any horse show, exhibition, sale, or auction, as our experience shows that weighted leathers and other devices have been used in ways that can cause soring in horses.

Several commenters stated that they use bell boots to protect the feet of their trotting horses and asked if such devices would be prohibited under the proposed regulations.

We acknowledge that certain boots, such as bell boots, can be used as protective devices and have reconsidered our decision to prohibit such devices in this final rule that meet the existing regulatory requirements. Accordingly, we have retained the existing restrictions on the use of those devices in this final rule.

A few commenters stated that the prohibition of all action devices could paradoxically lead to more soring, not less. One commenter making this point stated that without access to the legal action devices currently in use, unscrupulous trainers may look for other means to achieve the desired high-stepping gait by resorting to soring.

We are making no changes in response to the commenter's statement. Our goal is to achieve the statutory purpose of eliminating the cruel and inhumane practice of soring horses, and it has been our experience from administering and enforcing the Act that chains and similar action devices currently allowed under the regulations are used alone, or in conjunction with certain prohibited substances, to sore horses. Restricting the use of such devices on horses at any

horse show, exhibition, sale, or auction will reduce instances of soring in these horses and will help to promote fair competition at HPA-covered events.

Numerous commenters stated that the prohibition on action devices and pads would diminish public interest in shows and result in the cultural and economic decline of the Tennessee Walking Horse industry. Commenters stated that performance horse classes that allow the use of pads and action devices are part of the culture of horse shows and, without such classes, owners and spectators would lose interest in the shows.

We have no reason to believe that the prohibitions included in this rulemaking will diminish interest by horse owners or spectators in horse shows, regardless of breed. The economic analysis accompanying this rule provides a detailed evaluation of its economic impact on the affected segments of the horse industry.

One commenter representing a farrier organization suggested that the regulations prohibiting action devices were vague. The commenter stated that under the proposal, some horseshoes could be considered action devices, since a shoe influences the horse's movement.

While we acknowledge that horseshoes can influence a horse's movement, they do not meet the long-standing definition of action device contained in the regulations.

One commenter stated that we cited research from the Auburn study but did not make the details of this research public. The commenter stated that without access to the details of the research, the public cannot evaluate the basis for changing the rule.

In response to this comment we are making that study available to the public (see footnote 4).

## Prohibition on Pads, Wedges, and Hoof Bands

A considerable number of persons opposed to the rule, as well as many supporting it, commented specifically on the prohibition on pads, wedges, and hoof bands in proposed § 11.2(a)(2).

Commenters who supported the prohibition on pads, wedges, and bands mainly referred to the stacks (or pads) attached to the hooves of Tennessee Walking Horses and racking horses at shows and other HPA-covered events and cited concerns about the health and welfare of horses wearing them. Many of their concerns reflected our statement in the proposed rule that the stacks used can conceal hard objects that produce pain or be designed in such a way that causes a horse to strike the ground at an abnormal angle to produce pain on stepping, resulting in the accentuated gait. Some commenters noted specific effects of the stacks on the movement of performance horses. One stated that the hind end of the horse is forced to compensate and take on the majority of the horse and rider's weight, causing the hocks to bow away from the centerline of the horse in a rolling type of movement, and noted that the hinge joint of the hock does not naturally move that way. Another commenter stated that stacks and wedges change the natural angle and balance of the bones and can affect connective tissue in a horse's leg and hoof. A few other commenters stated that stacks are biomechanically damaging to the horse's hoof, limb, and body. One commenter stated that stacks and weighted shoes held on with overly tightened metal bands deform the horse's natural way of going.

Numerous commenters, on the other hand, opposed the prohibition on stacks and wedges. Some stated that the stacks used in shows with performance classes do not induce soring and cause no pain or injury to horses wearing them. Referring to our finding that 90 percent of the instances of noncompliance we documented involved horses wearing pads, one commenter

stated that this was an inappropriate use of statistics because the number does not account for the number of times pads were used with no noncompliance found. Several commenters stated that the accentuated gait achieved by Tennessee Walking Horses is the result of years of selective breeding, with one commenter stating that horses showing in performance classes “are bred to carry the pad and shoe.” A few commenters stated that prohibiting stacks will impair the ability of horses participating in shows to achieve the desired high step. One commenter opposed prohibiting stacks on the grounds that trainers will seek loopholes for soring horses, such as using heavy, wide shoes that hide the sole of the foot and make it difficult to detect evidence of soring.

Substantial numbers of commenters interpreted the rule and its reference to “related breeds” to apply to all horses, and stated that a proposed prohibition of all pads, wedges, and bands on all horses is overly broad. Comments opposing these prohibitions were from trainers, riders, farriers, and owners of Morgans, Saddlebreds, Arabians, and other trotting breeds that participate in events sanctioned by the United States Equestrian Federation (USEF). Many of these commenters stated that the purposes for which they use the pads, wedges, and hoof bands on their horses are distinctly different from the performance packages used on Tennessee Walking Horses and racking horses to achieve their desired gait. One such commenter stated that the thickness of the shoes and pads on Saddlebreds ranges from 10 to 20 percent of the natural hoof length, which is much thinner than allowed under the current USDA rules for Tennessee Walking Horses. Another commenter stated that, under the wording of the Act, the ban on pads, wedges, and hoof bands in the proposed rule is not within APHIS’ authority to ban when they are used in connection with the therapeutic treatment of a horse. Many commenters cited reasons for which the use of pads and wedges are protective, corrective, and therapeutic for

trotting horses, including protecting thin hooves and providing extra traction when riding on rocky surfaces or in snow, treating hoof cracks and dissymmetry, laminitis, navicular syndrome, pedal osteitis, and other conditions, and reducing pressure on the digital tendon. One commenter stated that horses ridden by mounted police during parades often require pads to absorb the shock of pavement and prevent lameness. Many commenters also noted that trotting horses can have uneven feet and that a custom-made pad or wedge is sometimes necessary to prevent balance problems. One commenter stated that pads allow for the retention of hoof packing materials such as turpentine that enhance the health of the horse's feet. A veterinarian writing on behalf of the USEF stated that horses governed under the federation use only shoes or shoes with a single pad, and that combinations of pads are used therapeutically only in severe injuries that would preclude showing. The commenter added that stacked pads are used for gait enhancement in show horses and are not therapeutic. A commenter stated that Missouri Fox Trotting horses do not show with the performance package used by some divisions of the Tennessee Walking Horse but do sometimes use pads for therapeutic purposes.

One commenter asked us to allow no exception for therapeutic pads for walking horse breeds, stating that there is no evidence of non-soring uses of pads that could justify an exception for walking horses.

Some commenters opposing the prohibition on pads suggested that we allow pads but develop weight and thickness standards for determining what would be acceptable. One commenter, for example, asked that we allow only two pads with a combined height of not more than 1 inch as a compromise measure.

After a careful consideration of the comments and available scientific and evidentiary data, we are codifying the proposed prohibition on pads and wedges as they pertain to Tennessee

Walking Horses and racking horses and allowing an exception for pads and wedges that are used for therapeutic purposes. In addition, we are retaining the existing provisions on the use of pads and wedges for all horses in this final rule. Finally, we are retaining the existing restrictions on the use of hoof bands for all horses, including Tennessee Walking Horse and racking horses, because such bands are used not only to secure pads and wedges, but also certain horse shoes.

As mentioned in the proposed rule, our experience in administering and enforcing the HPA indicates that soring has continued to occur through the use of hoof pads. Approximately 90 percent of the alleged violations documented at HPA-covered events from FY 2010 through 2015 involved horses wearing pads. In addition, during that same time period, approximately 369 shoeing noncompliances were documented at those events. Shoeing noncompliances include incidences where there is evidence of pressure shoeing and noncompliant heel-toe ratios, pads, wedges, and hoof bands, among other things. To illustrate this point, we have provided in Exhibit 1 (see footnote 1 for a link to the document) radiographic images that depict three shoeing noncompliances involving the insertion of metal plates in the pad. These noncompliances were all identified within two days of each other in 2013.

These inspection findings are significant, given the difficulties in detecting pressure shoeing and other soring methods that are difficult to detect upon inspection. For example, in 2011, a Tennessee Walking Horse trainer was sentenced for felony violations of the HPA and pled guilty to conspiring to violate the HPA and falsifying related forms, as well as conspiring to commit witness tampering. In connection with his plea agreement and subsequent sentencing, the trainer provided factual information regarding the soring methods he and others used while training horses, including some methods that are difficult to detect upon inspection. Among other things, the trainer and others did the following: Screwed large bolts against the sole area of

horses' front hooves, causing intense pressure to be applied to the area and resulting in significant pain for the horse, for the purpose of creating a more animated gait in the horse so it would perform better at horse shows; forced horses to stand with their front hooves placed on top of large wooden blocks constructed of 2" x 6" lumber with a central upward projection to press into the horses' sole area, causing significant pressure and pain; applied chemical irritants, such as mustard oil, on various horses' pasterns to burn the skin and make the horse more sensitive to weighted chains placed around this area when the horses were ridden; and used hoof packing material (known as "blue putty") between the hoof and the pad that hardens and creates pressure against the sole of the horse's hoof and removed the hoof packing prior to presenting the horse for inspection (making the HPA noncompliance difficult to detect), while allowing the sole of the horse's hoof to remain sore. In addition to finding that raising a horse's heels through the use of pads and wedges alone results in signs of inflammation, the Auburn study also found the ability to detect pressure soring (i.e., the illegal application and/or use of bolts, screws, blocks, hoof packing material, and other methods of pressure) through visual and physical inspection of the soles of horses' hooves is limited because pads obscure the solar surface of the foot. Moreover, because evidence of pressure soring can be removed prior to inspection, the evidence of soring would not appear on radiographs.

As an alternative to prohibiting the use of pads and wedges on Tennessee Walking Horses and racking horses at HPA-covered events, we considered increasing the frequency with which we remove horse shoes and pads while inspecting horses and increasing the use of radiographs to inspect the extremities of horses with pads. However, as mentioned above, devices that are used to pressure shoe horses are often removed before the horse is presented for inspection at a HPA-covered event. In addition, because shoeing a Tennessee Walking Horse

can be a complicated process that can take considerable time and care to do properly,<sup>6</sup> and may delay or interrupt individual classes or performances at horse shows or exhibitions, we do not believe requesting the removal of pads or wedges at horse shows, exhibitions, sales, and auctions would be feasible or advisable to do on a widespread basis, and would run counter to the Secretary's mandate in Section 1823 of the Act to commence and complete inspections with reasonable promptness.

As a second alternative to prohibiting the use of pads and wedges on Tennessee Walking Horses and racking horses at HPA-covered events, we considered enhanced enforcement of the Act. However, despite the modest size of the APHIS Horse Protection Program and the industry itself, noncompliance under the existing regulatory framework is so pervasive that it requires an inordinate use of USDA resources. The primary mechanism for enforcement under the HPA is formal adjudicatory actions, which, by their nature, may be protracted and take several years before reaching a final decision. When coupled with the volume of noncompliance under review, alleged violators know that they are unlikely to face sanctions for many years. Because the immediate effect of our enforcement is limited, alleged violators are not deterred from continuing to engage in activity that is noncompliant with the HPA.

Section 1824 of the Act prohibits the participation in horse shows, exhibitions, sales, and auctions of any horse which is wearing or bearing any equipment, device, paraphernalia, or substance which the Secretary by regulation prohibits to prevent the soring of horses. Based on APHIS' experience administering and enforcing the Act, the recommendations of the AVMA and AAEP, and leading industry standards for equestrian sports, including noncompliances

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<sup>6</sup> <https://www.americanfarriers.com/articles/994-shoeing-the-high-stepping-tennessee-walking-horse>.



identified during inspections and the use of pads and wedges as masking devices to conceal soring, APHIS has determined that prohibiting the use of pads and wedges on Tennessee Walking Horses and racking horses at horse shows, exhibitions, sales, and auctions is necessary to prevent the soring of horses, with the exception of horses that require pads or wedges for the therapeutic treatment of a disease or injury. To qualify for this exemption to the prohibition, the use of the pad or wedge on a Tennessee Walking Horse or racking horse receiving therapeutic treatment must be under the supervision of a person licensed to practice veterinary medicine, and must:

- Be necessary for the treatment of a disease or injury that has not responded to other appropriate treatments in accordance with established veterinary medical practice and procedures,
- Be prescribed for the treatment of the disease or injury (such as the height, weight, and material of a therapeutic pad), and
- Be removed after the period required to complete the treatment.

Any APHIS representative or Horse Protection Inspector may require the removal of any pads or wedges used for therapeutic purposes to inspect a horse for compliance with the Act and the regulations.

One commenter asked that we prohibit the use of acrylic “false” soles that resemble the hoof and that hide evidence of soring under the hoof.

In response to this comment, we note that acrylic or other hardening substances used under the hoof to cause or hide evidence of soring are prohibited.

Some of the same commenters calling for allowing pads for trotting breeds stated that hoof bands should be allowed for horses who have naturally thin or weak hoof walls which

prevent them from supporting shoes. A commenter acknowledged that hoof bands can be tightened for the purposes of soring but asked that we not prohibit them when they are beneficial to the horse. One commenter stated that hoof bands are a safety measure to hold the shoe in place; otherwise the horse would be more susceptible to breaking a toe or the entire foot. Another commenter stated that hoof bands help transfer the weight of the shoe to the whole hoof, not just the wall, thereby protecting the hoof in trotting breeds.

We acknowledge these commenters' concerns and, as mentioned above, are retaining the existing restrictions on the use of hoof bands for all horses in this final rule.

One commenter, a farrier, recommended that pads, shoe weight, and similar concerns be regulated by the needs of particular breed and activity organizations, not by the Federal government.

Congress enacted the HPA to end the cruel and inhumane practice of soring horses. The practice of soring is intended to improve the performance of a horse at horse shows and exhibitions by altering its gait through the use of a device, substance, or other physical practice that causes the horse to suffer, or reasonably be expected to suffer, pain, inflammation, or lameness while walking, trotting, or moving. This practice can produce a high-stepping gait that has been prized in certain competitions involving Tennessee Walking Horses and other breeds. This practice is not only cruel and inhumane, but also results in unfair competition that damages the integrity of the breed. To combat the practice of soring, the HPA not only prohibits the showing, exhibition, sale, and auction of sore horses, but also prohibits the participation in horse shows, exhibitions, sales, and auctions of any horse which is wearing or bearing any equipment, device, paraphernalia, or substance which the Secretary by regulation prohibits to prevent the

soring of horses, as we are doing here in this final rule with respect to certain pads and wedges. Accordingly, we make no changes based on this comment.

One commenter questioned our statement on the APHIS Web site that the changes in the proposed rule would align the HPA regulations with existing equestrian standards set forth by the USEF. The commenter noted that the USEF allows for certain bell boots and pads in competition and asked us to remove the statement from the APHIS Web site.

The prohibitions on certain devices discussed in this final rule with respect to Tennessee Walking Horses and racking horses are consistent with the standards set forth by the USEF in many respects. For example, the USEF prohibits the use of a pad or wedge attached to any limb of a Tennessee Walking Horse or a racking horse constructed to artificially alter the gait of such a horse, and which are not protective or therapeutic in nature, in classes at a USEF-licensed competition.

#### “Related Breeds”

Numerous commenters supporting and opposing the rule stated their concerns about our use of the wording “related breeds” in proposed § 11.2(a) and elsewhere when referring to breeds other than Tennessee Walking Horses and racking horses that perform with an accentuated gait that raises concerns about soring.

One commenter representing a Tennessee Walking Horse organization stated that the prohibitions in the proposed regulations are arbitrary and capricious, as they single out subject breeds in their applicability without providing adequate explanation for doing so. The commenter cited examples of soring that occur in other horse breeds, including pressure shoeing, inserting caustic chemicals into the rectum of the horse, and striking or placing irritants on the legs of jumper horses.

A very large number of commenters noted that the wording “related breeds” could be construed to include trotting breeds, such as Saddlebreds, Morgans, and Arabians, and emphasized that the gait of their horses is distinctly different from those of other breeds for which soring has been a concern. Several such commenters noted that Tennessee Walking Horses, unlike trotting horses, have what is called a four-beat gait or walk, while the trot is a two-beat diagonal gait. The commenters added that any unsoundness, or soreness, produces an uneven and unattractive way of going at the trot that would be severely penalized in the show ring and convey no competitive advantage. Other commenters similarly noted that a sore trotting horse would not trot well, so there is no motive for soring such a horse. A commenter cited a 2006 APHIS presentation illustrating that trotting horses participate in rigorous action competitions but have clean pasterns with no evidence of soring.<sup>7</sup> One commenter representing a horsemen’s association referred to the phrases “related breeds” and “related breeds of horses that perform with an accentuated gait that raises concerns about soring” as undefined terms that are “impermissibly vague,” and questioned what these related breed qualifications would be, as well as what types of accentuated gaits would raise concerns about soring and what process or persons would make such a determination. The same commenter also stated that inspecting horses at events for which there is no history of soring would be a waste of APHIS’ resources. Several commenters asked APHIS to replace “related breeds” with “related non-trotting breeds.”

Additionally, one commenter stated that the breed registry for the Tennessee Walking Horse includes breeds not typically associated with the accentuated gait of the Tennessee Walking Horse, including Standardbred, Thoroughbred, Morgan, and American Saddlebred

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<sup>7</sup> Horse Protection Program Listening Session, Shelbyville, TN, February 8, 2006: USDA/APHIS/Animal Care.

stock. The commenter also stated that the racking horse breed registry also includes some of these breeds, as well as others that share the distinctive gait of the racking horse. These commenters were concerned that, based on these registries, APHIS could enforce the regulations on breeds having no history or incentive to participate in the practice of soring. On the other hand, a commenter that supported the inclusion of all horse breeds under the rule stated that it is an important deterrent to soring.

In addition, several commenters opposed to the rule interpreted “related breeds” to mean that the rule’s provisions should apply to all breeds of horses that are shown or exhibited, with many adding that APHIS is unfairly targeting Tennessee Walking Horses and racking horses. One such commenter stated that trainers of American Saddlebred horses and Morgans place mechanical “shackles” on their horses for training purposes, and another stated that some Morgan owners and trainers are using action devices on their horses. Another commenter asked why APHIS has not shut down bull riding or rodeos. One commenter asked whether APHIS would be conducting inspections at dressage events.

APHIS is aware of substantive reports and instances of soring at events involving breeds of horses other than Tennessee Walking Horses and racking horses. For example, APHIS has found evidence of soring during inspections conducted at Spotted Saddle Horse and Missouri Fox Trotter events and is aware of trainers who have been convicted of violating the HPA that trained Spotted Saddle Horses and Tennessee Walking Horses. In addition, APHIS is aware of concerns and incidents of show jumpers bearing signs of abuse on their legs.<sup>8</sup> However, these reports and incidences are not as widespread as the reports and incidents of soring in Tennessee

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<sup>8</sup> See, for example, <https://www.americanfarriers.com/articles/875-soring-still-an-international-concern-with-show-jumpers>, and <http://www.chronofhorse.com/article/usef-suspends-devin-ryan-after-hampton-classic-horse-welfare-concerns>.

Walking Horses and racking horses, and we acknowledge the confusion expressed by commenters over the use of the term “related breeds” in the proposed rule. In this final rule, we are removing the term “related breeds” from regulations and are adopting proposed inspection, recordkeeping, and other requirements for Tennessee Walking Horses and racking horses. However, as noted elsewhere, we are retaining the existing prohibitions on the use of devices, equipment, or practices for all horses (while imposing additional restrictions on Tennessee Walking Horses and racking horses) and will continue to conduct unannounced inspections at any and all horse shows, exhibitions, sales, and auctions, on a risk-basis. In addition, we are continuing to consider what, if any, additional restrictions are necessary for horses other than Tennessee Walking Horses and racking horses. If, in the future, APHIS determines that additional restrictions should be established, we will initiate a rulemaking and solicit public comment on any proposed amendments.

Under the HPA, the management of any horse show, exhibition, sale, or auction is responsible for disqualifying and prohibiting sore horses from being shown, exhibited, sold, or auctioned, no matter the breed of horse. Given management’s responsibilities, we encourage management at all HPA-covered events, including Spotted Saddle Horses and Missouri Fox Trotter events, to be vigilant about soring, report any instances to us as required under the regulations, and consider retaining a HPI or conducting their own inspections to assess compliance.

One commenter opposed to the term “related breeds” asked why we included it in the proposed rule even though the Prevent All Soring Tactics Act (or PAST Act) legislation drafted by Congress does not contain it.

In response to this comment, we note that the process to amend agency regulations is separate from the process followed by Congress to amend statutes.

Finally, one commenter asked us to include mules in the regulations and indicated that some mules are the offspring of horse breeds for which soring is a concern.

We proposed no changes to the definition of horse in this rulemaking. Therefore, we are making no changes in response to this commenter's recommendation.

Many commenters asked us to define our use of the terms "accentuated" and "animated" when describing gaits, considering it to be overly broad and noting that trotting, dressage, and other movement in breeds not typically associated with soring could be described in similar terms. One commenter asked if horses in jumping events are considered to have an accentuated gait. Another commenter noted that gaited breeds sometimes perform with a non-accentuated gait and expressed concern that the proposed regulations would not be applied to such horses.

The commenters correctly point out that many horses, including trotting horses, have animated gaits. We use the terms "animated", "accentuated," and "exaggerated" to describe the high stepping, "animated" gait.

