

# Proposed Rules

Federal Register

Vol. 64, No. 96

Wednesday, May 19, 1999

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 70 and 88

[Docket No. 98-074-1]

RIN 0579-AB04

### Commercial Transportation of Equines to Slaughter

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to establish regulations pertaining to the commercial transportation of equines to slaughtering facilities. We are proposing these regulations to 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 proposed regulations is to establish minimum standards to ensure the humane movement of equines to slaughtering facilities via commercial transportation. As directed by Congress, the proposed regulations cover, among other things, the food, water, and rest provided to such equines. The proposed regulations would also require the shipper of the equines to take certain actions in loading and transporting the equines and would require that the shipper or owner of the equines certify that the commercial transportation meets certain requirements. In addition, the proposed regulations would 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.

**DATES:** Consideration will be given only to comments received on or before July 19, 1999.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 98-074-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 98-074-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

We are proposing to establish 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 he 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, from the Assistant Secretary for Marketing and Regulatory Programs 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 stated 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 stated 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.

APHIS has thoroughly researched the issue of transporting equines to slaughter. Upon learning of the statute, APHIS established a working group that included participants from other parts of the U.S. Department of Agriculture (USDA), including the Food Safety and Inspection Service (FSIS) and the Agricultural Marketing Service (AMS), to develop an appropriate and effective program for carrying out the statute. In addition, to get public input, APHIS 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.

APHIS used appropriations received late in FY 1998 for research to gather scientific data for the proposed regulations. We funded research by the Department of Animal Sciences of Colorado State University concerning the physical condition of equines upon arrival at slaughtering facilities via commercial transportation. The researchers observed equines being sold for slaughter at an auction, monitored trailer loads of equines arriving at slaughtering facilities, and examined the equines ante and post mortem for signs of physical trauma. We also funded research at Texas A&M University and the University of California at Davis regarding the effects of water deprivation in equines. The studies showed that equines deprived of water can begin to experience serious physiologic distress within 24 hours if the equines did not have access to water in the 6-hour period before deprivation occurred. Moreover, equines that had access to water in the 6-hour period before deprivation occurred did not experience serious physiologic distress for up to 30 hours without further access to water. Finally, we funded research at the University of California at Davis concerning stress in equines being shipped to slaughtering facilities. In that study, equines were loaded on trailers in California and shipped to a slaughtering facility in Texas where they were tested for signs of stress. We have used the data obtained from these research projects in developing the proposed regulations.

In addition, to help shippers of slaughter equines ensure the humane transport of the equines, APHIS will

allocate funds for public information efforts. AMS has developed a series of informational materials regarding the humane transport of specific types of livestock. We are working with AMS to develop and disseminate educational materials about the humane transport of equines. To obtain further information about the research or the educational materials just described, contact the person listed in this document under **FOR FURTHER INFORMATION CONTACT**.

We are proposing 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 are proposing 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. A description of the proposed regulations in each section and our rationale for them follows this introductory text. The full text of the proposed regulations is provided in the rule portion of this document.

The proposed regulations would pertain 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. For practical reasons, we do not propose to regulate the care of equines destined for slaughter prior to loading on the conveyance for shipment to the slaughtering facility. Most shippers acquire equines for sale to slaughtering facilities at livestock auctions. To acquire enough slaughter-quality equines to fill a conveyance and make a long-distance trip to a slaughtering facility economically feasible, shippers often need to buy a few equines at a time at these auctions over a period of several weeks. During this period, the equines are maintained at public feedlots or private residences until a full shipment (about 38 to 45 equines, depending on the conveyance) has been acquired. (This scenario is described more fully in the section of this document called "Executive Order 12866 and Regulatory Flexibility Act.")

We do not believe that it is either necessary for ensuring the well-being of the equines or logistically possible for us to regulate the care provided to equines maintained at feedlots or at private residences prior to shipment to a slaughtering facility. Moreover, research has shown that the vast majority of injuries caused to equines in transit to slaughter occur when the equines are actually in transit or during

loading or unloading. We recognize that, in some cases, shippers may want to deliver a shipment of equines en route to a slaughtering facility to a feedlot (for fattening or some other purpose) for a short period of time. In these cases, we would consider the transport to consist of two segments—from the point of origin of the shipment to the feedlot and from the feedlot to the slaughtering facility—and the shipper or shippers would be subject to the regulations during both segments. (If the shipper during the second segment of the trip is not the original shipper, then both shippers would be subject to the regulations.)

