



# Legal Protections for Farm Animals During Transport

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## INTRODUCTION

Each year, millions of farm animals are transported throughout the United States and across our borders to various locations based on their “stage of production.” Animals are transported for breeding, fattening, and slaughter, and often experience pain, fear, and suffering as a result of their loading, travel, and unloading. Farm animals are frequently deprived of food, water, and bedding during transport and often experience crowded conditions in trucks. Sometimes, the conditions are so bad during transport that animals become extremely stressed and may even die. Because of the potential negative impacts of transportation on animal welfare, the issue has been addressed (though inadequately) by federal, state, and international bodies.

## FEDERAL LAW

### *Twenty-Eight Hour Law*

In the 1800s farm animals in the United States were transported to market by railroad. Criticism of cattle transportation methods resulted in the introduction of a bill in Congress in 1871 to regulate the length of time animals can be transported before rest must be provided.<sup>1</sup> The bill was finally passed on March 3, 1873, and became known as the Twenty-Eight Hour Law.<sup>2</sup> The law has also been known as the “Cruelty to Animals Act,” the “Live Stock Transportation Act,” and the “Food and Rest Law.”<sup>3</sup>

The version of the law passed in 1873 was a step forward in developing humane standards for the transportation of cattle, sheep, and swine. In order to comply with the law, transport companies were obliged to provide facilities at convenient places on their rail lines where feed, water, and rest could be furnished.<sup>4</sup> Early pens and enclosures provided for this purpose were extremely crude and often poorly furnished.<sup>5</sup> Many of the loading and unloading chutes were poorly constructed and resulted in injury to the animals.<sup>6</sup> Few of the pens provided for protection against rain or snow; some were not equipped with either feeding or watering troughs.<sup>7</sup> The pens were often so muddy that cattle would not lie down even to rest. Too often, the feed was dumped in the mud and animals were forced to drink from contaminated mud holes.<sup>8</sup>

Nonetheless, the conditions under which livestock were handled in transit were slightly improved under this law.<sup>9</sup> Dissatisfaction arose among the shippers, because of the poor conditions and the frequent unloading of the animals.<sup>10</sup> Numerous convictions for noncompliance with the 1873 law

were obtained, but the law was repealed and replaced by the present Twenty-Eight Hour Law, enacted on June 29, 1906.<sup>11</sup> The law was again repealed and reenacted in amended form (but “without substantive changes”) in 1994.<sup>12</sup>

The text of the Twenty-Eight Hour Law, as amended in 1994, follows:

#### **49 U.S.C. § 80502. Transportation of animals**

- (a) Confinement –
- (1) Except as provided in this section, a rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel transporting animals from a place in a State, the District of Columbia, or a territory or possession of the United States through or to a place in another State, the District of Columbia, or a territory or possession, may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.
  - (2) Sheep may be confined for an additional 8 consecutive hours without being unloaded when the 28-hour period of confinement ends at night. Animals may be confined for –
    - (A) more than 28 hours when the animals cannot be unloaded because of accidental or unavoidable causes that could not have been anticipated or avoided when being careful; and
    - (B) 36 consecutive hours when the owner or person having custody of animals being transported requests, in writing and separate from a bill of lading or other rail form, that the 28-hour period be extended to 36 hours.
  - (3) Time spent in loading and unloading animals is not included as part of a period of confinement under this subsection.
- (b) Unloading, Feeding, Watering, and Rest – Animals being transported shall be unloaded in a humane way into pens equipped for feeding, water, and rest for at least 5 consecutive hours. The owner or person having custody of the animals shall feed and water the animals. When the animals are not fed and watered by the owner or person having custody, the rail carrier, express carrier, or common carrier (except by air or water), the receiver, trustee, or lessee of one of those carriers, or the owner or master of a vessel transporting the animals –

- (1) shall feed and water the animals at the reasonable expense of the owner or person having custody, except that the owner or shipper may provide food;
  - (2) has a lien on the animals for providing food, care, and custody that may be collected at the destination in the same way that a transportation charge is collected; and
  - (3) is not liable for detaining the animals for a reasonable period to comply with subsection (a) of this section.
- (c) Non-application – This section does not apply when animals are transported in a vehicle or vessel in which the animals have food, water, space, and an opportunity for rest.
- (d) Civil Penalty – A rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel that knowingly and willfully violates this section is liable to the United States Government for a civil penalty of at least \$100 but not more than \$500 for each violation. On learning of a violation, the Attorney General shall bring a civil action to collect the penalty in the district court of the United States for the judicial district in which the violation occurred or the defendant resides or does business.

