



A Review: The Twenty-Eight Hour Law and Its Enforcement

EXECUTIVE SUMMARY

This report presents the findings of an extensive review of the federal government's enforcement of the Twenty-Eight Hour Law. This law requires transporters that carry certain farm animals interstate to unload, feed, water, and rest the animals after 28 consecutive hours in transit.¹ The Animal Welfare Institute (AWI) submitted multiple Freedom of Information Act (FOIA) requests to three federal departments over a 12-year period to analyze enforcement of the law. The report describes the current framework of the Twenty-Eight Hour Law, pinpoints problems with the law and its enforcement, and outlines the (underused) authority of the US Department of Agriculture (USDA) and the US Department of Transportation (DOT) to enforce the law.

From the records received, AWI concluded that the law is rarely enforced, due to an inadequate monitoring system and muddled enforcement authority. Specific findings include:

- **Of the three government entities associated with the Twenty-Eight Hour Law, two—the US Department of Justice (DOJ) and the DOT—have not promulgated specific regulations to assist with enforcement of the law.** Neither the DOJ nor the DOT could provide AWI with any records related to the law, even though the law is codified within DOT statutes, and DOJ regulations assign actions related to the law to its Criminal Division.
- **The USDA, on the other hand, has taken some responsibility for enforcing the law.** Its “Statement of Policy under the Twenty-Eight Hour Law” has been codified into federal regulations. However, this policy statement has not been amended since its codification in 1963, when rail cars were still the main form of

transportation for farm animals. In 2003, the USDA authored a memo explaining that the Statement of Policy also applies to animals shipped on trucks.

- **Records received from the USDA via FOIA show only 10 USDA enforcement inquiries into possible violations of the law over a 12-year period.** AWI located another investigation through online research, bringing the total number of USDA investigations to 11. In six of these cases, the USDA found sufficient evidence for a violation of the law. However, only one of these was reported to the DOJ to determine whether enforcement was appropriate.
- **FOIA records suggest that the USDA has not submitted violations to the DOJ because (1) USDA personnel are not provided the guidance needed to understand their role in the law's enforcement, and (2) drivers are not required to provide documentation of the duration, mileage, or stops made on their trips.**
- **Millions of animals are transported interstate each year, and virtually none of these shipments are monitored for violations of the Twenty-Eight Hour Law.** Animal agriculture industry data suggest that shipping animals without rest for longer than 28 hours is a common practice.

Possible approaches to enforcing the law are offered at the report's conclusion.

LEGAL BACKGROUND

The Twenty-Eight Hour Law

Congress enacted the Twenty-Eight Hour Law in 1873, repealed and replaced it in 1906, and repealed and re-enacted it in amended form in 1994.² In its current form, the law states that

a carrier transporting animals interstate “may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.” If transport will exceed 28 consecutive hours, animals must be unloaded in a humane manner, put into pens equipped with feed and water, and allowed to rest for at least five hours before transport is resumed.

There are four exceptions to the law:

1. Sheep may be confined for an additional eight hours when the 28 hour period ends at night.
2. Animals may be confined for more than 28 hours when there is an accident or unavoidable circumstances.
3. Animals may be confined for 36 consecutive hours when the owner or custodian requests in writing (separate from a bill of lading) that the period be extended.
4. The law 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.

The carrier or owner of a truck that knowingly and willfully violates the law is subject to a civil penalty of at least \$100 but not more than \$500 for each offense.³ According to the law, the attorney general shall bring a civil action to collect the penalty when notified of a violation.⁴ Traditionally, the USDA has reported violations to the DOJ. However, the law is found in the US Code dedicated to transportation, which means that the USDA may not be the only executive department responsible for informing the attorney general when a carrier has violated the law.⁵

Regulations Under the Twenty-Eight Hour Law

As suggested above, there are at least three government entities associated with the Twenty-Eight Hour Law: the DOJ, the USDA, and the DOT. Neither the DOJ nor the DOT have promulgated specific regulations to help enforce the law. The DOJ regulations only state that the assistant attorney general of the Criminal Division is assigned to supervising actions related to the law.⁶

In 1963, the USDA Animal and Plant Health Inspection Service (APHIS) codified its “Statement of Policy under the Twenty-Eight Hour Law” into federal regulations, demonstrating its authority over enforcement of the law.⁷ The language indicates the amount of food, water, and rest that should be given to animals transported on rail carriers. Animals are to

have “sustaining rations” of feed, an “ample supply of potable water,” and enough space so that all animals can lie down simultaneously. Additionally, the policy states that animals unloaded for feed and water and then put back in the transport container for rest are to be given not less than two hours in the pens; if unloaded for feed only, animals are to have not less than one hour in the pens.⁸

The Statement of Policy has not been amended since its codification in 1963. At that time, rail cars were still the main form of transportation for farm animals. In 2003, after rail cars had become nearly obsolete for farm animal transport, APHIS wrote an intra-agency memo explaining that the Statement of Policy also applies to animals shipped in trucks. In 2005, animal advocates petitioned APHIS to publicly recognize that the Twenty-Eight Hour Law applies to trucks used for the interstate transport of animals.⁹ The agency responded to the petition with a letter stating that “the plain meaning of the statutory term ‘vehicle’ in the Twenty-Eight Hour Law includes ‘trucks’ which operate as express carriers or common carriers.”¹⁰ However, the USDA has not updated its Statement of Policy to align with current animal transport practices.¹¹

MONITORING AND ENFORCEMENT OF THE TWENTY-EIGHT HOUR LAW

Rail carriers were responsible for a majority of interstate shipments of animals from the time Congress enacted the Twenty-Eight Hour Law in 1873 until the 1960s. Stock cars, which carried animals, decreased from 80,000 in use in 1922 to 31,000 in 1960.¹² In 1919, rail carriers shipped approximately 35 million tons of animals and animal products, but by 1960 this number had decreased to 9.5 million.¹³ The number continued to decrease, as multi-unit, long-haul trucks became more popular.¹⁴

During the period when rail carriers transported a majority of live animals, the USDA enforced the Twenty-Eight Hour Law. Initially, the USDA tasked the (now defunct) Bureau of Animal Industry with regulating the interstate movement of animals.¹⁵ During the 11-year period from June 1906 to June 1917, the bureau reported approximately 9,000 violations of the Twenty-Eight Hour Law for prosecution, which resulted in \$426,818 in penalties.¹⁶

As the number of animals shipped on railroads decreased, so did the number of Twenty-Eight Hour Law cases.¹⁷ Cases involving rail carriers still appear in the records, however,

throughout the first half of the 20th century. For example, in 1941, a railroad appealed a 1937 decision against it to the First Circuit Court of Appeals. In 1938, a case against a rail carrier reached the US Supreme Court, which weighed in on the definition of “willfully” under the law.¹⁸

A thorough search of Westlaw records suggests that the DOJ did not bring any cases for violations of the Twenty-Eight Hour Law—on railroads or trucks—during the second half of the 20th century. There were reports of violations, but these, too, continued to drop. For instance there were 400 reported violations in 1967.¹⁹ In 1976, there were fewer than 100.²⁰ This is due in part to the fact that the USDA did not affirm that the law applied to trucks until 2003. (In 1964 and 1971, animal welfare organizations attempted unsuccessfully to get federal legislation passed stating that transport of animals via trucks was covered under the law.²¹)

Even though the USDA now acknowledges that the law applies to trucks, FOIA requests to the DOJ, USDA, and DOT help illustrate that enforcement of the Twenty-Eight Hour Law has not improved in the 21st century. AWI submitted FOIA requests to three divisions within the DOJ—Environmental and Natural Resources, Justice Management, and Civil—asking for all records related to the Twenty-Eight Hour Law from 2006 to 2009. The three divisions could not locate any records from this period.

