



# Animal Welfare Institute

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## LEGAL PROTECTIONS FOR FARM ANIMALS DURING TRANSPORT

### Federal Law

In the 1800s farm animals in the U.S. were transported to market by railroad. Criticism of cattle transportation methods resulted in the introduction of a bill in the U.S. Congress in 1871 to regulate the length of time animals can be transport before rest must be provided. The bill was finally passed on March 3, 1873, and became known as the Twenty-Eight Hour Law.

The 1873 Act was a step forward in developing humane standards for the transportation of cattle, sheep and swine. In order to comply with the Act, transport companies were obliged to provide facilities at convenient places on their rail lines where feed, water and rest could be furnished. Early pens and enclosures provided for this purpose were extremely crude and often poorly furnished. Many of the loading and unloading chutes were poorly constructed and resulted in injury to the animals. Few of the pens provided for protection against rain or snow; some were not equipped with either feeding or watering troughs. 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.

Nonetheless, the conditions under which livestock was handled in transit were slightly improved under this law. Dissatisfaction arose among the shippers, because of the poor conditions and the frequent unloading of the animals. Numerous convictions for noncompliance with the 1873 Act were obtained, but the law was repealed, and the present Twenty-Eight Hour Law was enacted on June 29, 1906.

The text of the Twenty-Eight Hour Law follows:

### **49 USC, Section 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 U.S. Department of Agriculture (USDA) added regulations entitled “Statement of Policy under the Twenty-Eight Hour Law” in 1963.<sup>1</sup> On May 29, 1884, Congress created the Bureau of Animal Industry (BAI) within the USDA. The purpose of the BAI was to prevent the exportation of diseased animals and to provide the means for the suppression and eradication of contagious diseases among domestic animals. The BAI was also charged with enforcing the Twenty-Eight Hour Law. Today the BAI is known as the Veterinary Services program of the Animal and Plant Health Inspection Service.

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>2</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. Provisions of the regulations include: separation of stallions and aggressive equines; adequate floor space per animal to prevent injury; equines receiving adequate food, water and rest for six hours prior to transport; and equines on conveyances for 28 consecutive hours must be unloaded for feed, water and six hours of rest.<sup>3</sup> The regulations apply only to equines going to slaughter; however, animal advocacy groups are attempting to extend the prohibition on double-deck trailers to transport of equines for other purposes as well.<sup>4</sup>

### **Enforcement of the Federal Law**

The 1906 Act was a stronger law than that of 1873, and its provisions were enforced immediately after passage. Waybills and records maintained by carriers and others were examined daily. Apparent violations were reported at stations where USDA livestock inspectors of the BAI were stationed. 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. Unsatisfactory conditions found at the stations were promptly brought to the attention of the affected railroads for corrective action.

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, until very few, if any, animals travel by this means today. 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; but by 1990, the number had dwindled to about 25, and many of these stations had not been used for several years. Reported violations dropped as well, from nearly 400 cases in 1967, to fewer than 100 in 1976, and none in 1988.

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 agency promulgate regulations applying the Twenty-Eight Hour Law to the truck transport of animals.<sup>5</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>6</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 includes ‘trucks’ which operate as express carriers or common carriers.” At that time, the USDA said that it had clarified the issue in a 2003 internal memo distributed to government veterinarians. However, the USDA takes the position that the same 1994 amendment that applied the Twenty-Eight Hour Law to trucks also relieves the Department of enforcing the law and defers responsibility to the U.S. Department of Justice. According to the USDA, its role is limited to investigating and reporting violations to the Department of Justice and providing transport-related guidance to field personnel.<sup>7</sup> Freedom of Information Act requests submitted by the Animal Welfare Institute to the Departments of Agriculture and Justice in 2009 failed to reveal any investigations or prosecutions under the law by either agency.

There is no evidence that enforcement of the law increased following the decision to apply the provisions to truck transport. According to press reports, the USDA investigated one complaint in 2006, regarding an incident where 135 pigs died at the U.S.-Mexico border that resulted in a warning letter being sent to the shipper.<sup>8</sup> In another case, however, the USDA failed to respond to a complaint submitted by humane groups regarding the deaths of more than 80 animals on a shipment of pigs travelling from Canada to Hawaii in the summer of 2007.<sup>9</sup> In January 2010, the USDA issued a notice to its slaughterhouse inspection personnel informing them of the Twenty-Eight Hour Law and advising inspectors to contact the Veterinary Services division of the USDA if they suspect animals may not have been properly rested during transport.<sup>10</sup> However, the USDA has not developed any system of documenting the length of journeys or rest stops taken. Lacking a mechanism under the auspices of either the USDA or the Department of Justice for monitoring truck transport, for all intents and purposes, there is no federal transport law in the United States.

