

**PETITION BEFORE THE
UNITED STATES DEPARTMENT OF AGRICULTURE**

**THE HUMANE SOCIETY OF
THE UNITED STATES, Inc.**

2100 L St. N.W.
Washington, D.C. 20037,

FARM SANCTUARY, Inc.

P.O. Box 150
Watkins Glen, NY 14891,

COMPASSION OVER KILLING, Inc.

P.O. Box 9773
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ANIMALS' ANGELS e.V.

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Petitioners,

MIKE JOHANNES

Secretary,
United States Department of Agriculture,
1400 Independence Ave.
Washington, DC 20250-0100,

W. RON DEHAVEN,

Administrator, USDA, Animal
and Plant Health Inspection Service
1400 Independence Ave.
Washington, DC 20250-0100

Respondents,

Docket No. _____

PETITION FOR RULEMAKING

I. INTRODUCTION

This petition is submitted on behalf of The Humane Society of the United States, Inc. (“The HSUS”), Farm Sanctuary, Inc., Compassion Over Killing, Inc., and Animals’ Angels (hereafter “petitioners”) and requests action by the United States Department of Agriculture, and its Animal and Plant Health Inspection Service (collectively “USDA”) regarding the interstate truck transport of animals. Specifically, petitioners request that USDA promulgate long overdue regulations applying the oldest federal humane law—the Twenty-eight Hour Law—to the truck transport of animals. Currently the USDA does not have any regulatory scheme in place to ensure that the millions of animals transported by truck every year in the United States are fed, watered and allowed a five hour rest after 28 hours of travel, even though the Twenty-eight Hour Law (“the Act”) has required these bare-minimum humane measures for over 132 years.

As discussed in detail below, the petitioners have amassed a detailed factual record showing extreme, and entirely avoidable cruelty associated with long distance truck transport of animals, including confinement exceeding 35 hours, broken limbs, severe overheating, dehydration, and frequent fatalities. Accordingly, new regulations applying the minimal protections provided by the Twenty-eight Hour Law to truck transport are not only legally required, but also sorely needed to reform an animal transport system that even the Congress of 1873 would have found morally repugnant.

The petitioners also request that the USDA regulate truck transport of animals as a means of protecting the public health, as required by the Animal Health Protection Act (“AHPA”). In enacting the AHPA, Congress made clear that “the health of animals is

affected by the methods by which animals and articles are transported in interstate and foreign commerce.”¹ As discussed in more detail below, transporting animals great distances without rest, food and water frequently causes animals to become “downers” – i.e., those too sick or injured to walk – which, in turn, has very grave consequences for both animal welfare and the health of American consumers. Petitioners therefore request that the USDA issue regulations under *both* the Twenty-eight Hour Law and the AHPA mandating that truck transporters feed, rest and water animals in their care in accord with the Twenty-eight Hour law.

As explained below, the USDA has ample legal authority under both the Twenty-eight Hour law, 49 U.S.C. § 80502, and the AHPA, 7 U.S.C. § 8301 et seq., to issue regulations pertaining to the truck transport of animals. The USDA’s regulations implementing the Twenty-eight law are now more than 40 years old and do not even discuss truck transport, speaking instead only of transport by rail² – even though train transport of farm animals fell into near total desuetude more than fifty years ago, while trucking has since ascended as the predominant means of animal transport.³ Similarly,

¹ 7 U.S.C. § 8301(3) (2005).

² 9 C.F.R. § 89.1-89.5 (promulgated in 28 Fed. Reg. 5967, June 13, 1963).

³ Attachment 1, Joseph E. Rickenbacker, *Causes of Loss in Trucking Livestock*, Farmer Cooperative Service USDA, Market Research Report 261 June 1958 at 1 (“Since motor trucks now handle from 80 to 90 percent of all shipments of the various species of livestock moving to market or processing plant from farms and feed lots, the higher rate of loss found in truck shipments becomes even more significant.”); Attachment 2, USDA Agricultural Research Service, *A Research Program to Reduce Losses Due to Transportation of Livestock*, Report to Congress, 1 (May 1977) (“Almost all transportation is now by truck”); Attachment 3, Bernard Unti, PROTECTING ALL ANIMALS: A FIFTY-YEAR HISTORY OF THE HUMANE SOCIETY OF THE UNITED STATES 59 (Humane Society Press 2004); Jordan Curnutt, ANIMALS AND THE LAW A SOURCEBOOK, 194 (2001) (“The law covered only animals moved by the railroads, and did not apply to interstate transport by trucks, a means of conveyance that had come to wholly dominate livestock transportation by the early 1950s.”); U.S. Department of Transportation, Bureau

the USDA's regulations promulgated under the AHPA apply to foreign importation of animals and do not generally regulate interstate animal transport.⁴

In short, the USDA's failure to promulgate regulations governing interstate truck transport of animals has rendered the Twenty-eight Hour Law essentially a dead letter, and frustrated Congress' public health goals under the AHPA. Accordingly, the petitioners request that new regulations be promulgated immediately.

II. INTERESTS OF THE PETITIONERS

Petitioner The HSUS is a non-profit charitable organization that promotes the protection of all animals. It maintains its headquarters in Washington DC, and is the largest animal protection organization in the United States, with more than nine million members and constituents. The HSUS actively advocates against practices that injure or abuse farm animals and promotes the humane slaughter of animals killed for human consumption. Furthermore, The HSUS offers information regarding the inhumane treatment of animals on a wide spectrum of topics, including the effects of intensive confinement and transport of farm animals. Some HSUS members consume meat and other products derived from animals transported interstate. These individuals have a strong personal interest in ensuring that all animals raised for human use are humanely and safely transported. The HSUS files this petition on behalf of itself and its adversely

of Transportation Statistics, *Table 7 - Shipment Characteristics by Two-Digit Commodity and Mode of Transportation for the United States: 2002, SCTG Code: 01 - SCTG Description (2-digit): Live animals and live fish* (2002) at http://www.bts.gov/publications/commodity_flow_survey/2002/united_states_final/html/table_07.html (indicating that no statistically significant percentage of animals are transported by rail).

⁴ See, e.g., 9 C.F.R. § 93.201, 93.301, 93.401, 93.501 (2004) (respectively allowing for USDA inspection of the means of conveyance and holding facilities of imported poultry, horses, ruminants and pigs).

affected members and constituents.

Petitioner Farm Sanctuary Inc. is a farm animal rescue and protection organization dedicated to ending the suffering of animals used for food. It is a national nonprofit corporation organized and existing under the laws of the State of Delaware with its principal place of business in Watkins Glen, New York. Farm Sanctuary also maintains and operates an office and shelter for rescued farm animals in Northern California. It was founded in 1986. Over the last 19 years, Farm Sanctuary has become the nation's largest farm animal advocacy and protection organization with more than 100,000 members. The organization has a strong personal interest in ensuring that animals transported long distances are treated in a safe, humane and compassionate manner.

Petitioner Compassion Over Killing, Inc. is a nonprofit animal advocacy organization based in Washington, D.C. Since 1995, Compassion Over Killing has worked to end the abuse of animals in all facets of agriculture by investigating abuse, educating the public, calling for enforcement of laws that protect animals, and litigating when necessary. With more than 5,000 members nationwide, it has a strong interest in ensuring that farm animals are treated humanely during transport.

Animals' Angels is an internationally operating animal welfare organization campaigning for the reform of long distance transport of live animals for slaughter, further fattening or other commercial use. Animals' Angels was founded in March 1998 in Germany by Lutheran pastor Christa Blanke and currently has 5000 members. The group focuses on investigating livestock trucks on the highways, as well as the treatment of animals in slaughterhouses and at livestock markets. Animals' Angels has long been

committed to improving the enforcement of humane transport laws around the world. To that end, the group works alongside the highway police and offers police training courses in several European countries. In addition, the group forwards detailed reports and photos from its investigations to the respective authorities and animal welfare organizations of the state or country concerned.

Animals' Angels is highly respected in Europe, because of its intense efforts and sterling investigative record. The European Commission has cited Animals' Angels investigations as a "principal source of information" for its report to the European Council and Parliament regarding the insufficient enforcement of the EU directive on the protection of animals during transport.⁵

III. ACTION REQUESTED

Pursuant to the Right to Petition Government Clause contained in the First Amendment of the United States Constitution,⁶ the Administrative Procedure Act,⁷ and the USDA's implementing regulations,⁸ the petitioners submit this petition for rulemaking under the Twenty-eight Hour Law⁹ requesting that the Secretary take action to comply with the express intent of Congress to adequately protect the welfare of all animals confined in excess of 28 hours without rest, food, and water during interstate transport. The requested relief is also appropriate under the Animal Health Protection

⁵ Commission of the European Communities, *Report From the Commission to the Council and the European Parliament on the Experience Acquired by Member States since the implementation of Council Directive 95/29/EC amending Directive 91/628/EEC concerning the protection of animals during transport*, COM(2000) 809 final (Brussels, December 12, 2000).

⁶ U.S. Const. amend I.

⁷ 5 U.S.C. § 553(e) (2005).

⁸ 7 C.F.R. § 1.28 (2005).

⁹ 49 U.S.C. § 80502 (2005).

Act, which requires the Secretary to protect U.S. public health, agriculture and the economy. Specifically, petitioners request that the USDA issue regulations limiting truck transport of animals in accord with the limits set by the Twenty-eight Hour Law by:

- (1) Defining the statutory terms “common carrier”¹⁰ and “vehicle” to include truck transport in accord with the plain meaning of these terms; and
- (2) Defining the statutory term “animals”¹¹ as encompassing all animals, including poultry, in accord with the plain meaning of that term; and
- (3) Developing regulations to implement the Twenty-eight Hour Law to all ground interstate transport of animals by all common carrier vehicles.

IV. LEGAL BACKGROUND

A. The Twenty-eight Hour Law

Enacted in 1873,¹² the Twenty-eight Hour Law generally requires animal transporters to unload animals and allow them to feed, drink and rest for 5 hours after 28 hours of confinement.¹³ The Act contains limited exceptions for extenuating circumstances.¹⁴ As enacted in 1873, the Act applied to “railroad[s]. . . steam, sailing, or

¹⁰ Id.

¹¹ Id.

¹² Attachment 4, Revised Statutes §§ 4386 et seq. (1873); Attachment 5, Cong. Globe, 42nd Cong., 2d Sess. 4226 (1872).

¹³ 49 U.S.C. § 80502 (2005); The Act was repealed and re-enacted in 1906: Attachment 6, The Cruelty to Animals Act or Livestock Transportation Act, June 29, 1906, ch 3594, 45 U.S.C.S. § 71; and again repealed and re-enacted in 1994: Pub. L. 103-272, §1(e) July 5, 1994, 108 Stat. 1356.

¹⁴ 49 U.S.C. § 80502 (2005). Exceptions allow for: sheep to be confined for up to 36 hours if the 28th hour occurs after dark. Additionally the 28 Hour period may be extended to 36 hours, if animals cannot be unloaded due to accidental or unavoidable causes that could not have been anticipated or avoided with due care. An animal’s owner may also obtain an extension by requesting one in writing. In addition, by its terms, the Act does not apply where, “animals are transported in a vehicle or vessel in which the

other vessels of any description.”¹⁵ The law in its current form, however, applies to all “vehicle[s]” operating as rail, express or “common carriers.”¹⁶ Thus, the law applies to and requires that “a rail carrier, express carrier, or common carrier . . . may not confine animals in a vehicle or vessel for more than 28 consecutive hours . . .”¹⁷

The USDA has historically borne responsibility for enforcing the Twenty-eight Hour Law, and remains under mandate to enforce it. The 1906 version of the Act provided that “It shall be the duty of all U.S. Attorneys to prosecute all violations of this Act reported by the Secretary of Agriculture.”¹⁸ During Senate debates preceding the 1906 amendment of the Act, a senator noted that a particular section of the bill “was suggested by the legal officer of the Department of Agriculture, who has had the enforcement of this law in charge.”¹⁹ In addition, a 1918 USDA Bulletin reports that between 1906 and 1917, the USDA received 8,948 reports of violations of the Act and the agency collected \$426,818.08 in fines for violations of the Act during the same period. The bulletin encouraged carriers to “cooperate more with the Government” to the ends of obtaining,

better results and fewer prosecutions . . . The department is always glad

animals have food, water, space and an opportunity for rest.”; *Id.* at § 80502(c).

¹⁵ Attachment 4, Revised Statutes §§ 4386 *et seq.* (1873).

¹⁶ 49 U.S.C. § 80502 (a)(1).

¹⁷ *Id.* (emphasis added) The statute does not define “express carrier,” “common carrier,” “vehicle,” or “vessel” or any of its other key terms.

¹⁸ Attachment 6, 45 U.S.C. § 74 (1906) (emphasis added) (repealed and re-enacted by Pub. L. 103-272, July 5, 1994, 108 Stat. 1356, and codified as subsection (d) of 49 U.S.C. § 80502, providing “on learning of a violation, the Attorney General shall bring a civil action to collect the penalty. . .” As is made clear in H.R. REP. NO. 103-180, at 4 (1994) Congress intended no substantive change to flow from this change in language.

¹⁹ Attachment 7, Congressional Record, 59th Congress, Special Session, 3769 (1906) (statement of Senator Warren (R-WY); *see also*, Attachment 8, *Transportation of Live Stock—Twenty-eight Hour Law*, 25 U.S. Op. Atty. Gen. 411, 412 (April 27, 1905) (noting that the Act is administered by the Department of Agriculture).

to furnish the carriers and others with suggestions and all the information it has as to the best methods of handling live stock so as to comply with the terms of the law.

Congress has done nothing to divest the USDA of its “charge” to see the humane purpose of the Act implemented in a way that ameliorates the rigors of long-distance transport for all animals.

However, although mandated by law to enforce the Twenty-eight Hour Law, the USDA has evidently abandoned all enforcement efforts. Although the agency has not responded to petitioner HSUS’ Freedom of Information Act request for records pertaining to violations of the Act and USDA enforcement,²⁰ it appears that there are no reported USDA administrative decisions involving USDA enforcement of the Act between 1977 and the present. Similarly between 1960 and 2005 there are no reported federal cases involving enforcement of the Twenty-eight Hour Law.

B. The USDA Regulations Implementing the Twenty-eight Hour Law

By their terms, the USDA’s regulations implementing the Act apply only to rail transport. In 1963 the USDA promulgated its only regulations implementing the Twenty-eight Hour Law, which remain in effect and unrevised to date.²¹ These regulations are codified under the title “Statement of Policy Under the Twenty-eight Hour Law,” and set minimum guidelines for, *inter alia*, the amount of rest, food and water to be provided to

²⁰ Attachment 9, Letter of Peter Brandt requesting information pursuant to the Freedom of Information Act (May 26, 2005); and Letter of Cynthia A. Eck USDA APHIS FOIA Specialist (June 13, 2005) (stating that the agency has not been able to determine if it has responsive records, and that the agency will not comply with the FOIA response timeline).

