

**Subpart C—General Administration****§ 1465.30 Appeals.**

(a) A participant may obtain administrative review of an adverse decision under AMA in accordance with 7 CFR parts 11 and 614, except as provided in paragraph (b) of this section.

(b) The following decisions are not appealable:

- (1) Payment rates, payment limits;
- (2) Funding allocations;
- (3) Eligible conservation practices; and
- (4) Other matters of general applicability, including:
  - (i) Technical standards and formulas;
  - (ii) Denial of assistance due to lack of funds or authority; or
  - (iii) Science-based formulas and criteria.

**§ 1465.31 Compliance with regulatory measures.**

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

**§ 1465.32 Access to operating unit.**

Any authorized NRCS representative shall have the right to enter an operating unit or tract for the purpose of determining eligibility and for ascertaining the accuracy of any representations related to contracts and performance. Access shall include the right to provide technical assistance; determine eligibility; inspect any work undertaken under the contracts, including the APO and O&M agreement; and collect information necessary to evaluate the conservation practice performance as specified in the contracts. The NRCS representative shall make an effort to contact the participant prior to exercising this provision.

**§ 1465.33 Equitable relief.**

(a) If a participant relied upon the advice or action of any authorized NRCS representative and did not know, or have reason to know, that the action or advice was improper or erroneous, the State Conservationist may grant relief to the extent it is deemed appropriate by NRCS. Where a participant believes that detrimental reliance on the advice or

action of a NRCS representative resulted in an ineligibility or program violation, the participant may request equitable relief under 7 CFR part 635.

(b) The financial or technical liability for any action by a participant that was taken based on the advice of an NRCS certified non-USDA TSP is the responsibility of the certified TSP and will not be assumed by NRCS when NRCS authorizes payment.

(c) If, during the term of an AMA contract, a participant has been found in violation of a provision of the contract, the O&M agreement, or any document incorporated by reference through failure to fully comply with that provision, the participant may be eligible for equitable relief under 7 CFR part 635.

**§ 1465.34 Offsets and assignments.**

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any participant shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 shall be applicable to contract payments.

(b) AMA participants may assign any payments in accordance with 7 CFR part 1404.

**§ 1465.35 Misrepresentation and scheme or device.**

(a) A participant who is determined to have erroneously represented any fact affecting an AMA determination made in accordance with this part shall not be entitled to contract payments and must refund to NRCS all payments plus interest, as determined in accordance with 7 CFR part 1403.

(b) A participant shall refund to NRCS all payments, plus interest, as determined by NRCS, with respect to all NRCS contracts to which they are a party if they are determined to have knowingly:

- (1) Adopted any scheme or device that tends to defeat the purpose of AMA;
  - (2) Made any fraudulent representation;
  - (3) Adopted any scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program; or
  - (4) Misrepresented any fact affecting an AMA determination.
- (c) Where paragraph (a) or paragraph (b) of this section apply, the

participant's interest in all contracts shall be terminated. In accordance with § 1465.25(c), NRCS may determine the producer ineligible for future funding from any NRCS conservation programs.

**§ 1465.36 Environmental Services Credits for Conservation Improvements.**

USDA recognizes that environmental benefits will be achieved by implementing conservation practices funded through AMA, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of an AMA contract. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that the requirements for AMA funded improvements are met and maintained consistent with § 1465.22. Where activities required under an environmental credit agreement may affect land covered under an AMA contract, participants are highly encouraged to request a compatibility assessment from NRCS prior to entering into such agreements.

Dated: November 12, 2008.

**Arlen L. Lancaster,**  
Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.  
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**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Part 93**

[Docket No. APHIS-2008-0108]

**Remove South Carolina From the Lists of States Approved To Receive Stallions and Mares From CEM-Affected Regions**

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the animal importation regulations by removing South Carolina from the lists of States approved to receive certain stallions and mares imported into the United States from regions affected with contagious equine metritis. This action is necessary because South Carolina no longer offers contagious equine metritis quarantine or treatment services and has requested removal from the lists.

**DATES:** *Effective Date:* November 20, 2008.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ellen Buck, Senior Staff Veterinarian,

Technical Trade Services, National Center for Import and Export, APHIS, VS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734-8084.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products to protect U.S. livestock from communicable diseases.

In § 93.301, paragraph (c)(1) prohibits the importation of horses into the United States from certain regions where contagious equine metritis (CEM) exists. Paragraph (c)(2) lists categories of horses that are excepted from this prohibition, including, in § 93.301(c)(2)(vi), horses over 731 days of age imported for permanent entry if the horses meet the requirements of § 93.301(e).

One of the requirements in § 93.301(e) is that mares and stallions over 731 days old imported for permanent entry from regions where CEM exists be consigned to States listed in § 93.301(h)(6), for stallions, or in § 93.301(h)(7), for mares. The Administrator of the Animal and Plant Health Inspection Service (APHIS) has approved these States to receive stallions or mares over 731 days of age from regions where CEM exists because each State has entered into a written agreement with the Administrator to enforce State laws and regulations to control CEM, and each State has agreed to quarantine, test, and treat stallions and mares over 731 days of age from any region where CEM exists, in accordance with § 93.301(e).

The CEM program is a voluntary, cooperative initiative between APHIS and the States. As noted, States that have entered into an agreement with the Administrator and have been approved to receive horses from CEM-affected regions are listed in § 93.301(h) of the regulations. South Carolina entered into such an agreement and was included in the lists in § 93.301(h). However, it has been several years since South Carolina last received horses for CEM quarantine and treatment, and the State has ceased operation of CEM quarantine and treatment facilities. Consequently, South Carolina has requested removal from the lists of States approved to receive stallions and mares from CEM-affected regions. Therefore, in this rule, we are removing South Carolina from those lists.

##### Executive Order 12866 and Regulatory Flexibility Act; Effective Date

This action has been reviewed under Executive Order 12866. For this action,

the Office of Management and Budget has waived its review under Executive Order 12866.

As noted, a State's decision to enter into a written agreement with the Administrator to enforce State laws and regulations to control CEM and to quarantine, test, and treat stallions and mares over 731 days of age from CEM-affected regions in accordance with § 93.301(e) is voluntary. Because the State of South Carolina has notified APHIS that it has discontinued these activities and has withdrawn from its agreement with the Administrator, it does not appear that public participation in this proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this action are not necessary. We also find good cause for making this action effective less than 30 days after publication in the **Federal Register**.

Further, this action is not a rule as defined by the Regulatory Flexibility Act, and, thus, is exempt from the provisions of the Act.

##### 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 States and local officials. (See 7 CFR part 3015, subpart V.)

##### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

##### Paperwork Reduction Act

This 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 93

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

■ Accordingly, 9 CFR part 93 is amended 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.

### § 93.301 [Amended]

■ 2. Section 93.301 is amended as follows:

■ a. In paragraph (h)(6), by removing the words "The State of South Carolina".

■ b. In paragraph (h)(7), by removing the words "The State of South Carolina".

Done in Washington, DC, this 14th day of November 2008.

**Kevin Shea,**

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

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM394; Special Conditions No. 25-375-SC]

#### Special Conditions: Airbus A318, A319, A320 and A321 Series Airplanes; Inflatable Restraints

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Airbus A318, A319, A320, and A321 series airplanes. These airplanes will have a novel or unusual design feature associated with a passenger restraint system that contains an integrated inflatable airbag installed on passenger seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is November 12, 2008. We must receive your comments by January 5, 2009.

**ADDRESSES:** You must mail two copies of your comments to: Federal Aviation