#### Notice to Clarify Proposed Regulations on Horseshoes

In the proposed rule, we proposed to replace the term "yearling horses" in § 11.2(b)(9) with "horses up to 2 years old" and moved the term to proposed paragraph (a)(3). In that paragraph, we included a provision to prohibit the use of any weight on horses up to 2 years old, except a keg or similar conventional horseshoe, as well as the use of a horseshoe on horses up to 2 years old that weighs more than 16 ounces.

Several commenters asked that horseshoes be regulated because heavy, wide shoes can impede inspection techniques, obscuring the sole and making it hard to use a hooftester. Many

commenters suggested that the regulations should include a limit on the weight and width of shoes allowed to be used on all breeds and prohibit any shoe which covers the sole of the hoof for inspection. Another commenter stated that some trainers shoe horses with shoes of uneven weights to create more action in the horse's gait.

In a Federal Register notice published on September 22, 2016 (FR 65307, Docket No. APHIS-2011-0009) we addressed the proposed rule to clarify commenter concerns about certain horseshoes and soring. In order to make proposed § 11.2(a)(3) consistent with other prohibitions on weights and heavy shoes, we stated we were considering changing the paragraph to read, "The use of any weight on horses, except a keg or similar conventional horseshoe is prohibited." The regulations continue to allow for corrective devices such as Memphis bars that do not form a single fulcrum point under the hoof.

A number of commenters who own or train trotting breeds opposed the clarification.<sup>9</sup> One commenter stated that while a certain amount of excessive shoe weight would eventually cause a horse to be lame, that amount would be much heavier than 16 ounces and vary greatly according to the size and strength of the horse. A farrier commented that shoeing techniques based on good science can correct for natural imbalances and deformities in the hoof, and that one kind of shoe is not practical. Other commenters stated that weighted shoes are used on trotting horses to accentuate movement and balance motion. A commenter suggested that instead of imposing a weight limit on shoes, APHIS should require that "the sole of the hoof and the entire frog must be visible" to ensure that no signs of soring are concealed during inspection. One commenter opposed to the prohibition of all but keg and conventional horseshoes stated

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<sup>9</sup> Comments on legal issues relating to the notice are addressed below in the Constitutional and Legal Issues section of this document.



that, in trotting breeds, shoes are often handmade to fit show horses who have uneven hooves. A commenter representing a flat shod organization stated that prohibiting all but “unweighted” keg shoes is unfounded by either science-based testing or merit and that there do not appear to be any relative studies of weighted versus non-weighted shoes. One commenter stated that with the prohibition on hoof bands on walking horses it would be impossible to use a shoe heavier than a horse could reasonably be expected to carry. Another commenter stated that the notice does not clarify the provision but significantly changes the substance of it by banning all but keg or conventional horseshoes, which will result in the elimination of a substantial number of classes in many Tennessee Walking Horse shows, including several flat-shod classes. The commenter added that APHIS did not explain whether and how the change would help to eliminate soring. A commenter representing a national walking horse organization stated that prohibiting weighted shoes would eliminate several walking horse divisions and cut their membership by half. Finally, one commenter asked us to explain what problem the clarification is attempting to address.

We have reconsidered the clarification we made to the provision in § 11.2(a)(3) in the proposed rule and are adopting the provision as originally proposed in § 11.2(b)(4) of this final rule. However, we will continue to monitor the use of horseshoes and weights and, if necessary, will propose additional restrictions in a future rulemaking.

Several commenters asked us to define a “conventional horseshoe.”

Undefined words of art contained in the regulations carry the meaning attributed to them by trade usage or general usage as reflected by definition in a standard dictionary, such as “Webster's.”

A commenter asked that we prohibit horseshoes made of anything other than rubber, plastic, aluminum, or steel.

We consider the term “conventional horseshoe” to adequately address the commenter’s concern.

We included in proposed § 11.2(a)(4) a provision to prohibit all artificial toe extensions and to remove the provisions concerning artificial toe length measurements.

Many commenters agreed with the prohibition on artificial toe extensions. One commenter stated that the unnatural toe length caused by extensions places tremendous pressure on a horse’s coffin bone, legs, and shoulders.

On the other hand, some commenters opposing the prohibition on toe extensions cited as the reason for their opposition the health and safety of the horse on grounds that they are used for therapeutic or corrective purposes. One commenter, a farrier, stated that under the proposed regulations, a person who repairs a cracked or damaged hoof could no longer do so with any methods currently available. A few commenters stated that adding acrylic to one foot should be allowed to repair a broken toe. Other commenters noted that many owners of breeds of horses not typically associated with soring, such as American Saddlebreds, Morgans, and Hackney ponies will lengthen the hoof to correct uneven feet or unpredictable hoof growth. Another commenter opposed to the prohibition suggested establishing a maximum toe length of 6.5 inches, including natural toe and pads and a minimum heel height of 3.5 inches, including wedges. The commenter stated that these measurements would continue to allow farriers to determine the correct hoof angle for each horse while maintaining horse tendon health. Another commenter suggested limiting the toe length of Tennessee Walking Horses to 6 inches and

reduce it to 5 inches over time. A commenter representing a national walking horse organization asked that we prohibit artificial extension of the toe length on more than one foot.

We acknowledge commenters' remarks that toe length may be manipulated to correct and repair hoof damage and alignment. At this time, we are continuing to consider whether the existing restrictions on artificial extensions of toe length are sufficient to prevent soring in horses. We are aware of a study that recommended further investigation on acute hoof angulation because researchers have found that long toes act as a long leverage point with an acute angulation and the effort required to rotate the hoof around the long fulcrum has been associated with increased stress on the deep digital flexor tendon, greater compressive force on the navicular bone, and tensile stress on ligaments.<sup>10</sup> We welcome additional data, information, and scientific studies on artificial extension of toe length and may initiate a future rulemaking if the existing regulations on this matter are inadequate to prevent soring of horses.

One commenter questioned our use of the term "artificial" in describing toe lengthening by stating that there is no definition of "natural" toe length that is appropriate to all horses.

Consistent with general usage, we consider artificial toe length to be achieved through the use of acrylics, pads, or other applications. We consider natural toe length as the length of the horse's toe absent any applications.

We proposed to add a new paragraph § 11.2(a)(5) that includes provisions for hoof packing. Acceptable hoof packing will continue to include pine tar, oakum, live rubber, sponge rubber, silicone, commercial hoof packing, or other material that does not create any pain on the

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<sup>10</sup> <http://onlinelibrary.wiley.com/store/10.1111/j.2042-3306.1990.tb04742.x/asset/j.2042-3306.1990.tb04742.x.pdf?v=1&t=iw6f642c&s=3cc4680b1addf900c406c539c3ed4c8d65bc992c>.

frog, sole, or any areas underneath the hoof. We also proposed to prohibit acrylic and other hardening substances as hoof packing.

One commenter stated that the phrase “other hardening substances” is vague and should be deleted or clarified.

We are making no changes in response to the comment, as it is not possible to create an exhaustive list of substances that can or cannot be used for hoof packing.

Some commenters stated that hoof packing is beneficial for redistributing the load on a horse’s foot to relieve pain and lameness. An equine veterinarian specializing in podiatry noted that appropriate hoof packing is a tool to keep or achieve soundness in show horses. Another commenter noted that on trotting horses, farriers often pack the space between the pad and the hoof to prevent debris from entering. Other commenters stated that they pack their horses’ hooves as a means of applying medication to the bottom of the foot but noted that a thin pad attached to the hoof is necessary to keep the medicated packing material in the hoof. They requested that we allow the use of pads for this purpose.

Another commenter asked that we prohibit hoof packing, as there is no need for it without pads and that trainers may use other means of inserting items in the hoof to cause soreing.

We agree with the comments noting that appropriate hoof packing can be used and are adopting the regulations as proposed.

Consistent with the existing regulations, we proposed in § 11.2(a)(6) to continue to prohibit single or double rocker-bars on the bottom surface of horseshoes which extend more than 1.5 inches back from the point of the toe, or any device which would cause, or could reasonably be expected to cause, an unsteadiness of stance in the horse with resulting muscle and tendon strain due to the horse’s weight and balance being focused upon a small fulcrum point.

We also retained the use of Memphis bars and other corrective devices for the purpose of correcting a lameness or pathological condition of the foot as long as such bars do not act as a single fulcrum point so as to affect the balance of the horse. We received no comments on this provision and are making no changes to it in this final rule.

We proposed in § 11.2(a)(7) a prohibition on any manner of shoeing or trimming a horse's hoof that will cause suffering, pain or distress, inflammation, or lameness when the animal is walking, trotting, or otherwise moving, as well as prohibitions on paring out the frog and bruising of the hoof. We also proposed to add the provision that horses showing any other indications of pressure shoeing are considered sore and subject to all the prohibitions in the Act.

One commenter stated that the prohibition on paring out of the frog is vague, and noted that it is sometimes necessary to trim excess, insensitive tissue that could trap bacteria and cause thrush.

To address this commenter's concern, we have revised this provision to prohibit paring out of the frog in a manner that will cause such horse to suffer, or can reasonably be expected to cause such horse to suffer pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving.

Another commenter stated that the term "bruising of the hoof" is vague and asked that it be clarified to indicate that it is prohibited when performed by a person.

We are making no changes in response to the comment. It is clear within the context of the prohibitions in § 11.2 that we mean bruising that is performed by a person and thereby prohibited.

Another commenter asked that we revise the prohibition to add "excessive paring of the frog and/or sole" to proposed paragraph (b)(7).

We agree with this suggestion and believe it is in line with the intent of this provision to prevent the soring of horses. We have made conforming changes accordingly in § 11.2(b)(13) of the final rule.

We added to proposed § 11.2(a)(8) the provision that lead or other weights attached to the outside of the hoof wall or the outside surface of the horseshoe are prohibited. We also proposed to provide that hollow shoes or artificial extensions filled with mercury or similar substances are prohibited.

We also proposed to redesignate paragraph (c), which pertains to lubricants, as paragraph (b) and revise it to prohibit all substances, including lubricants, on the limbs of any Tennessee Walking Horse, racking horse, or related breed while being shown, exhibited, or offered for sale at any horse show, horse exhibition, or horse sale or auction. Concurrently, we also proposed and solicited comment on the application of this prohibition “to any and all horses present on the grounds of a horse show, exhibition, sale, or auction.” Our proposed rule went on to explain that, “We are proposing these changes because, as we explain above, our experience in administering and enforcing the Act has shown that a wide range of foreign substances have been applied to the legs and pasterns of gaited horses to induce soreness. Numbing substances are also applied to a sore horse to temporarily mask the pain of being palpated during inspection.”

A substantial number of commenters opposed to this prohibition stated that it was overly broad. Several noted that many substances applied to the limbs of horses, such as fly spray, ointments, and liniments, are beneficial or therapeutic. One such commenter noted that the Act defines sore to specifically exempt the application of substances in connection with the therapeutic treatment of a horse and that the proposed rule’s failure to exempt the use of

substances for these purposes is in direct conflict with the Act. One commenter was concerned that wet clay poultices for drawing out inflammation in the limbs could no longer be used. Another commenter stated that the use of fly sprays reduces the risk of horses being infected with mosquito and fly-borne diseases, including encephalitis. A few commenters stated that many substances occur naturally in the environment, and that these can unintentionally make their way onto the horse. Other commenters noted the possibility that trainers or other persons could inadvertently transfer commonly used substances such as soap, hand lotion, and water from their hands to the horse. Some commenters opposed our inclusion of language indicating “any horse on the grounds of a show, exhibition, sale, or auction,” one noting that dirt and dust can collect on the limbs of a horse while simply on the grounds at such events.

One commenter stated that anything on a horse’s limbs can be considered a prohibited substance under the proposed prohibition and asked why APHIS refuses to create a baseline for determining prohibited substances. Another asked that we post a list of proposed substances to the APHIS Web site.

At the onset, we wish to highlight that the number of substances that can potentially be used to cause or mask soring, is prohibitively large. The creation of a baseline or exhaustive list considering all possible prohibited substances would be impractical. However, we note that APHIS does maintain a list of definitions of prohibited substances commonly found on horses at HPA-covered events<sup>11</sup> and, as a matter of policy, APHIS focuses its limited investigative and enforcement resources on prohibited substances that are considered irritants or numbing and masking agents.

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<sup>11</sup> [https://www.aphis.usda.gov/animal\\_welfare/hp/downloads/Foreign\\_Substance\\_Definitions.pdf](https://www.aphis.usda.gov/animal_welfare/hp/downloads/Foreign_Substance_Definitions.pdf).

Regarding the comments received in opposition to the prohibition of substances on the grounds of a horse show, exhibition, sale, or auction, we note that the current regulations have long prohibited the use of all substances on the extremities above the hoof of any Tennessee Walking horse or racking horse while being show, exhibited, offered for sale, sold, or auctioned. Aside from removing the allowance for lubricants provided by management to reduce friction caused by action devices on the limbs of Tennessee Walking Horses and racking horses, which is no longer necessary in light of the prohibitions on such devices, and the addition of the phrase “otherwise on the grounds,” the prohibition on substances is relatively unchanged. Yet, despite these long standing prohibitions on substances, we continue to detect a high incidence of prohibited substances, principally irritants and numbing and masking agents, on the pasterns of horses at HPA-covered events. As noted above, we published a table in the proposed rule describing HPA-covered event inspection data from FY 2010-2015, including results from testing for prohibited substances, on horse breeds at HPA-covered events at which horse industry DQPs conducted inspections. In FY 2015, for example, 500 horses were positive out of 768 tested, and over the 5 year period the average rate of positives was 69 percent. Because of this high rate of detection of substances on the extremities of horses at HPA-covered events, the Department will prohibit all substances, including lubricants previously permitted when provided by management, on the extremities above the hoof of any Tennessee Walking or racking horse while being shown, exhibited, or offered for sale, or otherwise present on the grounds at any horse show, exhibition, sale, or auction.

A few commenters asked that we also prohibit chemicals such as ginger paste applied to the rectum to raise a horse’s tail. One commenter representing a show organization suggested that this activity falls under the purview of the Act.



With respect to chemicals used to raise a horse's tail, this activity would be covered by the HPA if it involves the soring of horses. We welcome additional data and information concerning such practices to ensure that we are fully understanding the facts and circumstances, and the applicability of the Act to such practices.

In proposed § 11.2(c), we provided specific requirements for rest periods during horse show and horse exhibition workouts or performances for 2-year-old Tennessee Walking Horses, racking horses, and related breeds and working exhibitions for 2-year-old Tennessee Walking Horses, racking horses, and related breeds at horse sales or horse auctions.

In conformance with the changes discussed above, we are retaining the existing scope of this provision and are removing the reference to "related breeds." We are applying the provision to Tennessee Walking Horses and racking horses only.

#### Scar Rule (§ 11.3)

We proposed no substantive changes to the scar rule provisions in § 11.3 of the regulations. However, we received a substantial number of comments from persons regarding these provisions and how they are applied.

Several commenters raised questions about the scar rule, characterizing its application as overly subjective during the process of equine inspections. One such commenter stated that the existing guidelines for inspections related to the scar rule have changed frequently over the years and noted that APHIS has discontinued providing written guidelines on what constitutes a scar in connection with this rule. The commenter also characterized the application of the scar rule as arbitrary, imprecise, and inconsistent from show to show. One commenter stated that USDA continues to confuse and conflate the concepts of callus tissue, scars, and soring. A commenter representing a Tennessee Walking Horse organization stated that current inspectors misapply provisions of the scar rule and do not account for alternative explanations that may account for

scar-like conditions on the pasterns. Another commenter stated that testing on 94 horses rejected for failure to comply with the scar rule at the 2015 Tennessee Walking Horse National Celebration were found to have no scarring in the tissue identified by the inspector as being scarred. A commenter supporting the rule stated that inspecting a horse for scars only subjects horses to further torture, as owners will have scars burned from horses to avoid detection.

In addition, a few commenters stated that the scar rule should also be applied to the hind limbs of the horse. Several other commenters asked that the same criteria in paragraph (a) pertaining to the anterior surfaces of the pasterns also be applied to the posterior of each pastern in paragraph (b), and one asked that we require that the entire surface of the pastern be free of granulomas and inflammation. Another asked that we include “anterior/medial” among the parts of the pastern that must be free of granulomas and inflammation. Finally, one commenter stated that despite there being no “one foot” scar rule in the Act, USDA has disqualified horses for scars on one foot.

These comments are outside the scope of this rulemaking because we did not propose any changes to the provisions they address. Therefore, we are making no changes based on these comments. However, we note that APHIS representatives assess compliance with regulations pertaining to the scar rule through the use of palpation and other methods of inspection, as defined in the regulations. Aside from the clarifying changes made to the definition of inspection in this final rule, that definition has been in place for more than 30 years. Moreover, the Secretary has determined that digital palpation is a highly reliable method for determining whether a horse is sore. The Secretary’s reliance on palpation to determine whether a horse is sore is based on upon the experience of a large number of veterinarians, many of whom had 10 to 20 years of experience in examining many thousands of horses as part of their efforts to

enforce the HPA. APHIS interprets and applies the scar rule criteria in accordance with the regulations and inspects for compliance using these effective and reliable means to determine whether a horse is sore.

One commenter representing a Tennessee Walking Horse organization suggested that APHIS allow horses that do not meet the scar rule requirements to participate in natural gait events where soring conveys no advantage. The commenter explained that exempting them from the scar rule, solely for participation in other disciplines where soring, or training using soring practices is irrelevant to performance, could encourage the rehabilitation and re-employment of previously sored horses.

We are making no changes based on this comment. The scar rule is intended to detect horses that are sore at horse shows, exhibitions, sales, and auctions. Horses that do not meet the scar rule criteria in § 11.3 are considered to be sore and their participation in such events constitutes a violation of the Act.

A few commenters stated that horses may acquire abrasions and scars on their limbs for various reasons having no connection to soring.

In response to these comments, we note that the scar rule does not apply to horses that bear a scar from an accidental injury.

Other commenters requested that language in the scar rule stating its application to all horses born on or after October 1, 1975, be removed due to its lack of modern applicability. As two commenters noted, no horses born prior to this date would be showing in the present day.

While we agree with the commenters that no such horses are being shown in the present day, we are retaining this provision in order to emphasize that we have proposed no changes to the scar rule and are making no changes to it.

Another commenter asked that we include a requirement that horses born on or after the effective date of the rule must have the entire surface of the pastern, including the sulcus or “pocket,” be free of bilateral granulomas, other bilateral pathological evidence of inflammation, and other bilateral evidence of abuse indicative of soring.

We are making no changes to the scar rule; accordingly, we are making no changes in response to the comment.

Inspection and Detention of Horses: Responsible Parties (Proposed § 11.5, Final § 11.5).

We proposed in § 11.5(c) to state that no objects or tack other than a halter and lead rope are to be on the horse during inspection.

One commenter stated that this requirement creates additional difficulties for exhibitors and management because tack would need to be carried to the inspection area and placed on the horse. A few commenters stated that this requirement could pose a danger to people in the inspection area. One such commenter stated that attempting to bridle a horse in the warm up area prior to showing could cause injuries to horses and humans, as not all horses are easy to bridle. Other commenters supported this point, stating that bridles give the custodian a better ability to control the horse. One commenter recounted incidents in which unruly horses became agitated during inspection and stated that any liability for injury would have to be assumed by USDA as the result of placing people in harm’s way.

Except in terms of organization, we are adopting the regulations as proposed. As noted in the proposed rule, we have found that objects, other than a halter and lead rope, have been used to train or “steward” horses that are sore to not respond to digital palpation during HPA compliance inspections, thus impeding the detection and diagnosis of soring. For example, APHIS officials have observed instances in which an object was inserted under the saddle to

create pain as a means of stewarding the horse through the inspection process. In addition, in 2011, an owner and operator of a stable that trained Tennessee Walking Horses was sentenced for a HPA criminal conviction when a horse trained at the stable was discovered wearing a nerve cord – in this case, a plastic zip tie that distractingly stimulated the horse’s gums – in its mouth and found bilaterally during inspection. In response to commenters’ concerns about safety in the inspection area, it is the responsibility of management to provide an adequate inspection space. Horses that are preparing for show competition can be reasonably expected to be well-trained and capable of standing still for the duration of the inspection; in the uncommon event of an unruly horse in the inspection area, the person in custody will remain in close proximity to ensure a quick response.

Training and Licensing of Horse Protection Inspectors (HPIs) (Proposed § 11.6, Final § 11.14)

We proposed to consolidate horse inspection training and licensing requirements in a revised § 11.6, titled “Training and Licensing of Horse Protection Inspectors (HPIs).” As HIOs will no longer be responsible for training and licensing inspectors and enforcing penalties, we proposed also to remove all regulatory burdens and requirements assigned to them in part 11. As noted above, we proposed that APHIS assume all HPI licensing and training responsibilities.

We received comments requesting that the Agency consider, in the alternative, retaining the existing requirements for the training and licensing of DQPs but limiting the number of HIOs with certified DQP programs to one HIO only.

The 2010 USDA OIG audit, discussed in the proposed rule, uncovered conflicts of interest among DQPs, the HIOs that maintain training and licensing programs, and management that affiliate with the HIOs. The report recommended that APHIS undertake training and licensing of horse inspectors to ensure that inspection techniques are correctly and consistently applied by inspectors working independently of the horse industry.