The US Department of Agriculture (USDA) added regulations entitled “Statement of Policy under the Twenty-Eight Hour Law” in 1963.<sup>13</sup> Today the law is enforced by the Veterinary Services program of the USDA’s Animal and Plant Health Inspection Service (APHIS).<sup>14</sup> Veterinary Services was originally created by Congress in 1884 as the Bureau of Animal Industry, with the stated purpose of preventing the exportation of diseased animals and providing means for the suppression and eradication of contagious diseases among domestic animals.<sup>15</sup>

#### **Equine Transport**

In 1996, Congress amended the Humane Methods of Slaughter Act, requiring the USDA to develop regulations governing the commercial transportation of equines for slaughter.<sup>16</sup> The regulations were not released until nearly six years later, and one provision prohibiting use of double-deck trailers to transport horses did not go into effect until December 2006, 10 years after passage.<sup>17</sup> Provisions of the regulations include separation of stallions and aggressive equines; adequate floor space per animal to prevent injury; adequate food, water, and six hours of rest prior to transport; and, on conveyances for 28 consecutive hours, unloading for feed, water, and six hours of rest.<sup>18</sup> The USDA amended the horse transport regulations in 2011, extending protections to equines bound for slaughter

but delivered first to an assembly point, feedlot, or stockyard.<sup>19</sup> However, the regulations apply only to equines going to slaughter. Animal advocacy groups are attempting to extend the prohibition on double-deck trailers to transport of equines for other purposes, such as rodeos, through federal legislation.<sup>20</sup>

### **Animal Health Protection Act**

In 2002, Congress enacted the Animal Health Protection Act (AHPA), which authorizes the USDA to restrict or prohibit the movement of animals for disease control purposes and, in certain circumstances, to ensure humane treatment of farm animals.<sup>21</sup> Specifically, the law states,

“The Secretary [of Agriculture] may prohibit or restrict the use of any means of conveyance in connection with the exportation of livestock if the Secretary determines that the prohibition or restriction is necessary because the means of conveyance has not been maintained in a clean and sanitary condition or does not have accommodations for the safe and proper movement and humane treatment of livestock.”<sup>22</sup>

The AHPA also gives authority to the Secretary to conduct investigations for the enforcement of the law, and criminal and civil penalties can be assessed for violation of the law.<sup>23</sup> To date, the USDA has not used this authority to regulate the interstate transport of animals within the United States.

### **Federal Laws Addressing International Export of Livestock**

The exportation of animals is addressed in Title 9 of the Code of Federal Regulations, Part 91. Export regulations cover the inspection of animals and the vessels used to transport them from the United States by sea.<sup>24</sup> The regulations also address the handling and care of animals during the voyage.<sup>25</sup> They require that animals intended for export by sea or air receive a visual inspection from an APHIS veterinarian within 48 hours of embarkation, unless the importing country specifies otherwise.<sup>26</sup> The APHIS veterinarian is to reject for export any animal he or she finds unfit to travel.<sup>27</sup>

In February 2011, AWI petitioned the USDA to adopt “fitness to travel” requirements for all farm animals exported from the United States to any foreign country except those traveling overland to Canada or Mexico.<sup>28</sup> AWI recommended that the USDA employ the fitness requirements included in the animal transport standards of the World Organisation for Animal Health (known by its French initials “OIE”).<sup>29</sup> Exports of livestock (excluding poultry) to countries other than Canada

or Mexico increased dramatically between 2010 and 2012, from fewer than 56,000 animals in 2010 to more than 180,000 in 2012.<sup>30</sup> The numbers have declined since 2014, with 97,000 animals exported to countries other than Canada or Mexico in 2015.<sup>31</sup> In September 2013, the USDA officially responded to AWI’s petition, indicating that it was in the process of updating its regulations “to better ensure the welfare and safety of animals during transport for export to foreign countries.”<sup>32</sup> The revised regulations were proposed in February 2015<sup>33</sup> and finalized in 2016.<sup>34</sup> The new regulations include many requirements that should serve to improve the welfare of animals transported internationally, including fitness to travel criteria, means of humane euthanasia aboard vessels, replacement parts for major life support systems aboard vessels, and reporting of the number of mortalities and injuries occurring during each voyage, as well as the nature of these deaths and injuries.<sup>35</sup>

## **ENFORCEMENT OF FEDERAL LAWS**

### **Twenty-Eight Hour Law**

The 1906 act was a stronger law than that of 1873, and its provisions were enforced immediately after passage.<sup>36</sup> Waybills and records maintained by carriers and others were examined daily.<sup>37</sup> Apparent violations were reported at stations where USDA livestock inspectors of the Bureau of Animal Industry were stationed.<sup>38</sup>

Inspections were made at feed, water, and rest stations throughout the United States to ascertain whether the facilities and equipment were maintained for the safe and humane handling of the species they were designed to accommodate.<sup>39</sup> Unsatisfactory conditions found at the stations were promptly brought to the attention of the affected railroads for corrective action.<sup>40</sup>

