

herd would remove an obstacle to the initiation of brucellosis research, primarily in Class Free States, by ensuring that the animals held for such research are not considered a "herd" for the purposes of assigning or renewing a State's brucellosis status.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Brucellosis is a contagious, costly disease of ruminants that also affects humans. Although brucellosis can infect other animals, it is primarily a threat to cattle, bison, and swine. In animals, the disease causes weight loss, decreased milk production, loss of young, infertility, and lameness. There is no cure for brucellosis in animals, nor is there a preventative vaccine that is 100 percent effective.

Given the potential for costly consequences related to an outbreak of brucellosis, additional research is needed in order to eradicate this economically damaging disease. In 1952, when brucellosis was widespread throughout the United States, annual losses from lowered milk production, aborted calves and pigs, and reduced breeding efficiency were estimated at \$400 million. Subsequent studies show that if eradication efforts were stopped, the costs of producing beef and milk would increase by an estimated \$80 million annually in less than 10 years.

We expect that the groups affected by this proposed action would be herd owners and the entities that would operate any brucellosis research facilities established in Class Free States. To the extent that it would allow for more research with the goal of eradicating brucellosis in the United States, this proposed rule would benefit all herd owners over time. Brucellosis research facilities in Class Free States would be operated by the State in which they were located or exist as part of colleges or universities that have government contracts to conduct brucellosis research.

The latest agricultural census data show that there were 732,660 farms in the United States primarily engaged in beef cattle ranching and farming and dairy cattle and milk production that reported sales in 2002. Of those farms, over 99 percent were classified as small entities according to Small Business Association (SBA) standards. There were 82,028 farms in the United States

primarily engaged in raising hogs and pigs that reported sales in 2002. Of those farms, over 90 percent were classified as small entities by the SBA. Most, if not all, of the farms primarily engaged in bison production are classified as small entities under SBA standards. Accordingly, the majority of herd owners potentially affected by this proposed rule are considered small entities. For herd owners, any economic effects stemming from this proposed rule would result from advances made toward the eradication of brucellosis in the United States. As such, these economic effects would be positive, but long-term and generalized.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### 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 7 CFR part 3015, subpart V.)

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR part 78 as follows:

#### PART 78—BRUCELLOSIS

1. The authority citation for part 78 would continue to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. In § 78.1, the definition of **herd** would be revised to read as follows:

#### § 78.1 Definitions

\* \* \* \* \*

**Herd.** (a) All animals under common ownership or supervision that are grouped on one or more parts of any single premises (lot, farm, or ranch); or

(b) All animals under common ownership or supervision on two or more premises which are geographically separated but on which animals from the different premises have been interchanged or had contact with each other.

(c) For the purposes of this part, the term **herd** does not include animals that are contained within a federally approved research facility.

\* \* \* \* \*

Done in Washington, DC, this 6th day of December 2006.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Part 93

[Docket No. APHIS–2006–0013]

RIN 0579–AC00

#### Standards for Permanent, Privately Owned Horse Quarantine Facilities

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule; withdrawal and reproposal.

**SUMMARY:** We are proposing to amend the regulations pertaining to the importation of horses to establish standards for the approval of permanent, privately owned quarantine facilities for horses. We are taking this action because demand for quarantine services for horses exceeds the space available at existing facilities. This proposed rule replaces a previously published proposed rule, which we are withdrawing as part of this document, that contained substantially different restrictions on ownership and substantially different requirements for the physical plant, operating procedures, and compliance date. We believe that allowing imported horses to be quarantined in permanent, privately owned quarantine facilities that meet these newly proposed criteria would facilitate the importation of horses while continuing to protect against the

introduction of communicable diseases of horses.

**DATES:** We will consider all comments that we receive on or before February 12, 2007.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS-2006-0013 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2006-0013, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2006-0013.

*Reading Room:* You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Freeda Isaac, Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231; (301) 734-8364.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR part 93 govern the importation into the United States of specified animals and animal products in order to help prevent the introduction of various animal diseases into the United States. The regulations in part 93 require that some of these animals be quarantined upon arrival in the United States as a condition of entry. The Animal and Plant Health

Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) operates animal quarantine facilities and authorizes the use of privately owned quarantine facilities for certain animal importations. The regulations in subpart C of part 93 (9 CFR 93.300 through 93.326, referred to below as the regulations) pertain to the importation of horses and include requirements for privately owned quarantine facilities for horses. These requirements are for the approval and establishment of temporary quarantine facilities for the purpose of quarantining imported horses for a specific event.

In addition to operating Federal animal quarantine facilities and authorizing the operation of temporary, privately owned quarantine facilities for horses, APHIS currently authorizes the operation of one permanent, privately owned quarantine facility for horses, located in Los Angeles County, CA.

The demand for import quarantine facilities for horses has risen in recent years as the amount of trade between the United States and other countries has risen. From 1992 to 2003, the number of horses imported annually into the United States increased substantially. In some cases, the demand for quarantine services for horses has exceeded the space available at existing Federal facilities. In addition, the geographic distribution of the currently operating horse quarantine facilities can make it difficult or costly to import horses to some areas; in some geographically isolated locations, such as Hawaii and Puerto Rico, no facilities exist for quarantining imported horses, reducing the ability of importers to profitably bring horses to those States. The demand for quarantine services for horses cannot always be filled by temporary, privately owned quarantine facilities because such facilities are established, approved, and operated by importers on a temporary basis to handle only horses imported for a unique importation, race, or show.

We have considered the possible need for permanent, privately owned quarantine facilities for horses in the past. On September 6, 1989, we published in the *Federal Register* (54 FR 36986-36996, Docket No. 85-061) a proposed rule that would have (1) allowed the operation of permanent, privately owned quarantine facilities for horses; (2) added new requirements for the approval of temporary, privately owned quarantine facilities for horses; and (3) required payment from each privately owned quarantine facility for services provided by APHIS at the facility. These changes would have been made in 9 CFR part 92; however, a 1990

final rule reorganized part 92, and the proposed provisions were no longer consistent with the new format of the part. Because of this inconsistency and for other reasons, we withdrew the proposed rule and reopened the issue for public discussion in a notice of withdrawal and an advance notice of proposed rulemaking published in the *Federal Register* on February 26, 1996 (61 FR 7079, Docket No. 95-084-1). Then, on May 6, 1996, we published a notice (61 FR 20189-20190, Docket No. 95-084-2) that we were reopening and extending the public comment period for the advance notice of proposed rulemaking and holding a public meeting on May 17, 1996, regarding the issue of permanent, privately owned quarantine facilities for horses.

We received 10 comments during the 2 comment periods and at the public meeting just described. Some commenters supported the concept of permanent, privately owned quarantine facilities for horses, and some commenters were opposed. We considered the comments and decided to propose regulations that would allow the establishment of permanent, privately owned horse quarantine facilities that would operate under the oversight of an APHIS veterinarian.

On July 1, 2002, we published in the *Federal Register* (67 FR 44097-44111, Docket No. 99-012-1) a proposal to establish requirements in the regulations for the approval and operation of such facilities. We solicited comments concerning our proposal for 60 days ending August 30, 2002. We subsequently extended the deadline for comments until October 15, 2002, in a document published in the *Federal Register* on September 30, 2002 (67 FR 61293, Docket No. 99-012-2).

We received 59 comments by the close of the extended comment period. They were from import-export brokers, horse traders, operators of quarantine facilities, and representatives of State governments. The majority of these comments came from import-export brokers who supported the proposed rule on the grounds that current shortages in USDA quarantine space were negatively impacting their businesses. However, commenters raised issues about proposed ownership requirements, physical plant requirements, operating procedures, compliance, and other provisions that led us to rethink aspects of the proposed rule.

As a consequence, we are withdrawing the July 2002 proposed rule mentioned above and replacing it with an alternative proposal. This alternative proposal retains many of the

provisions of the July 2002 proposed rule, but incorporates numerous suggestions made by commenters and proposes a few new requirements. The most significant new provisions and changes in this reproposal are: A new provision that would require that the operator or any person responsibly connected with the business of a permanent, privately owned facility not act as a broker for the sale or importation of horses; several amended provisions that would change the biosecurity safeguards relating to disease transmission between lot-holding areas; a new provision that would allow necropsies to be conducted off-site from the facility; and a change to prohibit vaccinations from being performed at the facility.

The full text of the proposed regulations appears in the rule portion of this document. Our discussion of the proposed provisions follows. We have incorporated our responses to comments we received concerning the July 2002 proposed rule into our discussion of the provisions in this proposed rule.

#### General Discussion

We intend to maintain the current requirements in the regulations for the approval of temporary, privately owned quarantine facilities for horses. We believe that these requirements are sufficient for facilities that are intended to quarantine horses imported only for a particular event. Temporary facilities are generally used to quarantine small numbers of animals in a single group and are in operation for only a short period of time before all the animals are removed and the facility is closed.

We continue to believe that permanent, privately owned horse quarantine facilities, constructed and operated using the proper safeguards, would provide an effective and efficient means of bringing horses into the United States without compromising our ability to protect against the introduction of communicable diseases of horses. We are, therefore, proposing to add requirements to the regulations for the establishment and approval of permanent, privately owned quarantine facilities for horses.

These proposed requirements are designed to maintain the same level of biological security standards as other permanent quarantine facilities operated by APHIS. We believe that the permanent, privately owned facilities must be designed, equipped, and monitored similarly to APHIS quarantine facilities in order to provide sufficient protection against the introduction of disease. Like an APHIS facility, a permanent, privately owned

quarantine facility could be occupied on a continuing basis by a large number of horses imported from many different regions. These circumstances dictate that security measures must be tighter, and disease detection and prevention measures must be different, at permanent facilities than at temporary ones. While the requirements for temporary facilities allow for variation in physical plants, the proposed requirements for permanent facilities would ensure a greater degree of consistency in the physical plants of those facilities. Such consistency should help ensure a greater degree of biological security. The proposed requirements for permanent facilities would also set out the operational and monitoring procedures necessary to prevent the spread of disease into, within, and from the facilities in much more detail than the requirements for temporary facilities.

In response to the July 2002 proposed rule, which also sought to ensure that permanent, privately owned facilities were similar to APHIS facilities, one commenter argued that it would be inappropriate to require a level of biological security similar to that of current APHIS quarantine facilities because APHIS facilities handle other livestock such as cattle and goats in addition to handling horses. In this commenter's view, horses require less stringent biological security measures than other animals, because the purpose of quarantining horses is to isolate the horses while blood tests are run and to monitor horse health, rather than to diagnose communicable diseases of horses. Thus, the commenter argued, the level of biological security that would be required under the standards described in the July 2002 proposed rule was excessive and would not have resulted in an appreciable reduction of risk.

The purpose of horse quarantine is to observe imported horses for any sign of communicable animal diseases, not just to determine whether the horses are affected with any of the diseases for which APHIS requires imported horses to be tested. The requirements described in the July 2002 proposed rule were designed to ensure that horses would be observed for signs of disease in a facility that presented the smallest possible risk of disease being transmitted into the domestic horse population, while ensuring that the horses in the facility were properly cared for, fed, and handled. The proposed requirements were developed specifically to address the unique problems and risks posed in quarantining horses. Given the myriad foreign animal diseases that may be

detected only under proper quarantine scrutiny and the continuing risk that such diseases may be transmitted into the domestic horse population, we believe that lowering the level of biological security required by the standards described in the July 2002 proposed rule would be inconsistent with APHIS' duty to prevent the introduction of dangerous foreign animal diseases. Therefore, we have made no changes to the approach of the July 2002 proposed rule in response to this comment.

The same commenter stated that no evidence exists to justify biological security measures for permanent facilities that are more restrictive than the biological security measures already in place at the one currently operating permanent, privately owned horse quarantine facility. The commenter noted that no equine disease has ever passed from imported horses quarantined in the currently operating permanent facility into the general horse population, and requested that APHIS conduct a risk assessment to determine exactly what level of biological security is necessary for horse quarantine facilities.

In guarding against the introduction of foreign animal diseases into the United States, APHIS, among other things, examines the possible ways that such diseases could be spread among or from animals being held in quarantine, and determines what measures are necessary to guard against such spread. While it is true that the measures in place at the one currently operating permanent, privately owned facility serve to a great extent to mitigate the risk of such spread, based on the nature of diseases affecting horses and our own experience quarantining horses intended for entry into the United States, we consider more restrictive measures to be necessary to mitigate the risk of disease spread from horses entered into any permanent, privately owned horse quarantined facility.

APHIS based the requirements in the July 2002 proposed rule for permanent facilities on an evaluation of our experience in mitigating the risk of disease introduction via imported horses, and modeled the proposed risk mitigation measures on those in place at APHIS-operated and -approved quarantine facilities. In those cases where commenters on the July 2002 proposed rule asserted that certain specific mitigating measures were not necessary, and the available evidence supported their claims, we have removed those measures from this new proposal. The fact that no equine diseases are known to have passed

through the currently operating permanent, privately owned facility into the general horse population to date does not in itself address potential risks.