These proposed requirements would pertain to inter- and intrastate transport within the United States and also to the commercial transportation of equines for slaughter originating in other countries or being exported to other countries if the equines are transported by conveyance when in the United States. As examples, the proposed regulations would apply to the significant number of horses that are imported annually from Mexico for transport by truck to U.S. slaughtering facilities and to the significant number of horses from the United States that are exported annually to Canada by truck for slaughter at Canadian slaughtering facilities.

As directed by Congress, we have proposed performance-based regulations wherever possible. We believe that the proposed regulations would fulfill the intent of Congress under the statute to help ensure the humane treatment of equines in commercial transit to slaughtering facilities, and we do not believe that the proposed regulations would inhibit the viability of such commercial transportation. We welcome public comments on these proposed regulations.

## Proposed Regulations

### Proposed § 88.1—Definitions

The proposed *Definitions* section defines terms used in proposed part 88. While most of the terms and their proposed definitions are self-explanatory, a few warrant discussion.

We are proposing to divide the concepts inherent in the statute's definition of "commercial transportation" into two terms: *commercial transportation* and *conveyance*. We are proposing to define *commercial transportation* as "movement for profit via conveyance on any highway or public road." This definition would apply to both interstate and intrastate movement. We are proposing to define *conveyance* as "trucks, tractors, trailers, or semitrailers,

or any combination of these, propelled or drawn by mechanical power.”

We are proposing to define *owner* as “any individual, partnership, corporation, or cooperative association that purchases equines for the purpose of sale to a slaughtering facility” and *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 occasionally transports equines to slaughtering facilities incidental to the principal activity of the individual or other entity in production agriculture.” In cases in which the owner drives the conveyance carrying the equines to the slaughtering facility, the owner would also be the shipper. However, in many cases, owners hire commercial shippers to transport the equines. As proposed, both owners and shippers could be subject to the regulations.

The purpose of the definition of *shipper* is to carry out the mandate from Congress that “the object of any prospective regulation on this matter will be the individual or company which regularly engages in the commercial transport of equine to slaughter, and will not extend to individuals or others who periodically transport equine for slaughter outside of their regular activity.” We would consider any person who ships equines to slaughtering facilities more often than once a year, except for persons or entities who derive the majority of their income from production agriculture, to be subject to the proposed regulations.

Finally, we are proposing to define *slaughtering facility* as “a commercial establishment that slaughters equines for any purpose.” Equines, like other livestock, are slaughtered primarily at commercial slaughtering facilities for the purpose of human consumption. In addition, to a lesser extent, equines that are no longer valuable as live animals are used for purposes such as the manufacture of pet food and glue. Because the statute does not define “slaughtering facility,” we believe that we have the authority to regulate the commercial transportation of equines for slaughter at any commercial facility—not only facilities that slaughter equines and other animals for human consumption. Therefore, any shipper who transports live equines to any facilities for slaughter and processing would be subject to the proposed regulations.

#### *Proposed § 88.2—General information*

The *General information* section includes two proposed statements: (1)

State governments may enact and enforce regulations that are consistent with or that are more stringent than the regulations in proposed part 88; and (2) to determine whether an individual or other entity who transports equines to slaughtering facilities is subject to the regulations in proposed part 88, a USDA representative may request of any individual or other entity information, to be provided within 30 days, regarding the primary business of the individual or other entity transporting the equines.

#### *Rationale*

The first proposed statement conveys our willingness to allow the States to promulgate and enforce similar or even more stringent regulations to ensure the humane transport of equines to slaughtering facilities. The second proposed statement would provide a means by which USDA representatives enforcing the regulations could obtain business information about individuals or other entities found to be transporting equines to slaughtering facilities. Information about the primary source of income and frequency of shipping equines to slaughtering facilities of such persons would be necessary to determine if the individual or other entity meets the proposed definition of *shipper* and is, therefore, subject to the regulations in proposed part 88. We believe that the statute gives us the authority to request such information of anyone who might have information regarding the principal business of any individual or other entity found to transport equines to slaughter.