In the early years of the law, when shipments were by rail, there were about 900 feed, water, and rest stations operated by the railroad companies; by 1990, the number had dwindled to about 25, and many of these stations had not been used for several years.<sup>41</sup> As of 2017, the USDA identified only five feed, water, and rest stations remaining for the entire country.<sup>42</sup> Reported violations dropped as well, from nearly 400 cases in 1967, to fewer than 100 in 1976, and none in 1988.<sup>43</sup> With the increased use of trucks as a means of conveyance, there has been a steady decline

over the past century in the movement of livestock by railroads.<sup>44</sup> In fact, according to the Bureau of Transportation Statistics, as of 2012 no live animals were transported by rail.<sup>45</sup> With the diminished use of railroads for transport, the use of trucks has vastly increased.<sup>46</sup> In recent years, nearly all transported livestock were delivered by for-hire or private trucks.<sup>47</sup>

Over the years, animal advocacy groups became aware that the USDA did not apply the Twenty-Eight Hour Law to transport by truck, and as a result, enforcement of the law had virtually ceased. In October 2005, a coalition of humane organizations submitted a petition for rulemaking to the USDA, requesting that the department promulgate regulations applying the Twenty-Eight Hour Law to the truck transport of animals.<sup>48</sup> In preparing the petition, the groups found no reported USDA administrative decisions involving the Twenty-Eight Hour Law from 1997 onward, and no reported federal cases involving enforcement of the law going back more than 40 years (between 1960 and 2005).<sup>49</sup>

In 2006, the USDA responded positively to the petition, stating in a letter to the petitioners that “the plain meaning of the statutory term “vehicle” in the Twenty-Eight Hour Law (as amended in 1994) includes “trucks” which operate as express carriers or common carriers.”<sup>50</sup> At that time, the USDA said that it had clarified the issue in a 2003 internal memo distributed to government veterinarians.

To determine how the department handles violations of the law occurring on trucks, AWI submitted Freedom of Information Act (FOIA) requests to the USDA in 2009, 2011, 2014, 2015, and 2018. AWI’s 2018 request is still pending as of the writing of this report. Records received through these FOIA requests revealed five investigations into possible violations of the law from 2006 to 2015. Through online research, AWI found another USDA investigation, bringing the total number of investigations to six within the nine-year period.

Two of the six investigations commenced because a 2010 USDA Food Safety and Inspection Service (FSIS) notice instructed slaughterhouse inspection personnel to contact the Veterinary Services division of the USDA if they suspect animals may not have been properly rested during transport.<sup>51</sup> In these two cases, the USDA found no violation of the law. In one, an FSIS veterinary medical officer (VMO) noticed 33 “lethargic and dehydrated” cattle as the animals were off-

loaded from the truck into the slaughter plant.<sup>52</sup> The VMO spoke with the driver, who stated that he did not stop to rest, water, or feed the animals. However, Veterinary Services found insufficient evidence that a violation occurred because the trucking company stated that it told the driver to stop and rest the animals, and no physical evidence to the contrary existed.<sup>53</sup>

The USDA determined that a violation occurred in three of the six investigations done from 2006 to 2015. According to the Twenty-Eight Hour Law, when the USDA finds a violation of the law, it is to submit the case to the Department of Justice (DOJ).<sup>54</sup> However, the USDA did not report any of these violations to the DOJ for further action. In fact, the USDA determined its authority was different for each of the three cases. In one, where 152 pigs died en route, the USDA sent the violator a letter of warning.<sup>55</sup> In another case, where the shipping company transported animals for 40 hours without food, water, or rest, the USDA concluded that the Department of Transportation was responsible for punishing the company.<sup>56</sup> In the last investigation, the agency determined it had no authority under the law.<sup>57</sup> This inconsistency is due to muddled enforcement authority, and a lack of direction from the USDA on how violations of the law should be handled. Additionally, the fact that in a nine-year period only six investigations occurred demonstrates an inadequate monitoring system in place to detect violations. Without a mechanism under the auspices of either the USDA or the DOJ for monitoring truck transport, there is, for all intents and purposes, no federal transport law in the United States.

AWI has found that the Twenty-Eight Hour Law is likely being violated routinely by livestock transporters—especially those transporting cattle. The 2016 National Beef Quality Audit revealed that in its small sample of the mean values for time and distance traveled, auditors found that the maximum time traveled was 39.6 hours over a distance of 1412.9 miles.<sup>58</sup> This time period clearly exceeds the Twenty-Eight Hour Law unless the cattle were offloaded and provided time to rest. The study also revealed that a significant percentage of cattle arrived at processing facilities with major bruises (45.1 percent of cows and 21.9 percent of bulls).<sup>59</sup> Bruises on cattle are often the result of mishandling and other poor conditions during transit or just before slaughter.