²¹ See 9 C.F.R. §§ 89.1-89.5 (promulgated in 28 Fed. Reg. 5967 (June 13, 1963)).

cattle, dairy calves, horses, mules, sheep, goats, lambs, kids and swine.²² The regulations also impose requirements on facilities where animals are unloaded:

Stock pens and other enclosures for feeding, watering, and resting livestock in transit should have (1) sufficient space for all of the livestock to lie down at the same time, (2) properly designed facilities for feeding and watering the livestock, (3) reasonably well-drained, clean, and safe floors of concrete, cinders, gravel, hard-packed earth, or other suitable material, and (4) suitable protection from weather reasonably to be expected in the region in which the pens are located.²³

The agency maintains that the Act does not apply to trucks,²⁴ and its regulations bear out this policy by speaking exclusively in railroad terminology. For example the regulations apply to “cars” and “carloads” but make no reference to “common carriers,” “trucks,” “truckloads,” or to other terms applicable to means of transport besides rail.²⁵ Thus, the regulations impose on rail transporters several duties relating to shelter, food and water which are designed to implement the humane purpose of the Act. In contrast, the regulations impose no duties whatsoever on non-rail animal transporters.

The USDA has never offered any reasons for excluding truck transporters from the Act. For example, in a detailed guide to truck transport of cattle and pigs the USDA

²² *Id.*

²³ 9 C.F.R. § 89.5(a).

²⁴ Attachment 10, Attachment 10, USDA Agriculture Marketing Service, *Cattle and Swine Trucking Guide for Exporters*, 10-30 note 10 (May 1997) at: http://www.ams.usda.gov/tmd/livestock/Truck%20Guide.htm#N_10_ (“Federal law requires that livestock in interstate commerce be in transit for no more than 28 hours without food, water, and rest. However, this law applies only to rail shipments”); 60 Fed. Reg. 48362, 48365 (Oct. 19, 1995) (“The Twenty-eight Hour Law does not apply to transport by truck.”); Attachment 11, Joseph E. Rickenbacker, *Loss and Damage in Handling and Transporting Hogs*, Farmer Cooperative Service, USDA 1961 at 19-20 (“Truck shipments are not subject to the legislation mentioned above [Twenty-eight Hour Law] and stops enroute for feed, water and rest are discretionary.”).

²⁵ 9 C.F.R. §§ 89.1-89.5.

states the conclusion “Federal law requires that livestock in interstate commerce be in transit for no more than 28 hours without food, water, and rest. However, this law applies only to rail shipment.” The agency also gives the following guidance to livestock truckers:

Mature cattle have been delivered in good condition after being carried for as long as 48 hours. However, experienced transporters feel that cattle should not be carried for more than 30 to 40 hours without rest. Generally, feeder calves should not be in transit for more than 34 hours without rest. Swine have been carried for as long as 36 hours without rest. However, they are stress-sensitive animals and therefore cannot withstand the rigors of transport as well as cattle. Deciding how long animals should be on the road requires good judgment. Maximum transit time depends on many factors such as weather, species, and condition of animals.²⁶

Thus, the USDA is aware that cattle, pigs and calves are currently being shipped for well over 28 hours without being afforded a single break for rest, feeding and watering, but is simply not doing anything about it.

C. State Regulation of Animal Transport

Taken together, state laws regulating animal transport are an uneven patchwork of conflicting standards concerning maximum time limits and types of transporters regulated. Many states have no regulation of animals in transport at all,²⁷ while others have laws based on the Twenty-eight Hour Law. Some state laws apply only to rail or

²⁶ Attachment 10, USDA Agriculture Marketing Service, *Cattle and Swine Trucking Guide for Exporters*, 10-30 (May 1997) at: http://www.ams.usda.gov/tmd/livestock/Truck%20Guide.htm#N_10_.

²⁷ Geoffrey S. Becker, Environment and Natural Resources Policy Division, May 1, 1992, Congressional Research Service, *Humane Treatment of Farm Animals: Overview and Selected Issues*. Appendix A: Selected State Laws (Oregon, Texas, South Dakota, North Carolina, Mississippi, Missouri, and Nebraska are some of the states that do not regulate animals in transport).

other non-truck carriers,²⁸ and some do not explicitly mention trucks but are worded broadly enough to logically include trucks.²⁹ For example, the laws in Virginia and Illinois apply to “railroad or other common carrier.”³⁰

The maximum number of hours animals can be confined also varies greatly. Some state laws impose 28 hour maximums³¹ and others allow animals to be transported without breaks for up to 36 hours.³² However, other states restrict transport confinement to 24 hours,³³ and Vermont limits confinement time to 18 hours for trucks.³⁴ In addition,

²⁸ See e.g., Conn. Gen. Stat. Ann. § 53-252 (2004) (“No railroad company, in transporting animals, shall permit them to be confined in cars more than twenty-eight consecutive hours . . .”); Minn. Stat. Ann. § 343.24 (2004) (This statute does not explicitly refer to rail, but the twenty-eight hour provision refers to “cars or compartments” while other provisions in the “cruelty in transportation” statute refer to a “vehicle or otherwise”), Michigan, MCLS § 750.51 (2005) (“Confining animals on railroad cars-No railroad company, in the carrying or transportation of animals . . .”)

²⁹ See e.g., Florida, Fla. Stat. Ann. § 828.14 (2004) (“No person or corporation, or agent of either, engaged in transporting livestock on railway trains or on steam or sailing vessels, *or otherwise*, shall detain such stock for a longer continuous period than 28 hours . . .”) (emphasis added); Ohio, Ohio Rev. Code § 959.13 (2004) (animal cruelty statute prohibits, “Detain[ing] livestock in railroad cars or compartments longer than twenty-eight hours after they are so placed without supplying them with necessary food, water, and attention, nor permit such stock to be so crowded as to overlies, crush, wound, or kill each other” but also prohibits more generally, “Carry[ing] or convey[ing] an animal in a cruel or inhuman[e] manner.” Since this is not specific to a mode of transport, it appears to be broad enough to cover trucks, but does not prescribe specific behavior which would constitute cruel and inhumane carrying), New York, NY CLS Agr & M § 359 (explicit provision applying to train transport is separate from prohibition against carrying “in or upon any vessel or vehicle or otherwise, any animal in a cruel or inhuman manner, or so as to produce torture. . .”).

³⁰ Va. Code Ann. § 3.1-796.69 (2004) and 510 ILCS 70/7 (2005).

³¹ See e.g. Conn. Gen. Stat. Ann. § 53-252 (2004), Fla. Stat. Ann. § 828.14 (2004), Ohio Rev. Code § 959.13 (2004), Minn. Stat. Ann. S 343.24 (2004), 13 V.S.A. § 381 (2004) (28 hours is the limit only for rail; for trucks, the hour limit is shorter), 510 ILCS 70/7 (2005), NY CLS Agr & M § 359.

³² MCLS § 750.51 (2005).

³³ See e.g. Va. Code Ann. § 3.1-796.69 (2004).

³⁴ 13 V.S.A. § 382 (2004).

some states regulate transport but do not prescribe a specific limitation on hours.³⁵ Finally, in some states, the statutory standards vary depending on the species of animal transported.³⁶ As a whole, state animal transport laws do not provide any form of comprehensive protection for animals traveling in interstate commerce—which is presumably why Congress elected to implement a federal standard in the first place.

D. The Animal Health Protection Act

Enacted in 2002, the Animal Health Protection Act, 7 U.S.C. § 8301 *et seq.* (AHPA), gives the USDA broad authority over animal transportation to prevent disease, and to protect the United States economy and the health of its citizens.³⁷ In the AHPA, Congress delegated to the USDA, *inter alia*, the authority to regulate trucks and other means of conveyance engaged in interstate animal transport.³⁸ The broad AHPA definition of “means of conveyance” as “any personal property used for or intended for use for the movement of any other personal property” clearly includes animal-transport trucks.³⁹

The AHPA includes Congressional findings directing the USDA to promulgate regulations protecting the health of animals in transport. Specifically, Congress found that “the health of animals is affected by the methods by which animals and articles are

³⁵ See e.g., Pennsylvania, 18 Pa.C.S. § 5511 (2005) (applies to animals including poultry and prohibits transporting in a cruel or inhumane manner).

³⁶ See e.g., California, 3 CCR 950 (h) (2005) and 3 CCR 953 (2005) (applies only to deer).

³⁷ 7 U.S.C. § 8301 (2004); see also H.R. REP. NO. 107-424, at 388 (2002), *reprinted in* 2002 U.S.C.C.A.N. 141, 664 (“recogniz[ing] that the principal purpose of the Animal health Protection Act is to protect against animal disease”).

³⁸ 7 U.S.C. § 8301(5)(B).

³⁹ 7 U.S.C. § 8302(11).

transported in interstate commerce and foreign commerce”⁴⁰ and to safeguard the health of animals in transport.⁴¹ Congress also found that regulation by the USDA is “necessary” in order to thereby “protect the agriculture, environment, economy, and health and welfare of the people of the United States.”⁴² However, the USDA has not issued regulations implementing the AHPA’s command to regulate interstate animal transport comprehensively. Rather, the USDA has promulgated regulations that focus almost exclusively on the inspection of vehicles conveying animals into the United States from foreign nations.⁴³

V. FACTUAL BACKGROUND

A. Truck Transport of Animals in the United States

According to one expert, approximately 3,000 truckloads of cattle are moved per day in the United States⁴⁴ and 939,000 commercial truckloads of cattle are transported to slaughter per year in the United States.⁴⁵ Along with cattle, thousands of pigs, sheep and other animals are transported interstate by truck on a daily basis in the United States. The

⁴⁰ *Id.* at § 8301(3).

⁴¹ *Id.* at § 8301(1)(A)

⁴² *Id.* at § 8301(5)(B) (emphasis added); In addition, to help achieve the public health oriented goals of the AHPA, Congress provides significant funding to USDA in several sections of the AHPA. 7 U.S.C. § 8316 (authorizing the appropriation of “such sums as are necessary” to carry out the Act. Also, § 8320 authorizes \$30,000,000 for 2002 to expand the inspection activities and then such sums as are necessary to continue the expansion in the following fiscal years. There is also a response fund set up by § 8321 that now gets \$1,000,000 annually, plus reimbursements are also deposited there).

⁴³ *See*, 9 C.F.R. § 73.1(b) (2005) (establishing quarantine for cattle scabies).

⁴⁴ Joel Crews, *Handle With Care Transporting Livestock Correctly Pays Off*, Food Systems Insider (March 1, 2004) at: <http://foodsystemsinsider.com/articles/0403/0403handle.htm>.

⁴⁵ Tim O’Byrne, *Transporting Cattle Focus on Applied Practices*, slides from AMI Annual Animal Care & Handling Conference (Feb. 9, 2005) (Noting that the average commercial truckload of cattle numbers 38 head and citing USDA/NASS statistics: 35.7 million head of cattle federally inspected per year.).

number of cattle, sheep and pigs trucked interstate each year increased by 20 million animals between 1970 and 2001, with 30 million and 50 million animals transported respectively.⁴⁶ USDA statistics indicate that in 2003, the total population of U.S. born livestock animals (excluding poultry) was 202.8 million, including 96.1 million cattle,⁴⁷ 100.4 million pigs,⁴⁸ and 6.3 million sheep.⁴⁹ Of these numbers, 57 percent of all cattle (54.78 million), 27 percent of all pigs (27.11 million) and 34 percent of all sheep (2.14 million) will be shipped across state lines at least once during their lifetimes.⁵⁰

The number of animals enduring trips exceeding 28 hours most likely numbers in the millions per year. Because federal Department of Transportation (DOT) trucking regulations require truck drivers to rest for at least 10 hours per every 11 driving hours,⁵¹ an 18 hour truck route is at least 28 hours long for the animals, assuming drivers obey these federal regulations.

The USDA has not made available any counts of animals transported without rest breaks for more than 28 hours. However, general livestock market statistics compiled by the USDA demonstrate that every year millions of animals travel in excess of 28

⁴⁶ Attachment 36, USDA Economic Research Service, Dennis A. Shields and Kenneth H. Mathews, Jr., *Interstate Livestock Movements 2* (June 2003) at <http://www.ers.usda.gov/publications/ldp/jun03/ldpm10801/ldpm10801.pdf> (accessed July 1, 2005).

⁴⁷ Attachment 12, National Agriculture Statistics Service, *Livestock Track Records*, 3 (Sept. 2004) at <http://usda.mannlib.cornell.edu/reports/nassr/livestock/pls-bb/lvst0904.pdf>.

⁴⁸ *Id.* at 12.

⁴⁹ *Id.* at 14.

⁵⁰ USDA Economic Research Service, Dennis A. Shields and Kenneth H. Mathews, Jr., *Interstate Livestock Movements 2* (June 2003) at <http://www.ers.usda.gov/publications/ldp/jun03/ldpm10801/ldpm10801.pdf> (accessed July 1, 2005).

⁵¹ 49 CFR §§ 385, 390, 395 (2004). This regulation also imposes a mandatory limit on the number of consecutive days drivers can operate, requiring 34 consecutive off-duty hours before they can begin a 7 or 8 day work cycle.

consecutive hours. For example, in 2001, for cattle alone, taking into account only the longest interstate transport routes, at least 1,983,791 animals were transported distances that would take a minimum of 28 hours to drive.⁵² There is a near total lack of data regarding transport of chickens and other poultry birds. Although poultry are commonly transported—and some are transported very long distances⁵³—there are no publicly available state or federally compiled statistics concerning their numbers in transport or the lengths of their time in transit.⁵⁴

1. Recent Investigations of Long Distance Truck Transport

Very recent investigations into truck transport have confirmed that truck transporters routinely subject animals in their care to constant confinement, extreme heat, and complete food and water deprivation, for well over 28 hours. Often this results in preventable deaths and severe injury.⁵⁵ For example, on the evening of July 30, 2005 an investigator with petitioner Compassion Over Killing observed the severe mistreatment

⁵² Attachment 13, declaration of Cheryl Leahy (Aug. 10, 2005).

⁵³ R. Newberry, *et al*, *Management of Spent Hens*, 2(1) *Journal of Applied Animal Welfare Science*, 13, 14 (1999) (so-called “spent hens” i.e. egg laying hens that have reached “the end of their economically viable life span” have little economic value as a source of meat and are therefore “unattractive to most poultry-processing companies. Spent hens may therefore be transported over long distances to reach a processing plant willing to purchase them.”)

⁵⁴ This is most likely explained by the near total vertical integration of the U.S. poultry industry *See* USDA/ERS, *Poultry and eggs: background* (updated May 12, 2005) at <http://www.ers.usda.gov/briefing/poultry/background.htm> (accessed July 1, 2005); Many other species of animals are transported across state lines, however statistics at the national level exist only for the transport of livestock animals—the animals which are, in all likelihood, the most commonly transported. The USDA regulates transport of certain animals under the Animal Welfare Act, Pub.L. 89-544 (1966) as amended, and although the agency has made publicly available the number of regulated carriers, (98 in 1995, last year for which statistics are published) the agency does not make available any information regarding the number of animals transported pursuant to its AWA regulations.