#### *Proposed § 88.3—Standards for Conveyances*

We are proposing to require that the animal cargo space of conveyances used for the commercial transportation of equines to slaughtering facilities: (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 adequate ventilation, has no sharp protrusions, etc.); (2) include means of completely segregating each stallion and 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 design, size, and location to provide for safe loading and unloading. We are further proposing to prohibit the commercial transportation of equines to slaughtering facilities in conveyances

with animal cargo spaces divided into two or more stacked levels, except that conveyances lacking the capability to convert from two or more stacked levels to one level (“double-deck trailers”) may be used for 5 years following the publication of a final rule to this proposed rule. Conveyances with “floating decks” (collapsible floors that allow conversion of the animal cargo space to one, two, or three stacked levels) would need to be configured to transport equines on one level only.

#### *Rationale*

The proposed requirement concerning the design, construction, and maintenance of the conveyance is self-explanatory; because the purpose of the statute is to ensure the humane transport of equines to slaughtering facilities, the means of conveying the equines must not be a source of harm to them. As examples, the conveyance must be designed so that it provides adequate ventilation at all times for the equines, and it must be constructed and maintained so that no sharp edges or points that could injure an equine protrude from the walls, floor, or ceiling.

The proposed requirement concerning segregation of certain equines derives, in part, directly from the statute, which directs the Secretary to require the segregation of stallions from other equines during transit. Research conducted by Colorado State University has shown that one of the primary causes of injuries to equines being transported to slaughter is attacks by other equines. Stallions (uncastrated male equines that are 1 year of age or older, according to our proposed definition) are known to be aggressive animals that are easily provoked into attacking other equines. However, research has shown that aggressive geldings and mares also will attack other equines when placed together in close quarters. For that reason, we are proposing to also require the segregation of other aggressive equines.

The remaining three requirements pertaining to adequate headroom, sufficient doors and ramps, and a prohibition on the transport of equines in animal cargo spaces divided into two or more stacked levels are all somewhat related. Research has shown that the use of double-deck trailers for transporting equines to slaughtering facilities is likely to cause injuries and trauma to the equines. Double-deck trailers do not provide adequate headroom for equines, with the possible exception of foals and yearlings; therefore, adult equines transported in double-deck trailers can acquire cuts and abrasions to their

heads, which scrape the tops of the compartments. In addition, the equines cannot stand in a normal position with their heads raised. As a result of having to stand with their heads in a lowered position, they cannot maintain balance as easily and sustain injuries from falling. In addition, the ramps used to load animals onto double-deck trailers are at a relatively steep angle. While other species of animal, such as sheep, can maneuver the ramps without incident, equines frequently sustain injuries from being forced up or down the steep inclines. Because of their long legs and relatively high center of gravity, equines injure their withers and heads when they jump for the small opening at the top of a ramp leading out of a double-deck trailer.

The overpasses on most U.S. interstate highways are between 14- to 16-feet high. 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. Therefore, we believe that no conveyance is capable, under normal circumstances, of traversing most U.S. highways while carrying equines standing in a normal postural position on two or more stacked levels. Moreover, even if a route was chosen that did not involve passage under overpasses, a conveyance tall enough to transport equines standing in a normal postural position on two or more stacked levels would be extremely top-heavy and prone to tipping. For these reasons, 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, and we are proposing to prohibit the commercial transportation of equines to slaughtering facilities in such conveyances. However, to ease the burden of this proposed regulation on the affected entities, we are proposing to allow, for a period of 5 years following publication of a final rule to this proposal, the use of conveyances that lack the capability to convert from two or more stacked levels to one.

We arrived at the proposed "grandfather clause" of 5 years after much discussion with interested parties, including representatives of the trucking and equine industries, at the two meetings hosted by humane organizations mentioned earlier. The meeting participants came to a consensus on this issue, and we believe that the proposed timeframe is appropriate. Livestock trailers not used to haul equines can be serviceable for approximately 10 years. Trailers used to haul equines need to be replaced sooner because equines inflict significant damage to livestock trailers during

transport. 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.

*Proposed § 88.4—Requirements for Transport*

We are proposing various actions that must be taken by persons engaged in the commercial transportation of equines to slaughtering facilities.

