

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. APHIS–2006–0164]

RIN 0579–AC35

Temporary Importation of Horses; Noncompetitive Entertainment Horses From Countries Affected With Contagious Equine Metritis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations to allow noncompetitive entertainment horses from countries affected with contagious equine metritis to be temporarily imported into the United States under certain conditions. The regulations currently provide for the temporary importation of horses from countries affected with contagious equine metritis to compete in specified events. In recent years it has become evident that similar provisions are needed for noncompetitive entertainment horses. This action would allow the temporary importation of horses into the United States solely for public exhibition and entertainment purposes while continuing to protect against the introduction and dissemination of contagious equine metritis.

DATES: We will consider all comments that we receive on or before October 1, 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–2006–0164 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–2006–0164, 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–2006–0164.

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. Ellen M. Buck, Veterinary Medical Officer, Import/Export Animals, 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 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart C—Horses, §§ 93.300 through 92.326 of the regulations, pertains to the importation of horses into the United States.

Section 93.301 of the regulations contains specific provisions for the quarantine and testing of horses from regions affected with contagious equine metritis (CEM), a highly contagious bacterial venereal disease that affects breeding and fertility. This section also identifies regions where CEM exists and regions that trade horses freely with

those where CEM exists without testing for CEM.

To prevent the introduction of CEM into the United States, § 93.301(c)(1) prohibits the importation of horses into the United States from listed regions unless the horses are imported in accordance with certain requirements. To be eligible for importation, the horses must fall into one of the following categories:

- Wild (non-domesticated) species of equidae if captured in the wild or imported from a zoo or other facility where it would be unlikely that the animal would come in contact with domesticated horses used for breeding;
- Geldings;
- Weanlings or yearlings whose age is certified on the import health certificate required under § 93.314(a);
- Horses imported in accordance with conditions prescribed by the Administrator as provided in § 93.301(a);
- Spanish Pure Breed horses imported for permanent entry from Spain or thoroughbred horses imported for permanent entry from France, Germany, Ireland, or the United Kingdom as provided in § 93.301(d);
- Stallions or mares over 731 days of age imported for permanent entry as provided in § 93.301(e);
- Horses over 731 days of age imported into the United States for no more than 90 days to compete in specified events as provided in § 93.301(f); and
- U.S. horses returning to the United States as provided in § 93.301(g).

The Animal and Plant Health Inspection Service (APHIS) has used the provisions in § 93.301(f), relating to the temporary importation of horses for competition, to allow the temporary importation of noncompetitive entertainment horses into the United States. Several performance horse groups have asked APHIS to extend the 90-day limit provided for in § 93.301(f) so that they may exhibit and show their horses in the United States for longer periods of time. In addition, the United States Animal Health Association has recommended that APHIS amend the regulations to establish a category for noncompetitive entertainment horses.

APHIS has conducted a risk assessment to evaluate the risk of allowing the extended importation of noncompetitive entertainment horses

from countries affected by CEM without requiring CEM testing, and the risk of the U.S. Department of Agriculture (USDA) losing track of these horses during extended importation. The risk assessment, titled "Assessment of the Risk of Introduction of Contagious Equine Metritis (CEM) through the Extended Importation of Noncompetitive Entertainment Horses from CEM-affected countries," may be viewed on the Regulations.gov Web site (see **ADDRESSES** at the beginning of this document for instructions for accessing Regulations.gov). Copies of the risk assessment may be obtained by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

The risk assessment concluded that the risk posed by allowing the extended importation of noncompetitive entertainment horses from CEM-affected countries would be extremely low, with the application of the restrictions described in this proposed rule. In addition, the risk assessment concluded that the risk of USDA losing track of the animals was extremely low due to the extensive supervision and involvement of APHIS personnel and the accredited veterinarian.

Accordingly, we are proposing to amend the regulations in § 93.301 to establish conditions under which noncompetitive entertainment horses from CEM-affected regions may be imported into the United States for longer than 90 days solely for public exhibition and entertainment purposes. Because the conditions would be very similar to the conditions in § 93.301(f), which provides for the temporary importation of horses to compete in specified events, we would amend § 93.301(f) to apply to both types of imported horses. We would also amend the regulations pertaining to import permits in § 93.304 to require the submission of additional information with the application for an import permit.

As with horses imported for competition, we are proposing to provide two primary safeguards against the horses transmitting CEM while in the United States. First, a representative of APHIS would monitor the horses whenever they are not in transit in the United States. Second, we would require stringent measures to ensure that the horses are kept apart from other horses, except when performing or being exhibited or exercised. Because CEM is a venereal disease transmitted by sexual contact, there is virtually no risk that a horse will transmit the disease through casual contact with other horses during a performance, exhibition, or exercise.