As we noted in the proposed rule, inspection data compiled by APHIS suggests that inadequate inspections at events featuring Tennessee Walking Horses and racking horses have resulted in underreporting of sore horses when APHIS inspectors are not in attendance. This is consistent with the results of the 2010 OIG audit, which found that while APHIS attended only a fraction of the events at which DQPs were retained to inspect horses, APHIS consistently reported higher rates of noncompliance based on VMO inspection findings.

The OIG's recommendation is also consistent with findings of USDA's Office of the Judicial Officer, which issues final decision on behalf of the Secretary of Agriculture for purposes of judicial review. The Secretary of Agriculture, through the Judicial Officer, has routinely found that DQP inspections of horses are less probative than inspections conducted by USDA Veterinary Medical Officers. In making such findings, the Secretary has noted that DQP often conduct "short and cursory" inspections given the volume of horses they must inspect prior to HPA-covered events, that DQPs are not veterinarians and do not maintain the same qualifications, and DQPs must engage with members of the industry on a daily basis, which may make them reluctant to notify management that a horse is sore.

We proposed to add an introductory paragraph to revised § 11.6 stating that APHIS will train and license HPIs and reiterating the provisions of the Act that allow management to appoint and retain inspectors holding a valid, current license under section 1823 of the Act to inspect horses and records for the purposes of determining compliance with the Act. We also added that management may engage one or more HPIs from the list of APHIS trained and licensed HPIs by contacting them directly.<sup>12</sup>

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<sup>12</sup> A list of licensed HPIs will be made available on the APHIS Horse Protection Program Web site.

A few commenters concerned about conflicts of interest suggested that APHIS should control the designation and assignment of HPIs when show managers request their services. They stated that if show managers contact HPIs directly, it might be possible for them to select inspectors whom they know and whom they believe will be sympathetic.

APHIS will provide oversight to inspections conducted by HPIs to ensure that HPIs are conducting inspections honestly, fairly, and accurately regardless of whether they know the show manager.

We proposed that only veterinarians and veterinary technicians will be licensed as HPIs, that they must have extensive knowledge and experience of equine husbandry and science, and that they must be otherwise eligible to be licensed as HPIs under revised § 11.6. We also proposed that veterinarians must be members of the American Association of Equine Practitioners, or large animal practitioners with substantial equine experience, or that they be knowledgeable in the area of equine soring and soring practices (for example, Doctors of Veterinary Medicine with a small animal practice with sufficient knowledge of horses or who teach equine-related subjects in an accredited college or school of veterinary medicine). In addition, we proposed that veterinary technicians with degrees awarded by educational programs accredited by the American Veterinary Medical Association Committee on Veterinary Technician Education and Activities could also be licensed as HPIs if they possess adequate knowledge and experience of equine husbandry and science and are otherwise eligible to be licensed as HPIs under proposed § 11.6.

Numerous commenters questioned why only veterinarians or veterinary technicians would be eligible to become HPIs. Many such commenters stated that allowing only veterinarians and veterinary technicians to be HPIs would eliminate many current, reputable

DQPs from the pool of HPI candidates. One commenter stated that it would be a waste of taxpayer dollars to train a new group of inspectors when there are currently many qualified inspectors being utilized in the present system. This commenter further noted that there would be no advantage to hiring a veterinary technician as an HPI, because veterinary technicians cannot diagnose conditions and present no advantage over an already certified DQP. Another commenter requested that we allow current DQPs only for flat shod shows. In addition, a few commenters asked whether "animal cruelty investigators" would have any authority to enforce the soring regulations at farms or backyards where horses reside. Finally, another commenter suggested "expanding the State Warden Service and/or the City/County/State Police Services to include a Domestic Animal Crimes Unit" to help with instances of soring of horses.

The use of veterinarians and veterinary technicians with equine experience as HPIs was proposed to ensure that inspectors familiar with horses will be used, and to further ensure that inspectors possess a demonstrable level of knowledge, education, and skill to detect and diagnose sore horses and otherwise conduct compliance inspections. During the passage of the 1976 amendments to the HPA, the Executive Branch made plain its interpretation that veterinarians are best qualified to conduct such diagnosis and inspections. Accordingly, in this final rule, we are requiring that, in most cases, HPIs must be veterinarians.

The HPA does not authorize APHIS to expand State and local police services to address instances of soring. However, we recognize that persons with experience enforcing animal welfare laws have knowledge, training, and skills that can be applied to detect soring in horses. Accordingly, should there be an insufficient pool of veterinarians that are licensed as HPIs as determined by the Administrator, this final rule also provides that APHIS may train and license veterinary technicians and persons employed by State and local government agencies to enforce



laws and regulations pertaining to animal welfare. Should a person who is so employed by a State or local government agency wish to become licensed as a HPI, he or she would do so in his or her own private capacity, and not as an agent of any government agency.

Several commenters stated that hiring veterinarians or veterinary technicians as HPIs would add a financial burden to small horse shows and negatively impact flat shod horse shows. A commenter raised concerns about the costs and availability of suitable inspectors, noting that licensed veterinary professionals would likely charge more for inspection services than current DQPs; this increased inspection fee, combined with the anticipated reduced number of HPIs, would pose an economic and logistical burden upon State horse industries. One commenter suggested that we develop a regional approach to the HPI program to decrease anticipated travel expenses.

In general, the proposed rule should not adversely impact the shows that do not allow the use of action devices, pads, and wedges (including shows with flat shod classes), or the Tennessee Walking Horse or racking horse industry. It should be noted that management may elect not to hire HPIs for a show and bear liability for any instances of allowing a sore horse to participate in an HPA-covered event or other noncompliance with the Act and its regulations occurring at that horse show, exhibition, sale, or auction.

Some commenters raised concerns regarding the proposed HPI requirements for veterinarians and veterinary technicians, stating that the requirements listed for veterinarians appear to be more stringent than those for veterinary technicians. One such commenter disagreed with the AAEP membership requirement for veterinarians who wish to be licensed as HPIs, stating that it is not appropriate for a government agency to require membership in a private organization as part of its licensing regulations.

In the proposed rule, we proposed that veterinarians who wish to be licensed as HPIs must have extensive knowledge and experience in equine husbandry and science, be eligible to be licensed as HPIs under paragraph (b) of § 11.6 of the proposed rule, be accredited in any State by the USDA under part 161 of the existing regulations, and be 1) members of the AAEP, or 2) large animal practitioners with substantial equine experience, or 3) knowledgeable in the area of equine soring and soring practices. Membership in the AAEP was not proposed as a firm requirement for all veterinarian HPIs, but was rather one of several options listed for veterinarians to demonstrate a sufficient degree of knowledge of equine science. We further proposed that veterinary technicians who wish to become licensed HPIs must have a degree awarded by an educational program accredited by the American Veterinary Medical Association Committee on Veterinary Technician Education and Activities, possess adequate knowledge and experience of equine husbandry and science, and must meet the eligibility requirements under paragraph (b) of § 11.6.

However, we agree with the commenter that the necessary qualification requirements for veterinarians and veterinary technicians, as far as HPI licensing is concerned, should be as equivalent as possible. Therefore, we are amending proposed § 11.6(a) to remove the accreditation requirements for veterinarians as well as the requirements listed in paragraphs (a)(1)(i) through (a)(1)(iii). The amended HPI requirements for both veterinarians and veterinary technicians will be: Possession of a valid degree (respective to profession), extensive knowledge and experience of equine husbandry and science, and the eligibility requirements as stated under paragraph (b) of proposed § 11.6, which is § 11.14(b) in the final rule.

Several commenters questioned what would occur if there are not enough applicants to meet the need for inspectors. Another commenter stated that there is already a paucity of

veterinarians with equine experience and that the imposed qualification and training requirements would discourage such professionals from becoming licensed HPIs. Other commenters questioned the provision excluding those with family and employer ties from being HPIs, noting that this would disqualify large numbers of local veterinarians and veterinary technicians from being eligible. Another commenter raised similar concerns, noting that many local veterinarians and veterinary technicians in gaited horse communities have dealings in the gaited horse show world. The commenter expressed concern that the HPI requirements would necessitate additional expenses incurred from flying in out-of-area HPIs.

In response to the question of potential HPI staffing shortages, it is difficult to speculate as to how many applicants will desire to become HPIs. However, we note that the American Veterinary Medical Association reports that there were approximately 105,358 veterinarians in the United States in 2015, of which 8,051 have practices focused on mixed animals or equines. Currently, there are approximately 90 licensed DQPs, of which a small subset of approximately 30 DQPs conduct the majority of inspections at horse shows, exhibitions, sales, and auctions. For example, in 2015, more than 75 percent of the inspections reported by HIOs to APHIS were conducted by 30 DQPs. Given these statistics, we do not anticipate that a staffing shortage will occur. However, we acknowledge the commenters' concerns that such a shortage, were it to occur, could have an impact on management's ability to hire and utilize HPIs. In light of these concerns and as mentioned above, we are amending the HPI licensing regulations to allow for additional qualified applicants in the event that a sufficient number of veterinarians do not apply to become HPIs. Such applicants will be veterinary technicians and applicants who are employed by their State or local government agencies to enforce laws or regulations pertaining to animal welfare. We note that the provision excluding those with family and employer ties to the

industry from becoming HPIs is intended to prevent potential conflicts of interest between inspectors and horse owners, trainers or management that were noted during the 2010 USDA OIG audit.

Several commenters agreed that HPIs should have no ties personally or economically to show entrants, one of whom suggested that HPIs make surprise visits to training stables.

Section 1823 of the HPA directs the Secretary to prescribe by regulation requirements for the appointment by management of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for purposes of enforcing this chapter. The intent of this provision is to provide management with assistance in fulfilling its statutory responsibility to disqualify or prohibit sore horses from being shown, exhibited, sold, or auctioned at the shows, exhibitions, sales, and auctions.

A commenter asked if APHIS would need to initiate another proposed rule change in the event of a shortage of licensed HPIs.

As stated above, we are amending the qualifications to become a licensed HPI to extend eligibility to veterinarians first, and then to veterinary technicians and persons who are employed by State or local government agencies to enforce laws or regulations pertaining to animal welfare, provided that they meet the other eligibility requirements and qualifications. We expect there to be a sufficient number of HPI applicants under the revised qualifications and no need for an additional rulemaking.

Some commenters raised concerns about the required qualifications for HPIs to be veterinarians or veterinary technicians. One commenter found the HPI requirements to be not specific enough, requesting that only equine veterinarians be able to qualify for HPI licensing. Another commenter, who is a current DQP, expressed concern that new HPIs would have

insufficient training and field experience in comparison to seasoned DQPs. Another commenter stated that HPIs should have in-depth knowledge of the unique characteristics of Tennessee Walking Horses to properly inspect the breed.

All HPI applicants accepted by APHIS will receive thorough training. We will ensure that all licensed HPIs are sufficiently trained to detect soreness in horses and otherwise assess compliance with the HPA, including among Tennessee Walking Horses.

A few commenters suggested that farriers be allowed to qualify as HPIs or to accompany licensed HPIs to inspections, given their extensive knowledge of equine hooves. Another commenter stated that most veterinarians are not trained in gaited shoeing and trimming and therefore are not qualified to comment on shoe adaptations during the inspection process.

For the reasons discussed above, we believe that veterinarians are best qualified to detect and diagnose soring in horses, but will expand the candidate pool to include veterinary technicians and other persons who are employed by State and local government agencies to enforce laws and regulations pertaining to animal welfare, should there be an insufficient number of applicants. All HPIs will undergo formal training to sufficiently identify and detect evidence of soring and other noncompliances with the HPA.

One commenter stated that an unintended consequence of hiring only veterinarians or veterinary technicians as HPIs would be complaints filed to State licensing boards on behalf of any horses misdiagnosed or mislabeled as sore. The same commenter also indicated that each HPI would be held financially liable for diagnoses of sore horses.

Veterinarians who choose to become HPIs will be operating as licensed inspectors and persons who, pursuant to the Act, are “qualified to detect and diagnose a horse which is sore or otherwise inspect horses for the purposes of enforcing” the Act. Although the HPA’s legislative

history signals Congress' interest that veterinarians conduct compliance inspections, the Act itself does not mandate that "persons qualified to detect and diagnose a horse which is sore" be veterinarians. However, a veterinarian's professional experience will be an asset in performing this work even though the inspections conducted under the HPA, in and of themselves, do not require a veterinary medical degree or constitute the practice of veterinary medicine.

#### Credential Requirements and Verification

Two commenters raised concerns about the credential requirements for trainers of potential HPIs. The commenters both cited a passage from an APHIS employment advertisement indicating that the VMO career program aims to recruit entry-level veterinarians. In light of this example, the commenters stated that HPIs, who as proposed must have adequate equine experience in addition to a valid veterinary or veterinary technician degree, should not be held to a higher standard than the APHIS employee(s) who would be training them.

Any APHIS employees in supervisory, training, or oversight positions will have sufficient levels of knowledge and experience to effectively train and license HPIs. Such employees will have undergone their own formal training to ensure subject matter proficiency prior to training prospective HPIs.

Two commenters expressed concerns about APHIS' ability to verify credentials of HPI applicants based on the 2013 OIG Audit Report "Verifying Credentials of Veterinarians Employed or Accredited by USDA." The commenters stated that this report shows that the USDA did not adequately verify prospective veterinarians' education requirements, equivalent degrees, specialized experience and/or references, and questioned how future applicants will be sufficiently vetted with continuing issues related to cost and applicant shortages.

We are confident in APHIS' ability to review HPI applicants as outlined in this final rule. If there are any questions concerning a prospective applicant's educational or other qualifications, APHIS can conduct additional inquiries to verify the information with State licensing boards and other agencies and organizations.

We proposed to include a provision in paragraph (b)(1) of revised § 11.6 stating that APHIS will not license any person as an HPI if that person has been convicted or found to have violated any provision of the Act or the regulations in 9 CFR part 11 occurring after July 13, 1976, or has been assessed any fine or civil penalty, or has been the subject of a disqualification order in any proceeding involving an alleged violation with the Act or regulations occurring after July 13, 1976. Anyone who has been found in violation with the Act or subject to an order assessing a fine or civil penalty or imposing a disqualification period will not be allowed to be an HPI.

A commenter recommended that this provision be expanded to make any conviction under State or Federal law for animal cruelty or neglect, or any administrative penalty or suspension imposed for violating professional licensure requirements, a disqualifying factor for licensure as an HPI.

We are making no changes in response to the comment. The commenter noted also that proposed §§ 11.6(b)(4)(i) and (ii) touch on these issues and we believe that the language in these paragraphs, which is codified in this final rule, adequately addresses the types of convictions, penalties, and suspensions cited by the commenter.

Another commenter expressed concern that HPI applicants APHIS has determined to be in noncompliance with the Act would not be eligible for licensing under the proposed HPI requirements. The commenter stated that such a rule precludes those who have been in

noncompliance with the Act from being afforded their full rights to due process in appealing to the USDA, and referred to the provision as arbitrary and capricious.

As outlined in proposed § 11.6, any person who is assessed a penalty or other sanction under the Act is afforded the opportunity for a hearing regarding the matter. With respect to licensing eligibility, the current standard for licensing DQPs includes a provision to prohibit those who have been in violation with the Act from becoming licensed inspectors for a period of at least 2 years following the first such violation, and for a period of at least 5 years following the second such violation and any subsequent violation with the Act. The proposed rule removes the time period restrictions to prohibit any person convicted or found to have been in violation with the Act or its regulations from obtaining a license as an HPI. The reason for this requirement is to ensure that all inspectors meet the same high level of professional integrity and reputation in carrying out the duties of an HPI. This requirement also ensures that all horses receive the benefit of a safe, proper, and unbiased inspection. HPI applicants may appeal the denial of a license application to the Administrator within 30 days from the date of the decision as outlined in proposed § 11.6(e).

A commenter representing a walking horse organization disagreed with the inclusion of the phrase “found to have violated” in proposed § 11.6(b)(1). The commenter stated it is vague and could refer to a finding other than a conviction in a court or administrative proceeding.

We are making no changes in response to this comment. In the context of the paragraph the phrase clearly indicates that persons are disqualified from being licensed as an HPI if they are found to have violated any provisions of the Act or regulations. A finding of a violation is made after an adjudicatory proceeding in any form, including civil, criminal or administrative, or in the context of an admission in a plea agreement, consent decision and order, or similar document.



We also proposed in § 11.6(b)(2) a restriction against licensing any person as an HPI if that person, any member of that person's immediate family, or that person's employer participates in the showing of horses or acts as a judge or farrier, or is an agent of management involving any Tennessee Walking Horses and racking horses.

A commenter disagreed with this provision because it only disqualifies people from serving as HPIs if they engage in activities with specific breeds, with no reason given for this distinction from other breeds. The commenter also disagreed with our use of the word "agent," stating that it could be applied to routine banking or real estate transactions.

We agree with this commenter that the restriction against licensing any person as an HPI if that person or his or her employer or immediate family participates in the showing of horses or acts as a judge or farrier, or is an agent of management should extend to all breeds, as the potential for a conflict of interest is the same. This final rule amends the regulations accordingly. With respect to our use of the word "agent," we consider the meaning to be clear within the context of the paragraph.

A commenter asked that we include additional conflicts of interest that preclude licensing of persons as HPIs, including persons receiving a letter of warning or having been the subject of a request for a letter of warning and persons having any contractual or business connection with management. The commenter also asked that we add a statement to the regulations that allows APHIS to refuse to license an applicant on grounds not specifically provided in the regulations.

We consider the grounds we proposed for denying licenses to applicants to be sufficient to address potential conflicts of interest.

One commenter expressed concern that this provision would exclude a valuable subset of horse owners, farriers, and trainers with horse experience, expertise, and passion from becoming

HPIs. The commenter stated that the proposed terms to eliminate conflicts of interest were overly broad and suggested that more reasonable criteria be proposed.

We disagree with the commenter that the restriction against licensing HPIs with conflicts of interest is overly broad. Evidence in the 2010 OIG audit report clearly demonstrates the conflicts of interest that exist with the existing restrictions for DQPs and the ineffectiveness of the resulting system. Our experience in administering and enforcing the Act and regulations, and overseeing DQP performance, confirms that eliminating such conflicts of interest is critical to the task of strengthening the inspection process.

A commenter asked that the proposed prohibition regarding conflicts of interest should also apply to family or employers participating in exhibitions, sales, and auctions of Tennessee Walking Horses, not just shows.

We acknowledge the commenter's observation and are amending the provision to include any horse shows, exhibitions, sales, and auctions.

We proposed in revised § 11.6(b)(4) that APHIS will not license any person as an HPI if the professional integrity, reputation, honesty, practices, and reliability of the person do not support a conclusion that the applicant meets the minimum requirements of § 11.14. The information that APHIS will consider in reaching a conclusion that an applicant meets the minimum required standards to become an HPI includes: Criminal conviction records; official records of the person's actions while participating in Federal, State, or local veterinary programs; judicial determinations in any type of litigation; and any other evidence that reflects on the integrity, reputation, honesty, practices, and reliability of the person.

We outlined the requirement in proposed § 11.6(c)(1) that persons wishing to become an HPI will have to submit an application to APHIS, show that they satisfy the qualifications and requirements for licensure, and complete a formal training program administered by APHIS.

We proposed to include a requirement providing that, after an HPI candidate successfully completes all the requirements proposed in § 11.6, he or she will be licensed for 1 year. Licenses will terminate after 1 year and all HPIs will be required to reapply if they wish to be licensed another year.

One commenter asked if there will be a test of equine knowledge for HPI qualification.

Yes. The proposed rule states in § 11.6(c)(1), “Licensing of HPIs,” that applicants selected as candidates to become HPIs will complete a formal training program administered by APHIS to include instruction on anatomy and physiology of the limbs of a horse, the Act and its regulations, the history of (and inspection procedures to detect) sorning, practical instruction using live horses, HPI standards of conduct, and recordkeeping requirements. As indicated in § 11.6(c)(2), after a candidate successfully completes the formal training program as outlined in this section, he or she must pass a written examination before being issued a license.

One commenter questioned whether there would be expected annual application fees for HPIs.

There will be no annual application fees.

We proposed to include inspector requirements in a revised paragraph § 11.6(d) titled “Requirements to be met by HPIs.”

We proposed in § 11.6(d)(1) that any licensed HPI appointed and retained by management to inspect horses for the purpose of determining compliance with the Act and regulations must collect and maintain certain records concerning any horse which the HPI

recommends be prohibited for any reason from such horse show, exhibition, sale or auction, from being shown, exhibited, sold, or auctioned.

We also proposed in § 11.6(d)(2) that copies of records must be submitted by the HPI to management and to APHIS within 72 hours of conclusion of the horse show, exhibition, sale, or auction. In addition, proposed § 11.6(d)(3) would require that the HPI, after completing the inspection, informs the custodian of each horse found noncompliant with the Act or its regulations, or prohibited for any other reason, of such action and the specific reasons for such action.

A commenter stated that this provision should be modified to provide that for each horse an HPI finds to be noncompliant with the Act and regulations, the HPI must provide the custodian with the information set out in proposed § 11.6(d)(1)(viii).

In § 11.14(d)(4) of this final rule, we are requiring that the HPI shall immediately notify management of any horse which, in the HPI's opinion, is sore or otherwise not in compliance with the Act or regulations. Management alone is responsible for disqualifying and prohibiting sore horses from being shown, exhibited, sold, or auctioned. We view the logistics of how management elects to notify the owner, trainer, or other person having immediate custody or responsibility for a horse of its decision to be a matter of management's discretion.

