



# Federal Register

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**Friday,  
December 7, 2001**

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**Part II**

## **Department of Agriculture**

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**Animal and Plant Health Inspection  
Service**

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**9 CFR Parts 70 and 88  
Commercial Transportation of Equines to  
Slaughter; Final Rule**

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Parts 70 and 88**

[Docket No. 98-074-2]

RIN 0579-AB06

**Commercial Transportation of Equines to Slaughter****AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Final rule.

**SUMMARY:** We are establishing regulations pertaining to the commercial transportation of equines to slaughtering facilities. These regulations fulfill our responsibility under the 1996 Farm Bill to regulate the commercial transportation of equines for slaughter by persons regularly engaged in that activity within the United States. The purpose of the regulations is to establish minimum standards to ensure the humane movement of equines to slaughtering facilities via commercial transportation. As directed by Congress, the regulations cover, among other things, the food, water, and rest provided to such equines. The regulations also require the owner/shipper of the equines to take certain actions in loading and transporting the equines and require that the owner/shipper of the equines certify that the commercial transportation meets certain requirements. In addition, the regulations prohibit the commercial transportation to slaughtering facilities of equines considered to be unfit for travel, the use of electric prods on equines in commercial transportation to slaughter, and, after 5 years, the use of double-deck trailers for commercial transportation of equines to slaughtering facilities.

**EFFECTIVE DATE:** February 5, 2002.

**FOR FURTHER INFORMATION CONTACT:** Dr. Timothy Cordes, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231; (301) 734-3279.

**SUPPLEMENTARY INFORMATION:****Background**

We are establishing regulations pertaining to the commercial transportation of equines to slaughtering facilities. We are taking this action to fulfill a responsibility given by Congress to the Secretary of Agriculture in the Federal Agriculture Improvement and Reform Act of 1996 (commonly referred to as "the 1996 Farm Bill"). Congress

added language to the 1996 Farm Bill concerning the commercial transportation of equines to slaughtering facilities after having determined that equines being transported to slaughter have unique and special needs.

Sections 901-905 of the 1996 Farm Bill (7 U.S.C. 1901 note, referred to below as "the statute") authorize the Secretary of Agriculture, subject to the availability of appropriations, to issue guidelines for the regulation of the commercial transportation of equines for slaughter by persons regularly engaged in that activity within the United States. The Secretary is authorized to regulate the food, water, and rest provided to such equines in transit, to require the segregation of stallions from other equines during transit, and to review other related issues the Secretary considers appropriate. The Secretary is further authorized to require any person to maintain such records and reports as the Secretary considers necessary. The Secretary is also authorized to conduct such investigations and inspections as the Secretary considers necessary and to establish and enforce appropriate and effective civil penalties. In a final rule published in the **Federal Register** on December 30, 1996 (61 FR 68541-68542, Docket No. 96-058-1), the authority to carry out the statute was delegated from the Secretary of Agriculture to the Assistant Secretary for Marketing and Regulatory Programs (now the Under Secretary for Marketing and Regulatory Programs), and from that official to the Administrator of the Animal and Plant Health Inspection Service (APHIS), and from the APHIS Administrator to the Deputy Administrator for Veterinary Services.

To clarify its intentions, Congress set forth definitions in the statute. For purposes of interpreting the statute, "commercial transportation" is defined as "the regular operation for profit of a transport business that uses trucks, tractors, trailers, or semitrailers, or any combination thereof, propelled or drawn by mechanical power on any highway or public road." "Equine for slaughter" means "any member of the *Equidae* family being transferred to a slaughter facility, including an assembly point, feedlot, or stockyard." "Person" means "any individual, partnership, corporation, or cooperative association that regularly engages in the commercial transportation of equine for slaughter" but does not include any individual or other entity who "occasionally transports equine for slaughter incidental to the principal activity of the individual or other entity in production agriculture."

Congress further clarified its intentions with regard to the statute through a conference report. The conference report states that the object of any prospective regulation would be the individuals and companies that regularly engage in the commercial transport of equines to slaughter and not the individuals or others who periodically transport equines to slaughter outside of their regular activity. The conference report also states that the Secretary has not been given the authority to regulate the routine or regular transportation of equines to other than a slaughtering facility or to regulate the transportation of any other livestock, including poultry, to any destination. In addition, the conference report states that, to the extent possible, the Secretary is to employ performance-based standards rather than engineering-based standards when establishing regulations to carry out the statute and that the Secretary is not to inhibit the commercially viable transport of equines to slaughtering facilities.

On May 19, 1999, we published in the **Federal Register** (64 FR 27210-27221, Docket No. 98-074-1) a proposal to establish regulations pertaining to the commercial transportation of equines to slaughtering facilities in a new part of title 9 of the Code of Federal Regulations (CFR). The new regulations would be found at 9 CFR part 88. We proposed to divide part 88 into six sections: § 88.1—Definitions, § 88.2—General information, § 88.3—Standards for conveyances, § 88.4—Requirements for transport, § 88.5—Requirements at a slaughtering facility, and § 88.6—Violations and penalties. The proposed regulations pertained only to the actual transport of a shipment of equines from the point of being loaded on the conveyance to arrival at the slaughtering facility.

We solicited comments concerning our proposal for 60 days ending July 19, 1999. During the comment period, we received 276 comments. They were from animal humane associations, academia, slaughter plants, horse industry organizations, veterinary practitioners, a State government and a foreign government, the U.S. Congress, livestock industry organizations, livestock transporters, an organization representing veterinarians, and private citizens, among others.

The commenters expressed a variety of concerns that are discussed below by topic. Many commenters referred to "horses" rather than "equines"; for consistency with the rule portion of this document, we will use the term

“equines,” as appropriate, in discussing those comments.

### Summary of Changes Made in Response to Comments

We are making the following changes in response to the comments we received.

1. *Definitions.* We have removed the separate definitions of *owner* and *shipper* and applied the definition of *shipper* to *owner/shipper*. As a result, all references to “owner” and “shipper” have been changed to “owner/shipper.”

2. *General information.* Proposed § 88.2(b) provided that, to determine whether an individual or other entity transporting equines to a slaughtering facility is subject to the regulations, a USDA representative may request “from any individual or other entity” information regarding the business of the individual or other entity who transported the equines. We have amended that language in this final rule to clarify that a USDA representative may request that information “from the individual or other entity who transported the equines.” Also, proposed § 88.2(b) stated that, when such information is requested, the individual or other entity who transported the equines “will” provide the information within 30 days and in the format specified by the USDA representative. We have amended this provision to clarify that the individual or other entity “must” provide the information within 30 days and in the format specified.

3. *Requirements for transport.* Proposed § 88.4(a)(1) specified that, for a period of not less than 6 hours prior to the equines being loaded onto the conveyance, the owner or shipper must provide each equine appropriate food, potable water, and the opportunity to rest. This final rule clarifies that the 6 hours must be *immediately* prior to the equines being loaded. Proposed § 88.4(a)(3) listed information that must be included on the owner-shipper certificate for each equine being transported. This final rule adds the following information to that list: (1) The owner/shipper’s telephone number; (2) the receiver’s (destination) name, address, and telephone number; (3) if applicable, the name of the auction/market where the equine is loaded; (4) the breed of the equine; and (5) a description of any tattoos on the equine. This final rule also requires at § 88.4(a)(3) that information provided on the owner-shipper certificate be typed or legibly completed in ink. Proposed § 88.4(a)(3) required the owner-shipper certificate to contain a statement of the equine’s fitness to

travel. This final rule clarifies that we mean fitness to travel at the time of loading. Proposed § 88.4(a)(3) required a statement on the owner-shipper certificate about any unusual physical conditions and any special handling needs. We have reworded this provision to clarify that we mean any unusual physical conditions that may cause the equine to have special handling needs. Proposed § 88.4(b)(2) stated that “veterinary assistance must be provided as soon as possible for any equines in obvious physical distress.” This final rule adds that veterinary assistance must be provided by an equine veterinarian. In addition, § 88.4(b)(2) of this final rule adds that if an equine becomes nonambulatory en route, an owner/shipper must have the equine euthanized by an equine veterinarian. Further, § 88.4(b)(2) of this final rule specifies that, if an equine dies en route, the owner/shipper must contact the nearest APHIS office as soon as possible to allow an APHIS veterinarian to examine the equine, and if an APHIS veterinarian is not available, the owner/shipper must contact an equine veterinarian. Proposed § 88.4(e) required the shipper to secure the services of a veterinary professional to treat an equine, including performing euthanasia, if deemed necessary by the USDA representative. This final rule will require the veterinary professional to be an equine veterinarian.

4. *Requirements at a slaughtering facility.* Proposed § 88.5(b) stated that the shipper who transported the equines to the slaughtering facility must not leave the premises of the slaughtering facility until the equines have been examined by a USDA representative. Under this final rule, if an owner/shipper arrives at a slaughtering facility outside of the facility’s normal business hours, the owner/shipper may leave the premises but must return to the premises of the slaughtering facility to meet the USDA representative upon his or her arrival.

#### Section 88.1—Definitions

##### Shipper and Owner

A number of commenters expressed concerns about the proposed definitions of *shipper* and *owner*.

We proposed to define *shipper* as “Any individual, partnership, corporation, or cooperative association that engages in the commercial transportation of equines to slaughtering facilities more often than once a year, except any individual or other entity that transports equines to slaughtering facilities incidental to the principal activity of production agriculture.” We

proposed to define *owner* as “Any individual, partnership, corporation, or cooperative association that purchases equines for the purpose of sale to a slaughtering facility.” We stated that both owners and shippers would be subject to the regulations.

One commenter stated that exempting only those who ship equines once a year is too limiting and suggested allowing three shipments per year, which the commenter believed would allow the occasional transport of equines to slaughtering facilities by equine owners. One commenter stated that the definition of *shipper* should reflect both the frequency and number of equines transported. One commenter stated that an entity should have to adhere to the regulations if he or she transported more than 24 equines to slaughter per year.

Based on these comments and our experience with the equine industry, we have decided to apply the regulations to any individual, partnership, corporation, or cooperative association that engages in the commercial transportation of more than 20 equines per year to slaughtering facilities, except any individual or other entity who transports equines to slaughtering facilities incidental to his or her principal activity of production agriculture. We believe that those entities who transport more than 20 equines per year to slaughtering facilities, except those entities who transport equines to slaughtering facilities incidental to their principal activity of production agriculture, should be considered as regularly engaged in the commercial transportation of equines to slaughter.

Many commenters stated that replacing the term “person” in the statute with the terms “owner” and “shipper” exempts from the regulations horse owners who do not fit the definition of *owner*; and horse transporters who do not fit the definition of *shipper* and distorts Congress’ intent. These commenters stated that Congress included in the definition of “person” any individual or entity that regularly engages in the transportation of equines for slaughter, exempting only those who occasionally transport equines to slaughter incidental to the principal activity of the same individual or other entity in production agriculture; however, the proposed definition of *owner* includes only an individual or entity that purchases equines for the purpose of sale to a slaughtering facility.

We agree that the definition of *owner* may be confusing and could be interpreted to mean that certain entities that did not purchase equines for the

purpose of sale to a slaughtering facility could be excluded from the requirements. Therefore, in this rule, we have removed the definition of *owner*. Instead, we will use the term *owner/shipper*, which we have defined as "Any individual, partnership, corporation, or cooperative association that engages in the commercial transportation of more than 20 equines per year to slaughtering facilities, except any individual or other entity who transports equines to slaughtering facilities incidental to his or her principal activity of production agriculture." We believe that the definition of *owner/shipper* meets the intent of the definition of *person* in the statute.

Many commenters objected that our proposed definitions for *shipper* and *owner* narrowed the scope of the statute and would provide more exemptions from the regulations than intended by Congress. The issue that was mentioned most frequently was that our proposal would exclude persons in the premarin mare urine (PMU) industry. They said these persons would not be "shippers" because their principal activity would be considered production agriculture. Others stated that the premarin farmer would not be an "owner" because the farmer did not purchase the foals or any other equines for the purpose of sale to a slaughtering facility. For the purposes of these regulations, we consider "production agriculture" to mean food or fiber production. The principal activity of the PMU industry is the collection of urine from pregnant mares for use by the pharmaceutical industry, which is not production agriculture. Therefore, individuals or other entities in the PMU industry who transport equines to slaughter incidental to this business would be covered by our regulations unless they ship 20 or fewer equines per year. To clarify that we consider production agriculture to mean food or fiber production, the definition of *owner/shipper* in this final rule specifies that production agriculture means production of food or fiber.

In addition, we believe that the new definition of *owner/shipper*, as previously explained, provides clarification as to the entities that must comply with the regulations.

Some commenters appeared to believe that the term "production agriculture" includes professional horse breeders, those who sell riding or work horses, and persons who have riding stables or board horses. They expressed concern that these individuals or other entities would be exempt from the regulations if they transported unwanted foals or other equines to slaughter. Some

commenters assumed that trucking companies would be exempt from the regulations if they moved equines to slaughter for a farmer whose principal activity was production agriculture. As explained above, we consider production agriculture to mean food or fiber production. None of the entities listed above are engaged in food or fiber production. Therefore, they would not be exempt from the regulations unless they ship 20 or fewer equines per year.

Some commenters objected to our exempting entities who transport equines to slaughtering facilities incidental to their principal activity of production agriculture. One commenter suggested that the definition of *shipper* exempt only those who transport fewer than 10 equines per year, and another commenter stated that we should exempt those who transport 50 or fewer equines per year instead of providing an exemption for those entities involved in production agriculture. One commenter objected that the proposed definition of *shipper* would allow a farmer or other entity that engages in production agriculture to ship any number of equines a year to slaughtering facilities without complying with the regulations. Another commenter stated that there is no legitimate reason for persons or entities who derive income from production agriculture to be excluded from the regulations, and that anyone who engages in commercial transportation should have to comply with the regulations.

As stated previously, this final rule uses the term *owner/shipper* and exempts only those entities who transport 20 or fewer equines to slaughtering facilities per year and entities who transport equines to slaughtering facilities incidental to their principal activity of production agriculture (food or fiber production). As noted earlier, Congress clarified its intentions concerning who should be covered by the regulations in its conference report. The conference report states, among other things, that the object of any prospective regulation would be the individuals and companies that regularly engage in the commercial transport of equines to slaughter and not the individuals or others who periodically transport equines for slaughter outside of their regular activity. In the definition of *person* in the statute, Congress specifically exempted any individual or entity that occasionally transports equines for slaughter incidental to the principal activity of the individual or other entity in production agriculture.

One commenter stated that the definitions of *owner* and *shipper* should

be amended to exclude slaughtering facilities. We disagree. If a slaughtering facility possesses equines that will be transported to a slaughtering facility, including its own, from its own feedlot or other premises and the facility transports more than 20 equines a year, that slaughtering facility is an *owner/shipper* and must comply with the regulations.

#### Slaughtering Facility

We proposed to define *slaughtering facility* as "A commercial establishment that slaughters equines for any purpose."

Many commenters objected that the definition of *slaughtering facility* excludes facilities that were specifically intended by Congress to be covered by the regulations (i.e., assembly points, feedlots, and stockyards). Several commenters stated that auctions and sales should be added to the definition of *slaughtering facility*. One commenter stated that tracing a stolen equine would be easier if all locations intended by Congress were regulated by APHIS.

The statute gives the Secretary authority to regulate the commercial transportation of equines to slaughtering facilities, which the statute indicates include assembly points, feedlots, or stockyards. The Secretary may use his or her discretion within this authority. At this time, we are defining *slaughtering facility* to mean only those establishments where equines are slaughtered because (1) we believe that equines moved to these facilities are most at risk of being transported under inhumane conditions, and (2) USDA representatives are available at these facilities to help enforce the regulations. Equines moved to assembly points and stockyards are more likely to be taken better care of because the purpose of the movement is for sale. Also, equines may not be moved from these points to slaughter. Equines sent to feedlots are going there for the express purpose of gaining weight. Plus, we have no way currently to monitor movements from all points to these intermediate destinations.

Regarding lost or stolen equines, we believe that the use of the *owner-shipper* certificate will help ensure that there is documented identification for each equine that is transported to a slaughtering facility. To improve its usefulness for tracebacks, the *owner-shipper* certificate will provide for the identification of any auction/market where an equine is loaded. In addition, we plan to develop a database of the information provided on the *owner-shipper* certificates.

One commenter stated that the definition of *slaughtering facility* should exclude assembly points, feedlots, and stockyards to which the equines are transported for feeding or holding if the time at such a location is intended to exceed 14 days.

The definition of *slaughtering facility* in this rule excludes assembly points, feedlots, and stockyards regardless of the amount of time an equine spends there. However, equines moved from an assembly point, feedlot, or stockyard to a *slaughtering facility* must be transported in accordance with the regulations.

#### Commercial Transportation

We defined *commercial transportation* as "The movement for profit via conveyance on any highway or public road."

One commenter stated that the definition of *commercial transportation* should exempt transport by conveyances that are owned or leased by *slaughtering facilities* that deliver equines to their own *slaughtering facilities*.

As stated previously, if a *slaughtering facility* transports equines to a *slaughtering facility*, including its own, the equines must be transported in accordance with the regulations.

#### Euthanasia

We proposed to define *euthanasia* as "The humane destruction of an animal by the use of an anesthetic agent or other means that causes painless loss of consciousness and subsequent death."

One commenter stated that we should provide a list of acceptable anesthetic agents, such as pentobarbital, choral hydrate, pentobarbital combinations, and gunshot, and require them to be administered by a trained person. This commenter added that succinylcholine curariform drugs or other paralytic agents, cyanide, strychnine, ether, and carbon monoxide should be prohibited.

We do not believe that listing anesthetic agents (pharmaceuticals that provide a loss of sensation with or without loss of consciousness) or requiring them to be administered by a trained person is necessary. As explained later in this document, § 88.4(b)(2) of this final rule requires veterinary assistance to be provided by an equine veterinarian. In addition, as explained later in this document, § 88.4(b)(2) of this final rule provides that, if an equine becomes nonambulatory en route, the equine must be euthanized by an equine veterinarian. Also, § 88.4(e) of this final rule provides that, if deemed necessary at any time during transportation to a

*slaughtering facility*, a USDA representative may direct an owner/shipper to take actions to alleviate the suffering of an equine and this could include obtaining the services of an equine veterinarian to treat an equine, including performing euthanasia if necessary. An equine veterinarian will be aware of and will use appropriate and humane anesthetic agents for equines.

As mentioned in the proposed rule, we will allocate funds for public information efforts and are developing educational materials about the humane transport of equines.<sup>1</sup> These materials will include a list of equine veterinarians within the United States and their telephone numbers.

#### Section 88.2 General information

##### Federal Preemption

Proposed § 88.2(a) stated that State governments may enact and enforce regulations that are consistent with or that are more stringent than the regulations.

Many commenters expressed concerns that the regulations could preempt State laws that may be more stringent. Some pointed out that in the preamble, under the heading "Executive Order 12988," we stated that the regulations would preempt all State and local laws and regulations that are in conflict with the rule. Many commenters stated that the Federal regulations should not preempt State regulations unless compliance with the State regulations would make compliance with the Federal regulations impossible. In particular, many commenters expressed concern that the regulations would preempt existing State bans on transporting equines in double-deck trailers.

States may promulgate and enforce similar or even more stringent regulations to ensure the humane transport of equines to *slaughtering facilities*. State or local laws that are more stringent than the regulations will not necessarily conflict with the regulations. For example, the regulations would not preempt existing States' bans on transporting equines in double-deck trailers because double-deck trailers are not required by our regulations. The drivers of conveyances will be responsible for complying with any State laws that prohibit the use in a State of double-deck trailers for the transportation of equines to slaughter. State and local laws and regulations would be "in conflict" with the

<sup>1</sup> To obtain information about these educational materials, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

regulations established by this rule only if they made compliance with this rule impossible, just as some commenters suggested.