Import Permit and Health Certificate

In addition to the current requirements in § 93.304(a) for an import permit, we are proposing that the owner or importer would have to supply the following information to APHIS with the application for the permit:

- The individual identifying information for all horses to be imported;
- The permanent electronic identification of each horse to be imported, if applicable;
- Photographs (head and lateral views) of each horse that are sufficient to identify the horse on an electronic medium approved by APHIS;
- The proposed total length of stay in the United States;
- A description of the shows or events in which the horse would perform while in the United States;
- The names and locations of the venues in which the horse would perform while in the United States, and the dates the horse would perform at each venue;
- The names and locations of the premises on which the horse would be kept while in the United States, and the dates the horse would be kept on each premises;
- The methods and routes by which the horse would be transported while in the United States;
- A written plan for handling sick or injured horses that includes the name, address, and phone number of each accredited veterinarian who would provide veterinary services in the United States; the name, address, and phone number of medical facilities to be used to diagnose or treat sick or injured horses while in the United States; and a plan to return sick or injured horses to performance condition; and
- An application for a trust fund or escrow account agreement with APHIS.

This information would allow APHIS to monitor the location of the horse while it is in the United States and to confirm compliance with the required isolation and handling procedures to ensure that the horse does not transmit CEM to any other horse while in this country.

Given the potential for long stays in the United States for noncompetitive entertainment horses, APHIS must have current information about the horses and their itinerary in order to effectively monitor the horses for compliance with the regulations. Therefore, we would require that while in the United States, the owner or importer apply for and obtain from APHIS an import permit each year prior to the anniversary date of the horse's arrival in the United

States. This would ensure that APHIS has current information about the horses and their itinerary for monitoring purposes.

As with horses imported for competition, we would require that, at the time of importation, each horse be accompanied by an import permit in accordance with § 93.304 and a health certificate in accordance with § 93.314. However, we would also require the health certificates for noncompetitive entertainment horses to certify that cultures negative for CEM have been collected from each horse on three separate occasions within a 7-day period, with the last set of specimens collected within 30 days of exportation. This would help to ensure that horses infected with CEM do not enter this country and jeopardize the health of the U.S. horse population.

Restrictions Following Arrival in the United States

We are proposing to allow horses over 731 days of age to be imported into the United States solely for noncompetitive public exhibition and entertainment purposes. Such horses would be allowed to remain in the United States indefinitely as long as the conditions in the regulations are met. While in the United States, the horse would be prohibited from entering competitions and would have to be regularly used in performances or exhibitions, unless sick or injured. A horse that is no longer performing or being exhibited would be required to be exported or made eligible for permanent entry. In addition, a noncompetitive entertainment horse would have to be kept with the other horses listed on the import permit, unless otherwise approved by an APHIS representative. We expect that such approvals would be granted for diagnosis or treatment of a medical condition, pre-export isolation, or quarantine for permanent entry.

As with horses imported for competition, we would require a noncompetitive entertainment horse to be moved according to the itinerary and methods of transport specified in the import permit. However, we are proposing to allow horses imported for competition and noncompetitive entertainment horses to be moved for diagnosis or treatment of a medical condition with the prior approval of an APHIS representative. APHIS has always allowed such movements; however, we are proposing to add that provision to the regulations to make it clear to the public.

We are proposing that, while in the United States, the horse would be monitored by an accredited veterinarian

or APHIS representative to ensure that the horse is moved according to the itinerary and methods specified in the import permit, kept separated from other horses not listed on the import permit, and not used for breeding purposes (including artificial insemination or semen collection) or has any other sexual contact with other horses. The horse could not be kept on a breeding premises.

We would require that the horse be kept in a pasture or stall separate from other horses not listed on the import permit, except when actually performing or being exhibited or exercised. The stall in which the horse is kept would have to be separated from other stalls containing horses that are not listed on the import permit, either by an empty stall, by an open area across which horses cannot touch each other, or by a solid wall that is at least 8 feet (2.4 meters) high. The premises on which the horse is kept would have to be approved in writing by an APHIS representative.

As noted above, we would require that the horse not be used for breeding purposes or have any other sexual contact with other horses. However, in contrast to horses imported for competition, we would allow a noncompetitive entertainment horse to undergo genital examinations necessary for diagnosis or treatment of a medical condition with the prior approval of an APHIS representative. This provision would allow the horse to receive appropriate medical care during its extended stay in the country.

We are also proposing to apply the transportation and cleaning and disinfection requirements for horses imported for competition that are contained in the current regulations to noncompetitive entertainment horses. Thus, we would require that, while the horse is in transit, it would have to be moved either in an aircraft or a sealed van or trailer and, except in situations where the horse's life is in danger, only an APHIS representative would be permitted to break the seal on a van or trailer used to move the horse. Additionally, we would require that after the horse is transported anywhere in the United States, any vehicle in which the horse was transported would have to be cleaned and disinfected in the presence of an APHIS representative, according to the procedures for cleaning and disinfection specified in 9 CFR 71.7 through 71.12 of the regulations. We would also require that, in most instances, the cleaning and disinfection would have to be done before the vehicle is moved from the place where the horse is unloaded.

However, in cases where there are inadequate facilities or equipment for cleaning and disinfection at the place where the horse is unloaded, the Administrator would have the discretion to allow the vehicle to be moved to another location for cleaning and disinfection, when the move would not pose a disease risk to other horses in the United States.

