

EXECUTIVE SUMMARY OF HORSE PROTECTION ACT RULE 9 CFR 11

On January 13, 2017, USDA's Animal and Plant Health Inspection Service (APHIS) released a document announcing the impending publication of the final revision of the Rule 9 CFR 11 pertaining to the Horse Protection Act. The report includes over 100 pages of elucidation on the comments received during the 120 day comment period this past fall. The USDA received more than 130,000 comments on the proposed regulation, and subsequently made significant changes. As of January 15, 2017, the Final Rule is not published in the Federal Register, and will not go into effect until 30 days post publication.

Significant highlights, comments, and predicted unintended consequences of the impending Final Rule are listed below with a matrix showing the specific changes from the original proposed changes following these comments.

GENERAL HIGHLIGHTS & COMMENTS

- Rather than the difficult verbiage citing “related breeds”, APHIS wrote the bulk of the regulation to apply to Tennessee Walking Horses and racking horses. They divided the prohibitions into three categories: All Horses, Tennessee Walking Horses (TWH) and racking horses, and horses other than TWH and racking horses.
- The new rules are “strengthening the requirements pertaining to TWH and racking horses...”
- The capitalization of *Racking* horses has been changed to *racking* horses, indicating an inclusion of all horses that perform this gait, regardless of breed, in this change of the rules
- Spotted Saddle Horses (SSH) are no longer included as a specific breed within the regulations (page 38), but they and Missouri Fox Trotters are specifically mentioned
 - *“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. 8 However, these reports and incidences are not as widespread as the reports and incidents of soring in Tennessee Walking Horses”...*

- APHIS will “continue to consider what additional requirements are necessary, if any, for other breeds of horses that present a concern of soring.” (pg. 11)
- All action devices, except for boots that meet the requirements in prohibitions for all horses are prohibited (including chains) at shows, exhibitions, or sales. *This goes into effect as soon as the rule goes into effect.*
- “Excessive paring of the frog and/or sole” is now prohibited
- Prior to January 1, 2018, all pads and wedges on Tennessee Walking Horses or racking horses must meet the requirements of the prohibitions for all horses
- On or after January 1, 2018, all pads and wedges are prohibited on any Tennessee Walking Horse or racking horse at any exhibition unless it has been prescribed and is receiving therapeutic, veterinary treatment using pads or wedges
- All substances are prohibited on the extremities above the hoof
 - While there is not a substantive list of banned substances provided, the intent of the language remains consistent with the original HPA: “APHIS focuses its limited investigative and enforcement resources on prohibited substances that are considered irritants or numbing and masking agents.”
- APHIS may detain a horse for up to 24 hours for the purpose of examination, testing, or taking of evidence.
- Each horse may have only three people accompany it to the warm-up area – owner, trainer, and groom (or rider).
- First, second and third place horses must return for inspection following any class.
 - This may impact the “tempo” of the horse show in terms of getting horses through the initial inspection and the follow-up inspections, causing the overall length of time for the show to be longer, thereby having an impact on the cost to shows of inspectors, announcers, judges, and show management
- If more than 150 horses are entered at a show that includes TWH and racking horses, then management must hire at least 2 Horse Protection Inspectors
 - This needs some clarification regarding if this includes horse shows and exhibitions that have “open gaited classes”, i.e. those classes not specifically designated for TWH and/or racking horses
- If a show with TWH and/or racking horses has padded classes, AND there are more than 150 horses at the show, THEN there must be a farrier physically on the grounds. If there are no padded classes and/or less than 150 horses, then the farrier may be on call.
- The proposed requirement for an ID card for the horse has been removed.
- Show management must retain records as specified in the regulation for 90 days post show, not 6 years as originally proposed.
- Show management must notify APHIS at least 30 days prior to the show of the show, and provide specific information.
- Show management must report to APHIS all of the disqualifications of the horses found to be sore at any show, including shows that do not have Tennessee Walking horses and racking horses.