⁵⁵ Attachment 14, *Compassion Over Killing Confidential Investigation Report* at 1-2 ¶¶ 6, 12, 13 (Aug. 11, 2005).

of 283 pigs at a truck stop known as Bosselman Travelcenter/Pilot in Nebraska, at the intersection of Nebraska Route 183 and Interstate 80.⁵⁶ Through conversation with the driver of this truck the investigator learned that the truck carried 283 pigs and had been loaded at approximately 11:00 AM that morning near Kansas City, Missouri, and that the animals had not been given any water prior to loading.⁵⁷ In addition, the driver stated that the animals would not be fed, rested or offered any drinking water throughout their journey—which would last at least 35 hours and end in Modesto, California.⁵⁸ The temperature that day in this area of Nebraska reached 95 degrees Fahrenheit, and the investigator noted that the temperature near the crowded metal truck felt noticeably higher.⁵⁹

The truck arrived at the Bosselman truck stop at 7:25 PM., having traveled approximately 400 miles since loading eight and one-half hours earlier.⁶⁰ Traveling only 400 miles in the tightly packed truck and enduring excessive heat had already proved fatal for at least two pigs.⁶¹ The truck's driver pointed out to the investigator one pig who had died in transit and made reference to another dead pig in a different part of the truck. He also informed the investigator that the bodies of these dead animals will be left in the truck for the remaining 30-plus hours of the journey.⁶²

Although the truck was so tightly packed with animals that several pigs were forced to lean against and sit on one another as well as on one of the dead pigs, the driver

⁵⁶ Id. at 1 ¶ 2.

⁵⁷ Id. at 1 ¶ 4.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Id. at 1, 2-3 ¶¶ 3, 4, 10.

⁶¹ Id. at 1-2 ¶ 6.

⁶² Id.

stated that he could fit many more than 283 pigs into this truck.⁶³ Many of the surviving pigs had several injuries. The hind quarters of one pig were swollen and another's was extremely red.⁶⁴ Many of the animals were covered in scratches and lacerations and were bleeding. Near the truck, the smell of ammonia was extremely strong.⁶⁵ Nearly all the pigs were panting, many were frothing at the mouth, and one animal coughed incessantly.⁶⁶ The investigator also observed pigs fighting each other as one animal attempted to walk over others simply to move inside the cramped truck.⁶⁷ Other pigs were observed chewing on the ears of others.⁶⁸

The investigator observed the driver spraying the pigs with water for approximately 45 minutes in an attempt to cool down the animals, but he did not provide any water for the thirsty animals to drink.⁶⁹ As he sprayed the animals, the driver repeatedly and forcibly yanked the nozzle from the mouths of pigs trying to quench their thirst.⁷⁰ The investigator observed pigs licking water off the skin of other pigs while others tried to catch water dripping from the deck above.⁷¹ After spraying the pigs the driver went into the truck stop to shower and later drove the truck at least forty miles to pick up his wife, and later he returned with her to the truckstop.⁷² By the time the driver finally left the truck stop at 1:45 AM to continue the journey to California these animals had already been confined for over 14 hours, yet had only traveled 400 miles of the more

⁶³ Id.

⁶⁴ Id. at 2 ¶ 7.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id. at 2 ¶ 8.

⁶⁸ Id.

⁶⁹ Id. at 2 ¶ 9.

⁷⁰ Id.

⁷¹ Id.

⁷² Id. at 2-3 ¶ 10.

than 1,800 mile journey from Missouri to California.⁷³ During this approximately six hour lay-over at the Bosselman truck stop, the driver did not release the animals to allow them a chance to rest, nor did he feed them or give them water to drink.⁷⁴ Moreover, the driver told the investigator that these pigs would not be offered a single chance to eat, drink or rest off the truck throughout the 35 hour drive to California.⁷⁵

This encounter, along with the investigator's conversations with other truck drivers, reveals that truck transport of animals in the United States is characterized by near total neglect for the basic needs of animals for food, water and rest during journeys that regularly last more than 36 hours.⁷⁶ For example, on July 29, 2005, in Nebraska, one driver told the COK investigator that each month he drives cattle from a small stockyard just east of New York City to Chihuahua, Mexico.⁷⁷ This is a 3,600 mile trip which he stated he regularly drives non-stop in 48 hours, without ever offering the cattle water, food or a chance to rest.⁷⁸ While he only makes this trip once each month, he said others make the trip three times per month and that the cattle, "if they are lucky," will be unloaded at livestock sales barns along the way while drivers refuel the truck.⁷⁹ Normally the cattle are not unloaded and are thus denied rest, food and water for at least 48 hours.⁸⁰

This driver also transports pigs and said that one time he had a pig "blow-up" after 22 hours of confined travel.⁸¹ The other pigs had "worked him over" and they were

⁷³ Id.

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Id. at 3-4 ¶¶ 11-15.

⁷⁷ Id. at 3 ¶ 11.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Id. at 3 ¶ 12.

all covered in blood.⁸² This same driver also reported that, on another trip, he had 40 pigs out of 290 die in transit and that seven more pigs had to be shot inside the truck at the slaughterhouse.⁸³

Also on July 29, 2005, in Nebraska, another truck driver told the COK investigator that 24 calves had died during a fellow driver's trip through the Mojave Desert from Sacramento to Texas.⁸⁴ This driver also said that he has driven cattle from Quebec to Mexico and that the animals are not allowed to touch U.S. soil due to concerns over diseases, including mad cow disease.⁸⁵ He added that the animals hooves are not allowed to touch U.S. soil and implied that they are denied food, water and rest throughout the entire trip.⁸⁶

2. Truck Transport Investigations in 2003 and 2004

Investigations in 2003 and 2004 demonstrate the stress and grave injury animals regularly endure during inhumanely long truck journeys. In 2003, at the outset of the trip, workers packed approximately 200 pigs into a standard pig transport truck.⁸⁷ The truck then travelled for 35 hours without stopping to offload the animals on its journey between Lethbridge, Canada, just north of the Canada/U.S. border, to Atwater,

⁸² Id.

⁸³ Id.

⁸⁴ Id. at 3 ¶ 13.

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ Attachment 15, *Animals' Angels*, *Animals Angels North America Summer 2003 Investigation Schedule 1-4*; *Animals' Angels, Live Export of Pigs From Canada to Hawaii*, video converted to cd rom (2004); *See also*, David Messinger PhD Vice President of educational services of the National Pork Board, *Managing Transportation for Optimal Welfare* (power point slideshow) at <http://www.meatami.com/Meisinger.pdf> (noting that "Hauling 200 hogs on these trailers could result in double the DOA's [compared to hauling 190 hogs].

California, just south of San Francisco.⁸⁸ The investigators reported that during the trip the pigs endured 100 degree weather, and were deprived of food, water and rest.⁸⁹ There was only one driver in this truck for the 35-hour duration of the trip.⁹⁰ The ammonia that accumulated in the truck over the 35 hours made it difficult for the inspectors to film, as it burned the investigators' throats and eyes when they approached the sides of the truck.⁹¹ Upon reaching California, several pigs were suffering from severe injuries. One had a broken leg, three were limping badly, and two experienced heart attacks shortly after unloading.⁹² According to the investigators, after only three and one-half hours of being "rested" in slaughterhouse pens, the pigs were then shocked repeatedly with electric prods to move them up the long chute towards the kill floor of the slaughter facility.⁹³

In 2004, Animals' Angels investigators followed two separate trucks, each carrying 200 pigs, from Lethbridge, Canada to Vacaville, California.⁹⁴ Neither driver obeyed the Department of Transportation regulations mandating driver rest of at least ten hours per every eleven driving hours,⁹⁵ and both arrived in Vacaville, California approximately 28 hours after leaving Lethbridge, Canada.⁹⁶ Each driver drove 28 hours

⁸⁸ Attachment 15, Animals' Angels, Animals Angels North America Summer 2003 Investigation Schedule 2.

⁸⁹ *Id.* 1-2.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* 1-3.

⁹⁴ Attachment 16, Animals' Angels, *Summary The Live Export of Pigs From Canada to Hawaii*, *1 (May, 2005).

⁹⁵ 49 CFR §§ 385, 390, 395 (2004).

⁹⁶ Attachment 16, Animals' Angels, *Summary The Live Export of Pigs From Canada to Hawaii*, *1 (May, 2005).

without stopping to sleep.⁹⁷

By flouting federal regulations mandating driver rest, these drivers were able to complete their transport in 28 hours.⁹⁸ However, neither driver offloaded animals at the end of 28 hours, as required by the Twenty-eight Hour Law. The Animals' Angels investigators reported that both drivers simply offloaded 200 pigs each directly into rusted metal semi-truck containers scattered about the Vacaville property.⁹⁹ These 400 pigs were left in metal containers for more than 24 hours in 90 to 100 degree heat.¹⁰⁰ In short, 400 pigs were confined without any provision for rest for over 50 hours and were deprived of any food or water during the 28 hours of truck transport. Both the 2003 and 2004 investigations demonstrate that the absence of USDA regulation of trucks under the Twenty-eight Hour Law is causing animals to endure inhumane exposure to the elements, as well as deprivation of food, rest and water for time periods far exceeding 28 hours.

3. Excessive Confinement and Deprivation in Transport Trucks Is Standard Industry Practice

Perhaps the most surprising aspect of the cruelties associated with the long-distance truck transport of animals is that the industry makes no attempt to keep it a secret. Thus, companies transporting animals by truck and the trade groups representing these interests acknowledge that it is a standard practice to confine animals in transit for more than 28 hours.

For example, the Livestock Conservation Institute, a group representing the interests of U.S. livestock companies, advises that, "Cattle and sheep should have a rest

⁹⁷ Id.

⁹⁸ Id.

⁹⁹ Id.

¹⁰⁰ Id.

stop if the trip will last more than 48 hours” and that “calves will be less stressed if the trip can be made within 34 hours.”¹⁰¹ In accord with this guidance, livestock transporters make it their practice to confine animals for more than 28 hours.

Thus, a representative of one of the largest cattle transporting companies in the United States recently stated that the “only time we let our cattle out during trips is when we ship them from Pennsylvania to California. They're left off at Missouri, Iowa, or Nebraska for about 8 hours to eat and drink. Then they're shipped off to California.”¹⁰² This representative also noted that the drive from the Midwestern states, Missouri, Iowa, and Nebraska, to California takes approximately 36 hours to drive, including sleep time for the drivers.¹⁰³ Thus, it is the standard practice of one of the leading cattle trucking interests operating in the United States to deprive animals of a chance to rest, eat and drink for 36 hours. Moreover, this representative stated that “it is standard throughout the industry for companies to not let cattle out unless the trip is across the country” and thus animals are routinely confined for more than 36 hours without a chance to eat, drink and rest.¹⁰⁴

¹⁰¹ Attachment 17, Temple Grandin, *Livestock Trucking Guide*, 13 (Livestock Conservation Institute pamphlet) (1992); see also, Attachment 18, *If Sick Calves are Eating, They're on the Way*, *Progressive Farmer* 82 (March 1995) (quoting rancher, Kenny Bryan “When a calf has been on a truck for two to three days, that rumen can stop.”)

¹⁰² Record of June 14, 2005 interview on file with petitioner HSUS.

¹⁰³ *Id.* (“It takes us about 36 hours, and that's including sleep time for the driver, for the cattle to get from California to Nebraska or Colorado.”).

¹⁰⁴ *Id.*

B. The Detrimental Impact of Long-Distance Truck Transport on Animal Welfare

Truck transport of animals is widely recognized as a cause of grave injury, severe stress, and death for animals.¹⁰⁵ The USDA has long understood truck transport to be a major source of injuries, stress and fatalities.¹⁰⁶ In addition, truck transport of animals is recognized as an area that “has been largely ignored, and may be the weakest link” in the food supply chain.¹⁰⁷ Animals are regularly killed, permanently injured, dehydrated, starved and severely stressed as a result of enduring confinement in transport—often for two days or more—in overcrowded trucks, where they are exposed to extreme heat and cold and routinely denied food and water.

¹⁰⁵ Attachment 19, *Livestock Handling and Transport*, Temple Grandin Ed., Temple Grandin, *Introduction: Management and Economic Factors of Handling and Transport*, 1, 3-5 (CABI 2000); Dell M. Allen, *Handle with Care*, 12:5 Meat Marketing & Technology 85 (May 2005) (“Extreme heat or cold, abusive or rough handling, cattle prods, forcing animals to move when they’re tired, long truck hauls, mixing pens, overcrowding of panes--these are all conditions that create animal stress”).

¹⁰⁶ Attachment 20, Joseph E. Rickenbacker, *Handling Conditions and Practices Causing Bruises in Cattle*, Farmer Cooperative Service, USDA 1959 at 1 (“This survey indicated that the total loss due to death and crippling was approximately \$8 million a year at average annual prices for 1955 and 1956. In general, dead and cripple losses among animals hauled by motortruck exceeded those among animals moved by railroad, often by substantial margins.”); Attachment 11, Joseph E. Rickenbacker, *Loss and Damage in Handling and Transporting Hogs*, Farmer Cooperative Service, USDA 1961 at 19-20 (“regardless of distance, death loss in truck transport was higher than rail loss, not just higher, but much higher”); Attachment 2, USDA Agricultural Research Service, *A Research Program to Reduce Losses Due to Transportation of Livestock, Report to Congress*, 1 (May 1977) (“From research conducted to date and from discussions with the livestock and livestock transportation industry, it has been determined that the problems of livestock stress, especially those related to confinement during transport, are significant in transport-related livestock losses.”)

¹⁰⁷ Joel Crews, *Handle With Care Transporting Livestock Correctly Pays Off*, Food Systems Insider (March 1, 2004) (quoting Tim O’Byrne, president of Las Vegas-based Calico Beef Consulting) at: <http://foodsystemsinsider.com/articles/0403/0403handle.htm> (accessed July 1, 2005).

Frequently in truck transport, stress, fatigue, overcrowding and temperature extremes combine to create a cruel sum far exceeding the substantial harms these elements cause acting alone.¹⁰⁸ For example, on hot days, the most common cause of deaths for all species is overcrowding in trucks.¹⁰⁹ Similarly, research shows that overcrowded pigs—in addition to dying at a very high rate in hot weather—continually change positions and are not able to lie down and rest, all of which increases their stress and fatigue.¹¹⁰ Thus a cruel and frequently fatal synergy occurs when animals are packed into trucks at high density and then confined in extreme weather conditions for long periods of time.

