

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 Parts 93, 94, and 130

[Docket No. 98-070-2]

Closure of Harry S Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to close the Harry S Truman Animal Import Center (HSTAIC) and to amend the animal import regulations to remove all provisions related to HSTAIC. The facility, which is used for high risk imports, such as ruminants from countries where foot-and-mouth disease exists, is chronically under used and has never generated enough revenue to be self-sufficient. Closing HSTAIC would eliminate a drain on government resources, which does not appear to be justified by demand.

DATES: Consideration will be given only to comments received on or before October 9, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98-070-2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 98-070-2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38,

Riverdale, MD 20737-1231; (301) 734-3276; or e-mail: gcolgrove@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Harry S Truman Animal Import Center (HSTAIC) is an offshore, maximum biosecurity animal import facility owned and operated by the Animal and Plant Health Inspection Service (APHIS), an agency of the United States Department of Agriculture. It is the only facility of its kind in the United States.

HSTAIC was dedicated in 1979. Authorized by statute in 1970 (The Act of May 6, 1970, 7 U.S.C. 135-135b), HSTAIC was designed to be used as a quarantine facility for ruminants and swine from countries where high-risk diseases, such as foot-and-mouth disease (FMD) or rinderpest, hog cholera, African swine fever, and swine vesicular disease, exist. Animals are consigned to the facility upon arrival in the United States, and then tested and monitored for a period of time to ensure their freedom from disease. The full cost of operating HSTAIC was to be paid for by the importers using the facility.

At the time HSTAIC opened, demand for breeding stock, particularly cattle, from high disease-risk countries was projected to grow. It was anticipated that HSTAIC would be fully utilized—with at least three importations per year—and costs would be fully covered.

These assumptions turned out to be wrong. From the time it opened, HSTAIC has never been fully used. Only animals from countries where FMD or rinderpest exists have been imported through the facility, and on average, there has been only one importation per year. Since 1979, a total of 633 cattle, 574 swine, 460 goats and sheep, and 4,596 camelids have been imported through HSTAIC. The last importation of cattle through HSTAIC occurred in 1985. Since 1995, the only animals imported through HSTAIC have been camelids.

As a result of chronic under use, HSTAIC has never generated enough revenue to be self-sufficient. During periods when importers are not using HSTAIC, APHIS must keep the facility staffed, provide electric and telephone service, and cover other minimal operational and maintenance costs. These costs ranged from \$98,000 in FY 1995 to \$385,000 in FY 1997, averaging

\$219,000 per year. We tried in the early 1990s to curtail losses by amending our HSTAIC regulations. We eliminated the "tier system," which gave preference to certain types of animals. We also instituted a requirement that applicants deposit \$32,000 with their application. We draw on the winning applicant's deposit to cover the cost of preparing and maintaining HSTAIC in readiness for that applicant's animals. Together, these changes encouraged more importations through HSTAIC and shifted some of the cost of preparing the facility to receive animals from APHIS to the winning importer. In turn, this encouraged importers to carry through and use the facility. However, these changes did not eliminate APHIS' losses, but only reduced them. Since 1991, we have lost \$1.6 million keeping HSTAIC open for importers.

We do not anticipate any increase in demand to use HSTAIC. Instead, we expect demand to continue falling. There has never been any demand to use HSTAIC for animals from regions other than those where FMD or rinderpest exists. In 1970, only 10 countries or territories were recognized as free from FMD and rinderpest. As of January 1998, 51 countries had been recognized as free of these two diseases. In addition, we recently amended our animal import regulations to recognize regions, not only countries, as free of disease. Over time, more and more regions, or geographical areas, will be able to acquire status as FMD and rinderpest free. As a result, importers can import animals from a growing number of sources without needing to use HSTAIC.

In addition, since HSTAIC opened, international trade in live animals for breeding purposes has fallen. Instead, germplasm—embryos and semen—is imported for breeding. Using germplasm is less expensive and more reliable. Germplasm can be imported even from high-risk countries without using HSTAIC.

We have considered keeping HSTAIC open. Currently, importers who use the facility must pay APHIS approximately \$1 million per importation to cover the cost of operating the facility during the time the animals are in quarantine. This figure can only increase. HSTAIC needs urgent and substantial repairs to keep it operational and in compliance with environmental and other requirements.