### **Equine Transport**

The USDA established the Slaughter Horse Transport Program (SHTP) in 2001 to ensure that horses traveling to slaughter are

fit to travel and handled humanely during transport.<sup>60</sup> Since the SHTP's establishment, 17 cases have been adjudicated and 15 cases have been settled, for a combined total of \$912,000 in civil penalties.<sup>61</sup> Annual funding of USDA inspection duties related to horse slaughter has been completely prohibited since 2007, in an effort to prevent horse slaughter plants from operating in the United States.<sup>62</sup> According to the Government Accountability Office (GAO), although the domestic slaughter of horses for human food has stopped, the SHTP continues to operate.<sup>63</sup> The GAO says the program continues to collect and review shipping documents and inspects conveyances used to transport horses.<sup>64</sup> However, because of the prohibition on using federal funds for inspecting horse slaughter, the SHTP may not inspect the condition of horses destined for slaughter in Canada or Mexico.<sup>65</sup> The GAO reports that the USDA conducted approximately 110 horse transport investigation cases in 2006, versus approximately 50 cases in 2008 and 40 cases in 2010.<sup>66</sup>

### **International Export Of Livestock**

The USDA recently began enforcing its regulations relating to international transport of farm animals by sea vessel. The final rule, which went into effect in February of 2016, has several additional animal welfare safeguards. The rule adopts the OIE's fitness-to-travel standards.<sup>67</sup>

Within the last five years, an estimated 2,211,394 live farm animals were exported from the United States to other countries. A majority of these traveled by land to Mexico or Canada, but a significant portion (545,495) were shipped to their destinations by sea or air. Ocean voyages, which may cover thousands of miles and last for weeks or even months, are grueling and dangerous for animals.

Press accounts and records received by AWI from the USDA via FOIA requests show that many of the long-distance exports from the United States are sent by sea if they involve large numbers of cattle, while exports involving smaller or more vulnerable animals (such as chickens) or lower numbers of animals are by air. According to FOIA records, in recent years, nearly all pigs, sheep, goats, and horses have left the country by air, while cattle have traveled by both sea and air.

For the period of February 2016 to October 2017, AWI received records related to five shipments by sea. The records raised concerns regarding two shipments in particular: (1) a voyage of unknown length to Sudan in which 27 heifer deaths were

recorded (1.8% mortality rate) and (2) a 41-day voyage to Turkey with 27 cattle deaths (1% mortality rate). It is unclear whether there were in fact only five international shipments during the requested 20-month period, or if the USDA simply neglected to send all relevant records.

Given the limited information received, the extent to which the new rule is being enforced is unclear, but the reporting requirement has provided at least some mortality data where before there was none. As it stands, the records indicate that the volume of animals exported from the United States by sea is low. Although the mortality rate for two out of five journeys was concerning, no egregious incidents appear to have taken place in the wake of the 2016 amendments to the USDA's live export regulations.

### **STATE LAW**

Approximately three dozen states include language specific to transport in their anti-cruelty statutes (see table on page 6). In most cases, the applicable provisions prohibit the transport of animals in an "inhumane manner." Three states (New Hampshire,<sup>68</sup> Washington,<sup>69</sup> and Wyoming<sup>70</sup>) prohibit transport in a manner that poses risk of injury to the animal or jeopardizes the safety of the animal. Vermont's law only addresses "overcrowding" in a vehicle.<sup>71</sup> However, in 2015 and 2016, the Vermont Livestock Care Standards Advisory Council, wrote transportation guidelines for cattle and newborn calves that also provide cursory on-farm recommendations.<sup>72</sup> Arizona limits its transport regulation to equines for slaughter.<sup>73</sup> California also regulates the transportation of equines to slaughter.<sup>74</sup>

For the most part, time limits for feed, water, and rest under the state statutes mirror the federal Twenty-Eight Hour Law: 28 to 36 consecutive hours of confinement before unloading for at least five hours of rest. As with the federal law, state laws addressing transport were passed when most animals were still being shipped by rail. Of 18 states that have specific time limits for transport, only three (California,<sup>75</sup> Maine,<sup>76</sup> and New Mexico<sup>77</sup>) specifically reference transport by truck.<sup>78</sup> In addition, a few states have enacted laws or regulations that limit the transportation of nonambulatory animals.<sup>79</sup>

While most states have included transport in their anti-cruelty laws, the impact is most likely minimal, particularly given the fact that more than half of the 50 states exempt customary

agricultural practices from laws governing humane treatment of animals.<sup>80</sup> There is some evidence of the application and enforcement of state anti-cruelty laws to transport incidents, however. For example, two individuals hauling 11 horses through Arkansas on the way to a slaughterhouse in Texas

were charged with multiple counts of animal cruelty under the Arkansas anti-cruelty statute when an employee at an auto repair shop observed several horses with lacerations on their bodies and called police.<sup>81</sup>