In proposed § 11.6(e), we proposed that APHIS may deny or revoke a license for any of the reasons proposed in revised § 11.6(b), and will revoke the license of any HPI who fails to follow the inspection procedures set forth in proposed § 11.12, or who otherwise carries out his or her duties and responsibilities in a less than satisfactory manner. Upon denial or revocation of a license, the applicant or HPI may appeal the denial or revocation to the Administrator within 30 days from the date of such decision, and the Administrator will make a final determination in

the matter. If the Administrator upholds the denial or revocation of the license, the applicant or HPI will be given notice and opportunity for a hearing. Hearings will be in accordance with the Uniform Rules of Practice for the Department of Agriculture in 7 CFR 1.130-1.151. The license denial shall remain in effect until the final decision has been rendered.

We proposed in § 11.6(f) the provision that inspectors licensed by an HIO prior to the effective date of this rulemaking will no longer be allowed to perform inspection duties under that license after the effective date, and that persons seeking to become inspectors after the effective date of this rulemaking will need to apply for a license issued by APHIS and fulfill all HPI eligibility requirements included in revised § 11.6.

One commenter asked that we extend current DQP licenses beyond the effective date of the final rule so that inspections of events can continue until APHIS is able to train and license new HPIs.

In this final rule, we are delaying the effective date of the implementation of all sections, other than §§ 11.2 and 11.14, until January 1, 2018. Current DQP licenses will remain valid until that effective date. Concurrently, we are making § 11.14 effective on [Insert date 30 days after date of publication in the Federal Register] to allow sufficient time to train and license HPIs and ensure an adequate number before the start of the 2018 show season.

#### Other Concerns

A commenter requested improved safeguards against conflicts of interest with inspectors and management. Another commenter raised concerns about the potential for retaliation against local veterinarians who become licensed as HPIs.

The purpose of the proposed system of licensing, training and overseeing HPIs is tailored specifically toward eliminating conflicts of interest between inspectors and management,

trainers, owners, or other industry personnel. While the 2010 OIG audit report references the threatening atmosphere in many horse shows and other events where APHIS representatives are present, we are unaware of any threats made to DQPs. However, in an abundance of caution, we proposed in § 11.9(b) (final rule §§ 11.6(a) and 11.9(b)) provisions to require management to provide safe conditions for APHIS representatives, and applied most of those same safeguards to HPIs. These provisions proposed that management must control crowds or onlookers so that APHIS representatives may carry out their duties safely and without interference, and that management must not impede, intimidate, or interfere with APHIS representatives or influence attendees to do the same.

Two commenters stated that APHIS is acting in conflict with the HPA in replacing the current DQP program, finding that the proposed HPI system would remove the horse industry's role in enforcing the HPA. The commenters cite § 1823(c) of the HPA, which states that “[APHIS] shall prescribe by regulation requirements for the appointment by management of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for the purposes of enforcing this chapter.” The commenters indicated that Congress intended with this provision for the horse industry to hold a significant role in HPA enforcement, and that the proposed HPI system both removes the role of the industry through the removal of HIO regulatory responsibilities, and makes HPIs de facto agents of APHIS instead of third-party inspectors. One of the commenters further note that APHIS' role in licensing and training HPIs would constitute a conflict of interest between APHIS and inspectors.

We disagree with the commenters that the HPI program conflicts with the provisions or intent of the HPA and makes HPIs de facto agents of APHIS, and note that § 1823 of the Act gives clear authority to APHIS both to regulate the requirements for inspector appointments and

to conduct its own inspections. In addition to directing the Secretary to establish regulations for the appointment by management of persons qualified to conduct inspections under the Act, this section also provides that the appointment of inspectors “...shall not be construed as authorizing such person to conduct inspections in a manner other than that prescribed for inspections by the Secretary (or the Secretary’s representative) under subsection (e).” Subsection (e) of § 1823 provides that “[f]or purposes of enforcement of this chapter (including any regulation promulgated under this chapter) the Secretary, or any representative of the Secretary duly designated by the Secretary, may inspect any horse show, horse exhibition, or horse sale or auction or any horse at any such show, exhibition, sale or auction....” We further note that the relevant 1976 amendments to the HPA were principally intended to alleviate burdens the Agency had encountered in its previous enforcement efforts and that contemporaneous statements by the Executive Branch indicated an intent to have veterinarians serve in this capacity.

We also disagree with the commenters’ statements regarding the horse industry’s role in relation to the HPI program; show managers are part of the horse industry and will remain integral to the inspection process, including the hiring of HPIs. Additionally, though APHIS will train, license, and oversee HPIs, HPIs will not be employed by or agents of the Agency. We disagree with the commenter that the HPI program would present a conflict of interest with APHIS and HPIs in conducting inspections, as the Agency has no vested interest in HPA-covered events except to enforce the HPA and regulations.

Management Responsibilities: Access, Space, and Facilities (Proposed § 11.9, Final §§ 11.5 and 11.6).

We proposed in § 11.9 to include space and facility provisions requiring management to provide safe and accessible space and facilities for authorized HPIs and APHIS representatives

to carry out duties under the Act and regulations, including inspection of horses and records, whether or not management has received prior notification or otherwise knows that the show, exhibition, sale, or auction may be inspected by APHIS.

We proposed in § 11.9(a)(1) that management must, without fee, charge, assessment, or other compensation, provide authorized HPIs and APHIS representatives with unlimited and unrestricted access to the grandstands, sale ring, barns, stables, grounds, offices, and all other areas of any horse show, exhibition, sale, or auction. Proposed § 11.9(a)(2) similarly requires that management provide authorized HPIs and APHIS representatives with an adequate, sufficient, safe, and accessible area for the visual inspection and observation of horses while such horses are competitively or otherwise performing at any horse show or exhibition. This requirement also applies while such horses are being sold or auctioned, or offered for sale or auction.

As we proposed, we are including space requirements in § 11.9(b)(1) through (b)(3) (in the final rule: § 11.6(a)(1) through (a)(5)). Paragraph (b)(1) requires that management provide sufficient space in a convenient location to the horse show, exhibition, sale, or auction arena, acceptable to authorized HPIs or APHIS representatives, in which horses may be physically, thermographically, or otherwise inspected for soiling.

One commenter stated that the space requirements necessary for the use of thermographic equipment during inspections would impose a financial burden on management.

We are making no changes in response to this comment. This provision, with the exception of minor clarifying changes, has been in the existing regulations for decades. Based on our experience conducting inspections at HPA-covered events, meeting this requirement has not imposed a financial burden on management.



Proposed paragraph § 11.9(b)(2) requires that management provide protection from the elements of nature, such as rain, snow, sleet, hail, and wind for the inspection space at every event so that inspections can be performed safely and accurately.

Some commenters disagreed with the proposed space requirements. One commenter stated that there is not always access to indoor facilities at many local horse shows, and that the requirement to provide protection from elements of nature places an undue burden on smaller organizations. Another commenter noted that many gaited horse shows are held at schools, athletic fields, and small parks that are not set up to accommodate these sheltering requirements.

We are making no changes, as the space requirements in the proposed and final rule do not differ significantly from current provisions for horse shows, exhibitions, sales, and auctions. Historically, we have not observed problems with management meeting these requirements.

In proposed paragraph (b)(3) we also added a requirement that management maintain control of crowds or onlookers in order that authorized HPIs and APHIS representatives may carry out their duties safely and without interference. In the proposed rule, we requested public comment on instances in which it would be necessary to hire security personnel to protect HPIs. We also proposed the requirement that management ensure that each horse in the designated inspection and warm-up areas be accompanied by no more than three individuals, including the trainer, rider, and the custodian. Official guests of management, such as elected officials, legislators, and technical advisers will be allowed access to the designated inspection and warm-up areas for limited periods of time at the discretion of management and only with the concurrence of an authorized HPI or APHIS representative.

One commenter stated that elected officials, legislators, and technical advisers pose no threat to inspectors and will not limit proper inspections, and requested that the requirement be

removed from the proposal. Other commenters similarly stated that spectators and advisors pose no problems in the inspection area.

We disagree with these commenters. Persons congregating in inspection areas can jeopardize their own safety as well as the safety of custodians and inspectors should a horse become unruly. We had noted in the proposed rule that people congregating in designated inspection and warm-up areas can impede the ability of APHIS representatives to perform their duties. After review of the proposed provision and available data and information on security threats and incidents at HPA-covered events, we are amending the regulations in this final rule to allow only the person having immediate custody or responsibility for the horse to accompany the animal into the inspection area, while retaining the proposed allowance for up to three individuals to accompany the horse in the designated warm-up area. We also make clear that management is allowed in the inspection and warm-up areas and that official guests of management, such as elected officials, legislators, and technical advisors may be allowed access to the warm-up area and inspection area for limited periods of time at the discretion of management and only with the concurrence of an APHIS representative, if present. No other persons are allowed in the warm-up or inspection areas.

Another commenter stated that this requirement limits those accused of noncompliance with the Act of their right to defend themselves through the limitation of potential witnesses and limits participants' right to assemble.

We are making no changes in response to this comment. Inspections are typically within view of other persons in or around the inspection area. The requirement to prohibit an excessive number of persons in the inspection area ensures that inspectors can do their jobs effectively and safely.

We proposed to include in § 11.9(b)(3)(ii) a requirement that management must not in any way influence attendees to assault, resist, oppose, impede, intimidate, or interfere with authorized HPIs or APHIS representatives.

One commenter stated that security for APHIS representatives at shows is a needless expenditure of government money, as the commenter has seen no threatening behavior or intimidation at shows. Another commenter representing a walking horse organization stated that the provision violates management's free speech rights, and is overly broad in restricting forms of communication between management and attendees relating to inspectors.

The requirement does not restrict communication between management and attendees or other persons, but instead prohibits persons from influencing show attendees to assault, resist, oppose, impede, or intimidate, or interfere with HPIs and APHIS representatives. We also consider it a matter of safety to protect inspectors from physical harm. As we noted in the proposed rule, our experience, which is corroborated by the USDA OIG report, has shown that threatening and intimidating behavior toward APHIS officials has occurred within inspection areas.

This comment highlighted for us the need to further clarify and conform this change to the regulations to track the statutory intent of 15 U.S.C. 1825(a)(2)(C), which states that: "Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this chapter shall be fined not more than \$5,000, or imprisoned not more than three years, or both," and with the prohibitions in 15 U.S.C. 1824(9), which makes unlawful the failure or refusal to permit entry or inspection, as required by Section 1823 of the HPA. Accordingly, we further clarify in § 11.5(c) of this final rule that no person shall assault, resist, oppose, impede, intimidate, or

interfere with APHIS representatives or in any way influence attendees of a horse show, exhibition, sale, or auction to do the same.

We proposed to include in § 11.9(b)(4) the requirement that management provide an accessible, reliable, and convenient 110-volt electrical power source for the inspection space if requested by an authorized HPI or APHIS representative.

A few commenters stated that this requirement would be a burden on smaller horse shows and exhibitions, as many such events are held in fields and other open areas where an electric source is not readily available. Another commenter stated that APHIS has not provided a reasoned analysis why it is changing this requirement from what in the existing regulations.

In response to these comments, we are retaining the existing regulation, which only applies when electrical service is available at the horse show, exhibition, sale, or auction.

Management Responsibilities; Operation of Horse Shows, Horse Exhibitions, and Horse Sales and Auctions (Proposed § 11.10).

We proposed in § 11.10(a)(1) a requirement that management of any horse show, horse exhibition, or horse sale or auction involving Tennessee Walking Horses, racking horses, and related breeds notify the Administrator of the event at least 30 days before it begins by mail, fax, or electronic means such as e-mail. Notification must include: The name and location of the show, exhibition, sale, or auction; the name and address of the manager; a phone number and e-mail address (if available); the date or dates of the show, exhibition, sale, or auction; and a copy of the official horse show, exhibition, sale, or auction program, if any such program has been

prepared. Notification will also have to include the names of the APHIS-licensed HPIs scheduled to perform inspections at the horse show, exhibition, sale, or auction.

A number of commenters objected to the 30-day advance notice for shows, with some stating there should be no requirement for providing advance notice. One commenter stated that the requirement will burden local, backyard gaited shows and suggested that it be waived for small shows with fewer than 20 horses. Similarly, a commenter requested that 4-H or small community events that include a couple of flat shod country pleasure classes with fewer than 20 gaited horses not be required to notify APHIS.

We disagree with the commenter that the notification requirement itself constitutes a burden, as the same amount of information is required regardless of the number of horses participating in the event. We are also amending the section to specify that it applies to all horse shows, exhibitions, sales, or auctions that include Tennessee Walking Horses and racking horses, which have a history of soring and for which soring continues to be a concern.

In paragraph (a)(2) of proposed § 11.10, we required management to ensure that no action devices or substances prohibited under § 11.2 are present in the warm-up area.

One commenter representing a walking horse organization noted that there is no parallel provision in the current regulations and stated that while this proposed provision requires management to ensure that no devices or substances prohibited under §11.2 are present in the warm-up area, this is unfair because other provisions of the rule prohibit management from being in the warm-up area.

We note that there is no parallel provision in the current regulations because we are adding new provisions prohibiting action devices (other than certain boots) and substances on horses on the show grounds and at all sales and auctions. However, we acknowledge the

commenter's concern over the need to allow management in the warm-up area to enforce the prohibitions listed in proposed § 11.2. Therefore, we are adding a "management" representative to the list of persons allowed in the warm-up area in proposed § 11.12(c)(2) (in the final rule: § 11.6(b)).

In paragraph (a)(3) of proposed § 11.10, we required that management post the list of people who have been disqualified by USDA in a prominent place at the event. We included these requirements because we agreed with the USDA OIG audit indicating that current operating requirements are insufficient to enforce prohibitions on persons who have been disqualified from participation in horse shows, exhibitions, sales, and auctions. We proposed in paragraph (a)(4) that management check the people entering horses in the horse show, exhibition, sale, or auction against the list of people who have been disqualified by USDA and prevent them from entering their horses if they are on the list.

One commenter asked whether management is responsible for maintaining documentation showing that they have checked the licenses or other identification of persons entering horses against the list of disqualified persons. The commenter recommended changing this requirement in (a)(4) to "Prohibit anyone on the list noted in paragraph (a)(3) from entering their horses."

We agree with the intent of this comment and have revised the regulations in this final rule to require management to review the orders of the Secretary disqualifying persons from showing or exhibiting any horse, or judging or managing any horse show, exhibition, sale, or auction and disallow the participation of any such person in any horse show, exhibition, sale, or auction, for the duration of the period of disqualification.

One commenter noted that the requirement for management to check identification was a task previously handled by the HIO or DQP. The commenter argued that this would be an additional burden placed on management.

The HPA has long held management liable for penalties for knowingly allowing any person under an order of disqualification to participate in their event and is therefore the entity responsible for ensuring that no person under disqualification participates in a HPA-covered event. Accordingly, we do not believe the requirement codified in this final rule represents a new burden to management. Moreover, although management is responsible for meeting this requirement, management may arrange for another person to perform this task on its behalf.

A commenter representing a walking horse organization stated that the current regulations do not impose such an obligation to post such a list and that it would impose costs on management and conflict with free speech rights.

We are amending the regulations in this final rule to more specifically require that management review the orders of the Secretary disqualifying persons from showing or exhibiting any horse, or judging or managing any horse show, exhibition, sale, or auction and disallow the participation of any such person in any horse show, exhibition, sale, or auction, for the duration of the period of disqualification. This final rule contains no requirement that such a list be posted at a horse show, exhibition, sale, or auction.

In proposed § 11.10(a)(5), we required that management ensure (verify) that all horses entered in the horse show, exhibition, sale, or auction be properly identified by one of the following methods: A description sufficient to identify the individual equine, as determined by APHIS, to include name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (e.g., brands, tattoos, scars, cowlicks, or

blemishes); electronic identification that complies with ISO 11784/11785;<sup>13</sup> an equine passport issued by a State government and accepted in the government of the State in which the horse show, exhibition, sale, or auction will occur; or digital photographs sufficient to identify the individual equine, as determined by an authorized HPI or an APHIS representative. If any such horses belong to a registry, the registry number and registry records have to be provided to an authorized HPI and/or APHIS representative upon request. We noted in the proposed rule that APHIS may add at its discretion additional forms of identification. In this final rule, we are codifying these provisions, with the exception of allowing a horse to be identified by digital photographs, which have the potential for error and to be labor-intensive, insofar as the proposed rule would require an HPI or APHIS to determine that the photographs are sufficient to individually identify horses.

The management of a horse show, exhibition, sale or auction is not required under the current regulations to designate and appoint inspectors to conduct inspections. The proposed regulations retain this provision. However, consistent with the HPA, this final rule provides that management not using an inspector from the list of APHIS-trained and licensed inspectors will be held liable for the participation of any sore horse in an HPA-covered event. Management will also have to fulfill the notification requirements in paragraphs (b)(2) and (b)(3). If they choose to use APHIS-licensed inspectors, management may be held liable for failing to disqualify from being shown or exhibited or prohibit from being sold or auctioned any horse (1) which is sore, and (2) after having been notified by such person or the Secretary that the horse is sore or after otherwise having knowledge that the horse is sore. Horses entered in a sale or auction shall be inspected for soreness and identified as sore prior to entering the ring. Sore horses that have

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<sup>13</sup> An international standard regulating the radio frequency identification (RFID) of animals.



been entered in a show or exhibition for the purpose of showing or exhibition will have to be identified and disqualified by management. Sore horses participating in a show or exhibition compete unfairly with horses that are not sore. Management will be responsible for prohibiting such horses from participating in HPA-covered events immediately (e.g., before they are placed in a class or the completion of the event).

In proposed § 11.10(b)(1), we included the requirement that any horse placing first, second, or third, and any other horses indicated by management in each Tennessee Walking Horse, racking horse, or related breed class or event at any horse show or exhibition, would have to be inspected after being shown or exhibited to determine if such horses are compliant with the Act or regulations. We also proposed to require that, in instances where a horse is found sore during participation in a horse show, exhibition, sale, or auction, management shall disqualify the horse from further competition.

One commenter noted a discrepancy between the inspection requirements in this section and in proposed § 11.12 with respect to which horses must be inspected at horse shows and exhibitions.

In proposed § 11.12(a)(1), we stated that horses that perform with an accentuated gait that raises concerns about soring and that are tied first in their class or event are required to be inspected, as well as any other horses in a class or event at any horse show or exhibition that, in the view of the HPI, raises concerns about soring. We intended to require inspection for horses that place first, second, and third, along with any other horses indicated by management in each class or event. Therefore, we are establishing these requirements in §§ 11.15(a)(1)(iv) and 11.9(a) of this final rule.

A commenter asked that APHIS clarify language on whether management disqualifications should be done at the tying of a class or the completion of a show.

It is the responsibility of management to ensure that sore horses are not unfairly competing with horses that are not sore. In this final rule, we clarify that, if a horse is found sore during actual participation in a HPA-covered event, management must immediately disqualify the horse.

Under proposed § 11.10(b)(2), we required that copies of the records required under proposed § 11.6(d)(1) be collected and submitted by management to APHIS within 72 hours after the horse show, exhibition, sale, or auction is over.

One commenter asked whether it is management's responsibility to obtain the required documentation and provide copies to APHIS when there is no HPI working at an event.

For shows who do not use HPIs, it is management's responsibility to provide this documentation to APHIS. Shows and other events that do not use HPIs are subject to the same recordkeeping and reporting requirements as those using HPIs, with the exception of information identifying HPIs.

We required in proposed § 11.10(c)(1) that management appoint a minimum of two HPIs when 150 or fewer horses are entered in an event and more than two HPIs when more than 150 horses are entered.

Many commenters stated that the cost of requiring 2 HPIs at every show or event involving 150 or fewer horses will constitute a prohibitive cost burden. Commenters frequently cited small local horse shows and shows held to benefit charities that would be most negatively affected. Some commenters suggested various numbers of horses for which shows hiring licensed HPIs would only need to hire one inspector. One such commenter stated that hiring one

HPI if 75 or fewer horses are entered would be sufficient. Another placed the number for a single HPI at 30 or fewer horses and stated that 2 HPIs and a farrier for 60 or more horses would be appropriate. A commenter noted that the number of horses that may be entered in a small show can vary widely, making it difficult for management to decide in advance whether to hire only two HPIs and risk being in noncompliance with the Act if the number of horses entered exceeds 150.

We acknowledge the commenters' concerns regarding the number of HPIs required to be designated and appointed at a horse show, exhibition, sale, or auction and the potential impact of the proposed requirements on small shows. Accordingly, we have amended proposed § 11.10(c)(1) (in the final rule: § 11.9(b)(2)) to require that management that designates and appoints APHIS-licensed HPIs to inspect horses must designate and appoint at least one HPI if 150 horses or fewer are entered in the event. If more than 150 horses are entered in the horse show, exhibition, sale, or auction, the management must designate and appoint at least two APHIS-licensed HPIs, should management elect to appoint and retain HPIs. These numbers of required HPIs are the same as those in current § 11.20(c). We emphasize that it remains the responsibility of management to designate and appoint a sufficient number of HPIs to inspect sore horses with the goal of preventing such sore horses from competing in events.

We also included in proposed § 11.10(c)(1) the requirement that management must make a farrier available to assist with inspections at every horse show, exhibition, sale, and auction.