Change in Itinerary

We are proposing that if the owner or importer wishes to change the horse's itinerary or the methods by which the horse is transported from those specified in the import permit, the owner or importer would have to make the request for change in writing to the Administrator. Such requests would have to be submitted at least 15 days before the proposed date of any change. We propose that this provision would also apply to horses imported for competition. This would ensure that APHIS has enough time to process the request, including inspecting any new premises, and to arrange for the required monitoring before the date of the proposed change. The change in itinerary or means of transport would not be permitted without the written approval of the Administrator, who would have the discretion to grant the request for change when he or she determines that granting the request would not endanger other horses in the United States, and that sufficient APHIS personnel would be available to provide the services requested by the owner or importer.

Permanent Entry

We are proposing that noncompetitive entertainment stallions or mares over 731 days of age would be eligible to remain in the United States if the horse meets the provisions for permanent entry in the current regulations. Specifically, the horse's owner or importer would have to: (1) Apply for and receive a new import permit from APHIS that specifies that the stallion or mare would be moved to an approved State; and (2) transport the stallion or mare in a sealed vehicle that has been cleaned and disinfected to an approved facility in an approved State where it is quarantined under State or Federal supervision until the stallion or mare has met the testing and treatment requirements of § 93.301(e)(3) or (e)(5).

Cancellation of Import Permit

We are proposing to apply to noncompetitive entertainment horses the provisions relating to the cancellation of an import permit and the appeals process that currently appear in

the regulations pertaining to horses imported for competition. Specifically, we are proposing that if the provisions described in this proposed rule are not met, the Administrator would cancel the import permit that allows the importation of the horse into the United States and that allows the horse to stay in this country. If the cancellation is oral, the decision and the reason for cancellation of the permit would be confirmed in writing as promptly as circumstances allow. The owner or importer would be able to appeal the cancellation of the permit in writing to the Administrator within 10 days after receiving either oral or written notification of the cancellation, whichever is earlier. If the appeal is sent by mail, it would have to be postmarked within 10 days after the owner or importer receives the notification of cancellation. The appeal would have to include all of the facts and reasons upon which the person relies to show that the import permit was wrongfully canceled. If there is a conflict as to any material fact, a hearing would be held to resolve the conflict. These provisions would satisfy due process requirements pertaining to the cancellation of an import permit.

We are also proposing that, except in those cases where an appeal is in process, any person whose import permit is canceled would have to move his or her horse out of the United States within 10 days after receiving an oral or written notice of cancellation, whichever is earlier. The horse would not be permitted to perform or be exhibited from the date the owner or importer receives the notice of cancellation until the horse is moved out of the United States or until resolution of an appeal in favor of the owner or importer. Except when being exercised, the horse would have to be kept in a stall that is separated from other stalls containing horses that are not listed on the import permit, either by an empty stall, an open area across which horses cannot touch each other, or a solid wall that is at least 8 feet (2.4 meters) high.

Until the horse is removed from the United States or an appeal is resolved in favor of the owner or importer, the horse would have to be kept, at the expense of the owner or importer, either on the premises at which the horse is located when the notice of cancellation is received or, if the horse is in transit when the notice of cancellation is received, on the premises at which it is next scheduled to perform or be exhibited. However, in cases where the owners of the premises do not permit the horse to stay on those premises, or

when the Administrator determines that keeping the horse at the premises would pose a disease risk to other horses in the United States, the horse would have to be kept, at the expense of the owner or importer, on an alternative premises approved by the Administrator.

Trust Fund Agreement and Cost of Government-Provided Services

We are proposing to require that noncompetitive entertainment horses be imported and maintained in the United States in accordance with a trust fund agreement executed by the horse's owner or importer. The current regulations already require that a trust fund agreement be executed for horses imported into the United States to compete in specified events. We would extend these provisions to noncompetitive entertainment horses to ensure that the government is reimbursed for the services it provides.

Under the trust fund agreement, the owner or importer would have to deposit with APHIS an amount equal to the estimated cost, including travel, subsistence, administrative expenses, and incidental expenses, as determined by APHIS, for an APHIS representative to: (1) inspect the premises at which the horse would perform or be exhibited; (2) conduct the required monitoring of the horse at the premises at which it competes; and (3) supervise cleaning and disinfecting the means of conveyance in which the horses travel while in the United States. The estimated costs would be based on the following factors:

- Number of hours needed for an APHIS representative to conduct the required inspection and monitoring;
- For services provided during regular business hours (8 a.m. to 4:30 p.m., Monday through Saturday, except holidays), the average salary, per hour, for an APHIS representative;
- For services provided outside regular business hours, the applicable rate for overtime, night differential, or Sunday or holiday pay, based on the average salary, per hour, for an APHIS representative;
- Number of miles from the premises at which the horse competes, performs, or is exhibited to the APHIS office or facility that is monitoring the activities;
- Government rate per mile for automobile travel or, if appropriate, cost of other means of transportation between the premises at which the horse competes, performs, or is exhibited and the APHIS office or facility;
- Number of trips between the premises at which the horse competes, performs, or is exhibited and the APHIS

office or facility that APHIS representatives are required to make in order to conduct the required inspection and monitoring;

- Number of days the APHIS representative conducting the inspection and monitoring must be in "travel status;"
- Applicable government per diem rate; and
- Cost of related administrative support services.