- APHIS will license inspectors. Inspectors will be veterinarians, or, if there are not sufficient veterinarians who will perform the task, they will open it to Vet Techs and Government Animal Control Personnel working on their own time, not as part of their usual work. APHIS inspectors will not start inspecting until January 1, 2018. Until then, HIOs will do the inspecting.
- Horses will be presented for inspection in a halter and lead rope. All other tack is prohibited.
 - This may present hazards in the warm up area
- The leadline is to be held 18 inches from the horse by the handler

PREDICTED UNINTENDED ECONOMIC AND HORSE SLAUGHTER CONSEQUENCES

- The prediction of this working group is that the unintended consequence of deleting SSH from the group included with TWH will be that TWH will be “reclassified” as Spotted Saddle Horses, as there is already tremendous overlap between the breeds. Furthermore, the gait will be renamed from “rack” to something that is not within the more limiting rules i.e. “tolt” or “amble”. Another possibility is that SSH will become predominately padded horses exempt from the rules for TWH and racking horses.
- The cost of horse shows that utilize HPIs will increase as the education level of the HPIs will dictate a higher rate of pay per day for these inspectors
- The cost of shows that must have a farrier on the show/event grounds will increase
 - Although the vast majority of shows with 151 or more entries routinely have a farrier on the grounds
- The working group predicts that there will be a dramatic increase in the number of TWH and racking horses in rescues, shelters, and other such placements both through seizure by Animal Control Officers and voluntarily.
 - This will be due to the condensing of the number of divisions, currently based on the shoeing style (padded, performance pleasure (heavy-shod), and keg shod)
- The working group predicts that there will be a dramatic increase in the number of TWH and racking horses in auctions frequented by those purchasing horses for transportation to slaughter facilities outside of the USA
- Based on the predicted increase in the number of TWH and racking horses in auctions for slaughter, the working group predicts an increase in the number of horses transported, and the subsequent consequences of an increased number of in terms of accidents and other events related to transportation.
- While there are new nonprofit organizations that have been formed specifically to promote the purchase of gaited horses, primarily TWH, from the slaughter auctions, it is unlikely that those organizations can raise enough funds or identify enough people to purchase the expected influx of these horses into the slaughter-auction market.
- The working group predicts an increase in the number of calls to Animal Control Officers and other related government agencies regarding the conditions of horses in terms of neglect due to the change in the market value of TWH and racking horses.

Specific prohibitions for all horses:

- More than one action device on any one limb
- Boots, collars, etc., with rough or sharp edges, seams or any other abrasive surface
- Boots, collars, or any other devices that weigh more than 6 ounces, except for soft rubber or soft leather bell boots and quarter boots used as protective devices
- 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
- Any weight on horses up to 2 years old, except a keg shoe less than 16 ounces
- Artificial extension of the toe length, that exceeds 50 percent of the natural hoof length
- Toe length that does not exceed the height of the heel by 1 inch or more
- Pads that are not made of leather, plastic, or a similar pliant material
- Any object or material inserted between the pad and the hoof other than acceptable hoof packing
- Acrylic and other hardening substances are prohibited as hoof packing
- Single or double rocker-bars on the bottom surface of horseshoes which would cause an unsteadiness of stance with resulting muscle and tendon strain
- Metal hoof bands, placed less than 1/2 inch below the coronet band
- Metal hoof bands that can be easily and quickly loosened or tightened by hand, such as a wing-nut or similar fastener
- Any device that strikes the coronet band except for soft rubber or soft leather bell boots that are used as protective devices
- Shoeing, trimming, or paring the frog or sole in a manner that will cause such horse to suffer pain or distress and bruising of the hoof or any other method of pressuring shoeing is also prohibited
- 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

Specific Prohibitions for horses OTHER THAN Tennessee Walking horses and racking horses

- 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
- Chains weighing more than 6 ounces each, including the weight of the fastener
- Chains with links that are not of uniform size, weight and configuration; and, chains that have twisted links or double links
- Chains that have drop links
- Chains which are not smooth and free of protrusions, corrosion, or rough or sharp edges

Specific Prohibitions Tennessee Walking horses and racking horses

- All action devices, except for boots that meet the requirements in prohibitions for all horses are prohibited
- Prior to January 1, 2018, all pads and wedges on Tennessee Walking Horses or racking horses must meet the requirements of the prohibitions for all horses
- On or after January 1, 2018, all pads and wedges are prohibited on any Tennessee Walking Horse or racking horse at any exhibition unless it has been prescribed and is receiving therapeutic, veterinary treatment using pads or wedges
- All substances are prohibited on the extremities above the hoof

The following table links the parts and paragraphs of the old (current) 9 CFR 11, the parts and paragraphs in the proposed regulation, and the parts and paragraphs in the impending Final Rule.