#### Collection of Information

Proposed § 88.2(b) stated that a USDA representative may request of any individual or other entity information regarding the business of the individual or other entity that transported the equines to determine whether that individual or other entity is subject to the regulations. The proposal further stated that the individual or other entity will provide the information within 30 days and in a format as specified by the USDA representative.

Several commenters stated that we should say "must" request information regarding the business of the individual or other entity that transported the equines and that we should state that the individual or other entity "must provide" in place of "will provide."

We believe that "may" is more appropriate in the first instance because the USDA representative may not need to request information at all times to make a determination of whether an individual or other entity that is transporting the equines to a *slaughtering facility* is subject to the regulations. However, as to using "must provide," we agree with the commenters and have amended the rule accordingly.

One commenter stated that we should clarify in § 88.2(b) that a USDA representative may request information from the entity that actually transported the load of equines.

We agree. We have amended § 88.2(b) to read as follows: "To determine whether an individual or other entity found to transport equines to a *slaughtering facility* is subject to the regulations in this part, a USDA representative may request from that individual or other entity information regarding the business of that individual or other entity. When such information is requested, the individual or other entity who transported the equines must provide the information within 30 days and in a format as may be specified by the USDA representative."

#### Section 88.3 Standards for Conveyances

##### Cargo Space

Proposed § 88.3(a)(1) stated that the animal cargo space of conveyances used for the commercial transportation of equines to *slaughtering facilities* must be designed, constructed, and maintained in a manner that at all times protects the health and well-being of the equines being transported (e.g., provides

adequate ventilation, contains no sharp protrusions, etc.).

Many commenters stated that we should explain adequate ventilation, and some of these commenters stated that adequate ventilation cannot be provided in certain conveyances. Several commenters stated that the requirements should address protection from the elements and extremes of weather. One commenter suggested that trailers be modified to use air scoops to control air flow and stated that trailers that cannot be appropriately modified for operation in extreme weather conditions should not be used when adverse conditions are likely to exist. This commenter stated that a rating system could be used to rate trailers for their suitability for summer or winter conditions and could encourage transporters to invest in better-designed trailers.

As stated previously, the regulations are performance-based standards. If a conveyance does not provide adequate ventilation or other measures to protect the health and well-being of the equines in transit, it must not be used.

The educational materials we are developing about humane transport of equines will include information on ventilation and transport under various weather conditions.

Several commenters stated that our proposal did not address proper flooring in conveyances. Many commenters stated that the rule should require flooring within a conveyance to be of such material (rubber, neoprene, etc.) as to afford the animal secure footing at all times under all conditions. One commenter stated that welding  $\frac{3}{8}$ -inch rods at 12-inch intervals to the deck could prevent slipping. Many commenters stated that ramps should also have nonslip (nonmetal, nonskid) flooring. Several commenters stated that wood shavings, sawdust, or sand could be used to provide secure footing.

There are many ways of providing secure footing and otherwise protecting the health and well-being of equines in transit. We do not believe it is necessary to specify how this must be done. Many of the shippers or owners who transport equines safely and correctly already use flooring that provides equines with secure footing. In addition, the regulations will require the use of an owner-shipper certificate that must describe any preexisting injury the equine has at loading. If an equine arrives at a slaughter facility with an injury that was not identified on the certificate, such as an injury from a fall due to insecure footing, the owner/shipper may be found in violation of the regulations and could be fined in

accordance with § 88.6. Also, the educational program previously mentioned in this document will provide owners, shippers, and other stakeholders in the equine slaughtering industry with information regarding the safe transport of equines, including information on flooring.

One commenter objected that our proposal did not require conveyances to be cleaned of manure and urine. This commenter also stated that § 88.3(a)(1) should prohibit use of ropes, wires, or chains in animal cargo space because an equine could become entangled in or injured by them. This commenter further added that a conveyance that transports equines should not have openings in the walls or sides of the vehicle lower than 2 feet from the floor of the conveyance.

Under § 88.3(a)(1), the conveyance used for the commercial transportation of equines to slaughtering facilities must be maintained in a manner that at all times protects the health and well-being of the equines being transported. Maintenance of the conveyance would include the removal of manure and urine, when appropriate. Similarly, owners/shippers must ensure that the cargo space is free of any articles that may injure the equines. If a conveyance has openings in the walls or sides that cause harm to the equines, the conveyance must either be altered or not used for the transport of equines to slaughter. We do not believe that a comprehensive list of all articles or configurations that could injure an equine is necessary or appropriate.

#### Segregation of Aggressive Equines

Proposed § 88.3(a)(2) stated that the animal cargo space of conveyances used for the commercial transportation of equines to slaughtering facilities must include means of completely segregating each stallion and each aggressive equine on the conveyance so that no stallion or aggressive equine can come into contact with any of the other equines on the conveyance.

Many commenters stated that partitions or individual stalls should be required to segregate stallions and other aggressive equines, and one of these commenters stated that the partitions should be at least 6 feet high. Several commenters stated that partitions should be required for "high strung" equines. Several commenters stated that equines should be transported in trailers with separate individual compartments or haltered, and several commenters stated that equines could be tied to prevent injuries due to fighting if not partitioned. One commenter stated that tying equines will prevent rearing. One

commenter stated that stallions can be muzzled and tied.

Under § 88.4(a)(4)(ii), stallions and aggressive equines are required to be completely segregated from other equines during transit. We do not believe that it is necessary to require owner/shippers to separate equines into individual compartments. However, because this is a performance-based standard, an owner/shipper could use a partition to separate aggressive equines from other equines. As to tying equines, we agree that tying an equine, in some cases, could prevent it from rearing; however, the equines could still kick. Also, haltering and tying an equine could pose a danger to the equine if it attempted to rear and lost its balance and fell. The equine could be stepped on by other equines or injure itself. As to the comment regarding muzzling the equines, we assume that this commenter recommended muzzling and tying stallions instead of segregating them. Tying up or muzzling an equine is not practical for all equines going to slaughter because some are not halter-broken. We believe the owner/shipper should have some discretion in determining how to achieve segregation of stallions and aggressive equines.

#### Interior Height

Proposed § 88.3(a)(3) stated that the animal cargo space of conveyances used for the commercial transportation of equines to slaughtering facilities must have sufficient interior height to allow each equine on the conveyance to stand with its head extended to the fullest normal postural height.

Several commenters stated that the performance specifications were too vague and could be subject to interpretation. One commenter suggested that § 88.3(a)(3) state, "Have sufficient height to allow each equine on the conveyance to stand in a normal relaxed posture with its feet on the floor, without its head or any part of its body contacting the ceiling of the conveyance. There must be sufficient clearance to prevent injury or abrasions to the withers and the top of the rump. Horses which arrive at their destination with reddened abrasions or fresh injuries on the withers or the top of the rump would be in violation." One commenter suggested "\* \* \* extended up to the highest normal postural height so that its withers and top of its rump will not come into contact with the ceiling, but in any case the ceiling must be no less than 7 feet from the floor." Many commenters stated that the hauling area of vehicles used to transport equines should be a minimum of 7 feet high from the highest point

used by the animals for footing, to the lowest point in the ceiling, not having a strut or brace, and no less than 6 feet 6 inches from the highest point used by the animals for footing to the lowest point having a strut or brace. Some commenters provided ranges of 6 feet 6 inches to 7 feet for the minimum heights in the hauling area of conveyances, and several commenters stated that the height should be adequate for equines to stand upright and provide for safe loading and unloading. Many commenters stated that the intent of the statute was to require a conveyance to have a ceiling height of no less than 6 feet 6 inches. One commenter stated that § 88.4(a)(3) should state that, if equines arrive at their destination with injuries indicative of transport, the owner/shipper could be found in violation of the regulations.

We believe that the performance-based standards in this rule fulfill the intent of Congress under the statute to help ensure the humane movement of equines in commercial transit to slaughtering facilities. We have left the owner/shipper with the responsibility of ensuring that the design, construction, and maintenance of the conveyance used are adequate to ensure that the conveyance can safely and humanely transport equines. If an equine arrives at its destination with an injury, and the injury was caused by a violation of the regulations, the owner/shipper may be assessed civil penalties of up to \$5,000 per violation for each equine injured. Accountability for injuries that occur during transport due to violations is the reason the owner-shipper certificate requires the documentation of any preexisting injuries that are present prior to loading.

#### Doors and Ramps

Proposed § 88.3(a)(4) stated that the animal cargo space of conveyances used for the commercial transportation of equines to slaughtering facilities must be equipped with doors and ramps of sufficient size and location to provide for safe loading and unloading.

Many commenters stated that we should provide engineering-based standards for doors and ramps. One commenter stated that ramps should have sides, and another commenter stated that rails should be required. One commenter stated that we could require commercial semi-trailers to travel with their own external ramps. One commenter stated that conveyances should be equipped with doorways and ramps of sufficient height and width and location to provide for safe loading and unloading, including in an emergency. One commenter suggested

that conveyances be equipped with ramps and floors which provide nonslip footing and doors of sufficient width and height so that a horse that is walking off the conveyance will not sustain visible external injuries such as abrasions and lacerations. Another commenter stated that we should require ramps, rails, and flooring to be maintained in a good state of repair; fittings to be designed for quick and easy operation and maintained in good working order; ramps and floors to be covered with a nonmetal, nonskid surface; and flooring to be free of rust and rot and designed to allow for appropriate drainage. This commenter further stated that vehicles should be fitted with a ramp not to exceed 25 degrees in slope and be of sufficient width and equipped with solid sides of sufficient strength and height to prevent equines from falling off, and that all portable or adjustable ramps should be equipped with anchoring devices. This commenter also stated that vehicles must be equipped with an additional exit ramp suitable for use in emergencies and that conveyances should be equipped to provide for the safest and least stressful loading and unloading. One commenter stated that equines should be loaded in as quiet a situation as possible and that the area surrounding the ramp should also be nonslip.

We believe the performance-based standards in this rule provide clear guidance on what we mean by humane transport. Owner/shippers will have to ensure the safe loading and offloading of equines because, if equines sustain injuries while loading, in transit, or while offloading, due to violations of the regulations, the owner/shipper may be assessed civil penalties as set forth in § 88.6.

#### Double-Deck Trailers

Proposed § 88.3(b) stated that equines in commercial transportation to slaughtering facilities must not be transported in any conveyance that has the animal cargo space divided into two or more stacked levels, except that conveyances lacking the capability to convert from two or more stacked levels to one level may be used until a date 5 years from the date of publication of the final rule. The proposal also stated that conveyances with collapsible floors (also known as "floating decks") must be configured to transport equines on one level only.

Many commenters opposed the continued use of double-deck trailers. Many of them stated that the original intent of the statute was to ban the use

of double-deck trailers for the transport of equines.

The statute does not prohibit the use of double-deck trailers or any other conveyance; however, it requires the commercial transport of equines to slaughter by humane methods.

Many commenters stated that continued use of double-deck trailers is inconsistent with providing for the safe and humane transport of equines to slaughter. Many commenters stated that our rule is inconsistent with the State of New York's ban on the use of double-deck trailers for the transport of horses. Several commenters stated that APHIS should provide a shorter grace period for the use of double-deck trailers, and some of these commenters suggested grace periods ranging from 30 days to 2 years. One commenter suggested that, rather than allow an across-the-board 5-year "grandfather clause," APHIS should require entities to show that they cannot practicably comply with an immediate ban. This commenter stated that this requirement would require the shipper to demonstrate how soon he or she could switch to a single-deck trailer. Many commenters expressed concern that, with the 5-year exception, a shipper could begin to use a new double-deck trailer or a double-deck trailer previously used to transport nonequine livestock at any time during the 5-year period. Several commenters stated that vehicles designed for horses should be required.

We believe that the grace period of 5 years is fair and reasonable. As stated in the proposal, we arrived at a time period of 5 years after discussions with interested parties, including representatives of the trucking and equine industries, at two meetings hosted by humane organizations. We believe that many of the double-deck trailers currently used to transport equines will need to be replaced in approximately 5 to 7 years.

We acknowledge that some double-deck trailers are likely to cause injuries and trauma to equines; however, we are allowing their continued use for the next 5 years in order to minimize economic losses to those dependent on the use of double-deck trailers. Nevertheless, we will hold owners and shippers responsible for any injuries that occur during transport. If equines are injured during transport to slaughtering facilities, even if that transport is in double-deck trailers still allowed under the regulations, the owner/shipper could be in violation of the regulations for each equine that is injured and be assessed civil penalties as set forth in § 88.6. Furthermore, although our rule may not mirror

regulations that were promulgated by certain States, this rule will not preempt State regulations that have bans on the use of double-deck trailers.

One commenter stated that the regulations are not clear as to whether the 5-year grace period means that no violations can be written for transporting tall equines in a double-deck trailer for 5 years. As stated above, we will hold owners and shippers responsible for any injuries that occur during transport if the injuries are due to violations of the regulations.

One commenter stated that the use of double-deck trailers will lead to a violation of § 88.4 regarding the observation of equines every 6 hours and offloading every 28 hours because shippers will have little incentive to comply with unloading requirements given the intrinsic hazards to handlers and equines.

In the proposal, we stated that equines frequently sustain injuries from being forced up or down the steep inclines of double-deck loading ramps. However, if an owner/shipper continues to use a double-deck trailer, he or she must take proper precautions to protect equines from injury during loading and offloading while using ramps. In addition, the owner/shipper must adhere to the prescribed observation period and offloading times provided in § 88.4(b)(2) and 88.4(b)(3), respectively. The grace period for double-deck trailers is strictly a phase-out period for the use of double-deck trailers and does not provide protection from the regulations for owners or shippers for injuries incurred by equines due to their transport in double-deck trailers. Therefore, if equines are injured during transport to slaughtering facilities, the owner/shipper may be found in violation of the regulations for each equine that is injured and may be assessed civil penalties as set forth in § 88.6 even if the transport was performed using a double-deck trailer.

One commenter stated that the regulations are not clear as to whether double-deck trailers will be banned as of the date of the final rule.

As of the effective date of this rule, conveyances with collapsible floors (also known as "floating decks") must be configured to transport equines on one level only and will not be prohibited. In addition, if a conveyance is converted from two or more stacked levels to one level, the conveyance will not be prohibited. Conveyances that lack the capability to convert from two or more stacked levels to one level may be used until 5 years from the date of publication of this rule.

Many commenters stated that double-deck trailers can jeopardize public safety and, therefore, should not be allowed.

We agree that if drivers operate double-deck trailers in an unsafe manner, the trailers can pose a danger to humans, just as any vehicle that is operated in an unsafe manner. In § 88.4, paragraph (b) states that during transit to the slaughtering facility, the owner/shipper must drive in a manner to avoid causing injury to the equines. This is a performance-based standard that is meant to protect the equines from injury caused by poor driving habits and should help ensure that double-deck trailers are driven in a safe manner. Our educational program regarding the humane transport of equines will include safe driving procedures.

Several commenters stated double-deck trailers should not be prohibited after 5 years if they can be altered to accommodate equines or converted to single level.

Double-deck trailers do not provide adequate headroom for equines, with the possible exception of foals and yearlings. We do not believe that trailers that have two or more permanent levels that are not collapsible can be adequately altered to accommodate adult equines, especially tall equines. A tall equine can be 8 feet tall to the top of its head when standing on all four legs and close to 12 feet tall when rearing. As stated in the proposal, the overpasses on most U.S. interstate highways are between 14- and 16-foot high. We are not prohibiting, either immediately or after 5 years, the use of double-deck trailers that can be converted to a single level.

Several commenters said that if equines are sorted by size, double-deck trailers could continue to be used. Other commenters stated that we should require only that ceilings be of adequate height, which one commenter maintained would prohibit only unusually tall equines from the double-deck portion of the trailers. One commenter stated that § 88.3(b) should require only that conveyances be of sufficient interior height to allow each equine to stand with its head extended to the fullest normal postural height.

Again, we do not believe that double-deck trailers provide sufficient headroom for horses other than foals and yearlings.

Two commenters stated that research has shown that stress levels and physiological factors are improved on double-deck trailers versus single-deck trailers.

Upon completion of the USDA research, we determined that rubber

padding used in the single-deck trailers may have caused physiological differences between horses transported in double-deck trailers and horses transported in single-deck trailers. The rubber padding lined the interior walls of the single-deck trailer and limited the ventilation capacity within the conveyance. However, this discovery may support the use of rubber padding to decrease the exposure of equines to extremely low temperatures during their transport in the winter.

Several commenters opposed the prohibition on double-deck trailers because single deck, or "straight-floor," trailers do not hold as many horses. Several commenters stated that they now use the double-deck trailers for horses and other livestock and that going to a single deck, or "straight-floor," trailer would not be economical for them because they hold fewer animals. Thus, our rule would cause them economic hardship. One commenter stated that, since it will still be legal to transport livestock other than equines in double-deck trailers, and to transport equines to destinations other than slaughtering facilities in double-deck trailers, shippers will have no economic incentive to trade in double-deck trailers for single-deck trailers. The commenter maintained that the rule will, therefore, impede the transport of equines to slaughter by reducing the number of vehicles available for this transport and increasing the costs of transporting equines to slaughter.

We acknowledge that double-deck trailers can carry more equines and other livestock than single-deck trailers. We are allowing the continued use of double-deck trailers for the next 5 years in order to minimize economic losses to those dependent on the use of double-deck trailers. We do not believe that equines can be safely and humanely transported on a conveyance that has an animal cargo space divided into two or more stacked levels. As stated in the proposal, double-deck trailers can continue to be used to transport other commodities, including produce and livestock other than equines. Also, owners can sell their serviceable trailers at fair market value to transporters of commodities other than equines.

#### *Section 88.4 Requirements for Transport*

##### *Food and Water Prior to Transport*

Proposed § 88.4(a)(1) stated that, prior to the commercial transportation of equines to a slaughtering facility, the shipper or owner must, for a period of not less than 6 consecutive hours prior to the equines being loaded on the



conveyance, provide each equine appropriate food (*i.e.*, hay, grass, or other food that would allow an equine in transit to maintain well-being), potable water, and the opportunity to rest.

Several commenters expressed concern that the proposed rule would not require the 6-hour period of feed, water, and rest to occur immediately preceding loading for transport. One commenter suggested saying "not more than 6 consecutive hours prior to the equines being loaded." One commenter suggested inserting the words "for a period of at least 6 consecutive hours immediately. \* \* \*

It was our intent in § 88.4(a)(1) to require a 6-hour time period immediately preceding the loading of the equines. To make that clearer, we have added the word "immediately" before the word "prior" in the rule portion of this document.

Several commenters stated that the proposed provisions for access to food and water were too vague. One commenter objected to the lack of specific information regarding the quality or quantity of food and water to be provided. Two commenters stated that equines should be grouped appropriately to ensure that all of them have uninhibited access to food and water, and that water should be *ad libitum*, and one other commenter stated that the equines should have unimpeded access. One commenter suggested that we require "free access to potable water *ad libitum*."

The rule requires that each equine be provided appropriate food and potable water. This means that each equine must have access to the food and water. Also, the rule requires "appropriate" food. We do not believe that it is necessary to prescribe the quality or quantity of food that must be provided or to require grouping of animals. We believe that the owner/shipper can determine the quality and quantity of food and water that should be provided to equines and the best methods to ensure that all equines have access to food and water.

