

Rules and Regulations

Federal Register

Vol. 67, No. 236

Monday, December 9, 2002

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 02–024–1]

Stall Reservations at Import Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations regarding the importation of horses into the United States by requiring persons who cancel reservations for stall space at import quarantine facilities to notify us earlier and by increasing the fee for canceling reservations. Under the new fee structure, persons who cancel a reservation at least 30 business days prior to the reservation date will be charged 25 percent of the reservation fee; persons who cancel a reservation 15 to 29 business days prior to the reservation date will be charged 50 percent of the reservation fee; and persons who cancel a reservation less than 15 business days prior to the reservation date will forfeit 100 percent of the reservation fee. We are taking this action to discourage importers from reserving space that they may not use and canceling when it is too late for others to use the space. We believe this action will improve the occupancy rate of stall space, and, therefore, the efficiency of import quarantine facilities.

DATES: This interim rule is effective December 9, 2002. We will consider all comments that we receive on or before February 7, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or

by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–024–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–024–1. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and “Docket No. 02–024–1” on the subject line.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Morgan, Staff Veterinarian, National Center for Import and Export, Technical Trade Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 restrict the importation of certain animals and animal products into the United States to prevent the introduction of communicable animal diseases. Subpart C—Horses (§§ 93.300 through 93.326, referred to below as the regulations), regulates the importation of horses into the United States. Section 93.304 of the regulations contains, among other things, specific provisions for reservation fees for space at quarantine facilities maintained by the Animal and Plant Health Inspection Service (APHIS).

Under the current regulations in § 93.304(a)(3), the importer or importer's agent must pay or ensure payment of a

reservation fee for each lot of horses to be quarantined in a facility maintained by APHIS. The reservation fee is 100 percent of the cost of providing care, feed, and handling during quarantine, as estimated by the quarantine facility's veterinarian in charge. Any reservation fee will be forfeited if the importer or the importer's agent fails to present for entry, within 24 hours following the designated time of arrival, the horse or horses for which the reservation was made. However, a reservation fee will not be forfeited if written notice of cancellation from the importer or the importer's agent is received by the office of the veterinarian in charge of the quarantine facility during regular business hours (8:00 a.m. to 4:30 p.m. (local time) Monday through Friday, excluding holidays) no later than 5 business days prior to the beginning of the time of importation as specified in the import permit or as arranged with the veterinarian in charge of the quarantine facility if no import permit is required. When a reservation is canceled, a \$40 cancellation fee is charged.

Recently, stall space for imported horses at the United States Department of Agriculture (USDA) quarantine facilities has been in high demand. Importers or their agents can sometimes expect to wait up to 2 to 4 months to obtain stall space. Some importers or their agents have been making speculative reservations far in advance of the projected date of arrival of the imported horses, and then canceling those reservations with 5 business days notice if they have no horses to import. While 5 business days' notice is what is required under the regulations to avoid forfeiture of the total reservation fee, this period does not allow sufficient time to offer the canceled space to other prospective importers. Five business days also does not allow sufficient time for another importer who might be able to make use of the available stall space to make the necessary arrangements for importing horses. We believe the current cancellation fee does not provide sufficient deterrent against speculative reservations and does not recover the fixed cost associated with operating quarantine facilities when stall space goes unused.

Therefore, we are amending the regulations to establish a graduated fee schedule for cancellations. Under this

schedule, the fee depends on when the reservations are canceled prior to the reservation date. Persons who cancel a reservation 30 business days or more prior to the reservation date will be charged 25 percent of the reservation fee. Persons who cancel a reservation 15 to 29 business days prior to the reservation will be charged 50 percent of the reservation fee. Persons who cancel a reservation less than 15 business days prior to the reservation date will forfeit 100 percent of the reservation fee.

We believe that a cancellation fee of 100 percent of the reservation fee is appropriate when a cancellation occurs less than 15 days prior to the expected date of arrival because it is rarely possible to find other horses to take the space in that short a time. It takes at least 15 days to prepare a horse for importation into the United States. Brokers are required to have certain diagnostic tests performed on their horses and these tests must be processed at National Veterinary Services Laboratories. The reduced cancellation fees for more notice reflects the increased likelihood of the space being filled.

We are taking this action to discourage importers from reserving space they may not use and cancelling when it is too late for others to use the space. We believe this action will improve the occupancy rate of stall space, and, therefore, the efficiency of the quarantine facilities. Furthermore, the increased cancellation fee will recover a larger portion of the fixed costs associated with operating quarantine facilities when stall space goes unused.