Tim O’Byrne, a professional consultant on cattle handling, recently noted, “We haven’t done enough to bring truckers back into the fold, and it’s one of the most stressful parts of the process for cattle.”¹¹¹ Mr. O’Byrne’s observation is borne out by recent studies in the European Union demonstrating that cattle show signs of fatigue,

¹⁰⁸ Attachment 21, European Commission Health and Consumer Protection Directorate General, *The Welfare of Animals During Transport*, 15 (adopted March 11, 2002):

A combination of different stressors often has a greater effect than a single stressor, as emphasised in much of this report. Transport itself involves such a combination but it may also be combined with other stressors. When young animals are weaned just before transport, the absence of maternal care and absence of milk is added to the various stressors associated with transport so disease condition is more likely in such animals. Also, one pathogen may affect susceptibility to others. Or for example, viral infections which may be sub-clinical increase the susceptibility for secondary bacterial infections and this may lead to severe disease.

¹⁰⁹ Attachment 22, *Livestock Handling and Transport*, Temple Grandin Ed., Broom T.M., *Welfare Assessment and Welfare Problem Areas During Transport*, 43, 55 (CABI 2000).

¹¹⁰ *Id.* at 47 (pigs prefer to lie down and rest in transport, and cannot rest if they cannot lie down.); Attachment 23, *Livestock Handling and Transport*, Temple Grandin Ed., T.G. Knowles & P.D. Warriss, *Stress Physiology of Animals During Transport*, 385, 402 (CABI 2000) (“Physical stress and the associated fatigue are likely to be higher if pigs stand rather than lie down, during the journey.”).

¹¹¹ *Id.*

stress, and dehydration during road journeys lasting 31 hours.¹¹² Moreover, these studies show that the greatest impact on the animals' welfare, in terms of stress, weightloss, and fatigue, occurs within the first 15 hours of transport.¹¹³

Research on cattle transport indicates that these animals suffer from "Shipping Fever," which is caused by stress-induced changes in the immune system and is characterized by (1) loss of appetite and body mass, (2) compromised immune function, and (3) increased dehydration, increasing correspondingly with transit time.¹¹⁴ Based on observed stress, dehydration and fatigue, researchers recommend that cattle transport should not exceed 24 continuous hours, and that animals should be allowed to recuperate off of the truck mid-trip for an uninterrupted 24 hours.¹¹⁵

For calves, death and severe injury are common during long truck transport.¹¹⁶ Calf mortality rates increase in inverse proportion to the animals' age, and disease incidence increases as time in transit increases.¹¹⁷ In a study on the responses of calves

¹¹² Attachment 24, T.G. Knowles *et al*, *Effects on Cattle of Transport by Road for up to 31 Hours*, 145 *Veterinary Record* 575, 579-80 (1999).

¹¹³ *Id.*

¹¹⁴ Attachment 25, Parker, *et al.*, *Quantitative analysis of Acid-base Balance in Bos Indicus Steers Subjected to Transportation of Long Duration*, 81 *J. Animal Science* 1434, 1434 (2003); Attachment 26, T.G. Knowles, *A Review of the Road Transport of Cattle*, 144 *Veterinary Record*, 197, 197-98 (1999) (noting that shipping fever is the cause of 1% of all cattle loss in the United States); Attachment 27, *Livestock Handling and Transport*, Temple Grandin Ed., V. Tarrant Temple Grandin, *Cattle Transport*, 151, 152-53 (CABI 2000). (identifying shipping fever as one of the "greatest causes of concern" in cattle shipping).

¹¹⁵ Attachment 23, *Livestock Handling and Transport*, Temple Grandin Ed., T.G. Knowles & P.D. Warriss, *Stress Physiology of Animals During Transport*, 385, 396 (CABI 2000).

¹¹⁶ *Id.* at 397 (noting that calf mortality due to disease often follows, and is often caused by transport and also noting that mortality of transported calves has been reported as 160% of mortality rate of calves not transported).

¹¹⁷ *Id.* (less transport related disease found in calves transported 13 hours than in calves transported 31 hours); Attachment 28, T.G. Knowles, *et al*, *Effect on Young Calves of a*

less than one month old to truck transport of nineteen hours, there was increasing utilization of body reserves and a measurable increase in dehydration, coupled with an increased loss of liveweight.¹¹⁸ When transported in cold weather, calves lose weight at a faster rate than in temperate weather, and calves have difficulty regulating their body temperature during and following transport.¹¹⁹

Truck transport is especially harmful to pigs, chiefly because they cannot regulate their body temperatures well, and are therefore extremely sensitive to heat and cold. According to the National Pork Board, approximately 170,000 pigs die during transport every year as a result of exposure, overloaded trucks, lack of water, feed, and adequate rest.¹²⁰ Indeed, according to one researcher, Cate Dewey, D.V.M., “[a]bout 80 percent of market-related deaths occur when pigs are on the truck.”¹²¹ In a pamphlet entitled

One-Hour Feeding Stop During a 19-hour Road Journey, 144 *Veterinary Record* 687, 687 (1999).

¹¹⁸ Attachment 28, T.G. Knowles, et al, *Effect on Young Calves of a One-Hour Feeding Stop During a 19-hour Road Journey*, 144 *Veterinary Record* 687, 687 (1999) (all the transported calves “showed a marked decrease in bodyweight that was not recorded in the control animals.”).

¹¹⁹ Attachment 23, *Livestock Handling and Transport*, Temple Grandin Ed., T.G. Knowles & P.D. Warriss, *Stress Physiology of Animals During Transport*, 385, 397 (CABI 2000); T.G. Knowles, et al, *Effects on calves less than one month old of feeding or not feeding them during road transport of up to 24 hours*. 140(5) *Veterinary Record* 116-24 (1997).

¹²⁰ Joe Vansickle, *Quality Assurance Program Launched*, *National Hog Farmer*, 2 (Feb. 15, 2002) (according to the National Pork Board, the pork the industry loses \$59 million a year due to hogs that have been either killed or crippled during transport.) at http://nationalhogfarmer.com/mag/farming_quality_assurance_program; *Trucker Quality Assurance Instructor Training Workshop* (undated brochure for training workshop) at: <http://www.porkboard.org/docs/TQA%20TRAINING%20WRKSHP%20BRO.pdf> (“Yet, every year, the American pork industry loses tens of millions of dollars because of poor quality pork products that are the direct result of mishandling and bruising during transport.”).

¹²¹ Tyler Kelley, *Don't let stress, heat be a downer for pigs*, Monday May 2, 2005 *Pork Magazine*] (quoting Cate Dewey, University of Guelph) at http://www.porkmag.com/directories.asp?pgID=728&ed_id=3377.

Livestock Trucking Guide, livestock handling expert Temple Grandin notes that for pigs, “death losses often double on hot, humid days.”¹²² In addition to this high mortality rate, every year approximately 420,000 pigs are severely and permanently injured during truck transport.¹²³

Studies focusing on the effect of truck transport on pigs show that as travel time increases, mortality rates tend to increase, as does liveweight loss.¹²⁴ The loss of weight during transport indicates that pigs have endured hunger, or dehydration, or both, during transport.¹²⁵ In fact, pigs become dehydrated after only six hours in transit.¹²⁶ Their

¹²² Attachment 17, Temple Grandin, *Livestock Trucking Guide*, 2 (Livestock Conservation Institute pamphlet) (1992); Attachment 23, *Livestock Handling and Transport*, Temple Grandin Ed., T.G. Knowles & P.D. Warriss, *Stress Physiology of Animals During Transport*, 385, 401 (CABI 2000) (“there was a marked increase in mortality when average monthly temperatures rose above 15 degrees C.”); Attachment 11, Joseph E. Rickenbacker, *Loss and Damage in Handling and Transporting Hogs*, Farmer Cooperative Service, USDA 1961 at 17 (“Death loss was a much more significant factor during the extreme seasons of summer and winter.”).

¹²³ Joe Vansickle, *Quality Assurance Program Launched*, National Hog Farmer, 2 (Feb. 15, 2002) at http://nationalhogfarmer.com/mag/farming_quality_assurance_program/.

¹²⁴ Attachment 29, Jose Vicente Peloso, Influence of Pre-Slaughter Fasting in Muscle Condition in Swine and its Effects on the Final Meat Processing Quality, *Second International Virtual Conference on Pork Quality (November 5, to December 6 2001)* (“In the first 24 hours of fasting, the pig loses 5% of its body weight . . . Fasting for 48 hours increases this loss to 7.1%. Carcass loss represents 20% of live weight loss with 24-h fasting, and 31% with 48-h fasting.”). P.D. Warriss, *The welfare of slaughter pigs during transport*, 7 *Animal Welfare* 365-381 (1998) (pigs transported for longer are more prone to dying in the truck). USDA has been aware of the correlation between increased travel time and increased mortality since at least 1961, *see*, Attachment 11, Joseph E. Rickenbacker, *Loss and Damage in Handling and Transporting Hogs*, Farmer Cooperative Service, USDA 1961 at 17 (“Possibility of death in transit was far greater by truck than by rail. This was true, regardless of distance shipped, but was especially true where shipments moved really long distances.”).

¹²⁵ Attachment 29, Jose Vicente Peloso, Influence of Pre-Slaughter Fasting in Muscle Condition in Swine and its Effects on the Final Meat Processing Quality, *Second International Virtual Conference on Pork Quality* 1, 5 (November 5, to December 6 2001); P.D. Warriss, *The welfare of slaughter pigs during transport*, 7 *Animal Welfare* 365-381 (1998) (pigs transported for longer are more prone to dying in the truck);

¹²⁶ P.D. Warriss et al, *Reduction of Carcass Yield in Transported Pigs*, 34 *Journal of*

hunger during truck transport is exacerbated by the common practice of depriving the animals of all food for 12 to 24 hours prior to slaughter.¹²⁷ According to the National Pork Producers, transport is a stressful time for pigs, and even healthy individuals can lose up to 5 percent of their body weight during a mere four hour transport.¹²⁸ After long distance transports, pigs tend to have higher ultimate pH values in their muscles, suggesting glycogen depletion and, possibly fatigue.¹²⁹

As with cattle and pigs, sheep show signs of great stress and lose a significant amount of weight at a progressive rate during long journeys by truck.¹³⁰ Most of the weight loss and other physiological indications of stress occur in sheep during the first few hours of a journey.¹³¹ In a recent study conducted in the European Union, sheep lost

Science and Food Agriculture 351-56 (1983).

¹²⁷ Attachment 30, Morgan Morrow, et al, *The Effect of Feed Withdrawal on Pork Quality and the Prevalence of Salmonella and Gastric Ulcers at Slaughter*, Final Report to National Pork Producers Council, republished in 220 *Journal of American Veterinary Medicine* 2 (Feb. 15, 2002) (“producers are recommended to withdraw feed from hogs from 12-24 hours prior to slaughter.”).

¹²⁸ Attachment 31, National Pork Producers, *Swine Care Handbook*, 5 (undated) (citing McGlone *et al.*, *Shipping Stress and Social Status Effects on Pig Performance, Plasma Cortisol, Natural Killer Cell Activity, and Leukocyte Numbers*, 71 *Journal of Animal Science* 888 (1993) at <http://www.porkboard.org/docs/swinecarehandbook.pdf>; *see also*, Joel Crews, *Handle With Care Transporting Livestock Correctly Pays Off*, *Food Systems Insider* (March 1, 2004) at: <http://foodsysteinsider.com/articles/0403/0403handle.htm> (quoting David Messinger, PhD. And Vice President of the National Pork Board’s Educational Services: “The high-strung genetics of today’s pigs make them highly susceptible to quality compromises [due to stress].”).

¹²⁹ *Id.*

¹³⁰ Attachment 21, European Commission Health and Consumer Protection Directorate General, *The Welfare of Animals During Transport*, 34, 72 (adopted March 11, 2002).

¹³¹ Attachment 23, *Livestock Handling and Transport*, Temple Grandin Ed., T.G. Knowles & P.D. Warriss, *Stress Physiology of Animals During Transport*, 385, 399 (CABI 2000); (“liveweight losses of 3, 5, 7.5, 11, 12 and 14% over 6, 12, 24, 48, 72, 96h [hours] respectively with food withdrawal alone; however, losses as high as 20% after just 72h have been reported”); Broom, et al, *Hormonal and Physiological Effects of a 15 Hour Road Journey in Sheep: Comparison With the Responses to Loading, Handling and*

up to eight percent of their weight during a 24-hour journey.¹³² In addition, for the duration of a 24-hour journey, the animals' heart rates were elevated, suggesting the experience caused stress.¹³³ Indeed, sheep heart rates have been observed to remain elevated throughout a nine hour truck trip.¹³⁴ Finally, when ambient temperatures exceed 68 degrees Fahrenheit, sheep in transport trucks show clear signs of dehydration.¹³⁵

A USDA researcher participated in a recent study of injury and stress among poultry birds in transport which concluded that it is “imperative to pay more attention to these problems . . . and develop management practices to improve the welfare of the birds and the resultant product quality.”¹³⁶ Poultry deaths in transit increase significantly as transit time increases.¹³⁷ As mentioned above, there is very little publicly available data concerning poultry transport in the United States. However, a 2003 study of chicken

Penning in the Absence of Transport, 152 *British Veterinary Journal*, 593-604. (1996).

¹³² Attachment 32, Hall, *et al*, *Welfare Aspects of the Transport by Road of Sheep and Pigs*, 3 *Journal of Applied Animal Welfare Science* 235, 244 (1998) citing, Knowles, *et al*, *Long Distance Transport of Lambs and the Time Needed for Subsequent Recovery*, 133 *Veterinary Record* 286-93 (1995).

¹³³ T.G. Knowles, *et al*, *Long Distance Transport of Lambs and the Time Needed for Subsequent Recovery*, 133 *Veterinary Record* 286-93 (1995).

¹³⁴ Attachment 23, *Livestock Handling and Transport*, Temple Grandin Ed., T.M. Broom, *Welfare Assessment and Welfare Problem Areas During Transport*, 43, 55 (CABI 2000) (noting that in sheep as with “most farm animals tachycardia (increase in heart rate) has been associated with disturbing situations”); Baldock & Sibly, *Effects of Handling and Transportation on the Heart Rate and Behaviour of Sheep*, 28 *Applied Animal Behaviour Science* 15-39 (1990).

¹³⁵ Attachment 21, European Commission Health and Consumer Protection Directorate General, *The Welfare of Animals During Transport*, 72 (adopted March 11, 2002) (However, when ambient temperatures did rise above 20 C [68 F] for a large part of the journey, there were clear indications that animals became dehydrated.”) *citing*, Knowles, *et al*, *Long Distance Transport of Export Lambs*, 134 *Veterinary Record* 107-110 (1994).