During the horse's stay in the United States, if we determine that the amount deposited would not fully cover the services we are scheduled to provide during the remainder of the horse's stay, we would issue a bill for the difference to the horse's owner or importer. The horse's owner or importer would have to pay amounts billed within 14 days after receiving the bill. If the bill is not paid within that time, we would cease to perform the services provided for in this proposed rule until the bill is paid. The Administrator would inform the owner or importer of the cessation of services orally or in writing. If the notice is oral, it would be confirmed in writing as soon as circumstances permit, along with the reasons for it.

In such a case, the horse would have to be kept, at the expense of the owner or importer and until the bill is paid, either on the premises at which the horse is located when the notice of cessation of services is received or, if the horse is in transit when the notice of cessation is received, on the premises at which it is next scheduled to perform or be exhibited according to the import permit. The horse would have to be kept in a stall that is separated from other stalls containing horses that are not listed on the import permit either by an empty stall, an open area across which horses cannot touch each other, or a solid wall that is at least 8 feet (2.4 meters) high. In cases where the owners of the premises where the horse would be expected to stay do not permit the horse to be kept on those premises, or when the Administrator determines that keeping the horse on the premises would pose a disease risk to other horses in the United States, the horse would have to be kept, at the expense of the owner or importer, on an alternative premises approved by the Administrator. Until the bill is paid, the horse would not be permitted to perform or be exhibited. Any amount deposited in excess of the cost to APHIS of providing the services required would be refunded to the owner or importer.

Miscellaneous

In this document, we are also updating the name of the breed association in Spain that is specifically approved by the U.S. Department of Agriculture to provide factual, current information regarding the activities of Spanish Pure Breed horses for the purposes of § 93.301(d). The current regulations identify the breed association in Spain as "Jefatura de Criación Caballar Registro Matricula." The Spanish Government has notified APHIS that the name of the breed association has been changed to "Asociación Nacional de Criadores de Caballos de Pura Raza Española."

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.

Currently, § 93.301(f) provides that mares and stallions over 731 days old from CEM-affected countries may be temporarily imported into the United States to compete in specified events for no longer than 90 days without meeting CEM quarantine and testing requirements that would otherwise apply to such horses. These same provisions have been used to authorize the temporary importation of noncompetitive entertainment horses. Several performance horse groups have requested that APHIS extend the 90-day limit so that they may exhibit and show their horses in the United States for longer periods.

We are proposing to amend the regulations to establish conditions under which noncompetitive entertainment horses (stallions and mares) over 731 days of age from CEM-affected countries could remain in the United States for longer than 90 days for public exhibition and entertainment purposes without undergoing the CEM quarantine and testing prescribed in the regulations.

The horse industry plays an important role in the U.S. economy. There were 542,223 farms with 3.644 million horses valued at \$9.9 billion in the U.S. in 2002.¹ According to a recent study done for the American Horse Council, the number and value of horses are much larger than those reported in the 2002 Census of Agriculture: 2 million people owning 9.2 million horses with direct

¹ 2002 Census of Agriculture (NASS).

value of about \$39 billion.² Both sets of data underscore the importance of the equine industry. In addition, other agricultural and non-agricultural sectors are dependent on the horse industry for their economic activity. Horses are a highly valued asset, especially those with a specific pedigree.

Horses also play an important role in U.S. international trade. The value of U.S. horse exports (\$449 million) was more than the combined export value of cattle, hogs and sheep and goats (\$65 million) between 2003 and 2005.³

The United States imported a total of 31,198 horses in 2005. Nearly 67 percent of horses imported were from Canada and 7.6 percent were from Mexico. Of the total imports, 25,564 were from non-CEM countries and the remaining 5,634 were from CEM countries. The proportion of horse imports that are pure breeding horses is small. Of the above total, 2,341 were purebred breeding horses. Only 340 purebred breeding horses were imported from CEM countries.⁴ However, horses supplied by CEM-affected countries are generally highly valued. In 2005, for example, the average value of purebred breeding horses imported from CEM-affected regions was \$41,220, whereas the average value of purebred breeding horses imported from countries not affected by CEM was \$17,180.

Although the disease does not result in death, CEM can be economically costly. The direct consequence may include the closing of breeding operations, production losses as a result of abortion, and costs of disease control. A CEM outbreak would result in the quarantine of affected horse farms, temporary cessation of breeding operations, and restriction of both intrastate and interstate movement. For some breeders, this could mean the loss of thousands or even millions of dollars in stud fees and breeding losses. Other consequences include trade restrictions that may be imposed by international trading partners.

The noncompetitive entertainment horses that would be affected by this rule would not be allowed to have direct contact with horses outside those listed on their permit and could not be used for breeding purposes at any time while in the United States, including breeding with horses in the same show. Additionally, these horses may not undergo any genital examinations (unless required for diagnosis and

treatment of a medical condition with prior approval of an APHIS representative), semen collection, or artificial insemination. Furthermore, since these are very specialized performance animals, domestic breeders would not be affected if this rule were to increase the amount of time the imported horses are in the United States.