Alternatives Considered

We considered an alternative in which APHIS would refund brokers their cancellation fee if we were able to fill the stall space with other horses. We also considered charging a set cancellation fee greater than \$40 per reservation regardless of when notice is provided. We are not adopting these alternatives for the following reasons:

As noted, it is generally not feasible to fill spaces canceled within 15 days. In cases where cancellation occurs 15 or more days in advance, we may be able to fill the space. However, a refund procedure would be very complex due to the nature of scheduling shipments and arranging stall space. There are times when an entire shipment of 20

horses may be canceled and we may be able to fill only 10 of those slots. There may also be times when the space that becomes available may be inappropriate for a new shipment due to size or location of the newly available stalls. In addition, we do not have the staffing or infrastructure to track and control refunds, especially refunds that must be prorated because there would not be an even exchange. We also were concerned that providing refunds would mean that the fees would no longer be a deterrent to canceling stall space for brokers who can arrange for another importer to fill their canceled space. Such arrangements also could limit which brokers might have an opportunity to use the stall space.

Regarding the other alternative, which would set a flat fee of above \$40, we decided instead to establish a graduated fee schedule for cancellations. Under this schedule, the fee would depend on when the reservations were canceled prior to the reservation date, therefore, there would be a greater deterrent to cancelling reservations close to the reservation date, while the lower cancellation fees for more notice reflects the increased likelihood, but no certainty, of the space being filled.

Immediate Action

Immediate action is necessary to discourage importers from reserving space that they may not use and canceling when it is too late for others to use the space. APHIS put a freeze on taking reservations for stall space from importers until this issue is resolved. Because we wish to resume taking stall space reservations at these facilities by December 2002, it is important to make this action effective as quickly as possible. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This 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.

We are amending the regulations regarding the importation of horses into the United States by requiring persons who cancel reservations for stall space at import quarantine facilities to notify us earlier and by increasing the fee for canceling reservations. Under the new fee structure, persons who cancel a reservation at least 30 business days prior to the reservation date will be charged 25 percent of the reservation fee; persons who cancel a reservation 15 to 29 business days prior to the reservation date will be charged 50 percent of the reservation fee; and persons who cancel a reservation less than 15 business days prior to the reservation date will forfeit 100 percent of the reservation fee. We are taking this action to discourage importers from reserving space that they may not use and canceling when it is too late for others to use the space. We believe this action will improve the occupancy rate of stall space, and therefore the efficiency of import quarantine facilities.

In 1999, the U.S. horse industry directly produced goods and services of \$25.3 billion and had a total economic impact of \$112.1 billion on the U.S. gross domestic product.¹ Racing, showing, and recreation each contributed more than 25 percent to the total value of goods and services produced by the industry. Activities related to the horse industry generated approximately \$1.9 billion in tax revenues, most of which were generated in States where parimutuel betting was allowed.²

The horses quarantined at USDA's New York and Florida quarantine facilities include horses that are valued at up to \$1 million. The average value of these horses in 2001 was \$10,400 per horse. The number and total value of horses imported into the United States has been increasing over the last 8 years (table 1).

¹ American Horse Council, 2000 Horse Industry Statistics.

² American Horse Council, the Economic Impact of the U.S. Horse Industry, Executive Summary, Washington, DC January 2000.

TABLE 1.—ALL HORSE IMPORT VALUES AND QUANTITIES
[Harmonized Schedule Code 0101]

	1993	1999	2001
Value	\$61,000,000	\$326,000,000	\$319,000,000
Quantity	20,725	31,758	37,836

Source: World Trade Atlas, United States—General Imports—Customs Value.

Due to this increase in imported horses and the limited space available at USDA horse quarantine facilities, it is important that reservation space be fully utilized.

Horses are quarantined at a USDA facility for either 3 or 7 days before being cleared. European horses are quarantined for 3 days; South American and Caribbean horses are quarantined for 7 days. The user fee for a 3-day quarantine is \$792 per horse. The user fee for a 7-day quarantine is \$1,556 per horse (Table 2).

TABLE 2.—CURRENT STALL FEES FOR IMPORTED HORSES

	Equine stall daily user fee
1st through 3rd day (fee per day)	\$264
4th through 7th day (fee per day)	191
8th and subsequent days (fee per day)	162

Daily user fee Oct. 1, 2002–Sept 30, 2003 (9 CFR 130.7).

Eighty to ninety percent of the quarantine reservations cancelled 5 business days before a reservation are not refilled. The 5-day period does not allow sufficient time to find a replacement. The USDA quarantine facilities in Florida and New York each lose approximately \$300,000–\$470,000 each year in forgone user fees. In addition, the horse industry as a whole incurs additional costs through delays in being able to import horses. The result is fewer imports than would otherwise occur.

The current practice of charging \$40 for a cancellation allows horse brokers to reserve stall space even before

securing clients for the space. Brokers with significant capital resources may make several reservations and simply forfeit the \$40 reservation fees if a client is not found to fill them. This practice of reserving stall space before securing a client has led to stall reservations being bartered on the open market even though the program receives Federal funding. Some brokers have complained that a \$40 reservation fee is not an effective deterrent to prevent brokers from reserving stall space before a client is found.