We have already spent \$1 million to repair and modify an incinerator, test emissions, and replace stack pipes in order to meet environmental standards set by the U.S. Environmental Protection Agency (EPA) and the Florida Department of Environmental Protection (FDEP). Even with these repairs, we cannot operate the HSTAIC incinerators at full capacity: if we did so, we would be in violation of EPA and FDEP standards. Such limited incinerator capacity means we cannot quickly dispose of diseased animals, should that need arise.

We estimate that HSTAIC urgently needs approximately \$4.5 million worth of additional repairs and upgrades for which APHIS does not have an appropriation. Having this work done would significantly increase the already substantial fees for use of HSTAIC if the cost of the repairs and upgrades were to be recovered from users. The required work includes repairing and upgrading the facility's waste water treatment facility; replacing a generator, an incinerator, the roof, and underground fuel storage tanks; and upgrading the fire suppression/alarm, heating, ventilation, and air conditioning systems. Our highest priority is replacing the wastewater treatment facility, at an estimated cost of \$1.2 million. If we do not do this work soon, APHIS may face significant fines from EPA and FDEP.

Recently, HSTAIC has been used mainly by persons importing llamas and alpacas into the United States. These animals are currently imported mainly for animal exhibits and as pets. At some time in the future, enough llamas and alpacas will have been imported into the United States that animals bred in this country will satisfy demand, and importations will drop.

At this time, the only way importers can import animals directly into the United States from regions where high-risk diseases exist is through HSTAIC. Closing HSTAIC would stop these importations entirely. We are therefore looking into other possible means by which these animals can be safely imported into the United States. If it appears that high-risk animals could be imported into the United States by some other route or under other conditions without presenting an undue disease risk, we will publish a proposal in the **Federal Register**.

On July 13, 1998, we published a notice in the **Federal Register** (63 FR 37483, Docket No. 98-070-1) announcing that we do not plan to hold a lottery in December, 1998 for exclusive use of HSTAIC in calendar year 1999. (Under § 93.430(a) of the

regulations, APHIS enters into a cooperative-service agreement with only one importer for each importation through HSTAIC. We refer to this as "exclusive use".) In the same notice we also announced that we will not enter into any cooperative-service agreements with importers for use of the facility unless it is certain the animals will enter HSTAIC on or before December 31, 1998. This will ensure that no animals are in the facility beyond March 31, 1999, and allow us to close the facility by the end of FY 1999, should we decide to do so as a result of this rulemaking.

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.

If this proposed rule is adopted, we will close HSTAIC and amend the animal import regulations by removing all provisions related to HSTAIC.

HSTAIC is a maximum-security APHIS animal import center that provides quarantine services for animals which would otherwise be excluded because they are being imported directly from countries where high-risk diseases such as foot-and-mouth disease (FMD), rinderpest, African swine fever, hog cholera, and swine vesicular disease are found. HSTAIC was designed to be a self-supporting facility, to as a great degree as possible, with costs defrayed by charges to the importers of the animals who use the facility. However, this has not been the case. Instead, the facility has been under used and has never generated enough revenue to be self-sufficient.

Vital repairs and maintenance of the facility and its equipment has been accomplished by diverting the Agency's scarce resources, as APHIS has no funds allocated for this purpose. However, these costly short term repairs and maintenance have not been adequate to upgrade the facility. Regulations concerning the use of the facility were revised in the early 1990's so that any user of HSTAIC for a single animal importation would be responsible for paying all related costs, except capital expenses, incurred in qualifying and quarantining the imported animals at HSTAIC, but the deficit has persisted. At inception a strong demand was projected for breeding stock in order to import strains of livestock that had specific traits needed for improving U.S. domestic breeds, particularly cattle from

high disease-risk countries. However, after the first six imports, this has not occurred. The facility has not had the optimal three imports in any year and money for capital expenditures has not been appropriated. Therefore, we are proposing to close the facility and remove from the CFR the current regulations concerning HSTAIC. Under the terms of this proposal, the Center would not accept animals for quarantine after December 31, 1998, and APHIS would enter into an agreement with a prospective importer for final exclusive use of the facility only if it was certain that the animals could enter the Center on or before that date.