One commenter stated that requiring owners or shippers to provide equines with access to feed within 6 hours of transport could be a potential problem due to the possibility of impaction. This commenter stated that there are anecdotal accounts linking impaction to feed and dehydration and that requiring feed may need more study.

We are aware that impaction can occur under certain circumstances; however, impaction has been associated with inadequate intake of water. (Impaction is the blockage of a portion

of the digestive system formed by digested material.) However, we believe that allowing equines access to appropriate food and potable water for 6 hours immediately prior to loading is unlikely to result in impaction and is essential to ensure that the equines do not undergo serious physiological distress during transit.

One commenter stated that the minimum rest period prior to loading should be 16 hours with unlimited access to water, good quality hay, and shelter, and another commenter stated that water should be provided within 12 hours of transport.

Based on one of the USDA-commissioned research studies, we found that equines that were provided water for 6 hours immediately before transport did better than those that were provided water for more than 6 hours.

One commenter stated that feedlots practice dry lotting, which means that equines are not fed immediately prior to slaughter, and the regulations are not clear as to whether the practice will be prohibited when the rule is finalized. One commenter stated that providing food and water is not necessary if equines are going directly to processing from the truck.

The regulations at § 88.4(a)(1) require that equines be provided food and water prior to loading for transport to slaughter, and § 88.5 requires that equines be given access to food and water after being unloaded at the slaughtering facility. As a consequence, dry lotting will be prohibited.

One commenter stated that equines purchased at sale barns may have already been deprived of water for quite some time. This commenter stated that the regulations are not clear as to how USDA representatives will verify that each equine has received the required 6-hour access to food and water and whether USDA representatives will examine equines for evidence that they received preloading services upon arrival at the slaughtering facility. One commenter stated that we should not trust the owner-shipper statement that claims an equine was provided access to appropriate food, potable water, and rest prior to loading.

Owners/shippers are responsible for ensuring that equines have access to food, water, and rest for 6 hours immediately prior to loading on a conveyance for transport to a slaughtering facility. In accordance with § 88.4(a)(3), the owner/shipper must certify on the owner-shipper certificate for each equine being transported that the equine had access to food, water, and rest for the 6 hours immediately prior to loading into the conveyance. In

addition, in accordance with § 88.5(a)(3), a USDA representative must be given access to the equines upon arrival at the slaughtering facility. If the USDA representative suspects that the equines are suffering from the effects of a lack of food, water, or rest, he or she can question the owner/shipper regarding the care the equines received prior to and during transport. If we determine that an owner/shipper did not comply with any requirement, the owner/shipper may be subject to civil penalties of up to \$5,000 per violation per equine as set forth in § 88.6. In addition, if we determine that the owner/shipper falsified the form, the owner/shipper could be subject to a fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (The penalty for falsification of the owner-shipper certificate is stated on the owner-shipper certificate (18 U.S.C. 1001).)

#### USDA Backtag

Proposed § 88.4(a)(2) stated that, prior to the commercial transportation of equines to a slaughtering facility, the shipper or owner must apply a USDA backtag to each equine in the shipment.

One commenter stated that we should remove the requirement for a backtag and require each equine to be marked in a manner that provides a unique identification of the animal.

Backtags provide a unique identification for each animal. They are easy to apply and easy to read. We believe that requiring their use will facilitate identification of equines during loading, unloading, and in spaces where they are congregated. If an equine has a unique identifying mark such as a brand or tattoo, the owner-shipper must record the identifying mark on the owner-shipper certificate along with the USDA backtag number.

One commenter stated that an identification tag should be attached to each equine and that the tag should provide the identification of the owner/shipper and the license plate number of the conveyance.

A USDA backtag will be applied to each equine and the number will be recorded on the owner-shipper certificate for each equine. The owner-shipper certificate will contain the name, address, and telephone number of the owner/shipper. In addition, the vehicle license number or registration number of the conveyance will be recorded on the owner-shipper certificate. Because the USDA backtag provides a unique identification for each animal, the backtag will allow us to determine the identification of the

owner/shipper should that become necessary.

#### Owner-Shipper Certificate

Proposed § 88.4(a)(3) stated that, prior to the commercial transportation of equines to a slaughtering facility, the shipper or owner must complete and sign an owner-shipper certificate for each equine being transported. The proposal also stated that the owner-shipper certificate for each equine must accompany the equine throughout transit to the slaughtering facility and must include specified information, including, under § 88.4(a)(3)(v) (redesignated as § 88.4(a)(3)(vii) in this final rule), a statement of the equine's fitness to travel (a statement that the equine is able to bear weight on all four limbs, is able to walk unassisted, is not blind in both eyes, is older than 6 months of age, and is not likely to give birth during the trip).

One commenter maintained that an owner-shipper certificate is unnecessary paperwork, because, upon arrival at the slaughtering facility, the USDA representative can check the equines and conveyance and address any problems noted with the owner of the equines.

As explained in our proposal, we have several reasons for requiring the owner-shipper certificate. They make the owner/shipper responsible for ensuring that the equines are fit to travel and have had adequate food, water, and rest prior to transport; provide a way for the USDA representative at slaughtering facilities to determine whether an injury occurred en route; assist in the prosecution of persons found to be in violation of the regulations; and facilitate the traceback of any stolen equines.

#### Owner-Shipper Certificate; Who Signs

Many commenters expressed concern about an owner or shipper preparing the certificate for movement. In particular, with respect to the statement of fitness for travel, they stated that the owner or shipper may have an economic incentive to certify the equines fit to travel. Many commenters stated that a professional should certify an equine's fitness to travel prior to the transport to ensure the equine is in a reasonable state of health at the beginning of the trip. (Some of these commenters listed people such as a licensed veterinarian, accredited veterinarian, USDA representative, or licensed veterinary technician. One commenter added certified humane officers and brand inspectors.) Many commenters stated that the fitness to travel should be certified by a veterinarian because an

owner/shipper could ship a lame equine without identifying the injury on the certificate and state that injury occurred en route if lameness is noted as the equine is unloaded at the slaughtering facility. Several commenters stated that a lack of veterinary certification could mean that the USDA representative at the slaughtering facility would be unable to determine whether the injuries were preexisting or a result of transportation. One commenter stated that without medical or veterinary knowledge or training, there may be mistakes or inaccurate entries on the owner-shipper certificate. One commenter stated that the owner-shipper certificate requires subjective determinations that cannot be made by nonveterinary personnel. Many commenters stated that the original intent of the statute was to ban the shipment of sick and injured horses by having a veterinarian inspect the horses, rather than the owner, who stands to lose money if the horse is not shipped.

We considered requiring a veterinarian to certify each equine's fitness to travel. However, in most cases, because of the lack of a client-patient relationship, the veterinarian would not have liability coverage. We also determined that use of accredited veterinarians would be inappropriate because, as provided in 9 CFR part 161, they perform functions required by cooperative State-Federal disease control and eradication programs. We also decided, however, that a veterinarian was not needed to provide the information we require on the owner-shipper certificate. This information could be provided by any person who makes careful observation of an equine. However, if an owner/shipper wishes to have a veterinarian examine an equine prior to loading the equine for slaughter, the owner/shipper may make those arrangements.

If an equine arrives at a slaughtering facility with an injury that should have prevented the equine from being transported (e.g., if the equine cannot walk unassisted), the owner/shipper may be found in violation of the regulations and could be subject to civil penalties as set forth in § 88.6. In addition, if an equine arrives at a slaughtering facility with an injury that was not identified on the owner-shipper certificate, the USDA representative, who in most cases will be a veterinarian, will make a professional judgment as to the length of time an equine suffered the lameness or the age of a wound and its possible cause. If the USDA representative determines that the injury occurred en route or was present prior to loading the equine on

the conveyance, the owner/shipper may be found in violation of the regulations and subject to civil penalties as set forth in § 88.6. Any owner/shipper found to have falsified a certificate could also be subject to a fine of not more than \$10,000 or imprisonment for not more than 5 years or both, in accordance with 18 U.S.C. 1001.

A few commenters stated that allowing owners or shippers to complete the owner-shipper certificate is inconsistent with other regulations that require an accredited veterinarian to sign a certificate or that require a health certificate for the interstate movement of equines.

Other Federal regulations regarding the interstate movement of equines, for example, those for equine infectious anemia (9 CFR part 75), are intended to prevent the interstate spread of communicable diseases of equines. This rule does not pertain to a disease control or eradication program, and veterinary medical training is not required to complete the owner-shipper certificate.

One commenter asked if there would be a penalty for the owner or shipper if he or she is mistaken about an equine's fitness to travel. One commenter stated that an owner or shipper should not be found in violation of the regulations if he or she makes a mistake on the owner-shipper certificate or neglects to mark a box, such as the sex of the equine.

If an owner/shipper is unsure about an equine's fitness to travel, he or she should seek the proper guidance from a veterinarian or other qualified individual. If an owner/shipper makes a mistake on the owner-shipper certificate or fails to accurately complete the certificate, APHIS will attempt to determine whether the mistake or failure to accurately complete the certificate was inadvertent or an attempt to circumvent the regulations. We understand that, at times, someone who fills out a certificate may make a minor error, and we do not intend to bring a case against someone solely because he or she made a minor clerical error. However, falsification of the owner-shipper certificate is a criminal offense that may result in a fine of not more than \$10,000 or imprisonment for not more than 5 years or both because the owner-shipper certificate is a Federal document.

In the proposal, § 88.4(a)(3)(iii) (redesignated as § 88.4(a)(3)(v) in this final rule) required that the owner-shipper certificate provide a description of the equine's physical characteristics, including such information as sex, coloring, distinguishing markings, permanent brands, and electronic means of identification.

Several commenters stated that, at the point of loading, a USDA representative should inspect the equines to verify the description of the equine on each owner-shipper certificate.

Shippers and owners are responsible for the accuracy of the information on the owner-shipper certificate for each equine being transported. We believe that shippers and owners are capable of providing an accurate description of an equine's physical characteristics. If we find that an owner/shipper has provided false information on an owner-shipper certificate, the owner/shipper may be found in violation of the regulations and be assessed civil penalties for each equine as provided in § 88.6. In addition, if an owner/shipper provides false information, the owner/shipper could be subject to criminal charges that may result in a fine of not more than \$10,000 or imprisonment for not more than 5 years or both, under 18 U.S.C. 1001.

#### Owner-Shipper Certificate; When Signed

One commenter stated that fitness to travel should not be determined more than 48 hours prior to loading.

We agree that if an equine's fitness to travel is assessed too far in advance, there is a chance that an equine that becomes ill or injured would not be noted. The fitness to travel should be determined during the period prior to the loading of equines into the conveyance. Ideally, this determination should be made when equines are provided appropriate food, potable water, and rest in accordance with § 88.4(a)(1). In this final rule, we have reworded the provision concerning an equine's "fitness to travel" to clarify that we mean at the time of loading (see § 88.4(a)(3)(vii)).

#### Owner-Shipper Certificate; Identification of Owner, Shipper, Consignee, Vehicle

Under proposed § 88.4(a)(3), the shipper's name and address, and, if the shipper is not the owner of the equines, the owner's name and address, and a description of the conveyance, including the license plate number, must be included on the owner-shipper certificate.

One commenter stated that we should require the owner-shipper certificate to state the ultimate destination (city, State, and name of business) as well as any anticipated intermediate stopping points to allow USDA and law enforcement personnel to intercept a conveyance en route to a slaughtering facility. This commenter also suggested that the expected driving route should

be filed with a copy of the owner-shipper certificate at the point of sale and departure.

We agree that the destination of each equine should be required on the owner-shipper certificate and our certificate includes fields for that information. We have added a requirement to § 88.4(a)(3) that the owner-shipper certificate provide the name, address (street address, city, and State), and telephone number of the receiver (destination). We do not believe that listing intermediate stopping points on the owner-shipper certificate is necessary, however. There are only a few slaughtering establishments for equines. Most drivers follow a set route to the slaughtering facility to which they transport equines and, as a result, USDA representatives or other law enforcement officials will be able to locate the conveyance.

Several commenters stated that it is unnecessary to require a separate owner-shipper certificate for each equine in a shipment or to require a new owner-shipper certificate for each segment of the trip. They stated that, in the case of equines that are unloaded en route, information about the equines' fitness to travel and other required information could be added to the original certificate if the certificate was designed to accommodate more than one trip segment.

We do not believe that there would be circumstances that an owner/shipper certificate would unload equines except in an emergency or as required in § 88.4(b)(3) for equines that have been on a conveyance for 28 hours. Under these circumstances, we would want the owner/shipper to reassess each equine's fitness to travel prior to reloading onto the conveyance.

We require an owner-shipper certificate for each equine on the conveyance because the certificate provides a description of the equine. These descriptions can help us trace lost or stolen equines.

One commenter stated that the owner-shipper certificate should include the telephone number of the consignor (shipper) and consignee's (receiver/destination) businesses.

We agree. There is a field for this information on the certificate, and we have added that requirement to § 88.4(a)(3).

#### Owner-Shipper Certificate; Description of the Equine

As noted earlier, proposed § 88.4(a)(3)(ii) required the owner-shipper certificate to include a description of the equine's physical characteristics, including such

information as sex, coloring, distinguishing markings, permanent brands, and electronic devices that could be used to identify the equines.

One commenter stated that the owner-shipper certificate should include additional identifying information, including the breed or type of equine, color combinations, and the location and relative size of any markings, brands, tattoos, or scars, as well as the approximate age of the equine. The commenter stated that this information could assist individuals who are tracing missing or stolen animals. One commenter stated that a description of any physical preconditions should be included on the owner-shipper certificate. One commenter stated that we should require tattoos, especially lip tattoos, to be identified on the certificate.

The owner-shipper certificate contains fields for the owner/shipper to indicate the breed and color of the equine. If a specific breed or color is not indicated on the certificate, there is a field marked "Other" that should be completed. Also, on the owner-shipper certificate, the field for identifying marks specifies "brands, tattoos, and scars." In this final rule, § 88.4(a)(3) specifies that the owner-shipper certificate should include the breed of the equine and any tattoos that are present. We believe that most people who are familiar with handling equines will also add any facial or leg markings, as appropriate; however, we have added "facial or leg markings" to the field for "Identifying Marks" on the owner-shipper certificate. The certificate also provides space for recording any preconditions. We are not requiring an age to be indicated because an owner/shipper may have to guess the age of the equine. People use the teeth of an equine to determine its age, but, in most cases, there are many variables such as teeth grinding and diet that can affect the accuracy of the assessment.

#### Who Determines Fitness To Travel

One commenter stated that studies have shown that the majority of injuries to equines do not occur during transport or marketing but occur at the point of origin, prior to transport, due to either neglect or abuse. Several commenters provided examples of injuries that equines exhibited upon their arrival at a slaughtering facility that were determined to have occurred at the point of origin. These examples included equines that were emaciated, had severe founder, broken legs, deformities, etc. Several commenters provided examples of injuries, such as illness and broken limbs, that equines

exhibited at sales or auctions and that were caused by owners. The commenters stated that the equines were shipped even though they were unfit to travel. One commenter provided examples of people who have a history of transporting injured equines, transporting equines without water, or transporting equines in conveyances that are unsafe. A number of commenters suggested that APHIS should regulate the care of equines prior to loading.

This rule prohibits the commercial transport to slaughter of equines that are not found fit to travel under § 88.4(a)(3)(vii). This rule also requires that the equines be provided food, water, and rest for the 6 hours immediately prior to transport under § 88.4(a)(1). We believe that these regulations will prevent most animals with point-of-origin injuries from being moved to slaughtering facilities via commercial transportation.

#### Criteria for Fitness To Travel

As noted above, we proposed to require a statement of the equine's fitness to travel on the owner-shipper certificate for each equine. Proposed § 88.4(a)(3)(v) (redesignated as paragraph (a)(3)(vii) in this final rule) stated that equines must be able to bear weight on all four limbs, be able to walk unassisted, have sight in at least one eye, be older than 6 months of age, and not be likely to give birth during the trip.

One commenter suggested that we remove the reference to a "statement of fitness to travel" because that language implies that we are requiring untrained people to make a subjective determination.

We agree that, by itself, that phrase is subjective. However, the criteria for making that determination are objective. The phrase simply states the purpose of the criteria that the owner/shipper must consider prior to loading equines on a conveyance.

Several commenters objected to, or suggested changes to, the criteria. Some stated that the proposed regulations would allow the shipment of blind animals that are unable to defend themselves, board a conveyance, or travel without injury, as well as allow the transport of equines that are extremely ill, diseased, injured, incapacitated, or not physically fit. One commenter stated that equines that exhibit obvious disease, injuries, or similar indications of ill health should not be transported unless they are being removed from a facility for humane destruction due to the disease or injury as determined by a certified

veterinarian. One commenter stated that we should prohibit the transport of any equine with a known physical problem likely to cause collapse and that animals that are in immediate and severe distress and determined unfit to travel by an accredited veterinarian should be immediately and humanely euthanized. One commenter stated that, at minimum, the regulations should require that an equine bear weight evenly on all four limbs as determined by a veterinarian.

In § 88.4, paragraph (a)(3)(vii) prohibits the transport of equines that are blind in both eyes. However, equines that are blind in one eye can be transported safely and humanely when correctly loaded and placed on the conveyance. In addition, paragraph (a)(3)(vii) requires that equines be able to bear weight on all four limbs, be able to walk unassisted, be older than 6 months of age, and not be likely to give birth during the trip. These requirements will, in most cases, prohibit the transport of equines that are extremely ill or diseased, injured, or incapacitated.

Two commenters stated that, to ensure that equines are fit for travel, the owner-shipper certificate should be modified to state, "Horse is able to walk unassisted without physical prodding or marked difficulty." The commenters stated that equines are often forced to walk onto vehicles through the use of whips, hard slaps, kicks, or other devices and that "unassisted" is not defined and could be interpreted to allow the use of whips, hard slaps, etc. One commenter stated that an equine that cannot enter a conveyance under its own power should not be loaded.

In § 88.4, paragraph (a)(3)(vii) states that the equine must be able to bear weight on all four limbs and be able to walk unassisted. Unassisted means that the equine must be capable of climbing a ramp or entering a conveyance with ease and under its own power. In addition, § 88.4(c) states that the equines must be handled in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma.

One commenter stated that the owner-shipper certificate should use language similar to performance-based standards, i.e., require that the equine arrive in a condition that meets the requirements of animal cruelty laws.

We believe that a reference to animal cruelty laws would not specifically address the needs of equines being transported to slaughter. We believe that our requirements are clear.

Many commenters stated that pregnant mares, late-term pregnant

mares, foals of varying ages (up to 1 year), and foals less than 600 pounds should not be transported to slaughtering facilities.

Equines that are likely to give birth during transport can develop serious complications if they foal during transport. In addition, the mare's and the foal's well-being could be in danger. Among other things, § 88.4(a)(3)(vii) states that an equine cannot be transported if it is likely to give birth during the trip. If an owner/shipper thinks it's possible that a mare is close to delivering, the owner/shipper should not put the mare on the conveyance. If an owner/shipper transports a late-term pregnant mare that gives birth during transport, the owner/shipper may be found in violation of the regulations. In addition, the owner/shipper could be found to have falsified the owner-shipper certificate. We believe that, as long as the mare is not likely to give birth during transport, it can be safely transported.

As to the transport of foals to slaughtering facilities, § 88.4(a)(3)(vii) prohibits, among other things, the transport of equines less than 6 months of age to a slaughter facility. We believe that foals older than 6 months of age, including those that weigh less than 600 pounds, can be transported safely and humanely if the foals are loaded in a proper manner.

