



Docket No. APHIS-2009-0091
Regulatory Analysis and Development
PPD, APHIS Station 3A-03.8
4700 River Road Unit 118
Riverdale, MD 20737-1238

December 9, 2011

Re: Traceability for Livestock Moving Interstate, Docket No. APHIS-2009-0091

To Whom It May Concern:

We write on behalf of the undersigned organizations dedicated to the protection of animals to comment on the U.S. Department of Agriculture's (USDA) proposed rule on the traceability of farmed animals moved interstate.

We encourage USDA to use the traceability program as an opportunity to regulate farmed animal transport and to establish an enforcement mechanism for the long-neglected federal Twenty-Eight Hour Law. Under the Twenty-Eight Hour Law, animals transported interstate may not be confined to a vehicle for longer than 28 hours without being unloaded for food, rest, and water.¹ Enforcement of this law has been absent in recent decades, in part due to the lack of a comprehensive tracking system. USDA's Animal and Plant Health Inspection Service (APHIS) has implemented regulations defining adequate rest, food, and water for animals under the Twenty-Eight Hour Law, yet it has failed to establish an effective mechanism to enforce the law.²

Transport is Stressful and Contributes to Suffering and Disease

Long-distance transport exposes animals to a variety of stressors, including fasting and water deprivation, temperature extremes, exposure to unfamiliar environments, and exposure to unacquainted individuals.³ Transported animals may also be subjected to rough handling during loading and unloading, as well as the consequences of careless driving and inadequate space allowances. These stressors may occur in various combinations and have additive and deleterious effects on animals, particularly compromised animals (e.g., those who are pregnant or especially young or old). Stressors typically lead to pain and/or distress, and animals experiencing these conditions are at risk of becoming injured or non-ambulatory.⁴

¹ 49 U.S.C. § 80502.

² 9 C.F.R. § 89.

³ Xavier Manteca, *Physiology and Disease, in Long Distance Transport and Welfare of Farm Animals* 69 (M.C. Appleby et al., ed. 2008).

⁴ For a discussion of animal welfare issues related to transport, see D.M. Broom, *The Welfare of Livestock during Road Transport, in Long Distance Transport and Welfare of Farm Animals* 157-181 (M.C. Appleby et al., ed. 2008).

Stress caused by transport not only results in animal suffering but increases susceptibility to disease by reducing the effectiveness of an animal's immune system, and it increases the infectivity of subclinically infected animals.⁵ Similarly, because transport increases contact between animals, it can contribute to the spread of disease.⁶ The USDA Agricultural Research Service recognizes the role of transport-related stress in animal disease in its Food Safety Fact Sheet, entitled "Stress in Farm Animals and Food Safety: Is there a Connection?"⁷ For these reasons, it is imperative to utilize transport methods that minimize stress and promote the wellbeing of the animals. One way to lessen stress during transport is to limit the amount of time animals are in transit without food, water, and rest. The federal Twenty-Eight Hour Law does this, but enforcement of the law is lacking.

There is no Evidence of Transport Enforcement

Because APHIS did not initially apply the Twenty-Eight Hour Law to transport by truck, enforcement of the law virtually ceased after the 1970s, when farmed animals stopped being transported by rail. In October 2005, a coalition of animal protection organizations submitted a petition for rulemaking to the USDA, requesting that regulations be promulgated to apply the law to truck transport. The following year, USDA responded that the term "vehicle" in the Twenty-Eight Hour Law includes "trucks." At that time the agency also indicated it had clarified the issue in a 2003 memo distributed to APHIS veterinarians. However, USDA takes the position that responsibility for enforcing the law lies with the U.S. Department of Justice, and that its role is limited to investigating and reporting violations and providing transport-related guidance to APHIS personnel in the field.⁸

There is no evidence that enforcement of the law increased following the decision to apply the law's provisions to truck transport, and in fact there is no evidence that USDA is currently conducting any investigations and/or referring violations to the U.S. Department of Justice. Freedom of Information Act (FOIA) requests submitted to USDA in May 2009, and again in September 2011, by the Animal Welfare Institute (AWI) for documents related to enforcement of the Twenty-Eight Hour Law yielded no records. Furthermore, an October 2009 FOIA request to multiple divisions within the Department of Justice yielded no results.