¹³⁶ G. Kannan *et al*, *Effects of Crating and Transport on Stress and Meat Quality Characteristics in Broilers*, 76 *Poultry Science* 523, 524 (1997)

¹³⁷ Attachment 33, Estevez, *Poultry Welfare Issues*, *Poultry Digest Online* 7 (2003) *citing*, Gregory, *Animal Welfare and Meat Science*, CABI International 1998); *see also*, Attachment 34, *Livestock Handling and Transport*, Temple Grandin Ed. Weeks & Nicol, *Poultry Handling and Transport*, 363, 370 (CABI International 2000).

transport in Georgia led researchers to conclude that, “[m]ortality as a result of live haul indicates that the process is stressful to broilers. Flock health status, physical injury, and thermal stress all contribute to the incidence of DOA.”¹³⁸ Stress-related congestive heart failure is a leading cause of death among broiler chickens in transit.¹³⁹ In the Georgia study, 12 percent of birds necropsied had died due to thermal stress—in other words, they overheated. Deaths due to exposure are common year-round because the birds are simply stacked in crates on exposed truck beds, causing the birds in the center of the truck to overheat while birds confined on the outer-perimeter of the truck suffer direct exposure to the elements.¹⁴⁰

C. **Public Health Implications of Long-Distance Animal Transport**

Long-distance animal transport practices pose a significant threat to U.S. public health due to the highly contagious nature of some livestock and poultry diseases.¹⁴¹ Indeed, the Food and Agriculture Organization (FAO) of the United Nations recently

¹³⁸ Attachment 35, Ritz, *et al*, *Factors Affecting Broiler Mortality During Live Haul*, University of Georgia, Athens Georgia (2003) at <http://www.poultryscience.org/spss03abs.pdf>.

¹³⁹ Attachment 33, Estevez, *Poultry Welfare Issues*, *Poultry Digest Online* 7 (2003) *citing*, Gregory & Austin, *Causes of Trauma in Broilers Arriving Dead to Poultry Processing Plants*, 131 *Veterinary Record* 501-503 (1992) (“up to 47% of the deaths were linked to congestive heart failure and a resultant heart attack.”); see also, P.A. Bayliss & M.H. Hinton, *Transportation of Broilers with Special Reference to Mortality Rates*, 28 *Applied Animal Behaviour Science*, 93, 100-101 (1990) (Other well-documented causes of death and injury in broiler chicken transport include, collapse and subsequent suffocation, pathological lesions); R. Newberry, *et al*, *Management of Spent Hens*, 2(1) *Journal of Applied Animal Welfare Science*, 13, 14 (1999) (“By the end of their economically viable life span, Leghorn-type hens (*Gallus gallus domesticus*) kept for egg production tend to have relatively weak bones. As a result a risk of bone fractures occurs when these hens are handled prior to slaughter.”).

¹⁴⁰ *Id.* *citing*, Newberry *et al*, *Management of Spent Hens*, 2 *Journal of Applied Animal Welfare Science*, 13-29 (1999).

¹⁴¹ Attachment 36, USDA Economic Research Service, Shields & Mathews, *Interstate Livestock Movements*, Outlook Report No. (LDPM10801) 2 (June 2003) at <http://www.ers.usda.gov/publications/ldp/jun03/ldpm10801/>.

stated,

Modern animal transport systems are ideally suited for spreading disease. The animals commonly originate from different herds or flocks and they are confined together for long periods in a poorly ventilated stressful environment, all of which will favour the transmission within the group of infectious disease should sick animals be present.¹⁴²

Movements of livestock and other animals have historically promoted the spread of disease. For example, livestock importations or other livestock movements are to blame for more than 30 foot-and-mouth disease (FMD) outbreaks around the world since the 1800's.¹⁴³ Transporting animals with FMD or classical swine fever (CSF) creates a major risk of spreading both diseases. According to the World Animal Health Organization (OIE), the 2001 U.K. outbreak of FMD, one of the world's most economically devastating livestock diseases, was "mainly attributed to the movement of subclinically infected animals, principally of sheep, and by contact with contaminated vehicles used for the transportation of these animals."¹⁴⁴ Similarly, a 1997 outbreak of CSF in The Netherlands was linked to 18 transport vehicles.¹⁴⁵

For these reasons, the Federation of Veterinarians of Europe, in a 2001 position paper on animal transport, recommended that the "[l]ong distance transportation of

¹⁴² Food and Agriculture Organization, United Nations, *Improved Animal Health for Poverty reduction and Sustainable Livelihoods*, (Rome 2002) (emphasis added) at http://www.fao.org/documents/show_cdr.asp?url_file=//DOCREP/005/Y3542E/y3542e05.htm (Emphasis added).

¹⁴³ USDA, Animal and Plant Health Inspection Service Centers for Epidemiology and Animal Health, *Foot and Mouth Disease: Sources of Outbreaks and Hazard Categorization of Modes of Virus Transmission*, (Dec. 1994) at <http://www.aphis.usda.gov/vs/ceah/cei/health.htm#fmd> (temporarily removed).

¹⁴⁴ Attachment 37, OIE/FAO, *International Scientific Conference on Foot and Mouth Disease*, 3 (Apr. 17-18 2001) at ftp://ftp.oie.int/FMD20010417-18/OIEFAO_conf.pdf.

¹⁴⁵ Attachment 38, A.R.W. Elbers, *et. al.*, *Tracing systems used during the epidemic of classical swine fever in the Netherlands 1997-1998*, Review of Science and Technology, 614-629 (2001) at <http://www.oie.int/eng/publicat/rt/2002/ELBERS.PDF>.

animals for slaughter should be replaced, as much as possible, by a carcass-only trade.”¹⁴⁶

In making this recommendation, the Federation stressed that live animal transport can lead to “serious animal and public health problems, such as the rapid spread of diseases.”¹⁴⁷ Other important diseases which may be transmitted by transport include bovine viral diarrhea, African swine fever, swine dysentery, swine vesicular disease, porcine reproductive and respiratory syndrome, post weaning multi-system weaning syndrome, porcine dermatitis and nephropathy syndrome, enzootic pneumonia, bovine rhinotracheitis, rinderpest, glanders and sheep scabies.¹⁴⁸

The transportation of poultry can spread numerous diseases, including highly pathogenic avian influenza and exotic Newcastle disease. Recently the FAO identified the transport of live poultry birds as a primary culprit in the “rapid spread” of avian influenza throughout Asia, noting that

the rapid spread of certain virus types implicates dissemination mechanisms within the poultry subsector itself, such as live poultry movements or transports involving infected materials . . . Once high density industrial poultry areas become affected infection can explosively spread within the units, and the very high quantities of virus produced may be easily carried to other units, to humans, and into the environment.¹⁴⁹

In fact, in February 2004, the FAO reported that 5,000 chickens succumbed to avian influenza in Lhasa, Tibet and that these infected birds were transported to Tibet from

¹⁴⁶ Attachment 39, Federation of Veterinarians of Europe, *Transport Of Live Animals FVE Position Paper*, FVE/01/043 *1 (May 18, 2001) at http://www.fve.org/papers/pdf/aw/position_papers/01_043.pdf.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Food and Agriculture Organization, United Nations, *Animal Health Special Report: Avian Influenza Questions and Answers* (2004) at http://www.fao.org/ag/againfo/subjects/en/health/diseases-cards/avian_qa.html.

China's Lanzhou city—a trip of over 1,000 miles.¹⁵⁰ The further the animals are transported, the further the diseases may spread.¹⁵¹

Although USDA regulations prohibit interstate transport of livestock and poultry showing signs of infectious disease,¹⁵² animals who are in the incubation stage of an infection, or who are subclinically infected, can be infectious without showing clinical signs of disease.¹⁵³ For example, even thorough inspection of an animal will not detect infections like Johne's disease,¹⁵⁴ because most animals subclinically infected are still infectious.¹⁵⁵ Johne's disease is especially worrisome since evidence continues to accumulate that the pathogen, *Mycobacterium paratuberculosis*, plays a role in human Crohn's disease, a chronic disorder that causes painful inflammation of the gastrointestinal tract.¹⁵⁶ Similarly, USDA describes exotic Newcastle disease (END) as “probably one of the most infectious diseases in the world” and notes that “END is so virulent that many birds die without showing any clinical signs.”¹⁵⁷ Animals checked for

¹⁵⁰ Food and Agriculture Organization, United Nations, *Update on the Avian Influenza Situation*, 5 (Feb. 25, 2004).

¹⁵¹ Attachment 21, European Commission Health and Consumer Protection Directorate General, *The Welfare of Animals During Transport*, 17 (adopted March 11, 2002).

¹⁵² 9 C.F.R. § 71.3

¹⁵³ Attachment 21, European Commission Health and Consumer Protection Directorate General, *The Welfare of Animals During Transport*, 16 (adopted March 11, 2002).

¹⁵⁴ Committee on Diagnosis and Control of Johne's Disease Board on Agriculture and Natural Resources Division on Earth and Life Studies, National Research Council of the National Academies, *Diagnosis and Control of Johne's Disease*, (The National Academies Press, 2003).

¹⁵⁵ Attachment 40, J.R. Stabel, *Johne's Disease: a Hidden Threat*, 81(1) *Journal of Dairy Science* 283, 283 (Jan. 1998).

¹⁵⁶ C. Romero *et al*, *Evaluation of Surgical Tissue from Patients with Crohn's Disease for the Presence of Mycobacterium Avium Subspecies Paratuberculosis DNA by in situ Hybridization and Nested Polymerase Chain Reaction*, 11(2) *Inflammatory Bowel Diseases* 116 (Feb. 2005).

¹⁵⁷ Attachment 41, USDA, APHIS, *Exotic Newcastle Disease—A Deadly Disease that Affects Poultry and Pet Birds*, Program Aid No. 1739 (Mar. 2003).

visible signs of infection before a trip which may last one or more days may later develop the disease to a point that they can transmit it when they reach their destination. Hence the European Commission's Scientific Committee on Animal Health and Welfare concluded in its major 2002 report on animal transport, "whilst veterinary inspection can considerably reduce the spread of disease via transported animals, it cannot prevent it."

Long distance transport not only increases the opportunities for animals to come into contact with diseases and to spread disease, but also makes animals more susceptible to infection because the stress of transport impairs immune function, lowering the amount of pathogens necessary to initiate infection.¹⁵⁸ In other words, some pathogens that do not usually cause disease under normal conditions may become activated by stress-induced immunosuppression. Once activated by the stress of transport, these pathogens can lead to a variety of communicable diarrheal and respiratory diseases, including those caused by *E. coli*, *Salmonella*, rotaviruses, herpesviruses, and *Pasteurella* species.¹⁵⁹ So-called "shipping fever," the bovine version of which costs U.S. producers over \$500 million a year,¹⁶⁰ is often caused by commensal, or latent pathogens which may become active when "shipping cattle long distances."¹⁶¹ For the control and prevention of shipping fever, the Merck Veterinary Manual advises, "Transport time should be minimized, and rest periods, with access to food and water, should be provided during prolonged

¹⁵⁸ Attachment 21, European Commission Health and Consumer Protection Directorate General, *The Welfare of Animals During Transport*, 14-19 (adopted March 11, 2002).

¹⁵⁹ *Id.*

¹⁶⁰ Attachment 42, Pharmacia Animal Health. Beef Health Management, *Bovine Respiratory Disease (BRD) (Pneumonia, Shipping Fever, Cattle Respiratory Syndrome [CRS], Travel Fever* (2004) at <http://www.excenel.com/Health.asp?country=UK&lang=EN&species=BF&drug=EP&index=601&parentID=0>.

¹⁶¹ *Id.*

transport.”¹⁶² Likewise, in a 2002 report, the European Commission’s Scientific Committee on Animal Health and Animal Welfare noted that “[w]ith increasing duration of journey, the welfare of animals generally gets worse because they become more fatigued, incur a steadily increasing energy deficit, become more susceptible to existing infections, and may become diseased because they encounter new pathogens”¹⁶³ The committee concluded, “[j]ourneys should be as short as possible.”¹⁶⁴

Stress related to transport can also enhance the level and duration of pathogen shedding in subclinically infected animals and thereby enhance their infectiousness in the first place.¹⁶⁵ Increased diarrhea and intestinal shedding of Salmonella DT-104, for example, a bacterium growing dangerously resistant to multiple classes of antibiotics in the United States,¹⁶⁶ may result from transport-induced stress.¹⁶⁷ For example, in a 2001 study, Salmonella shedding was found in 92 percent of infected transported pigs compared to only 58 percent of infected untransported pigs.¹⁶⁸ The physiological stress of transport may increase a healthy animal’s susceptibility to disease while enhancing a sick

¹⁶² S.E. Aiello, Ed. THE MERCK VETERINARY MANUAL, Eighth Edition Merck & Co., Inc. Whitehouse Station, NJ, USA 2003 (the Merck manual is a comprehensive sourcebook on all aspects of animal healthcare).

¹⁶³ Attachment 43, Report of the Scientific Committee on Animal Health and Animal Welfare, The Welfare of Animals During Transport 3 (adopted by the European Commission March 30, 2004).

¹⁶⁴ *Id.* at 1.

¹⁶⁵ *Id.*

¹⁶⁶ D.G. White, et al., *The Isolation of Antibiotic-Resistant Salmonella from Retail Ground Meats*, 345(16) New England Journal of Medicine 1147 (Oct. 18 2001).

¹⁶⁷ Attachment 44, *Livestock Handling and Transport*, Temple Grandin Ed., E. Lambooij, *Transport Of Pigs* 275, 282 (CABI International 2000).

¹⁶⁸ H. Marg, et al, *Influence of long-time transportation stress on reactivation of Salmonella Typhimurium DT 104 in experimentally infected pigs*. 114 Berl. Munch. Tierarztl Wochenschr 385 (2001).

animal's ability to spread that disease.¹⁶⁹

Because long-distance transport commonly causes crippling injuries that leave animals unable to stand, the practice annually produces hundreds of thousands of “downed” animals who are often inhumanely dragged or pushed to slaughter at journey’s end.¹⁷⁰ Providing rest, food and drink to animals in transport will reduce the incidence of fatigue, stress, and crippling injuries which in turn will reduce the number of non-ambulatory or downer animals delivered to slaughtering facilities. Downed animals are more likely to be infected with diseases, including e. coli and Salmonella because “lame cattle usually have higher levels of bacteria on their carcasses” as these animals “spend more time lying down, which increases the likelihood they will be contaminated with fecal matter.”¹⁷¹ Providing rest, food and drink to animals in transport will reduce the incidence of fatigue, stress, and crippling injuries which in turn will reduce the number of non-ambulatory or downer animals delivered to slaughtering facilities.

A 2005 review in the *Journal of Dairy Science* concentrated on the risk of

¹⁶⁹ Attachment 21, European Commission Health and Consumer Protection Directorate General, *The Welfare of Animals During Transport*, 14-19 (adopted March 11, 2002); H. Marg, et al., *Influence of long-time transportation stress on reactivation of Salmonella Typhimurium DT 104 in experimentally infected pigs*. 114 Berl. Munch. Tierarztl Wochenschr 385 (2001).