### Changes in Our Approach With Respect to Lot-Holding Areas

We have modified one aspect of our approach to biological security in response to various comments we received. The July 2002 proposed rule included numerous biological security requirements intended to prevent disease transmission between lots of horses held within the quarantine facility. A lot of horses is a group of horses that, while held on a premises or conveyance, have had opportunity for physical contact with other horses in the group or with their excrement or discharges at any time during their shipment to the United States. The lot-holding area, therefore, is that area in a permanent, privately owned quarantine facility in which a single lot of horses is held at one time. A lot-holding area can comprise a stall, a group of stalls, or an entire building, provided that the physical plant and operational requirements relating to a lot-holding area are met.

The July 2002 proposed rule included proposed safeguards designed to prevent the transmission of any diseases that might be present in one lot of horses to another lot of horses held in the same quarantine facility. These safeguards included: Separate drainage and heating, ventilation, and air conditioning (HVAC) systems; physical barriers including lockable doors; and operational safeguards including showering and changing clothing when moving between lot-holding areas.

While these safeguards would meet the goal of reducing exposure between lots of horses, they do not in all cases reflect the construction of the permanent horse quarantine facilities operated by APHIS or the operational procedures in place at those facilities. We do not believe it is appropriate to require that permanent, privately owned quarantine facilities meet biosecurity standards different from those that have been determined and proven by APHIS to be effective when employed at our own facilities. Therefore, the proposed requirements related to lot-holding areas, which are discussed later in this document, have been adjusted. In all cases, when addressing issues related to lot-holding areas in this reproposal, we have either retained the proposed requirements presented in the July 2002 proposed rule or have provided more options for complying with the requirements while continuing to prevent the transmission of diseases

between lots of horses and from the quarantine facility to domestic horses.

These changes to the July 2002 proposed rule make the construction standards and the operating procedures described in this reproposal consistent with those of the permanent horse quarantine facilities operated by APHIS. The construction standards and the operating procedures of these facilities have been reviewed repeatedly by APHIS veterinarians and disease biologists and found to be adequate to prevent the transmission of disease between lots of horses. Under both the July 2002 proposed rule and this reproposal, permanent, privately owned horse quarantine facilities would operate under continuous APHIS oversight to ensure that operating procedures are correctly followed to prevent the spread of disease between lots. In addition, if there was a disease outbreak in a permanent, privately owned horse quarantine facility, APHIS would conduct tracebacks for any horses that had been quarantined in the facility at the time the infected horse was quarantined there, as is standard procedure at APHIS-operated horse quarantine facilities. For these reasons, we believe that the safeguards against the transmission of disease between lot-holding areas that we would require in this reproposal are adequate to prevent the spread of disease within and from a permanent, privately owned quarantine facility.

### Definitions

We are proposing to add to § 93.300 definitions for the terms *permanent, privately owned quarantine facility* and *temporary, privately owned quarantine facility* to make clear the differences between the two types of facilities. A permanent, privately owned quarantine facility would be one that offers quarantine services for horses to the general public on a continuing basis and that is owned and operated by an entity other than the Federal government. A temporary, privately owned quarantine facility would be one that offers quarantine services for a special event and that is owned and operated by an entity other than the Federal government. Throughout the rest of this document, use of the term “permanent facility” means a permanent, privately owned quarantine facility for horses, and use of the term “temporary facility” means a temporary, privately owned quarantine facility for horses.

We are proposing to revise the definition for *operator* contained in § 93.300. *Operator* is currently defined as “for the purposes of § 93.308, any person operating an approved

quarantine facility.” The revised definition of *operator* would read: “A person other than the Federal government who owns or manages and has responsibility for the services provided by a temporary, privately owned quarantine facility or a permanent, privately owned quarantine facility.” We are proposing this change because we want to emphasize that, although private entities would own these facilities, they would be subject to APHIS approval and oversight.

We would also add definitions for the terms *lot*, *lot-holding area*, *quarantine area*, and *nonquarantine area*. We would define a lot as a group of horses that, while held on a conveyance or premises, have had opportunity for physical contact with other horses in the group or with their excrement or discharges at any time during their shipment to the United States. A lot-holding area would be an area in a facility in which a single lot of horses is held at one time. The quarantine area of a facility would be the area of a facility that comprises all of the lot-holding areas in the facility and any other areas that the horses have access to, including loading docks for receiving and releasing horses. The quarantine area would also include any areas in the facility that are used to conduct examinations of horses and take samples or areas where samples are processed and examined. The nonquarantine area of a facility would include offices, storage areas, and other areas that are outside the quarantine area and off limits to horses, samples taken from horses that have not yet been prepared or packaged for shipment to laboratories, and any other objects or substances that have been in the quarantine area during quarantine of horses.

### Nonsubstantive Changes

The requirements for temporary facilities are currently located in § 93.308(b) and (c). Although we are not proposing to make any substantive changes to these requirements, we are proposing to make some nonsubstantive changes to update the language. We are also proposing to combine paragraphs (b) and (c), so that all of the requirements pertaining to the establishment and operation of temporary facilities are located in paragraph (b). (We would make minor editorial changes to these requirements as well.) We would place the proposed regulations pertaining to permanent facilities in the newly vacated § 93.308(c). We would also correct an error in footnote numbering in the regulations.

In addition, we are proposing to revise the heading for § 93.309 to indicate more clearly that the section pertains to payment information for use of all quarantine facilities, including privately owned temporary and permanent quarantine facilities, and quarantine facilities owned by APHIS. The section heading currently reads "Horse quarantine facilities"; we believe a more helpful heading would be "Horse quarantine facilities; payment information." Therefore, as proposed, § 93.308(a) would contain general information about quarantine requirements for imported horses; § 93.308(b) would contain requirements for temporary facilities; § 93.308(c) would contain requirements for permanent facilities; and § 93.309 would contain information about payment for services provided at all quarantine facilities.

Section 93.303 of the regulations pertains to ports designated for the importation of horses. Paragraph (e) of that section pertains to ports used by persons who quarantine horses at temporary facilities. The paragraph heading in § 93.303(e) currently reads "Ports and quarantine facilities provided by the importer for horses," and the text of the paragraph also refers to quarantine facilities provided by the importer. We are proposing to revise the paragraph heading and text because, under this proposed rule, the owner of a permanent facility would be prohibited from acting as a paid agent (broker) for the importation or subsequent sale of horses. (The July 2002 proposed rule did not include this proposed restriction on quarantine facility ownership; the restriction is discussed in more detail below under the heading "Approval Requirements.") The new paragraph heading for § 93.303(e) would read "Ports for horses to be quarantined at privately owned quarantine facilities," and the text would refer to privately owned quarantine facilities rather than to facilities provided by the importer. We would continue to allow brokers to establish temporary, privately owned quarantine facilities.

Section 93.304 contains permit requirements for horses imported from certain regions affected by contagious equine metritis. Paragraphs (a)(1) and (a)(2) contain references to quarantine facilities provided by importers of horses. Under this proposed rule, all quarantine facilities provided by importers of horses could only be temporary, privately owned quarantine facilities. However, we would need to require a permit for importation of horses from these regions into

permanent, privately owned facilities as well. Therefore, we are proposing to revise those paragraphs to refer to privately owned quarantine facilities.

#### **Proposed Requirements for Permanent Facilities**

We are proposing to add to the regulations information about how to apply for approval of a permanent facility and information concerning denial and withdrawal of approval. Owners of any currently approved quarantine facilities, whether temporary or permanent, who wish to convert to, or be recognized as, a permanent facility would need to meet the proposed requirements for permanent facilities described below and apply for approval as a permanent facility.

Under this proposed rule, any permanent, privately owned quarantine facility operating under APHIS authorization at the time these regulations went into effect would have 1 year to be approved by APHIS; otherwise, it would have to cease operations as a horse quarantine facility. Under the July 2002 proposed rule, that approval would have to have been secured by the effective date of the final rule following that proposal in order for the facility to continue quarantine operations. We made this change to the proposed regulations in response to a comment received regarding the economic analysis of the July 2002 proposed rule; the rationale behind this change is discussed in the context of the economic analysis in this proposed rule, under the heading "Executive Order 12866 and Regulatory Flexibility Act."

#### *Approval of Permanent Facilities*

##### *Application Process*

Proposed § 93.308(c)(1)(i) sets out procedures for applying for approval of a permanent facility. Under the proposed regulations, interested persons would be required to write to the Administrator, c/o National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231. The application letter would have to include:

- The full name and mailing address of the applicant;
- The location and street address of the facility for which approval is sought;
- Blueprints of the facility;
- A description of the financial resources available for construction, operation, and maintenance of the facility;
- The anticipated source or origin of horses to be quarantined as well as the expected size and frequency of shipments;

- A contingency plan for horses needing emergency veterinary care; and
- A contingency plan for the disposal of all the horses capable of being housed in the facility.

The July 2002 proposed rule would not have required the application letter to include a contingency plan for horses needing emergency veterinary care. We believe having such a plan is important to the success of a quarantine facility at preventing the transmission of diseases of horses, and therefore we have included that requirement in this reproposal.

If APHIS determines that a submitted application is complete and merits further consideration, we would require that the person applying for facility approval enter into a service agreement with APHIS wherein the applicant agrees to pay the cost of all APHIS services<sup>1</sup> associated with APHIS' evaluation of the application and facility. This service agreement would apply only to fees accrued during the application process. If the facility is approved by APHIS, facility owners would have to enter into a new compliance agreement in accordance with § 93.308(c)(2) of the proposed regulations.

Requests for approval would have to be submitted to APHIS at least 120 days prior to the date of application for local building permits in order to ensure that APHIS has adequate time to evaluate the plans for the facility, assess potential environmental effects, and determine that adequate APHIS personnel are available to staff the facility.

Requests for approval of a proposed facility would be evaluated on a first-come, first-served basis.

##### *Approval Requirements*

Proposed § 93.308(c)(1)(ii) lists the basic criteria that a permanent facility would have to meet to be approved by APHIS. A permanent facility would have to meet all the requirements in § 93.308(c). The facility would also have to meet any additional requirements that may be imposed by the Administrator to ensure that the quarantine is adequate to determine the horses' health status and to prevent the transmission of diseases into, within, and from the facility. These additional requirements would be specified in the compliance agreement that would be required under proposed § 93.308(c)(2). Finally, we are proposing that, to be approved as a permanent facility, the Administrator must determine that sufficient APHIS personnel (including

<sup>1</sup> APHIS charges for evaluation services at hourly rates listed in 9 CFR § 130.30.

veterinarians and animal health technicians) are available to ensure the biological security of the facility. This determination would be based on the expected size and frequency of shipments to the facility, as described in the application for approval of a permanent facility, as well as any other pertinent information in the application. Only if a facility met all of the other proposed requirements and APHIS personnel were available would APHIS approve the facility and assign personnel to it. Because the assignment of APHIS personnel would be handled on a "first-come, first-served" basis, the deployment of APHIS personnel at one permanent facility might result in another facility not being approved for lack of necessary APHIS personnel. The Administrator would have sole discretion in determining the number of APHIS personnel to be assigned to the facility.

One commenter on the July 2002 proposed rule objected to the requirement that approval be contingent upon the availability of sufficient APHIS personnel. The commenter doubted that, given perceived staffing shortages, any APHIS personnel would be available to serve at these facilities and suggested that this would constitute a barrier to entry for persons applying to own or operate permanent facilities. The commenter further asserted that the presence of APHIS personnel at a permanent facility was unnecessary to ensure the safety of the horses.

While we realize that there may not be enough APHIS personnel available to serve every permanent, privately owned horse quarantine facility that persons may wish to operate, we believe that APHIS personnel must be present at these facilities in order to provide continuous oversight and other technical services, as needed, to ensure the biological security of the facility. Therefore, we would only approve facilities for which sufficient APHIS personnel would be available to ensure the biological security of the facility.

Proposed § 93.308(c)(1)(iii) would require that the operator of a permanent, privately owned horse quarantine facility continue to comply with the requirements of proposed § 93.308(c) and the terms of the compliance agreement executed in accordance with proposed § 93.308(c)(2) in order to maintain APHIS approval.

Proposed § 93.308(c)(1)(iv) sets out procedures for denying or withdrawing approval of permanent facilities. This paragraph would also establish due process procedures regarding a denial or withdrawal of approval and an opportunity for a hearing when there is

a dispute of material fact regarding the denial or withdrawal and would provide that the withdrawal of approval for an existing facility will become effective prior to a final disposition of the matter when the Administrator determines it necessary to protect animal health or the public health, interest, or safety. This paragraph would also provide for approval to be withdrawn automatically by the Administrator when the owner notifies, in writing, the Veterinarian in Charge for the State in which the facility is located that the facility is no longer in operation.

Under the proposed regulations, the approval of a permanent facility may be denied or withdrawn if:

- Any requirement of § 93.308 or the compliance agreement is not complied with;
- The operator fails to pay for APHIS services rendered;
- The operator or a person responsibly connected with the business of the permanent facility acts as a paid agent (broker) for the importation or subsequent sale of horses;
- The operator or a person responsibly connected with the business of the permanent facility is or has been found by a court of competent jurisdiction to have violated any law or regulation pertaining to the importation or quarantine of any animal;
- The operator or a person responsibly connected with the business of the permanent facility is or has been convicted of any crime involving fraud, bribery, or extortion or any other crime involving a lack of integrity needed for the conduct of operations affecting the importation of animals; or
- The approved permanent facility has not been in use to quarantine horses for a period of at least 1 year.