We would require that, prior to the commercial transportation of equines to a slaughtering facility, the shipper or owner must: (1) 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., food such as hay or grass that allows the equine to maintain well-being during transit), potable water, and the opportunity to rest; (2) apply a USDA backtag to each equine in the shipment; (3) complete and sign an owner-shipper certificate (described below) for each equine being transported; and (4) load the equines on the conveyance so that each equine has enough floor space to ensure that no equine is crowded in a way likely to cause injury or discomfort and each stallion and aggressive equine is completely segregated so that no stallion or aggressive equine can come into contact with any other equine on the conveyance.

The owner-shipper certificate would need to include the following information:

- (1) The name and address of the shipper and, if the shipper is not the owner of the equine, the name and address of the owner;
- (2) A description of the conveyance, including the license plate number;
- (3) A description of the equine's physical characteristics, including such information as sex, coloring, distinguishing markings, permanent brands, and electronic identification, that could be used to identify the equine;
- (4) The number of the USDA backtag applied to the equine;
- (5) A statement of fitness to travel, which would have to 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;
- (6) A description of anything unusual with regard to the physical condition of the equine, such as a wound or blindness in one eye, or any special handling requirements;
- (7) The date, time, and place that the equine was loaded on the conveyance; and

(8) A statement that the equine was provided access to food, water, and rest prior to loading as required.

We are proposing to require that either the shipper or the owner must sign the owner-shipper certificate. We are also proposing that the owner-shipper certificate for each equine must accompany the equine throughout transit to the slaughtering facility. In situations described previously in which the transport consists of two segments (including a stop at a feedlot), then two owner-shipper certificates would need to be prepared. Moreover, we are proposing to require that the person who signs the owner-shipper certificate (either the owner or the shipper) must maintain a copy of the certificate for 1 year following the date of signature.

We are proposing to require that, during transit to the slaughtering facility, a 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 provide veterinary assistance as soon as possible to any equines in obvious physical distress; and (3) offload from the conveyance any equine that has been on the conveyance for 28 consecutive hours and provide the equine, for at least 6 consecutive hours, appropriate food, potable water, and the opportunity to rest. If such offloading is required en route to the slaughtering facility, a shipper must prepare another owner-shipper certificate indicating the date, time, and location where the offloading occurred.

We are proposing to require that handling of all equines in commercial transportation to a slaughtering facility be done as expeditiously and carefully as possible in a manner that does not cause unnecessary discomfort, stress, physical harm, or trauma. We are further proposing to prohibit the use of electric prods for any purpose on equines in commercial transportation to a slaughtering facility, including during loading or offloading on the conveyance, except when human safety is threatened.

Finally, we are proposing to state 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. Moreover, at any time during the commercial transportation of equines to a slaughtering facility, a USDA representative may direct a shipper to take appropriate actions to alleviate the

suffering of any equine. If deemed necessary by the USDA representative, such actions could include offloading an ill or injured equine and securing the services of a veterinary professional to treat the equine, including performing euthanasia when necessary.

#### Rationale

We are proposing to require that, for at least 6 hours prior to being loaded on the conveyance, equines in commercial transportation to a slaughtering facility be provided with appropriate food, potable water, and the opportunity to rest because research has shown that equines that have been provided these things prior to transit can be transported for at least 28 hours with no adverse health effects. Access to water is the most serious concern. Many equines do not experience serious physiologic distress for 30 hours without water if they have had access to water during the 6-hour period prior to deprivation. However, after consultation with interested parties at the two meetings mentioned previously, we believe that the proposed 28-hour maximum allowable timeframe for deprivation of food, water, and rest during transport to slaughter is appropriate. This timeframe would allow for realistic travel times from most points of the United States to the equine slaughtering plants and would ensure that the equines would not undergo serious physiologic distress. For these reasons, we are also proposing to require that any equine that has been on the conveyance for 28 consecutive hours must be offloaded and, for at least 6 consecutive hours before continuing the journey, provided appropriate food, potable water, and the opportunity to rest. Adequate amounts of hay and grass are examples of food that we would consider to be appropriate; oats are less desirable as they can cause digestive problems for equines in transit.

We are proposing to require that a shipper apply a USDA backtag to each equine to facilitate identification of the equines upon arrival at a slaughtering facility. The owner-shipper certificates would have to include the USDA backtag number of the equine. A USDA representative would examine the owner-shipper certificates and the backtags on the equines to ascertain which equines were identified on which certificates.