Furthermore, AWI has obtained no evidence to suggest that the DOT has played any role in the enforcement of the Twenty-Eight Hour Law, even though the law is codified within Title 49 of the US Code, which is dedicated to transportation. In calendar year 2019, the Federal Motor Carrier Safety Administration (FMCSA) conducted 3.27 million roadside inspections for commercial driver violations. That year, the agency cited nearly 1 million violations, falling under 185 separate driver violation codes.²² None of these inspections or violations involved enforcement of the Twenty-Eight Hour Law.

Over the past few years, AWI has submitted three FOIA requests to the DOT—one to the Office of Inspector General (OIG) and two to the FMCSA. The DOT OIG’s response to the request stated that the department had no records on file related to the Twenty-Eight Hour Law.²³ AWI’s first request to the FMCSA requested records from 2006 to June 2016, and its second sought records from July 2016 through the end of 2018. No records were produced in response to either of these requests.²⁴

The USDA, on the other hand, has taken some responsibility for enforcing the law as it applies to trucks. AWI submitted FOIA requests to APHIS in 2009, 2011, 2014, 2018, and 2019 to determine the USDA’s role in enforcement of the law. AWI did not receive its first set of records from APHIS until 2015. The records show 10 APHIS Investigative and Enforcement Services (IES) inquiries (discussed in detail below) into possible violations of the law over a 12-year period. Through online research, AWI found another IES investigation, bringing the total number of investigations to 11.²⁵ In six of the 11 instances, IES found sufficient evidence for a violation of the law. However, IES only reported one of these violations to the DOJ for prosecution. AWI has submitted a FOIA request to the DOJ for information relating to this referral or any other enforcement of the Twenty-Eight Hour Law between 2015 and 2019. In the DOJ’s first interim response, AWI did not receive any records relating to enforcement of the law or the referral.

IES investigations have been initiated as a result of two USDA procedures. APHIS Veterinary Services (VS) and the USDA Food Safety and Inspection Service (FSIS) each have protocols—albeit weak ones—for detecting violations of the Twenty-Eight Hour Law. Both agencies report potential violations of the law to IES for further investigation. According to AWI’s analysis of USDA, DOJ, and DOT involvement, these VS and FSIS procedures are the only official mechanisms by which the federal government currently identifies violations of the Twenty-Eight Hour Law. The records suggest that the only other means of prompting IES to initiate an investigation is if a large number of animals are reported to have died during transport, and/or there is public outcry. The following subsections will review the FSIS and VS procedures.

The FSIS Reporting System for Potential Violations of the Twenty-Eight Hour Law

In 2010, the FSIS, which maintains personnel at all federally inspected slaughter establishments in the country, issued a notice to its slaughter establishment personnel informing them of the Twenty-Eight Hour Law, and advising inspectors to contact APHIS if they suspect a violation of the law. The FSIS incorporated this notice into Directive 6900.2, Humane Handling and Slaughter of Livestock. The directive states that if animals arrive at a slaughter establishment looking exhausted or dehydrated, then FSIS personnel are to ask the establishment manager if the truck driver stopped in compliance with the Twenty-Eight Hour Law. If the manager

or truck driver is uncooperative, or the FSIS personnel believe the animals' exhaustion or dehydration is due to transport in excess of 28 hours, the FSIS personnel are to contact APHIS.²⁶

This directive has led to only two IES investigations of potential violations of the law since 2010.²⁷ In both instances, IES determined no violation occurred.

VS Import and Export Protocols

Animals are frequently shipped in trucks into and out of the United States from Canada and Mexico. Import and export protocols for these shipments depend upon the species, destination, and utility of the animal (i.e., animals to be used for breeding or animals for immediate slaughter). Generally, shipments are not monitored for compliance with the Twenty-Eight Hour Law. Import and export protocols for pigs and ruminants other than cattle do not address the Twenty-Eight Hour Law.²⁸ However, detailed instructions for compliance with the Twenty-Eight Hour Law are in place for the movement of certain cattle, as these shipments have historically been closely monitored due to the potential threat of bovine spongiform encephalopathy, or "mad cow disease."²⁹

While VS does not have a Twenty-Eight Hour Law protocol in place for shipments of pigs and ruminants other than cattle, the agency does often require seals for international truck shipments.³⁰ This provides USDA personnel with direct evidence to determine if the animals were unloaded, as a seal needs to be broken for unloading to occur. When exported from the United States to Mexico, shipments of breeding sheep and goats are sealed, and the seal number recorded on a health certificate.³¹ The health certificate also requires that the shipper provide the place of origin and the point of embarkation.³² The certificate does not require detailed information on the route, rest stops, or even the exact date the trip is to commence. Additionally, shipments of pigs bound for slaughter, and sheep and goats bound for slaughter or feed yards are sealed when exported from Canada to the United States.³³ However, VS protocol instructs drivers to go directly to the slaughter establishment or other final destination within the United States.³⁴ It does not make an exception for the Twenty-Eight Hour Law.

For cattle, transport containers are sealed when animals are transported from Canada to the United States, from the United States to Mexico, and when they are brought into the

United States from Canada as a thoroughfare to Mexico.³⁵ For shipments from Canada and the United States to Mexico, the seals are not to be broken until the animals arrive at the border, unless the driver is required to stop under the Twenty-Eight Hour Law.³⁶ Drivers who stop must do so at a USDA-approved station. At the station, a USDA-accredited veterinarian will break the seals to unload the animals.³⁷ When it is time to reload the animals onto trucks, the veterinarian will reseal the truck with new seal numbers.³⁸

Currently, there are five pre-approved "feed, water, and rest" (FWR) stations in the United States.³⁹ When a driver stops at an approved station, in compliance with the Twenty-Eight Hour Law, they must have an addendum for rest stops completed with the information for the seal that the accredited veterinarian broke.⁴⁰ This addendum is to be given to VS-authorized personnel upon arrival at the border.⁴¹ For shipments of cattle from Canada to Mexico, shippers are also required to obtain an "Import or in Transit Permit." The application must include the truck's route, number of drivers, and estimated travel time.⁴²

Additionally, as with the protocol for certain pigs, sheep, and goats, drivers transporting cattle into the United States from Canada must go directly to an APHIS-approved slaughter establishment or other final destination within the United States.⁴³ Again, VS does not make an exception for the Twenty-Eight Hour Law.

Summary of IES Investigations

TX-06284-VS: In June 2006, several companies shipped 2,644 pigs owned by Pig Improvement Company from Greenville and Somerset, Ohio, to Querétaro, Mexico, with a stop in Brownsville, Texas, before crossing the border. In Texas, USDA personnel discovered 152 dead animals on the trucks. An investigation ensued. The investigation showed crowded conditions, which prohibited most of the animals from accessing water. Some trucks did not provide water at all, and 10 of 11 trucks did not feed the animals. The investigator concluded that several of the companies violated the law. However, according to a letter sent from IES to the USDA's Office of General Counsel, IES did not believe it had the authority to enforce the Twenty-Eight Hour Law, and asked that the violations be submitted to the DOT. According to the FOIA records, IES never reported the case to the DOT.

CA-08470-VS: In December 2007, animal advocacy organizations requested an investigation into Pacific Livestock Company for potential violations of the Twenty-Eight Hour Law. The organizations submitted video evidence to support allegations that the company shipped animals from Alberta, Canada, to Vacaville, California, in journeys lasting longer than 28 hours without providing feed, water, or rest to the animals. Additionally, the organizations alleged that Pacific unloaded animals from their trailers directly into transport containers, where they spent hours before being shipped to Oakland, California, and then across the ocean to Hawaii. IES commenced an investigation into the incident. IES interviewed a Pacific employee who stated that shipments from Canada had not come in to Vacaville for approximately two years. Additionally, interviewees stated that pigs were unloaded from trailers into pens, where they had time to eat, drink, and rest before being put into shipment containers. After these interviews IES concluded that there was insufficient evidence of a Twenty-Eight Hour Law violation.