The proposed regulations would provide that a person is responsibly connected with the business of the permanent facility if the person has an ownership, mortgage, or lease interest in the facility's physical plant, or if such person is a partner, officer, director, holder or owner of 10 percent or more of its voting stock, or an employee in a managerial or executive capacity for the operation of the permanent facility.

The July 2002 proposed rule did not include any provisions that would have prohibited the operator or a person responsibly connected with the business of the permanent facility from acting as a paid agent or broker for the importation or subsequent sale of horses. We have added this prohibition to the reproposal in response to a request from four of the commenters on the July 2002 proposal. These

commenters asserted that a person holding both these positions would face conflicts of interest while housing, treating, and caring for horses imported by other brokers.

We agree that the potential for conflicts of interest is a concern. It is possible that an owner of a permanent, privately owned horse quarantine facility who also engaged in the sale and transport of horses for profit might block a competitor from using the owner's quarantine space, or cancel the competitor's reservations if the owner determined that the competitor's imports would affect the profitability of the owner's brokering business. Similarly, an owner of a permanent, privately owned horse quarantine facility who also is engaged in the sale and transport of horses might choose to weaken competitors in the brokerage business by charging exorbitant fees for quarantine space that could not be obtained elsewhere, as USDA quarantine facilities are filled most of the time; the owner would have even greater leverage if the quarantine facility in question was operating in a geographical area not served by other facilities.

#### *Compliance Agreement*

Proposed § 93.308(c)(2) would require permanent facilities to operate in accordance with a compliance agreement executed by the owner and by the APHIS Administrator that must be renewed on an annual basis. The compliance agreement would provide that the facility is required to meet all applicable requirements of § 93.308 of the regulations and that the facility's quarantine operations are subject to the oversight of APHIS representatives. The compliance agreement would also state that the operator of the facility agrees to be responsible for all the costs associated with operating a permanent facility, including:

- All costs associated with its maintenance and operation;
- All costs associated with the hiring of employees and other personnel to attend to the horses as well as to maintain and operate the facility;
- All costs associated with the care of quarantined horses, such as feed, bedding, medicines, inspections, testing, laboratory procedures, and necropsy examinations; and
- All APHIS charges for the services of APHIS representatives in accordance with 9 CFR part 130.

The compliance agreement would also state that the operator agrees to bar from the facility any employee or other personnel at the facility who fail to comply with the proposed regulations

in § 93.308(c), other regulations in 9 CFR part 93, any terms of the compliance agreement, or related instructions from APHIS representatives.

These proposed requirements are identical to those in the July 2002 proposed rule.

#### *Physical Plant Requirements*

Proposed § 93.308(c)(3) sets out physical plant requirements. The proposed requirements for the physical plant of permanent facilities are designed to ensure that permanent facilities are capable of preventing the spread of diseases to horses outside the facility. A permanent facility would have to meet these requirements before horses were admitted to the facility.

#### *Location*

To minimize the risk of disease introduction from imported horses moving from the port of entry to the permanent facility, proposed § 93.308(c)(3)(i) would require that the facility be located in proximity to a port authorized under § 93.303(e). While requiring that a permanent facility be located in proximity to the port, we decided for several reasons not to require that the port and the facility be located within a certain distance of one another. Some ports will be in large metropolitan areas with the nearest concentration of livestock many miles away. Other ports may be in towns with rural areas and concentrations of livestock within a very short distance of the port. Considering the diversity of places in which persons may consider locating permanent facilities, it would be difficult to stipulate a maximum distance from the port of entry.

The specific routes for the movement of horses from the port to the permanent facility would have to be approved by the Administrator. In evaluating the suitability of a particular site for a permanent facility, the Administrator would consider whether the site of the proposed facility or the routes for movement of horses from the port of entry to the proposed facility would put the animals in a position that could result in the transmission of communicable diseases.

In the July 2002 proposed rule, we proposed to require that the facility be located at least one-half mile from any premises holding livestock or horses. One commenter stated that the other safeguards in the proposed rule provide adequate biological security to mitigate the risk that a communicable disease of horses might be transmitted into the domestic horse population from horses in the quarantine facility.

We agree that the distance requirement would be unnecessary if all other procedures described in this proposed rule were followed at a private, permanently owned horse quarantine facility. In addition, just as the diversity of places in which persons may consider locating permanent facilities makes it difficult to stipulate a maximum distance from the port of entry, that diversity also makes it difficult to stipulate a minimum distance from existing horse populations. Therefore, we are not including in this reproposal a requirement that a permanent, privately owned horse quarantine facility must be located at least one-half mile from any premises holding livestock or horses from this reproposal, and we have indicated in this reproposal that the location would simply have to be approved by the Administrator in advance based on consideration of whether the site would put the horses in a position that could result in the transmission of communicable diseases to domestic horses.

#### *Construction*

Proposed requirements for facility construction would be contained in § 93.308(c)(3)(ii). We are proposing to require that the facility be of sound construction, in good repair, and properly designed to prevent the escape of horses from quarantine. The facility would be required to have the capacity to receive and house shipments of horses as lots on an "all-in, all-out" basis, whereby separate lots could be received and housed without contact with any other lots being quarantined at the facility.

We would also require that the facility be enclosed by a security fence of sufficient height and design to prevent unauthorized persons, horses, and other animals from outside the facility from having contact with horses quarantined in the facility. One commenter on the July 2002 proposed rule questioned the need for a security fence, stating that sound horse fencing should be used and that the entrance should be gated to prevent public access in lieu of a security fence. However, the fence enclosing the facility is intended to ensure not only that horses do not escape quarantine but also to prevent the unauthorized entry of persons, horses, and other animals. Sound horse fencing would not provide adequate protection against unauthorized entry.

We would also require that all entryways into the nonquarantine area of the facility be equipped with a secure and lockable door. Further, while horses are in quarantine, all access to the

quarantine area for horses would have to be from within the building, and each such entryway to the quarantine area would have to be equipped with a series of solid self-closing double doors. Emergency exits would be permitted in the quarantine area, but such exits would have to be constructed so as to permit their being opened only from the inside of the facility in order to ensure the security of the horses in quarantine and the integrity of quarantine operations.

The July 2002 proposed rule included a requirement that entryways to each lot-holding area be equipped with a solid, lockable door. We are not including that provision in this reproposal, for the reasons discussed earlier in this document under the heading "Changes in Our Approach With Respect to Lot-Holding Areas."

We propose to require that the facility be constructed so that any windows or other openings in the quarantine area are double-screened with screening of sufficient gauge and mesh to prevent the entry or exit of insects and other vectors of diseases of horses and to provide ventilation sufficient to ensure the comfort and safety of all horses in the facility. The interior and exterior screens would have to be separated by at least 3 inches (7.62 cm). The screens would have to be easily removable for cleaning, but otherwise remain locked and secure at all times in a manner satisfactory to APHIS representatives to ensure the biological security of the facility.

In response to the July 2002 proposed rule, one commenter recommended that we amend the proposed specifications for windows or other openings in the quarantine area to require adequate ventilation. In this reproposal, we have included the requirement that the window screens would have to provide ventilation sufficient to ensure the comfort and health of all horses in the facility. We believe this language will ensure that windows in permanent facilities provide sufficient ventilation to prevent horses from becoming uncomfortable or suffering injury for that reason.

The entire facility, including its stalls and hallways, would have to have adequate lighting to ensure that horses are moved and kept safely and that permanent facility employees can safely do their work.

Proposed paragraph § 93.308(c)(3)(ii)(E) would provide that a facility must have separate loading docks for receiving and releasing animals and for general receiving and pickup, unless a single dock used for both purposes is cleaned and disinfected after each use

according to the procedures set out in proposed paragraph § 93.308(c)(4)(iv)(F). That paragraph states that if the facility has a single loading dock, the loading dock would have to be immediately cleaned and disinfected after each use under the oversight of an APHIS representative with a disinfectant authorized in 9 CFR part 71 or otherwise approved by the Administrator. (Disinfectants are currently approved in 9 CFR part 71 under §§ 71.10, 71.11, and 71.12.)

The July 2002 proposed rule would have required that the facility have two separate loading docks. One would have been part of the quarantine area and would have been used for receiving and releasing horses, and one would have been part of the nonquarantine area and would have been used for general receiving and pickup. One commenter on the July 2002 proposed rule suggested that separate docks would be unnecessary; if a single dock were properly cleaned and disinfected after each use, the facility would achieve adequate protection against the risk that communicable diseases of horses might be transmitted. We agree with this comment and have modified the July 2002 proposed rule as suggested by the commenter. We believe this proposed requirement would adequately protect against the transmission of communicable diseases of horses while providing facility owners with greater flexibility.

We would require that the facility be constructed so that the floor surfaces with which horses have contact in the facility are nonslip and wear-resistant. All floor surfaces with which the horses, their excrement, or discharges have contact would have to provide for adequate drainage. All floor and wall surfaces with which the horses, their excrement, or discharges have contact would have to be impervious to moisture and be able to withstand frequent cleaning and disinfection without deterioration. Ceilings and wall surfaces with which the horses, their excrement, or discharges do not have contact would have to be able to withstand cleaning and disinfection between shipments of horses. The cleaning and disinfection of all of these surfaces would help ensure that disease agents would not be spread from one lot of horses to another. We would further require that surfaces with which the horses could have contact must not have any sharp edges that could cause injury to the horses.

The July 2002 proposed rule would have additionally required floor surfaces to have drains of at least 8 inches in diameter. One commenter suggested

that it was unnecessary for us to specify the required diameter for the floor drains, since the proposed rule prescribed that all floor surfaces must provide for adequate drainage. We agree that it would be better to allow facility designers flexibility to achieve the adequate drainage requirement, and we are not including a specific diameter requirement for the floor drains in these facilities in this reproposal.

In proposed § 93.308(c)(3)(ii)(G), we would require that the stalls in which horses are held be large enough to allow each animal to make normal postural and social adjustments (including turning around and making way for other humans or horses) with adequate freedom of movement. Horses that do not have adequate space for movement could be at risk for poor conditioning due to lack of movement, malnutrition due to refusal to eat, rapid weight loss, increased stress, depression, or abnormal behavior patterns. These could increase the likelihood of the horses exhibiting clinical symptoms of disease or, if disease is present, transmitting or becoming infected with disease. The stall size requirement would also allow the stalls to be cleaned more easily by facilitating access to the stalls for quarantine facility personnel.

To help prevent transmission of disease between horses in permanent facilities, we would require that the aiseways used by horses within the quarantine area be wide enough to provide for safe movement of horses, including allowing horses to turn around in the aisleway, to prevent horses in facing stalls from coming into contact with horses in the aisleway, and to adequately ventilate the stalls. Narrow aiseways can lead to injury to horses and personnel and can allow direct physical contact between horses, which could facilitate the spread of disease.

The facility would have to be constructed so that different lots of horses held at the facility at the same time would be separated by physical barriers in such a manner that horses in one lot could not have physical contact with horses in another lot or with the excrement or discharges of horses in another lot. In addition, we would require that permanent facilities include stalls capable of isolating any horses exhibiting signs of illness. This provision would help ensure that horses infected with or exposed to disease do not spread the disease or expose other horses in the facility to the disease.

To prevent dissemination of disease via persons at the facility, we are proposing to require that the facility contain showers for use before entering

and after exiting the quarantine area. A shower would also be needed at the entrance to the necropsy area if necropsies will be conducted onsite. (The proposed requirements for the necropsy area are described in greater detail later in this document.) We would also require that a clothes-storage and clothes-changing area be provided at each end of each shower area, and that there be one or more receptacles near each shower so that clothing that has been worn into the quarantine area can be deposited in a receptacle prior to entering the shower.

The July 2002 proposed rule would have required that the facility have showers at the entrance to each lot-holding area in a facility in which it is not possible to move to any lot-holding area except by first passing through another lot-holding area. It would also have required that all persons granted access to the quarantine area shower before entering a lot-holding area if previously exposed from access to another lot-holding area. This reproposal removes these proposed requirements, for the reasons discussed earlier in this document under the heading "Changes in Our Approach With Respect to Lot-Holding Areas."

Because of the need for APHIS representatives assigned to a permanent facility to examine horses and draw samples for testing, we would require that permanent facilities contain adequate space for these purposes and that the space include equipment to provide for the safe inspection of horses. In this reproposal, we are also proposing to require that the space provided to conduct examinations and testing include a refrigerator-freezer in which to store samples, which would facilitate conducting disease tests. The facility would have to include adequate storage space for the necessary equipment and supplies, work space for preparing and packaging samples for mailing, and storage space for duplicate samples. We would further require that the facility include a secure, lockable office space with enough room to contain a desk, chair, and filing cabinet for APHIS use.

Proposed § 93.308(c)(3)(ii)(L) would require that the facility either have a necropsy area or designate an alternate facility for conducting necropsies. A necropsy area would be necessary to perform post mortem inspection of horses that die in the permanent facility and to collect samples for laboratory diagnosis. These actions would be needed to determine whether the death of a horse was associated with a disease, or if it was caused by other factors, such as colic or physical injury.