Horses arriving in the United States from abroad are quarantined at a USDA Animal Import Center, generally for 3 days. Horses temporarily imported are required to exit the United States and be readmitted, following quarantine and testing, every 90 days. Each entry after 90 days is considered a new entry into the United States. The USDA charges a minimum of \$810 for the 3-day quarantine. In addition to this facility charge, user fees of \$80 are paid for blood testing, resulting in a total quarantine and testing cost per horse of \$890. The proposed rule would allow imported performance horses to stay in the U.S. longer than 90 days without their owners having again to pay USDA import quarantine and testing costs. This is a saving that accrues to the importing entities and is likely to counterbalance their costs associated with supervisory activities of APHIS and/or an accredited veterinarian.

The number of entities and horses expected to be directly affected by this rule is not large. We anticipate that between 1 and 10 performing groups varying in size from 5 to 40 horses (or a total of between 5 and 400 horses) would utilize the proposed exception each year. Given that there are over a million domestic show horses, even the upper quantity represents a very small fraction of the total supply (0.04 percent).

The Small Business Administration (SBA) has established guidelines for determining which types of firms are to be considered small under the Regulatory Flexibility Act. This rule may affect operations such as zoological parks (North American Industry Classification System [NAICS] code 712130), and animal performances including circuses, carnivals, and amusement parks (NAICS code 711190). SBA classifies these operations as small entities if their annual receipts are not more than \$6.5 million. Of the approximately 850 such establishments, about 12.5 percent are considered to be large. The subset of these entities that temporarily import noncompetitive entertainment horses from CEM countries would benefit from the forgone costs of having the horses exit and reenter the United States every 90 days. On the other hand, they would

bear the cost of supervisory activities by APHIS and/or an accredited veterinarian. The overall impact is expected to be insignificant, given the relatively small number of noncompetitive entertainment horses imported from CEM countries. Other operations that may remotely be affected are domestic suppliers of similar horses (NAICS code 112920). According to the 2002 Census of Agriculture, that year there were 542,223 horse farms with 3,644,278 horses in the United States, of which 124,596 farms sold 470,423 horses that had a total value of over \$1.13 billion.⁵ An unknown share of these farms supply show horses that could be comparable to the noncompetitive entertainment horses imported temporarily from CEM affected countries. SBA classifies horse farms as small entities if their annual receipts are not more than \$750,000;⁶ over 99 percent are considered to be small.

Entities that may be affected by the rule are principally small businesses, but the impact of the rule is not expected to be significant. Because the pool of noncompetitive entertainment horses that are temporarily imported is a small fraction of the total number of show horses in the United States, any effects of the proposed rule for U.S. entities would be very small.

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 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.

⁵ As stated above, the census total is much less than the total reported by the American Horse Council Foundation. According to that report, there were 9,222,847 horses in 2005 (Deloitte Consulting LLP, National Economic Impact of the U.S. Horse Industry). Of this total, 9 percent were racing, 30 percent showing, 42 percent recreation and 19 percent other (<http://www.horsecouncil.org/statistics.htm>).

⁶ SBA, Small Business Size Standards matched to North American Industry Classification System, Effective July 31, 2006; and U.S. Census Bureau, 2002 Economic Census: Manufacturing-Industries Series, Wholesale Trade-Subject Series and Transportation and Warehousing-Subject Series, Issued August, 2006.

² Deloitte Consulting LLP for American Horse Council, National Economic Impact of the U.S. Horse Industry, 2005.

³ Global Trade Information Services (GTIS), World Trade Atlas.

⁴ Id.

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 comments refer to Docket No. APHIS-2006-0164. Please send a copy of your comments to: (1) Docket No. APHIS-2006-0164, 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.

We are proposing to amend the regulations to allow noncompetitive entertainment horses from countries affected with CEM to be temporarily imported into the United States under conditions very similar to the conditions in § 93.301(f), which provides for the temporary importation of horses to compete in specified events. In addition, we are proposing to require the submission of additional information with the application for an import permit.

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 1.4 hours per response.

Respondents: Importers of noncompetitive entertainment horses.

Estimated annual number of respondents: 15.

Estimated annual number of responses per respondent: 1.333333333.

Estimated annual number of responses: 20.

Estimated total annual burden on respondents: 28 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' 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' 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, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues 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. Section 93.301 is amended as follows:

a. In paragraph (c)(2)(vii), by removing the words "paragraph (f)" and adding the words "paragraph (f)(1)" in their place, and by removing the word "and" at the end of the sentence.

b. By redesignating paragraph (c)(2)(viii) as paragraph (c)(2)(ix) and adding a new paragraph (c)(2)(viii) to read as set forth below.

c. In footnote 6, by removing the words "Jefatura de Cria Caballar Registro Matricula for Spain" and adding the words "Asociacion Nacional de Criadores de Caballos de Pura Raza Espanola for Spain" in their place.

d. By revising paragraph (f) to read as set forth below.

§ 93.301 General prohibitions; exceptions.

* * * * *

(c) * * *

(2) * * *

(viii) Horses over 731 days of age imported into the United States for noncompetitive public exhibition and entertainment purposes if the horses meet the requirements of paragraph (f)(2) of this section; and

* * * * *

(f) *Special provisions for temporary importation for competition or entertainment purposes.* (1) Horses over 731 days of age may be imported into the United States for no more than 90 days to compete in specified events provided that the conditions in paragraphs (f)(3) through (f)(12) of this section are met.