WI-10009-VS: In March 2009, cattle loaded in Canada and shipped into the United States were left on a truck for longer than 28 hours. FOIA records provided little detail for this case, but according to the records, a Canadian company exported animals into the United States for immediate slaughter at a Wisconsin slaughter facility. A veterinarian (presumably at the slaughterhouse) requested an IES investigation for the potential violation of the Twenty-Eight Hour Law. IES determined that a violation occurred, but closed the investigation because it could not find a US entity for Loerzel Farm Transport, the Canadian shipping company.

CA-10421: In 2010, a transport company shipped 33 cattle from Fordyce, Nebraska, to a slaughter establishment in Pico Rivera, California. According to on-site FSIS personnel, the animals looked dehydrated and lethargic upon arrival. When questioned at the establishment, the truck driver responsible for the cattle stated that he did not unload and rest the animals before arriving at the establishment. FSIS personnel contacted APHIS, which then initiated an investigation into the matter. The transport company told APHIS that all drivers using this route are told to stop at a livestock market in Utah and unload the animals. However, the market does not keep a record of who stops and unloads animals. During the investigation, IES was unable to locate the driver of the truck for an interview. Therefore, IES found insufficient evidence for further action and closed the case.

IL-11039-VS: In February 2011, a truck driver transported 134 pigs from South Dakota to a slaughter establishment in Marengo, Illinois. A supervisory public health veterinarian (SPHV) for the FSIS observed three “dead on arrival” sows, three crippled sows, and one condemned sow during the unloading. Additionally, some of the sows appeared thirsty and there was no indication that the animals received water or food during transport. The truck driver stated that a majority of the animals were not unloaded until they got to the Illinois slaughter establishment, which took about 35 hours. However, documentation suggested that the trip was less than 28 hours. The SPHV reported this information to the FSIS Chicago District Office, and the office forwarded this information to APHIS. An investigation by IES concluded that the agency could not definitively show that the driver violated the Twenty-Eight Hour Law.

NM-11032-VS: In May 2011, two trucking companies shipped 78 cows from New Holland, Pennsylvania, to Santa Teresa, New Mexico, en route to Mexico. Before departing New Holland, APHIS personnel sealed the trucks, as is required for cattle being shipped to Mexico. Upon arrival in Santa Teresa, APHIS personnel discovered that the seals had not been cut. The journey from New Holland to Santa Teresa took approximately 32–40 hours (2,000 miles) for the first truck, and 38–40 hours for the second truck (2,100 miles). Upon arrival, the seals were intact, and an APHIS veterinarian requested that IES investigate any violations of the Twenty-Eight Hour Law. The drivers admitted to knowing about the law, but stated that they did not have a good place to feed, water, and rest the animals along the route.⁴⁴ After the investigation, which clearly showed that the trip violated the law, IES gave both companies an official warning. In the warning, IES threatened the companies with civil penalties of up to \$650 for each violation.⁴⁵ The agency did this even though, in email communication, APHIS personnel stated that they do not have civil penalty authority.

ID-150002-VS: In February 2015, a trucker from West Coast Livestock Express contacted a Wisconsin Department of Agriculture, Trade and Consumer Protection (WDATCP) employee to determine whether there was a rest stop for livestock transporters en route from Wisconsin to Idaho and/or California. The WDATCP employee referred the matter to APHIS officials, who then referred the case to IES to investigate whether the transporter had violated the Twenty-Eight Hour Law. The investigation of the company’s daily logs showed

shipments of calves from Bonduel, Wisconsin, to Jerome, Idaho. None of these logs included trips that exceeded 28 hours, and online mapping services showed the trip was only 25 hours. APHIS determined that the evidence did not support a violation of the law.

MI-150030-VS: In 2015, Mihm Transportation Company was investigated by IES for repeated violations of the Twenty-Eight Hour Law while transporting cattle to and from St. Louis, Michigan, to Bliss, Jerome, and Malta, Idaho. The investigation found 23 shipments where driver logs indicated drive time exceeded 28 hours. In four instances, animals were given food, water, and rest, but not before exceeding 28 hours of continuous transport. AWI's review of the driver logs indicates that in most cases, driver teams were utilized for these trips. In one case where no driver team was used, two violations occurred in one trip from Bliss, Idaho, to St. Louis, Michigan. Where driver teams were used, one violation occurred per trip either to or from Idaho or Michigan. In one particularly troubling trip, a driver team stopped off for 35 hours without unloading their animals, leaving cattle on the truck for 74 continuous hours. In another egregious event, a single driver did not offload for over 48 hours. Most records, however, indicated that drivers were only 2–3 hours in excess of the Twenty-Eight Hour Law's requirements. Rather than refer the case to the DOJ for enforcement, APHIS issued an official warning and notice of alleged violation to the carrier and threatened civil penalties of "up to \$60,000 or other sanctions for each alleged violation described" in its warning letter. The letter stated, "Although we have authority to pursue penalties for this type of alleged violation(s), we have decided not to pursue penalties in this instance so long as you comply, in the future, with the 28 Hour Law and regulations."

MI-150052-VS: APHIS began an investigation into a shipment when a port veterinarian notified her supervisor that a load of imported cattle bound for slaughter was held for an extended period after release from the port. On September 23, 2015, a truck driver entered the United States from Canada transporting the 38 cattle. The carrier was inspected, sealed, and released at the animal inspection station in Michigan. Shortly after leaving the inspection station, the truck was stopped for speeding, escorted to a truck stop in Smith's Creek, Michigan, and placed out of service. During detention, documents obtained from the Department of Homeland Security's Customs and Border Protection agency indicated that the driver did not have authority to operate within the

United States. Because the driver was detained, the animals were not offloaded until two days later, September 25, which amounted to at least 46 hours of continuous confinement. There was substantiated evidence, according to the IES investigation, that the carrier violated the Twenty-Eight Hour Law. The report also indicated that because the trip originated in Canada, the Canadian Health of Animals Regulations might have been violated. The records received by AWI do not indicate whether the USDA issued an official warning to the carrier or whether the case was referred to the DOJ for enforcement.

WI-150005-VS: On January 12, 2017, APHIS issued an official warning against West Coast Livestock Express for failure to comply with the Twenty-Eight Hour Law during repeated trips carrying calves from Bonduel, Wisconsin, to Jerome, Idaho, and Tulare, California. A veterinarian requested an investigation after identifying interstate certificates of veterinary inspection for these movements. The driver logs demonstrate that at least 16 individual violations of the law occurred during these trips from 2014 to January 2016. The longest time on the truck found in these records is 56.5 hours. Despite extensive evidence of Twenty-Eight Hour Law violations, APHIS only issued an official warning and notice of alleged violation to the carrier, and threatened civil penalties of "up to \$5,000, or other sanctions for each alleged violation described" in its warning letter. The initial report of investigation stated, "The [Department of Justice] has recently reviewed anthr [sic] investigation and determined there is no criminal violation ... USDOJ is currently reviewing the case for civil violation enforcement." AWI has not yet received files from the DOJ relating to this review. The official warning document AWI received contains no information about what the DOJ's findings were. The USDA ultimately concluded (as it did in the MI-150030-VS case above), "Although we have authority to pursue penalties for this type of alleged violation(s), we have decided not to pursue penalties in this instance so long as you comply, in the future, with the 28 Hour Law and regulations."