If the facility has a necropsy area, it would have to be of sufficient size to perform necropsies on horses and be equipped with adequate lighting, hot and cold running water, a drain, a cabinet for storing instruments, a refrigerator-freezer for storing specimens, and an autoclave to sterilize veterinary equipment. If the facility does not have such an area, it would have to specify an alternate facility at which a suitable necropsy area is available, a route from the quarantine facility to the alternate facility's necropsy area, and the safeguards that will be in place to ensure that communicable diseases of horses are not spread during transit. This alternate facility and transport methodology would have to be approved by the Administrator under the procedures for requesting variances in these proposed regulations for permanent facilities as outlined in § 93.308(c)(6). This provision would require the operator to submit a request for a variance from the requirements for the construction of the facility prior to approval of the facility; because facilities would generally be required to have a necropsy area onsite, a request to designate an alternate facility for necropsies would be a request for a variance from the facility construction requirements.

If a facility did not have either a necropsy area that met the requirements of proposed § 93.308(c)(3)(ii)(L) or an alternate facility approved under the variances provision in proposed § 93.308(c)(6), it would not be approved.

The July 2002 proposed rule did not provide for the use of an alternative facility to perform necropsies. Three commenters asserted that requiring the construction of a necropsy area onsite at a permanent facility would be excessively costly, since the necropsy area would be expected to be used only rarely. Two commenters expressed a desire to designate an alternate facility at which necropsies and carcass incineration could be performed if necessary. We agree that, if carried out with the proper safeguards and notification, an alternate facility for necropsies could be used, and we have added provisions for designating an alternate facility, as described above. We believe that this change to the July 2002 proposed rule will ensure that biological security is maintained while allowing owners and operators some flexibility in design and construction of permanent, privately owned horse quarantine facilities.

These commenters also stated that the construction of a carcass incinerating facility should not be required; however, neither the July 2002 proposed

rule nor this reproposal would require the construction of a carcass incinerating facility, but instead would require that the facility have the capability to dispose of carcasses safely and without spreading disease.

We are also proposing to require that the facility have sufficient storage space for equipment and supplies used in quarantine operations. Storage space would have to include separate, secure storage for pesticides and for medical and other biological supplies, as well as a separate vermin-proof storage area for feed and bedding, if feed and bedding are to be stored at the facility.

We are proposing to require that separate storage space be provided for each lot-holding area for any reusable equipment and supplies that are not disinfected after each use in accordance with 9 CFR part 71. The July 2002 proposed rule included a provision that each lot-holding area have separate storage space for equipment and supplies; we are not including this requirement in this reproposal, for the reasons discussed earlier in this document under the heading "Changes in Our Approach With Respect to Lot-Holding Areas."

We are proposing to require that the facility have an area for washing and drying clothes, linens, and towels and an area for cleaning and disinfecting equipment used in the facility. The facility would also have to include a work area for the repair of equipment. These areas are essential to ensure the continuity of quarantine operations.

The facility would have to have permanent restrooms in both the quarantine and nonquarantine areas of the facility so that persons do not need to leave or enter the quarantine area simply to use a restroom. Leaving the quarantine area would necessitate the person showering prior to entering the nonquarantine area, and then again upon reentering the quarantine area.

The July 2002 proposed rule included a provision that the facility have an area within the quarantine area for breaks and meals in order to eliminate the need for workers to leave the quarantine area for breaks. One commenter on the July 2002 proposed rule opposed this requirement, stating that a break area in the quarantine area would not play any role in providing biological security and should not be mandatory. We agree with this comment; additionally, we recognize that, unlike use of the restroom, movement into and out of the quarantined area for breaks could be planned to some extent. Therefore, we have removed the break area requirement from this reproposal.

We would also require that the facility be constructed with an air handling system capable of controlling and maintaining the ambient temperature, air quality, humidity, and odor at levels that are not injurious or harmful to the health of horses in quarantine. We would prohibit air supplied to the quarantine areas from being recirculated or reused for other ventilation needs. Further, air handling systems for quarantine areas would have to be separate from air handling systems for other operational and administrative areas of the facility in order to ensure that air from the quarantine areas is not diverted into nonquarantine areas of the facility.

The July 2002 proposed rule would have specifically required the facility to have a heating, ventilation, and air conditioning (HVAC) system. In this reproposal, rather than refer to an HVAC system, we refer to an "air handling system." This change is intended to indicate that any air handling system may be used provided that it is capable of controlling and maintaining the ambient temperature, air quality, humidity, and odor at levels that are not injurious or harmful to the health of horses in quarantine. In some cases, an HVAC system may be necessary to fulfill this requirement; the less specific language, however, provides us with the flexibility to decide that matter on a case-by-case basis.

The July 2002 proposed rule would have required that each lot-holding area within the quarantine facility have its own separate HVAC system. For the reasons discussed earlier in this document under the heading "Changes in Our Approach With Respect to Lot-Holding Areas," this reproposal would require that the air handling system be adequate to ensure that there is no cross-contamination of air between the separate lot-holding areas. This would provide protection against transmission of communicable diseases of horses without placing an undue burden on facility operators.

One commenter maintained that if the necropsy room is enclosed, it should have a separate air handling system to prevent the possible transmission of disease from carcasses to live horses.

As discussed above, air inside the quarantine area would not be recirculated, but rather ventilated directly to the outside; thus, any airborne disease agents would be vented from inside the quarantine area. Therefore, we believe that requiring a separate air handling system for the necropsy area would not appreciably enhance the biological security at quarantine facilities.

The facility, including the lot-holding areas, would have to be equipped with a fire alarm voice communication system so that personnel working in those areas can be readily warned of any potential emergency and can warn other personnel.

The July 2002 proposed rule would have required that the facility also have a television monitoring system or other arrangement sufficient to provide a full view of the quarantine area or areas, excluding the clothes-changing area. One commenter questioned the necessity of the television monitoring system given that the proposed rule also would have required that a full-time security service monitor the facility or that an electronic alarm system be used to indicate the entry of unauthorized persons into the facility. The proposed requirement for a television monitoring system was intended to facilitate surveillance within the quarantine facility, so that any persons attempting to gain unauthorized access could be detected. We believe the commenter is correct in stating that the television monitoring system would be unnecessary given the other proposed requirements, and we have not included a requirement for a television monitoring system in this reproposal.

The facility would also have to have a communication system between the nonquarantine and quarantine areas of the facility. Such a system would allow persons working in the quarantine area to communicate with persons working in the nonquarantine area and vice versa without moving from one area to the other.

#### *Sanitation*

To ensure that proper animal health and biological security measures are observed, proposed § 93.308(c)(3)(iii) would require that permanent facilities have the equipment and supplies necessary to maintain the facility in clean and sanitary condition, including pest control equipment and supplies and cleaning and disinfecting equipment with adequate capacity to disinfect the facility and equipment.

We would require that any reusable equipment and supplies that are not disinfected after each use in accordance with 9 CFR part 71 be kept separately for each lot of horses. The July 2002 proposed rule would have required that facilities keep separate equipment and supplies for each lot of horses; we are not including this requirement in this reproposal for the reasons discussed earlier in this document under the heading "Changes in Our Approach With Respect to Lot-Holding Areas."

Equipment and supplies to be used in the quarantine area would have to be maintained separately from equipment and supplies used in the nonquarantine area.

We would require facilities to maintain a supply of potable water adequate to meet all watering and cleaning needs at the facility. We would require that water faucets for hoses be located throughout the facility to ensure that personnel would not need to drag hoses across areas that have already been cleaned and disinfected. We would also require that an emergency supply of water for horses in quarantine be maintained at the facility.

Facilities would also need to maintain a stock of disinfectant authorized in 9 CFR part 71, or otherwise approved by the Administrator, sufficient to disinfect the entire facility.

We would also require permanent facilities to have the capability to dispose of wastes, including manure, urine, and used bedding, by means of burial, incineration, or public sewer. Facilities would have to handle other waste material in a manner that minimizes spoilage and the attraction of pests and would have to dispose of the waste material by incineration, public sewer, or other preapproved manner that prevents the spread of disease. Disposal of wastes would have to be carried out under the oversight of APHIS representatives.

We would further require permanent facilities to have the capability to dispose of horse carcasses in a manner approved by the Administrator and under conditions that minimize the risk of disease spread from carcasses. This requirement is necessary to prevent the dissemination of any disease agents that may be present in horse carcasses.

For incineration to be carried out at the facility, the facility would have to have incineration equipment that is detached from other facility structures and is capable of burning animal waste and refuse. We would require the incineration site to include an area sufficient for solid waste holding. Incineration could also take place at a local site away from the facility premises. Furthermore, we would require all incineration activities to be carried out under the direct oversight of APHIS representatives, even if conducted off-site.

We would require the facility to have the capability to control surface drainage and effluent into, within, and from the facility in a manner that prevents the spread of disease into, within, or from the facility. If the facility was approved to handle more than one lot of horses at the same time, the

drainage system would have to be adequate to ensure that there would be no cross-contamination between lot-holding areas.

The July 2002 proposed rule would have required that each lot-holding area have a separate drainage system to prevent cross-contamination. We have modified this requirement in this reproposal for reasons discussed earlier in this document under the heading "Changes in Our Approach With Respect to Lot-Holding Areas." We believe this changed requirement would provide protection against transmission of communicable diseases of horses without placing an undue burden on facility operators.

#### *Security*

Proposed § 93.308(c)(3)(iv) would require that the facility and premises be kept locked and secure at all times to ensure the integrity of quarantine operations. We would also require the facility and premises to have signs indicating that the facility is a quarantine area and no visitors are allowed.

The facility and premises would also have to be guarded at all times by one or more representatives of a bonded security company or, alternatively, would have to have an electronic security system that would indicate the entry of unauthorized persons into the facility.

We would require that such an electronic security system be coordinated either through or with the local police so that the quarantine facility is monitored whenever APHIS representatives are not at the facility. We would also require that such an electronic security system be of the "silent type" and must be triggered to ring at the monitoring site and not at the facility. The electronic security system would have to be approved by Underwriter's Laboratories. We would also require that the operator provide written instructions to the monitoring agency stating that the police and a representative of APHIS designated by APHIS must be notified by the monitoring agency if the alarm is triggered. The operator would be required to submit a copy of those instructions to the Administrator. The operator of the facility would be required to notify the designated APHIS representative whenever a breach of security occurs or is suspected of having occurred. Further, in the event that disease is diagnosed in quarantined horses, the Administrator could require the operator to have the facility guarded by a bonded security company in a manner that the Administrator deems

necessary to ensure the biological security of the facility.

In response to the July 2002 proposed rule, one commenter stated that the requirement that a representative of a security company be present at the facility at all times would not ensure the safety of the horses inside the barns, and that the requirement should be eliminated for that reason. The purpose of having a representative of a bonded security company (or, alternatively, an electronic security system) is not only to ensure the safety of the horses but also to ensure that no unauthorized persons enter the facility. Preventing unauthorized persons from accessing the facility is essential to providing quarantine security.

We would require that the operator of the facility furnish a telephone number or numbers to APHIS at which the operator or his or her agent can be reached at all times while horses are in quarantine.

We would also provide that APHIS may place APHIS seals on any or all entrances and exits of the facility when determined necessary by APHIS and take all necessary steps to ensure that such seals are broken only in the presence of an APHIS representative. In the event that someone other than an APHIS representative breaks such seals, we would consider the act a breach in security, and APHIS representatives would make an immediate accounting of all horses in the facility. If we determine that a breach in security has occurred, we may extend the quarantine period for horses as long as necessary to ensure that the horses are free of communicable diseases.

These proposed security requirements are unchanged from our July 2002 proposal.

#### *Operating Procedures*

##### *APHIS Oversight*

Proposed requirements regarding APHIS oversight would be contained in § 93.308(c)(4)(i).

The quarantine of horses at the facility would be subject to oversight by APHIS representatives, who could include one or more veterinarians and other professional, technical, and support personnel who are employed by APHIS and authorized to perform the services required by the regulations and the compliance agreement. Unlike temporary facilities, which are inspected on a regular basis by an APHIS veterinarian, a permanent facility would have at least one APHIS representative overseeing the care of all horses in quarantine during normal working hours. Depending on the size of

the facility and the number of horses present, additional APHIS veterinarians and animal health technicians could be necessary to ensure adequate oversight of the horses in quarantine. The deployment of APHIS representatives to oversee and provide other professional, technical, and support services at a quarantine facility would be determined by the Administrator.

If, for any reason, the operator fails to properly care for, feed, or handle the quarantined horses as required under the regulations, or fails to maintain and operate the facility as required under the regulations, APHIS representatives would furnish such services or make arrangements for the sale or disposal of quarantined horses at the quarantine facility owner's expense.

##### *Personnel*

Proposed requirements concerning personnel would be contained in § 93.308(c)(4)(ii).

We would require the operator of the facility to provide adequate personnel to maintain the facility and care for the horses in quarantine, including attendants to care for and feed the horses, and other personnel to maintain, operate, and administer the facility.

We would also require that the operator provide APHIS with a list of employees and other personnel assigned to work at the facility. The list would have to include the names, current residential addresses, and employee identification numbers of employees and other personnel. We would require that, when the operator wishes to grant access to the facility to persons who have not previously had access to it, the operator update the list prior to such persons having access to the quarantine facility. These requirements are necessary to ensure that APHIS has knowledge of, and can identify, all persons working at the facility.

In conjunction with the above requirements, we would require the operator to provide APHIS with signed statements from each employee and any other personnel hired by the operator and working at the facility in which the person agrees to comply with proposed § 93.308(c) of the regulations, other applicable provisions of 9 CFR part 93, all terms of the compliance agreement, and any related instructions from APHIS representatives pertaining to quarantine operations, including contact with animals both inside and outside the facility.