Since HSTAIC was dedicated in 1979 there have been 21 ruminant and swine importations (including Alpaca imports from Peru which are still in quarantine and to be released on September 1998). The first imports (cattle from Brazil) were released in July 1980. A total of 6,713 animals have been quarantined and released during this period, including cattle (633), swine (574), sheep and goats (460) and camelids (5,046). Several countries in Latin America (Bolivia, Brazil, Chile and Peru), Europe (France, Germany), Asia (China), and Africa (South Africa) were the sources of the imports. Of these, Chile, France and Germany are now recognized as FMD free. Certain regions in South Africa are also in the process of being recognized as free. The first six imports were cattle (3 from Brazil and 3 from Europe). Camelids have accounted for 11 imports (5 from Bolivia, 1 from Chile/Brazil and 5 from Peru). There have been three imports of swine (1 from China, 1 from France and 1 from Germany), and one import of sheep and goats (from South Africa). Eight out of the nine most recent imports have been camelids.

The above total, 21 imports in nearly 20 years, has fallen short of the anticipated three shipments of animals per year. Based on three months of isolation at the center for each group and one month between shipments for cleaning and disinfecting, with full use, there should have been 57 imports handled through HSTAIC. Furthermore, the size of individual imports has been smaller than the capacity of the facility, and thus importers have failed to take advantage of economies of scale, which would have reduced the per animal cost of using the facility, as costs per animal are lower as numbers increase. The capacity of the facility is about 400, plus sentinel animals (This designation is for cattle. For smaller animals, such as sheep and goats, even larger numbers can be accommodated). Only 6,713 animals were actually imported and

quarantined during the entire 21 years. The potential number should have been more than 22,800 animals.

The quarantine process is costly regardless of numbers, and is paid entirely by the importers. The average fee for the last 10 imports has been \$1,920 (or \$16 per day) per head. Each selected applicant has exclusive rights to use HSTAIC for the importation during the quarantine period and is responsible for paying all costs, excluding capital expenditure, incurred in qualifying and quarantining the specified animals through HSTAIC. A partial list of costs includes: expense for sentinel animals, laboratory tests, medical treatment, official travel by APHIS personnel, courier services to transport test samples to the Foreign Agricultural Disease Diagnostic Laboratory (FADDL), salaries of HSTAIC personnel, all supplies needed for animal care, maintenance, and testing and the post-quarantining cleaning and disinfection of HSTAIC, as well as utilities and overhead, including salaries and benefits of support staff. The operational cost of an average importation is high—between \$750,000 and \$1 million per import period. This cost is likely to increase, should the center remain open, since substantial infrastructure repairs are needed immediately and there is an ever-increasing requirement to maintain the aging facility. Expenses charged to selected importers vary by importation depending on the kind and number of animals in each shipment, and the country of origin.

Since operating costs while the facility is in use are charged entirely to the importers, if HSTAIC were fully utilized (that is, housing three importations during each year), it could probably be nearly self-supporting. However, due to under-utilization, the minimum operating budget must cover costs borne by the facility in the absence of animal shipments. The facility has never had three imports in a single year since its opening. In fact, no quarantines at all occurred for two years (1986 and 1990), two imports each for only three years (1993, 1996 and 1998), and the remaining years have had only one import each year. Thus, up to two-thirds of operational costs have had to be covered from agency funds. During a non-used year, approximately \$390,000 must be allocated, from the agency budget, just to maintain the facility. In a partial-use year the deficits ranged between \$130,000 and \$260,000. Over the duration of the facility, the agency has diverted approximately \$4 million in nominal dollars, or about \$6.4 million in 1998 dollars, for operational

expenditures to keep the facility ready for very few users.

These deficit amounts do not reflect the depreciation of the component parts of the facility and of replacement needs. While the property presently has no other purpose except maintaining readiness for the small number of importers of special livestock from countries that are not free from FMD, equipment, supplies and the physical plant still lose their value, whether with disuse or use, as they wear out or become obsolete. Furthermore, as the facility has aged, maintaining the building in useable condition has required more frequent upgrading of its components, which have varying degrees of life expectancy. The annual adjusted depreciation value of the various physical components of the facility is approximately \$93,776 (obtained by straight line depreciation of all replaceable assets and equipment whose useful life is still active) or about \$257/day. This is the cost of depreciation the facility has been incurring annually even with full use, the amount that should have been collected for the purpose of upgrading equipment. By initially excluding capital expenditures from the fee structure, the agency has forfeited the opportunity to charge users approximately \$1.8 million in nominal dollars (or about \$2.4 million in 1998 dollars) that it could have been collecting over the entire period. Overall, the operational deficits and the capital expenditures have accounted for about \$8.8 million. If the facility is kept open, the agency would continue to incur similar losses, with only slight relief if these costs are prorated and added to user fees.