THE CURRENT REGULATORY FRAMEWORK IS INSUFFICIENT TO PROPERLY ENFORCE THE TWENTY-EIGHT HOUR LAW

The Twenty-Eight Hour Law is one of only two federal laws with the express purpose of creating a more humane agriculture system. While the law does not provide

specifications for several animal welfare indicators such as space per animal, bedding, and fitness to travel, it does require basic care of animals in terms of food, water, and rest. The law also aims to add a layer of safety to our food supply by ensuring healthy animals arrive at slaughter establishments, livestock markets, and other industry facilities. Therefore, it is important that the industry comply with the law and that the government vigorously enforce it.

The protocols in place to help enforce the law are inadequate. The following analysis will focus on four main problems with the current framework:

1. Large numbers of animal shipments are not monitored.
2. Monitoring techniques are insufficient to detect violations of the law.
3. Enforcement is applied inconsistently.
4. APHIS's investigatory and evidentiary tools are indiscriminate.

Large Numbers of Animal Shipments Are Not Monitored for Violations of the Twenty-Eight Hour Law

The current Twenty-Eight Hour Law enforcement strategy only applies to animals being transported interstate to slaughter and animals transported across the national border. However, millions of animals are shipped interstate each year for purposes other than slaughter. Calves are shipped between states to feeding or breeding facilities, and pigs are moved from farrowing to grow-out facilities. Farm animals are also frequently shipped across state lines to auctions and markets. Currently, not a single shipment of animals to these places is monitored for violations of the Twenty-Eight Hour Law.

In 2005, 26 percent of pigs and 40 percent of cattle sold in the United States were shipped interstate. Many of these are “inshipments”—animals transported for feeding or breeding purposes rather than immediate slaughter.⁴⁶ In 2018, 60 million pigs and 21 million cattle traveled interstate as inshipments.⁴⁷ This represents approximately 34 percent of all pigs and 40 percent of all cattle sold in the United States that year.⁴⁸

In response to a 2012 national survey of health-related practices in the pork industry (the survey is due to be updated in 2020), 68 percent of pig-raising sites said that at least one shipment of pigs left the site during the previous six months to an out-of-state destination. Sixty-five percent of all sites indicated that they sent at least one shipment of pigs to slaughter across

state lines. According to APHIS, which conducted the survey, production sites of all sizes sent pigs interstate, but the largest operations were most likely to do so.⁴⁹

While the number of animals being shipped over 28 hours is unknown, it is likely a common practice. Data from a 2003 Economic Research Service (ERS) report on the interstate movement of livestock indicate that approximately 11 percent of farm animals transported for feeding and breeding purposes are shipped more than 28 hours, which would have amounted to 7.7 million animals in 2015.⁵⁰ The actual number of animals shipped more than 28 hours is likely much higher, however, since the ERS did not include the millions of animals shipped to slaughter establishments or across the national border each year.

Trade association guidelines also suggest that shipping animals without rest for longer than 28 hours is a common practice, and one that is not monitored. The American Sheep Industry Association's *Sheep Care Guidelines* states that rest stops should be given if long hauls of 48 hours or more are expected.⁵¹ The guide does not mention the Twenty-Eight Hour Law, or the fact that in most circumstances, transporting sheep for 48 hours without rest stops would violate the law. The *Master Cattle Transporter Guide*, part of the National Beef Quality Assurance program, does not discuss the Twenty-Eight Hour Law. In fact, the guide reminds transporters to “keep stops as short as possible in extreme heat or cold conditions,” but does not mention the legal requirements of the Twenty-Eight Hour Law.⁵²

Although the Beef Quality Assurance Program does not mention the Twenty-Eight Hour Law, the National Beef Quality Audit (conducted approximately every five years) does evaluate the condition of animals arriving at beef slaughter plants. The 2016 audit sampled 10 percent of trucks during one day's production at 18 slaughter plants. The average transit duration for cows and bulls across all loads surveyed was 6.7 hours, across 283 miles. Many trips far exceeded 28 hours, however; the longest observed was 39.5 hours, across 1,413 miles.⁵³

Monitoring Techniques Are Insufficient to Detect Twenty-Eight Hour Law Violations

Food Safety and Inspection Services Directive 6900.2: As discussed above, FSIS Directive 6900.2 explains how personnel at slaughter establishments should monitor for violations of the Twenty-Eight Hour Law. The directive explains that FSIS personnel are only to inquire about violations of the law if

animals appear dehydrated or exhausted upon arrival at the slaughter establishment.⁵⁴ This subjective system has been in place for 10 years, and the FSIS only detected two possible violations of the law in that time (CA-10421-VS and IL-11039-VS, described above). (Note: It is likely that the veterinarian who reported WI-10009-VS, also described above, to IES followed a protocol in line with Directive 6900.2. However, the directive was not issued until a year after the veterinarian's investigation request, and WI-10009-VS is not counted here among the cases brought based on the directive.)

The potential violations in CA-10421-VS and IL-11039-VS were only discovered because a veterinarian in a supervisory position saw the animals when the truck driver unloaded them. FSIS personnel are not required to inspect animals when they arrive at the slaughter establishment unless they are performing Humane Activities Tracking System (HATS) verifications, which generally occur once per shift at slaughter establishments.⁵⁵ There is no minimum time that inspection program personnel must spend on each HATS activity, and therefore it is possible that FSIS personnel spend mere minutes inspecting the condition of animals as they are offloaded from trucks.

Additionally, while inspection is required for all animals to be slaughtered, FSIS personnel usually perform these duties after the animals have been offloaded and put into pens. Once animals are placed into these pens, the law requires that they be given water immediately, and food if kept more than 24 hours, thus making it harder to determine if violations of the Twenty-Eight Hour Law have occurred.⁵⁶

AWI also has found evidence that not all potential Twenty-Eight Hour Law violations flagged by FSIS personnel are investigated. In July 2013 an FSIS inspector at a slaughter establishment in Tennessee generated a memorandum of interview reporting a possible violation. He observed that two truckloads of Canadian hogs had been unloaded, with one of the trucks holding 12 dead animals; another 4 hogs died that night. The inspector reported that the driver had traveled more than 28 hours since entering the United States from Canada and had not watered the animals during that time. This incident was not covered in the FOIA records received by AWI.

VS Import and Export Protocols: Compliance with the Twenty-Eight Hour Law is particularly important for the

health and welfare of animals shipped internationally. These animals are not shipped in large numbers—in 2019, the US sent 40,970 pigs, sheep, and goats to Mexico⁵⁷—but those shipped are likely confined in containers for long periods of time and are therefore at a higher risk for a variety of stressors, which can lead to increased susceptibility to disease and improper handling.⁵⁸

Import and export protocols for pigs and ruminants other than cattle are minimal. Often the protocol requires that shipments of these animals are sealed, but VS gives no indication that it monitors them for compliance with the Twenty-Eight Hour Law. Worse, for animals imported into the United States from Canada, VS protocol instructs drivers to take animals directly to their destination, ignoring the Twenty-Eight Hour Law altogether. Because instructions are not in place to monitor for violations of the law for these shipments, and VS protocol may in fact require noncompliance with the law in some instances, it is likely that violations go unmonitored even when enough information is provided through health certificates and seal numbers to determine if a driver violated the law.