Substantial numbers of commenters questioned the need for a farrier at every show, many of whom cited the cost burden on small shows. One commenter asked if farriers are only required at shows with HPIs. Several commenters stated that a farrier would be an unnecessary financial expense for small flat shod shows such as those that have a show without the shoe or

“don’t show” rule. The commenter suggested that shows with fewer than 20 horses need not have a farrier present to help with inspections. Another commenter asked that we consider an "on-call" farrier requirement for shows with fewer than 75 horses. One commenter asked whether the farrier requirement applied to all breeds or only those in danger of soring. A commenter noted that there exists no accredited, professional course of training and study required to work as a farrier and raised several questions about the farrier’s role; in particular, what certification and qualifications are necessary, who will select the farrier, and what legal responsibilities will the farrier have. The commenter recommended that we amend the requirement to specify “licensed, professional” farriers.

Because this final rule continues to allow for the use of pads and wedges for therapeutic treatment of Tennessee Walking Horses and racking horses, we continue to believe that it is necessary for management to make a farrier available to assist with inspections of horses at horse shows, exhibitions, sales, and auctions that allow such horses to participate in a horse show, exhibition, sale, or auction. To accomplish this objective, however, we believe that a farrier need only be physically present if more than 150 horses are entered in the horse show, exhibition, sale, or auction and if the horse show, exhibition, sale, or auction allows Tennessee Walking Horses or racking horses to participate in therapeutic pads or wedges. For horse shows, exhibitions, sales, and auctions with 150 or fewer horses entered in the HPA-covered event, management must, at minimum, have a farrier on call to come to the event if the horse show, exhibition, sale, or auction allows Tennessee Walking Horses or racking horses to participate in therapeutic pads or wedges. We have amended the regulations in this final rule accordingly.

Under proposed § 11.10(c)(4), we required that management not dismiss or otherwise interfere with an HPI during the HPI’s appointed tour of duty, which is the duration of the show,

exhibition, sale, or auction. If management believes that a horse is sore but it is not identified as sore by the HPI, management will prohibit that horse from participating and immediately notify the Administrator, in writing, as to why the performance of an HPI was inadequate or unsatisfactory. Management shall prohibit from being shown, exhibited, sold, or auctioned any horse identified by the HPI to be sore or otherwise known by management to be sore. Should management fail to prohibit any such horse from being shown, exhibited, sold, or auctioned, management will assume full responsibility for and liabilities arising from the showing, exhibition, sale, or auction of such horses.

One commenter asked how APHIS will stand behind management's decision if the HPI does not disqualify a horse that management deems sore.

Management is responsible for disqualifying and prohibiting sore horses from being shown, exhibited, sold, or auctioned at HPA-covered events. If management fails to disqualify or prohibit a horse from being shown, exhibited, sold or auctioned and it had knowledge that the horse was sore, management may be subject to penalties and other sanctions under the HPA, after notice and an opportunity for a hearing has been provided.

Management Responsibilities: Records and Reporting (Proposed § 11.11, Final §§ 11.10, 11.11, and 11.12).

In the proposed rule, we consolidated the records and reporting requirements for management in a new § 11.11 titled “Management Responsibilities: Records and Reporting.”

In proposed § 11.11(a)(1), we required that management maintain all records for a period of at least 6 years, instead of the current 90 days, following the closing date of the show, exhibition, or sale or auction. We are making the record maintenance requirements specifically for horse shows, exhibitions, sales, and auctions that include Tennessee Walking Horses and

racking horses to ensure that records remain available for verifying compliance with the Act and regulations.

A few commenters stated that there was not enough storage capacity for small organizations and clubs to keep records for 6 years. One commenter stated that many small shows would need to implement more extensive computer systems to comply with this requirement. Another commenter noted that shifting the recordkeeping burden from HIOs to management would make this requirement especially difficult, particularly given the previous 90-day record maintenance requirement. One commenter stated that 3 years is sufficient time, and another suggested a 2 year requirement unless a dispute arises. A commenter asked that we evaluate management responsibilities to get a better sense of their administrative burdens.

We acknowledge the burdens cited by the commenters and are retaining the existing 90-day recordkeeping requirement in this final rule and adding that management must submit the records to APHIS within 30 days following the conclusion of the show or other HPA-covered event. These changes would relieve management of any record maintenance requirements beyond the existing 90-day retention period while ensuring the Department has records necessary to effectively administer the HPA, including, but not limited to, conducting investigations into alleged violations of the HPA.

In proposed § 11.11(c)(1), we included the requirement that following the conclusion of any horse show, exhibition, sale, or auction featuring Tennessee Walking Horses, racking horses, or related breeds, the management will have to submit to the Administrator the information required by proposed § 11.11(a)(1) and submit a report listing the name, exhibition number and class number, or assigned sale number, and the registration name and number (if applicable) for each horse disqualified from being shown, exhibited, sold or auctioned, and the reasons for such

action. We will allow this information to be submitted within 30 days following the conclusion of the show or other event to give management more time to compile the information. If no horses are disqualified, the management will still be required to submit a report stating this fact.

One commenter stated that post-show reporting is a burden and asked APHIS to provide electronic forms for management to submit to APHIS.

We are always seeking ways to streamline the reporting process for stakeholders and will take the commenter's suggestion into consideration.

We also included in proposed § 11.11(c)(2) the existing requirement that following the conclusion of any horse show, exhibition, or sale or auction that does not include Tennessee Walking Horses, racking horses, or related breeds, the management must inform the Administrator of any case where a horse was disqualified by management or its representatives from being shown, exhibited, sold or auctioned because it was found to be sore. We will allow this information to be submitted within 30 days following the conclusion of the show or other event.

One commenter asked what type of documentation is acceptable to APHIS to substantiate a decision by management to disqualify an entry if the HPI disagrees.

APHIS requires no documentation for this decision. We note that proposed § 11.10(c)(4) (final § 11.9(b)(4)) states that management, not the HPI or APHIS, is responsible for the decision to disqualify a horse. If management has knowledge that a horse is sore, management should disqualify or prohibit the horse from participating in the event.

Inspection Procedures for HPIs (Proposed § 11.12, Final §§ 11.6 and 11.15).

We proposed to add a new § 11.12 in which inspection procedures in the existing regulations in § 11.20, § 11.21, and elsewhere in part 11 will be consolidated and revised. As a result of this change, we are removing §§ 11.20 and 11.21 from the regulations.

We included a requirement in proposed § 11.12(a)(1) that the HPI physically inspect all horses for which soring is a concern that are:

- Entered for sale or auction;
- Entered in any accentuated gait class (whether under saddle, horse to cart, or otherwise), regardless of breed;
- Entered for exhibition before they are admitted to be shown, exhibited, sold, or auctioned, except as provided in proposed § 11.12(a)(2);
- Placed first, second, or third in their class or event; and
- Any other horse in a class or event at any horse show or exhibition that, in the view of the HPI, raises a concern about soring. Such an inspection will be for the purpose of determining whether any such horses are in compliance with the Act or regulations.

Such physical inspection will be conducted in accordance with the inspection procedures provided for in proposed § 11.12.

A commenter opposed to the rule stated that USDA inspectors at events unfairly focus their inspections on padded horses. Several commenters disagreed with our inclusion of the language “regardless of breed” in proposed § 11.12(a)(1)(ii) with the requirement that all horses for which soring is a concern be physically inspected. Many of these commenters stated that this language would include trotting breeds such as Morgans, Saddlebreds, and Arabians.



Consistent with the existing requirements for inspections conducted by DQPs, we are focusing the inspection requirements for HPIs on Tennessee Walking Horses and racking horses in this final rule because we have reason to believe that soring is of greatest concern in those breeds of horses. For example, our records show that the majority of cases where sore horses and other noncompliances occur is at shows featuring Tennessee Walking Horses and racking horses that wear stacked pads and action devices.

In proposed § 11.12(a)(2), we included the requirement that when a horse is presented for inspection, its custodian must present the HPI with a record or entry card that includes the horse's required identifying information.

Several commenters asked questions about this proposed requirement, including who issues the card, whether the card can be used all year or only for each exhibition, whether the card will have a fee, and how the HPI confirms that the identifying information matches the horse being presented.

Based on the commenters' questions and a reassessment of the requirement, we have determined that completing the entry sheet as is typically required by management will be a sufficient record for identification purposes and that no separate entry card is required. We are amending the regulations accordingly.

One commenter noted that we did not retain the provision from current § 11.20(b)(2) stating that if an inspector is at another show, he or she "shall examine any horse which he determines should be examined for compliance with the Act and regulations." The commenter stated that we are removing authority that should belong to the inspector and asked us to restore this "off-duty" authority at other shows.

The deletion of this provision from the proposed rule was inadvertent and we have retained the existing provision in this final rule. In addition, in response to this comment, we are clarifying this provision slightly to make clear that such inspections are not being conducted while a HPI is “off-duty” at other shows, but rather are being conducted by HPIs appointed and retained by management to conduct inspections other than those specifically prescribed by regulation. HPIs that are not appointed or retained by management should not conduct inspections in their official capacity at horse shows, exhibitions, sales, or auctions.

A commenter asked why APHIS officials should have the right to inquire as to whether a specific horse is in attendance at a show. The commenter also asked why APHIS officials should have access to a horse’s name, owner information, or trainer information.

Section 11.12(a)(2) was intended to identify horses that management already disqualified from showing, exhibition, sale, or auction at a particular show, exhibition, sale, or auction based on the results of a HPI inspection (e.g., during a proceeding class). However, we recognize that this proposed requirement is redundant with management’s responsibility to verify the identity of all horses entered in a horse show, exhibition, sale, or auction, and have therefore elected not to finalize this proposed change.

If an APHIS representative identifies a sore horse or other noncompliance during the course of an inspection, the APHIS representative will collect information from management and the person having immediate custody or control of the horse, including the name of the horse and owner and trainer information, for further review and potential enforcement action.

In proposed § 11.12(b), we included procedures that HPIs must follow while conducting inspections. These procedures help to ensure that HPIs can inspect the horse to determine whether the horse is in compliance with the Act or regulations. We required in proposed

§ 11.12(b)(1) that the HPI ensures that all tack except for a halter and lead rope is removed from the horse during inspection. This requirement is also included in proposed § 11.5(c).

Some commenters stated that this prohibition constitutes a safety issue, as the horse cannot be adequately restrained if it becomes unruly.

As we noted above in the discussion of proposed § 11.5(c), we are adopting the requirements as proposed. Horses that are preparing for competition can be reasonably expected to be well-trained and capable of standing still for the duration of the inspection. In the uncommon event of an unruly horse in the inspection area, the custodian will remain in close proximity to ensure a quick response.

In proposed § 11.12(b)(2) we required that during the preshow inspection, the HPI direct the custodian of the horse to lead, walk, and turn the horse in a figure-eight to allow the HPI to determine whether the horse exhibits a gait deficiency.

One commenter objected to our use of the phrase “gait deficiency” and requested that we amend it to “signs of soreness” as contained in the current regulations, as gait deficiencies can have many causes unrelated to soreness.

In response to this comment, we have retained the existing regulatory language in this final rule.

We included requirements in proposed § 11.12(b)(3) for proper manipulation of the hoof and limb of a horse during inspection. The digital palpation conducted throughout this process requires pressure against the hoof and limb sufficient to blanch, or whiten, the thumbnail of the inspecting HPI. The HPI will have to palpate the front limbs of the horse from knee to hoof, with particular emphasis on the fetlocks and pasterns. The HPI will also have to inspect the posterior surface of the pastern by picking up the hoof and examining the posterior (flexor)

surface. In addition, the HPI will have to digitally palpate the pocket (sulcus), including the bulbs of the heel, and continue the palpation to the medial and lateral surfaces of the pastern. During palpation of the hoof and limb, the HPI is required to watch for responses to pain in the horse such as sudden movements. While continuing to hold the pastern, the HPI will have to extend the hoof and limb of the horse to inspect the front (extensor) surfaces, including the coronary band.

Many persons submitted comments regarding current and proposed horse inspection procedures.

Several commenters opposing the rule expressed concern with what they referred to as the imprecise and subjective nature of horse show inspections and made appeals for the utilization of more scientific and objective inspection techniques. One commenter referred to the inspection protocol as a “look and feel” procedure, noting that the knowledge and perception of the individual inspector plays a role in each inspection. Another commenter stated that inspection procedures are not based on any acceptable veterinary scientific principles and that APHIS representatives ignore principles of veterinary science. Some commenters referenced specific technologies that they would like to see be used to detect soring, including thermography, blood tests, and swabs of a horse’s pastern area. The appeal of such methods, as indicated by these commenters, is that they would provide more uniform inspections with less potential for human error or bias. On the other hand, many veterinarians commenting on the rule stated that soring chemicals or numbing agents applied to a horse’s limb cannot typically be detected by a blood test alone, and a few recommended that blood tests, radiography, and other objective methods be used to supplement a finding of soring through palpation rather than a replacement of it.

While advancements in technology are beneficial for many aspects of medicine and provide excellent diagnostic capabilities for a number of conditions, it remains the case that soring is primarily characterized by the presence of pain, and that palpation is the most accurate and effective method for detecting pain in veterinary medicine.<sup>14</sup> As evidenced in the training, practice, and expertise of modern veterinarians, palpation is the cornerstone of the veterinary physical exam. Moreover, the Secretary of Agriculture's policy is that digital palpation is a highly reliable method to determine whether a horse is sore. The Secretary's reliance on palpation to determine whether a horse is sore is based upon the experience of a large number of veterinarians, many of whom have had 10 to 20 years of experience in examining many thousands of horses as part of their efforts to enforce the HPA. We agree that imaging, blood, and swab tests certainly could be used in conjunction with palpation and visual examination by licensed inspectors, as they have been used in the past to aid in detecting the presence of caustic chemicals and inflammation. Taken without palpation, diagnostic imaging or blood tests alone would likely miss critical evidence of soring in a horse.

Some degree of professional judgment is inherent in the inspection process. As some commenters noted, even a medical doctor who examines an x-ray must use his or her professional judgment to interpret the results. To ensure the most qualified individuals are performing inspections, we are limiting the initial HPI applicant pool to veterinarians, with the

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<sup>14</sup> "Valuable, modern diagnostic imaging techniques are no substitute for detailed visual inspection and thorough manual palpation of the limbs in weightbearing and nonweightbearing positions." *The Merck Veterinary Manual*. (September 2015). "The Lameness Examination in Horses." Retrieved from [http://www.merckvetmanual.com/mvm/musculoskeletal\\_system/lameness\\_in\\_horses/the\\_lameness\\_examination\\_in\\_horses.html](http://www.merckvetmanual.com/mvm/musculoskeletal_system/lameness_in_horses/the_lameness_examination_in_horses.html)

option of expanding that pool to include veterinary technicians and other qualified individuals with requisite educational and professional experience as outlined in this final rule.

Some commenters specifically objected to current USDA inspection methods on the grounds that the palpation done by inspectors is itself injurious to the horse. Other commenters stated USDA inspectors manipulate horses inappropriately and deliberately to produce pain. One such commenter stated that while DQPs use soft and deep palpation as described by the Act, USDA inspectors use fingernails, pull hair at the coronal band, and percuss the foot to make a horse move to disqualify certain horses that are not sore.

We disagree with commenters' statements that USDA officials inspect horses inappropriately and note that proper palpation by USDA officials has never been shown to cause injury to a horse. The pressure applied to the horse's limb during palpation is limited to pressure against the hoof and limb sufficient to blanch, or whiten, the thumbnail of the inspecting HPI, which is insufficient pressure to cause pain in a horse that is not sore. In addition, we further note that USDA inspectors do not disqualify horses from being shown, exhibited, sold, or auctioned. Management has that authority under the HPA.

On the other hand, a few commenters cited a study indicating that the correct amount of palpation pressure indicated in proposed § 11.2(b)(3) (i.e., "pressure against the hoof and limb sufficient to blanch, or whiten, the thumbnail of the inspecting HPI") is actually insufficient to produce a reaction in a sore horse. They noted that the amount of pressure specified in § 11.12(b)(3) is equivalent to 0.4-0.6 kg/cm<sup>2</sup>, which is likely to be inadequate to distinguish between horses that are sore and horses that are not sore. The commenters recommended that objective scientific data regarding digital palpation should be considered in developing inspection procedures.

Our knowledge and experience indicates that pressure against the hoof and limb sufficient to blanch, or whiten, the thumbnail of the inspecting HPI is sufficient to detect soring in sore horses. In fact, APHIS continues to find a high prevalence of horses that are sore in the Tennessee Walking Horse and racking horse industries when applying this arguably light amount of pressure to the pastern during the inspection process. We agree, however, that more scientific data regarding digital palpation can be useful in evaluating and refining current inspection procedures.

Another commenter stated that USDA inspectors selectively inspect the feet and legs of horses. The commenter states that USDA improperly checks horses by pushing on a bone in the back of the foot to induce pain and make them move. The commenter added that in instances of such inspections captured on video, a licensed medical veterinarian shows what the USDA did to the horse to induce pain, even though the horse was not previously sore. The commenter asked that USDA release all video it has of horse inspections.

We are making no changes in response to this comment. USDA inspectors have no reason to deliberately cause pain in horses and in fact are committed to ending the cruel and inhumane practice of soring horses. As we note above, palpation is a professionally accepted and highly reliable means of detecting pain in sore horses.

We noted in the proposed rule that the HPI shall also inspect the rear limbs of all horses exhibiting lesions or unusual movement of the rear limbs before or after showing, and may inspect a horse whenever he or she considers it necessary while the horse is on the show grounds. While carrying out these procedures, the HPI will also have to inspect the horse to determine compliance with the scar rule. We also noted in the proposed rule that as part of the inspection,

the HPI may also use an x-ray machine or other technologies to detect evidence of soring consistent with noncompliance with the Act or regulations.

In proposed § 11.12(b)(5), we proposed to require that the HPI instruct the custodian of the horse to control it for inspection by holding the lead rope approximately 18 inches from the halter. We noted in the proposed rule that horses that are not presented in a manner to allow their proper inspection, as well as unruly or fractious horses, will be prohibited from showing, and that the HPI must report all such incidents to management and APHIS.

One commenter opposed to the requirement in proposed paragraph (b)(5) stated that not allowing a custodian to hold the lead rope closer than 18" from the halter is inadequate for controlling some horses and can create a dangerous situation.

We are making no changes in response to this comment. Horses that cannot be controlled under this requirement may be too unruly to be inspected.

Another commenter stated that a horse could be unruly or factious but not sore, and that APHIS lacks the authority to dismiss such horses.

Unruly and fractious horses in the inspection area present a risk to the safety of HPIs, APHIS representatives, exhibitors, and other horses. In this final rule, we clarify that the HPI shall not be required to inspect horses that are not presented in a manner to allow their proper inspection, as well as unruly or fractious horses. The HPI shall report such incidents to management, who can make a determination as to whether to allow the horse to be shown, exhibited, sold, or auctioned, and to APHIS, for purposes of oversight and potential evidence collection.

Paragraph (c) of proposed § 11.12 includes inspection logistics for HPIs. Paragraph (c)(1) will require that in shows with more than 150 horses entered, an authorized HPI may



inspect horses 3 classes ahead of the time such horses are to be shown but only if another authorized HPI can provide continuous and uninterrupted supervision of the designated warm-up area for the inspected horses. In shows with 150 horses or fewer entered, one HPI may inspect horses 2 classes ahead of the time the inspected horses are to be shown but only if another authorized HPI can provide continuous and uninterrupted supervision of the designated warm-up area for the inspected horses.

One commenter stated that the provision allowing the HPI to inspect horses 2 classes ahead of time is dangerous to exhibitors. The commenter explained that that there would not be sufficient time for an exhibitor to replace the show pads, saddle, bridle and breast collar that would have to be removed during the inspection, that this leads to serious safety concerns in presenting a clean and sound horse safely, and that any fault would lie with APHIS.

We acknowledge the commenters' concerns regarding inspection safety and share the same goal of ensuring that inspection procedures are safe and efficient. We proposed this requirement to ensure that the horse is in the same condition while being shown as when it was inspected by limiting the amount of time that a horse could be tampered with in the warm-up area. With respect to timing concerns, the current regulations state that a DQP in a show with greater than 150 horses entered should inspect horses no more than 3 classes ahead of the time the inspected horses are to be shown. For shows with fewer than 150 horses, the DQP should inspect horses no more than 2 classes ahead of the time the inspected horses are to be shown. The proposed inspection procedures do not alter these stipulations significantly. Based on our experience and with proper oversight by management, there is sufficient time for exhibitors to prepare their horses between the inspection and show times.

The same commenter recommended that APHIS should encourage show managers to include in their liability clause that any injury or death resulting from the inspection process lies with APHIS.

Liability agreements between management and entrants are not within the purview of APHIS.

We proposed a requirement in § 11.12(c)(2) that inspected horses be held in a designated warm-up area that is under observation by an authorized HPI or an APHIS representative. Horses will not be permitted to leave the designated area before showing. Only a management representative, HPIs appointed and retained by management to conduct inspections, APHIS representatives, and up to three individuals accompanying the horse will be allowed in the designated area. As noted in proposed § 11.9(b)(3)(i), official guests of management, such as elected officials, legislators, and technical advisers will be allowed access to the inspection and warm-up areas for limited periods of time at the discretion of management and only with the concurrence of authorized APHIS representatives, if present.

One commenter stated that elected officials, legislators, and technical advisers pose no threat to inspectors and will not limit proper inspections, and requested that the requirement limiting such persons be removed from the proposal.

As we noted in the discussion of § 11.9(b)(3)(i), persons congregating in inspection areas can jeopardize their own safety, as well as the safety of custodians and inspectors, should a horse become unruly. Inspectors must have sufficient space to conduct inspections safely and without distraction.