One commenter stated that mares should not be taken from their foals and shipped to slaughter if their foals are under 4 months of age.

We do not believe that it is necessary to prohibit the shipment of mares that will leave 4-month-old foals on the premises of origin. Foals are weaned from 1 to 9 months of age, depending on the standard practice of the premises of operation. Weaning is extremely traumatic at any age and could be in direct proportion to the time the mare and foal spend together. From this standpoint, separating a mare from its foal at 4 months may be less stressful for the mare and the foal than when the foal is older.

Several commenters expressed concern that shod equines, especially equines with shoes on their hind feet, could injure other equines and said they should not be transported.

We are aware that equines can be injured when kicked by other equines that are wearing shoes. In addition, shoes can be slippery in a conveyance if the proper flooring is not provided. As stated previously, these regulations are performance-based standards. We believe that shod equines may be transported safely if the owner/shipper takes proper precautions and, therefore,

will not prohibit the transport of shod equines. However, the owner/shipper must ensure that equines are not injured during transport. Any injuries that an equine incurs during transport may result in the owner/shipper being found in violation of the regulations and subject to civil penalties as provided in § 88.6.

One commenter stated that the regulations will require owners to keep lame and debilitated equines or pay for euthanasia rather than sell the equines to slaughter to salvage some value.

The regulations pertain to those individuals who meet the definition of *owner/shipper*. An individual or entity is exempt from these regulations if the individual or entity transports 20 or fewer equines to slaughtering facilities or transports equines to slaughtering facilities incidental to his or her principal activity of production agriculture.

#### Owner-Shipper Certificate; Identification of Special Handling Needs

Proposed § 88.4(a)(3)(vi) (redesignated as § 88.4(a)(3)(viii) in this final rule) stated that the owner-shipper certificate should include a description of anything unusual with regard to the physical condition of the equine, such as a wound or blindness in one eye, and any special handling needs.

One commenter stated that special handling needs means taping and wiring horses mouths for the entire journey, which are practices that should be prohibited. Many commenters stated that taping shut the mouths and/or eyes of aggressive horses is inhumane and should be prohibited. One added that taping the nostrils of equines should be banned. One commenter stated that the meaning of special handling is not clear and that we should remove those words from § 88.4(a)(3)(vi). This commenter questioned whether a determination by APHIS that an equine required special handling would override a different opinion expressed on an owner-shipper certificate.

By special handling needs, we meant that an owner/shipper should provide any information that should be taken into account to ensure the safe and humane transport of the equine. For example, an owner/shipper could use this space to indicate that an equine is blind in one eye, which would alert those handling the equine to be cautious when handling the horse. We have slightly reworded the provision concerning special handling needs in this final rule to clarify what we mean. Special handling needs should in no way be interpreted to mean instructions

for taping or wiring the mouths or taping the eyes or nostrils of equines. We do not condone such practices. In fact, § 88.4(c) of the regulations requires the handling of equines in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma to the equines. The educational program that we are developing will explain appropriate techniques for the humane transport of equines to slaughtering facilities.

#### Owner-Shipper Certificate; Date, Time, and Place of Loading

Proposed § 88.4(a)(3)(vii) (redesignated as § 88.4(a)(3)(ix) in this final rule) stated that the shipper or owner must indicate on the certificate the date, time, and place the equines were loaded.

Two commenters stated that the departure time should be noted and one commenter stated that a third party should verify the exact time and location of loading.

We believe that the time each equine was loaded onto the conveyance is more essential than the time of departure because, based on § 88.4 (b)(2), any equine that has been on the conveyance for 28 consecutive hours, whether the conveyance was in motion or not, must be offloaded and provided appropriate food, potable water, and the opportunity to rest for 6 consecutive hours.

We do not believe that a third party should be required to verify the time and location of loading. If an owner/shipper falsifies the owner-shipper certificate, the falsification may be a criminal offense that could result in a fine of not more than \$10,000 or imprisonment for not more than 5 years or both.

#### Owner-Shipper Certificate; Other Comments

One commenter stated that APHIS should require the owner-shipper certificate to be legibly filled out in ink or typed and should prohibit script writing other than for the signature. One commenter stated that the departure time should be written in ink.

We agree that the owner-shipper certificate must be legibly completed. We are amending § 88.4(a)(3) to require the owner/shipper to type or legibly provide in ink the information required on the owner-shipper certificate. If the owner-shipper certificate is not legibly completed, the owner/shipper may be assessed a civil penalty.

One commenter wanted the certificate to state that the equine was loaded under the supervision of the owner/shipper. The commenter also requested that the certificate include a statement

that the horse's condition, gender, and size were taken into account in positioning it in the vehicle.

We do not believe it is necessary to require a statement that the equine was loaded under the supervision of the owner/shipper. The owner/shipper must complete and sign the owner-shipper certificate, so he or she must be present. We do not believe that adding a qualifying statement that the equine's condition, gender, and size were taken into account when loading is necessary. However, our educational program will include instruction on the proper loading and offloading of equines, as well as how to position animals so that smaller or thin equines or ponies are not harmed by larger equines.

Another commenter also stated that the owner-shipper certificate should include the name and address of the shipper and the owner if the owner is not the shipper.

We do not believe that the owner has to be identified on the certificate if he or she is not the shipper. In most cases where the owner is not the shipper, the shipper will have purchased the equines from an auction/market. The records maintained at most auction/markets include the identification and address of the owner of the equines should it become necessary to trace the owner.

One commenter stated that funds should be set aside for a pamphlet with clear instructions on the proper handling of equines and completion of the owner-shipper certificate.

The educational program we are developing in conjunction with this rule will provide guidelines for the humane transport of equines to slaughtering facilities, including instructions for completion of an owner-shipper certificate.

#### Segregation of Stallions and Aggressive Equines

Proposed § 88.4(a)(4)(ii) required that each stallion and any aggressive equines be segregated on the conveyance to prevent them from having contact with any other equine on the conveyance.

Many commenters expressed concern that our requirement for the segregation of stallions would encourage point-of-sale castration. They recommended that our rule be amended in some way to discourage point-of-sale castration. One commenter stated that the regulations should not allow a stallion to be gelded within 2 weeks preceding transport unless it is segregated and accompanied by a signed and dated veterinary certificate.

We do not believe that the regulations need to address point-of-sale castration. A recovery period of 21 days or more is

necessary for the site of castration to heal. If an equine arrives at slaughter with a fresh and open wound, the equine's value will decline, and the owner/shipper will lose money. The healthier an equine is upon arrival at the slaughtering facility, the more that equine is worth. In addition, stallions retain their aggressive behavior for a period of at least 30 days after castration. Therefore, an owner/shipper could not circumvent the requirement for segregating a stallion by performing a point-of-sale castration because the equine would still be aggressive, and aggressive equines must be segregated from other equines in the conveyance.

Many commenters stated that equines should be segregated by size and/or sex, several commenters added age, and one commenter added height and weight. One commenter stated that all equines 14.2 hands or less should be shipped on separate conveyances from larger equines. One commenter stated that thin, weak, and old horses should be separated.

As stated previously, we designed performance-based standards to ensure that equines have sufficient space and are protected from injury during transport. We do not believe it is necessary to spell out in the regulations exactly how this must be accomplished. However, the educational program we are developing will show appropriate ways to transport equines and will address loading by size. It is worth noting that, if an equine is extremely thin, weak, or old, the equine may not be fit to travel as required by § 88.4(a)(3)(vii).

Some commenters stated that we should not require segregation of aggressive equines. One commenter stated that we may have gone beyond our authority under the statute to require the segregation of aggressive equines, along with stallions. Several comments stated that it was unclear what we meant by "aggressive" or how aggressiveness would be determined. One commenter stated that it was not clear who would be responsible for determining whether an equine is aggressive. Two commenters expressed concern that an equine may not be aggressive during observation prior to transport but may become aggressive during transport. One commenter suggested that we require segregation of any equine "that has been observed to display aggressiveness toward other horses," to give the shipper some direction and protection if an equine that did not show aggressive behavior becomes aggressive when transport begins.

The statute directs the Secretary to review, among other things, the segregation of stallions from other equines and such other issues as the Secretary considers appropriate. The main purpose for separating stallions (uncastrated male equines that are 1 year of age or older) is that stallions are known to be aggressive animals that are easily provoked into attacking other equines. In line with protecting equines from aggressive behavior by stallions, we believe that any aggressive equine should be separated from the other equines as set forth in § 88.3(a)(2). In fact, one of the USDA-commissioned studies observed that the segregation of stallions did not solve the entire aggression problem. The study determined that aggressive geldings and mares had to be separated in the same manner as stallions.

The use of "aggressive" in the regulations is in accordance with the definition of the term "aggressive" found in various dictionaries. If an equine attacks another equine for no apparent reason or kicks or bites another equine without provocation, for example, we believe that equine should be considered aggressive. The educational program we are developing will provide guidance concerning aggressive equines. However, USDA representatives will be aware that some equines that have not exhibited aggressive behavior on previous occasions may do so under certain conditions, and they will take into consideration that the owner/shipper may not have had prior knowledge of the equines' aggressive tendencies.

Some commenters stated that mares with foals should be segregated from other equines during transport. We believe that mares with foals may be transported safely with other equines if the owner/shipper takes proper precautions and, therefore, we will not require the segregation of mares with foal. The educational program that we are developing will show owners, shippers, and other stakeholders in the equine slaughtering industry appropriate loading procedures and placement of equines in the conveyance.

Several commenters stated that equines with shoes on their hind feet should be segregated.

As stated previously, these regulations are performance-based standards. We believe that shod equines may be transported safely with other equines if the owner/shipper takes proper precautions and, therefore, we will not require the segregation of shod equines. However, the owner/shipper must ensure that equines are not injured during transport. Any injuries that an

equine incurs during transport may result in the owner/shipper being found in violation of the regulations and subject to civil penalties as provided in § 88.6.

#### Floor Space

Proposed § 88.4(a)(4)(i) stated that equines on the conveyance must be loaded so that each equine has enough floor space to ensure that no equine is crowded in a way likely to cause injury or discomfort.

Several commenters stated that this requirement is vague and that specifications for floor space should be included in the regulations. One commenter stated that the number of equines carried should be equal to the length of the compartment in feet divided by 4. One commenter suggested a standard of 1.75m<sup>2</sup>/equine or approximately 18 square feet per equine. Some commenters provided further suggestions based on transit time, and/or the number, ages, and size of the equines. One commenter stated that a numerical density specification should be provided and should be based on scientific studies and practical experience. One commenter stated that we should determine an average numerical figure that is safe and acceptable for each vehicle type based on research and require each vehicle to have a permanent tag affixed that specifies the range or the number of equines/ponies that are acceptable to be transported in the vehicle at one time. One commenter stated that we should determine the appropriate density of equines for each vehicle-type, based on studies conducted by Texas A&M and Colorado State University. Several commenters stated that horse industry standard for trailers is 8 to 15 horses and not the 40 to 45 that would be permitted for slaughter transport. One commenter suggested a system in which equines may be transported at higher densities during shorter trips, but at lower densities for longer trips. This commenter stated that his studies and experience indicate that slaughter-type horses that are transported for 28 hours should be transported at a much lower density than the industry average (13 to 14 square feet per horse).

We were directed by Congress to draft performance-based regulations wherever possible. Owner/shippers will have to load equines in a manner that will avoid injury to the equines. Overcrowding in a conveyance can cause animals to bruise and sustain other injuries. This could result in the owner/shipper being found in violation of the regulations and being assessed a civil penalty. Owner/shippers also have some market-based

incentive to prevent injury to equines during transport because bruised carcasses command lower market values. Our educational program will help owner/shippers comply with the performance-based standards. The educational program will address many issues, including loading density and floor space. The educational program will be directed towards owners, shippers, and other stakeholders in the equine slaughtering industry.

#### Observation of Equines During Transport

Proposed § 88.4(b)(2) stated that, during transit to the slaughtering facility, the shipper must observe the equines as frequently as circumstances allow, but not less than once every 6 hours, to check the physical condition of the equines and ensure that the regulations are being followed. Proposed § 88.4(b)(2) also stated that veterinary assistance must be provided as soon as possible for any equines in obvious physical distress.

Many commenters stated that observation of the equines every 6 hours is insufficient. Some of these commenters provided observation ranges of every 2, 3, and 4 hours. One commenter stated that equines should be observed the first hour and every 6 hours after. One commenter stated that equines should be observed each time the conveyance stops for a break or refueling, but not less than once every 6 hours, and that the equines must be allowed to rest for no less than 30 minutes while the vehicle remains stopped. One commenter stated that the phrase "not less than once every 6 hours" is misleading and that we should replace it with the phrase "at least once every 6 hours."

We believe that the requirement conveys the meaning that the equines are to be observed once every 6 hours or more often. We provided a maximum time of every 6 hours because we believe that this is the maximum amount of time that equines should go without observation to ensure that none have fallen or have become otherwise physically distressed en route. However, § 88.4(b)(2) requires shippers or owners to observe the equines as frequently as circumstances allow during transport, which would include during breaks from driving and refueling.

One commenter stated that we should clarify whether adequate observation includes stopping the truck and climbing on the trailer in any weather and lighting conditions to examine the equines.

Observation of the equines by the owner/shipper means that the owner/

shipper must stop the conveyance and observe each equine at least once every 6 hours. The owner/shipper has the responsibility of locating an area where observation of the equines can be performed safely and completely.

One commenter stated that § 88.4(b)(2) should require veterinary assistance as soon as "reasonably" possible.

We believe that § 88.4(b)(2), as worded, conveys an appropriate sense of urgency and does not require an owner/shipper to do anything unreasonable. Veterinary assistance must be provided as soon as possible to ensure the safe and humane transport of equines in the conveyance. Also, in this final rule, § 88.4(b)(2) requires owner/shippers to obtain the services of an *equine veterinarian* for veterinary assistance. We believe that an equine veterinarian will be better equipped than most other veterinarians to handle equines. The educational program we are developing in conjunction with this regulation will provide participants with a list of equine veterinarians within the United States and their telephone numbers.

One commenter stated that the regulations should specify how equines that die in transit should be handled.

Our regulations are intended to ensure that equines transported to slaughtering facilities are fit to travel and, therefore, not likely to die in transit. However, in this final rule, § 88.4(b)(2) states that if an equine dies in transit, the driver of the conveyance must contact the nearest APHIS office as soon as possible and allow an APHIS veterinarian to examine the equine, and, if an APHIS veterinarian is not available, the owner/shipper must contact an equine veterinarian.

#### Offloading of Equines After 28 Hours

Proposed § 88.4(b)(3) stated that during transit to the slaughtering facility, the shipper must offload from the conveyance any equine that has been on the conveyance for 28 consecutive hours and provide the equine appropriate food, potable water, and the opportunity to rest for at least 6 consecutive hours. In addition, proposed § 88.4(b)(3) stated that, if such offloading is required en route to the slaughtering facility, the shipper must prepare another owner-shipper certificate and record the date, time, and location where the offloading occurred. Both owner-shipper certificates would then need to accompany the equine to the slaughtering facility. In this final rule, the requirement for completing a new certificate if equines are unloaded is at § 88.4(a)(4).

Many commenters opposed allowing 28 hours without water, and many opposed allowing the transport of horses for 28 hours without food, water, or rest. Most of these commenters stated that equines must be provided water, food, and/or rest, and unloaded at times ranging from every 4 to 24 hours or reasonable intervals, and some added that the time for water, food, and rest should be whether the vehicle is in transit or stationary. Many commenters stated that equines should not be without water, and some added food, for time periods ranging 3 to 12 hours, and some added that water could be provided during the observation period. Several commenters stated that studies have shown that equines suffer serious and traumatic health problems from travel for periods under 28 hours, and several commenters referenced 24 hours. One commenter stated that the amount of time that equines are deprived of water, food, and rest should be reviewed by a qualified veterinarian to establish that fewer hours should be specified. Several commenters stated that the standard of 28 hours was determined primarily using young, healthy horses, and that equines going to slaughter are not young or healthy. Several commenters stated that the USDA-commissioned studies did not take into account such variables as the age and condition of the equines, the density of equines on the truck, and temperature or other conditions. Some commenters, apparently thinking the 6-hour period of food, water, and rest prior to loading could occur at any time prior to loading, expressed concern that equines could be without water for more than 28 hours if transport took 28 hours. Several commenters stated that we should recommend a rest period of 8 hours that is not included in the transit length.

In accordance with § 88.4(a)(1), an owner/shipper must provide equines appropriate food, potable water, and an opportunity to rest for a period of not less than 6 consecutive hours immediately prior to the equines being loaded on the conveyance. Therefore, 28 hours would be the longest an equine could go without being offered food and water during transport to a slaughtering facility in the United States.

We based the requirements in § 88.4(b)(3) on the conclusions of the USDA-commissioned research, which was performed by veterinarians. In addition, various times that horses could be without water were reviewed by a panel of qualified veterinarians who established that the research was valid. At least half of the USDA-commissioned research involved



slaughter horses for comparison. In fact, one of the studies involved 306 horses that ranged from 1 to 30 years of age, and 33 percent of the horses were 16 years of age or older.

Further, some of the research simulated transport to slaughter under varying situations. For instance, straight-deck trucks were divided into compartments with four levels of density, and the equines were transported during the hottest part of the day during the summer. The research also showed that frequent loading and unloading caused more distress to equines than allowing the equines to remain on the conveyance.

One commenter stated that the USDA-commissioned research performed in 1998 by Drs. Carolyn Stull, Ted Friend, and Temple Grandin was developed to deny that water, food, and rest are basic needs. Several commenters stated that the research was biased and flawed and that some of the researchers contradicted their findings in previously published studies and findings. One commenter cited a study by Dr. Stull that recommended water every 6 to 8 hours, if possible. Many commenters stated that the USDA-commissioned study performed by Dr. Stull concluded that trips longer than 27 hours showed effects in equines that were considered to be reliable stress indices and that injuries increased with travel times over 27 hours. These commenters added that Dr. Stull performed a study that concluded that transportation in hot, humid conditions should attempt to minimize thermal stress by frequently offering (every 4 to 6 hours) water to horses and limiting the duration of the trip. These commenters and several others stated that Dr. Friend performed a study that concluded that tame horses in good condition could be transported for up to 24 hours before dehydration and fatigue became severe; however, they stated that the study was terminated after 24 hours because 3 of the 30 horses were deemed unable to continue and concluded that if horses must be transported more than 24 hours, the truck must be equipped with a watering device. One commenter stated that the study performed by Dr. Stull was biased because she used horses in the study that were identified by cooperating brokers and transport drivers who had an interest in the outcome of the study. Another commenter also stated that people associated with the auction facility and slaughtering facility used for Dr. Grandin's study were made aware of the study ahead of time.

We commissioned the performance of research to identify appropriate

timeframes in which food, water, and rest should be provided to ensure that the last trip for equines being transported to slaughter was a tolerable one. The research was performed to address the transport of equines to slaughtering facilities. Our results were based on the most recent research, which may have shown different results than previous research by the same researchers. We based the requirements for food, water, and rest on the conclusions of the research. The study performed by Dr. Stull that was cited by the commenters regarding the transportation of equines in hot and humid conditions was performed to determine the optimal conditions for the transport of performance horses.

It is true that Dr. Stull's USDA-commissioned research study concluded that trips longer than 27 hours could cause distress to equines; however, as stated in the proposal, we believe that 28 hours will allow for realistic travel times from most points of the United States to equine slaughtering facilities without the equines undergoing serious physiological distress. In most cases, we believe equines will be transported from the point of loading to the slaughtering facility within 24 hours.