## STATES WITH TRANSPORT PROVISIONS IN ANTI-CRUELTY STATUTES

State	Statutory Code Section
Arkansas	5-62-103(a)(6)
California	CAL. PENAL CODE § 597a
Colorado	18-9-202(1)(a)
Connecticut	53-249; 53-247(a); 53-252
District of Columbia	22-1002
Florida	828.12(1)
Hawaii	711-1109(1)(e)
Idaho	25-3505
Louisiana	102.1(a)(1)(f)
Maine	7-3981(5)
Massachusetts	272-77
Michigan	750.50(2)(c)
Minnesota	343.24(1)(a)
Mississippi	97-41-5
Montana	45-8-211(1)(b)
Nebraska	54-7, 104

Nevada	574.190
New Hampshire	644:8(III)(d)
New Jersey	4:22-18
New York	N.Y. AGRIC. & MKTS. LAW § 359(1)
North Carolina	14-363
Ohio	959.13(A)(3)
Oklahoma	21-1688
Pennsylvania	18-5511(e)
Rhode Island	4-1-3(a)
South Carolina	47-1-50(A)(2)
Tennessee	39-14-202(a)(4)
Texas	TEX. PENAL § 42.09(a)(4)
Vermont	13-352(4)
Virginia	3.2-6570
Washington	16.52.080
Wisconsin	951.05
Wyoming	6-3-203

## INDUSTRY STANDARDS

While currently no federal law in the United States governs conditions during domestic transport, other than the maximum duration of travel before rest, the meat industry here has developed voluntary guidelines and audit criteria for the transportation of certain farm animals to slaughter. The North American Meat Institute (NAMI), which represents cattle, pig, sheep, and turkey slaughter establishments, added cattle and pig transport standards to its animal handling guidelines in 2010.<sup>82</sup> The guidelines cover the following areas: set-up and loading, timeliness of arrival and unloading, falls, electric prod use, condition of the animals, and willful abuse of animals.<sup>83</sup>

In 2010, the USDA's Agricultural Marketing Service (AMS) revised its animal welfare requirements for companies that voluntarily supply meat for commodity programs (such as the federal school lunch program) to include the NAMI's transport criteria.<sup>84</sup> The AMS expanded its transport criteria in 2013.<sup>85</sup> Of the NAMI's seven core criteria for transport, suppliers to federal programs currently must pass two criteria with an excellent score, four criteria with an acceptable score, and one criterion with a perfect score each time an audit is conducted.<sup>86</sup>

The National Chicken Council (NCC), a trade association representing companies that raise broiler chickens, also

has transport standards in its guidelines. The NCC Animal Welfare Guidelines and Audit Checklist, which has been widely adopted by the conventional chicken industry, includes several components relating to animal welfare before and during transport.<sup>87</sup> The audit contains requirements for catching, conditions during transport, and emergency response planning, among others. Some major nonconformances result in automatic audit failure (e.g., loss of bird from trailer), while others are on a point scale that must exceed a certain level for a producer to fail.

## INTERNATIONAL STANDARDS

Like the United States, many developed countries have had animal transport laws in place for several decades or longer. The first directive of the European Union on the protection of animals during transport was adopted in 1977.<sup>88</sup> Since that time, additional transport directives and regulations have been implemented. Council Regulation 1/2005, adopted in December 2004 by the European Council, has now replaced these older laws.<sup>89</sup> It is hoped that this binding regulation, which encourages greater harmonization between member states, will result in more consistent enforcement of transport standards.

In 1968, the Council of Europe produced the European Convention for the Protection of Animals during International Transport, which laid down the general conditions for international transport and set special conditions for transport of animals by road, air, sea, and rail.<sup>90</sup> The Committee of Ministers of the Council of Europe also adopted recommendations for the transport of individual species.<sup>91</sup> The Convention was revised in 2003, and a working party is now drafting the technical protocols for space allowances and water, feed, and rest intervals.<sup>92</sup> As of January 2016, the Convention had been signed by 19 countries and ratified by 12.<sup>93</sup>

In 2005, the OIE adopted welfare standards for the transport of animals by land,<sup>94</sup> sea,<sup>95</sup> and air<sup>96</sup> that were drafted by the intergovernmental organization's permanent Working Group on Animal Welfare. While nonbinding, the OIE's 180 member states and territories are encouraged to implement the standards through the passage and enforcement of national legislation.

## OTHER REPORTS IN THIS SERIES

*Legal Protections for Farm Animals on Farms*

*Legal Protections for Nonambulatory (or "Downed") Farm Animals*

*Legal Protections for Farm Animals at Slaughter*



<sup>1</sup> Animal Plant & Health Inspection Serv., U.S. Dep't of Agric., *First Federal Law to Prevent Cruelty to Animals*, in ANIMALS AND THEIR LEGAL RIGHTS 49 (4th ed. 1990).