Another commenter noted that proposed § 11.10(a)(2) requires management to ensure that no prohibited devices or substances are present in the warm-up area but that other parts of

the proposed regulations, such as § 11.12(c)(2), do not include management among those persons who are allowed in the warm-up area.

As we noted in the discussion of § 11.10(a)(2) above, we are adding a “management” representative to the list of persons allowed in the warm-up area.

We included in proposed § 11.12(d) requirements for additional inspection procedures that have been adapted from current § 11.21(d). We will allow the HPI to carry out additional inspection procedures on a horse as he or she deems necessary to determine whether a horse is in compliance with the Act and regulations. The HPI will be permitted to remove and inspect plastic, cotton, or any materials wrapped around the limbs of any horse to determine whether any prohibited substances are present, and may require that horseshoes be removed as part of the inspection. Finally, the HPI will be authorized to use hoof testers on horses. We are adding these provisions to the regulations, but note that they are nonsubstantive in nature as these inspection methods are already provided for in the existing definition of inspection.

#### Requirements Concerning Persons Involved in Transportation of Certain Horses

(Proposed § 11.13, Final § 11.13).

We proposed moving the requirements in § 11.40 concerning persons involved in transporting certain horses to proposed § 11.13 and removing § 11.40 from the regulations. Under the proposed regulations, each person who ships, transports, or otherwise moves, or delivers or receives for movement, any horse with reason to believe such horse may be shown, exhibited, sold or auctioned at any horse show, exhibition, or sale or auction, will be required to allow inspection of the horse at any show, exhibition, sale, or auction to determine compliance with the Act and regulations. As proposed, each person would also be required to furnish to any APHIS representative upon request the name and address (including street address or post office

box number, and ZIP Code) of the horse owner and shipper, if different from the owner or trainer; name and address of the trainer; name and address of the carrier, the driver, and the means of conveyance; the origin and date of the shipment; and the destination. We also proposed to require the transporter to provide APHIS with the name and address of the horse's farrier.

One commenter objected to the proposed transportation requirement on the grounds that an acquaintance or other such person who agrees to transport someone else's horse to a small show is unlikely to know the name and address of that horse's trainer, much less the farrier.

We note that this information requirement imposes no new requirement, as exhibitors and transporters are subject to the current regulations in § 11.40. However, we agree with the commenter with respect to the farrier's information and are therefore removing that proposed requirement. We consider the impact of obtaining the name and address of the horse's trainer before shipping a horse to be minimal. While reviewing this comment, we found that the proposed rule inadvertently omitted the existing requirement that each person subject to the provisions of this section must not only allow but also assist in the inspection of horses. Therefore, we are retaining this language in this final rule.

#### Constitutionality and Legal Issues

In addition to comments on specific provisions in the proposed rule, we received numerous comments regarding constitutional and legal issues.

One commenter stated that the ban on action devices would have a deleterious effect on commerce due to economic effects on the industry and is thus outside the purview of the Executive Branch's powers under the Constitution. Several other commenters stated that the Act was not intended to be an equine welfare law, but rather a commerce and consumer protection

law. In applying an intent of equine welfare to the proposed rule, the commenters state that APHIS is changing the congressional intent of the Act itself, which APHIS does not have the authority to do.

The intent of this rulemaking is to effectuate the purposes of the Act. In Section 1822 of the Act, Congress found and declared that --“(1) the soring of horses is cruel and inhumane; (2) horses shown or exhibited which are sore, where such soreness improves the performance of such horse, compete unfairly with horses which are not sore; (3) the movement, showing, exhibition, or sale of sore horses in intrastate commerce adversely affects and burdens interstate and foreign commerce; (4) all horses which are subject to regulation under the Act are either in interstate or foreign commerce or substantially affect such commerce; and (5) regulation under the Act by the Secretary is appropriate to prevent and eliminate burdens upon commerce and the effectively regulate commerce.” The proposed regulations wholly support the intent of the Act in all of these areas. We also note that the economic analysis for the proposed rule certifies that, if promulgated, the rule would not have a significant economic impact on a substantial number of small entities.

Other commenters stated that the proposed rule would constitute a regulatory taking under the Fifth Amendment on the grounds that the value of Tennessee Walking Horses would be significantly reduced as a result of the rule, thus owing horse owners just compensation from the Federal government.

We disagree with the commenter that the rule constitutes a regulatory taking under the Fifth Amendment. As discussed at length above, the prohibitions contained in this final rule on the use of pads, wedges, and certain action devices are necessary to prevent the soring of Tennessee Walking Horses and racking horses and eliminate the unfair competitive advantage

that sore horses have over horses that are not sore. While it would be harmful to some horses currently on high pads to have their pads removed without a phasing-in period, this rule specifically provides that this prohibition will not take effect until January 1, 2018, which is almost a full year after publication of this final rule. As the Agency explained in a previous rulemaking that sought to strengthen the prohibitions on pads, action devices, and other equipment and devices, “APHIS veterinarians, and farriers and other members of the horse industry, have indicated that horses can be moved without harm to pads 1 inch high or less, if the change is done gradually. A gradual reduction in pad size will minimize physiological stress to horses, and will allow horses who have had their feet trimmed in conjunction with the use of pads to grow a naturally configured foot....”<sup>15</sup> Additionally, the lengthy delay in implementing this prohibition will allow horses to be reshod as necessary without damage to their hooves. Experienced farriers have indicated to the Agency that a horse can be reshod every 6 to 8 weeks without harm to the horse’s hooves.<sup>16</sup> Finally, the phasing-in period would also provide time for padded horses to be re-trained and compete in classes that do not allow the use of pads and wedges, which one commenter represented would be a 6 month process.

As discussed in the economic analysis accompanying this rule, only a small portion of the Tennessee Walking Horse and racking horse industries will be impacted by the changes made in this final rule. APHIS personnel are aware of horses that formerly participated in padded classes at HPA-covered events that had their pads removed and subsequently participated in classes that did not allow pads.

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<sup>15</sup> 53 FR 14780 (April 26, 1988).

<sup>16</sup> 53 FR 14780 (April 26, 1988).

One commenter representing a national equestrian organization expressed concern about the expansion in the proposed rule to include “related breeds” and stated that unless the proposed language prohibiting all pads and substances on “related breeds” is amended, the enforceability of the regulation is vulnerable to a court finding that the issuance of this rule is arbitrary and capricious and thus in violation of the Administrative Procedure Act.

As discussed above, we are clarifying in this final rule which breeds of horses are subject to the regulatory requirements.

Another commenter representing a national horse professional organization stated that the proposed rule exceeds the USDA’s statutory authority under the HPA. Along with citing language in existing regulations that identifies specific breeds, the commenter noted HPA findings that 1) horse soring is cruel and inhumane, and that 2) sore horses, when shown in events where soreness provides a competitive advantage, compete unfairly with horses which are not sore, to support this claim. The commenter took issue with the proposed rule’s “selective and arbitrary” exclusion of certain events – including events where speed is the prime factor, rodeo events, parades or trail rides – but not others, such as horse shows where a horse is shown at a trot. The commenter argued that the clear purpose of the HPA to eliminate the practice of soring must lead to the USDA’s targeting of enforcement efforts in only those events featuring breeds where soring is a concern.

We disagree with the commenter’s assertion that the proposed rule exceeds the USDA’s statutory authority under the HPA. As indicated in the proposed rule, the Act applies to any horse at any horse show, exhibition, sale, or auction. The proposed definitions of “horse exhibition” and “horse show” that the commenter raises concerns about are unchanged from existing regulations, and this rule does not amend them.

One commenter asked APHIS to develop and implement a grievance process with an independent review and appeals board to give owners and trainers due process when there is a dispute arising from a subjective inspection. Several commenters stated that the USDA has ignored due process, adding that when the USDA takes information on and turns down a horse that the DQP has passed, the horse should be allowed to show until the matter is decided in court.

We note that while APHIS officials may inspect horses and notify management of its reasonable belief that a horse is sore or otherwise in noncompliance with the Act and regulations, it is management's decision alone whether to disqualify or prohibit the horse from being shown, exhibited, sold, or auctioned.

A commenter stated that inspections for soring are subjective and as support cited a Fifth Circuit Court finding that inspections "are more art than science with a high incidence of false positives."

The commenter is referring to the case Contender Farms, LLP v. USDA, in which the U.S. Court of Appeals for the Fifth Circuit ruled against USDA's attempts to require HIOs to impose mandatory penalties against alleged violators of the Act. The Secretary's reliance on palpation to determine whether a horse is sore is based upon the experience of a large number of veterinarians, many of whom have had 10 to 20 years of experience in examining many thousands of horses as part of their efforts to enforce the HPA.

A few commenters representing national farm organizations stated that stakeholders would benefit from more information as to which events fall under the designation of interstate commerce for the purposes of the HPA. The commenters asked if events sponsored by youth horse clubs, or small shows which show only an occasional gaited breed, may be subject to inspections.



The requirements established under the HPA apply to horses that are either in interstate or foreign commerce or substantially affect such commerce.

A commenter representing a national walking horse organization suggested that USDA re-establish an external review committee to examine objective and impartial measures to evaluate what could be done to improve procedures and report their findings and recommendations to the USDA for action to improve the enforcement of the Act.

We appreciate the intent of this comment. Although this comment is outside the scope of this rulemaking, we note that APHIS sought to improve enforcement of the Act and communication with the industry throughout this rulemaking process by soliciting written comments on the proposed changes to the regulations, as well as verbal comments at numerous public meetings.

In a Federal Register notice published on September 22, 2016 (Docket No. APHIS-2011-0009), we extended the comment period by 30 days and clarified a prohibition we proposed on certain horseshoes.

One commenter opposed the clarification on grounds that it did more than clarify § 11.2(a)(3) but actually changed the substance of it to the detriment of the Tennessee Walking Horse industry. The commenter stated that APHIS appears to have sidestepped several statutory rulemaking requirements for the notice, including review by the White House Office of Management and Budget. Given these issues, the commenter recommended that APHIS rescind the proposed clarification and extend the comment period by another 30 days so that persons have the opportunity to comment on it.

Many commenters raised specific concerns about the clarification. Based on those concerns and other considerations, we will not be finalizing that proposed change and are retaining the existing regulations on this matter.

## Oversight and Enforcement

One commenter questioned whether APHIS would have the resources to enforce the proposed changes to the regulations. Another suggested that a third-party audit be conducted regularly to confirm whether the proposed changes are effective.

APHIS has the resources necessary to enforce the changes we are making to the regulations and to conduct ongoing evaluation of the effectiveness of the program.

One commenter stated that it would be both inefficient and ineffective for the USDA to duplicate efforts by allocating its already limited resources to the regulation of USEF competitions. Another commenter representing the USEF urged the USDA to amend the regulations to include an exception that would permit the USEF to continue to self-regulate its licensed and endorsed competitions and continue its ongoing partnership with the USEF.

We are making no changes to the regulations in response to this comment. The HPA covers all horses shown, exhibited, sold, or auctioned at horse shows, exhibitions, sales, and auctions.

One commenter noted that proposed regulations do not offer any sort of penalty structure for non-compliant horses and stated that such rules must be focused and well-defined prior to implementation of the final rule.

Penalties and other sanctions for violations are specified in § 1825 of the Act.

## Other Comments

We received many comments on topics generally relating to the rule but not to specific provisions of it, including the following.

A number of commenters stated that the current regulations and DQP inspection structure are sufficient to prohibit soring.

We disagree with the commenters. The observations of APHIS officials inspecting horses at HPA-covered events, corroborated by the findings of the USDA OIG audit and the USDA Judicial Officer, indicate that the current inspection program is inadequate to reduce instances of soring.

One commenter suggested that instead of educating "private" inspectors, APHIS should educate equestrians all over the nation by making literature available at equestrian events and establishing a reporting hotline.

APHIS maintains guides and other information about soring on the APHIS Horse Protection Web site, as well as a Web form for any persons wishing to report welfare concerns.<sup>17</sup>

One commenter noted that there is no discussion in the proposed rule of how management will appoint and compensate HPIs. The commenter added that HIOs should not be allowed to manage or participate in the process.

Once a HPI candidate is trained and licensed by APHIS, management may appoint and retain any licensed HPI he or she chooses, along with any associated fee schedule for inspection services rendered.

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<sup>17</sup> Program information is available at [https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa\\_hpa/ct\\_hpa\\_program\\_information](https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/sa_hpa/ct_hpa_program_information). The reporting form is at <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/complaint-form>.

Many commenters, including Members of Congress, asked that APHIS not extend the comment period for the rule, while others asked us to extend it.

We extended the comment period by 30 days to give stakeholders additional time to read the rule and submit comments.

A commenter stated that our statement in the proposed rule that 49 percent of DQP tickets were written at 6 percent of shows attended by APHIS is skewed because it fails to account for the number of entries at those shows and the fact that the majority of the percentage of DQP tickets were written and were found at the larger shows which have more entries and where USDA is more likely to attend.

We disagree with the commenter's contention that these percentages are skewed. APHIS representatives have attended shows that did not allow the use of action devices, pads, and wedges with large numbers of entries and found no noncompliances with the HPA and regulations. On the other hand, APHIS has attended many smaller performance horse shows with classes that allowed the use of action devices, pads, and wedges, and found rates of detection involving sore horses or other noncompliances the same as or higher than those of large shows with classes that allowed the use of action devices, pads, and wedges.

One commenter stated that letters of warning issued to persons for alleged violations are included in the HPA violation statistics but are not actual violations. The commenter stated that only those cases found by USDA to be violations after due process and a hearing should be used in such statistics.

The commenter is correct in that letters of warning issued by the USDA are not a finding of a violation but rather are regulatory correspondence intended to notify a person of his or her regulatory responsibilities under the HPA to promote future compliance. APHIS provides

statistical information on its inspection activities, regulatory correspondence, and enforcement actions under the HPA to serve the public interest in the actions and functions of the Federal government and in compliance with applicable laws.

Several commenters stated that the Tennessee Walking Horse industry has a 96 percent or higher compliance rate with the Act and regulations.

We disagree with the commenters' statements. This percentage is the result of DQPs conducting inspections that are inadequate in detecting soring. Based on APHIS inspection data, the compliance rate for padded horses competing in performance classes is under 70 percent, which is considerably lower than the percentage cited by the commenter.

One commenter suggested that APHIS file animal abuse charges in cases of soring. Another commenter stated that horses failing inspection be taken to a rehabilitation center rather than to their home barns for further abuse.

The Act and regulations are enforced at the Federal level by USDA. Administrative enforcement, civil, and criminal proceedings initiated under the Act are conducted in accordance with applicable rules of procedure. The Act does not authorize APHIS to confiscate horses for failing an inspection. We note, though, that many local jurisdictions have animal cruelty laws that cover animal abuse.

Several commenters stated that the gaited horse industry should be given a greater role in developing the soring regulations. Many commenters opposed to the proposal stated that it fails to follow Congress' directive that the USDA work with the walking horse show industry on any changes to the regulations. One commenter stated that the Appropriations Committee had specifically directed APHIS to provide greater and more consistent transparency and to work more closely with stakeholders on rules and regulations.

In addition to reviewing the 130,975 comments that the Agency received and holding 5 public hearings on the proposed rule, we note that APHIS is continuously working to promote transparency with and compliance among the regulated community. Among other initiatives, APHIS recently published its new Animal Care Strategic Plan that outlines its two key goals for 2016-2020: Building relationships and promoting animal welfare.<sup>18</sup> In addition, APHIS continues to update and improve the content of its website and provide information on the Agency's efforts to promote compliance among regulated industries.

A few commenters stated horse owners of American Saddlebreds and other breeds altering tails is a greater problem than soring.

The Act and regulations are specifically focused on the detection of horses with sore limbs participating in shows, exhibitions, sales, and auctions.

Several commenters made reference to the Bureau of Land Management's advisory board and voiced opposition to the euthanasia of wild horses in holding facilities.

This issue is outside the scope of the Act and its regulations.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule with the changes discussed in this document.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to

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<sup>18</sup> [https://www.aphis.usda.gov/animal\\_welfare/hp/downloads/strategic\\_plan/AC-Strategic-Plan-2016-2020\\_092716.pdf](https://www.aphis.usda.gov/animal_welfare/hp/downloads/strategic_plan/AC-Strategic-Plan-2016-2020_092716.pdf).

assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

The Horse Protection Act (HPA) was passed in 1970 to eliminate the cruel and inhumane practice of soring and the unfair competitive advantage that sore horses have over horses that are not sore. Although it has been more than 40 years since the HPA was enacted, substantial noncompliance continues to exist among Tennessee Walking Horses and racking horses at horse shows and other regulated events. Additionally, APHIS continues to observe that a relationship exists between the use of certain permitted items and soring in horses, such as the permitted use of action devices alone or in conjunction with prohibited substances. Also, USDA's Office of Inspector General (OIG) released an audit of APHIS' enforcement of the HPA in 2010 that concluded the current inspection program, in which horse industry organizations or associations (HIOs) train and license private inspectors to conduct compliance inspections at horse shows, exhibitions, sales, and auctions, is not adequate to effectively enforce the Act and regulations.

The final rule is amending the horse protection regulations by removing all regulatory burdens and responsibilities from HIOs for the training and licensing of private inspectors (referred to as designated qualified persons or DQPs) and establishing new requirements for the

training and licensing by APHIS of a new cadre of private inspectors, to be referred to as Horse Protection Inspectors, or HPIs. The management of a horse show, exhibition, sale, or auction may elect to appoint and retain a private inspector that meets the requirements established by APHIS to detect and diagnose a horse which is sore or to otherwise inspect horses for the purposes of enforcing the HPA.

The OIG audit found inherent conflicts of interest between DQPs, the HIOs that license and hire them, and the management of the shows and exhibitions that contract with HIOs to provide DQPs. The OIG audit noted that at times DQPs fail to inspect horses adequately to determine compliance. According to APHIS inspection data for 2010 to 2015, of the horse shows where the DQPs and APHIS both conducted inspections, DQPs reported an average of one instance of noncompliance for every 90 inspections, while APHIS inspectors reported one instance of noncompliance for every 16 inspections, demonstrating the inefficacy of the existing DQP system and underreporting of HPA noncompliance at covered events.

As noted above, APHIS will train and license HPIs. APHIS can deny an application for a HPI license or revoke the license of a HPI who does not meet the minimum requirements, who fails to follow the designated inspection procedures, or who otherwise fails to carry out his or her duties and responsibilities in a satisfactory manner. Because HPIs will be licensed on an individual basis, management may hire HPIs directly or use an agent or organization, such as a horse industry organization or association, to assist them with that process.

The rule will also:

- Prohibit the use of pads and wedges on Tennessee Walking Horses and racking horses at horse shows, exhibitions, sales, and auctions, except for therapeutic pads or wedges.



- Prohibit the use of action devices (other than certain boots) and associated lubricants on Tennessee Walking Horses and racking horses at horse shows, exhibitions, sales, and auctions.
- Amend existing access, space, and facility requirements for management of horse shows, exhibitions, sales, and auctions.
- Amend management recordkeeping and reporting requirements.
- For shows, exhibitions, sales, or auctions that elect to hire HPIs, ensure there is at least one APHIS-licensed HPI present at shows with 150 or fewer horses entered and two or more APHIS-licensed HPIs at shows with more than 150 horses entered.
- Require HPIs to be veterinarians or, if the Administrator determines that the pool of HPIs comprised solely of veterinarians is too small, veterinary technicians or certain government employees with responsibilities for enforcement of animal welfare laws and experience with horses.
- Require management to have a farrier physically present to assist HPIs at horse shows, exhibitions, sales, and auctions that allow Tennessee Walking Horses or racking horses to participate in therapeutic pads and wedges if more than 150 horses are entered, and have a farrier on call if 150 or fewer horses are entered.
- Remove from the regulations all provisions pertaining to HIOs, as they will no longer be responsible for training and licensing DQPs.

Tennessee Walking Horses and racking horses have a history of soring that conveys an unfair competitive advantage and are the focus of this rule.

The prohibitions on the use of pads, wedges, and action devices will not impose undue hardship on the management of horse shows, exhibitions, sales, or auctions, or on the

participants of such events. Also, the minimum number of HPIs required to be present at shows, exhibitions, sales, and auctions that choose to employ APHIS-licensed HPIs—one if there are 150 or fewer horses entered and two or more if there are more than 150 horses entered—is the same as current DQP requirements and will result in no additional costs. HPIs will be required to be veterinarians or, if the Administrator determines that the pool of HPIs comprised solely of veterinarians is too small, veterinary technicians or certain government employees with responsibilities for enforcement of animal welfare laws and experience with horses. Based on estimates of an expert elicitation commissioned by APHIS, the cost of services provided per show by DQPs ranges from a few hundred to several thousand dollars and the most common cost is between \$600 to \$700 per show, which is well within the range of compensation for veterinarians.<sup>19</sup> The cost of services provided by HPIs will depend on the number hired and the length of the show or other HPA-covered event (e.g., multiday versus single-day shows). Management may decide to hire more than the minimum number of HPIs required by regulation to ensure that inspections are accomplished in a timely manner.