We have several reasons for proposing to require that an owner or shipper prepare, sign, and maintain for 1 year an owner-shipper certificate for each equine being transported. As discussed above, the certificates would include the name and address of the shipper and, if

that person is not the owner of the equines, the name and address of the owner. The certificates would also include a description of the equine's physical characteristics and a description of the conveyance, including the license plate number. All of this information would likely be necessary for prosecution of persons found to be in violation of the regulations in proposed part 88.

This information would also be helpful in the traceback of any stolen equines. The USDA's FSIS has veterinary medical officers stationed at U.S. slaughtering facilities. Enforcement of the proposed regulations would primarily be carried out at the slaughtering facilities (only four currently slaughter equines) in a combined FSIS-APHIS effort. FSIS already conducts a program to identify stolen equines that arrive at slaughtering facilities. To assist USDA representatives in any investigations stemming from the shipment of equines to slaughtering facilities, we are proposing to require that the person who signs the owner-shipper certificate (either the shipper or the owner) maintain a copy of the certificate for 1 year following signature.

An important purpose of the proposed owner-shipper certificates is to certify the equine's fitness to travel. As such, we are proposing to require that the owner-shipper certificate 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. Any equine not meeting these five conditions is generally considered to be unfit for travel. Equines that cannot bear weight on all four limbs and equines that are unable to walk unassisted are likely to fall during transport by conveyance and could incur serious injury by being stepped on by other equines. Equines that are blind in both eyes are subject to many injuries during transit and pose serious danger to other equines on the conveyance and human handlers because blind equines are easily frightened. Equines 6 months of age or less being transported by conveyance are subject to injury because of their relatively diminutive size. Finally, any mare that gives birth can develop serious complications, and no mare should be subjected to giving birth on a conveyance filled with other equines, both for her well-being as well as the well-being of the foal.

We are proposing to require that persons shipping equines to slaughtering facilities describe anything unusual with regard to the physical

condition of each equine, such as an old wound, as a means of disclaiming any physical conditions that were present on the equine prior to the commercial transportation to the slaughtering facility. With this information, a USDA representative could examine the equine upon arrival at the slaughtering facility, review the owner-shipper certificate, and determine whether an injury occurred during transit and whether it constituted a violation of the regulations. We are also proposing to require that persons shipping equines to slaughtering facilities indicate any special handling needs of any equines being transported.

The certificate would have to include the date, time, and place at which the equine was placed on the conveyance for movement to the slaughtering facility so that a USDA representative at the slaughtering facility could determine whether the equine had been on the conveyance for longer than 28 hours. Equines that have been on a conveyance for 28 hours would need to be offloaded and provided appropriate food, potable water, and the opportunity to rest, as previously discussed.

The proposed requirement regarding sufficient floor space on conveyances transporting equines to slaughtering facilities is self-explanatory; the proposed requirement regarding segregation of stallions and other aggressive equines on the conveyances was discussed previously in this document in the "Rationale" section for § 88.3—*Standards for Conveyances*.

The proposed performance-based requirement regarding driving conveyances transporting equines to slaughtering facilities is designed to protect the equines from injury caused by poor driving habits. For example, drivers of conveyances transporting equines should accelerate and decelerate slowly and turn corners carefully because sudden starts or stops or turns taken too quickly can cause equines on board to lose balance and fall. As stated previously, we are working with USDA-AMS to develop educational materials regarding the safe transport of equines.

Our proposed requirement regarding observation of the equines not less than once every 6 hours is intended to help ensure that any equines that may have fallen or otherwise become physically distressed en route will not go unnoticed and unattended to for the entire journey to the slaughtering facility. As stated previously, we are proposing to require that veterinary assistance be provided as soon as possible to any equine in obvious physical distress.

Our proposed requirements regarding handling of equines and taking appropriate actions to alleviate the suffering of any equine are self-explanatory. We are proposing to prohibit the use of electric prods on equines in commercial transportation to slaughtering facilities. Although electric prods are frequently used to assist in moving cattle and swine, we believe that these devices cause undue pain and trauma when used on equines, which have much thinner skins than cattle or swine. However, we would not consider the use of an electric prod to be a violation of the regulations in proposed part 88 in situations in which an equine threatens human safety.