<sup>2</sup> See HARRY GODING & A. JOSEPH RAUB, BUREAU OF ANIMAL INDUSTRY, U.S. DEP'T OF AGRIC., THE 28-HOUR LAW REGULATING THE INTERSTATE TRANSPORTATION OF LIVESTOCK: IT'S PURPOSE, REQUIREMENTS, AND ENFORCEMENT 1,1 (1918), [https://www.nal.usda.gov/sites/default/files/28hour1918\\_o.pdf](https://www.nal.usda.gov/sites/default/files/28hour1918_o.pdf) (last visited June 20, 2017).

<sup>3</sup> VIVIAN S. CHU., CONG. RESEARCH SERV., 94731 BRIEF SUMMARIES OF FEDERAL ANIMAL PROTECTION STATUTES 27–28 (2010).

<sup>4</sup> Animal Plant & Health Inspection Serv., *supra* note 2, at 49.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> GODING & RAUB, *supra* note 2, at 2.

<sup>12</sup> CHU, *supra* note 3, at 27.

<sup>13</sup> 9 C.F.R. §§ 89.1–89.5.

<sup>14</sup> Animal Plant & Health Inspection Serv., *supra* note 1, at 50.

<sup>15</sup> See Act of May 29, 1884, ch. 60, 48th Cong. (1st Sess. 1884), <https://www.loc.gov/law/help/statutes-at-large/48th-congress/Session%201/c48s1ch60.pdf> (creating the Bureau of Animal Industry).

<sup>16</sup> Federal Agriculture Improvement and Reform Act of 1996, Pub. Law No. 104–127, 110 Stat. 1184.

<sup>17</sup> 9 C.F.R. § 88.3 (2011).

<sup>18</sup> 9 C.F.R. §§ 88.1–88.6.

<sup>19</sup> Commercial Transportation of Equines to Slaughter, 76 Fed. Reg. 55,213 (Sept. 7, 2011).

<sup>20</sup> See Horse Transportation Safety Act of 2009, H.R. 305, 111th Cong. (2010) (prohibiting the transport of horses in a motor vehicle “containing two or more levels stacked on top of one another”); see also Horse Transportation Safety Act of 2015, H.R. 1282, 114th Cong. (defining “motor vehicle” and imposing a civil penalty). Neither the 2010, nor the 2015, Bills have been amended since their proposals.)

<sup>21</sup> Animal Health Protection Act, 7 U.S.C. §§ 8301–8322 (2002).

<sup>22</sup> U.S.C. § 8304.

<sup>23</sup> U.S.C. §§ 8313–8314.

<sup>24</sup> 9 C.F.R. § 91.12.

<sup>25</sup> *Id.*

<sup>26</sup> 9 C.F.R. § 91.7.

<sup>27</sup> *Id.*

<sup>28</sup> See ANIMAL WELFARE INST. & WORLD SOC'Y FOR THE PROTECTION OF ANIMALS, PETITION FOR RULEMAKING TO AMEND THE INSPECTION OF LIVESTOCK FOR EXPORTATION REGULATIONS TO INCLUDE FITNESS FOR TRANSPORT REQUIREMENTS (Feb. 18, 2011).

<sup>29</sup> *Id.* at 2. For more information on the OIE and fitness for travel, see *International Standards*, *infra* at pg 5.

<sup>30</sup> U.S. Census Bureau, Foreign Trade Statistics, DEP'T OF COMMERCE, <http://www.fas.usda.gov/gats/default.aspx> (last visited November 9, 2018).

<sup>31</sup> *Id.*

<sup>32</sup> Letter from Joyce Bowling-Heyward, USDA-Veterinary Services to

Cathy Liss, President, Animal Welfare Inst. (Sept. 18, 2013).

<sup>33</sup> 80 Fed. Reg. 10,398 (proposed Feb. 26, 2015) (codified at 9 C.F.R. pt. 91).

<sup>34</sup> 81 Fed. Reg. 12,2980 (Jan. 20, 2016) (codified at 9 C.F.R. pt. 91).

<sup>35</sup> 9 C.F.R. pt. 91 (2016).

<sup>36</sup> Animal Plant & Health Inspection Serv., *supra* note 1, at 49.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 50.

<sup>42</sup> Animal & Plant Health Inspection Serv., Feed, Water and Rest Stations, U.S. DEP'T AGRIC., [https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/ct\\_feed\\_water\\_rest\\_stations](https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/ct_feed_water_rest_stations) (last updated May 1, 2017).

<sup>43</sup> Animal Plant & Health Inspection Serv., *supra* note 1, at 50.