¹⁷⁰ Bovine Spongiform Encephalopathy (BSE) (APHIS factsheet) (May 20, 2004) at <http://www.aphis.usda.gov/lpa/issues/bse/bse-surveillance.html> (“No one knows the exact number [of downed cattle]; however, an estimate of 195,000 per year was obtained from a survey conducted of American Association of Bovine Practitioners (Hansen et al., 1999) members.”); Attachment 45, Temple Grandin, *Handling of Crippled and Non-ambulatory Livestock*, 9 Animal Welfare Information Center Bulletin 1/2 (Fall 1998) at <http://www.nal.usda.gov/awic/newsletters/v9n1/9n1grand.htm> (“handling of cripples and downers is still a problem area. In a national study, Grandin visited 27 major hog and cattle packing plants and observed that 5 plants mistreated nonambulatory livestock. The most common handling problem at these plants was dragging conscious downers.”); there are currently no estimates of the number or rate of downed pigs, sheep or other animals.

¹⁷¹ G. Bauston, *FDA: Prohibit the Slaughter of Downed Animals*, 18 Journal of Sustainable Agriculture 3-6 (2001).

contracting toxin-producing *E. coli* associated with eating dairy cow ground beef tainted with feces.¹⁷² These toxin-producing strains, like the *E. coli* 1057:H7, can cause hemorrhagic colitis (profuse bloody diarrhea) and then progress to kidney failure, seizures, coma and death, particularly in young children. Meat from diseased and disabled cattle has also been implicated in a similar life-threatening disease in dogs.¹⁷³ Dairy cattle “enter the food chain as ground beef,” the review concludes. “As a result, downer dairy cows harboring STEC [Shiga-Toxin producing *E. coli*] at slaughter can be a health risk to humans.”¹⁷⁴

In a recently published study, the USDA investigated the “potential impact on human health that may occur following consumption of meat derived from downer dairy cattle” by measuring the infection rates in downers of one of the most dangerous pathogens, *E. coli* 0157:H7. *E. coli* 0157:H7 infects tens of thousands of Americans every year and causes dozens of deaths. Children are particularly susceptible. These researchers found that downer cows were more than three times as likely to harbor the potentially deadly *E. coli* strain than walking cull dairy cows. Moreover, some of the *E. coli* taken from the downer cattle were found to be resistant to multiple antibiotics.¹⁷⁵ They conclude that: “downer dairy cattle harboring *E. coli* 0157:H7 at slaughter may be an important source of contamination and may contribute to the health risk associated

¹⁷² H.S. Hussein & T. Sakuma, *Prevalence of Shiga Toxin-Producing Escherichia coli in Dairy Cattle and Their Products*, 88 *Journal of Dairy Science* 450 (2005).

¹⁷³ G.L. Armstrong, *et al.*, *Emerging Foodborne Pathogens Escherichia coli 0157:H7 as a Model of Entry of a New Pathogen into the Food Supply of the Developed World*, 18 *Epidemiologic Reviews*, 29-51 (1996).

¹⁷⁴ H.S. Hussein & T. Sakuma, *Prevalence of Shiga Toxin-Producing Escherichia coli in Dairy Cattle and Their Products*, 88 *Journal of Dairy Science* 450 (2005).

¹⁷⁵ C.M. Byrne, *et al.* *Characterization of Escherichia coli -157:H7 from Downer and Healthy Dairy Cattle in the Upper Midwest Region of the United States*, 69 *Applied and Environmental Microbiology* 4683 (2003).

with ground beef.”¹⁷⁶

Likewise, *Salmonella* has been linked to downer cattle. *Salmonella* hospitalizes thousands of people every year and kills hundreds.¹⁷⁷ Data published by the CDC in June 2005 added to the evidence that antibiotic resistant *Salmonella* was a growing public health threat.¹⁷⁸ A five-fold increase in resistant strains was noted between 1998 and 2001.¹⁷⁹ One strain, known as *Salmonella* Newport MDR-AmpC, is growing resistant to even ceftriaxone, an antibiotic vital for combating serious infections in children.¹⁸⁰ Dr. Carolyn Stull of the University of California-Davis, has directly tied *Salmonella* infection to downer cows.¹⁸¹ Reporting her results at a 2004 American Meat Institute conference, her team sampled 50 downer cows and found 7 of them infected with *Salmonella*. Despite being infected, at least 5 out of the 7 infected cows were known to have passed inspection for human consumption.¹⁸²

Clearly, USDA regulations applying the Twenty-eight Hour Law to trucks are sorely needed to reduce the number of animals who collapse in transit due to stress,

¹⁷⁶ *Id.*

¹⁷⁷ Attachment 46, P. Mead *et. al.*, Food Related Illnesses and Deaths in the United States, Center For Disease Control, 5 Emerging Infectious Diseases 607, 610 Table 2 (Sept. 1999) at <http://www.cdc.gov/ncidod/eid/vol5no5/mead.htm>.

¹⁷⁸ Attachment 47, J.K. Varma, *et al.*, *Hospitalization and antimicrobial resistance in Salmonella outbreaks, United States, 1984-2002*, Emerging Infectious Disease (June 2005) at <http://www.cdc.gov/ncidod/EID/vol11no06/pdfs/04-1231.pdf>.

¹⁷⁹ Attachment 48, A. Gupta, *Emergence of Multidrug-Resistant Salmonella enterica Serotype Newport Infections Resistant to Expanded-Spectrum Cephalosporins in the United States*, 188 Journal of Infectious Diseases 1707, 1707 (2003) at http://www.cdc.gov/narms/publications/2003/A_gupta_2003.pdf.

¹⁸⁰ Outbreak of Multidrug Resistant *Salmonella* Newport—United States, January-April 2002, 545-8 Mortality and Morbidity Weekly 51(2002) at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5125a1.htm>.

¹⁸¹ Attachment 49, C. Stull, Handling Non-Ambulatory Cattle, International Meat Animal Welfare Research Conference, (Feb. 17 2004) at <http://www.meatami.com/Content/PressCenter/IMAWRC/Presentation3STULL.pdf>.

¹⁸² *Id.*

exhaustion and injury. Consumers face risks, such as E. coli and Salmonella, from consuming downed animals who become contaminated by fecal matter after collapsing from the rigors of long distance transport, and then linger in fecal matter and urine as it accumulates throughout trips that can span days.

D. National Security Implications of Long Distance Transport

Experts interviewed by the General Accounting Office recently stated that the transportation of live cattle, hogs, and poultry across the country may make the United States agricultural sector more vulnerable to a terrorist attack.¹⁸³ Long distance live animal transport is a viable terrorism target because the practice enables diseases to spread quickly and over large areas, circumventing natural barriers that could slow pathogenic dissemination and making it more difficult to trace diseases to their source.¹⁸⁴ Moreover, U.S. livestock makes a conspicuous terrorism target because livestock production generates over \$100 billion in annual farm revenue, a significant fraction of U.S. gross national product¹⁸⁵

The Department of Homeland Security has developed 15 all-hazards planning scenarios for use in national, federal, state, and local homeland security preparedness activities. Scenario 14 involves the seeding of foot and mouth disease into U.S. herds,

¹⁸³ United States Government Accountability Office, *Report to Congressional Requesters Homeland Security: Much Is Being Done to Protect Agriculture from a Terrorist Attack, but Important Challenges Remain* 65 (March 2005) at <http://www.gao.gov/new.items/d05214.pdf>.

¹⁸⁴ J. Monke, Congressional Research Services Report for Congress, *Agroterrorism: Threats and Preparedness*, 1 (Aug. 13, 2004) at <http://www.fas.org/irp/crs/RL32521.pdf>.

¹⁸⁵ A. Kohnen, *Responding to the Threat of Agroterrorism: Specific Recommendations for the United States Department of Agriculture*. BCSIA Discussion Paper 2000-29, ESDP Discussion Paper ESDP 2000-04, John F. Kennedy School of Government, Harvard University 2 (Oct. 2000) at http://bcsia.ksg.harvard.edu/BCSIA_content/documents/Responding_to_the_Threat_of_Agroterrorism.pdf.

potentially causing hundreds of millions of dollars worth of damages.¹⁸⁶ The economic impact to the United Kingdom for its 2001 outbreak has been estimated at approximately \$20 billion (USD).¹⁸⁷ The Homeland Security planning document notes that the extent of the economic impact would depend on the extent of the geographical spread of the outbreak. “The U.S. livestock transportation system is highly efficient,” the document reads,

and movements are rapid and frequent. Although the initial event will be localized at transportation facilities in several states, as the biological agent matures and the livestock are transported, the geographical area will widen to include surrounding states where the livestock are delivered.¹⁸⁸

Whether the outbreak is intentional or natural, as the Food and Agricultural Organization of the United Nations describes, “[t]ransport of animals over long distances is one cause of the growing threat of livestock epidemics . . .”¹⁸⁹

VI. LEGAL GROUNDS FOR PETITIONED ACTION

As is clear from the foregoing discussion, the USDA’s practice of excluding trucking—the overwhelmingly dominant means of animal transport—from regulation under the Twenty-eight Hour Law gravely threatens public health and greatly compromises the welfare of millions of animals annually. The plain language of the

¹⁸⁶D. Howe, *Homeland Security Planning Scenarios*, 14-1 (July 2004) http://www.globalsecurity.org/security/library/report/2004/hsc-planning-scenarios-jul04_exec-sum.pdf.

¹⁸⁷ Attachment 37, OIE/FAO International Scientific Conference on Foot and Mouth Disease, 3 (Apr. 17-18 2001) at ftp://ftp.oie.int/FMD20010417-18/OIEFAO_conf.pdf.

¹⁸⁸ D. Howe, *Homeland Security Planning Scenarios. Scenario 14: Biological Attack – Foreign Animal Disease (Foot & Mouth Disease)*, (July 2004) at http://www.globalsecurity.org/security/library/report/2004/hsc-planning-scenarios-jul04_exec-sum.pdf.

¹⁸⁹ Attachment 50, *Europe vulnerable to livestock epidemics, warning delivered at FAO press conference*, News and Highlights (Feb. 17 1998) at <http://www.fao.org/news/1998/980204-e.htm>.

Twenty-eight Hour Law, which must ordinarily be regarded as conclusive,¹⁹⁰ provides that “a rail carrier, express carrier, or common carrier . . . may not confine animals in a vehicle for more than 28 consecutive hours”¹⁹¹ The legislative history surrounding the Act’s enactment in 1873, and its repeal and re-enactment in 1906, shows in rich detail that Congress intended the law to regulate all forms of interstate land-bound transport. The USDA’s exclusion of truck transport from its regulation under the Act is inconsistent with the statute’s humane-spirited purpose.

The USDA not only has the authority, but is statutorily required to regulate truck transport of all animals under the Twenty-eight Hour Law. Moreover, as noted above, the Animal Health Protection Act imposes upon the USDA the duty to safeguard public health by promulgating regulations concerning interstate animal transport. The issuance of regulations applying the Twenty-eight Hour Law to truck transport of animals is the bare minimum required for the USDA to satisfy its obligations under that Act, and to fulfill its AHPA responsibility to protect public health from the ills associated with inhumane livestock trucking practices.

A. The Twenty-eight Hour Law Requires that the USDA Regulate Interstate Truck Transport of Livestock

Under the Administrative Procedure Act an agency’s regulation is unlawful where it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”¹⁹² In assessing whether an agency has acted “not in accordance with law,” a

¹⁹⁰ Chevron U.S.A. v. Natural Resources Def. Council Inc., 467 U.S. 837, 842-43 (1984).

¹⁹¹ 49 U.S.C. § 80502 (a)(1) (emphasis added).

¹⁹² 5 U.S.C. § 706(2).

reviewing court must first look to the “plain language” of the statute,¹⁹³ which “must ordinarily be regarded as conclusive.”¹⁹⁴ If Congress’ chosen language is “clear on its face,” then the Court must “follow the statute’s instructions.”¹⁹⁵

Ordinarily, if a Court concludes, after exhausting the normal tools of statutory construction, that the language of the statute does not clearly express Congressional intent, the Court may proceed to “step two” of the Chevron analysis and determine whether the agency entrusted with the implementation of the statute has adopted an “administrative interpretation” of the statute, and whether that interpretation is “reasonable” and consistent with the statute’s overall purpose.¹⁹⁶ In this case, it could hardly be more plain that the USDA must construe the Twenty-eight Hour Law, according to its unambiguous terms, to apply to any and all “animal[s]” transported interstate by land and by any type of “vehicle,” “rail carrier, express carrier or common carrier.”¹⁹⁷

¹⁹³ Chevron, 467 U.S. at 842-43.

¹⁹⁴ Consumer Product Safety Comm’n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1990).

¹⁹⁵ Backcountry Against Dumps v. EPA, 100 F.3d 147, 150 (D.C. Cir. 1996); Northpoint Tech., Ltd. v. F.C.C., --- F.3d ----, 2005 WL 1653051 *6 (D.C. Cir. 2005) (This means that, if Congress has directly spoken to the precise question at issue, we give effect to [its] unambiguously expressed intent)(quotations and citations omitted).

¹⁹⁶ Chevron, 467 U.S. at 843; Lever Bros. Co. v. U.S., 981 F.2d 1330, 1338 (D.C. Cir. 1993) (“The bottomline is that the issue . . . was not addressed in either the legislative history or the administrative record. It is not enough to posit that silence implies authorization, when the authorization sought runs counter to the evident meaning of the governing statute.”); Northpoint Tech., Ltd., 2005 WL 1653051 *6 ([i]f the statute is silent or ambiguous, we defer to the [agency’s] interpretation so long as it is based on a permissible construction of the statute.); see also Dep’t of Treasury v. FLRA, 837 F.2d 1163, 1167 (D.C. Cir. 1988) (Court will only defer to interpretation offered by the agency “which [] has been entrusted to administer” the statute).

¹⁹⁷ 49 U.S.C. § 80502(a).

1. **The Twenty-eight Hour Law Unambiguously Requires Regulation of Animal Transport by Truck**

Although the Twenty-eight Hour Law does not define any of its terms, its language is clear on its face.¹⁹⁸ As Courts have made clear, “[a] basic principle of statutory construction provides that where words in a statute are not defined, they must be given their ordinary meaning . . . when a word is not defined by statute, we normally construe it in accord with its ordinary or natural meaning.”¹⁹⁹ “The determination of whether certain language is plain depends on the language itself,” as well as “the specific context in which that language is used, and the broader context of the statute as a whole.”²⁰⁰

Here, the fundamental question is whether the plain meaning of the statutory term “vehicle” includes trucks. Trucks are considered vehicles under standard usages, as well as the transportation title of United States Code, caselaw, and relevant IRS and USDA regulations. A vehicle is commonly defined as, “[a] device or structure for transporting persons or things; a conveyance”²⁰¹ In turn, the dictionary definition of “truck” is

¹⁹⁸Backcountry Against Dumps v. EPA, 100 F.3d 147 at 150; Northpoint Tech., Ltd. v. F.C.C., --- F.3d ----, 2005 WL 1653051 *6 (D.C. Cir. 2005); U.S. v. West, 393 F.3d 1302, 1312 (D.C. Cir. 2005)

¹⁹⁹ United States v. Granderson, 511 U.S. 39, 71 (1994) (citations omitted); United States v. West, 393 F.3d at 1312 (“The plain language, of course, provides the first point of reference. If the statutory language has a plain and unambiguous meaning, the court's inquiry ends, provided that the resulting statutory scheme is coherent and consistent. (quotations and citations omitted).