(2) Horses over 731 days of age may be temporarily imported into the United States solely for noncompetitive public exhibition and entertainment purposes provided that the conditions in paragraphs (f)(3) through (f)(12) of this section are met.

(3) At the time of importation, each horse must be accompanied by an import permit in accordance with § 93.304 and a health certificate issued in accordance with § 93.314. For horses imported in accordance with paragraph (f)(2) of this section, the health certificate must also certify that cultures negative for CEM were obtained from sets of specimens collected on three separate occasions within a 7-day period from the mucosal surfaces of the clitoral fossa and the clitoral sinuses of any female horses and from the surfaces of the prepuce, the urethral sinus, and the fossa glandis, including the diverticulum of the fossa glandis, of any male horses. For both female and male horses, the sets of specimens must be collected on days 1, 4, and 7 of the 7-day period, and the last of these sets of specimens must be collected within 30 days of exportation. All specimens required by this paragraph must be collected by a licensed veterinarian who either is, or is acting in the presence of, the veterinarian signing the certificate.

(4) Following the horse's arrival in the United States:

(i) A horse imported in accordance with paragraph (f)(1) of this section may remain in the United States for not more

than 90 days, except as provided in paragraph (f)(9) of this section.

(ii) A horse imported in accordance with paragraph (f)(2) of this section may remain in the United States indefinitely, except as provided in paragraph (f)(9) of this section, as long as the conditions of paragraphs (f)(3) through (f)(12) of this section are met and the horse's owner or importer applies for and obtains from APHIS an import permit, as provided for in § 93.304, each year prior to the anniversary date of the horse's arrival in the United States.

(5) While the horse is in the United States, the following conditions must be met:

(i) A horse imported in accordance with paragraph (f)(2) of this section:

(A) Must not be entered in competitions.

(B) Must be regularly used in performances or exhibitions, unless sick or injured. A horse that is no longer performing or being exhibited must be exported or made eligible for permanent entry in accordance with paragraph (f)(9) of this section.

(C) Must be kept with the other horses listed on the import permit, unless otherwise approved by an APHIS representative.

(ii) Except as provided in paragraph (f)(5)(viii) of this section, the horse must be moved according to the itinerary and methods of transport specified in the import permit provided for in § 93.304.

(iii) The horse must be monitored by an accredited veterinarian or APHIS representative to ensure that the provisions of paragraphs (f)(5)(ii), (f)(5)(vi), and (f)(5)(vii) of this section are met. If the monitoring is performed by an accredited veterinarian, the Veterinarian in Charge will ensure that the accredited veterinarian is familiar with the requirements of this section and spot checks will be conducted by an APHIS representative to ensure that the requirements of this section are being met. If an APHIS representative finds that requirements are not being met, the Administrator may require that all remaining monitoring be conducted by APHIS representatives to ensure compliance.

(iv) Except when in transit, the horse must be kept on a premises that has been approved by an APHIS representative. For horses imported in accordance with paragraph (f)(1) of this section, such approval may be oral or in writing. If the approval is oral, it will be confirmed in writing by the Administrator as soon as circumstances permit. For horses imported in accordance with paragraph (f)(2) of this section, the approval will be in writing. To receive approval, the premises:

(A) Must not be a breeding premises; and

(B) Must be or contain a building in which the horse can be kept in a stall that is separated from other stalls that contain horses that are not listed on the import permit, either by an empty stall, by an open area across which horses cannot touch each other, or by a solid wall that is at least 8 feet (2.4 meters) high.

(v) While in transit, the horse must be moved in either an aircraft or a sealed van or trailer. If the horse is moved in a sealed van or trailer, the seal may be broken only by an APHIS representative at the horse's destination, except in situations where the horse's life is in danger.

(vi) Except when actually competing, performing, or being exhibited or exercised, the horse must be kept in a pasture approved by APHIS or in a stall that is separated from other stalls containing horses that are not listed on the import permit, either by an empty stall, by an open area across which horses cannot touch each other, or by a solid wall that is at least 8 feet (2.4 meters) high.

(vii) The horse may not be used for breeding purposes (including artificial insemination or semen collection) and may not have any other sexual contact with other horses. The horse may not undergo any genital examinations, except that a horse imported in accordance with paragraph (f)(2) of this section may undergo genital examinations for diagnosis or treatment of a medical condition with the prior approval of an APHIS representative.

(viii) The horse may be moved for diagnosis or treatment of a medical condition with the prior approval of an APHIS representative.

(ix) After the horse is transported anywhere in the United States, any vehicle in which the horse was transported must be cleaned and disinfected in the presence of an APHIS representative, according to the procedures specified in §§ 71.7 through 71.12 of this chapter, before any other horse is transported in the vehicle.

(x) The cleaning and disinfection specified in paragraph (f)(5)(ix) of this section must be completed before the vehicle is moved from the place where the horse is unloaded. In those cases where the facilities or equipment for cleaning and disinfection are inadequate at the place where the horse is unloaded, the Administrator may allow the vehicle to be moved to another location for cleaning and disinfection when the move will not pose a disease risk to other horses in the United States.