<sup>44</sup> *Id.*

<sup>45</sup> See Table 7. *Shipment Characteristics by Two-Digit Commodity and Mode of Transportation for the United States: 2012—Con.*, BUREAU TRANSP. STAT., [https://www.bts.gov/archive/publications/commodity\\_flow\\_survey/2012/united\\_states/TABLE7](https://www.bts.gov/archive/publications/commodity_flow_survey/2012/united_states/TABLE7) (last updated May 20, 2017) (providing the statistics for live animal transportation in 2012).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Gaverick Matheny & Cheryl Leahy, *Farm-Animal Welfare, Legislation, and Trade*, 70 L. & CONTEMPORARY PROBLEMS 325, 335 (2007) (referencing a letter From W. Ron DeHaven, the APHIS-USDA Administrator, to Cheryl Leahy acknowledging that the 28-hour Law includes transport by trucks); see also Letter from Cindy J. Smith, Animal & Plant Health Inspection Serv., Administrator, to Tom Garrett, Animal Welfare Inst. (Oct. 2, 2009) (acknowledging that “APHIS recognizes that the text in the law referring to ‘a vehicle or vessel’ includes trucks”).

<sup>49</sup> THE HUMANE SOC'Y OF THE U.S ET AL., PETITION FOR RULEMAKING TO EXTEND THE TWENTY-EIGHT HOUR LAW TO TRUCKS (OCTOBER 4, 2005).

<sup>50</sup> Letter from W. Ron DeHaven, Administrator, to Peter A. Brandt, Esq., The Humane Soc'y of the U.S. (September 22, 2006).

<sup>51</sup> FOOD SAFETY & INSPECTION SERV., U.S. DEP'T OF AGRIC., NOTICE NO. 06–10, HUMANE HANDLING AT ALL ENTRANCES AND THE TWENTY-EIGHT HOUR LAW (2010). The content of the notice was later incorporated into the FSIS directive on humane handling. See FOOD SAFETY & INSPECTION SERV., U.S. DEP'T OF AGRIC., DIRECTIVE NO. 6900.2, HUMANE HANDLING AND SLAUGHTER OF LIVESTOCK (2011).

<sup>52</sup> Response from Animal & Plant Health Inspection Serv. to Animal Welfare Institute (May 6, 2014) (on file with AWI) (regarding Freedom of Information Act request 2012-APHIS-00570-F) [hereinafter APHIS, May 6 Response].

<sup>53</sup> *Id.*

<sup>54</sup> 49 U.S.C. § 80502(d); See CHU, *supra* note 3, 27–28.

<sup>55</sup> Response from Animal & Plant Health Inspection Serv. to Animal Welfare Institute (June 16, 2016) (on file with the Animal Welfare Inst.) (regarding Freedom of Information Act request 2012-APHIS-00570-F) [hereinafter APHIS, June 16 Response].

<sup>56</sup> *Id.*

<sup>57</sup> APHIS, May 6 Response, *supra* note 44.

<sup>58</sup> National Beef Quality Audit, 2016 National Beef Quality Audit Market Cow and Bull Results, 6 <https://www.bqa.org/Media/BQA/>



Docs/nbqa-exec-summary\_cowbull\_final.pdf.

<sup>59</sup> *Id.* at 11.

<sup>60</sup> ANIMAL & PLANT HEALTH INSPECTION SERV., HORSE TRANSPORT, U.S. DEP'T OF AGRIC., [http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalhealth?url=wc%3Apath%3A%2Faphis\\_content\\_library%2Fsa\\_our\\_focus%2Fsa\\_animal\\_health%2Fsa\\_animal\\_disease\\_information%2Fsa\\_equine\\_health%2Fct\\_horse\\_transport](http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/animalhealth?url=wc%3Apath%3A%2Faphis_content_library%2Fsa_our_focus%2Fsa_animal_health%2Fsa_animal_disease_information%2Fsa_equine_health%2Fct_horse_transport) (last updated Mar. 10, 2017).

<sup>61</sup> *Id.*

<sup>62</sup> U.S. GOV'T ACCOUNTABILITY OFF., GAO-11-228, HORSE WELFARE: ACTION NEEDED TO ADDRESS UNINTENDED CONSEQUENCES FROM CESSATION OF DOMESTIC SLAUGHTER 3 (2011).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 9.

<sup>65</sup> *Id.* at 13.

<sup>66</sup> *Id.*

<sup>67</sup> 9 C.F.R. pt. 91.

<sup>68</sup> N.H. REV. STAT. ANN. § 644: 8(III)(d).

<sup>69</sup> WASH. REV. CODE § 16.52.080.

<sup>70</sup> WYO. STAT. ANN. § 6-3-203.

<sup>71</sup> VT. STAT. ANN. tit. 13, § 352(4).