²⁰⁰ West, 393 F.3d at 1312.

²⁰¹ THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, FOURTH EDITION COPYRIGHT (Houghton Mifflin Co. 2000) *see also*, Act of July 18, 1866, 14 Stat. 178 (repealed) (“the term ‘vehicle,’ whenever hereinafter used, shall be held to include every description of carriage, wagon, engine, car, sleigh, sled, sledge, hurdle, cart, and other artificial contrivance, used or capable of being used as a means or auxiliary of transportation on land.”);

“an automotive vehicle built for the transportation of goods on its own chassis”²⁰² Because “vehicle” is used to define the term “truck,” the conclusion that a truck is commonly understood to be a vehicle is all but unavoidable. In line with common usage dictionaries, Black’s Law Dictionary defines “vehicle” as “something used as an instrument of conveyance; any conveyance used in transporting passengers or merchandise by land, water, or air.”²⁰³

Moreover, the transportation title of the U.S. Code—under which the Twenty-eight Hour Law is codified—also defines trucks as motor vehicles. For Title 49 purposes, “motor vehicle” is defined broadly enough to include all trucks: “‘motor vehicle’ means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.”²⁰⁴

Not surprisingly, a long-line of federal caselaw classifies trucks as vehicles.²⁰⁵ In addition, an Internal Revenue Service revenue rule classifies trucks as vehicles for the purpose of highway taxes.²⁰⁶ Finally, USDA regulations pertaining to animal welfare define “transporting vehicle” as “any truck, car, trailer, airplane, ship, or railroad car used

²⁰² WEBSTERS THIRD INTERNATIONAL DICTIONARY, 2454 (Merriam Webster Inc. 2002)

²⁰³ BLACK’S LAW DICTIONARY 1551 (7th ed. 1999).

²⁰⁴ 49 U.S.C. § 30102 (2005).

²⁰⁵ See Thomson v. United States, 321, U.S. 19, 20-21 (1944) (issue is whether the trucking arm of a railroad company is a common carrier by motor vehicle; court finds railroad was a common carrier by a motor vehicle because it held itself out to the public as transporting freight by motor vehicle through its trucking arm), Amer. Trucking Ass’n v. United States, 344 U.S. 298, 305, 312 (1953) (trucking company which leased its trucks still considered motor vehicle carrier; court also uses “truck” and “vehicle” interchangeably).

²⁰⁶ Rev. Rul. 76-294 (1976).

for transporting animals.”²⁰⁷

In sum, the definitions of Title 49, legal and standard usages, caselaw, as well as apposite IRS and USDA regulations, all classify trucks as vehicles. Thus, the plain language of the Twenty-eight Hour Law unambiguously applies to trucks.

As with the term “vehicle,” the natural, plain, ordinary and commonly understood meaning of the terms “animal,” “rail carrier,” “express carrier” and “common carrier” have not meaningfully changed since those terms were originally cast in the Act in 1873. Moreover, it is clear from the statutory context that giving these key terms their natural, plain, ordinary and commonly understood meaning effectuates the humane purpose of the Act.

The Twenty-eight Hour Law’s unqualified term “animal” includes at minimum all warm and cold blooded vertebrates endowed with sensation.²⁰⁸ The 1994 repeal and re-enactment of the Twenty-eight Hour Law added the term “vehicle” and changed the term: “express company” to “express carrier.”²⁰⁹ Other federal interstate commerce laws have

²⁰⁷ 9 C.F.R. § 1.1 (2005).

²⁰⁸ THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, FOURTH EDITION (Houghton Mifflin Co. 2000) (defines “animal” A multicellular organism of the kingdom Animalia, differing from plants in certain typical characteristics such as capacity for locomotion, nonphotosynthetic metabolism, pronounced response to stimuli, restricted growth, and fixed bodily structure.); *see also* EASTON’S 1897 BIBLE DICTIONARY (public domain) (“animal” defined as “an organized living creature endowed with sensation.”); Chesapeake & O. Ry. Co. v. Amer. Exch. Bank., 23 S.E. 935, 937 (1896) (“the words ‘other animals’ were added to include all animals that might be shipped in crowded cars or boats, and which would suffer also for want of food, water, or rest.”).

²⁰⁹ Pub. L. 103-272, §1(e) July 5, 1994, 108 Stat. 1356; During the nineteenth century, the Pony Express, and its competitors such as Wells Fargo Express Companies, Leavenworth & Pike’s Peak Express Company referred to themselves as “express companies.” These companies offered shipping services and used a variety of means of conveyance to accommodate their customers’ orders. *See* Attachment 51, http://www.linecamp.com/museums/americanwest/western_clubs/leavenworth_pikes_peak_express/leavenworth_pikes_peak_express.html;

defined the term “express carrier” as “a person providing express transportation for compensation.”²¹⁰ Finally, the term “common carrier” has not meaningfully changed since Congress included it in the 1906 version of the Twenty-eight Hour Law.²¹¹

2. The Legislative History of the Act Supports a Plain Reading to Include Trucks

Because the language of the Twenty-eight Hour Law is not at all ambiguous in its regulation of land transport of all animals interstate, there is no cause to look to the Act’s legislative history.²¹² However, legislative history dating back to the Act’s enactment indisputably demonstrates that humane care for all animals moving by land in interstate commerce was the chief purpose Congress sought to achieve through the Twenty-eight Hour Law.²¹³ Giving the act’s language its plain, natural meaning fulfills the humane purpose of the Twenty-eight Hour Law.

<http://members.aol.com/Gibson0817/WellsFargo.htm>.

²¹⁰ 49 U.S.C. § 10102(8) (1990) (the definition for “express carrier” was removed in 1994 by the same codification law that re-drafted the Twenty-eight Hour Law: Pub. L. 103-272, July 5, 1994, 108 Stat. 1356.

²¹¹ Act of July 18, 1866, 14 Stat. 178 § 3 (repealed) (describing as “common carriers” any “railway car[s]...engine[s] or other vehicle[s], or team[s].”) (emphasis added); BLACK’S LAW DICTIONARY 205 (7th ed. 1999 (“A carrier that is required by law to transport passengers or freight, without refusal, if the approved fare or charge is paid.”).

²¹² Chevron, 467 U.S. at 842-43; GTE Sylvania, Inc., 447 U.S. at 108; Backcountry Against Dumps, 100 F.3d at 150; Northpoint Technology, Ltd., --- F.3d ---, 2005 WL 1653051 *6 (D.C. Cir. 2005).

²¹³ See e.g., Attachment 5, Cong. Globe, 42nd Cong., 2d Sess. 4226 (1872) (including Senate debates in which senators repeat that everyone agrees that they want to protect the animals – they just disagree about constitutionality, effectiveness, etc.) see also, statements of Senator Allen Granberry Thurman (D-OH),

Mr. President I am quite sure every Senator sympathizes with the object of this bill. The reasons for some measure of this kind by some authority, state or national, whichever is the proper authority are so obvious that everyone feels them at once. It is not simply mercy to the poor brute although that of itself is sufficient with any right hearted man; it is mercy to ourselves, mercy to the people who eat the flesh of these animals, which, when improperly transported is unhealthy at its place of destination, and almost or quite unfit for food. Id. 4227-28

The Twenty-eight Hour Law's legislative history makes abundantly clear that Congress intended the Act to regulate all interstate commerce in animals for humane reasons.²¹⁴ As an ancillary benefit, Congress sought to protect consumers from ills associated with slaughtering animals sickened and injured by inhumane shipping practices.²¹⁵

On the evening of June 4th 1872, after more than four hours of debate on the bill, the Senate of the 42nd Congress passed the Twenty-eight Hour law. The bill had both impassioned opponents as well as proponents. Yet all who spoke during this lengthy debate, whether in favor or against the bill, stressed that some law was needed to spare animals the great inhumanity visited upon them during transport. Senator Allen Granberry Thurman of Ohio opposed the bill for fear that its passage would simply encourage railroads to speed up livestock trains and thereby harm animals more significantly than if the animals simply endured more time in transit without being offloaded to rest, eat and drink. Despite his opposition to the bill as drafted, Senator Thurman stated,

There is no man more anxious than I am to see some remedy provided. I have witnessed with my own eyes the torture of these beasts until I turned away because I could not look at it any longer. I have seen them where they were lying dead, smothered by the heat and I know what it is.²¹⁶

Senator Lot Myrrick Morill of Maine, a proponent of the bill, championed the need for federal regulation of animal transport across state lines:

And when we know what takes place on the great highways of commerce, I think it a very provident thing, and one of very high

²¹⁴ Id.

²¹⁵ Id.

²¹⁶ Id. at 4236.

expediency, that the Government of the United States should interpose its authority, and at least in some way give an admonition which shall teach men that even dumb animals have rights which are not to be violated.²¹⁷

The comments of these two senators, one a proponent and one an opponent, fairly characterize the humane spirit pervading the Senate's debate on the bill that became the Twenty-eight Hour Law. The aim of protecting all animals traveling in interstate commerce shows in the language of the Act, and is also pervasive in the legislative history of its enactment.

When Congress repealed and re-enacted the Twenty-eight Hour Law in 1906, it hewed closely to the humane purpose evident in the Act's language and the history of its 1873 enactment. As noted above, the 1906 repeal and re-enactment added exceptions for extenuating circumstance that would allow transporters to keep animals confined for up to 36 hours based upon the occurrence of specified contingencies, such as unforeseen inclement weather.²¹⁸ 1906 Senate debates concerning these changes reflect a willingness to make these changes only if the result would be enhanced humane treatment of animals. For example, Senator Henry Cabot Lodge, a Massachusetts Republican, was willing to vote for the changed law,

[i]f it is going to make the treatment of cattle more humane to extend the time they shall be kept without food and water from twenty-eight hours to thirty-six hours, I am in favor of the bill. If it will bring them to market in better condition and if it will cause less suffering to keep them without food and water for thirty-six hours instead of twenty-eight

²¹⁷ *Id.* at 4228.

²¹⁸ Attachment 6, The cruelty to Animals Act or Livestock Transportation Act, June 29, 1906, ch 3594, 45 U.S.C.S. § 71 (Exceptions allow for: sheep to be confined for up to 36 hours if the 28th hour occurs after dark. Additionally the 28 hour period may be extended to 36 hours if animals cannot be unloaded due to accidental or unavoidable causes that could not have been anticipated or avoided with due care. An animal's owner may also obtain an extension by requesting one in writing.)

hours, and I can be convinced of that I will cheerfully vote for the bill.²¹⁹

In answer to these concerns, a proponent of the bill, Wyoming Republican Senator Francis Emory Warren, stated, “I wish to repeat that this bill is a humane measure and is intended to be such. It is asked for by a great many members of humane societies.”²²⁰ Thus, in 1906, Congress re-affirmed its intent to provide more humane conditions for all animals moving by land in interstate commerce.

The Twenty-eight Hour Law was again repealed and re-enacted in 1994.²²¹ The changes made to the law in 1994 were part of an overall restructuring of older transportation statutes, the stated purpose of which was purely administrative. Congress did not intend these changes to be substantive.²²² Moreover, the language enacted in 1994—and currently in force—is not materially different from the act’s 1906 language. The language of the Act still expressly prohibits confining animals in land transport vehicles for more than 28 hours without rest, food and water, and provides the same limited exceptions. Thus the 1994 re-enactment does nothing to undermine the twice-

²¹⁹ Attachment 7, Cong. Record, 59th Congress, Special Session, 3769, 3774 (March 14, 1906).

²²⁰ *Id.* at 3770.

²²¹ In 1994 the Law of June 29, 1906, ch. 4, 45 U.S.C.S. § 71 *et seq.*, was repealed and re-enacted by Pub. L. 103-272 § 1(e) codified at 49 U.S.C.S. § 80502.

²²² H.R. REP. NO. 103-180, at 4 (1994) Congress intended to make no substantive changes by this act:

Substantive change not made.-As in other codification bills enacting titles of the United States Code into positive law, this bill makes no substantive change in the law. It is sometimes feared that mere changes in terminology and style will result in changes in substance or impair the precedent value of earlier judicial decisions and other interpretations. This fear might have some weight if this were the usual kind of amendatory legislation when it can be inferred that a change of language is intended to change substance. In a codification law, however, the courts uphold the contrary presumption: the law is intended to remain substantively unchanged. The following authorities affirm this principle (citing cases).

expressed intent of Congress to protect all animals moved in interstate commerce without regard to species or type of vehicle.

3. **Exclusion of Truck Transport Cannot Be Reconciled with the Act's Purpose, Applicable Caselaw, or the USDA's Interpretation of Similar Statutes**

Even if there were some ambiguity in the plain language of the Act, any interpretation of the Act to exclude truck transport must be rejected as profoundly inconsistent with the purpose of the law, contrary to controlling caselaw, and irreconcilable with the USDA's longstanding interpretations of similar laws.

What little discussion that has been published concerning the Twenty-eight Hour Law typically arrives at the conclusion that the Act applies only to train transport because it does not mention trucks specifically and because the law's substance was last amended in 1906, when trains were the predominate means of transporting animals and shipment by truck was non-existent.²²³ However, this is not a valid ground for excluding millions

²²³ Steven M. Wise, *Of Farm Animals and Justice*, 3 PACE ENVTL. L. REV. 191, 210 (1986), 60 Fed. Reg. 48365 ("The Twenty-eight Hour Law does not apply to transport by truck."); Attachment 52, Henry Cohen, *Brief Summaries of Federal Animal Protection Statutes*, Congressional Research Service Report for Congress, 19 (2000) (concluding without analysis that "The statute does not apply to transportation by truck"); *but see* Richard F. McCarthy & Richard E. Bennett, *Statutory Protection for Farm Animals*, 3 PACE ENVTL. L. REV. 229, 236 (1986):

The LST [Twenty-eight Hour Law] has been criticized because it was passed prior to the advent of motor transportation and, therefore, arguably does not apply to livestock transported in trucks. However, the language would seem to apply to any 'common carrier, other than by water' so that the argument could be made that motorized transportation would be included within its purview." (citations omitted);

Jordan Curnutt, ANIMALS AND THE LAW A SOURCEBOOK, 194 (2001) ("the Twenty-eight Hour Law was finally repealed in 1994, revised and reenacted to account for all methods of livestock transportation."); David J. Wolfson & Mariann Sullivan, *Foxes in the Hen House: Animals, Agribusiness, and the Law: A Modern American Fable*, in ANIMAL

of animals transported by truck from the protections afforded by the Act.