(xi) The owner or importer of the horse must comply with any other provisions of this part applicable to him or her.

(6) If the owner or importer wishes to change the horse's itinerary or the methods by which the horse is transported from that which he or she specified in the application for the import permit, the owner or importer must make the request for change in writing to the Administrator. Requests for change must be submitted to APHIS no less than 15 days before the proposed date of the change. Requests should be sent to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231. The change in itinerary or method of transport may not be made without the written approval of the Administrator, who may grant the request for change when he or she determines that granting the request will not endanger other horses in the United States and that sufficient APHIS personnel are available to provide the services required by the owner or importer.

(7) The Administrator may cancel, orally or in writing, the import permit provided for under § 93.304 whenever the Administrator finds that the owner or importer of the horse has not complied with the provisions of paragraphs (f)(3) through (f)(6) of this section or any conditions imposed under those provisions. If the cancellation is oral, the Administrator will confirm the cancellation and the reasons for the cancellation in writing as soon as circumstances permit. Any person whose import permit is cancelled may appeal the decision in writing to the Administrator within 10 days after receiving oral or written notification of the cancellation, whichever is earlier. If the appeal is sent by mail, it must be postmarked within 10 days after the owner or importer receives oral or written notification of the cancellation, whichever is earlier. The appeal must include all of the facts and reasons upon which the person relies to show that the import permit was wrongfully cancelled. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(8) Except in those cases where an appeal is in process, any person whose import permit is cancelled must move the horse identified in the import permit out of the United States within 10 days

after receiving oral or written notification of cancellation, whichever is earlier. The horse is not permitted to enter competition, perform, or be exhibited from the date the owner or importer receives the notice of cancellation until the horse is moved out of the United States or until resolution of an appeal in favor of the owner or importer. Except when being exercised, the horse must be kept, at the expense of the owner or importer, in a stall on the premises where the horse is located when the notice of cancellation is received or, if the horse is in transit when the notice of cancellation is received, on the premises where it is next scheduled to compete, perform, or be exhibited according to the import permit. The stall in which the horse is kept must be separated from other stalls containing horses that are not listed on the import permit, either by an empty stall, by an open area across which horses cannot touch each other, or a by solid wall that is at least 8 feet (2.4 meters) high. In cases where the owners of the above specified premises do not permit the horse to be kept on those premises, or when the Administrator determines that keeping the horse on the above specified premises will pose a disease risk to horses in the United States, the horse must be kept, at the expense of the owner or importer, on an alternative premises approved by the Administrator.

(9) Stallions or mares over 731 days of age that are imported in accordance with paragraphs (f)(1) or (f)(2) of this section may be eligible to remain in the United States if the following is completed:

(i) Following completion of the itinerary specified in the import permit provided for in § 93.304, the horse's owner or importer applies for and receives a new import permit that specifies that the stallion or mare will be moved to an approved State listed in paragraph (h)(6) or (h)(7) of this section; and

(ii) The stallion or mare is transported in a sealed vehicle that has been cleaned and disinfected to an approved facility in an approved State where it is quarantined under State or Federal supervision until the stallion or mare has met the testing and treatment requirements of paragraph (e)(3) or (e)(5) of this section.

(10) All costs and charges associated with the supervision and maintenance of a horse imported under paragraphs (f)(1) or (f)(2) of this section will be borne by the horse's owner or importer. The costs associated with the supervision and maintenance of the horse by an APHIS representative at his

or her usual places of duty will be reimbursed by the horse's owner or importer through user fees payable under part 130 of this chapter.

(11) In the event that an APHIS representative must be temporarily detailed from his or her usual place of duty in connection with the supervision and maintenance of a horse imported under this paragraph (f), the owner or importer of the horse must execute a trust fund agreement with APHIS to reimburse all expenses (including travel costs, salary, per diem or subsistence, administrative expenses, and incidental expenses) incurred by the Department in connection with the temporary detail. Under the trust fund agreement, the horse's owner or importer must deposit with APHIS an amount equal to the estimated cost, as determined by APHIS, for the APHIS representative to inspect the premises at which the horse will compete, perform, or be exhibited; to conduct the monitoring required by paragraph (f)(5)(iii) of this section; and to supervise the cleaning and disinfection required by paragraph (f)(5)(ix) of this section. The estimated costs will be based on the following factors:

(i) Number of hours needed for an APHIS representative to conduct the required inspection and monitoring;

(ii) For services provided during regular business hours (8 a.m. to 4:30 p.m., Monday through Saturday, except holidays), the average salary, per hour, for an APHIS representative;

(iii) For services provided outside regular business hours, the applicable rate for overtime, night differential, or Sunday or holiday pay, based on the average salary, per hour, for an APHIS representative;

(iv) Number of miles from the premises at which the horse competes, performs, or is exhibited to the APHIS office or facility that is monitoring the activities;

(v) Government rate per mile for automobile travel or, if appropriate, cost of other means of transportation between the premises at which the horse competes, performs, or is exhibited and the APHIS office or facility;

(vi) Number of trips between the premises at which the horse competes, performs, or is exhibited and the APHIS office or facility that APHIS representatives are required to make in order to conduct the required inspection and monitoring;

(vii) Number of days the APHIS representative conducting the inspection and monitoring must be in "travel status;"

(viii) Applicable government per diem rate; and

(ix) Cost of related administrative support services.