TABLE 1

Existing regulation	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), (c), 11.12(a)	11.9(a), (b), 11.15(a)
N/A	11.10(a)	11.9(c), 11.12(a)
11.21	11.12(b)(2) – (d)	11.6(b), 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

A matrix was developed to capture the comments to the proposed regulation and submitted by multiple organizations and individuals to the USDA APHIS as part of the public comment procedure. That matrix has been updated to include the addition of a column explaining the outcome and the final ruling.

Original Proposed Paragraph	Verbiage	Comment	Proposed change	Final rule
11.1	“Substance means any agent applied to a horse’s limbs while a horse is shown.....”	This broad definition prohibits the use of fly spray, soap, liniment (and for that matter water). One could also argue that dirt is a substance. Somehow we need to limit the long list of everything on the earth down to something manageable. Perhaps we could use some verbiage whereby the use of MSDSs could help out.	“ <i>Forbidden Substance</i> means any agent applied to the horse’s limbs while a horse is shown... for which the MSDS indicates that irritation of the skin or mucous membranes is likely on contact.”	Eliminated definition. The reg will say “All substances are prohibited...”, but only on TWH and racking horses. The substance rule does not apply to horses other than TWH and racking horses. Clarified later in the document to indicate substances considered irritants or numbing and masking agents.
11.2(a), et al	“...specifically prohibited with respect to any Tennessee Walking Horse, Racking Horse, or related breed that performs with an accentuated gait.....”	This could be construed to include Saddlebreds, Morgans, and Arabs, all of whom show with pads, wedges and bands. This verbiage will meet with significant push-back from other breed organizations, and opens the door to litigation from gaited horse organizations who will argue that the Rule is not enforced evenly across the board. One would have to change the verbiage throughout the proposed Rule to assure that the breeds not intended to be targeted are, indeed, not	“...with respect to any Tennessee Walking Horse, Racking Horse, or related Non-trotting breed that performs”	Fixed by adding section that applies to all horses and sections specific to TWH and racking horses. See 11.2 (b), (c), (d)

		<p>targeted.</p> <p>Additionally, many gaited horses perform a natural, non-accentuated gait. If my gaited horse does not perform an “accentuated gait”, then one might argue that these regulations not apply.</p>		
11.2(a)(2)	Any pad, wedge or hoof band is prohibited	We need this, but we need not interfere with the trotting breeds.		<p>11.2(b)(5): “Artificial toe length... That exceeds 50% of the natural hoof length...” is prohibited on all horses.</p> <p>11.2(b)(7): “Pads that are not made of leather, plastic, or a similar pliant material” are prohibited on all horses.</p> <p>11.2(b)(10): “Metal hoof bands, ...placed less than ½ inch below the coronet band” are prohibited on all horses.</p> <p>11.2(b)(11): Metal hoof bands that can be quickly loosened or tightened by hand... Such as...a wing nut...” are prohibited on all horses.</p> <p>11.2(c) prohibits action devices weighing more than 6 oz., chains with drop links, twisted or double links or abrasive or have rough edges on horses other than TWH and Racking horses.</p>

				11.2(d)(2)... prior to Jan 1, 2018, TWH and racking horses may use pads that meet the restrictions in 11.2(b), but no action devices (chains). After Jan 1, 2018, pads and wedges are prohibited on TWH and racking horses, except for therapeutic pads under the prescription of a veterinarian.
11.2(b)	Any substances are prohibited on the limbs of any Tennessee.....	See comment to 11.1, Substance.	Recommend changing to “forbidden substances”	11.2(d)(3) The final rule says “all substances are prohibited” but it is limited to TWH and racking horses.
11.3	The scar rule applies to all horses born on or after October 1, 1975	Any horse born prior to October 1, 1975 is either dead or retired. Perhaps it’s time to reword this paragraph to include all horses.	Recommend: Eliminate first sentence. Begin with: “Horses that do not meet the following scar rule criteria shall be considered to be “sore” and are subject to”	No change
11.3(b)	The posterior surfaces of the pasterns (flexor surface), including the sulcus or “pocket”.....	Ref. new 11.12(b)(3) – which says that rear feet may be inspected after showing or when deemed necessary. Does this paragraph apply to hind feet?	QUESTION	The verbiage about the rear feet is removed.
11.5(c)	No tack other than a halter and lead rope may be on the horse during inspection	The logistics of this, from an exhibitor and from a management perspective, are difficult, but manageable.		11.5(b)(2): “No tack other than a halter and lead rope may be on the horse during inspection.”