It is true that the equines used in Dr. Stull's study were identified by cooperating brokers and transport drivers. Dr. Stull's study required a large number of equines that were destined for transport to slaughtering facilities. We believe that the identification of equines by brokers and drivers did not have a significant impact on the results of the study.

The nature of the research performed by Dr. Grandin required her to have access to the equines for examination. The premises were privately-owned and, as a consequence, there had to be a certain level of cooperation with the owners or management of the premises. However, we do not believe that the level of cooperation affected the results of the study.

Several commenters suggested that providing water to equines en route, via an onboard watering system, might be preferable to unloading equines after 28 hours because unloading and loading equines from a conveyance causes stress. One commenter suggested that loading equines at a reduced density and watering enroute should be an alternative to unloading. One commenter stated that each conveyance should contain at least 10 gallons of water for every 20 equines for emergencies, in addition to the equine's regular water supply.

We believe that unloading after 28 hours to provide food, water, and rest is appropriate based on the findings of the USDA-commissioned research.

Several commenters stated that APHIS is not following the findings of the USDA-commissioned research because APHIS indicated that equines do not experience serious physiological distress for 30 hours without water if they have had access to water during the 6-hour period prior to deprivation.

It is true that we stated in the proposed rule that the USDA-commissioned studies showed that equines that had access to water in the 6-hour period before deprivation occurred did not experience serious physiological distress for up to 30 hours without further access to water. However, we believe that a 28-hour maximum allowable timeframe for deprivation of food, water, and rest during transport to slaughter will allow for realistic travel times from most points of the United States to the equine slaughtering facilities and ensure that the equines will not undergo serious physiological distress.

One commenter stated that adequate water, ventilation, and feed must be provided because equines are often sold by the pound, and loss of weight during transport reduces revenue for the seller.

In accordance with § 88.4(b)(3), the owner/shipper must offload from the conveyance any equine that has been on the conveyance for 28 consecutive hours and provide the equine appropriate food, potable water, and the opportunity to rest for at least 6 consecutive hours. However, the owner/shipper may provide appropriate food, potable water, and rest to equines at any point during transit that it is safe to do so.

One commenter stated that we should recommend the offloading of equines every 10 hours when drivers are required to stop and rest because drivers are not allowed to drive for 28 hours straight. One commenter stated that equines should be provided water, food, and rest at each rest stop.

It is not clear whether the commenter was referring to each rest area long the interstate or each time the driver stops for a rest. In some areas, rest stops can be with 30 to 60 minutes of each other, which could be an unnecessary burden on the owner/shipper. Further, we do not believe that it is necessary to require the owner/shipper to provide the equines with food, potable water, and rest at every rest stop for the driver. Drivers must stop periodically for personal and safety reasons. The timing of these stops has nothing to do with the well-being of the equines.



One commenter stated that equines should be offloaded at weigh and check stations when crossing a State or Federal boundary so that the equines can be inspected for injuries because visibility is better compared to observing the equines while they are in the conveyance.

Offloading equines at weigh and check stations could be a safety hazard for the equines due to the presence of other commercial vehicles that are not involved with the transport of equines. In addition, weigh and check stations would have to be equipped with facilities that could provide food, water, and containment of equines.

One commenter stated that the regulations are not clear whether the 28-hour rule includes the amount of time an APHIS official may spend examining the equines. One commenter stated that § 88.4(b)(3) should exempt time required for inspection by USDA, State or Federal law enforcement officials, or any other delay in the direct transport of the equines due to governmental or law enforcement interference with movement of the conveyance.

Section 88.4, paragraph (b)(3), requires any equine that has been on a conveyance for 28 consecutive hours to be offloaded and provided appropriate food, potable water, and the opportunity to rest for at least 6 consecutive hours. We do not believe that amending § 88.4(b)(3) to address delays due to law enforcement officials is appropriate. Equines that have been on a conveyance for 28 hours need to be offloaded and provided food, rest, and, most importantly, potable water, regardless of the reason that they were on the conveyance for 28 hours.

#### Handling of Equines

Proposed § 88.4(c) required the handling of all equines in commercial transportation to a slaughtering facility to be done as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma. Proposed § 88.4(c) also prohibited use of electric prods on equines in commercial transportation to a slaughtering facility for any purpose, including loading or offloading on the conveyance, except when human safety is threatened.

Many commenters stated that any use of electric prods should be banned or prohibited, and some of these commenters stated that other equipment is readily available if human safety is threatened. One commenter stated that we should provide clarification as to who determines when human safety is threatened. One commenter stated that use of an electric prod can elicit

unpredictable movement in horses. One commenter stated that the loading of equines should be monitored to ensure that prods are not used.

One of the purposes of the regulations is to ensure that equines are transported without unnecessary discomfort, stress, physical harm, or trauma. Therefore, the regulations prohibit the use of electric prods, except in cases when human safety is threatened. We limited the use of electric prods to situations in which human safety is threatened to decrease the potential that prods could be used in abusive situations. We agree that there may be other equipment that can be used; however, they may not elicit a response quickly enough in a life or death situation. The owner/shipper is the entity who must make the determination of whether human safety is threatened. A USDA representative cannot be present in all areas that equines may be loaded for transport to slaughtering facilities; however, if an owner/shipper uses an electric prod when human safety is not threatened and evidence of that abuse is found, that person may be found in violation of the regulations.

Many commenters stated that metal pipes and sharp or pointed objects capable of piercing the skin should be banned. Many commenters stated that no implement, device, contrivance, mechanism, apparatus, appliance, contraption, instrument, tool, or utensil should be allowed to be used, including for the control or restraint of the equines, that was not expressly and specifically designed for use on equines and generally recognized as such. In addition, several commenters stated that only restraints considered humane should be used. Two commenters stated that, in addition to electric prods, whips or any other object that could cause injury or pain should be prohibited except when human safety is directly threatened by an equine.

We cannot provide a list of all implements that have been or could be used on equines because of the number of possibilities; however, the use of any implement that does not provide equines with the care described in § 88.4(c) should not be used and could be a violation of the regulations.

#### Examination of Equines at Any Point

Proposed § 88.4(d) stated that at any point during the commercial transportation of equines to a slaughtering facility, a USDA representative may examine the equines, inspect the conveyance, or review the owner-shipper certificates required by § 88.4(a)(3).

Several commenters stated that § 88.4(d) should state "must" rather than "may."

We use "may" in § 88.4(d) because a USDA representative may not be able to examine all equines, inspect all conveyances, or review all of the owner-shipper certificates. However, USDA representatives are authorized by § 88.4(d) to inspect the equines and conveyances as the need arises, and USDA representatives will collect all of the owner-shipper certificates at slaughtering facilities.

One commenter stated that § 88.4(d) should require a USDA representative, his or her designee, a weigh station or agricultural check point employee, or other law enforcement personnel to enforce the requirements of the regulations during transit as well as upon arrival at the slaughter facility. One commenter stated that we should clarify whether law enforcement officials can perform duties such as inspect vehicles, conduct investigations, examine the animals and seize and impound the animals, if necessary. Some commenters stated that there should be a provision that allows law enforcement officials, State or Federal employees, or inspectors to ensure an owner or shipper's compliance with the regulations.

In a State that has its own regulations regarding the transport of equines to slaughter, that State's police or law enforcement personnel can enforce the State's regulations. The statute does not provide for Federal enforcement actions by State and local law enforcement personnel in State and local courts.

One commenter stated that equines should be shipped directly and expeditiously from the point of loading to the slaughtering facility without stopping between the points for USDA representatives to conduct examinations, which the commenter stated could be potentially harmful and cause stress to the animals. This commenter stated that the manner at which the equines arrive at the slaughtering facility should be sufficient.

We believe that we need to be able to check conveyances, equines, and paperwork if we have any concerns that equines may be being transported in violation of the regulations. Every transport will not be subject to such an examination; however, if an examination has to be conducted, the USDA representative will consider the welfare of the equines in the conveyance and will not take more time than necessary to perform his or her duties.

#### Direction to the Owner/Shipper To Take Action

Proposed § 88.4(e) stated that, at any time during the commercial transportation of equines to a slaughtering facility, a USDA representative may direct the shipper to take appropriate actions to alleviate the suffering of any equine. Proposed § 88.4(e) also stated that, if deemed necessary by the USDA representative, such actions could include securing the services of a veterinary professional to treat an equine, including performing euthanasia if necessary.

Several commenters stated that § 88.4(e) should state that a USDA representative “must,” “shall,” or “should” direct the shipper to take appropriate actions, and that such actions “must” include securing the services of a veterinary professional.

We use “may” in § 88.4(e) because this provision authorizes a USDA representative to direct the owner/shipper to take appropriate actions to alleviate the suffering of any equine based on the representative’s assessment of the equine’s condition. “Must” would imply that such direction will be necessary in all cases. Similarly, we say that such action “could” include securing the services of a veterinary professional because those services will not always be necessary.

One commenter stated that § 88.4(e) should state that the services of a veterinary professional will be secured if “reasonably” available.

We believe that if a USDA representative directs the owner/shipper, as provided in § 88.4(e), to secure the services of a veterinary professional to treat an equine, the veterinary professional should be secured as soon as possible.

One commenter stated that § 88.4(e) should refer to a USDA representative “or his or her designee.” In addition, this commenter stated that the veterinary professional should be an equine veterinary professional.

We do not believe that § 88.4(e) needs to indicate “his or her designee” because we define *USDA representative* as any USDA employee authorized by the Deputy Administrator, Veterinary Services, APHIS, to enforce the regulations. However, we agree with the commenter that § 88.4(e) should specify that the veterinary professional must be an equine veterinarian. We have amended § 88.4(e) to require the veterinary professional to be an equine veterinarian.

#### Retention of the Owner-Shipper Certificate for 1 Year

Proposed § 88.4(f) stated that the individual or other entity who signs the owner-shipper certificate must maintain a copy of the owner-shipper certificate for 1 year following the date of signature.

Several commenters stated that the owner or shipper should retain a copy of the owner-shipper certificate for a minimum of 2 years, and some of these commenters stated that we should retain a copy so that information is readily accessible to those who are attempting to trace lost or stolen equines. One commenter stated that there should be provisions for law enforcement and State agencies to have access to the owner-shipper certificates for identifying and locating stolen or missing horses.

We believe that requiring a 1-year retention of the owner-shipper certificates is adequate. If someone is attempting to trace a lost or stolen equine, the investigation will more than likely take place within a few months of the disappearance of the equine. However, to improve the capability of tracing lost or stolen equines, APHIS plans to develop a database of the information provided on the owner-shipper certificates. If necessary, information from the database could be supplied to law enforcement or State agencies, when requested.

#### Section 88.5 Requirements at a Slaughtering Facility

##### Access to Food and Water After Unloading

Proposed § 88.5(a)(1) stated that, upon arrival at a slaughtering facility, the shipper must ensure that each equine has access to appropriate food and potable water after being offloaded.

Two commenters stated that the shipper should not be responsible for providing food and water to equines at the slaughtering facility. Both commenters stated that the slaughtering facility should be the responsible party. One of these commenters stated that the shipper would not know the conditions at destination and, in most cases, would not be the owner of the equines.

We believe that the requirement in § 88.5(a)(1) will ensure that the owner/shipper notifies the proper officials of his or her arrival at the slaughtering facility, and that the equines are offloaded into an area where the slaughtering facility can provide food and potable water.

One commenter stated that § 88.5(a)(1) should state that the management of the slaughtering facility

must provide consent to the shipper to provide each equine access to appropriate potable water after being offloaded, but not food.

We believe that equines should be allowed access to both food and potable water to maintain their well-being after being transported without access to food and water, sometimes over great distances. The requirement in § 88.5(a)(1) is to ensure that the owner/shipper notifies the proper officials of his or her arrival at the slaughtering facility. We believe that most shippers and owners will appropriately communicate with the proper personnel at the slaughtering facility without the inclusion of the word “consent” in the regulation.

One commenter stated that equines should be provided water every 4–6 hours where they are housed before slaughter.

The statute only allows us to regulate the transport of equines to a slaughtering facility. Once the equines arrive at the slaughtering facility and are provided food, potable water after being offloaded in accordance with § 88.5(a)(1), the equines are subject to the facility’s feed and water schedule.

One commenter stated that § 88.5(a) should require the arrival of a conveyance during regular business hours of the slaughtering facility and to require the shipper to “immediately” abide by the requirements set forth in § 88.5(a).

We do not believe that requiring shipments of equines to arrive at slaughtering facilities during normal business hours would always be in the best interests of the equines. It could, for instance, result in the equines being kept on the conveyance for a longer time than might otherwise be necessary.

We do not believe that adding “immediately” is necessary because, in most cases, the owner/shipper will offload the equines and discharge his or her responsibilities as soon as possible after arrival.

##### Access to the Equines

Proposed § 88.5(a)(3) stated that, upon arrival at a slaughtering facility, the shipper must allow a USDA representative access to the equines for the purpose of examination.

Several commenters pointed out that USDA representatives are not available at slaughtering facilities on all days of the week or at all hours. One commenter stated that § 88.5(a)(3) should state that management of the slaughtering facility must provide consent to a USDA representative to have access to the equines for the purpose of examination. The commenter also stated that

§ 88.5(a)(3) should state that the absence or delay in arrival of the USDA representative will not prohibit the slaughtering facility from proceeding with the slaughter of the equines during its normal course of business. One commenter stated that if a USDA representative is not available prior to slaughter, an examination of carcasses for bruising or abrasions during inspection could be used to assess injuries incurred during transport to the slaughtering facility. One commenter asked who a USDA representative is. One commenter asked if full-time veterinarians would be assigned to the slaughtering facilities to enforce the regulations.

A USDA representative will be available during normal business hours of the slaughtering facility to examine the equines. This requirement, therefore, should not cause any significant delays in slaughter operations. Also, most equines are delivered during the hours of operation of the slaughtering facility. Regardless of when the equines arrive, we believe a USDA representative must be given access to the equines prior to slaughter for the purpose of examination.

A USDA representative may be any employee of the USDA who is authorized by the Deputy Administrator, Veterinary Services, APHIS, to enforce the regulations. The employee could be an APHIS veterinarian, a Food Safety and Inspection Service (FSIS) employee, or any other USDA employee so authorized.

One commenter stated that § 88.5(a)(3) should require equines to be inspected when they reach their destination.

In accordance with § 88.5(a)(3), a USDA representative must be given access to the equines for the purpose of examination; however, the USDA representative will use his or her discretion in determining which equines to inspect and the extent of any examination.

#### Access to the Animal Cargo Area

Proposed § 88.5(a)(4) stated that, upon arrival at a slaughtering facility, the shipper must allow a USDA representative access to the animal cargo area of the conveyance for the purpose of inspection.

One commenter stated that § 88.5(a)(4) should require inspection of the animal cargo area.

Inspection of the animal cargo area may not be necessary in all cases. This requirement in § 88.5(a)(4) alerts owner/shippers that the animal cargo area of

their conveyances may be inspected by a USDA representative.

#### Owner/Shipper Remaining on Premises

Proposed § 88.5(b) stated that the shipper must not leave the premises of a slaughtering facility until the equines have been examined by a USDA representative.

One commenter stated that equine slaughtering facilities should not have their slaughter schedules dictated by APHIS. This commenter stated that § 88.5(b) should allow the shipper to leave the premises of the slaughtering facility if a USDA representative does not appear to examine the equines within 3 hours after they are offloaded from the conveyance. One commenter stated that drivers should not have to wait for the USDA representative and should be allowed to leave the premises if an employee of the slaughtering facility is there to allow the USDA representative access to the equines.

A USDA representative will be available for the examination of the equines and conveyances during normal business hours, and we believe it is important for the owner/shipper to be present during these activities.

However, we agree that a driver who arrives at a slaughtering facility outside of normal business hours should be able to leave the premises to eat or rest. Therefore, § 88.5(b) of this final rule states that the owner/shipper must not leave the premises of a slaughtering facility until the equines have been examined by a USDA representative if the owner/shipper arrives during normal business hours; however, if the owner/shipper arrives outside of normal business hours, the owner/shipper may leave the premises but must return to the premises of the slaughtering facility to meet the USDA representative upon his or her arrival.

One commenter stated that § 88.5(a) should provide that all equines that are nonambulatory upon arrival should be euthanized on the vehicle after all other equines have been unloaded and that euthanasia should be performed by a licensed and accredited veterinarian in an approved manner. The commenter stated further that if arrival of a veterinarian would cause time delays and suffering to the equine, the regulations should provide that euthanasia could be performed by a trained individual using approved methods. In addition, the commenter maintained that the regulations should provide that seriously injured or downed animals may not be dragged, hoisted, thrown, or left alone without medical intervention.

Any equine that is seriously injured or nonambulatory upon arrival must be provided veterinary assistance and may not be mistreated or left unattended. A USDA representative will be available to examine the equines upon their arrival at the slaughtering facility during normal business hours. In most cases, the USDA representative will be a veterinarian; therefore, the USDA representative will be able to perform euthanasia, if necessary. If an equine is nonambulatory, is seriously injured, or is otherwise in obvious physical distress upon arrival and a USDA representative is not available (i.e., because of arrival of the equines at the slaughtering facility outside of normal business hours), § 88.4(b)(2) requires the owner/shipper to obtain veterinary assistance as soon as possible. We agree that equines that become nonambulatory should be euthanized. In this final rule, § 88.4(b)(2) provides that equines that become nonambulatory en route to a slaughtering facility must be euthanized by an equine veterinarian. Since we are requiring that euthanasia be performed by an equine veterinarian, we do not believe that it is necessary to add that euthanasia be performed in an approved manner.

#### Transport of Equines Outside the United States

Proposed § 88.5(c) stated that any shipper transporting equines to slaughtering facilities outside the United States must present the owner-shipper certificate to USDA representatives at the border.

One commenter stated that § 88.5(c) does not state that a USDA inspector will inspect the equines to determine whether they are fit to travel or whether the description on the owner-shipper certificate matches the equines in the conveyance.

A USDA representative at the border will inspect conveyances carrying equines destined for slaughter outside the United States when he or she deems it necessary.

#### Section 88.6 Violations and Penalties

Proposed § 88.6(a) stated that the Secretary is authorized to assess civil penalties of up to \$5,000 per violation of any of the regulations in part 88, and proposed § 88.6(b) stated that each equine transported in violation of the regulations would be considered a separate violation.

Many commenters stated that penalties for violation of the regulations should be criminal instead of civil; otherwise, law enforcement personnel will not be able to enforce them. Some commenters stated that laws must be

enforced at auctions and feedlots, prior to loading. One commenter stated that § 88.6 should provide that a person who knowingly violates the regulations shall, upon conviction, be subject to imprisonment for not more than 1 year or a fine of \$5,000, or both, and on conviction of a second or subsequent offense, the person shall be subject to imprisonment for not more than 3 years or to a fine of \$8,000, or both.

The statute does not allow the Secretary to establish criminal penalties for violations of the regulations. The statute allows the Secretary to establish and enforce appropriate and effective civil penalties only. As previously explained, the regulations pertain to equines transported to slaughter from any point of loading, including auctions/markets and feedlots.

One commenter stated that shippers should be subject to penalties as prescribed by county, State, or Federal statutes or regulations.

The regulations do not prohibit counties or States from applying penalties in accordance with their regulations if an owner/shipper violates their regulations even if the amount of the penalty is more than that provided in § 88.6(a).