We are proposing to authorize USDA representatives to conduct examinations and inspections under proposed part 88 at any point during the commercial transportation of equines to a slaughtering facility so that regulated entities would know that they may be subject to inspection prior to arrival at the slaughtering facility. In addition, allowing USDA inspection of conveyances en route to slaughtering facilities offers better protection to the equines than conducting examinations and inspections only at these facilities. For any equine found to be suffering en route to a slaughtering facility, a USDA representative could require a shipper to provide veterinary assistance, including securing the services of a veterinary professional to treat an injured equine and perform euthanasia if necessary.

We believe that USDA authority under the statute extends, for domestic movement, from the point of loading the equines on the conveyance to offloading them at the slaughtering facility. For equines transported by conveyance from a point inside the United States to a slaughtering facility outside the United States, USDA regulation would end at the border, where the shipper would need to present the owner-shipper certificates. For equines transported by conveyance from a point outside the United States to a commercial facility in the United States for slaughter, USDA regulation would begin upon crossing the border. However, we would expect the owner-shipper certificates to be completed at the point of loading the equines (as would be required for domestic movement of equines to slaughter), so the proposed maximum 28-hour period for transport without offloading for food, water, and rest would begin at the point of loading the equines in the foreign country.

#### *Proposed § 88.5—Requirements at a Slaughtering Facility*

We are proposing to require that, upon arrival at a slaughtering facility, a shipper must: (1) Ensure that each equine has access to appropriate food and potable water after being offloaded from the conveyance; (2) present the owner-shipper certificates to a USDA representative; (3) allow a USDA official 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. In addition, as discussed above, shippers transporting equines to slaughtering facilities outside the United States would need to present the owner-shipper certificates to USDA representatives at the border.

#### Rationale

Our proposed requirement regarding offloading of the equines is self-explanatory; most equines being transported to slaughtering facilities have traveled great distances without access to food and water and need to be offloaded and provided access to appropriate food and potable water to maintain their well-being.

We are proposing to require that shippers arriving at a slaughtering facility present the owner-shipper certificates to a USDA representative and allow the USDA representative access to the equines and the animal cargo area of the conveyance so that he or she can assess the condition of the equines to determine whether any apparent violations of the regulations in proposed part 88 have occurred. We are further proposing to prevent a shipper from offloading a shipment of equines at a slaughtering facility and leaving the premises before a USDA representative can make the necessary examinations and inspections of the equines, the conveyance, and the owner-shipper certificates. We believe that such inspections and examinations would be necessary for effective enforcement of the proposed regulations. Finally, we are proposing to require that shippers transporting equines to slaughtering facilities outside of the United States present the owner-shipper certificates to USDA representatives at the border so that we can ensure the well-being of the equines as well as track the numbers of equines being shipped out of the country for slaughter elsewhere. When they deem it necessary, USDA representatives at the border would conduct inspections of conveyances carrying equines destined for slaughter outside the United States.

#### *Proposed § 88.6—Violations and Penalties*

We are proposing to state that the Secretary is authorized to assess civil penalties of up to \$5,000 per violation for noncompliance with any of the regulations in proposed part 88. We are also proposing that each equine transported in violation of the regulations would be considered a separate violation.

#### Rationale

As stated previously, the statute authorizes the Secretary to establish and enforce appropriate and effective civil penalties. In considering appropriate amounts for civil penalties, we reviewed the legislative history of the statute and also drew on our experience as a Federal regulatory agency. We especially drew 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 humane treatment of certain animals. In the statute's origins as a Senate bill, a maximum criminal penalty was set at \$5,000. We believe that civil penalties up to \$5,000 per violation would be appropriate and effective in deterring noncompliance with the proposed regulations as directed by Congress in the statute.

The proposed 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.

Adjudication of a violation of the regulations would be conducted pursuant to the Department'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). In the rule portion of this document, we are proposing to add the statute to the list of statutes in 9 CFR 70.1. The necessary amendment to 7 CFR 1.131 is being handled through a separate rulemaking action. The Rules of Practice establish, among other things, the procedures for filing a complaint and a response, settling a case, and holding a hearing.

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

This proposed 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. 603, we have performed an Initial Regulatory Flexibility Analysis for this proposed rule, which 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 proposed regulations, which would 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 proposed regulations would 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. Our discussion of the anticipated economic impact of this proposed rule on small entities also serves as our cost-benefit analysis under Executive Order 12866.

The proposed rule would pertain 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 four slaughtering facilities that accept equines in the continental United States: Two are located in Texas (Ft. Worth and Kaufman), and the others are in Nebraska (North Platte) and 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.