11.6	<p>(a) Persons licensed as HPIs under this part shall be veterinarians or veterinary technicians.</p> <p>(b)(2)APHIS will not license any person as a 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 show management.....</p>	<p>Currently, most of the DQPs have some ties to the industry. Often, they become DQPs because they want to help end the abusive practices related to soring. This rule effectively eliminates them from the pool of potential HPI candidates.</p> <p>Currently, show management pays a single DQP approximately \$200/day plus travel expenses. The concern then becomes how many vets and/or techs who have no ties to the gaited horse industry will want to go through the licensing process annually for very little return. And, if there are not enough HPIs certified, does APHIS have to go through another proposed rule change to allow a broader pool of potential candidates?</p>	<p>Recommend giving some thought to changing the verbiage to allow a broader range of personnel IF there are not enough HPIs who are vets or vet techs. This would eliminate the need to go through the Federal Register process just to be able to find enough people.</p>	<p>11.14 The final rule says “Veterinarians or if there aren’t enough Vets, then APHIS will take Vet Techs or government affiliated Animal Control Officers (working on their own time, not as agents working within their usual work hours)</p>
11.6(c)(2)	<p>... Licenses terminate after 1 year and all HPIs must submit a new</p>	<p>There is nothing in the proposed regulation about application fees. Do we expect that there will be an</p>	<p>QUESTION</p>	<p>11.14(c). No change</p>

	application each year...	annual application fee?		
11.10(a)(1)	(1) Notify the Administrator of the event at least 30 days before it begins.....	There is currently no requirement for notifying APHIS of any horse show, affiliated or not. This means that ALL local, backyard gaited shows are required by law to report to APHIS – 30 days in advance. As written, this includes small, back-yard 4H open shows that include a few gaited classes for their kids who have gaited horses. Small, sound shows that currently do not affiliate and police their own will necessarily suffer.	Recommend adding a caveat for any show (exhibition, etc) where less than 20 Tennessee Walking Horses, Racking horses... et al... are shown that does not require notification and reporting to APHIS.	11.12 (a) All shows at which TWHs and racking horses exhibit shall notify. 11.12(b) All shows with TWH or racking horses shall report any disqualifications
11.10(a)(4)	Check the drivers' licenses or other official photo identification of the people entering horses in the horse show, ... against the list noted in paragraph (a)(3)... and prevent them from entering their horses if they are on the list	New responsibility for show managers. This is attainable, but is show management responsible for maintaining documentation that they have checked the licenses? If not how will one determine compliance?	Recommend changing to "Prohibit anyone on the list noted in paragraph (a)(3) from entering their horses."	11.9 takes this recommendation and uses it, saying that show management's responsibility is to prohibit horses that are sore or in violation from participating. (Limited to TWH and racking horses)

11.10(b)	Horse shows...at which the management does not designate and appoint HPIs	This allows management to choose not to designate HPI, but does not relieve them from the notification and record keeping requirements.		Omitted
11.10(b)(1)	...management shall inspect all horses tied first, second, or third	This requirement applies only to those shows who do not have an HPI. So, if one assumes that the show hires a “steward” (someone who is not licensed by APHIS), then that steward must check many more horses than if an APHIS-qualified HPI comes. What documentation will APHIS require to verify compliance with this requirement? How do we assure compliance?	QUESTION	This is in the final rule for TWH and racking horses only
11.10(b)(2)	Copies of the records required under section 11.6(d) shall be collected and submitted by management to APHIS within 72 hours after the horse show...is over	A whole list of information, but only applies to disqualified horses. (Comment only)		11.12(b) extends this requirement to 30 days.
11.10(c)(1)	... a minimum of 2 HPIs if 150 horses	HPI costs are significant, and this doubles them for	Please consider changing to “a minimum of 2 HPIs if 75	11.9(b)(2) Changed to a minimum of 2 IF there are