One commenter stated that civil penalties of up to \$10,000 rather than \$5,000 should be assessed. One commenter stated that if a conveyance carrying a load of equines is found to have a sharp protrusion, a fine of \$5,000 per equine in the conveyance seems excessive, especially if an equine that is being transported caused the protrusion by kicking the walls of the conveyance. This commenter stated that a sliding scale should be used that increases the amount of the fine proportional to the seriousness of the violation. This commenter further stated that a sliding scale would help the shipper know exactly what is expected of him/her, ensure that USDA representatives levy the same fines for the same offense, and provide credibility to the USDA during any appeals process. One commenter stated that § 88.6 should provide that civil penalties will be progressive, with the first offense receiving a written warning; the second offense a fine up to \$500 per violation; the third offense a fine up to \$2,500 per violation; and the fourth or subsequent offense a fine up to the jurisdictional limit. One commenter suggested that we provide for a minimum fine of \$500. One commenter suggested that each day a violation occurs should be considered a separate violation.

In § 88.6(a), we state that the Secretary is authorized to assess civil penalties of up to \$5,000 per violation. We proposed

assessing civil penalties of up to \$5,000 per violation based on the legislative history of the statute and our experience as a Federal regulatory agency. We believe that a civil penalty of up to \$5,000 per violation is appropriate and will be effective in deterring noncompliance with the regulations. Among other things, this belief is based on our experience in enforcing the Animal Welfare Act as amended (7 U.S.C. 2131 *et seq.*) and the Horse Protection Act, as amended (15 U.S.C. 1821–1831), two other statutes whose purpose is ensuring the humane treatment of animals. The statement concerning each equine transported in violation of the regulations being a separate violation also derives from the statute's legislative history and our experience as a regulatory agency.

We do not believe that we need to include a sliding scale or a minimum fine. The amount of the civil penalty will be determined based on the severity of the violation and the history of the owner/shipper's compliance with the regulations. Procedures will be in place to ensure consistent application of civil penalties. We also do not believe that we need to consider each day that a violation occurs as a separate violation. We believe that considering each equine transported in violation of the regulations as a separate violation is sufficient.

One commenter stated that § 88.6 should provide that a person who assaults, resists, opposes, impedes, intimidates, or interferes with any USDA representative or his/her agent in performing an official duty pursuant to the regulations should be assessed a fine of no less than \$1,000 and up to \$5,000.

There is a statute that provides protection to all Federal employees (18 U.S.C. 111). The statute prohibits the assault on any Federal employee.

One commenter stated that APHIS should provide that, for any person who fails to pay a civil penalty, the Secretary shall request the Attorney General to institute a civil action in a district court of the United States or other court of the United States for any district in which the person is found, resides, or transacts business, to collect the penalty, and to provide that the court shall have jurisdiction to hear and decide the actions.

If an owner/shipper is unable to pay a civil penalty, we can pursue payment through a payment plan or adjustment of the amount. However, if the case is not settled, a formal complaint may be filed. If a complaint is issued, the case may go to a hearing. If a hearing is held, the matter will be heard and decided by an administrative law judge.

One commenter stated that, to a certain extent, injuries during transport are unavoidable and assessing civil penalties to commercial transporters may not be appropriate. This commenter stated that civil penalties should be designed to ensure compliance with the regulations and not punish an industry for occurrences that are beyond its control.

We understand that some injuries may not be avoidable; however, the purpose of the regulations is to ensure the humane transport of equines to slaughtering facilities. If shippers and owners adhere to this rule, we believe that many of the injuries that equines have suffered in the past will be avoided.

One commenter stated that the regulations do not allow truck drivers to provide grounds for their defense as to how the equines were injured.

USDA will consider a trucker's explanation in determining whether a violation has occurred. However, as stated in the proposal, if adjudication is necessary, it will be conducted pursuant to the USDA's "Uniform Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes," found at 7 CFR part 1, subpart H(7 CFR 1.130–1.151), and the Supplemental Rules of Practice found at 9 CFR, part 70, subpart B (9 CFR 70.10). The Rules of Practice establish, among other things, the procedures for filing a complaint and a response, settling a case, and holding a hearing. Based on this information, any one who is cited for violating the regulations will be provided an opportunity to present his or her case.

Many commenters stated that enforcement of the regulations may be difficult because we use performance-based standards rather than engineering-based standards. Some of these commenters stated that Congress directed the Secretary of Agriculture to employ "to the extent possible" performance-based standards. One of these commenters stated that USDA tried performance-based standards with § 3.81 of the Animal Welfare regulations regarding primate psychological well-being, which led to confusion among entities that were affected by the regulations.

The conference report states that, to the extent possible, the Secretary is to employ performance-based standards rather than engineering-based standards when establishing regulations to carry out the intent of the statute and that the Secretary is not to inhibit the commercially viable transport of equines to slaughtering facilities. We used performance-based standards

rather than engineering-based standard because they are the least intrusive method of regulating entities and are potentially less burdensome on regulated entities. We will review and evaluate these standards once they are in place. If we determine that changes are necessary, we will publish another document in the **Federal Register** for public comment.

One commenter stated that we will not be able to adequately enforce the regulations because we do not require persons transporting equines to slaughter to register with or apply for a USDA license. This commenter stated that individuals who are not in compliance could be threatened with suspension of their licenses rather than assessment of fines, which could be viewed as the cost of doing business.

We do not believe that registration with or a license issued by APHIS is necessary. We believe that the civil penalties set forth in § 88.6 are sufficient to ensure compliance with the regulations.

One commenter stated that the regulations should provide for suspension of a hauler's carrier certificate, the operator's commercial driver's license (CDL), and the registration of the vehicle involved for not less than 90 calendar days from the date of adjudication upon violations of the regulations. This commenter further stated that the hauler and consignor should be jointly responsible for the maintenance of the animals that were in the vehicle at the time of the seizure at the seizing authority's choice until a proper vehicle is provided for their continued shipment. The commenter also maintained that failure to post a satisfactory bond or to pay the costs involved should result in forfeiture of the vehicle and load to the seizing authority as partial payment for costs incurred by the seizing authority, which should retain all other remedies including civil suits and criminal prosecutions. The commenter also stated that a second violation of the regulations or violation of any other jurisdiction's animal transportation regulations should result in penalties applied per animal in the vehicle, without limit, and that a third violation should result in a minimum 1-year suspension of certificates and CDL per animal in the vehicle.

The statute does not provide the Secretary with the authority to suspend a hauler's carrier certificate, the operator's commercial driver's license, or registration of the vehicle if the operator violates these regulations. In addition, the statute does not give the Secretary authority to seize vehicles.

The statute provides the Secretary with the authority to assess only civil penalties for violation of the regulations.

One commenter stated that the regulations do not address how we will determine, other than by checking for a signed, properly timed and dated owner-shipper certificate, that the intentions of the regulations are being met and a violation of the regulations has not occurred. One commenter stated that the proposed regulations were unclear as to what APHIS would do when an owner-shipper certificate appears to be in order but the equines arrive in poor condition or with injuries. Several commenters stated that the regulations should state that any equine arriving in a condition that is noncompliant with the regulations will be considered a violation, regardless of the information on the owner-shipper certificate.

The USDA representative at the slaughtering facility will have access to both the equines and the paperwork accompanying them. If an equine arrives at a slaughtering facility with an injury that was not recorded on the owner-shipper certificate or in a condition that is evidence that the equine was not fit to travel, the owner/shipper may be found in violation of the regulations and may be assessed civil penalties as set forth in § 88.6.

#### *Paperwork Burden*

One commenter stated that electronic transmission of the owner-shipper certificate may not decrease the burden because the format must be standardized, and a "hard-copy" must be made to accompany each equine. The commenter stated that the owner-shipper certificate could be in book form that is bound and supplied with a duplicate-style copy so the owner/shipper would have a copy of the certificate that was given to APHIS.

The owner-shipper certificate will consist of a multipart set that will eliminate the need for the owner/shipper to make copies of the form.

One commenter stated that completion of the owner-shipper certificate would take 2 to 3 minutes. Several commenters stated that completion of the owner-shipper certificate will take more than 5 minutes per equine. One of these commenters stated that each equine must be examined thoroughly, in addition to completing the certificate.

The estimated burden was based on discussions with owners and shippers of slaughtering horses and the owner/operators of slaughtering facilities. The estimated burden of 5 minutes was only an estimate. We are aware that some

individuals may take a little less or a little more time than others to inspect each equine and complete the owner-shipper certificate.

#### *Miscellaneous*

One commenter stated that the proposal does not cover equines that belong to slaughtering facilities and that are transferred from a feeding facility owned by the facility to the plant grounds. This commenter stated that the regulations are not clear as to whether owner-shipper certificates are required to ship equines to a feedlot when the equines will be eventually transported for slaughter, and they are not clear as to whether a slaughtering facility has to complete owner-shipper certificates for equines owned by the facility to transport them from its own facilities or ranches to the slaughtering facility.

The regulations pertain to any individual or other entity that fits the definition of the term *owner/shipper*. Therefore, a slaughtering facility would have to complete an owner-shipper certificate and otherwise adhere to the regulations if it moves equines from its own premises, such as a ranch or feedlot, to the slaughtering facility. However, if equines arrive at a slaughtering facility (defined as a commercial establishment that slaughters equines for any purpose) and the facility moves all or some of the equines to its own feedlot or other premises, the slaughtering facility will not have to complete an owner-shipper certificate or otherwise comply with the regulations for that movement. The slaughtering facility must, however, complete an owner-shipper certificate and otherwise comply with the regulations when it transports the equines back to the slaughtering facility.

One commenter stated that mileage calculations that we provided under the "Executive Order 12866 and Regulatory Flexibility Analysis" section of the proposal were based on the assumption that shippers deliver to the closest available plant, which is not always the case. This commenter stated that shippers deliver to the plant where they have their contract or to the plant that is paying the most money. This commenter also stated that the proposal contended that shippers would have to share driving responsibilities with another driver to meet the requirements, but the regulations do not require it.

We believe that barring unusual circumstances, the overwhelming majority of equines arrive at slaughtering facilities in 28 hours or less. As to the use of two different drivers, we stated that drivers of equines that originate at east or west coast

locations could reduce the time equines spent on conveyances considerably by using two different drivers on long trips. However, this scenario was only an example for those drivers who can share driving responsibilities with another driver. If the driver of a conveyance will require more than 28 hours to reach his or her destination, whether alone or with a partner, he or she must abide by § 88.4(b)(3) and offload the equines from the conveyance to provide them with appropriate food, potable water, and the opportunity to rest for at least 6 consecutive hours before reloading them.

One commenter stated that we should require drivers to be certified by APHIS as knowledgeable in equine handling and humane treatment.

We do not believe this is necessary. We believe that the regulations will help ensure the humane movement of equines that are transported to slaughtering facilities. If the equines are not handled or transported as required by the regulations, or if the equines are injured during transport, the owner/shipper may be found in violation of the regulations and assessed a civil penalty. To assist drivers and others in meeting the requirements of the regulations, we are preparing an educational program.

One commenter stated that the regulations should extend to agents of owners and shippers. This commenter suggested, "The act, omission, or failure of an individual acting for or employed by the owner or shipper, within the scope of employment, shall be considered the act, omission, or failure of the owner or shipper as well as that of the individual."

We do not believe that we need to address agents. We believe that we have defined owner/shipper broadly enough to cover anyone transporting equines to slaughtering facilities (except as specifically exempted by the regulations).

One commenter stated that the regulations will result in increased transit time and more frequent loading and unloading of equines, which will increase the possibility of exacerbating existing injuries or creating new ones.

We do not believe that the regulations will result in an increase in transit time or loading and unloading in most cases. As stated in the discussion under "Executive Order 12866 and Regulatory Flexibility Act," officials at two of the U.S. equine slaughtering facilities, including the largest facility, indicated that, barring unusual circumstances, the overwhelming majority of equines already arrive at the slaughtering facilities in 28 hours or less. In cases where transport would take more than

28 hours, we believe the benefits of unloading the equines for rest, food, and water outweigh the disadvantages of unloading and reloading. Also, owners or shippers could locate, in advance, appropriate facilities close to their routes for unloading the equines. In addition, the educational program that we are developing will provide owners and shippers with information on the proper methods for loading and unloading equines from a conveyance to help ensure that injuries to equines do not occur.

One commenter stated that the regulations should apply as minimum standards for all commercial haulers, regardless of the origin or destination of the load. One commenter stated that the regulations seem to state that if an equine is transported to a slaughtering facility, the transportation is given protection by Federal regulations; however, if the animal is transported to some other destination, the transportation can be performed without protection of these regulations.

We are unable to expand the scope of these regulations to include the transportation of equines to any destination other than a slaughtering facility. Congress authorized the Secretary to issue guidelines for the regulation of the commercial transportation of equines for slaughter by persons regularly engaged in that activity. In addition, Congress clarified its intentions with regard to the statute through a conference report. The conference report states, among other things, that the Secretary has not been given the authority to regulate the routine or regular transportation of equines to other than a slaughtering facility.

One commenter stated that conveyances that enter the United States from Canada are sealed by authorities in Canada, and that to meet the requirement that equines must be fed, watered, and offloaded every 28 hours, the seals would have to be broken during transport in the United States to comply with the regulations.

Few equines are transported from Canada into the United States for slaughter purposes. However, if equines are transported from Canada into the United States and must be offloaded in the United States to meet the requirements of part 88, the seals may only be broken by a USDA representative at an approved site for offloading the equines. The owner/shipper must make arrangements with the APHIS office that is nearest to the location where the equines must be offloaded. After the equines have had the prescribed rest, food, and water, the

truck will be sealed by the USDA representative and allowed to resume transport to the slaughtering facility.

One commenter stated that we should obtain written agreements from Canada and Mexico to ensure compliance with the regulations for equines moving into those countries for slaughter. One commenter stated that the regulations would allow travel time of 28 hours within the United States and additional travel time after entering Canada. This commenter stated that the regulations should include travel time to the final destination in Canada because the locations of plants in Canada are established.

For equines transported by conveyance from a point inside the United States to a slaughtering facility outside the United States, the regulations end at the border, where the owner/shipper must present the owner-shipper certificates. We do not have jurisdiction over movement of equines outside the United States. Although, we currently do not have an arrangement with Mexico, we have revised the owner-shipper certificate to include a field for a stamp to be administered by Canadian officials at slaughtering facilities in Canada. The stamp will include the time and date of arrival and slaughtering facility. We can use this information to verify the amount of time that equines have been on a conveyance prior to leaving the United States.

One commenter stated that we must provide the public with the findings from USDA-commissioned research so the public can offer comment. Another commenter stated that she could not obtain copies of the research.

Copies of the USDA-commissioned research were and are available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

One commenter stated that an equine first aid kit that includes, among other things, fly spray, rubbing alcohol, and a hoof pick should be on the conveyance. In addition, this commenter stated that at least one fire extinguisher should be on the conveyance and that the driver's ability to use the fire extinguisher should be established by an APHIS inspector.

We do not believe that it is necessary to require an equine first aid kit. If an equine is in physical distress, the owner/shipper is required, in accordance with § 88.4(b)(2), to have an equine veterinarian provide veterinary assistance as soon as possible. Until such assistance is available, the owner/shipper may be the only person in a conveyance, and attempts by the owner/shipper to apply first aid, without assistance, to an injured equine could be

dangerous for the person and the equine. As to a fire extinguisher, the Federal Motor Carrier Safety Administration within the Department of Transportation requires commercial motor vehicles used on a highway in interstate commerce to be equipped with a fire extinguisher when, in short, the gross vehicle has a weight rating or gross combination weight rating, or gross vehicle weight, or gross combination weight, of 4,537 kg (10,001 lb) or more; whichever is greater. We believe that most conveyances used for the commercial transportation of equines to slaughtering facilities meet this weight threshold.

Several commenters stated that a \$400 disposal fee should be levied against an owner or shipper for every equine that arrives dead or in an unusable condition to discourage owners from sending downed or dying horses to slaughter. One of these commenters stated that the disposal fee could be used to subsidize long distance shipments of equines that are made at reduced loading density. Two commenters stated that the regulations should establish a per equine fee of \$5 to be levied upon an owner who sells an equine to slaughter. One commenter stated that the \$5 per equine fee could be used to cover the costs of administering and enforcing the regulations, and another commenter stated that the fee could be used to provide rewards for information leading to documentation of violations of the regulations.

We believe that the regulations will help ensure that equines that are shipped to slaughtering facilities are fit to travel. However, we do not have authority to assess a disposal fee and/or a \$5 fee per equine.

One commenter stated that we should not allow dogs to be used to herd equines for breeding.

If someone wishes to use dogs to herd equines into a conveyance, the equines must be handled in a manner that does not violate the regulations, including those in § 88.4(c). In § 88.4, paragraph (c) states that handling of all equines in commercial transportation to a slaughtering facility shall be done in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma.

One commenter stated that all conveyances that contain live animals should be so labeled and that a toll-free USDA/APHIS telephone number should be displayed for the public to call if a vehicle is operating in an unsafe manner or a dangerous or inhumane treatment is witnessed.

We do not believe that we should require a conveyance to be labeled as

containing live equines or to display a toll free USDA/APHIS telephone number. Many conveyances transport equines for purposes other than to slaughtering facilities, and the Secretary has not been given the authority to regulate the routine or regular transportation of equines to other than a slaughtering facility. However, if someone witnesses inhumane treatment, we encourage the person to contact the nearest APHIS office or the proper local authorities. In addition, if a vehicle is operating in an unsafe manner, especially if human safety is threatened, the proper local law enforcement authorities should be contacted.

One commenter stated that individuals who transport equines to veterinary facilities for treatment should be exempt from the regulations that pertain to the health of the equines that are hauled.

The regulations do not pertain to the transport of equines to veterinary facilities, only to the transport of equines to slaughtering facilities.

One commenter stated that USDA does not have a program to identify stolen equines that arrive at slaughtering facilities.

APHIS will require an owner-shipper certificate for each equine that is transported to a slaughtering facility. The USDA representative at the slaughtering facility will collect the certificates. In addition, the owner/shipper must maintain a copy of the certificate for 1 year. We will maintain information from the completed certificates in a database that can help us trace lost or stolen equines.

One commenter stated that proficiency testing (written and skills) for those engaged in the commercial transport of equines should be required because it is impossible to determine whether the persons targeted (e.g., drivers of the conveyances) are reading and understanding the educational materials. One commenter stated that an educational component should be included in the regulations to ensure that all affected parties are informed of the new regulations. One commenter stated that APHIS must put effort toward educating inspectors at feedlots, assembly points, or stockyards because shippers and owners already know how to properly transport equines.

We do not think that a proficiency test is necessary. We are developing an educational program that will include a video, guidebook, and workshops. The program will be directed towards owners, shippers, and others in the equine slaughtering industry. We will also provide opportunities for individuals who work at feedlots,

assembly points, and stockyards to participate in the educational program.

Several commenters expressed concern that burdensome regulations in the United States may lead to an increase in the shipment of livestock to countries where animal welfare is not a consideration. One of these commenters and others stated that the regulations are not necessary and that effective enforcement of existing laws is necessary. One of these commenters stated that safeguards already exist for the humane treatment of equines prior to slaughter. One commenter stated that imposing additional humane shipping conditions on the industry will decrease profits by increasing transportation costs.

Until this final rule becomes effective, no specific standards exist that address the needs of equines transported to slaughtering facilities. We believe that the regulations are the minimum standards to ensure the humane movement of equines to slaughtering facilities via commercial transportation. If equines are transported by conveyance from a point inside the United States to a slaughtering facility outside the United States, the owner/shipper will be required to meet the requirements of the regulations until the conveyance reaches the U.S. border. In addition, this rule allows us to assess civil penalties for those individuals who are not in compliance.