Violations of the Transport Law are Likely Common

While the problems associated with animal transport are well documented, conclusive data regarding the numbers of animals subjected to this process are not currently available. Data on farmed animal movements in the U.S. are highly fragmented and limited in geographic and historic scope. According to estimates from the National Agricultural Statistics Service (NASS), the number of cattle, sheep, and pigs being shipped between states has increased three-fold in the past 40 years, from 20 million animals in 1970 to 62 million in 2010.⁹ In 2010, interstate movements, as a share of the annual number of

⁵ *Id.* at 73.

⁶ *Id.*

⁷ Marcos Rostagno, *Stress in Farm Animals and Food Safety: Is there a Connection?*, USDA-ARS, Fall 2010.

⁸ In an April 2009 letter to the Animal Welfare Institute, Kevin Shea, Associate 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 [to the Department of Justice] and provide guidance to our field personnel."

⁹ See USDA Nat'l Agric. Statistics Serv. (NASS), *Meat Animals Production, Disposition, and Income* annual summaries.

animals born, were 59 percent for cattle, 35 percent for pigs, and 30 percent for sheep.¹⁰ However, these statistics exclude transport for slaughter, and therefore significantly understate the extent of interstate transport, especially given the ongoing consolidation in the animal agriculture industry and the resulting increase in the numbers of animals crossing state lines for slaughter.

AWI has conducted an analysis of a 2003 Economic Research Service (ERS) database of interstate animal movements¹¹ in an attempt to identify the number and percentage of farmed animals transported long distances. It estimated that approximately 11 percent of the animals included in the ERS database – or 4 million animals – travelled in excess of 28 hours.¹² The AWI study noted several limitations, most of which strongly suggest that the actual figure is significantly higher than the estimate.¹³ In our experience animals are infrequently off-loaded for food, water, and rest, and therefore it is likely that a significant number of long distance journeys are conducted in violation of the Twenty-Eight Hour Law.

Recommendations

1. Require the ICVI to show an “estimated travel time” and “estimated location of stops to provide animals rest, food, and water.”

APHIS’ proposed rule on traceability will create a more uniform system for recording the interstate movement of animals, which could aid authorities in tracking compliance with the Twenty-Eight Hour Law. Under the proposed rule, an Interstate Certificate of Veterinary Inspection (ICVI) must include the address at which the animals were loaded for interstate movement and the address to which the animals are destined. We recommend that the ICVI include two additional pieces of information: an estimated time in transit, and estimated location of stops for rest, food, and water. Recording such information prior to transport would encourage transporters to adhere to the Twenty-Eight Hour Law, and would facilitate enforcement in the event of a suspected violation. This reporting requirement would come at no additional cost to farmers and would require minimal time and effort to fulfill. In sum, time-in-transit and rest stop reporting would greatly enhance the USDA’s ability to enforce the Twenty-Eight Hour Law at minimum cost to states, farmers, and transporters.

2. Include specific fitness to travel requirements in the ICVI process.

The Animal Health Protection Act (AHPA) authorizes APHIS to regulate the transport of animals for disease control and prevention.¹⁴ The AHPA permits the Secretary of Agriculture to “prohibit or restrict” the interstate transport of animals where “necessary to prevent the introduction or dissemination of any pest or disease of livestock.”¹⁵ Pursuant to this authority, the proposed rule restricts interstate transport to only those animals that have official identification and an ICVI.

¹⁰ USDA-NASS, *Meat Animals Production, Disposition, and Income 2010 Summary*, April 2011.

¹¹ Dennis Shields & Kenneth Mathews, *Interstate Livestock Movements*, USDA Economic Research Service, Report LDP-M-108-01, June 2003.

¹² Animal Welfare Inst., *Estimating the Number of Farm Animals Transported Long Distance in the United States*, May 2011 (unpublished report).

¹³ Study limitations suggesting a number higher than the estimate include: 1) exclusion of transports to and from Canada and Mexico from the study, 2) lack of transport records from a few major agricultural states including Nebraska, Ohio, and Oklahoma, and 3) use of data from 2001.

¹⁴ 7 U.S.C. § 8305; 7 C.F.R. § 371.4(b)(3)(ii).