(12) If a trust fund agreement with APHIS has been executed by the owner or importer of a horse in accordance with paragraph (f)(11) of this section and APHIS determines, during the horse's stay in the United States, that the amount deposited will be insufficient to cover the services APHIS is scheduled to provide during the remainder of the horse's stay, APHIS will issue to the horse's owner or importer a bill to restore the deposited amount to a level sufficient to cover the estimated cost to APHIS for the remainder of the horse's stay in the United States. The horse's owner or importer must pay the amount billed within 14 days after receiving the bill. If the bill is not paid within 14 days after its receipt, APHIS will cease to perform the services provided for in paragraph (f)(5) of this section until the bill is paid. The Administrator will inform the owner or importer of the cessation of services orally or in writing. If the notice of cessation is oral, the Administrator will confirm, in writing, the notice of cessation and the reason for the cessation of services as soon as circumstances permit. In such a case, the horse must be kept, at the expense of the owner or importer and until the bill is paid, in a stall either on the premises at which the horse is located when the notice of cessation of services is received or, if the horse is in transit when the notice of cessation of services is received, on the premises at which it is next scheduled to compete, perform, or be exhibited according to the import permit. The stall in which the horse is kept must be separated from other stalls containing horses that are not listed on the import permit either by an empty stall, an open area across which horses cannot touch each other, or a solid wall that is at least 8 feet (2.4 meters) high. In cases where the owners of the premises where the horse would be kept following a cessation of services do not permit the horse to be kept on those premises, or when the Administrator determines that keeping the horse on the premises will pose a disease risk to other horses in the United States, the horse must be kept, at the expense of the owner or importer, on an alternative premises approved by the Administrator. Until the bill is paid, the horse is not permitted to enter competition, perform, or be exhibited. Any amount deposited in excess of the costs to APHIS to provide the required

services will be refunded to the horse's owner or importer.

* * * * *

3. Section 93.304 is amended as follows:

a. In paragraph (a)(1)(ii), by removing the citation “§ 93.301(f)” and adding the citation “§ 93.301(f)(1)” in its place.

b. By redesignating paragraph (a)(1)(iii) as paragraph (a)(1)(iv) and adding a new paragraph (a)(1)(iii) to read as set forth below.

§ 93.304 Import permits for horses from regions affected with CEM and for horse specimens for diagnostic purposes; reservation fees for space at quarantine facilities maintained by APHIS.

(a) *Application for permit; reservation required.* (1) * * *

(iii) Horses intended for importation under § 93.301(f)(2) must meet the permit requirements of paragraph (a)(1)(i) of this section. Additionally, for horses intended for importation under § 93.301(f)(2), the horse's owner or importer must include the following information with the application for permit that is required by paragraph (a)(1)(i) of this section:

(A) The individual identifying information required in paragraph (a)(1)(i) of this section for all horses to be imported.

(B) The permanent electronic identification of each horse to be imported, if applicable. In the event that a horse has permanent electronic identification, the horse must be accompanied by a compatible reader.

(C) Photographs (head and lateral views) that are sufficient to identify each horse on an electronic medium approved by APHIS.

(D) The proposed total length of stay in the United States.

(E) A description of the shows or events in which the horse will perform while in the United States.

(F) The names, dates, and locations of the venues in which the horse will perform while in the United States.

(G) The names and locations of the premises on which the horse will be kept while in the United States, and the dates the horse will be kept on each premises.

(H) The methods and routes by which the horse will be transported while in the United States.

(I) A written plan for handling sick or injured horses that includes:

(1) The name, address, and phone number of each accredited veterinarian who will provide veterinary services in the United States;

(2) The name, address, and phone number of medical facilities to be used to diagnose or treat sick or injured horses while in the United States; and

(3) A plan to return sick or injured horses to performance condition.

(J) An application for a trust fund or escrow account agreement with APHIS in accordance with § 93.301(f)(11).

* * * * *

Done in Washington, DC, this 27th day of July 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7-14994 Filed 8-1-07; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-28854; Directorate Identifier 2007-NM-109-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 777-200, -200LR, -300, and -300ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 777-200, -200LR, -300, and -300ER series airplanes. This proposed AD would require doing initial and repetitive inspections for cracking of the elevator actuator fittings, and replacing any cracked fitting with a new fitting. This proposed AD results from a report that a cracked left elevator actuator fitting was found on a Model 777 airplane. We are proposing this AD to detect and correct a cracked actuator fitting, which could detach from the elevator and lead to an unrestrained elevator and an unacceptable flutter condition, which could result in loss of airplane control.

DATES: We must receive comments on this proposed AD by September 17, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: U.S. Department of Transportation, Docket Operations, M-

30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- Fax: (202) 493-2251.

- Hand Delivery: Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6443; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number “FAA-2007-28854; Directorate Identifier 2007-NM-109-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located on the