##### *Authorized Access*

Proposed requirements regarding access would be contained in § 93.308(c)(4)(iii).

We are proposing to grant access to the quarantine facility premises as well as inside the quarantine facility only to APHIS representatives and authorized employees and other personnel of the operator assigned to work at the facility. All other persons would be prohibited from the premises unless specifically granted access by the overseeing APHIS representative. Any visitors granted access would be required to be accompanied at all times by an APHIS representative while on the premises or in the quarantine area of the facility.

##### *Sanitary Requirements*

Under proposed § 93.308(c)(4)(iv), all facility employees and other personnel, as well as any other person granted access to the quarantine area, would have to:

- Shower when entering and leaving the quarantine area;
- Shower when leaving the necropsy area if a necropsy is in the process of being performed or has just been completed, or if any portion of the examined animal remains exposed;
- Wear clean protective work clothing and footwear upon entering the quarantine area;
- Wear disposable gloves when handling sick horses, and then wash hands after removing gloves; and
- Change protective clothing, footwear, and gloves when they become soiled or contaminated.

The July 2002 proposed rule would have required that persons granted access to quarantine areas in a facility shower before entering a lot-holding area if previously exposed from access to another lot-holding area. It would also have required that persons granted access to the quarantine area not have contact with any horses in the facility other than the lot or lots of horses to which the person would be assigned or granted access. For reasons discussed earlier in this document under the heading "Changes in Our Approach With Respect to Lot-Holding Areas," we are not including these requirements in this reproposal.

The July 2002 proposed rule would also have required that no person granted access to the quarantine area have contact with any horses outside the quarantine facility for at least 7 days after the last contact with the horses in quarantine. One commenter suggested retaining the requirement only for visitors to the quarantine area and shortening the length of time from 7 to 5 days to make the requirement consistent with that of the Foreign Animal Diagnostic Disease Laboratory operated by APHIS. This commenter further stated that the APHIS

representative at the facility, authorized employees, other personnel of the operator assigned to work at the facility, and veterinary practitioners who enter the facility to provide emergency care should be exempt from this requirement altogether provided the other sanitary requirements in the proposed rule, such as showering when entering and exiting the quarantine area and changing clothes when entering and exiting the quarantine area, are met. Two commenters stated that such a requirement should be unnecessary for any visitors if the other sanitary requirements are met.

We agree with the latter commenters that restrictions on contact with horses outside the quarantine facility should not be necessary for any visitors to a permanent facility, provided that all visitors fulfill the sanitary requirements of this proposed rule. We are, therefore, not including in this reproposal any restrictions on contact with horses outside the quarantine facility for visitors to the quarantine facility.

We would require that the operator provide clean, protective clothing to persons granted access to the quarantine area. The July 2002 proposed rule would have required that the operator provide clean, protective clothing to be worn when persons provided access to the quarantine area move from one lot of horses to another lot of horses. For the reasons discussed earlier in this document under the heading "Changes In Our Approach With Respect to Lot-Holding Areas," we have revised this proposed requirement to refer to the quarantine area rather than to lot-holding areas.

The operator or the operator's designated representative would also be responsible for the handling, washing, and disposal of soiled and contaminated clothing worn within the quarantine facility in a manner approved by the overseeing APHIS representative as adequate to preclude transmission of any animal disease agent from the facility. Work clothing worn into the quarantine area would be required to be washed at the end of each workday. Used footwear would either be left in the clothes changing area or cleaned with hot water (148 °F minimum) and detergent and disinfected as directed by an APHIS representative.

The July 2002 proposed rule would have required that work clothing worn into each lot-holding area be collected and kept in a bag until the clothing is washed at the end of each workday. For reasons discussed earlier in this document under the heading "Changes in Our Approach With Respect to Lot-Holding Areas," we have revised this

proposed requirement to refer to the quarantine area rather than to lot-holding areas.

We would require that all equipment (including tractors) be cleaned and disinfected prior to being used in a quarantine area of the facility with a disinfectant authorized in 9 CFR part 71 or otherwise approved by the Administrator. The equipment would have to remain dedicated to the facility for the entire quarantine period in order to prevent the spread of disease agents outside the facility. Any equipment used with quarantined horses (e.g., halters, floats, feed and water buckets) would have to remain dedicated to that particular lot of quarantined horses for the duration of the quarantine period or be cleaned and disinfected before coming in contact with horses from another lot to ensure that no cross contamination occurs. Prior to its use on another lot of horses or its removal from the quarantine premises, any equipment would have to be cleaned and disinfected to the satisfaction of an APHIS representative.

The proposed regulations would also require that any vehicle, before entering or leaving the quarantine area of the facility, be cleaned and disinfected under the oversight of an APHIS representative within a time period authorized by the APHIS representative and with a disinfectant authorized in 9 CFR part 71 of the regulations or otherwise approved by the Administrator.

We would also require that, if the facility has a single loading dock instead of two as described earlier in this document, the loading dock would have to be cleaned and disinfected after each use under the oversight of an APHIS representative within a time period authorized by the APHIS representative and with a disinfectant authorized in 9 CFR part 71 of the regulations or otherwise approved by the Administrator.

Further, we would require the area of the facility in which a lot of horses has been held to be thoroughly cleaned and disinfected, with a disinfectant authorized in 9 CFR part 71, under the oversight of an APHIS representative upon release of the horses before a new lot of horses is placed in that area of the facility. This requirement is necessary to ensure that horses entering quarantine are not exposed to disease agents present in the previous lot of horses.

#### *Handling of the Horses in Quarantine*

Under the proposed regulations, horses that are quarantined in private facilities would have to undergo the appropriate quarantine specified in

§ 93.308(a) and would be subject to any other applicable regulations in title 9 of the Code of Federal Regulations. For the purposes of quarantine operations, private facilities would operate no differently than Federal horse quarantine facilities.

Each lot of horses to be quarantined would have to be placed in the facility on an "all-in, all-out" basis. Under this requirement, no horse could be taken out of the lot while it is in quarantine, except for diagnostic purposes or as provided in § 93.308(a)(4), and no horse could be added to the lot while the lot is in quarantine.

The regulations would require that the facility provide sufficient feed and bedding that is free of vermin and that is not spoiled for the horses in quarantine. Feed and bedding would have to originate from an area that is not listed in 9 CFR part 72 as an area quarantined for splenic or tick fever.

We would prohibit the breeding of horses and the collection of germplasm from horses during the quarantine period. The July 2002 proposed rule would have prohibited the breeding of horses or the collection of germplasm from horses during the quarantine period unless necessary for a required import testing procedure. Because there are currently no import testing procedures that require the breeding of horses or the collection of germplasm from horses, we have removed that exception from this reproposal.

We propose to require that horses in quarantine be subjected to such tests and procedures as directed by the overseeing APHIS representative to determine whether they are free from communicable diseases of horses.

We would require that any death or suspected illness of horses in quarantine be reported immediately to the overseeing APHIS representative so that appropriate measures may be taken to ensure the health of the other horses in quarantine. The affected horses would have to be disposed of as the Administrator may direct or, depending on the nature of the disease, would have to be cared for as directed by the overseeing APHIS representative.

The regulations would provide that quarantined horses requiring specialized medical attention or additional post-mortem testing may be transported off the quarantine site, if authorized by the overseeing APHIS representative. In such situations, a second quarantine site would have to be established to house the horses at the facility of destination (e.g., veterinary teaching hospital), and the overseeing APHIS representative could extend the quarantine period for that horse and for

its lot until the results of any outstanding tests or postmortem results are received.

Further, if we determine that a horse is infected with or exposed to a communicable disease of horses, we would require that arrangements for the final disposition of the infected or exposed horse be accomplished within 10 days of the date that the importer is notified by the overseeing APHIS representative that the horse has been refused entry into the United States. We would require the horses to be disposed of under the direct oversight of APHIS representatives. We would require the operator to have a preapproved contingency plan for the disposal of all horses housed in the facility prior to issuance of an import permit. This requirement is essential to ensure that diseased horses can be disposed of without posing a risk of disseminating diseases outside the quarantine facility.

In the July 2002 proposed rule, we would have allowed horses in quarantine to be vaccinated. One commenter recommended that we prohibit vaccinations entirely in permanent, privately owned horse quarantine facilities. Vaccinations performed on horses while they are in quarantine can alter the immune system of the horses and therefore affect diagnostic serology, potentially producing inaccurate results in response to the diagnostic tests administered in quarantine. We agree and have therefore added a new paragraph § 93.308(c)(4)(v)(I) in this reproposal specifically prohibiting vaccination of horses in these facilities.

#### *Records*

Under proposed § 93.308(c)(4)(vi), it would be the facility operator's responsibility to maintain current daily records to record the entry and exit of all persons entering and leaving the quarantine facility. We would require the operator or the operator's designated representative to hold the daily records, along with any records kept by APHIS and deposited with the operator, for at least 2 years following the date of release of the horses from quarantine and to make such records available to APHIS representatives upon request.

#### *Environmental Requirements*

Under proposed § 93.308(c)(5), if APHIS determines that a privately operated quarantine facility does not meet all applicable local, State, and Federal environmental regulations, APHIS reserves the right to deny or suspend approval of the facility until appropriate remedial measures have been applied. This requirement is

necessary to ensure that APHIS-approved facilities meet all applicable waste disposal and other environmental quality standards.

#### *Variations*

Under proposed § 93.308(c)(6), the Administrator may grant variations to the requirements relating to location, construction, and other design features of the physical facility, as well as to sanitation, security, operating procedures, recordkeeping, and other provisions of the regulations, but only if the Administrator determines that the variance causes no detrimental impact to the overall biological security of the quarantine operation. The operator of a permanent facility would have to submit a request for a variance from the requirements for the construction of a facility to the Administrator in writing prior to approval of the facility; for a variance from the requirements for the operation of a facility, the operator would have to submit a request to the Administrator in writing at least 30 days in advance of the arrival of horses to the facility. Any variance would also have to be expressly provided for in the compliance agreement.

In conjunction with these changes, we would also make editorial changes to § 93.310 to update the regulations and make them easier to understand.

We believe that these proposed regulations would ensure that permanent facilities could operate without posing a risk of foreign animal disease introduction and allow U.S. horse importers another option for quarantining imported horses. We welcome public comment on the proposed regulations.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The 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.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the potential economic costs and benefits of this rule and its potential economic effects on small entities. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small

entities. Therefore, we are inviting comments on potential effects.

This proposed rule would allow the establishment and operation, under APHIS oversight, of permanent, privately owned quarantine facilities for horses imported into the United States. Currently, the regulations set standards only for temporary, privately owned quarantine facilities for horses. Such temporary facilities are used to quarantine horses imported for a particular event or purpose. APHIS has also authorized the operation of one permanent, privately owned and operated animal quarantine facility in Los Angeles County, CA.

Under the Animal Health Protection Act, specifically 7 U.S.C. 8303, the Secretary is authorized to promulgate regulations requiring that any animal imported or entered into the United States be raised or handled under post-importation quarantine conditions by or under the supervision of the Secretary for the purpose of determining whether the animal is or may be affected by any pest or disease of livestock.

The horse industry in the United States contributes \$39 billion annually to the U.S. gross domestic product via direct spending, and it supports 1.4 million full-time equivalent jobs. The horse industry pays approximately \$1.9 billion in taxes annually to all levels of government. Approximately 1.96 million people own the estimated 9.2 million horses in the United States.

Trade in live horses between the United States and other countries has increased considerably, both recently and over the past decade. Even though the United States is a net exporter of live horses, imports of live horses have increased dramatically. Specifically, from 2001 to 2003, U.S. imports of live horses increased by 54 percent in number (from 27,236 horses to 41,960 horses). During the 3-year period 2001–2003, the number of U.S. live horse imports averaged 39,434 annually, 134 percent more than the annual average for the 1991–1993 3-year period. In 2003, the value of U.S. live horse imports was \$259.3 million.

The increased demand for importing horses in the United States has resulted in an increased demand for import quarantine services. As can be seen from the data above, horses play an important role in the international trade of the United States.

#### **Effects on Small Entities**

We have identified two types of entities that could be affected by implementation of this rule: The existing permanent, privately owned

quarantine facility and horse importers or farmers.

#### *Quarantine Facilities*

According to Small Business Administration (SBA) criteria, a horse quarantine facility is considered a small entity if it has annual revenues of \$6 million or less. The existing permanent, privately owned quarantine facility that operates in Los Angeles County, CA, is believed to be a small entity.

If this proposed rule is implemented, the operators of that quarantine facility may need to upgrade its facilities to be in compliance with the proposed requirements. If and when the facility is approved for operation under the proposed regulations, the cost of any needed renovations to the facility, as well as the costs associated with being in compliance with the proposed regulations, would likely be passed on to importers of horses who elect to use the facility to quarantine imported horses. Such a cost pass-through to the facility's users is likely to occur, at least in the short run, given the increased demand for quarantine services in the United States, the small number of Federal horse quarantine facilities currently in operation, and the fact that there are no other permanent, privately owned quarantine facilities operating at this time. Over the long term, the impact of the rule on the facility is less certain, given the possibility of additional—and potentially competing—quarantine facilities opening in the future. That only one or two additional quarantine facilities are expected to open in the next several years suggests that this action would not have a significant effect on the facility, even in the long run. Nevertheless, at this time, we are unable to determine the effect that implementation of this rule would have on the facility's business volume and revenue.