Under the heading, "Executive Order 12866 and Regulatory Flexibility Act," we estimate that this rule will increase operating costs for owners and commercial shippers who transport equines to slaughtering facilities by an amount somewhere between \$300 and several thousand dollars annually for an entity that transports 500 equines per year. However, we added that the data suggested that the economic consequences for most entities would fall somewhere near the minimum point on the impact scale because many entities are already in compliance with at least some of the rule's provisions.

One commenter stated that the USDA does nothing to prevent the shipment of diseased animals for human consumption.

FSIS has regulations that provide for the antemortem and postmortem examination of equines to ensure that equines with certain diseases are not slaughtered or used for the purposes of human consumption.

One commenter stated that all horses shipped for slaughter should have a negative Coggins test performed within 6 months of transport due to possible zoonosis and also because horses are transported near highways and pass



horses on private farms and could pose a disease risk. One commenter stated that Coggins tests are required for horses that enter or exit Pennsylvania.

A Coggins test is the common name for the agar gel immunodiffusion test used for the diagnosis of equine infectious anemia (EIA). The purpose of this rule is to provide for the humane transport of equines to slaughtering facilities. Other regulations are concerned with the potential transmission of disease, including 9 CFR part 75, which restricts the interstate movement of horses that are positive to a test for EIA. Also, all States require a Coggins test for equines entering the State. At this time, there is no evidence that EIA can be contracted by humans through the consumption of meat from an equine infected with EIA. However, equines infected with EIA are not allowed to be used for human consumption. The transmission of EIA infection from equines on a conveyance to equines on farms that are passed by the conveyance is a low risk and highly unlikely because a number of factors have to be present, such as presence of tabanidae (horse flies) and high viremia in the infected equine.

Several commenters stated that all meetings regarding the statute were not open to all interested parties. One commenter stated that, contrary to the statements in the proposal, consensus was not reached on the proposed regulations, and certain humane organizations opposed the regulations.

We did not state in the proposed rule that the proposal was a consensus-based document. We stated that, prior to drafting the proposed rule, APHIS representatives established a working group that included participants from other parts of the USDA, including FSIS and the Agricultural Marketing Service. In addition, APHIS attended two meetings regarding the statute that were hosted by humane organizations and attended by representatives of the equine, auction, slaughter, and trucking industries and the research and veterinary communities. At these meetings, we had an opportunity to listen to diverse opinions. We have relied on the proposed rule and public comment period to obtain comments from all interested persons.

One commenter stated that APHIS should remove "minimum" in the summary in reference to the standards to ensure the humane movement of equines to slaughtering facilities. This commenter also added that the summary should be revised to state "humane movement and treatment of equines to slaughtering facilities via commercial transportation."

The summary only serves as a brief description of the document and is not intended to prove a point or argue a case.

Two commenters stated that proposed rules should be made available to everyone, and one commenter stated that APHIS should disclose them to the media, especially the press.

All proposed rules are published in the **Federal Register**, which satisfies the legal requirements to notify the public. In addition, APHIS makes all of its proposed rules available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html> and advises various media through distribution of press releases.

Two commenters stated that they must pay taxes on transactions that involve horses, but entities involved in the transportation of horses to slaughter, including slaughtering facilities, do not. Many commenters stated that they were opposed to the slaughter of equines. One commenter stated that, rather than slaughter horses, zoos should be established or States zoned to hold the horses. These comments are outside the scope of this rulemaking.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document. In addition, we are making minor, nonsubstantive, editorial changes in the rule for clarity.

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

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis for this rule, which is set out below. Our discussion of the anticipated economic effects of this rule on small entities also serves as our cost-benefit analysis under Executive Order 12866.

This rule is intended to fulfill a responsibility given to the Secretary of Agriculture in the 1996 Farm Bill. Sections 901–905 of the 1996 Farm Bill (7 U.S.C. 1901 note) authorize the Secretary of Agriculture, subject to the availability of appropriations, to issue guidelines for the regulation of the commercial transportation of equines for slaughter by persons regularly engaged in that activity within the United States. In both fiscal years 1998 and 1999, \$400,000 was made available to administer this law. The regulations, which appear as a new part in title 9 of

the CFR, are designed to help ensure the humane transport of equines to slaughtering facilities. The regulations cover, among other things, food, water, and opportunity for rest; space on the conveyance; segregation of stallions and other aggressive equines; completion of an owner-shipper certificate; and prohibitions on the movement of certain types of equines as well as on the use of electric prods and conveyances with animal cargo spaces divided into more than one stacked level.

This rule pertains almost exclusively to the commercial transportation of slaughter horses because horses account for almost all equines slaughtered in the United States. Equines are generally slaughtered for their meat, which is sold for human consumption, primarily outside the United States. From 1995 through 1997, an average of 100,467 equines were slaughtered annually in federally inspected U.S. slaughtering facilities. At the current time, there are three slaughtering facilities that accept equines in the continental United States: Two are located in Texas (Ft. Worth and Kaufman), and one is in Illinois (DeKalb). In 1996, the United States exported 38 million pounds of horse, ass, and mule meat, with a value of \$64 million. Of the total volume exported in 1996, 29 million pounds, or 76 percent, was exported to Belgium and France. Slaughter equines represent a variety of types, and they come from a variety of sources, including working ranches, thoroughbred racing farms, and pet owners. Equines are usually slaughtered when they are unfit or unsuitable for riding or other purposes.

#### **Economic Effects of the Rule on Owners and Commercial Shippers**

The "path" from source supplier (farmer, rancher, pet owner, etc.) to slaughtering facility can vary. However, the most common scenario and the one used for the purpose of this analysis is as follows: The source suppliers transport their equines to local auction markets, where the equines are sold to persons who purchase the equines for the specific purpose of selling them to a slaughtering facility. (Hereafter, for the purposes of this final regulatory flexibility analysis, we will refer to persons who sell equines for slaughter as "owners"; however, in some cases, the owners use agents to conduct some aspect of the business of purchasing the equines and transporting and selling them to slaughtering facilities. We will use the term "owners" to refer to either the actual owners or their agents.) The owners consider price lists published by the slaughtering facilities for equines (the price varies in relation to the



weight of the equine and the quality of the meat), transportation costs, and profit requirements to establish the maximum prices that they will pay for equines at local auctions. Because the owners cannot usually purchase enough slaughter-quality equines at any one auction to make it economically feasible to ship the equines directly from the auction site to the slaughtering facility, the owners transport the equines back to their own farms or feedlots, usually nearby, where the equines are stored until such time as the owners can accumulate more equines from other auctions. Double-deck livestock trailers, which are the types most often used for transporting equines to slaughtering facilities, can carry up to about 45 equines each; single-deck trailers can carry up to about 38 equines each.

When enough equines have been accumulated to comprise a shipment, the owners transport the equines to the slaughtering facility. Although owners who ship 2,000 or more equines to slaughter per year are not uncommon, most owners ship far fewer than that number. In an estimated 75 percent of the cases, owners hire commercial shippers to move the equines to the slaughtering facilities; in the remaining estimated 25 percent of the cases, owners transport the equines to slaughter in their own conveyances. Therefore, the regulations will apply both to owners of equines destined for slaughter and to commercial shippers who transport such equines to slaughtering facilities. We estimate that approximately 200 owners and commercial shippers will be affected by this rule. Based on the average number of equines slaughtered in the United States per year (approximately 100,000) and on the estimated number of potentially affected owners and commercial shippers (approximately 200), the average number of equines transported annually to slaughter per affected entity would be 500.

This rule will require that, for a period of not less than 6 consecutive hours immediately prior to the equines being loaded on the conveyance, each equine be provided access to food and water and the opportunity to rest. As indicated above, the owners generally have possession of the equines immediately prior to their being loaded onto conveyances for transport to slaughtering facilities. In those cases where the owners hire commercial shippers, the latter do not take possession of the equines until they are loaded onto the conveyance. Furthermore, when commercial shippers are hired, they are normally not in the presence of the equines for

the full 6-hour period prior to loading. For these reasons, it can be assumed that the owners, not commercial shippers, would be responsible for fulfilling the preloading requirements of this rule. In addition, the owners are more likely than commercial shippers to have the facilities necessary to meet the preloading requirements.

This requirement is unlikely to impose a hardship on affected entities. While in the possession of the owners, equines are usually housed on farms or in feedlots, where they have access to food, water, and rest. Owners have an incentive to provide equines awaiting transport to a slaughtering facility with food, water, and rest because malnourished equines have a reduced slaughter value and dead equines have no slaughter value. Furthermore, most equines are stored on farms or in feedlots for 6 consecutive hours or more because it usually takes at least that long for owners to accumulate enough equines to fill a conveyance. At most, the rule would result in owners having to keep their equines in a farm or feedlot for an additional 6 hours to fulfill the preloading requirements for the last equines needed to fill a conveyance. This worst-case scenario assumes that the "last-in" equines have not had the required preloading services prior to their acquisition by the owners. If the last-in equines have had those services, then the owners would be able to load them onto the conveyance immediately. For example, owners might be able to stop at an auction en route to a slaughtering plant and pick up their last-in equines.

We cannot estimate the precise dollar effects of this requirement because no hard data is available on the prevalence of slaughter equines receiving the required food, water, and rest prior to loading. However, for the reasons stated above, the economic effects would be minimal. Storing equines in feedlots costs about \$2 per day per animal. (This amount is the typical rental rate for a pen, which includes food and water.) If an owner had to store a truckload of equines (assume 38) for a full day, the cost would be \$76. The cost for storing 500 equines (the estimated average number of equines shipped annually to slaughter per affected entity) would be \$1,000.

This rule will require that owners or commercial shippers sign an owner-shipper certificate for each equine being transported to a slaughtering facility. Among other things, the owner-shipper certificate will include a statement that the equine has received the required preloading services. If, as a result of this requirement, commercial shippers load

fewer equines per conveyance, the shippers should not be affected because they typically charge owners a flat rate to transport equines to slaughtering facilities regardless of the number of equines on the conveyance. For owners who use their own vehicles for transportation, fewer equines per conveyance translates into increased costs. As an example, assume that it costs an owner \$1,850 (\$1.85 per mile—a representative average rate for commercial shipment of slaughter equines—times 1,000 miles) to transport a truckload of equines in the person's own conveyance. Assume also that, as a result of this rule, the owner could ship only 35 equines in a particular shipment, 3 fewer than the 38 that would have been shipped had the rule not been in effect. Using that data, the owner's transportation costs on a per-equine basis for that particular shipment would increase by 8.6 percent, from \$48.68 to \$52.86. The owner would incur similar costs if the owner secured the services of a commercial shipper.

This rule will require that any equine that has been on the conveyance for 28 consecutive hours or more without food, water, and the opportunity to rest be offloaded and, for at least 6 consecutive hours, provided with food, water, and the opportunity to rest. This rule will also require that each equine be provided with enough space on the conveyance to ensure that no animal is crowded in a way likely to cause injury or discomfort. Finally, this rule will require that stallions and other aggressive equines be segregated from each other and all other equines on the conveyance.

Available data suggest that the "28-hour rule" should not pose a problem for the vast majority of slaughter equine transporters. Officials at two of the U.S. equine slaughtering facilities, including the largest facility, indicate that, barring unusual circumstances, the overwhelming majority of equines arrive at the slaughtering facilities in 28 hours or less. Indeed, there is reason to believe that few equines actually fit the "worst-case" scenario in terms of travel distance—equines transported from the east or west coasts to the slaughtering facilities, which are all located in the central part of the United States. Equines on the east coast, at least from the State of Maryland northward, as well as those on the west coast and in the States of Montana and Idaho, are usually transported to Canadian slaughtering facilities. (For example, the slaughtering plant at Massueville, Quebec, is about 100 miles from the port of entry at Champlain, NY. For transporters in the northeastern part of

the United States, the Massueville plant is closer than any of the U.S. plants.) Furthermore, even for equines that do originate at east and west coast locations, the time spent on conveyances is reduced considerably by the common transport practice of using two different drivers on long trips. This practice allows the equines to be transported virtually nonstop because one person can drive while the other rests, thereby avoiding federally mandated rest periods that apply in a single-driver situation. Assuming an average speed of 55 mph and two different drivers, and allowing 1½ hours for loading and 2 hours for refueling and meal stops, even a trip as long as 1,300 miles would take only about 27 hours.

If equines do have to be offloaded for feeding, rest, etc., while en route to a slaughtering facility, transporters would incur additional costs. As stated previously, pens can generally be rented at a rate of about \$2 per day per equine. (The rent for a 6-hour period is unknown but, presumably, it would be less than the full-day fee.) In addition to the pen rental fee, transporters would have to spend time unloading the equines. Also, they may have to: (1) Adjust routes and schedules to find pens to accommodate the equines; (2) wait while they are being serviced; and (3) reload them after they have been serviced. These activities would add to the cost of servicing equines at intermediate points.

This rule will also require that, during transport, equines must be provided with enough space to ensure that they are not crowded in a way that is likely to cause injury or discomfort. One source of injury and discomfort, double-deck trailers, will be banned in 5 years. (See "Alternatives Considered," below, for a discussion of why we selected a 5-year phase-in period rather than a shorter time.) Overcrowding can also occur in single-deck (also called straight-deck) trailers, which are used to transport equines to a lesser extent than double-deck trailers. The requirement concerning adequate space could translate into fewer equines per conveyance. As stated previously, commercial shippers typically charge owners a flat rate to transport their equines, so the possibility of fewer equines per shipment should not result in less revenue for commercial shippers. For owners, however, fewer equines per conveyance translates into increased costs, regardless of whether the owners hire commercial shippers or use their own vehicles for transportation.

The requirement that aggressive equines be segregated during transport

is not likely to have a significant impact. Available data suggests that such segregation is already common practice. Owners have an incentive to make sure that aggressive equines are segregated because equines that arrive at the slaughtering facilities injured as the result of biting and kicking en route command lower market values. The segregation of equines requires that transporters spend more time and effort during loading, but that added time and effort is considered to be relatively minor. Nor should most transporters have to buy special equipment, because livestock trailers usually come equipped with devices, such as swing gates, that permit animal segregation. As a final point in this regard, relatively few stallions are transported for slaughter. USDA personnel stationed at two of the slaughtering facilities estimate that no more than about 5 percent of the equines arriving for slaughter are stallions.

This rule will require that an owner-shipper certificate be completed for each equine prior to departing for the slaughtering facility. The certificate must describe, among other things, the equine's physical characteristics (color, sex, permanent brands, etc.), and it must show the number of the animal's USDA backtag. It must also certify the equine's fitness to travel and note any special care and handling needs during transit (e.g., segregation of stallions). An equine will be fit to travel if it: (1) Can bear weight on all four limbs; (2) can walk unassisted; (3) is not blind in both eyes; (4) is older than 6 months of age; and (5) is not likely to give birth in transit. Affected entities will not need the services of a veterinarian in order to make the fitness-to-travel determination. This rule will require that either the owners or the commercial shippers sign the certificate and that the owner-shipper certificate accompany the equine to the slaughtering facility.

This requirement for an owner-shipper certificate will create additional paperwork for both owners and commercial shippers. As with the other preloading services discussed above, it is reasonable to assume that the responsibility for providing the data on the certificate will generally rest with the owners, not the commercial shippers. The owners have possession of the equines prior to departing for the slaughtering facility and presumably are more qualified to provide the data required by the owner-shipper certificate. It is also reasonable to assume that the responsibility for obtaining and installing the USDA backtag will be theirs, not the commercial shippers. The owners will

not incur a cost for obtaining the backtags, which are available free of charge from a variety of sources. The backtags are adhesive and are attached simply by sticking them on the equine's back, so owners will not incur installation costs.

The added administrative costs that owners will incur as a result of having to complete and sign the owner-shipper certificate is difficult to quantify. Assuming that it takes 5 minutes to complete each certificate, an owner who ships 500 equines to slaughter annually will have to spend about 42 hours per year complying with the rule. Assuming a labor rate of \$7 per hour, the 42 hours translates into added costs of about \$300 per year. For reasons explained earlier, the added administrative costs for commercial shippers will likely be less than those for owners.

This rule will allow the use of electric prods only in life-threatening situations and will prohibit the transport of equines to slaughter on conveyances divided into more than one level, such as double-deck trailers, 5 years after publication of this final rule. The restriction on the use of electric prods should not pose a burden because effective, low-cost substitutes are available for use in non-life-threatening situations. For example, fiberglass poles with flags attached, which cost only about \$5 each, are considered to be an effective alternative to electric prods. Any current use of electric prods by transporters of slaughter equines probably derives from the traditional use of these devices to assist in moving other livestock, such as cattle and swine.

The retail cost of a new double-deck livestock trailer averages about \$42,000; single-deck trailers retail for about \$38,000 each. The cost varies depending largely on the model, type of construction, and optional features. The useful life of the trailers also varies, depending on such factors as the weight and type of animals hauled and the needed frequency of cleaning. It is not uncommon, however, for trailers of both types to provide 10 to 12 years' worth of useful service.

As discussed previously, double-deck trailers can carry more equines than single-deck trailers, and some owners and shippers will be negatively affected by the reduction in the numbers of equines that could be transported in a single conveyance. Upon publication of this rule, shippers using floating-deck trailers to transport equines to slaughtering facilities will need to collapse the decks so that they create only one level. Conveyances divided permanently into more than one stacked

level can be, and are, also used to transport commodities other than equines, including livestock and produce. In fact, it is estimated that double-deck trailers in general carry equines no more than about 10 percent of the time they are in use. Upon effect of the ban, commercial shippers who transport equines to slaughtering facilities could use their double-deck trailers to transport other livestock and produce. Owners who use their own double-deck trailers to transport equines to slaughtering facilities will have to find another use for the equipment or trade them for single-deck trailers. Owners should be able to sell their serviceable trailers at fair market value to transporters of commodities other than equines. Furthermore, some of the double-deck trailers now in use by owners will need to be taken out of service within the next 5 years anyway as the result of normal wear and tear and could be replaced by single-deck trailers.

In conclusion, we do not anticipate that any of the requirements will have undue onerous economic effects on any affected owners or commercial shippers. We believe that many transporters of slaughter equines may already be in compliance with many of the requirements. The requirement for an owner-shipper certificate will affect all transporters of slaughter equines, but we have designed the form to make its preparation as easy as possible. We do not believe that the completion and maintenance of these certificates will be unreasonably time-consuming or burdensome. As stated previously, the proposed "28-hour rule" should not pose a problem for the vast majority of slaughter equine transporters, and the ban on double-deck trailers should not have a significant economic effect on owners or commercial shippers because these trailers can be used for other purposes and will need to be replaced anyway within the next 5 years and could be replaced with a single-deck trailer.

At a minimum, the rule will require that affected owners and commercial shippers complete an owner-shipper certificate, an administrative task that they do not have to perform now. For an entity that transports 500 equines per year, the average for all potentially affected entities, the requirement regarding owner-shipper certificates will translate into added costs of about \$300 annually. In a worst-case scenario, the rule can add several thousand dollars to the annual operating costs of an entity that transports 500 equines per year. This worst-case scenario assumes that, at the current time, affected owners

and commercial shippers are engaging in little or no voluntary compliance with the requirements.