<sup>72</sup> LIVESTOCK CARE STANDARDS ADVISORY COUNCIL, TRANSPORTATION GUIDELINES FOR CATTLE (2015), [http://agriculture.vermont.gov/sites/ag/files/pdf/animal\\_health/Cattle%20Transport%20Website%20Final%20April%202016.pdf](http://agriculture.vermont.gov/sites/ag/files/pdf/animal_health/Cattle%20Transport%20Website%20Final%20April%202016.pdf); LIVESTOCK CARE STANDARDS ADVISORY COUNCIL, TRANSPORTATION GUIDELINES FOR NEWBORN CALVES (2016), <http://agriculture.vermont.gov/sites/ag/files/Calf%20Transport%20Website%20Material%20Final.pdf>.

<sup>73</sup> ARIZ. REV. STAT. ANN. § 3-1312.

<sup>74</sup> CAL. PENAL CODE §§ 5970, 597X.

<sup>75</sup> CAL. FOOD & AGRIC. CODE § 16908.

<sup>76</sup> ME. STAT. tit. 7, § 3981.

<sup>77</sup> N.M. STAT. ANN. § 77-9A-5.

<sup>78</sup> See ANIMAL WELFARE INST., ANIMALS AND THEIR LEGAL RIGHTS: A SURVEY OF AMERICAN LAWS FROM 1641 TO 1990 (4th ed. 1990).

<sup>79</sup> See ANIMAL WELFARE INST., LEGAL PROTECTIONS FOR NONAMBULATORY (OR "DOWNED") ANIMALS 4-11 (2016).

<sup>80</sup> See David J. Wolfson, *Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production*, 2 ANIMAL L. 123, 135-36 (1996). See also ANIMAL WELFARE INST., *supra* note 67, 261-62 (enumerating the state anti-cruelty statutes that cover transport).

<sup>81</sup> Matt Woo, *Trial Set for Fayette Man Accused of Cruelty to Horses*, COMMERCIAL APPEAL (2008).

<sup>82</sup> See TEMPLE GRANDIN, AM. MEAT INST. FOUND., RECOMMENDED ANIMAL HANDLING GUIDELINES AND AUDIT GUIDE: A SYSTEMATIC APPROACH TO ANIMAL WELFARE 4 (rev. ed., 2013) (referencing the first transportation audit in 2010).

<sup>83</sup> *Id.* at 5-9.

<sup>84</sup> AGRIC. MKTG. SERV., U.S. DEP'T OF AGRIC. TRS-AHW-2010, TECHNICAL REQUIREMENTS SCHEDULE—ANIMAL HANDLING AND WELFARE 2010 (2010).

<sup>85</sup> AGRIC. MKTG. SERV., U.S. DEP'T OF AGRIC., TRS-AHW-2013, TECHNICAL REQUIREMENTS SCHEDULE—ANIMAL HANDLING AND WELFARE 2013 (2013).

<sup>86</sup> *Id.*

<sup>87</sup> NAT'L CHICKEN COUNCIL, ANIMAL WELFARE GUIDELINES AND AUDIT CHECKLIST FOR BROILERS, [https://www.nationalchickencouncil.org/wp-content/uploads/2018/07/NCC-Animal-Welfare-Guidelines\\_Broilers\\_July2018.pdf](https://www.nationalchickencouncil.org/wp-content/uploads/2018/07/NCC-Animal-Welfare-Guidelines_Broilers_July2018.pdf).

<sup>88</sup> See Council Directive 77/489/EEC, 1977 O.J. (L 200) 10-16.

<sup>89</sup> For more information about transport laws in Europe and elsewhere outside the United States see CAM INT'L, LONG DISTANCE TRANSPORT AND WELFARE OF FARM ANIMALS (Michael C. Appleby et al., eds. (2008)).

<sup>90</sup> European Convention for the Protection of Animals During International Transport, Dec. 13, 1968, E.T.S. No. 65.

<sup>91</sup> See Human Rights & Legal Affairs, *Texts and Documents*, COUNCIL EUR., [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/biological\\_safety\\_and\\_use\\_of\\_animals/transport/A\\_texts%20and%20documents.asp#TopOfPage](http://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/transport/A_texts%20and%20documents.asp#TopOfPage) (last visited June 22, 2017) (listing the Committee of Ministers of the Council of Europe's recommendations for the transport of horses, pigs, cattle, sheep and goats, and poultry).

<sup>92</sup> European Convention for the Protection of Animals During International Transport (Revised), June 11, 2003, E.T.S. No. 193.

<sup>93</sup> See *Chart of Signatures and Ratifications of Treaty 193*, COUNCIL EUR., [http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/193/signatures?p\\_auth=QTD5u9Zm](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/193/signatures?p_auth=QTD5u9Zm) (last updated June 21, 2017).

<sup>94</sup> World Org. for Animal Health [OIE] Terrestrial Animal Health Code, Chapter 7.3. (2016).

<sup>95</sup> World Org. for Animal Health [OIE] Terrestrial Animal Health Code, Chapter 7.2. (2016).

<sup>96</sup> World Org. for Animal Health [OIE] Terrestrial Animal Health Code, Chapter 7.4. (2016).