rules and regulations

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

PART 11—HORSE PROTECTION REGULATIONS

Devices and Substances for Use on Horses at Certain Horse Shows

On February 18, 1975, there was published in the FEDERAL REGISTER (40 FR 6978–6979) a notice with respect to proposed regulations relating to devices and substances for use on horses at certain horse shows, to appear as an amendment to Part 11, Subchapter A, Chapter I, Title 9, Code of Federal Regulations. Subsequently, on March 19, 1975, there was published a notice (40 FR 12514) to extend the time for filing data, views, and arguments with respect to the proposed amendments. The proposed amendments to the regulations were designed to resolve complaints from the horse industry that portions of existing regulations were unnecessarily restrictive and detrimental to the industry, and to resolve recurring enforcement problems related to the regulations. The amendments would: prohibit the use of certain methods and devices which may reasonably be expected to cause physical pain, extreme physical distress, or inflammation to any horse upon which they are used; delete the provisions specifying permitted boots and thereby eliminate the 16 ounce weight limitation and 2½ inch width requirement for bell boots; modify provisions for the use of therapeutic treatments, including the outright prohibition of therapeutic agents on a horse's foot above the hoof and below the fetlock; allow the use of clear and transparent lubricants under certain conditions when controlled by show management. All comments with respect to the proposed amendments were given due consideration.

A. As a result of written and oral comments received, the following changes in the proposed regulations were made in addition to minor language changes for clarification:

1. The general terminology used in § 11.2(c) (1) which refers to "trotting devices" has been deleted and specific prohibited devices are identified in § 11.2(c) (1) and (3), in accordance with the suggestion of the American Horse Council and its affiliated members. Lignum vitae and aluminum rollers exceeding 14 ounces in weight or which are not smooth and free of projections, protrusions, corrosion or rough or sharp edges have been prohibited because of evidence which shows that they would cause a horse to be sored.

2. Proposed § 11.2(c) (4) is renumbered § 11.2(c) (5), and new § 11.2(c) (4) has been added to make it clear that only chains with links of uniform size are allowed since other types would cause a horse to be sored.

3. The phrase "clear and transparent lubricants, including, but not limited to", used in § 11.2(d) has been deleted in accordance with the suggestion of several private citizens who contend that the Department and show management will have more effective control over lubricants if specific lubricants are permitted and all others prohibited.

4. Paragraph (1) under § 11.2(d) has been renumbered as paragraph (2), and paragraph (2) has been renumbered as paragraph (1) in order to give greater continuity to the provisions.

5. The word "control" used in § 11.2 (d) (1) has been deleted and the word "supervision" inserted in its place, in order to clarify show management's responsibility to supervise the application of lubricants, rather than to directly control such application, in accordance with the suggestions of representatives of various horse show managements.

6. The phrase "agrees to" has been added to § 11.2(d) (2), and the phrase "to the exhibitors at their request" has been deleted to clarify that it is show management's decision whether or not to provide lubricants. This change was recommended by the National Tennessee Walking Horse Breeders and Exhibitors Association.

B. Certain other recommendations have been carefully considered but have not been accepted. The following suggestions were not adopted for the reasons assigned.

1. Section 11.2(d) was objected to primarily for esthetic reasons. The Department's primary concern must be for providing needed protection for show horses. Therefore, the banning of all lubricants for appearance sake alone does not seem to be justified.

2. Several recommendations were received that advocated retention of the 16 ounce, 2½ inch width restrictions on bell boots. However, the Department feels that adequate supportive data to justify removing the restrictions has been established, as documented in the Statement of Considerations of the Proposed Regulation change. The Department's position concerning boots and other devices is that the soring of horses will not be tolerated and violators will be prosecuted regardless of the weight, width, or type boot, chain, roller, or other device being used on a horse at the time the horse is found to be sored.

Accordingly, the amendments are adopted with changes as set forth below.