On the other hand, import and export procedures provide instruction for how to comply with the Twenty-Eight Hour Law when cattle are shipped to Mexico. Fortunately, when APHIS investigations of cattle shipments are conducted at border export facilities, they can definitively prove violations of the Twenty-Eight Hour Law. Current seal and rest stop addendum procedures provide APHIS with enough evidence to demonstrate when a driver has not stopped in compliance with the Twenty-Eight Hour Law. APHIS is able to do this because animals are only able to leave a sealed container if the seal is broken. If APHIS can show that a driver spent more than 28 hours en route, the seal shows whether the driver unloaded the animals. In NM-11032-VS, APHIS was able to prove that a driver violated the law because the driver entered the export facility with the same seal on the container from when the trip commenced. A similar incident occurred with respect to MI-150052-VS, which was an import from Canada that was sealed at the US border. Since the seal demonstrated the date and time the shipment entered the United States, APHIS was able to prove the driver had violated the law.

Unfortunately, instances like these are rare, and depend entirely upon on-site personnel at export facilities taking an interest in a specific shipment of animals. In 2009, AWI

submitted a FOIA request to APHIS asking for records related to all shipments of bovines transported from Canada to Mexico for a two-year period. APHIS sent records for 116 shipments. After estimating the mileage of the routes provided, AWI found that 92 percent of shipments took over 28 hours to reach their destination once they entered the United States. Yet, the records were void of rest stop addendums. As with these shipments, records indicate that the driver in NM-11032-VS did not have a rest stop addendum, but APHIS only commenced an investigation when an on-site veterinarian requested one after he witnessed dead animals on the truck.

In the last 12 years, there have only been three cases (TX-06284-VS, NM-11032-VS, and MI-150052-VS) in which on-site officials have taken an interest in a particular shipment. In one of these cases, over 150 animals died during transport or immediately thereafter. Violations of the law may go unnoticed because drivers are often allowed to unload cattle at export facilities without being required to disclose hour or mileage information to APHIS. Thus, the only time a potential violation of the law is investigated is when someone questions the drivers' routes.

APHIS Applies Its Enforcement Authority Inconsistently

In the few cases, revealed through FOIA records, where APHIS has detected violations of the Twenty-Eight Hour Law, it has applied its authority inconsistently and has not followed its obligation under the law. In a letter to AWI, APHIS stated that its primary obligation under the Twenty-Eight Hour Law is to report violations to the DOJ.⁵⁹ Even though the agency has uncovered violations of the law occurring on trucks, it appears it has consulted the DOJ only once about a violation. In fact, in six cases where APHIS found a violation of the law, it came to several different conclusions regarding its authority. However, recent cases suggest that APHIS merely threatens enforcement regardless of the severity of the violation.

In one of the cases described above (TX-06284-VS), APHIS suggested reporting the violation to the DOT because that is all its authority allowed it to do.⁶⁰ In another case (NM-11032-VS), IES provided the violator with an "official warning." The warning stated that APHIS may "pursue civil action including penalties up to \$650 for each violation described in the official warning." As with other such warnings, the letter stated that it generally pursued penalties for these types of violations but that it would not if the carrier complied in the future.⁶¹

In another case (WI-10009-VS) where APHIS found a violation of the law, agency personnel stated that they did not have the authority to bring any action against the company because of its status as a foreign entity. From the limited facts recovered regarding WI-10009-VS, it seems that APHIS should have submitted the violation to the DOJ, which then would have decided whether to bring the case.

A 2011 email communication from an APHIS veterinarian to an IES area manager about WI-10009-VS states, "It appears that there is nothing we can do in this case, which is unfortunate. It is likely that the majority of 28-hour violations we will see will involve Canadian exporters, so we effectively have an animal welfare regulation that we will not be able to enforce in the majority of our cases. If that's true, then we are likely, over time, to have repeat offenders because they are effectively exempt from meeting our regulations due to the fact that they are a foreign entity."

However, FOIA records show that APHIS acted differently in a 2006 case where Steve's Livestock Transport, a Canadian company, violated the Twenty-Eight Hour Law. Records show that the company received a letter of information (an informal warning letter) for violating the Twenty-Eight Hour Law.⁶²

In the three cases where the violator was a foreign entity, APHIS should have reported the cases to the DOJ. Foreign entities must comply with domestic laws when transporting goods and animals within the United States.⁶³ According to a guideline prepared by the Department of Homeland Security with assistance from the FMCSA, foreign entities must comply with driver's log, alcohol, hours of service, identification, and inspection requirements.⁶⁴ The department does not refer to the Twenty-Eight Hour Law specifically, but this is likely due to the lack of familiarity with the law, and should not be taken as an assertion that foreign companies may ignore the law altogether. Additionally, the law asks for agencies to report violations. Here, IES expressly stated that it found a violation, so it should have reported it to the DOJ.

In the more recent incidents for which AWI received information, APHIS referred all four cases to IES for investigation. However, APHIS never issued anything other than a warning, even when it found repeated, substantiated violations of the law. It is unclear to AWI why only one of the

three cases where IES found violations was referred to the DOJ, even though violations seemed well documented.

FOIA records show that in the past, APHIS was uncertain as to how it should handle the Twenty-Eight Hour Law overall. Emails discovered through FOIA demonstrate that APHIS personnel were uncertain about their authority under the law.⁶⁵ When the FSIS amended Directive 6900.2 with information about the Twenty-Eight Hour Law, APHIS showed it was unaware of how to handle such cases.

One area veterinarian in charge stated that the agency needed guidance on the issue. A 2009 email from the veterinarian to a VS associate regional director had the following questions pertaining to the Twenty-Eight Hour Law: “Does this only pertain to slaughter facilities? What about livestock markets? What about dealer facilities? The historic interpretation of this [law] say[s] [it] only pertains to railroad cars, so the vehicle really doesn’t matter now?” FOIA records do not indicate any response to this inquiry. This email came about six years after the USDA’s inter-agency memo explaining that the Twenty-Eight Hour Law regulations apply to trucks.

Another area veterinarian in charge emailed VS colleagues in 2009 stating that he believed the Twenty-Eight Hour Law was the responsibility of APHIS’ Animal Care division. More recently, however, emails reveal that personnel are less confused about their ability to open IES investigations. For example, several files AWI received include commands to open investigations, with no questions about whether APHIS has jurisdiction to enforce the law. However, it is glaringly apparent that APHIS officials are hesitant to refer cases to the DOJ for enforcement or impose penalties on violators even when violations are substantiated.

APHIS Investigatory and Evidentiary Tools Are Indiscriminate

In three of the above cases (TX-06284-VS, WI-10009-VS, and NM-11032-VS), IES relied on various types of evidence to conclude that a violation had occurred. In TX-06284-VS, the driver’s log, the trucks themselves, and a police report were used. According to the IES investigator, the driver’s log demonstrated that in several shipments, the driver did not stop to provide animals with food or water. FOIA records did not provide all driver logs for the incident, but at least one clearly shows that a shipment of pigs traveled over 3,200 miles

without stopping to unload and rest the animals. An affidavit from a port veterinarian explained that the trailers used to ship the animals were not equipped to water the animals during transport. The police report stated that a USDA animal health technician viewed the trucks in question and found them to be overcrowded; therefore, even if there was water, not all the animals would have been able to access it.⁶⁶

The FOIA records for WI-10009-VS did not indicate the documentation that IES used to conclude that a violation occurred. Records did contain the exhibit list used in the investigation, which included shipping records, a bill of lading, a “Non-Domestic Livestock Receiving Verification Log,” and a VS certificate titled “Export of Cattle or Bison for Immediate Slaughter to the United States of America.”

In NM-11032-VS, the investigator concluded that a violation occurred because (1) the shipment container’s seal was not broken, (2) the truck driver confessed that he did not stop, (3) an addendum for rest stops did not accompany the shipment, and (4) records indicated which day the animals left their point of departure. APHIS personnel told IES that the seal was not broken and that there was not a rest stop addendum. The IES investigator spoke with the driver during the investigation. According to the investigation report, the driver said that “he is familiar with the Twenty-Eight Hour Law but that he did not stop during the trip for rest, feed or water for the cattle because there are no rest stop facilities along the way for this.”⁶⁷ An APHIS-accredited veterinarian had signed a “Certificate of Cleaning and Disinfecting” at the beginning of the journey on May 23, 2011, and sealed the trailer on the same day.