In response to the July 2002 proposed rule, one commenter objected to the proposed standards for permanent, privately owned horse quarantine facilities on the grounds that they would impose significant additional costs on the existing quarantine facility. The commenter cited decreasing demand for imported horses as grounds for fear that these significant additional costs could eventually result in a reduction of the total quarantine space available for imported horses, since the existing permanent, privately owned horse quarantine facility would likely exit the market and prospective owners of permanent horse quarantine facilities would be discouraged by the regulations from entering it.

As noted earlier in this document, the demand for import quarantine facilities for horses has risen in recent years, and in some cases the demand for quarantine services for horses has exceeded the space available at existing facilities. Most of the comments we received cited this increased demand and the resulting shortage of quarantine services as the reason for supporting our proposed standards for permanent, privately owned horse quarantine facilities. However, we cannot allow horses to be quarantined in privately owned facilities that are not constructed and operated in such a manner as to mitigate the risk of transmission of foreign animal diseases into the domestic horse population. We have determined that the standards set out in the proposed rule would ensure that permanent, privately owned horse quarantine facilities are constructed and operated properly.

In response to this comment, however, this reproposal provides additional time for the existing permanent, privately owned horse quarantine facility to comply with any requirements that may be established by a final rule. This deadline would be 1 year after the final rule takes effect. We have also made changes to substantive provisions in this reproposal that we expect would reduce the compliance costs associated with this rulemaking.

We continue to lack data of the kind that could be used in an economic analysis to assess the proposed rule's potential impact on the existing permanent, privately owned horse quarantine facility. We are inviting comments on such impacts, particularly estimates of compliance costs and impacts on revenue. This will allow us to better assess this proposal's potential impact.

#### *Importers of Horses and Horse Farms*

According to SBA criteria, a farm that keeps horses for breeding and has annual revenues of \$750,000 or less is considered a small entity. According to the most recent Census of Agriculture data, average per-farm revenue for all U.S. equine farms in 2002 was \$7,158, an indication that these farms are by and large small entities.

The establishment of standards for the approval of permanent, privately owned quarantine facilities for horses has the potential to make the import process easier and more timely while at the same time protecting against the introduction of communicable diseases of horses, a clear benefit for importers if the demand for, and worth of, live horse imports continues to increase. However, as discussed above, importers

may be subject to higher fees and charges from the current quarantine facility or from new facilities that may open in the future.

Additional quarantine facilities could be expected to benefit brokers, and they may also have positive economic effects for horse owners who purchase horses, since increased competition from foreign imports may serve to depress domestic prices. However, any decline in domestic horse prices stemming from increased imports would have an adverse impact on domestic sellers.

Given the available data, it is not possible for us to predict the proposed rule's economic impact. Nevertheless, any increase in horse imports, which the rule would facilitate, should yield net benefits. This is because trade of a commodity generally increases social welfare. To the extent that consumer choice is broadened and the increased supply of the imported commodity leads to a price decline, gains in consumer surplus will outweigh losses in domestic producer surplus.<sup>2</sup> Although the rule's impact on domestic producers is uncertain, it is expected to provide benefits to consumers (domestic importers, brokers) that would exceed any potential losses to domestic producers. The net welfare effect for the United States of increased horse imports will be positive.

The additional number of horses that might be imported into the United States as a result of this proposed rule is not known. However, because the proposed rule is expected to result in the opening of only one or two additional quarantine facilities in the next several years, the expected benefits are likely to be small.

#### **Alternatives Considered**

This proposed rule would establish standards for the approval of permanent, privately owned quarantine facilities for horses. Alternatives to the proposed rule would be to either leave the regulations unchanged, or to require a different set of standards than is proposed. Leaving the regulations unchanged would be unsatisfactory, because it would perpetuate the current situation, *i.e.*, one which does not fully address the potential disease risks, and one which does not facilitate the importation of horses.

APHIS considers the proposed set of standards to be the minimum necessary to accomplish the rule's objectives. In this regard, we have made changes to

<sup>2</sup> Consumer surplus is the difference between the amount a consumer is willing to pay for a good and the amount actually paid. Producer surplus is the amount a seller is paid for the good minus the seller's cost.

substantive provisions in this reproposal that we expect would reduce the compliance costs associated with this rulemaking. This reproposal also provides additional time for the existing permanent, privately owned horse quarantine facility to comply with any requirements that may be established by a final rule. The deadline would be 1 year after the final rule takes effect.

Nevertheless, we invite public comment on the proposed rule, including any comments on the expected impacts for small entities and on how the proposed rule could be modified to reduce expected costs or burdens for small entities consistent with its objectives. Any comment suggesting changes to the proposed standards should be supported by an explanation of why the changes should be considered.

This proposed rule contains information collection requirements, which have been submitted for approval to the Office of Management and Budget (see "Paperwork Reduction Act" below).

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging 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.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comment refers to Docket No. APHIS-2006-0013. Please send a copy of your comment to: (1) Docket No. APHIS-2006-0013, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Because recent demand for quarantine services for horses exceeds the space available at existing facilities, we are

proposing to allow the establishment of permanent, privately owned horse quarantine facilities if they meet requirements proposed in this document. Accomplishing this will necessitate the use of several information collection activities, including an application for facility approval, a compliance agreement explaining the conditions under which the facility must be operated, and a certification that the facility meets all applicable environmental regulations.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.78571 hours per response.

*Respondents:* Owners of approved permanent, privately owned horse quarantine facilities and applicants for approval.

*Estimated annual number of respondents:* 3.

*Estimated annual number of responses per respondent:* 4.666.

*Estimated annual number of responses:* 14.

*Estimated total annual burden on respondents:* 11 hours.

Copies of this information collection can be obtained from: Mrs. Celeste Sickles, APHIS's Information Collection Coordinator, at (301) 734-7477.

#### 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 proposed rule, please contact Mrs. Celeste Sickles, APHIS's Information Collection Coordinator, at (301) 734-7477.

#### List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

#### PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

**Authority:** 7 U.S.C. 1622 and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2-3. Section 93.300 would be amended by revising the definition for *operator* and by adding, in alphabetical order, new definitions of *lot*, *lot-holding area*, *nonquarantine area*, *permanent, privately owned quarantine facility*, *quarantine area*, and *temporary, privately owned quarantine facility* to read as follows:

#### § 93.300 Definitions.

\* \* \* \* \*

*Lot.* A group of horses that, while held on a premises or conveyance, have had opportunity for physical contact with other horses in the group or with their excrement or discharges at any time during their shipment to the United States.

*Lot-holding area.* That area in a permanent, privately owned quarantine facility in which a single lot of horses is held at one time.

*Nonquarantine area.* That area in a permanent, privately owned quarantine facility that includes offices, storage areas, and other areas outside the quarantine area, and that is off limits to horses, samples taken from horses, and any other objects or substances that have been in the quarantine area during quarantine of horses.

*Operator.* A person other than the Federal Government who owns or manages and has responsibility for the services provided by a temporary, privately owned quarantine facility or a permanent, privately owned quarantine facility.

*Permanent, privately owned quarantine facility.* A facility that offers quarantine services for horses to the general public on a continuing basis and that is owned and operated by an entity other than the Federal Government (also permanent facility).

\* \* \* \* \*

*Quarantine area.* That area in a permanent, privately owned quarantine facility that comprises all of the lot-holding areas in the facility and any other areas in the facility that horses have access to, including loading docks for receiving and releasing horses, and any areas used to conduct examinations of horses and take samples and where samples are processed or examined.

\* \* \* \* \*

*Temporary, privately owned quarantine facility.* A facility that offers quarantine services for horses imported for a special event and that is owned and operated by an entity other than the Federal Government (also temporary facility).

\* \* \* \* \*

4. Section 93.303 would be amended as follows:

a. By revising the heading of paragraph (e) to read as set forth below.

b. In paragraph (e), by removing the words "provided by the importer" and by adding the words "privately owned" before the word "quarantine".

**§ 93.303 Ports designated for the importation of horses.**

\* \* \* \* \*

(e) *Ports for horses to be quarantined at privately owned quarantine facilities.*

\* \* \*

\* \* \* \* \*

**§ 93.304 [Amended]**

5. In § 93.304, paragraph (a)(1)(i), the first sentence would be amended by removing the words "quarantine facility provided by the importer" and adding the words "privately owned quarantine facility" in their place.

6. In § 93.304, paragraph (a)(2), the words "of the regulations, horses intended for quarantine at a quarantine facility provided by the importer," would be removed, and the words "or horses intended for quarantine at a privately owned quarantine facility" would be added in their place.

7. In § 93.308, in paragraph (a), footnote 14 would be redesignated as footnote 13, paragraph (b) would be revised and a new footnote 14 would be added, and paragraph (c), including footnote 15, would be revised to read as follows:

**§ 93.308 Quarantine requirements.**

\* \* \* \* \*

(b) *Temporary, privately owned quarantine facilities.* Horses presented for entry into the United States as provided in § 93.303(e) may be quarantined in temporary, privately owned quarantine facilities that meet the requirements of paragraphs (b)(1) and (2) of this section and that have been approved by the Administrator for a specific importation.

(1) *Approval.* Requests for approval and plans for proposed temporary facilities must be submitted no less than 15 days before the proposed date of entry of horses into the facility to APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 39, Riverdale, MD 20737-1231. Before facility approval can be granted, a veterinary medical officer of APHIS must inspect the facility to determine whether it complies with the standards set forth in this section: *Provided, however,* that approval of any temporary facility and use of such facility will be contingent upon a determination made by the Administrator that adequate personnel are available to provide required services at the facility. Approval of any facility may be refused and approval of any quarantine facility may be withdrawn at any time by the Administrator, upon his or her determination that any requirements of this section are not being met. Before such action is taken, the operator of the facility will be informed of the reasons for the proposed action by the Administrator and afforded an opportunity to present his or her views. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. The cost of the facility and all maintenance and operational costs of the facility will be borne by the operator.

(2) *Standards and handling procedures.* The facility must be maintained and operated in accordance with the following standards:

(i) *Inspection.* Inspection and quarantine services must be arranged by the operator or his or her agent with the APHIS Veterinarian in Charge for the State in which the approved facility is located <sup>14</sup> no less than 7 days before the proposed date of entry of the horses into the quarantine facility.

(ii) *Physical plant requirements.*

(A) The facility must be located and constructed to prevent horses from having physical contact with animals outside the facility.

<sup>14</sup> The name and address of the Veterinarian in Charge in any State is available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 39, Riverdale, MD 20737-1231.

(B) The facility must be constructed only with materials that can withstand repeated cleaning and disinfection. Disinfectants authorized in 9 CFR part 71 must be used. All walls, floors, and ceilings must be constructed of solid material that is impervious to moisture. Doors, windows, and other openings of the facility must be provided with double screens that will prevent insects from entering the facility.

(iii) *Sanitation and security.*

(A) The operator must arrange for a supply of water adequate to clean and disinfect the facility.

(B) All feed and bedding must originate from an area not under quarantine because of splenetic or tick fever (see part 72 of this chapter) and must be stored within the facility.

(C) Upon the death of any horse, the operator must arrange for the disposal of the horse's carcass by incineration. Disposal of all other waste removed from the facility during the time the horses are in quarantine or from horses that are refused entry into the United States must be either by incineration or in a public sewer system that meets all applicable environmental quality control standards. Following completion of the quarantine period and the release of the horses into the United States, all waste may be removed from the quarantine facility without further restriction.

(D) The facility must be maintained and operated in accordance with any additional requirements the Administrator deems appropriate to prevent the dissemination of any communicable disease.

(E) The facility must comply with all applicable local, State, and Federal requirements for environmental quality.

(iv) *Personnel.*

(A) Access to the facility will be granted only to persons working at the facility or to persons specifically granted such access by an APHIS representative.

(B) The operator must provide attendants for the care and feeding of horses while in the quarantine facility.

(C) Persons working in the quarantine facility may not come in contact with any horses outside the quarantine facility during the quarantine period for any horses in the facility.

(v) *Handling of horses in quarantine.* Horses offered for importation into the United States that are quarantined in an approved temporary facility must be handled in accordance with paragraph (a) of this section while in quarantine.

(c) *Permanent, privately owned quarantine facilities.* Horses presented for entry into the United States as provided in § 93.303(e) may be

quarantined in permanent, privately owned quarantine facilities approved by the Administrator as meeting the requirements of paragraphs (c)(1) through (c)(6) of this section.

(1) *APHIS approval.*

(i) *Approval procedures.* Persons seeking APHIS approval of a permanent, privately owned quarantine facility must write to the Administrator, c/o National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231. The application letter must include the full name and mailing address of the applicant; the location and street address of the facility for which approval is sought; blueprints of the facility; a description of the financial resources available for construction, operation, and maintenance of the facility; the anticipated source or origin of horses to be quarantined, as well as the expected size and frequency of shipments; a contingency plan for horses needing emergency veterinary care; and a contingency plan for the disposal of all the horses capable of being housed in the facility.

