



# Animal Welfare Institute

900 Pennsylvania Avenue, SE, Washington, DC 20003

November 2, 2020

James Wiley Deck, Deputy Administrator  
Federal Motor Carrier Safety Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue SE  
Washington, DC 20590

## **SUBMITTED VIA REGULATIONS.GOV**

**RE: Docket No. FMCSA-2020-0098  
Request for Comment on Hours of Service of Drivers; Pilot Program to Allow  
Commercial Drivers to Pause Their 14-Hour Driving Window**

Dear Deputy Administrator Deck,

The Animal Welfare Institute (AWI) submits these comments in response to the Federal Motor Carrier Safety Administration's (FMCSA) new Split Duty Pilot Program. AWI was established in 1951 to reduce the suffering caused by humans to all animals, including farm animals in transportation systems. AWI opposes long-haul transport of farm animals that causes pain and distress, and supports enforcement of the Twenty-Eight Hour Law. 49 U.S.C. § 80502.

AWI has monitored long-haul transport of animals for a decade as part of its mission to reduce suffering of animals in agriculture. Its research indicates that animals shipped long distances or held over for long periods of time face negative welfare impacts. As such, AWI and its members are concerned that allowing livestock carriers to participate in the pilot program could cause needless suffering of farm animals by increasing transit times, risking animal welfare during adverse weather, and increasing the risk of Twenty-Eight Hour Law violations.

AWI requests that FMCSA preclude livestock carriers from participating in this pilot program. Alternatively, AWI requests that FMCSA create provisions barring livestock carriers from participating during adverse weather and to take measures to ensure the program does not increase the risk of violations of the Twenty-Eight Hour Law. Finally, AWI requests that FMCSA comply with its regulatory obligations to notify states, the public, and law enforcement personnel about the pilot program and its participants.

### **Background**

FMCSA's proposed pilot program allows drivers to pause hours of service (HOS) for 30 minutes to three hours. *Hours of Service of Drivers; Pilot Program to Allow Commercial Drivers to*

*Pause Their 14-Hour Driving Window*, 85 Fed. Reg. 55,061 (proposed Sep. 3, 2020). Currently, a driver's ability to take breaks is limited because the 14-hour HOS period does not stop if the driver takes a break. *Id.* The pilot program's stated primary goal is to gather information on whether this pause will increase the productivity of shippers and receivers by allowing drivers an option to avoid traffic congestion and/or increase driver safety by allowing drivers to rest when tired. *Id.* FMCSA requested comments on the proposal, and AWI respectfully submits the following concerns and suggestions.

## Discussion

### **1) The Proposed Pilot Program Needlessly Risks Animal Welfare.**

Animals experience extremely stressful conditions during transport. Even under the most controlled conditions within the industry, farm animals are deprived of basics such as food, water, bedding, and space during transport. In some instances, trucks are so overcrowded that animals are unable to rest, and may trample or fight with one another. The situation is only worsened when drive times are extended or conditions deteriorate due to adverse weather. Animals are particularly sensitive to weather conditions such as extreme heat or cold, especially when combined with rain, snow, wind, and trailer movement.

The Food Safety and Inspection Service (FSIS) documents dozens of incidents relating to animal suffering each year due of long transport times and/or adverse weather.<sup>1</sup> Animals can die during transport if weather conditions are extreme compared to days with moderate weather.<sup>2</sup> For instance, during hot weather, animals rely on the constant airflow provided by movement of the trailer to keep cool during transit. Trailers can become hot and deadly to animals when left in the sun, just like a passenger car. If drivers are able to take a three-hour break, constant airflow is prevented from circulating through the trailer, which can cause animals to suffer or even die from heat exhaustion. Animals can also be at risk during cold weather. FSIS records have documented chickens and turkeys arriving at slaughterhouses shaking or frozen and stuck to their transport crates after being transported in cold weather.<sup>3</sup> No heating devices are provided in trailers and only wooden boards are used to protect animals from wind chill. Even with this protocol, many farm animals still die from hypothermia and exposure during transport.

The problem of animal suffering and death during adverse weather conditions would only worsen if livestock carriers were included in FMCSA's pilot program because the potential time in transit would only stand to increase. Therefore, FMCSA should prohibit livestock carriers from participating in the pilot program, or create provisions restricting participation during adverse weather.

---

<sup>1</sup> *E.g. Poultry Transport Records Collected by AWI* (2020) <https://awionline.org/sites/default/files/uploads/documents/temp/FA-AWI-Poultry-loading-transport-holding-incidents.pdf> (while this document contains enforcement records for poultry involving holdovers that are typically longer than the pilot program, it demonstrates that it does not take long for animals to experience suffering during transport due to long trips, extreme weather, and deprivation of food and water).

<sup>2</sup> ANIMAL WELFARE INSTITUTE, *Extreme Weather*, <https://awionline.org/content/extreme-weather>.

<sup>3</sup> *Poultry Transport Records*, supra note 1.