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 in this 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, as proposed, the regulations would 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 entities would be affected by the proposed 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 entities (approximately 200), the average number of equines transported annually to slaughter per affected entity would be 500.

The proposed rule would require that, for a period of not less than 6 consecutive hours 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 the proposed rule. In addition, the owners are more likely than commercial shippers to have the facilities necessary to meet the preloading requirements.

This proposed 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 worst, the proposed rule would result in owners having to keep their equines in a farm or feedlot for an additional 6 hours to fulfill the proposed 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 impact of this proposed requirement because no hard data is available on the prevalence of slaughter equines receiving the proposed requirements for food, water, and rest prior to loading. However, for the reasons stated above, the impact should 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.

The proposed rule would 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 would include a statement that the equine has received the required preloading services. If, as a result of this proposed 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 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 the proposed rule, the owner could ship only 35 equines in a particular shipment, 3 fewer than the 38 that would have been shipped had the proposed 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.

The proposed rule would 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. The proposed rule would 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, the proposed rule would require that stallions and other aggressive equines be segregated from each other and all other equines on the conveyance.

Available data suggest that the proposed "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.

The proposed rule would 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, would be banned in 5 years. 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 proposed 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 proposed 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.

The proposed rule would 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 would 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 would not need the services of a veterinarian in order to make the fitness-to-travel determination. The proposed rule would 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.

The proposed requirement for an owner-shipper certificate would 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 would 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 would be theirs, not the commercial shippers. The owners would 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 would not incur installation costs.

The added administrative costs that owners would 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 would have to spend about 42 hours per year complying with the proposed 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 would likely be less than those for owners.

The proposed rule would allow the use of electric prods only in life-threatening situations and would prohibit the transport of equines to slaughter on conveyances divided into more than one level, such as double-deck trailers, 5 years after the final rule's publication date. The proposed 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 affected entities would be negatively affected by the reduction in the numbers of equines that could be transported in a single conveyance. Upon publication of the final rule, shippers using floating-deck trailers to transport equines to slaughtering facilities would need to collapse the decks so that they create only one level. Otherwise, the proposed ban on transporting slaughter equines in conveyances divided into more than one stacked level should not impose a burden on the owners of double-deck trailers because these trailers can be, and are, also used to transport other commodities, including livestock other than equines 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. If the proposed ban takes effect, commercial shippers who transport equines to slaughtering facilities should be able to 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 would have to find another use for the equipment or trade for single-deck trailers. This situation should not pose a problem. Owners should be able to sell their serviceable trailers at fair market value to transporters of commodities other than equines. Furthermore, many of the double-deck trailers now in the service of owners would need to be retired in 5 years anyway.

In conclusion, we do not anticipate that any of the proposed requirements would have undue onerous impacts on any affected entities. We believe that many transporters of slaughter equines may already be in compliance with many of the proposed requirements. The proposed requirement for an owner-

shipper certificate would affect all transporters of slaughter equines, but we have designed the proposed form to make its preparation as easy as possible. We do not believe that the completion and maintenance of these certificates would 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 proposed ban on double-deck trailers should have minimal effect because these trailers can be used for other purposes and many would need to be replaced prior to the ban becoming effective anyway.

At a minimum, the proposed rule would require that affected entities 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 would translate into added costs of about \$300 annually. In a worst-case scenario, the proposed rule could 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 entities are engaging in little or no voluntary compliance with the proposed requirements.

#### **Effect on Small Entities**

The Regulatory Flexibility Act requires that agencies consider the economic impact of proposed rules on small entities (i.e., businesses, organizations, and governmental jurisdictions). As discussed above, the entities that would be affected by the proposed rule are owners and commercial shippers who transport equines to slaughtering facilities.

As stated previously, we estimate that approximately 200 entities would be affected by the proposed rule. Although the sizes of these entities is 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.

The proposed rule would have a negative economic impact on affected entities, large and small. As indicated above, operating costs would 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 would 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 proposed rule's provisions, such as stallion segregation. Because we do not have enough data to conclude that even a cost increase of as low as \$300 annually would not be significant for most of the potentially affected entities, we welcome public comment on the potential economic impact of the proposal on small entities.