(A) If APHIS determines that an application is complete and merits further consideration, the person applying for facility approval must enter into a service agreement with APHIS wherein the applicant agrees to pay the cost of all APHIS services associated with APHIS' evaluation of the application and facility. APHIS charges for the evaluation of the application and facility at hourly rates listed in § 130.30 of this chapter. This service agreement applies only to fees accrued during the application process. If the facility is approved by APHIS, facility owners must enter into a compliance agreement in accordance with paragraph (c)(2) of this section.

(B) Requests for approval must be submitted to APHIS at least 120 days prior to the date of application for local building permits. Requests for approval will be evaluated on a first-come, first-served basis.

(ii) *Criteria for approval.* Before a facility may operate as a permanent, privately owned quarantine facility for horses, it must be approved by APHIS. To be approved:

(A) The facility must meet all of the requirements of this section;

(B) The facility must meet any additional requirements that may be imposed by the Administrator in each specific case, as specified in the compliance agreement required under paragraph (c)(2) of this section, to ensure that the quarantine of horses in the facility will be adequate to

determine their health status, as well as to prevent the transmission of diseases into, within, and from the facility; and

(C) The Administrator must determine that sufficient personnel, including one or more APHIS veterinarians and other professional, technical, and support personnel, are available to serve as APHIS representatives at the facility and provide continuous oversight over import quarantine operations and other technical services to ensure the biological security of the facility, if approved. This determination will be based on the expected size and frequency of shipments to the facility, as described in the application for approval of a permanent facility, as well as any other pertinent information in the application. APHIS will assign personnel to facilities requesting approval in the order that the facilities are approved. The Administrator has sole discretion on the number of APHIS personnel to be assigned to the facility.

(iii) *Maintaining approval.* To maintain APHIS approval, the operator must continue to comply with all the requirements of paragraph (c) of this section and the terms of the compliance agreement executed in accordance with paragraph (c)(2) of this section.

(iv) *Denial or withdrawal of approval.* Approval for a proposed privately owned quarantine facility may be denied or approval for a facility already in operation may be withdrawn at any time by the Administrator for any of the reasons provided in paragraph (c)(1)(iv)(C) of this section.

(A) Before facility approval is denied or withdrawn, the operator of the facility will be informed of the reasons for the proposed action by the Administrator and afforded an opportunity to present his or her views. If there is a conflict as to any material fact, APHIS will afford the operator, upon request, the opportunity for a hearing with respect to the merits or validity of such action.

(B) The Administrator may withdraw approval of an existing facility prior to a final determination in the hearing if the Administrator determines that such action is necessary to protect animal health or the public health, interest, or safety. Such withdrawal will be effective upon oral or written notification, whichever is earlier, to the operator of the facility. In the event of oral notification, APHIS will promptly give written confirmation to the operator of the facility. This withdrawal will continue in effect pending the completion of the hearing and any judicial review, unless otherwise ordered by the Administrator. In addition to withdrawal of approval for

the reasons provided in paragraph (c)(1)(iv)(C) of this section, the Administrator will also automatically withdraw approval when the operator of any approved facility notifies the APHIS Veterinarian in Charge for the State in which the facility is located, in writing, that the facility is no longer in operation.<sup>15</sup>

(C) The Administrator may deny or withdraw approval of a permanent privately owned quarantine facility if:

(1) Any requirement of this section or the compliance agreement is not complied with; or

(2) The operator fails to remit any charges for APHIS services rendered; or

(3) The operator or a person responsibly connected with the business of the quarantine facility acts as a paid agent (broker) for the importation or subsequent sale of horses; or

(4) The operator or a person responsibly connected with the business of the quarantine facility is or has been found by a court of competent jurisdiction to have violated any law or regulation pertaining to the importation or quarantine of any animal; or

(5) The operator or a person responsibly connected with the business of the quarantine facility is or has been convicted of any crime involving fraud, bribery, or extortion or any other crime involving a lack of integrity needed for the conduct of operations affecting the importation of animals; or

(6) The approved quarantine facility has not been in use to quarantine horses for a period of at least 1 year.

(D) For the purposes of this section, a person is deemed to be responsibly connected with the business of the quarantine facility if such person has an ownership, mortgage, or lease interest in the facility's physical plant, or if such person is a partner, officer, director, holder, or owner of 10 percent or more of its voting stock, or is an employee in a managerial or executive capacity.

(v) *Approval for existing facilities.* Any permanent, privately owned quarantine facility operating under APHIS authorization at the time these regulations become effective must be approved by APHIS to continue quarantine operations by [Insert date 1 year after effective date of final rule] or else must cease horse quarantine operations.

(2) *Compliance agreement.*

(i) All permanent, privately owned quarantine facilities for horses must operate in accordance with a

<sup>15</sup> The name and address of the Veterinarian in Charge in any State is available from APHIS, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 39, Riverdale, MD 20737-1231.

compliance agreement executed by the operator or his or her agent and the Administrator, and that must be renewed on an annual basis.

(ii) The compliance agreement must provide that:

(A) The facility must meet all applicable requirements of this section;

(B) The facility's quarantine operations are subject to the oversight of APHIS representatives;

(C) The operator agrees to be responsible for the cost of the facility; all costs associated with its maintenance and operation; all costs associated with the hiring of employees and other personnel to attend to the horses as well as to maintain and operate the facility; all costs associated with the care of quarantined horses, such as feed, bedding, medicines, inspections, testing, laboratory procedures, and necropsy examinations; and all APHIS charges for the services of APHIS representatives in accordance with this section and part 130 of this chapter; and

(D) The operator agrees to bar from the facility any employee or other personnel at the facility who fails to comply with paragraph (c) of this section or other provisions of this part, any terms of the compliance agreement, or related instructions from APHIS representatives;

(3) *Physical plant requirements.* The facility must meet the following requirements as determined by an APHIS inspection prior to admitting horses into the facility:

(i) *Location.* The quarantine facility must be located in proximity to a port authorized under § 93.303(e). The site and the specific routes for the movement of horses from the port to the site must be approved by the Administrator based on consideration of whether the site or routes would put the horses in a position that could result in the transmission of communicable diseases to domestic horses.

(ii) *Construction.* The facility must be of sound construction, in good repair, and properly designed to prevent the escape of quarantined horses. It must have adequate capacity to receive and house shipments of horses as lots on an "all-in, all-out" basis, whereby separate lots of horses can be received and housed without contact with any other lots being quarantined at the facility. The facility must include the following:

(A) *Perimeter fencing.* The facility must be surrounded by a security fence of sufficient height and design to prevent the entry of unauthorized people and animals from outside the facility and to prevent the escape of the horses in quarantine.

(B) *Entrances and exits.* All entryways into the nonquarantine area of the facility must be equipped with a secure and lockable door. While horses are in quarantine, all access to the quarantine area for horses must be from within the building, and each such entryway to the quarantine area must be equipped with a series of solid self-closing double doors. Emergency exits to the outside are permitted in the quarantine area. Such emergency exits must be constructed so as to permit their being opened from the inside of the facility only.

(C) *Windows and other openings.* The facility must be constructed so that any windows or other openings in the quarantine area are double-screened with screening of sufficient gauge and mesh to prevent the entry or exit of insects and other vectors of diseases of horses and to provide ventilation sufficient to ensure the comfort and safety of all horses in the facility. The interior and exterior screens must be separated by at least 3 inches (7.62 cm). All screening of windows or other openings must be easily removable for cleaning, but must otherwise remain locked and secure at all times in a manner satisfactory to APHIS representatives in order to ensure the biological security of the facility.

(D) *Lighting.* The entire facility, including its stalls and hallways, must have adequate lighting.

(E) *Loading docks.* The facility must have separate docks for animal receiving and releasing and for general receiving and pickup, unless a single dock used for both purposes is cleaned and disinfected after each use in accordance with paragraph (c)(4)(iv)(F) of this section.

(F) *Surfaces.* The facility must be constructed so that the floor surfaces with which horses have contact are nonslip and wear-resistant. All floor surfaces with which the horses, their excrement, or discharges have contact must provide for adequate drainage. All floor and wall surfaces with which the horses, their excrement, or discharges have contact must be impervious to moisture and be able to withstand frequent cleaning and disinfection without deterioration. Ceilings and wall surfaces with which the horses, their excrement, or discharges do not have contact must be able to withstand cleaning and disinfection between shipments of horses. All floor and wall surfaces must be free of sharp edges that could cause injury to horses.

(G) *Horse stalls.* The stalls in which horses are kept must be large enough to allow each animal to make normal

postural and social adjustments with adequate freedom of movement.

(H) *Aisleways.* The aisleways through which horses are moved to and from stalls must be wide enough to provide for safe movement of horses, including allowing horses to turn around in the aisleway, prevent horses in facing stalls from coming into contact with horses in the aisleway, and to adequately ventilate the stalls.

(I) *Means of isolation.* Physical barriers must separate different lots of horses in the facility so that horses in one lot cannot have physical contact with horses in another lot or with their excrement or discharges. Stalls must be available that are capable of isolating any horses exhibiting signs of illness.

(J) *Showers.* A shower must be located at each entrance to the quarantine area. If the facility has a necropsy area, a shower must be located at the entrance to the necropsy area. A clothes-storage and clothes-changing area must be provided with each shower area. There must also be one or more receptacles near each shower so that clothing that has been worn into the quarantine area can be deposited in a receptacle prior to entering the shower.

(K) *APHIS space.* The facility must have adequate space for APHIS representatives to conduct examinations and testing of the horses in quarantine, prepare and package samples for mailing, and store the necessary equipment and supplies for duplicate samples. The space provided to conduct examinations and testing must include a refrigerator-freezer in which to store samples. The examination space must include equipment to provide for the safe inspection of horses. The facility must also include a secure, lockable office for APHIS use with enough room for a desk, chair, and filing cabinet.

(L) *Necropsy area.* The facility must either include an area for conducting necropsies onsite or must have designated an alternate facility at which a suitable necropsy area is available. If the facility has a necropsy area, it must be of sufficient size to perform necropsies on horses and be equipped with adequate lighting, hot and cold running water, a drain, a cabinet for storing instruments, a refrigerator-freezer for storing specimens, and an autoclave to sterilize veterinary equipment. If the facility does not have such an area, it must specify an alternate facility at which a suitable necropsy area is available, a route from the quarantine facility to the alternate facility's necropsy area, and the safeguards that will be in place to ensure that communicable diseases of horses are not spread during transit.

This alternate facility and transport methodology must be approved by the Administrator under the procedures for requesting variances outlined in paragraph (c)(6) of this section.

(M) *Storage.* The facility must have sufficient storage space for equipment and supplies used in quarantine operations. Storage space must include separate, secure storage for pesticides and for medical and other biological supplies, as well as a separate vermin-proof storage area for feed and bedding, if feed and bedding are stored at the facility. If the facility has multiple lot-holding areas, then separate storage space for any reusable supplies and equipment that are not disinfected after each use in accordance with part 71 of this chapter must be provided for each lot-holding area.

(N) *Additional space needs.* The facility must have an area for washing and drying clothes, linens, and towels and an area for cleaning and disinfecting equipment used in the facility. The facility must also include a work area for the repair of equipment.

(O) *Restrooms.* The facility must have permanent restrooms in both the quarantine and nonquarantine areas of the facility.

(P) *Ventilation and climate control.* The facility must be constructed with an air handling system capable of controlling and maintaining the ambient temperature, air quality, humidity, and odor at levels that are not injurious or harmful to the health of horses in quarantine. Air supplied to the quarantine area must not be recirculated or reused for other ventilation needs. Air handling systems for lot-holding areas must be separate from air handling systems for other operational and administrative areas of the facility. In addition, if the facility is equipped to handle more than one lot of horses at a time, the air handling system must be adequate to ensure that there is no cross-contamination of air between the separate lot-holding areas.

(Q) *Fire protection.* The facility, including the lot holding areas, must have a fire alarm voice communication system.

(R) *Communication system.* The facility must have a communication system between the nonquarantine and quarantine areas of the facility.

(iii) *Sanitation.* To ensure that proper animal health and biological security measures are observed, the facility must have the following:

(A) Equipment and supplies necessary to maintain the facility in clean and sanitary condition, including pest control equipment and supplies and cleaning and disinfecting equipment

with adequate capacity to disinfect the facility and equipment.

(B) Any reusable equipment and supplies that are not disinfected after each use in accordance with part 71 of this chapter maintained separately for each lot of horses.

(C) Equipment and supplies used in the quarantine area maintained separately from equipment and supplies used in the nonquarantine area.

(D) A supply of potable water adequate to meet all watering and cleaning needs, with water faucets for hoses located throughout the facility. An emergency supply of water for horses in quarantine must also be maintained.

(E) A stock of disinfectant authorized in part 71 of this chapter or otherwise approved by the Administrator that is sufficient to disinfect the entire facility.

(F) The capability to dispose of wastes, including manure, urine, and used bedding, by means of burial, incineration, or public sewer. Other waste material must be handled in such a manner that minimizes spoilage and the attraction of pests and must be disposed of by incineration, public sewer, or other preapproved manner that prevents the spread of disease. Disposal of wastes must be carried out under the oversight of APHIS representatives.

(G) The capability to dispose of horse carcasses in a manner approved by the Administrator and under conditions that minimize the risk of disease spread from carcasses.

(H) For incineration to be carried out at the facility, the facility must have incineration equipment that is detached from other facility structures and is capable of burning animal waste and refuse. The incineration site must also include an area sufficient for solid waste holding. Incineration may also take place at a local site away from the facility premises. All incineration activities, whether onsite or offsite, must be carried out under the direct oversight of APHIS representatives.