Management will be required to have a farrier physically present at horse shows, exhibitions, sales, and auctions that allow Tennessee Walking Horses or racking horses to participate using therapeutic pads and wedges if more than 150 horses are entered, and have a farrier on call if 150 or fewer horses are entered. APHIS is aware of horse shows that have routinely had farriers available during all performances and HIOs that suggest to their affiliates

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<sup>19</sup> Veterinarians who are hired as HPIs will act only in the capacity of a HPI, not as a veterinarian, and are expected to be paid accordingly. Assuming, *arguendo*, veterinarians serving as HPIs are paid based on veterinary wages, according to the U.S. Bureau of Labor Statistics, the median hourly wage rate for veterinarians in the United States, for 2016 was about \$42, well within the compensation range for persons who served as DQPs. <http://www.bls.gov/oes/current/oes291131.htm>

that a farrier be retained to ensure a successful show. Nevertheless, the management of horse shows, exhibitions, sales, or auctions may elect to not allow Tennessee Walking Horses and racking horses to participate in therapeutic pads and wedges under this final rule, in which case no farrier would be required and there would be no additional costs. However, we assume for purposes of this analysis that management will allow such horses to participate and estimate the potential total annual costs to shows, exhibitions, sales, and auctions with Tennessee Walking Horses and racking horses for this farrier requirement may range from \$10,000 to \$50,000. This potential cost is the only additional cost we anticipate affected entities incurring to comply with this rule. The HPI and farrier costs may be passed along to participants or other show entities. Many, if not most, of the entities that may be affected by this rule are small, but the impact is expected to be minor. The implementation will be delayed for one year.

The rule will enhance enforcement of the HPA as compared to the current DQP system. APHIS will incur additional administrative costs associated with training and licensing HPIs, and assuring that they meet the high level of professional integrity and reputation needed to carry out the duties of an HPI. Consequently, APHIS will allocate resources to design, coordinate, and deliver training of HPIs, and provide program guidance and oversight.

In FY 2015, the USDA's Horse Protection Program received \$697,000 in appropriated funding. APHIS will implement the Program revisions and maintain this same level of funding through a reallocation of Program activities that cost approximately \$300,000. APHIS anticipates a reduction in Program travel expenditures because APHIS would be able to focus its resources on providing oversight of licensed HPIs to address the inadequacies the OIG found with respect to the existing DQP program, instead of directly inspecting horses. USDA

personnel will continue to attend a percentage of horse events to ensure consistency among inspectors, address performance concerns, and assist in meeting the program's goals.

The benefits of the rule are expected to justify the costs. The changes to the horse protection regulations will help to eliminate the cruel and inhumane practice of soring horses and the unfair competitive advantage that sore horses have over horses that are not sore. The rule is not expected to adversely impact communities in which HPA-covered events are held because such events are expected to continue; owners are motivated to show their prized horses and will continue to participate in shows.

Therefore, due to the reasons summarized here and explained in the economic analysis accompanying this rule, the Administrator of the Animal and Plant Health Inspection Service certifies that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 13175

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

The Animal and Plant Health Inspection Service has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications

that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, the Animal and Plant Health Inspection Service will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

#### Executive Order 12988

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

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), some of the reporting and recordkeeping requirements included in this final rule are approved under number 0579-0056. The new reporting and recordkeeping requirements included in this final rule were filed under 0579-0451 and have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the Federal Register providing notice of what action we plan to take. Upon approval of this new information collection, 0579-0451, it will be merged into the existing 0579-0056.

## E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this final rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483.

### List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Reporting and recordkeeping requirements.

Accordingly, we are revising 9 CFR part 11 to read as follows:

#### PART 11--HORSE PROTECTION REGULATIONS

Sec.

11.1 Definitions.

11.2 Prohibitions concerning exhibitors.

11.3 Scar rule.

11.4 Inspection and detention of horses.

11.5 Access to premises and records.

11.6 Inspection space and facility requirements.

11.7-11.8 [Reserved]

11.9 Responsibilities and liabilities of management.

11.10 Records required and disposition thereof.

11.11 Inspection of records.

11.12 Reporting by management.

11.13 Requirements concerning persons involved in transportation of certain horses.

11.14 Training and licensing of Horse Protection Inspectors (HPIs).

11.15 Inspection procedures for HPIs.

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

§ 11.1 Definitions.

For the purpose of this part, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also impart the plural and the masculine form shall also impart the feminine. Words of art undefined in the following paragraphs shall have the meaning attributed to them by trade usage or general usage as reflected by definition in a standard dictionary, such as “Webster's.”

Act means the Horse Protection Act of 1970 (Pub. L. 91-540) as amended by the Horse Protection Act Amendments of 1976 (Pub. L. 94-360), 15 U.S.C. 1821 et seq., and any legislation amendatory thereof.

Action device means any boot, collar, chain, beads, bangles, roller, or other device which encircles or is placed upon the lower extremity of the leg of a horse in such a manner that it can either rotate around the leg, or slide up and down the leg so as to cause friction, or which can strike the hoof, coronet band, or fetlock joint.

Administrator means the Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator. Mail for the Administrator should be sent to the Animal and Plant Health Inspection Service, Animal Care, 2150 Centre Avenue, Building B, Mailstop 3W11, Fort Collins, CO 80526-8117.

Animal and Plant Health Inspection Service (APHIS) means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative means any employee or official of APHIS.

Department means the United States Department of Agriculture.

Exhibitor means (1) any person who enters any horse, any person who allows his horse to be entered, or any person who directs or allows any horse in his custody or under his direction, control or supervision to be entered in any horse show or exhibition; (2) any person who shows or exhibits any horse, any person who allows his horse to be shown or exhibited, or any person who directs or allows any horse in his custody or under his direction, control, or supervision to be shown or exhibited in any horse show or exhibition; (3) any person who enters or presents any horse for sale or auction, any person who allows his horse to be entered or presented for sale or auction, or any person who allows any horse in his custody or under his direction, control, or supervision to be entered or presented for sale or auction in any horse sale or auction; or (4) any person who sells or auctions any horse, any person who allows his horse to be sold or auctioned, or any person who directs or allows any horse in his custody or under his direction, control, or supervision to be sold or auctioned.

Horse means any member of the species Equus caballus.

Horse exhibition means a public display of any horses, singly or in groups, but not in competition. The term does not include events where speed is the prime factor, rodeo events, parades, or trail rides.

Horse Protection Inspector (HPI) means a person meeting the requirements specified in § 11.14 whom the Administrator has licensed as an HPI. The management of any horse show, exhibition, sale, or auction under section 1823 of the Act may appoint and retain a HPI to detect and diagnose horses which are sore or to otherwise inspect horses and any records pertaining to such horses for the purposes of enforcing the Act.



Horse sale or auction means any event, public or private, at which horses are sold or auctioned, regardless of whether or not the horses are exhibited prior to or during the sale or auction.

Horse show means a public display of any horses, in competition, except events where speed is the prime factor, rodeo events, parades, or trail rides.

Inspection means any visual, physical, and diagnostic means approved by APHIS to determine compliance with the Act and regulations. Such inspection may include, but is not limited to, visual inspection of a horse and records, physical inspection of a horse, including touching, rubbing, palpating, and observation of vital signs, and the use of any diagnostic device or instrument, and may require the removal of any shoe, pad, action device, or any other equipment, substance, or paraphernalia from the horse when deemed necessary by the person conducting such inspection.

Management means any person who organizes, exercises control over, or administers or is responsible for organizing, directing, or administering any horse show, exhibition, sale, or auction and specifically includes, but is not limited to, the sponsoring organization and show manager.

Person means any individual, corporation, company, association, firm, partnership, society, organization, joint stock company, State or local government agency, or other legal entity.

Secretary means the Secretary of Agriculture or anyone who has heretofore or may hereafter be delegated authority to act in his stead.

Show manager means the person who has been delegated primary authority by a sponsoring organization for managing a horse show, exhibition, sale, or auction.

Sore when used to describe a horse means:

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

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

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

(4) Any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse, and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was given.

Sponsoring organization means any person or entity under whose immediate auspices and responsibility a horse show, exhibition, sale, or auction is conducted.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

§ 11.2 Prohibitions concerning exhibitors.

(a) General prohibitions. Notwithstanding the provisions of paragraph (b) of this section, no device, method, practice, or substance shall be used with respect to any horse at any horse

show, exhibition, sale, or auction if such use causes or can reasonably be expected to cause such horse to be sore.

(b) Specific prohibitions for all horses. The use of the following devices, equipment, or practices on any horse at any horse show, exhibition, sale, or auction is prohibited:

(1) More than one action device on any one limb of a horse.

(2)(i) Boots, collars, or any other devices, with protrusions or swellings, or rigid, rough, or sharp edges, seams or any other abrasive or abusive surface that may contact a horse's leg; and

(ii) Boots, collars, or any other devices that weigh more than 6 ounces, except for soft rubber or soft leather bell boots and quarter boots that are used as protective devices.

(3) Pads or other devices on horses up to 2 years old that elevate or change the angle of such horses' hooves in excess of 1 inch at the heel.

(4) Any weight on horses up to 2 years old, except a keg or similar conventional horseshoe, and any horseshoe on horses up to 2 years old that weighs more than 16 ounces.

(5) Artificial extension of the toe length, 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 at a 90 degree angle to the proximal (foot/hoof) surface of the shoe.

(6) 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 3/4 inch in length. That portion of caulk at the rear of a horseshoe in excess of 3/4 of an inch shall be added to the height of the heel in determining the heel/toe ratio.

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

(8) 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. Acrylic and other hardening substances are prohibited as hoof packing.

(9) Single or double rocker-bars on the bottom surface of horseshoes which extend more than 1 1/2 inches back from the point of the toe, or which would cause, or could reasonably be expected to cause, an unsteadiness of stance in the horse with resulting muscle and tendon strain due to the horse's weight and balance being focused upon a small fulcrum point.<sup>1</sup>

(10) Metal hoof bands, such as used to anchor or strengthen pads and shoes, placed less than 1/2 inch below the coronet band.

(11) Metal hoof bands that can be easily and quickly loosened or tightened by hand, by means such as, but not limited to, a wing-nut or similar fastener.

(12) Any action device or any other device that strikes the coronet band of the foot of a horse except for soft rubber or soft leather bell boots that are used as protective devices.

(13) Shoeing a horse, trimming a horse's hoof, or paring the frog or sole in a manner that will cause such horse to suffer, or can reasonably be expected to cause such horse to suffer pain

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<sup>1</sup> This prohibition is not intended to disallow corrective devices, such as Memphis bars which consist of a metal bar(s) crossing from the ground surface of one side of the horseshoe to the ground surface of the other side of the horseshoe, and the purpose of which is to correct a lameness or pathological condition of the foot: Provided, That such metal bar(s) do not act as a single fulcrum point so as to affect the balance of the horse.

or distress, inflammation, or lameness when walking, trotting, or otherwise moving. Bruising of the hoof or any other method of pressuring shoeing is also prohibited.

(14) 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.

(c) Specific prohibitions for horses other than Tennessee Walking Horses and racking horses. The use of any of the following devices, equipment, or practices on any horse, other than Tennessee Walking Horses or racking horses, at any horse show, exhibition, sale, or auction, is prohibited:

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

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

(3) Chains with links that are not of uniform size, weight and configuration; and, chains that have twisted links or double links.

(4) Chains that have drop links on any horse that is being ridden, worked on a lead, or otherwise worked out or moved about.

(5) Chains or lignum vitae, stainless steel, or aluminum rollers which are not smooth and free of protrusions, projections, rust, corrosion, or rough or sharp edges.

(d) Specific prohibitions for Tennessee Walking Horses and racking horses. (1) All action devices, except for boots that meet the requirements in paragraph (b) of this section, are prohibited on any Tennessee Walking Horse or racking horse at any horse show, exhibition, sale, or auction.

(2) All pads and wedges on Tennessee Walking Horses or racking horses at any horse show, exhibition, sale, or auction before January 1, 2018, are prohibited unless they meet the requirements of paragraph (b) of this section. All pads and wedges are prohibited on any Tennessee Walking Horse or racking horse at any horse show, exhibition, sale, or auction on or after January 1, 2018, unless such horse has been prescribed and is receiving therapeutic, veterinary treatment using pads or wedges. The use of any such pads or wedges on a horse receiving therapeutic treatment must be prescribed by and/or under the supervision of a person licensed to practice veterinary medicine, and must:

(i) Be necessary for the treatment of a specific disease or injury that has not responded to other appropriate treatments in accordance with established veterinary medical practice and procedures,

(ii) Be specifically designed and prescribed (for example, as to the height, weight, and material of a therapeutic pad) for the treatment of the horse's disease or injury, and

(iii) Be discontinued at the conclusion of the treatment period ordered by the prescribing or supervising veterinarian.

(3) All substances are prohibited on the extremities above the hoof of any Tennessee Walking Horse or racking horse while being shown, exhibited, or offered for sale, or otherwise present on the grounds at any horse show, exhibition, sale, or auction.

(e) Competition restrictions—2 Year-Old Horses. Horse show or horse exhibition workouts or performances of 2-year-old Tennessee Walking Horses and racking horses and working exhibitions of 2-year-old Tennessee Walking Horses and racking horses (horses eligible to be shown or exhibited in 2-year-old classes) at horse sales or horse auctions that exceed a total of 10 minutes continuous workout or performance without a minimum 5-minute rest period between the first such 10-minute period and the second such 10-minute period, and, more than two such 10-minute periods per performance, class, or workout are prohibited.

(f) Information requirements—horse related. Failing to provide information or providing any false or misleading information required by the Act or regulations or requested by Department representatives, by any person that enters, owns, trains, shows, exhibits, or sells or has custody of, or direction or control over any horse shown, exhibited, sold, or auctioned or entered for the purpose of being shown, exhibited, sold, or auctioned at any horse show, exhibition, sale, or auction is prohibited. Such information shall include, but is not limited to: Information concerning the name, any applicable registration name and number, markings, sex, age, and legal ownership of the horse; the name and address of the horse's training and/or stabling facilities; the name and address of the owner, trainer, rider, any other exhibitor, or other legal entity bearing responsibility for the horse; the class in which the horse is entered or shown; the exhibitor identification number; and, any other information reasonably related to the identification, ownership, control, direction, or supervision of any such horse.

§ 11.3 Scar rule.

The scar rule applies to all horses born on or after October 1, 1975. Horses subject to this rule that do not meet the following scar rule criteria shall be considered to be “sore” and are subject to all prohibitions of section 5 of the Act. The scar rule criteria are as follows:

(a) The anterior and anterior-lateral surfaces of the fore pasterns (extensor surface) must be free of bilateral granulomas,<sup>2</sup> other bilateral pathological evidence of inflammation, and other bilateral evidence of abuse indicative of soring including, but not limited to, excessive loss of hair.

(b) The posterior surfaces of the pasterns (flexor surface), including the sulcus or “pocket” may show bilateral areas of uniformly thickened epithelial tissue if such areas are free of proliferating granuloma tissue, irritation, moisture, edema, or other evidence of inflammation.

§ 11.4 Inspection and detention of horses.

For the purpose of effective enforcement of the Act:

(a) Each horse owner, exhibitor, trainer, or other person having custody of, or responsibility for, any horse at any horse show, horse exhibition, or horse sale or auction, shall allow any APHIS representative to reasonably inspect such horse at all reasonable times and places the APHIS representative may designate. Such inspections may be required of any horse which is stabled, loaded on a trailer, being prepared for show, exhibition, or sale or auction, being exercised or otherwise on the grounds of, or present at, any horse show, horse exhibition, or horse sale or auction, whether or not such horse has or has not been shown, exhibited, or sold or auctioned, or has or has not been entered for the purpose of being shown or exhibited or

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<sup>2</sup> Granuloma is defined as any one of a rather large group of fairly distinctive focal lesions that are formed as a result of inflammatory reactions caused by biological, chemical, or physical agents.



offered for sale or auction at any such horse show, horse exhibition, or horse sale or auction.

APHIS representatives will not generally or routinely delay or interrupt actual individual classes or performances at horse shows, horse exhibitions, or horse sales or auctions for the purpose of examining horses, but they may do so in extraordinary situations, such as but not limited to, lack of proper facilities for inspection, refusal of management to cooperate with Department inspection efforts, reason to believe that failure to immediately perform inspection may result in the loss, removal, or masking of any evidence of a violation of the Act or the regulations, or a request by management that such inspections be performed by an APHIS representative.

(b) When any APHIS representative notifies the owner, exhibitor, trainer, or other person having custody of or responsibility for a horse at any horse show, horse exhibition, or horse sale or auction that APHIS desires to inspect such horse, it shall not be moved from the horse show, horse exhibition, or horse sale or auction until such inspection has been completed and the horse has been released by an APHIS representative.

(c) For the purpose of examination, testing, or taking of evidence, APHIS representatives may detain for a period not to exceed 24 hours any horse, at any horse show, horse exhibition, or horse sale or auction, which is sore or which an APHIS veterinarian has probable cause to believe is sore. Such detained horse may be marked for identification and any such identifying markings shall not be removed by any person other than an APHIS representative.

(d) Detained horses shall be kept under the supervision of an APHIS representative or secured under an official USDA seal or seals in a horse stall, horse trailer, or other facility to which access shall be limited. It shall be the policy of APHIS to have at least one representative present in the immediate detention area when a horse is being held in detention. The official

USDA seal or seals may not be broken or removed by any person other than an APHIS representative, unless:

(1) The life or well-being of the detained horse is immediately endangered by fire, flood, windstorm, or other dire circumstances that are beyond human control.

(2) The detained horse is in need of such immediate veterinary attention that its life may be in peril before an APHIS representative can be located.

(3) The horse has been detained for a maximum 24-hour detention period, and an APHIS representative is not available to release the horse.

(e) The owner, exhibitor, trainer, or other person having custody of or responsibility for any horse detained by APHIS for further examination, testing, or the taking of evidence shall be allowed to feed, water, and provide other normal custodial and maintenance care, such as walking, grooming, etc., for such detained horse: Provided, That:

(1) Such feeding, watering, and other normal custodial and maintenance care of the detained horse is rendered under the direct supervision of an APHIS representative.

(2) Any non-emergency veterinary care of the detained horse requiring the use, application, or injection of any drugs or other medication for therapeutic or other purposes is rendered by a Doctor of Veterinary Medicine in the presence of an APHIS representative and, the identity and dosage of the drug or other medication used, applied, or injected and its purpose is furnished in writing to the APHIS representative prior to such use, application, or injection by the Doctor of Veterinary Medicine attending the horse. The use, application, or injection of such drug or other medication must be approved by the APHIS representative.

(f) It shall be the policy of APHIS to inform the owner, trainer, exhibitor, or other person having immediate custody of or responsibility for any horse allegedly found to be in violation of

the Act or the regulations of such alleged violation or violations before the horse is released by an APHIS representative.

(g) The owner, trainer, exhibitor, or other person having immediate custody of or responsibility for any horse or horses that an APHIS representative determines shall be detained for examination, testing, or taking of evidence pursuant to paragraph (c) of this section shall be informed after such determination is made and shall allow said horse to be immediately put under the supervisory custody of APHIS or secured under official USDA seal as provided in paragraph (d) of this section until the completion of such examination, testing, or gathering of evidence, or until the 24-hour detention period expires.

(h) The owner, trainer, exhibitor, or other person having custody of or responsibility for any horse allegedly found to be in violation of the Act or regulations, and who has been notified of such alleged violation by an APHIS representative as stated in paragraph (f) of this section, may request re-inspection and testing of said horse within a 24-hour period: Provided, That:

(1) Such request is made to an APHIS representative immediately after the horse has been inspected by the APHIS representative and before such horse has been removed from the inspection facilities; and

(2) An APHIS representative determines that sufficient cause for re-inspection and testing exists; and

(3) The horse is maintained under APHIS supervisory custody as prescribed in paragraph (d) of this section until such re-inspection and testing has been completed.

(i) The owner, exhibitor, trainer, or other person having custody of, or responsibility for any horse being inspected shall render such assistance as the APHIS representative may request for purposes of such inspection.

§ 11.5 Access to premises and records.

(a) Management. (1) The management of any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, provide APHIS representatives with unlimited access to the grandstands, sale ring, barns, stables, grounds, offices, and all other areas of any horse show, horse exhibition, or horse sale or auction, including any adjacent areas under their direction, control, or supervision for the purpose of inspecting any horses, or any records required to be kept by regulation or otherwise maintained.

(2) The management of any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, provide APHIS representatives with an adequate, safe, and accessible area for the visual inspection and observation of horses while such horses are competitively or otherwise performing at any horse show or horse exhibition, or while such horses are being sold or auctioned or offered for sale or auction at any horse sale or horse auction.

(b) Exhibitors. (1) Each horse owner, exhibitor, or other person having custody of or responsibility for any horse at any horse show, horse exhibition, or horse sale or auction shall, without fee, charge, assessment, or other compensation, admit any APHIS representative to all areas of barns, compounds, horse vans, horse trailers, stables, stalls, paddocks, or other show, exhibition, or sale or auction grounds or related areas at any horse show, horse exhibition, or horse sale or auction, for the purpose of inspecting any such horse at any and all reasonable times.

(2) Each owner, trainer, exhibitor, or other person having custody of or responsibility for, any horse at any horse show, horse exhibition, or horse sale or auction shall promptly present his horse for inspection upon notification, orally or in writing, by any APHIS representatives that

said horse has been selected for inspection for the purpose of determining whether such horse is in compliance with the Act and regulations. No tack other than a halter and lead rope may be on the horse during inspection.

(c) No person shall assault, resist, oppose, impede, intimidate, or interfere with APHIS representatives or in any way influence attendees of a horse show, exhibition, sale, or auction to do the same.

§ 11.6 Inspection space and facility requirements.