#### Alternatives Considered

The Regulatory Flexibility Act, at section 603(c), requires Federal agencies promulgating new regulations to consider alternatives that would lessen the impact of the proposed regulations on affected small entities. In developing the proposed rule, APHIS considered many alternatives, some of which are discussed below. As mentioned previously, in developing the proposed program to carry out the statute, APHIS 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, to get appropriate public input, APHIS 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.

APHIS had considered requiring that owners and shippers of equines destined for slaughter secure the services of a veterinarian to certify the equines' fitness for travel. However, as proposed, owners and shippers would be allowed to certify the equines' fitness to travel themselves. In addition, APHIS considered various alternatives with regard to the types of equines that would be prohibited from shipment. After much consideration, the agency is proposing to prohibit 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. Agency officials believe that they 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, the agency considered many allowable timeframes 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, the agency determined that such a ban is necessary to ensure the humane transport of equines to slaughtering facilities. However, the proposed rule would allow the use of double-deck trailers for a period of 5 years following publication of a final rule to lessen the impact of the proposed ban on affected entities.

Paragraph (c) of section 603 of 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 proposed 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.

This proposed rule contains information collection and recordkeeping requirements. These requirements are described in the section of this document entitled "Paperwork Reduction Act."

#### Executive Order 12372

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

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this

rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98-074-1. Please send a copy of your comments to: (1) Docket No. 98-074-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Implementing this proposed rule would require two information collection activities: The preparation of an owner-shipper certificate for each equine transported to slaughter and the collection of information concerning the business of any person found to be transporting equines to a slaughtering facility. The owner-shipper certificate would include, among other things, a description of the equine's physical characteristics and a description of the conveyance; certification of the equine's fitness to travel; and the date, time, and place at which the equine was placed on the conveyance for movement to the slaughtering facility. We believe this information would be necessary for enforcement of the proposed regulations. The collection of business information from persons found to be transporting equines to slaughtering facilities would enable us to determine whether a particular person is subject to the proposed regulations.

We are asking OMB to approve these information collection activities in connection with our efforts to ensure that horses being transported to slaughter are treated humanely.

We are soliciting comments from the public concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's

functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 5 minutes per response.

*Respondents:* Owners and shippers of slaughter horses.

*Estimated annual number of respondents:* 200.

*Estimated annual number of responses per respondent:* 500.

*Estimated annual number of responses:* 100,000.

*Estimated total annual burden per respondent:* 42 hours.

Copies of this information collection can be obtained from: Clearance Officer, OClO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

**List of Subjects**

*9 CFR Part 70*

Administrative practice and procedure.

*9 CFR Part 88*

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

Accordingly, we propose to amend 9 CFR part 70 and to add a new 9 CFR part 88 as follows:

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

1. The authority citation for part 70 would be 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, 371.2(d).

2. In § 70.1, the list of statutory provisions would be 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 would be 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, 371.2(d).

**§ 88.1 Definitions.**

*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.* Any individual, partnership, corporation, or cooperative association that purchases equines for the purpose of sale to a slaughtering facility.

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

*Secretary.* The Secretary of Agriculture.

*Shipper.* 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.

*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 of any individual or other entity information regarding the business of the individual or other entity that transported the equines. When such information is requested, the individual or other entity will 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 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 [date 5 years from the date of publication of final rule]. 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 shipper or owner must:

(1) 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;

(2) Apply a USDA backtag<sup>1</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:

(i) The shipper's name and address and, if the shipper is not the owner of the equines, the owner's name and address;

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

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

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

(v) A statement of fitness to travel, 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;

(vi) 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;

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

(viii) 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 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. Veterinary assistance must be provided as soon as possible for any equines in obvious physical distress; and

(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. If such offloading is required en route to the slaughtering facility, a 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 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 a veterinary professional to treat an equine, including performing euthanasia if necessary.

(f) The individual or other entity who signs the owner-shipper certificate (either the owner or the shipper) 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 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) The shipper must not leave the premises of a slaughtering facility until the equines have been examined by a USDA representative.

(c) Any 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 will be considered a separate violation.

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

Done in Washington, DC, this 13th day of May 1999.

**Joan M. Arnoldi,**

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

[FR Doc. 99-12577 Filed 5-18-99; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-100905-97]

RIN 1545-AU96

#### Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document proposes to eliminate the regulatory requirement that certain information be set forth on the face of a collateralized debt obligation (CDO) or regular interest in a Real Estate Mortgage Investment

<sup>1</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.