In later cases, the sevidence relied upon includes driver logs, interstate certificates of veterinary inspection (ICVIs), invoices, and online mapping services. For example, in WI-50005-VS, the exhibits include driver logs for the dates of suspected violations, numerous ICVIs, invoices showing transactions between the shippers and purchasers of the calves, and a Google Maps inquiry showing the shortest routes from the point of departure to the destination.

The lack of standardized documentation for animal transport makes it difficult for APHIS to collect evidence and determine in a timely manner whether the Twenty-Eight Hour Law has been violated. For instance, it took APHIS 10 months to finish its investigation into CA-10421-VS, despite the fact that the truck

driver who transported the animals admitted at the outset to violating the Twenty-Eight Hour Law. During the investigation, APHIS conducted interviews, solicited and reviewed affidavits, and traveled to the offices of those involved. Yet, after all this, APHIS was forced to make the determination that there was insufficient evidence of a violation because there was no proper documentation of the driver's actions during the trip.

In other instances, APHIS put time and resources into its investigations, yet the evidence needed to prove that a violation occurred did not exist or was immaterial. In WI-10009-VS and WI-150005-VS, it took APHIS approximately two years to conduct an investigation into a possible violation of the law. In WI-10009-VS, it concluded that a violation occurred, but that Canadian companies are exempt from complying with the law and therefore nothing could be done. Even when violations are clear, as in WI-150005-VS and NM-11032-VS, it typically takes APHIS months or years to finish the investigation.

THE USDA HAS THE AUTHORITY AND RESPONSIBILITY TO BETTER ENFORCE THE TWENTY-EIGHT HOUR LAW

While the previous section demonstrates how enforcement of the Twenty-Eight Hour Law has failed, it also illuminates ways to improve compliance with the law. There are two main reasons why the USDA has not submitted violations of the law to the DOJ. First, there is a lack of proper guidance for APHIS personnel in understanding their role in the Twenty-Eight Hour Law. Second, in most instances there is no specific documentation a driver is required to provide to APHIS that reviews the mileage, hours, and stops made on their trip.⁶⁸ The USDA has the authority under the Twenty-Eight Hour Law to provide clarity on these two points and more as initial steps to better enforcement of the law.

When Congress passed the Twenty-Eight Hour Law in 1906, it specified that the USDA has certain enforcement powers under the law. The law stated that the USDA would report violations of the law to the attorney general. When Congress repealed and reenacted the law in 1994, it did so “without substantive changes;” therefore, the department is still charged with reporting violations of the law to the DOJ.⁶⁹ Congressional reports also demonstrate that Congress intended for the USDA to have enforcement power over the law, given that it implemented the law at the USDA's request.⁷⁰

The USDA has clearly demonstrated it has authority to enforce the Twenty-Eight Hour Law. While it has not always done so to the best of its abilities, the department has been the entity that has enforced the law since its enactment. As discussed above, the Bureau of Animal Industry originally enforced the law against rail carriers. APHIS wrote regulations to enforce the law in 1963, when transport by rail was still common, and it eventually affirmed that the law applied the law to trucks in 2003. Throughout, IES has investigated possible violations of the law, although this currently occurs very infrequently, and with only one case showing that APHIS referred a case for prosecution to the DOJ.

POSSIBLE MECHANISMS FOR ENFORCING THE TWENTY-EIGHT HOUR LAW

Several options are available for enforcement of the Twenty-Eight Hour Law—by the USDA and/or the DOT—without the need for new legislation or rulemaking:

1. The number of hours in transit could be included on an existing or new form that accompanies animals to federally inspected slaughter establishments. The form could be collected or reviewed by USDA personnel at the slaughter plant. This would cover animals transported to slaughter but not those transported for breeding or feeding purposes.
2. The FMCSA has finalized a rule to require the use of electronic logging devices (ELDs) for tracking compliance with hours of service regulations for motor carriers.⁷¹ ELDs offer a potential mechanism for the DOT and/or the USDA to track compliance with the Twenty-Eight Hour Law. One way in which this could be accomplished is by having USDA personnel at slaughter establishments review ELD data or paper logbooks when they conduct inspections related to truck unloading. During each shift at federal slaughter plants, USDA personnel verify humane handling procedures during animal unloading activities. (“Truck Unloading” is designated as Category II of the USDA's Humane Activities Tracking System.) This approach would cover animals transported for slaughter but not for other purposes.
3. The USDA or the DOT could monitor ELD data remotely for compliance with the Twenty-Eight Hour Law. This potentially could be used to monitor the transport of farm animals for multiple purposes.
4. The DOT could monitor compliance with the Twenty-Eight Hour Law by including enforcement as part of

roadside inspections conducted by the Motor Carrier Safety Assistance Program (MCSAP). MCSAP inspectors already monitor compliance with numerous FMCSA regulations and hazardous material regulations. Inspectors conducted 3.27 million inspections in 2019,⁷² and adding an additional compliance check does not appear burdensome. However, the Twenty-Eight Hour Law regulations are found within USDA regulations, so it is unclear whether MCSAP inspectors have enforcement jurisdiction. If such enforcement is possible, this approach would cover the transport of farm animals for all purposes.

CONCLUSION

Initially, when animals were transported long distances primarily on rail carriers, the USDA helped enforce the Twenty-Eight Hour Law. Once the animal transport system modernized, the department lost sight of its role under the law. This has led to insufficient enforcement of long-distance animal transport. The USDA has the authority to enforce the law and should do so to stop its constructive nullification of one of the very few laws Congress has passed to protect farm animal health and welfare.

REFERENCES

¹ The Twenty-Eight Hour Law, 49 U.S.C. § 80502 (2012). The Twenty-Eight Hour Law covers the transportation of cows, sheep, pigs, goats, and equines. In 1996, Congress amended the Humane Methods of Slaughter Act, giving the USDA further authority to regulate the transportation of equines to slaughter. Unlike the Twenty-Eight Hour Law, these regulations discuss floor space per animal and ways to prevent injuries, including separating stallions and otherwise aggressive animals. The USDA has the authority to assess civil penalties up to \$5,000 per violation under these regulations. See 9 C.F.R. pt. 88.

² See VIVIAN CHU, CONG. RESEARCH SERV., BRIEF SUMMARIES OF FEDERAL ANIMAL PROTECTION STATUTES 27 (2010), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/94-731.pdf>.

³ 49 U.S.C. § 80502(d) (2012); see Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584 (2015) (amending the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461) and giving authority to the head of each agency responsible for the law in question to adjust civil penalties for inflation). As of this writing, the Twenty-Eight Hour Law penalty has not been adjusted for inflation.

⁴ 49 U.S.C. § 80502(d) (2012) (stating that upon “learning of a violation, the Attorney General shall bring a civil action to collect the penalty in the district court of the United States”).

⁵ See CHU, *supra* note 2, at 28.

⁶ 28 C.F.R. § 0.55 (2018).

⁷ 9 C.F.R. Pt. 89.

⁸ In its current form, the Statement of Policy may not comply with the Twenty-Eight Hour Law. 9 C.F.R. § 89.3 states that animals unloaded for feed and water and then put back in the transport container for rest are to be given not less than two hours in the pens. It also specifies that animals unloaded for feed only are to have not less than one hour in the pens. The Twenty-Eight Hour Law specifies that animals should be unloaded for not less than five hours unless they have food, water, space, and an opportunity to rest in the vehicle.