¹⁵ 7 U.S.C. § 8305.

However, the veterinary inspection is limited to signs of brucellosis, tuberculosis, or other infectious diseases. We urge APHIS to take the additional step of *clearly prohibiting* the interstate transport of animals that are diseased or otherwise unfit to travel.

As noted above, animals moving long distances can suffer from numerous physical stressors, including heat, crowding, inadequate ventilation, motion sickness, noise, and fatigue.¹⁶ Young animals and pregnant animals are more susceptible to the health risks associated with transport, and are therefore among the least fit to travel.¹⁷ Requiring a fitness to travel assessment would address these risks by establishing a uniform health inspection process and adding clear language to define when an animal is not fit to travel. Adoption of this language will reduce animal morbidity, mortality, and suffering during transport.

We propose the following language:

9 C.F.R. § 90.5(a)(1) No animal that is unfit to travel shall be issued an ICVI, unless the purpose of transport is for veterinary treatment. Animals unfit to travel include:

- (A) Animals sick, injured, weak, disabled or fatigued;
- (B) Animals unable to stand unaided or bear weight on each leg;
- (C) Animals blind in both eyes;
- (D) Animals for whom movement would cause additional suffering;
- (E) Newborns with an unhealed navel;
- (F) Pigs of less than three weeks, lambs of less than one week, and calves of less than ten days of age;
- (G) Female animals having given birth within the previous 48 hours;
- (H) Pregnant animals in the final 10% of their gestation period at the planned time of unloading; and
- (I) Animals with unhealed wounds from recent surgical procedures such as dehorning.

The person directly responsible for animals leaving a premises for interstate movement must make humane and effective arrangements for the prompt care or, where appropriate, euthanasia of any animal rejected as unfit to travel.¹⁸

3. Eliminate the exception for cattle going to slaughter.

The proposed rule does not present any justification for exempting cattle from the ICVI requirements. Cattle in transit to slaughter are just as susceptible to the disease, discomfort, and stress accompanying transport, and in fact breeding dairy cattle deemed no longer productive (referred to as “cull” or “spent” cows) en route to slaughter are likely the most vulnerable to disease. Accordingly, we recommend that APHIS eliminate the exceptions made for direct-to-slaughter cattle.

¹⁶ See Manteca, *supra* note 3, at 69; Jeffrey Rushen, et al., *The Welfare of Cattle* 136 (2008).

¹⁷ Univs. Fed’n for Animal Welfare, *Management and Welfare of Farm Animals* 175 (J. Webster, ed. 2011).

¹⁸ These proposed fitness requirements are consistent with the recommendations of the World Organisation for Animal Health (“OIE”) for the transport of animals by sea and land. See OIE, *Terrestrial Animal Health Code*, Chapters 7.2 and 7.3.

4. Expressly prohibit hot-iron branding as an acceptable form of identification.

Hot-iron branding causes painful third-degree burns and should be expressly prohibited. The proposed rule currently requires bison and cattle to be identified by an official eartag or group/lot identification number. However, the rule allows the Administrator to authorize any other form of official identification that he or she deems adequate for traceability. A number of commenters have suggested that the rule be amended to allow for branding, and several states require branding as official identification. Branding causes high levels of stress and pain, which can last for days after the procedure.¹⁹ The pain is most acute during the branding itself, which has been shown to cause cattle to vocalize, kick, flick their tails, fall in the chute, and make escape movements.²⁰ Although there are welfare concerns involved with all invasive forms of identification, hot-iron branding is the most inhumane, and we strongly oppose the hot-iron branding of any animal. We recommend that the rule be amended to explicitly prohibit the use of hot-iron branding as an acceptable form of official identification.

In summary, we recommend that USDA use the traceability program as an opportunity to establish an enforcement mechanism for the Twenty-Eight Hour Law by adding information regarding travel time and rest stops to the ICVI. Further, we urge USDA to include fitness requirements as part of the ICVI process, eliminate the exception for cattle going to slaughter, and expressly prohibit hot-iron branding as a means of animal identification.

We appreciate the opportunity to comment on this matter. Thank you for your consideration.

Respectfully submitted,

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¹⁹ Rushen, *supra* note 14, at 125.

²⁰ *Id.* at 125.