The graduated fee schedule for canceled reservations will provide greater deterrence against late

cancellations. Under a graduated fee schedule, brokers and horse owners will lose 25 percent of the reservation fee if they cancel at least 30 days prior to the reservation. Thirty days notice will provide opportunity for APHIS to refill the stall space. Brokers and horse owners who cancel 15–29 days prior to the reservation will lose 50 percent of the reservation fee. Brokers and horse owners who cancel less than 15 days prior to the reservation will be charged 100 percent of the reservation fee due to the insufficient time to refill the stall space (Table 3).³

TABLE 3.—GRADUATED RESERVATION FEES.

Cancellation time period prior to reservations	3-day quarantine cancellation fee	7-day quarantine cancellation fee
30 days or longer (25 percent)	\$198	\$389
15–29 days (50 percent)	396	778
Less than 15 days (100 percent)	792	1,556

Economic Efforts on Small Entities

Increasing the cancellation fee and the time-period required for cancellation has potential to affect both horse owners and brokers. Horse brokers who cancel space will incur additional cancellation fees. While the cost of cancellations will most likely be borne by the horse owners, the effects on those owners

should be minimal compared to the high values of the horses being quarantined.⁴

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

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 in conflict with this rule; (2) has no

³ While most equines undergo a 3 or 7 day quarantine, the new graduated fee schedule will apply to all quarantine periods for which user fees are charged under 9 CFR 130.2. Calculations of graduated fee schedule: (GF) = ((a*d)+(b*d)+(c*d)) * Z, where a = 1st through 3rd day (fee per day)

\$264, b = 4th through 7th day (fee per day) \$191, c = 8th and subsequent days (fee per day) \$162, d = number of days, and Z = percentage determined from the cancellation date prior to stall reservation 25%, 50%, and 100%.

⁴ SBA lists horse owners as small if they have less than \$750,000 per head in revenue (NAICS 112920). Census information is not available for individual horse owners' sales.

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 new 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, we are amending 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 is revised to read as follows:

Authority: 7 U.S.C. 1622, 8303, 8306–8308, 8310, 8313, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. Section 93.304 is amended by revising paragraphs (a)(3)(iv) and (a)(3)(vi), and by adding a new paragraph (a)(3)(vii) to read as follows:

§ 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) * * *

(3) * * *

(iv) Any reservation fee shall be forfeited if the importer or the importer's agent fails to present for entry, within 24 hours following the designated time of arrival, the horse for which the reservation was made: Except that a reservation fee shall not be forfeited if the Administrator determines that services, other than provided by carriers, necessary for the importation of the horses within the required period are unavailable because of unforeseen circumstances as determined by the Administrator (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine).

* * * * *

(vi) If a reservation is canceled, the importer or the importer's agent will be charged a fee according to the following schedule:

Cancellation date	Fee
30 or more days before the scheduled reservation date	25 percent of the reservation fee.
15–29 days before the scheduled reservation date	50 percent of the reservation fee.
Less than 15 days before the scheduled reservation date	100 percent of the reservation fee.

(vii) If the reservation fee was ensured by a letter of credit, the Department will draw the amount of the cancellation fee against the letter of credit unless the cancellation fee is otherwise paid at least 3 days prior to the expiration date of the letter of credit.

* * * * *

Done in Washington, DC, this 4th day of December 2002.
Peter Fernandez,
Acting Administrator, Animal and Plant Health Inspection Service.
[FR Doc. 02–31009 Filed 12–6–02; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 91, 121, 125, and 129

[Docket No. FAA–1999–6411; Amendment Nos. 21–82, 91–272, 121–285, 125–140, 129–35, Special Federal Aviation Regulation No. 88–1]

RIN 2120–AG62

Extension of Compliance Times for Fuel Tank System Safety Assessments

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule; request for comments.

SUMMARY: This final rule extends the compliance deadline for supplemental type certificate holders to complete safety assessments of their fuel tank systems, and any system that may affect the fuel tank system, and to develop design changes and maintenance programs needed to correct unsafe conditions. It also extends the compliance time for the affected operators to incorporate instructions for maintenance and inspection of the fuel tank system into their maintenance or inspection programs. This action is needed to allow supplemental type certificate holders additional time to complete their compliance submittals using a newly identified method of completing their safety assessments and identifying corrective actions without acquiring information from the type certificate holders. Because the operators are dependent upon the supplemental certificate holders for showing compliance with the operating rules, this rule allows them the same time extension.

DATES: This final rule is effective December 9, 2002. Comments must be submitted on or before February 7, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–1999–

6411 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Mike Dostert, Transport Airplane Directorate, Propulsion/Mechanical Systems Branch, ANM–112, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2132.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134, February 26, 1979), however, provide that, to the maximum extent possible,