⁹ HUMANE SOC’Y OF THE U.S. ET AL., PETITION FOR RULEMAKING TO EXTEND THE TWENTY-EIGHT HOUR LAW TO TRUCKS (October 4, 2005) <http://cok.net/wp-content/uploads/2013/02/Twenty-Eight-Hour-Law-Petition-2005.pdf>.

¹⁰ Letter from W. Ron DeHaven, Administrator, to Peter A. Brandt, Esq., The Humane Soc’y of the U.S. (September 22, 2006).

¹¹ See, e.g., K.S. Schwartzkopf-Genswein et al., *Road Transport of Cattle, Swine, and Poultry in North America and Its Impact on Animal Welfare, Carcass and Meat Quality: A Review*, 92 MEAT SCI. 222 (2012). Since 1963, when the USDA wrote its Statement of Policy, the scientific community has done considerable research on the impact of transport on the welfare of animals.

¹² JOHN F. STOVER, AMERICAN RAILROADS 195 (The University of Chicago Press, 2nd ed. 1997).

¹³ *Id.*

¹⁴ *Id.* at 196.

¹⁵ *History of APHIS*, USDA, APHIS (Aug. 3 2015), https://www.aphis.usda.gov/aphis/banner/aboutaphis/SA_APHIS_History. Today’s APHIS Veterinary Services performs similar tasks to those performed by the Bureau of Animal Industry in the first half of 20th century.

¹⁶ HARRY GODING AND A. JOSEPH RAUB, USDA, BULLETIN NO. 589, THE 28-HOUR LAW REGULATING THE INTERSTATE TRANSPORTATION OF LIVE STOCK: ITS PURPOSE, REQUIREMENTS, AND ENFORCEMENT 17 (1918), https://www.nal.usda.gov/sites/default/files/28hour1918_o.pdf.

¹⁷ Stover, *supra* note 12.

¹⁸ U.S. v. Illinois Cent. R. Co., 303 U.S. 239 (1938).

¹⁹ Animal and Plant Health Inspection Service, *First Federal Law to Prevent Cruelty to Animals*, in *Animals and Their Legal Rights* (AWI, 4th ed. 1990).

²⁰ *Id.*

²¹ H.R. 10026, 88th Cong. (1964); see *Our Heritage*, AMERICAN HUMANE CERTIFIED <http://www.humaneheartland.org/about-us/heritage>.

²² *Roadside Inspections, Driver Violations*, FED. MOTOR CARRIER SAFETY ADMIN. DEP'T. OF TRANSP., <https://ai.fmcsa.dot.gov/SafetyProgram/spViolation.aspx?rpt=RDDV>.

²³ Letter from Gordon Johnson, FOIA Officer, to Michelle Pawliger, Farm Animal Policy Associate, AWI (Aug. 2, 2016) (on file with AWI).

²⁴ Letter from Stanza M. Ludgood, Acting FOIA Officer, Federal Motor Carrier Safety Administration, to Michelle Pawliger, Farm Animal Policy Associate, AWI (June 30, 2017) (on file with the AWI); Letter from Jennifer Weatherly, FOIA Officer, Federal Motor Carrier Safety Administration, to Erin Thompson, Farm Animal Program Staff Attorney, AWI (March 27, 2019) (on file with AWI).

²⁵ The APHIS FOIA office did not provide this case (CA-08470-VS) to AWI even though it fell within the parameters of AWI's requests. AWI knew of this case because individuals in the organization took part in requesting an IES investigation. After discussing this with the APHIS FOIA office, APHIS reviewed the records again and did not find any other cases that would fit within AWI's request.

²⁶ FSIS Directive 6900.2, Humane Handling and Slaughter of Livestock (USDA 2011), <http://www.fsis.usda.gov/wps/wcm/connect/2375f4d5-0e24-4213-902d-d94ee4ed9394/6900.2.pdf?MOD=AJPERES>.

²⁷ In WI-10009-VS (discussed in detail below), similar protocol were likely used, but the incident took place before the FSIS published its notice and directive.

²⁸ See, e.g., Veterinary Servs., Questions and Answers: USDA's Finalized Import Certification Regulations for Live Bovine Animals and Bovine Products (Nov. 2007) [hereinafter *Q&A: USDA's Import Regulations for Bovine*], https://www.aphis.usda.gov/import_export/downloads/q_a_can_cattle_imp.pdf (explaining that sheep and goats (shipped as "feeder" or for slaughter) from Canada must go directly to their final destination within the United States); see also, Veterinary Servs., Protocol for the Importation of Swine from Canada (Sept. 8 2008) [hereinafter *Protocol for the Importation of Swine from Canada*], available at https://www.aphis.usda.gov/import_export/animals/downloads/import_canadaswine_intous.pdf (explaining that pigs imported into the United States from Canada for slaughter must go directly to the slaughter establishment).

²⁹ See *Frequently Asked Questions on BSE*, USDA, https://www.usda.gov/wps/portal/usda/usdahome?contentid=BSE_FAQs.xml&contentidonly=true.

³⁰ While this is true, VS documents state that Canadian shippers may not ship sheep or goats through the United States to Mexico. Therefore, instructions for seals and health certificates are not provided on VS import and export webpages for these ruminants. See, *Q&A: USDA's Import Regulations for Bovine*, *supra* note 28.

³¹ USDA, VETERINARY HEALTH CERTIFICATE FOR EXPORT OF SHEEP AND GOATS FOR BREEDING FROM THE UNITED STATES OF AMERICA TO MEXICO, https://www.aphis.usda.gov/regulations/vs/iregs/animals/downloads/mx_ov_caprine_breeding_hc_9-26_16.pdf.

³² *Id.*

³³ *Q&A: USDA's Import Regulations for Bovine*, *supra* note 27; *Protocol for the Importation of Swine from Canada*, *supra* note 27.

³⁴ *Id.*

³⁵ See *Export by Country: Mexico*, APHIS (April 24, 2018) https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/export/international-standard-setting-activities-oie/sa_by_country/sa_m/ct_animal_mexico (explaining that seals are required for cattle transported from the United States to Mexico for breeding. The process for shipping cattle to Mexico for slaughter is not as clear, yet APHIS states that the rules are similar); see also APHIS, VETERINARY SERVICES QUESTIONS AND ANSWERS REGARDING BOVINES IN TRANSIT FROM CANADA TO MEXICO, https://www.aphis.usda.gov/import_export/downloads/q_a_transit_ca_mx.pdf.

³⁶ APHIS, GUIDELINES TO EXPORT BREEDING CATTLE FROM THE UNITED STATES AND CANADA TO MEXICO, (Apr. 2008) https://www.aphis.usda.gov/regulations/vs/iregs/animals/downloads/mx_bred_ca.pdf.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Feed, Water, and Rest Station*, APHIS, (May 1, 2018) https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/ct_feed_water_rest_stations.

⁴⁰ APHIS, *supra* note 36 at 1.

⁴¹ *Id.*

⁴² APHIS, VS, PROTOCOL TO TRANSIT BOVINES FROM CANADA TO MEXICO (Mar. 2008), https://www.aphis.usda.gov/import_export/downloads/cn_us_mx_transit_bovines.pdf.

⁴³ APHIS, VS, PROTOCOL FOR THE IMPORTATION OF CATTLE OR BISON FROM CANADA, https://www.aphis.usda.gov/import_export/downloads/pro_imp_cattle-bison_can.pdf; Concerning cattle shipped into the United States from Canada for purposes other than slaughter, the requirements as to whether shipments need to be sealed are unclear. In a letter to importers, APHIS does not mention that shipments containing these animals must be sealed; see Letter from Michael David, Acting Director, Animals, Organisms and Vectors, and Select Agents, NCIE, to Importers, Brokers, and Other Interested Parties, https://www.aphis.usda.gov/import_export/downloads/bse_letter.pdf.