(Sec. 9, 84 Stat. 1466; 15 U.S.C. 1828; 37 FR 28464, 28477; 38 FR 19141)

Effective date: The foregoing amendments shall become effective August 21, 1975.

The amendments must be made effective immediately to be of maximum benefit to affected persons. It does not appear that further public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that further notice and other public procedure with respect to the amendments are impracticable and unnecessary and good cause is found for making the amendments effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 15th day of August 1975.

PIERRE A. CHALOUX,
Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

1. In 9 CFR § 11.2, paragraphs (b), (c), and (d), are revised to read as follows:

§ 11.2 Prohibitions concerning exhibitors.

* * * * *

(b) No chain, boot, or other method or device shall be used with respect to any horse at any horse show or exhibition if such use causes the horse to be sored.

(c) The use of any of the following devices on any horse for the purpose of affecting its gait at any horse show or exhibition is prohibited:

(1) All beads, bangles, rollers and similar devices, except lignum vitae and aluminum rollers weighing less than 14 ounces each including the weight of the fastener.

(2) Chains weighing in excess of 10 ounces each including the weight of the fastener;

(3) Chains, lignum vitae and aluminum rollers which are not smooth and free of projections, protrusions, rust, corrosion, or rough or sharp edges;

(4) Chains with links that are not of uniform size;

(5) Boots, or any other device, with protrusions, swellings, or rough or sharp edges, seams or other surfaces that may contact a horse's leg.

(d) All substances are prohibited on the extremities, above the hoof (but below the fetlock) of any horse while being shown or exhibited at any horse show or exhibition, except glycerine, petrolatum, and mineral oil, or mixtures thereof: *Provided*, That:

(1) Show management agrees to furnish and maintains control over all lubricants for use at the horse show or exhibition;

(2) Any such lubricant is applied after the horse is inspected by the show manager or his representative and the lubricant is applied under the supervision of show management.

(3) Show management makes such lubricants available for Department personnel to obtain samples for laboratory analysis.

§ 11.3 [Deleted]

2. The present § 11.3 is deleted in its entirety.

§ 11.1 [Amended]

3. In present § 11.1(t) (1) (iv), the last sentence is amended to read: "Although a horse given therapeutic treatment by a veterinarian to relieve pain, lameness, or disability, or to restore its normal gait shall not be considered sored, the use of any substances above the hoof but below the fetlock on any horse while being shown or exhibited at any horse show or exhibition is prohibited by § 11.2(d) except as permitted therein.

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Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

ADMINISTRATIVE PROCEDURES AND OIL IMPORT REGULATIONS

Consolidation

On July 7, 1975, the Federal Energy Administration (FEA) issued a proposal to amend Parts 205 (Administrative Procedures and Sanctions) and 213 (Oil Import Regulations), and to vacate and reserve Part 206 (Administrative Procedures for Oil Imports) of its regulations, in order to abolish the Oil Import Appeals Board effective August 1, 1975 and consolidate its functions with those of the Office of Exceptions and Appeals. Since this consolidation was intended to integrate with the general procedures in Part 205 all procedures in Part 206 except those relative to the revocation and suspension of allocations and licenses, FEA also proposed that Part 205 be further amended to authorize such revocation and suspension in accordance with general FEA procedures. The purpose of these proposals was to extend administrative uniformity to all FEA regulatory programs. No public hearing was scheduled in connection with the proposal, though as a result of substantial interest, one was subsequently scheduled for August 8, 1975. Consequently, it was necessary to postpone the effective date of the amendments. FEA has now reviewed the written and oral comments received in this connection, and accordingly hereby adopts the proposed amendments, with certain changes and clarifications, effective immediately. All applications pending before the Oil Import Appeals Board will be deemed, in all respects, to be pending in the Office of Exceptions and Appeals.