(a) The management of every horse show, exhibition, sale, or auction shall provide, without fee, charge, assessment, or other compensation, sufficient space and facilities for APHIS representatives to carry out their duties under the Act and regulations when requested to do so by APHIS representatives, whether or not management has received prior notification or otherwise knows that such show, exhibition, sale, or auction may be inspected by APHIS. With respect to such space and facilities, it shall be the responsibility of management to provide at least the following:

(1) Sufficient space in a convenient location to the horse show, exhibition, sale, or auction arena, acceptable to APHIS representatives, in which horses may be physically, thermographically, or otherwise inspected.

(2) Protection from the elements of nature, such as rain, snow, sleet, hail, windstorm, etc.

(3) A means to control crowds or onlookers in order that APHIS representatives may carry out their duties safely and without interference.

(4) An accessible, reliable, and convenient 110-volt electrical power source, if electrical service is available at the show, exhibition, sale, or auction site and is requested by an APHIS representative.

(5) Appropriate areas adjacent to the inspection area for designated horses to wait before and after inspection, and an area to be used for detention of horses.

(b) A management representative, HPIs appointed and retained by management to conduct inspections, and APHIS representatives are allowed in the warm-up and inspection area. Each horse in the designated warm-up area may be accompanied by no more than three individuals, including the person having immediate custody of or responsibility for the horse, the trainer, and the rider. Each horse in the inspection area may only be accompanied by the person having immediate custody of or responsibility for the horse. Official guests of management, such as elected officials, legislators, and technical advisors may be allowed access to the warm-up area and inspection area for limited periods of time at the discretion of management and only with the concurrence of an APHIS representative, if present. No other persons are allowed in the warm-up or inspection areas.

§ 11.7-11.8 [Reserved]

§ 11.9 Responsibilities and liabilities of management.

(a) Horse shows, exhibitions, sales, and auctions at which the management does not appoint and retain HPIs. The management of any horse show, exhibition, sale or auction which does not appoint and retain a HPI shall be responsible for identifying all horses that are sore or otherwise in violation of the Act or regulations, and shall disqualify or prohibit any horses which are sore or otherwise in violation of the Act or regulations from participating or competing in any horse show, exhibition, sale, or auction. Horses entered for sale or auction at a horse sale or horse auction must be inspected and, as appropriate, identified as sore or otherwise in violation of the Act or regulations prior to the sale or auction and, as required by law, prohibited from entering the sale or auction ring. Sore horses or horses otherwise in violation of the Act or

regulations that have been entered in a horse show or horse exhibition for the purpose of show or exhibition must be identified and disqualified prior to the show or exhibition. Any horses found to be sore or otherwise in violation of the Act or regulations during actual participation in the show or exhibition, must be removed from further participation immediately (e.g., prior to the horse placing in the class or the completion of the exhibition). All horses that placed first, second, or third in each Tennessee Walking Horse or racking horse class or event at any horse show or horse exhibition shall be inspected after being shown or exhibited to determine if such horses are sore or otherwise in violation of the Act or regulations.

(b) Horse shows, horse exhibitions, and horse sales and auctions at which the management appoints and retains HPIs. (1) The management of any horse show, exhibition, sale, or auction that appoints and retains HPIs shall accord said HPIs access to all records and areas of the grounds of such show, exhibition, sale, or auction and the same right to inspect horses and records as is accorded to any APHIS representative under this section. Further, management shall not take any action which will interfere with or influence the HPIs in carrying out his or her duties.

(2) The management of any horse show, exhibition, sale, or auction that appoints and retains a HPI to inspect horses shall appoint and retain at least two HPIs when more than 150 horses are entered in the horse show, exhibition, sale, or auction. Management that allows Tennessee Walking Horses and racking horses to use pads or wedges in accordance with § 11.2(d)(2) shall have at least one farrier physically present if more than 150 horses are entered in the event. If 150 or fewer horses are entered in the horse show, exhibition, sale, or auction the management shall, at minimum, have a farrier on call and in the local area to come to the show, if requested by an APHIS representative or HPI.

(3) After a HPI has completed inspection, management must prevent tampering with any part of a horse's limbs or hooves in such a way that could cause a horse to be sore.

(4) If management is dissatisfied with the performance of a particular HPI, management should promptly notify, in writing, the Administrator as to why management believes the performance of the HPI was inadequate or otherwise unsatisfactory. Management that appoints and retains HPIs shall immediately disqualify or prohibit from showing, exhibition, sale, offering for sale, or auction of any horse identified by the HPI to be sore or otherwise allegedly in violation of the Act or regulations and any horse otherwise known by management to be sore or otherwise in violation of the Act or regulations.

(c) At horse shows, exhibitions, sales, or auctions involving Tennessee Walking Horses or racking horses, the management of any such horse show, exhibition, sale, or auction must:

(1) Ensure that no devices or substances prohibited under § 11.2 are present in the warm-up area.

(2) Review the orders of the Secretary disqualifying persons from showing or exhibiting any horse, or judging or managing any horse show, exhibition, sale, or auction and disallow the participation of any such person in any horse show, exhibition, sale, or auction, for the duration of the period of disqualification.

(3) Verify the identity of all horses entered in the horse show, exhibition, sale, or auction. Acceptable methods of identification are as follows:

(i) A description sufficient to identify the horse, including, but not limited to, name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present (e.g., brands, tattoos, cowlicks, or blemishes); or

(ii) Electronic identification that complies with ISO 11784/11785; or



(iii) An equine passport issued by a State government and accepted in the government of the State in which the horse show, horse exhibition, or horse sale or auction will occur.

§ 11.10 Records required and disposition thereof.

(a) Records required and disposition thereof. The management of any horse show, exhibition, sale, or auction that contains Tennessee Walking Horses or racking horses shall maintain for a period of at least 90 days following the closing date of a show, exhibition, sale, or auction all pertinent records containing:

(1) The dates and place of the horse show, exhibition, sale, or auction.

(2) The name and address (including street address or post office box number, and ZIP Code) of the sponsoring organization.

(3) The name and address of the horse show, exhibition, horse sale, or horse auction management.

(4) The name and address (including street address or post office box number, and ZIP Code) of any HPI appointed and retained by management to conduct inspections.

(5) The name and address (including street address or post office box number, and ZIP Code) of each show judge.

(6) A copy of each class or sale sheet containing the names of horses, the registration number of the horse (if applicable), the names and addresses (including street address or post office box number, and ZIP Code) of horse owners, the exhibitor number and class number, or sale number assigned to each horse, the show class or sale lot number, and the name and address (including street address or post office box number, and ZIP Code) of the person paying the entry fee and entering the horse in a horse show, horse exhibition, or horse sale or auction.

(7) A copy of the official horse show, exhibition, sale, or auction program, if any such program has been prepared.

(8) The name and any applicable registration name and number of each horse, as well as the name and address (including street address or post office box number, and ZIP Code) of the owner, the trainer, the person who had immediate custody of the horse, and the location (including street address and ZIP Code) of the home barn or other facility where the horse is stabled.

(b) The management of any horse show, exhibition, or sale or auction containing Tennessee Walking Horses or racking horses shall designate a person to maintain the records required in this section.

(c) The management of any horse show, horse exhibition, or horse sale or auction that includes Tennessee Walking Horses or racking horses shall furnish to any APHIS representative, upon request, the name and address (including street address or post office box number, and ZIP Code) of the person designated by the sponsoring organization or manager to maintain the records required by this section. Management must provide this information within 30 days of the request.

§ 11.11 Inspection of records.

The management of any horse show, exhibition, sale, or auction shall permit any APHIS representative, upon request, to examine and make copies of any and all records pertaining to any horse that are required in the regulations or otherwise maintained during business hours or such other times as may be mutually agreed upon. A room, table, or other facilities necessary for proper examination and copying of such records shall be made available to the APHIS representative.

§ 11.12 Reporting by management.

(a) At least 30 days before any horse show, exhibition, sale, or auction containing Tennessee Walking Horses or racking horses is scheduled to begin, the management of any such horse show, exhibition, sale, or auction must notify the Administrator of the event by mail, fax, or electronic means such as email.<sup>3</sup> Such notification must include:

- (1) The name and location of the horse show, exhibition, sale, or auction;
- (2) The name, address, phone number (and email address, if available) of the manager;
- (3) The date or dates of the horse show, exhibition, sale, or auction;
- (4) A copy of the official horse show, exhibition, sale, or auction program, if any such program has been prepared; and

(5) The name(s) of the APHIS-licensed HPIs scheduled to perform inspections at the horse show, exhibition, sale, or auction, should management choose to appoint and retain HPIs.

(b) Within 30 days following the conclusion of any horse show, exhibition, sale, or auction that contains Tennessee Walking Horses or racking horses the management of such show, exhibition, sale or auction shall submit to the Administrator the information required by § 11.10(a) of this section and a report listing the name, exhibition number and class number, or assigned sale number, and the registration name and number (if applicable) for each horse disqualified or prohibited by management from being shown, exhibited, sold or auctioned, and the reasons for such action. If no horses are disqualified, the management shall submit a report so stating.

(c) Within 30 days following the conclusion of any horse show, exhibition, sale, or auction which does not include Tennessee Walking Horses and racking horses, the management

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<sup>3</sup> Email notification may be sent to [hp@aphis.usda.gov](mailto:hp@aphis.usda.gov).

of such show, exhibition, sale or auction shall inform the Administrator of any case where a horse was prohibited by management from being shown, exhibited, sold or auctioned because it was found to be sore or otherwise noncompliant with the Act or regulations.

§ 11.13 Requirements concerning persons involved in transportation of certain horses.

Each person who ships, transports, or otherwise moves, or delivers or receives for movement, any horse with reason to believe such horse may be shown, exhibited, sold or auctioned at any horse show, exhibition, sale, or auction, shall allow and assist in the inspection of such horse at any such horse show, exhibition, sale, or auction to determine compliance with the Act and regulations and shall furnish to any authorized HPI or APHIS representative upon his or her request the following information:

(a) Name and address (including street address or post office box number, and ZIP Code) of the horse owner and of the shipper, if different from the owner or trainer;

(b) Name and address (including street address or post office box number, and ZIP Code) of the horse trainer;

(c) Name and address (including street address or post office box number, and ZIP Code) of the carrier transporting the horse, and of the driver of the means of conveyance used;

(d) Origin of the shipment and date thereof; and

(e) Destination of shipment.

§ 11.14 Training and licensing of Horse Protection Inspectors (HPIs).

APHIS will train and license HPIs on an individual basis. The management of any horse show, exhibition, sale, or auction may appoint and retain HPIs holding a valid, current license to detect and diagnose horses that are sore or to otherwise inspect horses and any records pertaining

to such horses for the purposes of enforcing the Act. A current list of licensed HPIs, including names and contact information, is available on the APHIS Web site.

(a) Basic qualifications of HPI applicants. Persons licensed as HPIs shall be veterinarians. If there is an insufficient pool of veterinarians that are licensed as HPIs as determined by the Administrator, APHIS may also train and license veterinary technicians and persons employed by State and local government agencies to enforce laws or regulations pertaining to animal welfare. The required qualifications of each are as follows:

(1) Veterinarians, veterinary technicians, and persons employed by State and local government agencies to enforce laws or regulations pertaining to animal welfare must have extensive knowledge and experience of equine husbandry and science, defined as understanding the anatomy, selection, breeding, care, and maintenance of horses, and applicable principles of equine science, welfare, care, and health, and be eligible to be licensed as HPIs under paragraph (b) of this section. They also must be knowledgeable in the areas of equine soring and soring practices.

(2) Veterinarians must have a degree awarded from a veterinary school accredited by the American Veterinary Medical Association's (AVMA) Council on Education, or have a certificate issued by the AVMA's Education Commission for Foreign Veterinary Graduates, or have received equivalent formal education as determined by the Administrator. Veterinary technicians must have a degree awarded by an educational program accredited by the AVMA's Committee on Veterinary Technician Education and Activities.

(b) Additional restrictions on HPI licensing. (1) APHIS will not license any person as an HPI if that person has been convicted or found to have violated any provision of the Act or the regulations in this part occurring after July 13, 1976, or has been assessed any fine or civil

penalty, or has been the subject of a disqualification order in any proceeding involving an alleged violation of the Act or regulations occurring after July 13, 1976.

(2) APHIS will not license any person as an HPI if that person, any member of that person's immediate family, or that person's employer participates in the showing, exhibition, sale, or auction of horses or acts as a judge or farrier, or is an agent of management.

(3) APHIS will not license any person as an HPI if that person has been disqualified by the Secretary from performing diagnosis, detection, and inspection under the Act.

(4) APHIS will not license any person as an HPI if the honesty, professional integrity, reputation, practices, and reliability of the person do not support a conclusion that the applicant is fit to carry out the duties of an HPI. In making this conclusion, the Administrator shall review all available information about the applicant and shall consider:

(i) Criminal conviction records, if any, indicating that the person may lack the honesty, integrity, and reliability to appropriately and effectively perform HPI duties;

(ii) Official records of the person's actions while participating in Federal, State, or local veterinary programs when those actions reflect on the honesty, reputation, integrity, and reliability of the person;

(iii) Judicial determinations in any type of litigation adversely reflecting on the honesty, reputation, integrity, and reliability of the person; and

(iv) Any other evidence reflecting on the honesty, reputation, integrity, and reliability of the person.

(c) Licensing of HPIs. (1) All persons wishing to become HPIs must submit an application to the Administrator. Applicants will be required to show that they satisfy the requirements in paragraphs (a) and (b) of this section. HPI applicants selected as candidates will

complete a formal training program administered by APHIS. This training program will include instruction on:

- (i) The anatomy and physiology of the limbs of a horse;
  - (ii) The Act and the regulations in this part;
  - (iii) The history of soring, the physical inspection procedures necessary to detect and diagnose soring, and related subjects;
  - (iv) Practical instruction using live horses;
  - (v) HPI standards of conduct; and
  - (vi) Recordkeeping requirements and procedures.
- (2) After an HPI candidate successfully completes the formal training program in paragraph (c)(1) of this section and passes a written examination, a license will be granted to that candidate for 1 year. Licenses terminate after 1 year and all HPIs must submit a new application each year if they wish to be considered for licensing for another year.

(d) Requirements to be met by HPIs. (1) Any licensed HPI appointed by the management of any horse show, exhibition, sale, or auction to inspect horses for the purpose of detecting and diagnosing horses which are sore and to otherwise inspect horses for the purpose of enforcing the Act and regulations shall collect and maintain the following information and records concerning any horse which he or she finds to be sore or otherwise noncompliant with the Act or regulations:

- (i) The name and address, including street address or post office box number, and ZIP Code, of the event and the manager;
- (ii) The name and address, including street address or post office box number, and ZIP Code, of the horse owner;

(iii) The name and address, including street address or post office box number, and ZIP Code, of the horse trainer;

(iv) The name and address, including street address or post office box number, and ZIP Code, of the horse exhibitor;

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

(vi) The date and time of the inspection;

(vii) A detailed description of all of the HPI's findings and the nature of the noncompliance, or other reason for notifying management of inspection findings involving a horse, including said HPI's statement regarding the evidence and facts upon which management's decision to disqualify or prohibit said horse was based;

(viii) The name and any applicable registered name and number (if the horse is registered), age, sex, color, and markings of the horse; and

(ix) The name or names of the manager or other management representative notified by the HPI of horses that he or she found sore or otherwise noncompliant with the Act or regulations.

(2) Copies of the records required by paragraph (d)(1) of this section shall be submitted by the HPI to APHIS and management within 72 hours after the conclusion of a horse show, exhibition, sale, or auction.

(3) After completing an inspection, the HPI shall inform the owner, trainer, exhibitor, or other person having immediate custody of or responsibility of any horse allegedly found to be in violation of the Act or regulations of such alleged violation or violations before the horse is released by the HPI.



(4) The HPI shall immediately notify management of any horse which, in the HPI's opinion, is allegedly in violation of the Act or regulations.

(e) Denial and revocation of HPI license. APHIS will deny or revoke a license for any of the reasons outlined in paragraph (b) of this section, and will revoke the license of any HPI who fails to follow the inspection procedures set forth in this part, or who otherwise carries out his or her duties and responsibilities in a less than satisfactory manner. Upon denial or revocation of a license, the applicant or HPI may appeal the denial or revocation to the Administrator within 30 days from the date of such decision, and the Administrator shall make a final determination in the matter. If the Administrator upholds the denial or revocation of the license, the applicant or HPI shall be given notice and opportunity for a hearing. Hearings will be in accordance with the Uniform Rules of Practice for the Department of Agriculture in 7 CFR 1.130 through 1.151. The license denial shall remain in effect until the final decision has been rendered.

(f) Inspectors licensed prior to January 1, 2018. Inspectors licensed as Designated Qualified Persons (DQPs) prior to January 1, 2018, shall not be appointed and retained by management to detect and diagnose horses which are sore or otherwise inspect horses for compliance with the HPA and regulations after the effective date. DQPs and other persons seeking to become inspectors after January 1, 2018, must apply for a license and fulfill all HPI eligibility requirements included in this section.

§ 11.15 Inspection procedures for HPIs.

(a) Required inspections. (1) The HPI shall physically inspect the following horses in accordance with the inspection procedures provided for in this section for the purpose of determining whether horses are sore or otherwise not in compliance with the Act:

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

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

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

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

(2) The HPI shall observe horses warming up and during actual performances whenever possible, and shall inspect any horse at any time he or she deems necessary to determine whether any such horse shown, exhibited, sold, or auctioned is compliant with the Act or regulations. The HPI shall examine any horse which the HPI determines, at any time, should be examined for compliance with the Act and regulations.

(3) The HPI shall immediately notify management of any horse show, exhibition, sale, or auction, of any horse which, in the HPI's opinion, is sore or otherwise not in compliance with the Act or regulations. Such report shall be made before the show class or exhibition involving the horse has begun or before the horse is offered for sale or auction.

(4) Horses dismissed from the show arena, whether by a judge, steward, or custodian of the horse, must be taken directly to the inspection area for follow-up inspection by the HPI. Horses that suffer serious illness or injury while performing and determined by the HPI to require immediate veterinary treatment are not required to return to the inspection area at that time.

(b) Inspection procedures. (1) During the preshow inspection, the HPI shall direct the person having immediate custody of the horse to walk and turn the horse in a manner that allows

the HPI to determine whether the horse exhibits signs of soreness. The HPI shall determine whether the horse moves in a free and easy manner and is free of any signs of soreness.

(2) The HPI shall instruct the custodian of the horse to control it by holding the lead rope approximately 18 inches from the halter. The HPI shall not be required to inspect a horse if it is presented in a manner that might cause the horse not to respond to an HPI's inspection, if there is any tack on the horse except for a halter, or if whips, cigarette smoke, or other actions or paraphernalia are used to distract a horse during inspection. The HPI shall not be required to inspect horses that are not presented in a manner to allow their proper inspection, as well as unruly or fractious horses. The HPI shall report such incidents to management and APHIS.

(3) The HPI shall digitally palpate the front limbs of the horse from knee to hoof, with particular emphasis on the pasterns and fetlocks. Digital palpation must be of a pressure sufficient to blanch, or whiten, the thumbnail of the inspecting HPI. The HPI shall inspect the posterior surface of the pastern by picking up the hoof and examining the posterior (flexor) surface. The HPI shall apply digital pressure to the pocket (sulcus), including the bulbs of the heel, and continue the palpation to the medial and lateral surfaces of the pastern, being careful to observe for responses to pain in the horse. While continuing to hold onto the pastern, the HPI shall extend the hoof and limb of the horse to inspect the front (extensor) surfaces, including the coronary band. The HPI may inspect the rear limbs of all horses inspected after showing, and may inspect the rear limbs of any horse inspected preshow or on the show grounds when he deems it necessary, except that the HPI shall inspect the rear limbs of all horses exhibiting lesions on, or unusual movement of, the rear limbs. While carrying out the procedures set forth in this paragraph, the HPI shall also inspect the horse to determine whether it is compliant with

the scar rule in § 11.3, and particularly whether there is any evidence of inflammation, edema, proliferating granuloma tissue, or other evidence of abuse.

(4) The HPI shall observe and inspect the horse for compliance with the provisions set forth in § 11.2(a) through (d). All devices, pads, and other equipment shall be inspected to assess whether they are in compliance with the regulations.

(c) Inspection logistics. (1) In shows in which 150 horses or more are entered, a HPI appointed and retained by management may inspect horses three classes ahead of the time such horses are to be shown but only if another HPI can provide continuous and uninterrupted supervision of the designated warm-up area for the inspected horses; otherwise, the HPI may inspect horses up to two classes ahead of the time such horses are to be shown. In shows in which fewer than 150 horses are entered, the HPI may inspect horses up to two classes ahead of the time the inspected horses are to be shown.

(2) Inspected horses shall be held in a designated area that is under observation by a HPI. Horses shall not be permitted to leave the designated warm-up area before showing.

(d) Additional inspection procedures. The HPI may carry out additional inspection procedures as he deems necessary to determine whether the horse is sore or otherwise not in compliance with the Act or regulations. The HPI may inspect and remove plastic, cotton, or any materials wrapped around the limbs of any horse at a horse show, exhibition, sale, or auction to determine whether any prohibited substance is present. Finally, the HPI would be authorized to use hoof testers on horses.

Done in Washington, DC, this 11<sup>th</sup> day of January 2017.

David Howard,

Acting Deputy Under Secretary for Marketing and Regulatory Programs.