The agency has already spent over \$1 million in the last five years to repair and modify an incinerator, test emissions, and replace stack pipes, in an effort to meet standards set by the U.S. Environmental Protection Agency (EPA) and the Florida Department of Environmental Protection (FDEP). Attempting to keep this aging facility in compliance with EPA/FDEP standards will continue to be expensive for the agency. (These needed repairs include repairing and upgrading the facility's wastewater treatment facility; replacing a generator, an incinerator, the roof, and underground fuel storage tanks; and upgrading the fire suppression/alarm and heating, ventilation, and air conditioning systems.) Currently about \$4.5 million are needed to make the most urgently needed repairs. Closing the facility would make this unnecessary. Since the agency is currently operating with a large deficit,

even increased use would still not immediately meet revenue needs. The money and human resources needed to keep this facility operating could be diverted to other programs that play a more important role in protecting the United States against animal disease incursions. The cost of closing the facility, about \$1 million, would be offset by the future saving the agency would realize.

The proposed closure of the facility would not impact a substantial number of importers, because most importers do not use HSTAIC. Despite the original expectation that cattle and swine would be the predominant imports, over the last six years the facility has been used mainly by importers of llamas and alpacas. Using public funds in the maintenance of a facility that serves only specific importers places an undo burden on tax payers. The action is not expected to have a negative economic impact on this small number of entities, which could still import camelids into the United States from Chile, which has been recognized as FMD free since HSTAIC was dedicated. The facility closure could produce positive budgetary impact for the agency.

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.

Paperwork Reduction Act

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

Lists of Subjects

9 CFR Part 93

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

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we are proposing to amend 9 CFR parts 93, 94 and 130 as follows:

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

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

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§§ 93.430 and 93.431 [Removed and reserved]

2. In part 93, §§ 93.430 and 93.431 would be removed and reserved.

§§ 93.522 and 93.523 [Removed]

3. In part 93, §§ 93.522 and 93.523 would be removed.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

4. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

5. In § 94.1, paragraph (b) would be revised to read as follows:

§ 94.1 Regions where rinderpest or foot-and-mouth disease exists; importations prohibited.

* * * * *

(b) The importation of any ruminant or swine or any fresh (chilled or frozen) meat of any ruminant or swine¹ that originates in any region where rinderpest or foot-and-mouth disease exists, as designated in paragraph (a) of this section, or that enters a port in or otherwise transits a region in which

rinderpest or foot-and-mouth disease exists, is prohibited:

(1) Except as provided in part 93 of this chapter for wild ruminants and wild swine; and

(2) except as provided in paragraph (c) of this section for meat of ruminants or swine that originates in regions free of rinderpest and foot-and-mouth disease but that enters a port or otherwise transits a region where rinderpest or foot-and-mouth disease exists; and

(3) except as provided in § 94.4 of this part for cooked or cured meat from regions where rinderpest or foot-and-mouth disease exists.

* * * * *

PART 130—USER FEES

§ 130.1 [Amended]

6. The authority citation for part 130 would be revised to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 7 CFR 2.22, 2.80, and 371.2(d).

7. In § 130.1, the definition of *Animal Import Center* would be amended by removing the last sentence.

Done in Washington, DC, this 4th day of August, 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–21363 Filed 8–7–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. This proposal would require repetitive testing of certain main tank fuel boost pumps to identify those with degraded performance, and replacement of degraded pumps with new or serviceable pumps. This proposal also

would require eventual replacement of the existing low pressure switches for boost pumps located in the main fuel tanks with higher threshold low pressure switches, which, when accomplished, would terminate the repetitive testing. This proposal is prompted by reports of engine power loss caused by unsatisfactory performance of the fuel boost pumps. The actions specified by the proposed AD are intended to prevent fuel suction feed operation on both engines without flight crew indication, and possible consequent multiple engine power loss.

DATES: Comments must be received by September 24, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorr M. Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

¹ Importation of animals and meat includes bringing the animals or meat within the territorial limits of the United States on a means of conveyance for use as sea stores or for other purposes.