I. Integration of Oil Import Appeals Board Procedures With FEA Procedures of General Applicability

The Oil Import Appeals Board presently handles two classes of petitions. The first are in the nature of requests for exception from payment of the base fees imposed under Part 213, where the Board is authorized to:

(1) modify import allocations on grounds of exceptional hardship;

(2) grant import allocations in special circumstances to persons who would not otherwise be eligible;

(3) grant allocations of imports of finished products on grounds of exceptional hardship;

(4) grant import allocations to independent refiners or marketers experiencing exceptional hardship or in emergencies; and

(5) refund license fees where licenses were subsequently issued on a fee-exempt basis. Under the amended regulations, petitions falling into this class will be handled through the Exceptions procedure in Subpart D of Part 205, and will be appealable under Subpart H. All other aspects of Part 205 will, where relevant, also apply to such petitions. No substantive change will result with respect to the availability or scope of exceptions authorized by the President under Proclamation No. 3279, as amended. Only the procedural aspects relating to petitions, such as the time and place of filing, will be changed.

The second class of petitions considered by the Oil Import Appeals Board is in the nature of appeals from actions of the Director of Oil Imports. These include:

(1) actions taken erroneously on applications for allocations of imports; and

(2) denials of refunds of license fees theretofore paid by a person.

Under the amended regulations, petitions falling into this class, in addition to appeals from denial of exception from the base fees, will be handled through the Appeals procedure in Subpart H of Part 205. All other aspects of Part 205, where relevant, will also apply. No substantive change will result with respect to appeals from actions of the Director. Only the procedural aspects relating to petitions, such as the time and place of filing, will be changed.

II. Suspension and Revocation of Allocations and Licenses

With respect to the suspension and revocation of allocations and licenses, FEA will continue this function in the Director of Oil Imports, but will require that the procedures followed by him be in conformity with the procedures in Part 205. Accordingly, FEA is establishing a new Subpart T in Part 205, "Revocation and Suspension of Allocations and Licenses Issued Pursuant to Part 213," which substantially follows the provisions of Subpart O, "Notices of Probable Violations and Remedial Orders." It differs from Subpart O, however, in that the civil and criminal penalties provided in Subpart P for violations of other FEA programs will not be applicable. Subpart O itself will also not apply. Thus, revocation and suspension of allocations and licenses will continue to be the only sanction for violation of the Program, although consent orders will also be made available. The procedures originally proposed with respect to such orders have been revised to reflect public comment on similar procedures proposed in connection with Subpart O. Primarily, this revision provides for public comment on proposed consent orders involving allocations or licenses for imports of 300,000 barrels per year or more.

In this connection, however, it should be noted that with respect to potential violations of the fraud provisions of 18 U.S.C. § 1001, FEA will make available to the Department of Justice all information necessary to an appropriate investigation.

As with the proposed transfer of functions from the Oil Import Appeals Board to the Office of Exceptions and Appeals, there are no substantive changes as a result of issuing Subpart T. Only the procedural aspects of revocation and suspension are changed, in conformity with procedures affecting violations of other FEA programs.

III. Public Comments

Oral and written comments pertaining to these amendments fall primarily into four categories. As described below, FEA is adopting certain changes and making certain clarifications in response to these comments.

A. THE OFFICE OF EXCEPTIONS AND APPEALS DOES NOT RENDER DECISIONS WITHIN THE THREE-WEEK TIMETABLE FOLLOWED BY THE OIL IMPORT APPEALS BOARD.

FEA recognizes that expeditious processing of requests for exceptions is crucial to small refiners and marketers whose purchasing decisions may be determined by FEA's disposition of their requests. Therefore, it will be FEA's policy, insofar as practicable, to process fully documented applications in a timely fashion. Furthermore, under § 205.120 (b), an applicant for an exception to a regulation under Part 213 may seek a stay of that regulation pending the disposition of his application. The grant of such a stay would have an effect similar to the Board's granting of interim relief.

B. DATA REQUIREMENTS OF THE OIL IMPORT APPEALS BOARD, ADOPTED IN THE PROPOSED AMENDMENTS, ARE BURDENSOME AND UNNECESSARY.

A major factor in causing delay, has been the failure of applicants to furnish the complete documentation required under FEA regulations. Comments