(I) The capability to control surface drainage and effluent into, within, and from the facility in a manner that prevents the spread of disease into, within, or from the facility. If the facility is approved to handle more than one lot of horses at the same time, the drainage system must be adequate to ensure that there is no cross-contamination between lot-holding areas.

(iv) *Security.* Facilities must provide the following security measures:

(A) The facility and premises must be kept locked and secure at all times while horses are in quarantine.

(B) The facility and premises must have signs indicating that the facility is a quarantine area and no visitors are allowed.

(C) The facility and premises must be guarded at all times by one or more representatives of a bonded security company or, alternatively, the facility must have an electronic security system that indicates the entry of unauthorized persons into the facility. Electronic security systems must be coordinated through or with the local police so that monitoring of the quarantine facility is maintained whenever APHIS representatives are not at the facility. The electronic security system must be of the "silent type" and must be triggered to ring at the monitoring site and not at the facility. The electronic security system must be approved by Underwriter's Laboratories. The operator must provide written instructions to the monitoring agency stating that the police and a representative of APHIS designated by APHIS must be notified by the monitoring agency if the alarm is triggered. The operator must also submit a copy of those instructions to the Administrator. The operator must notify the designated APHIS representative whenever a breach of security occurs or is suspected of having occurred. In the event that disease is diagnosed in quarantined horses, the Administrator may require the operator to have the facility guarded by a bonded security company in a manner that the Administrator deems necessary to ensure the biological security of the facility.

(D) The operator must furnish a telephone number or numbers to APHIS at which the operator or his or her agent can be reached at all times.

(E) APHIS is authorized to place APHIS seals on any or all entrances and exits of the facility when determined necessary by APHIS and to take all necessary steps to ensure that such seals are broken only in the presence of an APHIS representative. If someone other than an APHIS representative breaks such seals, APHIS will consider the act a breach in security and APHIS representatives will make an immediate accounting of all horses in the facility. If a breach in security occurs, APHIS may extend the quarantine period as long as necessary to determine that the horses are free of communicable diseases.

(4) *Operating procedures.* The following procedures must be observed at the facility at all times:

(i) *APHIS oversight.*

(A) The quarantine of horses at a privately owned quarantine facility is

subject to the oversight of APHIS representatives authorized to perform the services required by this section and by the compliance agreement.

(B) If, for any reason, the operator fails to properly care for, feed, or handle the quarantined horses as required in this paragraph (c), or fails to maintain and operate the facility as provided in this paragraph (c), APHIS representatives will furnish such services or make arrangements for the sale or disposal of quarantined horses at the quarantine facility owner's expense.

(ii) *Personnel.*

(A) The operator must provide adequate personnel to maintain the facility and care for the horses in quarantine, including attendants to care for and feed horses, and other personnel as needed to maintain, operate, and administer the facility.

(B) The operator must provide APHIS with an up-to-date list of all personnel who have access to the facility. The list must include the names, current residential addresses, and employee identification numbers of each person. When the operator wishes to grant access to the facility to persons who have not previously had access to it, the operator must update the list prior to such persons having access to the quarantine facility.

(C) The operator must provide APHIS with signed statements from each employee and any other personnel hired by the operator and working at the facility in which the person agrees to comply with paragraph (c) of this section and applicable provisions of this part, all terms of the compliance agreement, and any related instructions from APHIS representatives pertaining to quarantine operations, including contact with animals both inside and outside the facility.

(iii) *Authorized access.* Access to the facility premises as well as inside the quarantine area will be granted only to APHIS representatives, authorized employees, and other personnel of the operator assigned to work at the facility. All other persons are prohibited from the premises unless specifically granted access by an APHIS representative. Any visitors granted access must be accompanied at all times by an APHIS representative while on the premises or in the quarantine area of the facility.

(iv) *Sanitary requirements.*

(A) All persons granted access to the quarantine area must:

(1) Shower when entering and leaving the quarantine area;

(2) Shower when leaving the necropsy area if a necropsy is in the process of being performed or has just been

completed, or if all or portions of the examined animal remain exposed;

(3) Wear clean protective work clothing and footwear upon entering the quarantine area;

(4) Wear disposable gloves when handling sick horses and then wash hands after removing gloves; and

(5) Change protective clothing, footwear, and gloves when they become soiled or contaminated.

(B) The operator is responsible for providing a sufficient supply of clothing and footwear to ensure that all persons provided access to the quarantine area at the facility have clean, protective clothing and footwear when they enter the quarantine area.

(C) The operator is responsible for the handling, washing, and disposal of soiled and contaminated clothing worn within the quarantine facility in a manner approved by APHIS as adequate to preclude transmission of any animal disease agent from the facility. At the end of each workday, work clothing worn into the quarantine area must be collected and kept in a bag until the clothing is washed. Used footwear must either be left in the clothes changing area or cleaned with hot water (148 °F minimum) and detergent and disinfected as directed by an APHIS representative.

(D) All equipment (including tractors) must be cleaned and disinfected prior to being used in the quarantine area of the facility with a disinfectant authorized in part 71 of this chapter or otherwise approved by the Administrator. The equipment must remain dedicated to the facility for the entire quarantine period. Any equipment used with quarantined horses (e.g., halters, floats, feed and water buckets) must remain dedicated to that particular lot of quarantined horses for the duration of the quarantine period or be cleaned and disinfected before coming in contact with horses from another lot. Prior to its removal from the quarantine premises, any equipment must be cleaned and disinfected to the satisfaction of an APHIS representative.

(E) Any vehicle, before entering or leaving the quarantine area of the facility, must be cleaned and disinfected under the oversight of an APHIS representative within a time period authorized by the APHIS representative and with a disinfectant authorized in part 71 of this chapter or otherwise approved by the Administrator.

(F) If the facility has a single loading dock, the loading dock must be cleaned and disinfected after each use under the oversight of an APHIS representative within a time period authorized by the APHIS representative and with a disinfectant authorized in part 71 of this

chapter or otherwise approved by the Administrator.

(G) That area of the facility in which a lot of horses has been held or has had access to must be thoroughly cleaned and disinfected, with a disinfectant authorized in part 71 of this chapter or otherwise approved by the Administrator, under the oversight of an APHIS representative upon release of the horses before a new lot of horses is placed in that area of the facility.

(v) *Handling of the horses in quarantine.*

(A) All horses must be handled in accordance with paragraph (a) of this section.

(B) Each lot of horses to be quarantined must be placed in the facility on an "all-in, all-out" basis. No horse may be taken out of the lot while it is in quarantine, except for diagnostic purposes or as provided in paragraph (a)(4) of this section, and no horse may be added to the lot while the lot is in quarantine.

(C) The facility must provide sufficient feed and bedding for the horses in quarantine, and it must be free of vermin and not spoiled. Feed and bedding must originate from an area that is not listed in part 72 of this chapter as an area quarantined for splenetic or tick fever.

(D) Breeding of horses or collection of germplasm from horses is prohibited during the quarantine period.

(E) Horses in quarantine will be subjected to such tests and procedures as directed by an APHIS representative to determine whether they are free from communicable diseases of horses.

(F) Any death or suspected illness of horses in quarantine must be reported immediately to APHIS. The affected horses must be disposed of as the Administrator may direct or, depending on the nature of the disease, must be cared for as directed by APHIS to prevent the spread of disease.

(G) Quarantined horses requiring specialized medical attention or additional postmortem testing may be transported off the quarantine site, if authorized by APHIS. A second quarantine site must be established to house the horses at the facility of destination (e.g., veterinary teaching hospital). In such cases, APHIS may extend the quarantine period for that horse and for its lot until the results of any outstanding tests or postmortem results are received.

(H) Should a horse be determined to be infected with or exposed to a communicable disease of horses, arrangements for the final disposition of the infected or exposed horse must be accomplished within 10 days of the date

that the importer is notified by the overseeing APHIS representative that the horse has been refused entry into the United States. Subsequent disposition of the horse must occur under the direct oversight of APHIS representatives. The operator must have a preapproved contingency plan for the disposal of all horses housed in the facility prior to issuance of the import permit.

(I) Vaccination of horses in quarantine is prohibited.

(vi) *Records.*

(A) The facility operator must maintain a current daily record to record the entry and exit of all persons entering and leaving the quarantine facility.

(B) The operator must maintain the daily record, along with any records kept by APHIS and deposited with the operator, for at least 2 years following the date of release of the horses from quarantine and must make such records available to APHIS representatives upon request.

(5) *Environmental quality.* If APHIS determines that a privately operated quarantine facility does not meet applicable local, State, or Federal environmental regulations, APHIS may deny or suspend approval of the facility until appropriate remedial measures have been applied.

(6) *Variations.* The Administrator may grant variations to existing requirements relating to location, construction, and other design features of the physical facility, as well as to sanitation, security, operating procedures, recordkeeping, and other provisions of paragraph (c) of this section, but only if the Administrator determines that the variance causes no detrimental impact to the overall biological security of the quarantine operations. The operator must submit a request for a variance from the requirements for the construction of the facility in paragraph (c)(3) of this section to the Administrator in writing prior to the construction of the facility. The operator must submit a request for a variance from the operational requirements in paragraph (c)(4) of this section to the Administrator in writing at least 30 days in advance of the arrival of horses to the facility. Any variance must also be expressly provided for in the compliance agreement.

8. In § 93.309, the section heading would be revised to read as follows:

**§ 93.309 Horse quarantine facilities; payment information.**

\* \* \* \* \*

9. Section 93.310 would be revised to read as follows:

**§ 93.310 Quarantine stations, visiting restricted; sales prohibited.**

Visitors are not permitted in the quarantine enclosure during any time that horses are in quarantine unless an APHIS representative specifically grants access under such conditions and restrictions as may be imposed by APHIS. An importer (or his or her agent or accredited veterinarian) may be admitted to the lot-holding area(s) containing his or her quarantined horses at such intervals as may be deemed necessary, and under such conditions and restrictions as may be imposed, by an APHIS representative. On the last day of the quarantine period, owners, officers or registry societies, and others having official business or whose services may be necessary in the removal of the horses may be admitted upon written permission from an APHIS representative. No exhibition or sale shall be allowed within the quarantine grounds.

Done in Washington, DC, this 1st day of December 2006.

**Bruce Knight,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. E6-21032 Filed 12-12-06; 8:45 am]

**BILLING CODE 3410-34-P**

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 20**

**Public Meeting on Consideration of Rulemaking To Reduce the Likelihood of Funding Shortfalls for Decommissioning Under the License Termination Rule**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is working on a proposed rule to reduce the likelihood that a licensee will have insufficient funds to decommission its facility in accordance with 10 CFR part 20, Subpart E, Radiological Criteria for License Termination. In the past, these funding shortfalls resulted in "legacy sites," which are sites that are in decommissioning but whose operators do not have enough funds to complete the work and terminate the license in accordance with NRC regulations. All of the legacy sites have been materials facilities, primarily those that processed uranium and thorium, with undetected subsurface contamination from operations arising as a significant problem during decommissioning. A

risk-informed approach addressing subsurface contamination at operating facilities would affect materials licensees and operators of nuclear power reactors. The purpose of the meeting is to give stakeholders an opportunity to discuss their views and interact with other interested parties on the regulatory issues summarized in the Supplementary Information section of this document.

To aid in the rulemaking process, NRC is holding a public meeting with a "roundtable" format (defined further in the body of this notice) to solicit input. The meeting is open to the public. The NRC is asking those planning to attend the meeting to pre-register by contacting Jayne McCausland as noted under the For Further Information section of this document. Individuals unable to attend the meeting will be able to listen by teleconference.

**DATES:** The meeting will be held on January 10, 2007, from 9 a.m. to 4 p.m. Registration is from 8:30 a.m. to 9 a.m.; however, all persons planning to attend the meeting are encouraged to pre-register in order to facilitate check-in on the day of the meeting.

**ADDRESSES:** Residence Inn Bethesda Downtown, 7335 Wisconsin Avenue, Bethesda, Maryland, 20814. Telephone (301) 718-0200.

**FOR FURTHER INFORMATION CONTACT:** Kevin O'Sullivan, telephone (301) 415-8112, e-mail [kro2@nrc.gov](mailto:kro2@nrc.gov), of the Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Questions on the meeting format, including participation in the roundtable, should be directed to the meeting facilitator, Lance Rakovan. Mr. Rakovan can be reached at (301) 415-2589 or [ljr2@nrc.gov](mailto:ljr2@nrc.gov). To pre-register to attend the meeting in person or to participate via teleconference, or if a participant has special needs, please contact Jayne McCausland, telephone (301) 415-6219, fax (301) 415-5369, or e-mail [jmm2@nrc.gov](mailto:jmm2@nrc.gov).

**SUPPLEMENTARY INFORMATION:** Current NRC regulations in 10 CFR part 20, Subpart F, Surveys and Monitoring, require licensees to conduct surveys, as reasonable under the circumstances, to evaluate (1) the magnitude and extent of radiation levels; (2) concentrations or quantities of radioactive material; and (3) the potential radiological hazards. NRC regulations in 10 CFR 20, Subpart L, Records, contain related record-keeping requirements. There have been past occurrences among materials licensees, and recent occurrences at