## **State Laws**

Approximately three-dozen states include language specific to transport in their anti-cruelty statutes. In most cases, the applicable provisions prohibit the transport of animals in an “inhumane manner.” Four states 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, and Arizona limits its transport

regulation to equines for slaughter. 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 21 states that have specific time limits for transport, only five (Alabama, California, Maine, Minnesota and New Mexico) specifically reference transport by truck.<sup>11</sup> In addition, a few states have enacted laws or regulations that limit the transportation of nonambulatory animals.<sup>12</sup>

While most states have included transport in their anti-cruelty laws, the impact is most likely minimal, particularly given the fact that about half of the 50 states exempt customary agricultural practices from laws governing humane treatment of animals.<sup>13</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 employees at an auto repair shop observed several horses with lacerations on their body and called police.<sup>14</sup>

## **International Standards**

Like the U.S., 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. 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>15</sup> It is hoped that this binding regulation, which encourages greater harmonization between member states, will result in more consistent enforcement of transport standards.

The Council of Europe produced a European Convention for the Protection of Animals during International Transport in 1968, which laid down the general conditions for international transport and set special conditions for transport of animals by road, air, sea and rail. The Committee of Ministers of the Council of Europe also adopted recommendations for the transport of individual species. 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. As of July 2010, the Convention had been signed by 18 countries and ratified by 11.

In 2005, the World Organization for Animal Health (OIE) adopted welfare standards for the transport of animals by road and sea, drafted by the intergovernmental organization's permanent Working Group on Animal Welfare. While non-binding, the OIE's 174 member-states and territories are encouraged to implement the standards through the passage and enforcement of national legislation.<sup>16</sup>

## **Industry Standards**

While currently no federal law in the U.S. governs conditions during transport, the meat industry here has developed voluntary guidelines and audit criteria for the transportation of certain farm animals to slaughter. The American Meat Institute (AMI), which represents cattle, pig, sheep and turkey slaughter establishments, added cattle and pig transport standards to its animal handling guidelines in 2010. The guidelines cover the following areas: set-up and loading, timeliness of arrival and unloading, condition of the trailer, electric prod use, condition of the animals, and willful abuse of animals.<sup>17</sup>

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<sup>1</sup> Code of Federal Regulations, Title 9, Section 89.1 to 89.5.

<sup>2</sup> P.L. 104-127, title IX, subtitle A, April 4, 1996, 110 Stat. 1184.

<sup>3</sup> Code of Federal Regulations, Title 9, Sections 88.1 to 88.6.

<sup>4</sup> See the Horse Transportation Safety Act (H.R. 305) in the 111<sup>th</sup> Congress.

<sup>5</sup> Brandt P, Loopholes on wheels: Trucks and the 28-Hour Law, The Humane Society of the United States, October 4, 2005.

<sup>6</sup> The Humane Society of the United States, et al. Petition for Rulemaking Before the United States Department of Agriculture, October 4, 2005.

<sup>7</sup> In an April 2009 letter to the Animal Welfare Institute, Kevin Shea, Acting Administrator USDA-APHIS, stated: "Regulations are already in place under the Twenty-Eight Hour Law, and APHIS' policies regarding this law support our obligation to report violations and provide guidance to our field personnel."

<sup>8</sup> Abandoned pigs die at export facility, Associated Press, June 30, 2006.

<sup>9</sup> In December 2007, a coalition of animal advocacy organizations, led by the World Society for the Protection of Animals, submitted a complaint and request for investigation to the USDA regarding the practices of an animal transport company located in Dixon, California. The complaint charged that the company held animals for longer than 28 hours onboard stationary trucks during the heat of the summer, and animals were suffering and dying as a result. In February 2008, the USDA indicated it was investigating the complaint, but as of July 2010 no further word had been received.

<sup>10</sup> U.S. Department of Agriculture, Food Safety and Inspection Service, *Humane Handling at all Entrances and the Twenty-Eight Hour Law*, FSIS Notice 06-10, January 15, 2010.

<sup>11</sup> See *Animals and Their Legal Rights: A Survey of American Laws from 1641 to 1990*. Animal Welfare Institute, Washington, DC, 1990 (4<sup>th</sup> ed.).

<sup>12</sup> See *Legal Protections for Nonambulatory Animals* (fact sheet), Animal Welfare Institute, 2010.

<sup>13</sup> See Wolfson DJ, *Beyond the Law: Agribusiness and the Systematic Abuse of Animals Raised for Food or Food Production*, Farm Sanctuary, Watkins Glen, New York, 1999.

<sup>14</sup> Woo, M., Trial set for Fayette man accused of cruelty to horses, *The Commercial Appeal*, July 19, 2008.

<sup>15</sup> For more information about transport laws in Europe and elsewhere outside the U.S., see Appleby, M.C., et al. (eds.), *Long Distance Transport and Welfare of Farm Animals*, CABI, New York, 2008.

<sup>16</sup> OIE Terrestrial Animal Health Code, Chapter 7.3.

<sup>17</sup> Grandin T, *Recommended Animal Handling Guidelines and Audit Guide: A Systematic Approach to Animal Welfare*, AMI Foundation, Washington, DC, 2010.