⁴⁴ One trucking company stated that there is not a good system in place for complying with the Twenty-Eight Hour Law because they have to seal the trucks and would need to rest in a place where the trucks could be resealed. The current protocol is to have an addendum for rest stops when transporting cattle from the United States to Mexico. The owner's statement indicates that this process is not used and that the Twenty-Eight Hour Law is not enforced, or that trucking companies are not aware of the process.

⁴⁵ The official warning stated that the agency generally pursues penalties for Twenty-Eight Hour Law violations. FOIA records did not indicate that APHIS had pursued penalties for other violations of the law, but if the agency did, it would have gone beyond its authority, as it is up to the DOJ to prosecute violations of the law.

⁴⁶ USDA, National Agricultural Statistics Service (NASS), *Meat Animals Production, Disposition, and Income 2005 Summary* 6, 14, 15 (April 2006) <https://downloads.usda.library.cornell.edu/usda-esmis/files/02870v85d/fb494b97n/sx61dp66q/MeatAnimPr-04-27-2006.pdf>.

⁴⁷ USDA, NASS, *Meat Animal Production, Disposition, and Income 2017 Summary* 8, 14, 15 (April 2019) <https://downloads.usda.library.cornell.edu/usda-esmis/files/02870v85d/70795j27s/xs55mn77c/meatan19.pdf>.

⁴⁸ *Id.*

⁴⁹ NATIONAL ANIMAL HEALTH MONITORING SYSTEM, USDA, PART II: REFERENCE OF SWINE HEALTH AND HEALTH MANAGEMENT IN THE UNITED STATES, 2012 82 (Feb. 2016) https://www.aphis.usda.gov/animal_health/nahms/swine/downloads/swine2012/Swine2012_dr_PartII_revised.pdf.

⁵⁰ AWI noted several limitations to its approximation—most of which suggest a higher percentage of animals transported more than 28 hours. Among these limitations: (1) AWI’s estimate is based on data that do not provide exact distances, (2) trips to and from Canada and Mexico have been excluded, and (3) several major agricultural states—including Nebraska, Ohio, Oklahoma, and Pennsylvania—did not provide records to the ERS study.

⁵¹ DR. RUTH WOIWODE, SHEEP CARE GUIDE 12 (2017), [HTTPS://D1C9R0366W3IKE.CLOUDFRONT.NET/HTTP/DOCUMENT/SHEEPUSA/SHEEP%20CARE%20GUIDE%202017%20WEB3.PDF](https://d1c9r0366w3ike.cloudfront.net/http/document/sheepusa/sheep%20care%20guide%202017%20web3.pdf).

⁵² RAN SMITH, DMV, MASTER CATTLE TRANSPORTER GUIDE 13, http://www.bqa.org/Media/BQA/Docs/master_cattle_transporter_guide-digital.pdf.

⁵³ NATIONAL CATTLEMEN’S BEEF ASSOCIATION, 2016 NATIONAL BEEF QUALITY AUDIT, MARKET COW AND BULL EXECUTIVE SUMMARY 6 (2017). https://www.bqa.org/Media/BQA/Docs/nbqa-exec-summary_cowbull_final.pdf.

⁵⁴ FSIS Directive, *supra* note 26.

⁵⁵ See FSIS, FSIS COMPLIANCE GUIDE FOR A SYSTEMATIC APPROACH TO THE HUMANE HANDLING OF LIVESTOCK 6 (2013) <http://www.fsis.usda.gov/wps/wcm/connect/da6cb63d-5818-4999-84f1-72e6dabb9501/Comp-Guide-Systematic-Approach-Humane-Handling-Livestock.pdf?MOD=AJPERES> (explaining that the FSIS records the time spent performing nine verification activities in the Humane Activities Tracking System (HATS). These activities cover humane handling and slaughter regulations under the Humane Methods of Slaughter Act).

⁵⁶ 9 C.F.R. § 313.2 (2018).

⁵⁷ *Standard Query*, FOREIGN AGRICULTURAL SERVICE, <https://apps.fas.usda.gov/gats/ExpressQuery1.aspx> (Search Product Type: “exports,” Product Group: “Sheep, lambs, & goats” and “swine,” and Partner: “Mexico”). This number can vary greatly. In 2015, the United States sent 44,000 pigs, sheep, lambs, and goats to Mexico; more than twice that amount were shipped in 2009; in 2010, there was nearly a 30 percent decrease. The total number of animals shipped from Canada through the United States to Mexico is not available. However, United States to Mexico summary reports provide numbers for dairy cattle and pigs shipped from Canada to Mexico—554 and 8,284, respectively, in 2018. See USDA, AMS, *US to Mexico Livestock Export Summary* Dec. 20, 2018 https://www.cattle.com/markets/archive.aspx?code=AL_LS635&date=2018-12-20.

⁵⁸ Manteca, *Physiology and Disease*, in LONG DISTANCE TRANSPORT AND WELFARE OF FARM ANIMALS, (Michael C. Appleby et al. eds. 2008).

⁵⁹ Letter from Kevin Shea, Acting Administrator, APHIS, to Cathy Liss, President, AWI, (Apr. 7, 2009) (on file with AWI).

⁶⁰ Based on FOIA records, it is unclear if APHIS sent the case to the DOT—the records only show APHIS’s intention to submit the case to the DOT. The DOT could not locate any records associated with this case when AWI requested this information through FOIA.

⁶¹ The Twenty-Eight Hour Law violation is the only violation discussed in the letter of warning. It is possible, and perhaps likely, that the agency’s insinuation that it frequently pursues penalties for violations of the law pertains to horses and violations of 9 C.F.R. Part 88 (2001).

⁶² FOIA records did not provide details of this case (TX-04252-VS). It is only referenced in the records as a past violation of the law.

⁶³ See MICHIGAN STATE POLICE, BORDER CROSSING GUIDE FOR COMMERCIAL TRUCK DRIVERS, (2008) http://www.truckingsafety.org/portals/o/guidebooks/border_crossing_guide.pdf (explaining that Canadian drivers must abide by hours of service, alcohol restrictions, identification, and inspection laws).

⁶⁴ U.S. DEP’T OF HOMELAND SEC., GUIDELINES FOR COMPLIANCE OF COMMERCIAL MOTOR VEHICLES AND CMV DRIVERS ENGAGED IN CROSS-BORDER TRAFFIC, (2012) <https://www.dhs.gov/xlibrary/assets/policy/dhs-cross-border-trucking-guidelines.pdf>.

⁶⁵ APHIS employees did not write these emails recently, but because the law has been so inconsistently enforced, and few cases have been brought to their attention, it is likely that confusion still persists within the agency.

⁶⁶ The investigation only discussed the violation of the feed and water requirements under the Twenty-Eight Hour Law regulations. It did not mention the “unloading animals to rest” requirement under the law. This is particularly troubling because the investigation showed that the animals were overcrowded, and therefore the exemption to the Twenty-Eight Hour Law would not have applied.

⁶⁷ However, there is an official USDA feed, water, and rest station in Adair, Oklahoma, and according to Google Maps this would have provided the driver a place to stop without adding more than an hour in driving time to the trip.

⁶⁸ Note that in IL-11039-VS, the driver’s log helped determine that a violation did not occur, and this case took the least amount of time for APHIS to conclude.

⁶⁹ CHU, *supra* note 2.

⁷⁰ See HSUS, *supra* note 9.

⁷¹ Hours of service regulations place limitations on the numbers of hours motor carriers may drive and be on duty.

⁷² *Roadside Inspections*, *supra* note 22.

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