	or fewer are entered in the event	any show that uses them. This rule will necessarily press shows to NOT hire HPIs and instead hire a non-certified “steward” to provide whatever inspection services they can. Currently, many shows are currently quite small (less than 50 horses at most 2-day shows, less than 30 horses at 1-day shows), and the \$400 - \$750 additional expense is completely prohibitive. The choices left to show management are: (a) Produce the show without APHIS notification and be non-compliant with the Rule, (b) Lose a substantial amount of money, (c) don’t hold the show. The fear is that (c) will be the option for small local sound horse shows.	horses or more are entered in the event....”	greater than 150 horses entered and those horses include TWH and/or TWH and racking horses. A farrier is required on the grounds if padded horses are exhibited and there are 150 or more horses entered. In the comment resolution section, it says that the on-call farrier is only required if the show allows padded horses.
11.10(c)(1)	The management must also make a farrier available to assist in inspections at every horse show....	NEW (and potentially expensive). Once again, this requirement will likely drive smaller shows to elect not to hire HPIs.	Recommend clarifying to say that for shows with less than 75 horses, a farrier must at least be “on call” to assist if needed.	11.9(b)(2)Changed to farrier on call unless padded classes and more than 150 horses.
11.10(c)(4)	... if management	This gives show	QUESTION	11.9(b)(4): “Management...

	has reason to believe that a horse is sore but it is not determined to be sore by the HPI, management shall override the HPI's decision and disqualify the horse...	management a way of protecting itself, but if the HPI does not disqualify the horse, how will APHIS stand behind management's decision?		shall immediately disqualify... any horse identified by the HPI to be sore... and any horse otherwise known by management to be sore or ... in violation of the Act or regulations" (TWH and racking horses only)
11.11(a)	The management shall maintain, for a period of at least 6 years following the closing date of the show....	While exhibitions and auctions are often produced by companies, horse shows are most often produced by small organizations and clubs, none of whom have the capacity for significant records storage. Additionally, since show management is required to report all of this information to APHIS should any person be disqualified (11.11(c)(1)), the likelihood for a dispute beyond a short time is highly unlikely.	Recommend changing the requirement to 2 years, unless a dispute arises.	11.10(a) "The management of any horse show... that contains Tennessee Walking Horses or racking horses shall maintain for a period of at least 90 days....."
11.11(c)(1)	Within 30 days following the conclusion of any horse show.....each horse disqualified	See 11.10(c)(4). My interpretation is that if management over-rides an HPI then they must report to APHIS regarding	1: Clarify what kind of documentation would be acceptable to APHIS to substantiate a management decision to disqualify an	11.12(b) no change. (applies only to TWH and racking horses). In addition, 11.12(c) requires reporting to APHIS for any horse (TWH or not) that is disqualified

	by management or its representatives... and the reasons for such action. If no horses are disqualified, the management shall submit a report so stating.	<p>reasons. Once again, the concern is that APHIS either has to back the show manager or the HPI (who it certifies). If there is a dispute with an exhibitor, how is management protected?</p> <p>Additionally, management is required to provide a post-show report to APHIS, increasing the burden on the show.</p>	<p>entry. Does one need photos? Video? Testimony?</p> <p>2: Provide an electronic form for show management to easily fill out and return to APHIS with required information.</p>	for non-compliance with the regs or the Act.
11.12(a)(1)(ii)	All horses, regardless of breed, entered in any animated gait class (whether under saddle, horse to cart, or otherwise)	REGARDLESS of breed. This paragraph necessarily affects many other “animated” breeds and if not enforced across the board, begs for litigation from the opposition to the Rule.	Recommend changing to “All non-trotting horses.....”	Fixed
11.12(2)	When a horse is presented for inspection, its custodian shall present the HPI with a record or entry card that includes identifying information about the horse....	Who makes the card? Who issues the card? Is this something one would have all year or does show management make a card for each exhibitor every time? What documentation does the HPI complete to verify that they have inspected the card and confirmed that the	QUESTIONS ONLY	Omitted. 11.9(c)(3) requires that managers at shows, etc. involving TWH and racking horses verify the identity of all horses, by having (i) a description with name, age, markings, etc. (like a Coggins), or electronic ID, or an equine passport.

		horse matches it?		
11.12(b)(3)	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 showgrounds.... The HPI shall also inspect the horse to determine whether it is compliant with the scar rule in Section 11.3..	This implies that the scar rule applies to rear legs as well. Is that the intent?	QUESTION ONLY	11.15(b)(3). The verbiage is intact. No changes to the scar rule are included in this rule. The intent is not to subject the hind limbs to the scar rule at this time (TWH and racking horses only)
		How does a show manager go about hiring an HPI? How much does it cost?	QUESTION	Remains a question