## 2) The Proposed Pilot Program Increases the Likelihood of Twenty-Eight Hour Law Violations.

The Twenty-Eight Hour Law was passed by Congress in 1873 to prevent cruelty to animals during interstate transport on railcars.<sup>4</sup> In its current form, the law states that certain livestock (cows, horses, pigs, sheep, and goats) cannot be transported for more than 28 hours without offloading for food, water, and rest.<sup>5</sup> The law has since been interpreted to cover transport of animals on motor vehicles.<sup>6</sup> The law also states that civil penalties may be brought against carriers that violate the law.<sup>7</sup>

Participation by livestock haulers in the proposed pilot program could increase the risk of violations of the Twenty-Eight Hour Law. Farm animals commonly travel across the country or even internationally to reach slaughterhouses, and travel times can take up to or exceed 28 hours on days with perfect road and weather conditions.<sup>8</sup> An increase in the number of breaks for carriers naturally increases the amount of time an animal spends in transit—and because haulers are likely not unloading animals during such a short break, it puts the carriers closer towards a violation if the carrier must get its animals to a far-off destination.

Normally, if a livestock carrier could not reach a destination within a 14-hour shift, the carrier would end his shift and not drive for another 10 hours. Once back on the road, the carrier would have four hours to reach its destination before violating the Twenty-Eight Hour Law. In contrast, if livestock carriers were to participate in the pilot program, it would have even less time to reach destinations while complying with the law. If livestock carriers took the maximum pause of three hours on their 14-hour shifts and then were required to take a mandatory 10-hour rest period, carriers would only have one hour to reach the slaughterhouse. This scenario seems highly inefficient for drivers, carrier companies, and slaughterhouses.<sup>9</sup>

FMCSA should consider the impact the pilot program could have on Twenty-Eight Hour Law compliance and the effects on animal welfare. Only five U.S. Department of Agriculture approved feed, water, and rest stations are available to livestock carriers who may encounter transportation times exceeding 28 hours.<sup>10</sup> These rest stations may be out of the way for carriers, which would only extend travel times even more. Livestock carrier participation in the pilot program could even cause extended transportation times due to the tighter window to comply

---

<sup>4</sup> United State Dep't of Agric., Bull. No. 589, *The 28-Hour Law Regulating the Interstate Transportation of Live Stock: Its Purpose, Requirements, and Enforcement* (1918).

<sup>5</sup> 49 U.S.C. § 80502(a)(1). Sheep may be confined for an additional eight hours when the 28 hour period ends at night. 49 U.S.C. § 80502(a)(2).

<sup>6</sup> Animal Welfare Inst., *A Review: The Twenty-Eight Hour Law and Its Enforcement 2* (Apr. 2020) <https://awionline.org/sites/default/files/uploads/documents/20TwentyEightHourLawReport.pdf>.

<sup>7</sup> 49 U.S.C. § 80502(d).

<sup>8</sup> Animal Welfare Inst., *Legal Protections for Farm Animals During Transport* (Nov. 2018) <https://awionline.org/sites/default/files/uploads/documents/19LegalProtectionsTransport.pdf>.

<sup>9</sup> The above scenario does not even consider the possibility of a driver using the “agricultural commodity” 150-air mile radius exception, which would only increase the amount of time in transit and further increase the possibility of Twenty-Eight Hour Law violations. 49 C.F.R. § 395.1(k)(1).

<sup>10</sup> APHIS, *Feed, Water, and Rest Station*, (June 2, 2020), [https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animalproduct-import-information/ct\\_feed\\_water\\_rest\\_stations](https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animalproduct-import-information/ct_feed_water_rest_stations).

with the Twenty-Eight Hour Law. As such, AWI requests that FMCSA prohibit livestock carriers from participating in the pilot program, or create provisions to ensure carrier compliance with the Twenty-Eight Hour Law without extending transport times for animals.

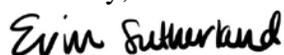
### **3) The Pilot Program Fails to Meet Minimum Elements for a Pilot Program.**

According to FMCSA's regulations, a pilot program must meet minimum criteria described in 49 C.F.R. § 381.505 to be lawful. This includes a "plan to inform the States and the public about the pilot program and to identify approved participants to enforcement personnel and the general public."<sup>11</sup> Merely publishing the notice in the Federal Register does not appear to be consistent with the plain language of the regulation, which requires more than just notification. At the very minimum, FMCSA should issue an amended proposed pilot program in the Federal Register demonstrating how it plans to meet this required element for pilot programs and allow for public comment. If FMCSA fails to meet these requirements, implementation of this pilot program could not only be dangerous to the public, it is arbitrary, capricious, and not in accordance with law.<sup>12</sup>

### **Conclusion**

Thank you for the opportunity to comment on this proposed pilot program. AWI respectfully recommends that FMCSA add a provision to its proposal prohibiting livestock carriers from participating. Alternatively, FMCSA should restrict livestock carriers from participating during adverse weather and create provisions to ensure carrier compliance with the Twenty-Eight Hour Law. If FMCSA decides to move forward with the program without AWI's suggestions, it must comply with its own regulations requiring it to notify states, the public, and law enforcement personnel about the pilot program and its participants. If you have any questions, please feel free to contact me at [erin@awionline.org](mailto:erin@awionline.org) or (202) 446-2147.

Sincerely,



Erin Sutherland  
Staff Attorney, Farm Animal Program  
Animal Welfare Institute

---

<sup>11</sup> *Id.* § 381.505(6).

<sup>12</sup> 5 U.S.C. § 706(2)(A).