#### **Economic Effects of the Rule on Horse Slaughtering Facilities**

Up to this point, the discussion in this final regulatory flexibility analysis has centered entirely on owners and commercial shippers, who represent the bulk of the entities affected by this rule. However, the rule will also impact the three horse slaughtering facilities currently operating in the continental United States. While the deferral of the effective date for the prohibition on double-deck trailers will allow them time to respond to the expected decline in the number of transporters willing to haul horses to slaughter, these slaughtering facilities will nonetheless be affected because they will experience lost business as a result of that expected decline. Some transporters will choose to keep their double-deck trailers and carry other commodities (*i.e.*, other than equine) because in their locations it is more lucrative for them to do so. Other transporters will likely find that it is not cost effective to haul horses long-distance in conveyances that have a smaller capacity, *i.e.*, straight-deck and goose-neck trailers.

The slaughtering facilities will also experience increased hauling costs over time, because transporters that continue to ship horses to slaughter will be forced to do so in smaller conveyances. The hauling cost that slaughtering facilities pay to acquire each horse will increase, because the number of horses per load (being hauled the same distance) will be reduced but the hauling cost per load will remain the same. Officials at one U.S. slaughtering facility indicate that commercial shippers currently charge a hauling fee of \$1.65 per mile if they have a return load, and \$2.25 per mile if they return empty, regardless of the type of conveyance used. For a trip of 1,000 miles at \$1.65 per mile, the facility's hauling cost per horse is \$36.67 with a double-deck trailer and \$43.42 with a straight-deck trailer, an increase of \$6.75 or 18 percent per horse.<sup>2</sup> For each lot of 1,000 horses delivered to the slaughtering facility, the per horse cost increase of \$6.75 translates into increased costs of \$6,750.

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

The Regulatory Flexibility Act requires that agencies consider the economic effects of rules on small entities (*i.e.*, businesses, organizations, and governmental jurisdictions). As

<sup>2</sup> This assumes 45 horses on a double-deck trailer and 38 horses on a single-deck trailer.

discussed above, the entities that will be affected by this rule are owners and commercial shippers who transport equines to slaughtering facilities and the slaughtering facilities themselves.

As stated previously, we estimate that approximately 200 entities will be affected by this rule, most of whom are owners and commercial shippers. Although the sizes of these entities are unknown, it is reasonable to assume that most are small by U.S. Small Business Administration (SBA) standards. This assumption is based on composite data for providers of the same and similar services in the United States. In 1993, there were 30,046 U.S. firms in Standard Industrial Classification (SIC) 4213, a classification category comprising firms primarily engaged in "over-the-road" trucking services, including commercial shipping. The per-firm average gross receipts for all 30,046 firms that year was \$2.6 million, well below the SBA's small-entity threshold of \$18.5 million. Similarly, in 1993, there were 1,671 U.S. firms in SIC 5159, a classification category that includes horse dealers. Of the 1,671 firms, 97 percent had fewer than 100 employees, the SBA's small-entity threshold for those firms.

This rule will result in increased costs for affected entities, large and small. As indicated above, operating costs will increase somewhere between about \$300 and several thousand dollars annually for an entity that transports 500 equines per year. However, the available data suggests that, for most entities, the economic consequences will fall somewhere near the minimum point on the impact scale because, as stated previously, many are already in compliance with at least some of the rule's provisions, such as stallion segregation. Because we did not have enough data to conclude that even a cost increase of as low as \$300 annually will not be significant for most of the potentially affected entities, we requested public comment on the potential economic impact of the proposal on small entities.

We received several comments regarding the initial regulatory flexibility analysis.

One commenter stated that the effect of the rule is so minimal that the small entities are the "winners" at an impact of \$300 per year or \$25 per month. Another commenter stated that APHIS put more emphasis on not creating financial hardship for the entities involved than on what Congress mandated regarding the humane transport of equines to slaughter.

We believe that these regulations will help ensure the humane movement of

equines to slaughtering facilities via commercial transportation. However, we do not believe that small entities are not affected. In fact, in the discussion under the heading, "Executive Order 12866 and Regulatory Flexibility Act," we stated that the regulations would have a negative economic effect on affected entities, large and small. We determined that operating costs would increase somewhere between about \$300 and several thousand dollars annually for an entity that transports 500 equines per year, which would be a negative impact on these entities. However, we stated that, for most entities, the economic consequences of the regulations would fall somewhere near the minimum point on the impact scale because many entities are already in compliance with at least some of the requirements in part 88.

One commenter stated that the number of affected entities was understated because certain entities were not counted. Commercial airlines; air and sea cargo carriers; vendors that supply packing plants; feed manufacturers; and suppliers of veterinary supplies and medications were among the entities the commenter cited.

We stated above that the entities that would be affected by this rule were owners and commercial shippers who transport equines to slaughtering facilities and the slaughtering facilities themselves. These are the primary entities that would be directly affected by this rule. It is possible that these regulations may indirectly affect other entities, including commercial airlines, vendors, and feed manufacturers; however, these entities are not directly affected by this rule, and this rule should not have a significant economic effect on them.

#### Alternatives Considered

The Regulatory Flexibility Act requires Federal agencies promulgating new regulations to consider alternatives that will lessen the economic effects of the regulations on affected small entities. In developing the proposed rule, we considered many alternatives, some of which are discussed below. In developing the proposed program to carry out the statute, we established a working group that included participants both from within the agency as well as from other parts of USDA, including FSIS and AMS. In addition, APHIS representatives attended two meetings about the statute hosted by humane organizations and attended by representatives of the equine, auction, slaughter, and trucking

industries and the research and veterinary communities.

We considered requiring that owners and commercial shippers of equines destined for slaughter secure the services of a veterinarian to certify the equines' fitness for travel. However, this rule allows owners and commercial shippers to certify the equines' fitness to travel themselves. In addition, we considered various alternatives with regard to the types of equines that would be prohibited from shipment. After much consideration, we are prohibiting the shipment of equines that are unable to bear weight on all four limbs, unable to walk unassisted, blind in both eyes, less than 6 months of age, and likely to give birth during shipment. We believe that we must prohibit the shipment to slaughter of equines in these five categories to carry out congressional intent under the statute for ensuring the humane transport of equines for slaughter. In addition, we considered many allowable time frames for equines to be on conveyances without access to food and water; the proposed 28-hour period is based on available data and input from interested and potentially affected parties. Finally, in regard to the prohibition on the transport of slaughter equines in any type of conveyance divided into more than one stacked level, we determined that such a ban is necessary to ensure the humane transport of equines to slaughtering facilities. However, this rule would allow the use of double-deck trailers for a period of 5 years following publication of this rule to lessen the effect of the ban on affected entities.

The Regulatory Flexibility Act also requires that Federal agencies consider the use of performance-based rather than design-based standards. In keeping with this requirement and the direction provided in the conference report to employ performance-based rather than engineering-based standards to the extent possible, the requirements included in the proposed rule are primarily performance-based. As examples, the rule's requirements for design of the conveyance, space allotted per equine on the conveyance, and manner of driving the conveyance are all performance-based.

For this rule, we also considered establishing the effective date of the ban on double-deck trailers at various points of time in the future, ranging from 6 months to 10 years after the rule's publication. We chose a 5-year effective date because we believe it provides a strategy for steadily improving the welfare of equines transported to slaughter. For reasons discussed below, a shorter period could have an onerous

impact on the slaughter horse industry and result in unintended consequences for equines.

As discussed above, hauling costs for slaughtering facilities will increase as a result of owners and commercial shippers using smaller conveyances, and to the extent that the transition to a new single-deck system results in more trips at the higher, empty backhaul rate. In this regard, slaughtering facility officials believe that transporters who decide to continue shipping horses in the new single-deck environment will need time to find markets or customers with alternative products to haul, thereby avoiding empty backhauls and saving the facilities money. As indicated above, transporters charge one slaughtering facility a hauling fee of \$1.65 per mile if they have a return load and \$2.25 per mile if they return empty. For one trip of 1,000 miles, the savings for that facility would be \$600 if the transporter is able to secure a return load. For 100 trips, the savings would be \$60,000.

Slaughtering facility officials believe that they also need a deferral of the effective date for the prohibition on double-deck trailers to allow them time to respond to the expected decline in the number of transporters willing to haul horses to slaughter. Specifically, they have stated that they need time to budget and to arrange for financing on equipment they may need to acquire if they must haul horses on their own because commercial shippers and owners will not. The largest facility currently owns two tractors and one straight-deck trailer and estimates that it would have to acquire about 10 additional tractor trailers in order to do all of its own hauling. One new tractor costs approximately \$100,000, and one new single-deck trailer costs approximately \$38,000.

Officials at one slaughtering facility believe that, because the profit margin for their operation is already very thin (due in part to the financial burden imposed by the new European Union Additional Residue Testing Program), the facility could not make the transition to single-deck trailers in 6 months.<sup>3</sup> However, the same officials believe that, with a gradual transition,

<sup>3</sup> The European Union established Maxxam Laboratory, Inc. (Maxxam) in Canada as the North American residue testing facility. Maxxam charged the horse slaughter facilities in the United States \$130,000 start-up costs; as a direct result, one facility, Central Nebraska Packing in North Platte, NE., closed its operation. The three facilities in Canada in direct competition with the U.S. facilities are subsidized by the Canadian government for both start-up and future testing fees. This places the U.S. facilities at a financial disadvantage with their Canadian competitors.

over a 5-year period, they would be able to plan accordingly and the facility might survive. They point out that their facility, which generates export sales exclusively, may be forced to close regardless of the time frame imposed by this rule, but the facility's chances of remaining open would be substantially improved with a 5-year phase-in.

If the facility closes, we believe it likely that horses in the United States that are intended for slaughter will be trucked to feedlots in Canada or Mexico, ostensibly as saddle horses, then go to slaughter. If that happens, we will have no jurisdiction over those movements because our statutory authority to regulate is limited to the commercial transportation of horses to slaughter and to movements to slaughter within the United States. Thus, a critical factor in our decision to use a 5-year time frame for the ban on double-deck trailers is our belief that if the rule has too great an impact on horse slaughtering facilities in the United States, our rule will not provide equines transported to slaughter the protection that we intend.

The information collection and recordkeeping requirements contained in this rule were described in the proposed rule and have been approved by the Office of Management and Budget. See "Paperwork Reduction Act," below.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

This final 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 retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579-0160.

#### List of Subjects

##### 9 CFR Part 70

Administrative practice and procedure.

##### 9 CFR Part 88

Animal welfare, Horses, Penalties Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR, chapter I, subchapter C, as follows:

#### PART 70—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER CERTAIN ACTS

1. The authority citation for part 70 is revised to read as follows:

**Authority:** 21 U.S.C. 111, 112, 114a, 114a-1, 115, 117, 120, 122, 123, 125-127, 134b, 134c, 134e, and 134f; 7 CFR 2.22, 2.80, 371.4.

2. In § 70.1, the list of statutory provisions is amended by adding at the end of the list the following:

##### § 70.1 Scope and applicability of rules of practice.

\* \* \* \* \*

Sections 901-905 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901 note).

\* \* \* \* \*

3. A new part 88 is added to read as follows:

#### PART 88—COMMERCIAL TRANSPORTATION OF EQUINES FOR SLAUGHTER

Sec.

88.1 Definitions.

88.2 General information.

88.3 Standards for conveyances.

88.4 Requirements for transport.

88.5 Requirements at a slaughtering facility.

88.6 Violations and penalties.

**Authority:** 7 U.S.C. 1901, 7 CFR 2.22, 2.80, 371.4.

##### § 88.1 Definitions.

The following definitions apply to this part:

**APHIS.** The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

**Commercial transportation.**

Movement for profit via conveyance on any highway or public road.

**Conveyance.** Trucks, tractors, trailers, or semitrailers, or any combination of these, propelled or drawn by mechanical power.

**Equine.** Any member of the *Equidae* family, which includes horses, asses, mules, ponies, and zebras.

**Euthanasia.** The humane destruction of an animal by the use of an anesthetic agent or other means that causes

painless loss of consciousness and subsequent death.

**Owner/shipper.** Any individual, partnership, corporation, or cooperative association that engages in the commercial transportation of more than 20 equines per year to slaughtering facilities, except any individual or other entity who transports equines to slaughtering facilities incidental to his or her principal activity of production agriculture (production of food or fiber).

**Owner-shipper certificate.** VS Form 10-13,<sup>1</sup> which requires the information specified by § 88.4(a)(3) of this part.

**Secretary.** The Secretary of Agriculture.

**Slaughtering facility.** A commercial establishment that slaughters equines for any purpose.

**Stallion.** Any uncastrated male equine that is 1 year of age or older.

**USDA.** The U.S. Department of Agriculture.

**USDA backtag.** A backtag issued by APHIS that conforms to the eight-character alpha-numeric National Backtagging System and that provides unique identification for each animal.

**USDA representative.** Any employee of the USDA who is authorized by the Deputy Administrator for Veterinary Services of APHIS, USDA, to enforce this part.

##### § 88.2 General information.

(a) State governments may enact and enforce regulations that are consistent with or that are more stringent than the regulations in this part.

(b) To determine whether an individual or other entity found to transport equines to a slaughtering facility is subject to the regulations in this part, a USDA representative may request from any individual or other entity who transported the equines information regarding the business of that individual or other entity. When such information is requested, the individual or other entity who transported the equines must provide the information within 30 days and in a format as may be specified by the USDA representative.

##### § 88.3 Standards for conveyances.

(a) The animal cargo space of conveyances used for the commercial transportation of equines to slaughtering facilities must:

(1) Be designed, constructed, and maintained in a manner that at all times protects the health and well-being of the equines being transported (e.g., provides

<sup>1</sup> Forms may be obtained from the National Animal Health Programs Staff, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231.

adequate ventilation, contains no sharp protrusions, etc.);

(2) Include means of completely segregating each stallion and each aggressive equine on the conveyance so that no stallion or aggressive equine can come into contact with any of the other equines on the conveyance;

(3) Have sufficient interior height to allow each equine on the conveyance to stand with its head extended to the fullest normal postural height; and

(4) Be equipped with doors and ramps of sufficient size and location to provide for safe loading and unloading.

(b) Equines in commercial transportation to slaughtering facilities must not be transported in any conveyance that has the animal cargo space divided into two or more stacked levels, except that conveyances lacking the capability to convert from two or more stacked levels to one level may be used until December 7, 2006. Conveyances with collapsible floors (also known as "floating decks") must be configured to transport equines on one level only.

#### § 88.4 Requirements for transport.

(a) Prior to the commercial transportation of equines to a slaughtering facility, the owner/shipper must:

(1) For a period of not less than 6 consecutive hours immediately prior to the equines being loaded on the conveyance, provide each equine appropriate food (i.e., hay, grass, or other food that would allow an equine in transit to maintain well-being), potable water, and the opportunity to rest;

(2) Apply a USDA backtag<sup>2</sup> to each equine in the shipment;

(3) Complete and sign an owner-shipper certificate for each equine being transported. The owner-shipper certificate for each equine must accompany the equine throughout transit to the slaughtering facility and must include the following information, which must be typed or legibly completed in ink:

(i) The owner/shipper's name, address, and telephone number;

(ii) The receiver's (destination) name, address, and telephone number;

(iii) The name of the auction/market, if applicable;

(iv) A description of the conveyance, including the license plate number;

(v) A description of the equine's physical characteristics, including such information as sex, breed, coloring, distinguishing markings, permanent brands, tattoos, and electronic devices that could be used to identify the equine;

(vi) The number of the USDA backtag applied to the equine in accordance with paragraph (a)(2) of this section;

(vii) A statement of fitness to travel at the time of loading, which will indicate that the equine is able to bear weight on all four limbs, able to walk unassisted, not blind in both eyes, older than 6 months of age, and not likely to give birth during the trip;

(viii) A description of any preexisting injuries or other unusual condition of the equine, such as a wound or blindness in one eye, that may cause the equine to have special handling needs;

(ix) The date, time, and place the equine was loaded on the conveyance; and

(x) A statement that the equine was provided access to food, water, and rest prior to transport in accordance with paragraph (a)(1) of this section; and

(4) Load the equines on the conveyance so that:

(i) Each equine has enough floor space to ensure that no equine is crowded in a way likely to cause injury or discomfort; and

(ii) Each stallion and any aggressive equines are completely segregated so that no stallion or aggressive equine can come into contact with any other equine on the conveyance.

(b) During transit to the slaughtering facility, the owner/shipper must:

(1) Drive in a manner to avoid causing injury to the equines;

(2) Observe the equines as frequently as circumstances allow, but not less than once every 6 hours, to check the physical condition of the equines and ensure that all requirements of this part are being followed. The owner/shipper must obtain veterinary assistance as soon as possible from an equine veterinarian for any equines in obvious physical distress. Equines that become nonambulatory en route must be euthanized by an equine veterinarian. If an equine dies en route, the owner/shipper must contact the nearest APHIS office as soon as possible and allow an APHIS veterinarian to examine the equine. If an APHIS veterinarian is not available, the owner/shipper must contact an equine veterinarian;

(3) Offload from the conveyance any equine that has been on the conveyance for 28 consecutive hours and provide the equine appropriate food, potable

water, and the opportunity to rest for at least 6 consecutive hours; and

(4) If offloading is required en route to the slaughtering facility, the owner/shipper must prepare another owner-shipper certificate as required by paragraph (a)(2) of this section and record the date, time, and location where the offloading occurred. In this situation, both owner-shipper certificates would need to accompany the equine to the slaughtering facility.

(c) Handling of all equines in commercial transportation to a slaughtering facility shall be done as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma. Electric prods may not be used on equines in commercial transportation to a slaughtering facility for any purpose, including loading or offloading on the conveyance, except when human safety is threatened.

(d) At any point during the commercial transportation of equines to a slaughtering facility, a USDA representative may examine the equines, inspect the conveyance, or review the owner-shipper certificates required by paragraph (a)(3) of this section.

(e) At any time during the commercial transportation of equines to a slaughtering facility, a USDA representative may direct the owner/shipper to take appropriate actions to alleviate the suffering of any equine. If deemed necessary by the USDA representative, such actions could include securing the services of an equine veterinarian to treat an equine, including performing euthanasia if necessary.

(f) The individual or other entity who signs the owner-shipper certificate must maintain a copy of the owner-shipper certificate for 1 year following the date of signature.

#### § 88.5 Requirements at a slaughtering facility.

(a) Upon arrival at a slaughtering facility, the owner/shipper must:

(1) Ensure that each equine has access to appropriate food and potable water after being offloaded;

(2) Present the owner-shipper certificates to a USDA representative;

(3) Allow a USDA representative access to the equines for the purpose of examination; and

(4) Allow a USDA representative access to the animal cargo area of the conveyance for the purpose of inspection.

(b) If the owner/shipper arrives during normal business hours, the owner/shipper must not leave the premises of

<sup>2</sup> USDA backtags are available at recognized slaughtering establishments and specifically approved stockyards and from State representatives and APHIS representatives. A list of recognized slaughtering establishments and specifically approved stockyards may be obtained as indicated in § 78.1 of this chapter. The terms "State representative" and "APHIS representative" are defined in § 78.1 of this chapter.

a slaughtering facility until the equines have been examined by a USDA representative. However, if the owner/shipper arrives outside of normal business hours, the owner/shipper may leave the premises but must return to the premises of the slaughtering facility to meet the USDA representative upon his or her arrival.

(c) Any owner/shipper transporting equines to slaughtering facilities outside

of the United States must present the owner-shipper certificates to USDA representatives at the border.

**§ 88.6 Violations and penalties.**

(a) The Secretary is authorized to assess civil penalties of up to \$5,000 per violation of any of the regulations in this part.

(b) Each equine transported in violation of the regulations of this part will be considered a separate violation.

(Approved by the Office of Management and Budget under control number 0579-0160.)

Done in Washington, DC, this 3rd day of December 2001.

**Bill Hawks,**

*Under Secretary, Marketing and Regulatory Programs.*

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