Thus, although it is beyond dispute that the Act does not specifically mention trucks, the U.S. Supreme Court has consistently rejected attempts to limit unambiguous and unqualified statutory terms such as those used in the Twenty-eight Hour Law's prohibitions. For example, the Supreme Court's construction of a smuggling statute enacted contemporaneous to the Twenty-eight Hour Law demonstrates that the Court will give clear statutory language its plain and commonly understood meanings even when construing statutes enacted in the 19th century.²²⁴

U.S. v. Ramsey required the Court to construe the Act Further to Prevent Smuggling and Other Purposes of July 18, 1866. The Court described the smuggling statute's language as "precise and clear" and noted that Congress's language evinced the clear purpose of preventing smuggling.²²⁵ Accordingly, the Court rejected the dissenters'

RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS 208 (Cass R. Sunstein & Martha C. Nussbaum eds., 2004), 60 Fed. Reg. 48362,48365 (Sept. 19, 1995) ("While on an initial reading the statute appears to be an attempt to limit farmed-animal abuses, the U.S. Department of Agriculture has determined that the statute and its regulations were written to apply only to railcar and that the Twenty-eight Hour Law does not apply to transport by truck").

²²⁴ 431 U.S. 606, 615 n. 8 (1977); (construing the Act of July 18, 1866, 14 Stat. 178 (repealed).

²²⁵ Id. This smuggling law employed several of the key terms used in the Twenty-eight Hour Law as enacted in 1873, and amended in 1906 and 1994. The smuggling law defined "common carriers" (a term added to the Twenty-eight Hour Law in 1906) as any "railway car[s]...engine[s] or other vehicle[s], or team[s]." (emphasis added). The law defined other key terms as follows: "the term 'vessel,'" (was employed in the 1873 version of Twenty-eight Hour Law)...shall be held to include every description of water-craft, raft, vehicle, and contrivance used or capable of being used as a means or auxiliary of transportation on or by water; "the term 'vehicle,' (a term added in 1994 to the Twenty-eight Hour Law) "whenever hereinafter used, shall be held to include every description of carriage, wagon, engine, car, sleigh, sled, sledge, hurdle, cart, and other artificial contrivance, used or capable of being used as a means or auxiliary of transportation on land." Between the passage of the 1866 smuggling law and the debates preceding passage of the 1906 version of the Twenty-eight Hour law it is unlikely that

claim that the smuggling act applied only to large, not small packages: “The purpose of the Act is ‘to prevent smuggling.’ Nowhere does this purpose, however and wherever articulated, reflect a concern with the physical size of the container employed in smuggling.” The purpose of the Twenty-eight Hour Law is to provide food, rest and water to animals in interstate transport, and as with the smuggling statute, “[n]owhere does this purpose, however and wherever articulated, reflect a concern with the” type of animal, or means of transport “employed in” such transport.

Similarly, in Oncale v. Sundowner Offshore Services, Inc., the Court confronted the question of whether language in Title VII prohibiting “discriminat[ion]. . .because of . . . sex,” applied to male-on-male harassment.²²⁶ In Oncale, respondent asserted that he had been discriminated against in violation of Title VII by male co-workers. In reaching its holding that male-on-male harassment was prohibited by the unambiguous terms of Title VII, the Court observed,

As some courts have noted, male-on-male sexual harassment in the workplace was assuredly not the principal evil Congress was concerned with when it enacted Title VII. But statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.²²⁷

In support of its holding, the Court noted that in Newport News Shipbuilding & Drydock Co. v. EEOC, Title VII’s prohibition on “discriminat[ion]. . .because of. . .sex,” was held to apply to discrimination against men in general,²²⁸ even though the statute’s language

Congress’s understanding as to the meanings of the term “common carrier” as used in both statute’s had materially changed.

²²⁶ 523 U.S. 75, 76 (1998); 42 U.S.C. § 2000e-2(a)(1).

²²⁷ Oncale, 523 U.S. at 79 (emphasis added).

²²⁸ 462 U.S. 669, 680, 682 (1983) (expressly rejecting petitioners’ assertion that because discussion in legislative history focused on discrimination against female employees the

did not explicitly so delineate. Additionally, the Oncale Court noted that similar Title VII language pertaining to racial discrimination, “discriminat[ion]... because of... race, color” was held to apply to racial discrimination occurring between members of the same race in Castaneda v. Partida.²²⁹

Furthermore, almost 30 years ago, the Supreme Court held in McDonald v. Santa Fe Trail Transp. Co., that 42 U.S.C. § 1981, which grants “all persons within the jurisdiction of the United States ... the same right in every State and Territory to make and enforce contracts. . . as is enjoyed by white citizens,” protects Caucasians against discrimination on the basis of race. In so holding the Court acknowledged that,

While it is, of course, true that the immediate impetus for the bill was the necessity for further relief of the constitutionally emancipated former Negro slaves, the general discussion of the scope of the bill did not circumscribe its broad language to that limited goal.²³⁰

Oncale, and its antecedents Newport News, Castaneda, McDonald, and Ramsey all stand for the proposition that courts must give effect to unambiguous and unqualified statutory terms even where doing so includes “reasonably comparable evils” within the ambit of regulation along with the specific evils perceived to be Congress’ primary targets.²³¹

act gave rise to a “‘negative inference’ limiting the scope of the act to the specific problem that motivated its enactment.”).

²²⁹ 430 U.S. 482, 499 (1977).

²³⁰ 427 U.S. 273, 289 (1976).

²³¹ See e.g., Brogan v. United States, 522 U.S. 398, 809 (1998) (“it is not, and cannot be, our practice to restrict the unqualified language of a statute to the particular evil that Congress was trying to remedy -- even assuming that it is possible to identify that evil from something other than the text of the statute itself...the reach of a statute often exceeds the precise evil to be eliminated.”); United States v. Turkette, 452 U.S. 576, 590-91 (1981):

In view of the purposes and goals of the Act, as well as the language of the statute, we are unpersuaded that Congress nevertheless confined the reach of the law to only narrow aspects of organized crime, and, in particular, under RICO, only the infiltration of

In addition, an 1896 Virginia Supreme Court decision construing the Twenty-eight Hour Law aligns completely with the U.S. Supreme Court principles of statutory construction discussed above. Shortly after the Twenty-eight Hour Law was enacted, Virginia's Supreme Court of Appeal was faced with the task of determining whether the Act's terms "other animals" included only those animals raised for food. In Chesapeake & O. Ry. Co. v. Amer. Exch. Bank., Virginia's high court rejected a construction advanced by a railroad company defendant that would have limited the Act's application to only food animals shipped in interstate commerce.²³²

Having confined the plaintiff's horses and mules in a rail car for more than 60 hours, and seeking to avoid invocation of the Twenty-eight Hour Law, defendant argued that because the act's term "other animals" followed a string of customarily consumed animals ("cattle, sheep, swine,") Congress must have intended "other animals" to mean only other animals like cattle, sheep and swine—namely, those commonly raised and shipped for human consumption. In finding for the plaintiff in American Exchange,²³³ the court explicitly rejected defendant's argument that Congress' exclusive impetus for passing the Twenty-eight Hour Law was the protection of public health from harms associated with shipping animals raised for food great distance without rest or sustenance. The American Exchange court stressed that the act is primarily a humane

legitimate business. This is not to gainsay that the legislative history forcefully supports the view that the major purpose of Title IX is to address the infiltration of legitimate business by organized crime. The point is made time and again during the debates and in the hearings before the House and Senate. But none of these statements requires the negative inference that Title IX did not reach the activities of enterprises organized and existing for criminal purposes. (emphasis added).

²³² Chesapeake & O. Ry. Co. v. Amer. Exch. Bank., 23 S.E. 935, 937 (1896).

²³³ Id.

law and that,

[a]s cattle, sheep and swine were more generally shipped upon the cars than horses and mules, they were doubtless named, while the words “other animals” were added to include all animals that might be shipped in crowded cars or boats, and which would suffer also for want of food, water, or rest. There is nothing in the language of the statute in question which would indicate that only animals used for food were intended to be embraced within its provisions.²³⁴

The American Exchange court’s reasoning regarding the catch-all terms “other animals” applies perforce to the Act’s “common carrier” and “vehicle” catch-all terms. Just as the enumeration of “cattle,” “sheep,” and “swine” in the Act does not limit the catchall “other animals” to food animals, neither does the enumeration of the term “rail carrier,” operate to restrict the broad catchall terms “common carrier,” “express carrier,” and “vehicle” to any subcategory of these classes of shipment. On the contrary, as discussed above, controlling U.S. Supreme Court precedent and the persuasive analysis of American Exchange forbid drawing these limiting negative inferences in light of the Act’s unqualified terms “vehicle,” and “common carrier.”

In sum, because the terms of the Act broadly impose restrictions on “vehicle[s]” and “common carrier[s]” engaged in interstate transport of “animal[s],” the Act cannot be construed as applicable only to subclasses of “animal[s],” “vehicle[s],” and “common carrier[s].” Such a construction is irreconcilably in conflict with several decades of Supreme Court precedent holding that Congress’ clear, unqualified language must be followed. It is thus of no import that Congress did not specifically refer to “trucks” in the Act, because truck transport of animals falls within a class of related evils which the Act’s broad language encompasses.

²³⁴ Id. (emphasis added).

Nor can a wholesale exclusion of truck transport from the Act be reconciled with the USDA's interpretation of similar laws. For example, the USDA administers quarantine statutes enacted contemporaneously with the Twenty-eight Hour Law and the agency consistently construes these quarantine laws as reaching means of transport not in use when Congress enacted the quarantine acts. The quarantine acts, known as the Plant Quarantine Act of August 20, 1912, and the Cattle Contagious Disease Act of 1903, respectively authorize the Secretary to establish animal and plant quarantines to protect public health and agricultural commerce.²³⁵ Although ancillary to the humane purpose of the Twenty-eight Hour Law, legislative history demonstrates conclusively that protection of both the public health and agricultural commerce are purposes of the Twenty-eight Hour Law.²³⁶ Although both the Twenty-eight Hour Law and the quarantine statutes share the common goals of protecting U.S. agricultural interests and general public health, the USDA has consistently applied the quarantine acts as restrictions on moving quarantined animals, plants, and objects by any means, whereas it refuses to similarly apply the broad terms "express carrier," "common carrier," and "vehicle" in regulations implementing the Twenty-eight Hour Law.

For example, the Plant Quarantine Act of August 20, 1912 and the Cattle Contagious Disease Act of March 3, 1905 (authorizing Secretary to establish animal quarantines) were both enacted in an era when neither plants nor animals were transported by airplanes, and thus neither statute refers to air transport. Nonetheless, the USDA has issued regulations under both the plant and animal quarantine statutes which

²³⁵ Plant Quarantine Act of August 20, 1912, as amended (7 U.S.C. §§ 151-164a, 167) (repealed in 2000); Cattle Contagious Disease Act of 1903, 21 U.S.C. § 111 (repealed in 2002).

²³⁶ *See e.g.*, Attachment 5, Cong. Globe, 42nd Cong., 2d Sess. 4226, 4227 (1872).

broadly define interstate transport to include air transport.²³⁷ In addition, USDA administrative adjudications routinely apply the statutes and regulations promulgated thereunder to air transport violative of quarantines.²³⁸

The USDA's flexible interpretation of these turn-of-the-century quarantine statutes is eminently sensible given the protective purposes of the quarantine laws as evidenced by Congress' use of broad unqualified prohibitions on interstate transport of animals and plants under quarantine. In contrast, the USDA's failure to interpret the Twenty-eight Hour Law's restrictions on interstate commerce as it does the quarantine laws is entirely unwarranted, especially so because the Twenty-eight Hour Law shares with the quarantine statutes both a prohibition pertaining to interstate commerce, as well as the purpose of protecting public health and agricultural commerce.

²³⁷ See e.g., 9 C.F.R. § 71.2 (animal quarantines as announced by secretary may "absolutely forbid the interstate movement of the quarantined animals"); 1984 Pseudorabies quarantine regulations define "Interstate:" as "From any State into or through any other State" and define "move" as: "shipped, transported, or otherwise moved or delivered or received for movement by land, water, or air" (emphasis added); 7 C.F.R. § 330.100 (1971 version) (36 Fed. Reg. 24,917 (Dec. 24, 1971) Pertaining to plant quarantine regulations and defining "Interstate" as "From one State, Territory or possession or the District of Columbia into or through any other State, Territory or possession, or the District of Columbia. This term includes movements, within its provisions, to a port in the United States for export." And defining "Move" as: "ship, deposit for transmission in the mail, otherwise offer for shipment, offer for entry, import, receive for transportation, carry, or otherwise transport or move, or allow to be moved, by mail or otherwise. And defining "Means of conveyance" as "Automobiles, trucks, animal-drawn vehicles, railway cars, aircraft, boats, and other means of transportation." (emphasis added).

²³⁸ See e.g., In Re: Shulamis Kaplinsky, 47 Agric. Dec. 613, 614 P.Q. Docket No. 191. (A proceeding under the Plant Quarantine Act of August 20, 1912, as amended (7 U.S.C. §§ 151-164a, 167) (repealed in 2000), involving the importation by airplane into the United States at John F. Kennedy International Airport, New York, from Israel, approximately four peaches and approximately five plums, in violation of section 319.56(c) of the regulations (7 C.F.R. § 319.56(c), because the peaches and plums were not imported under permit, as required by section 319.56-2(e) of the regulations 7 C.F.R. § 319.56-2(e).

Where an agency defines similar terms in similar contexts in an incompatible fashion there is a strong argument that one of the definitions is unreasonable. In determining whether an agency's construction of a statutory term is reasonable courts will compare the construction at hand to the agency's constructions of similar terms and statutes.²³⁹ For example, in American Chemistry Council v. Johnson,²⁴⁰ the D.C. Circuit rejected an Environmental Protection Agency ("EPA") definition of "toxic" as an impermissible construction of the term as used in the Emergency Planning and Community Right-To-Know Act ("EPCRA").²⁴¹ Litigation began after EPA denied an American Chemistry Council petition for rulemaking which requested that the agency not list methyl ethyl ketone as toxic because, in itself the chemical was not "toxic" for "EPCRA" purposes.²⁴² In denying the petition, EPA construed "toxic" to include not just substances that are harmful standing alone, but also those that become harmful only through interaction with other substances—in the agency's words substances that are "indirectly toxic."²⁴³ The court rejected the "indirectly toxic" definition, stressing that this broad definition could not be reconciled with the agency's definition of the related term "toxicant," "[a]fter all, EPA's own *Toxicology Handbook* (3d prtg.1988) defines

²³⁹ See United States v. Hayashi, 22 F.3d 859, 862 (9th Cir. 1993) (providing that a defendant can not be convicted under the regulations of a statute different from that under which he was indicted, but that nevertheless "a regulation implementing a different statute might aid in interpreting those under another statute."); see also, Bower v. Fed Ex Corp., 96 F. 3d 200, 209-219 (6th Cir. 1996) (noting that it is better to use another regulation for interpretative guidance rather than interpret a term "without regulatory assistance").

²⁴⁰ 406 F.3d 738 (D.C. Cir. 2005).

²⁴¹ 42 U.S.C. § 11023, 100 Stat. 1613, 1741 (Oct. 17, 1986).

²⁴² Amer. Chem. Council, 406 F.3d at 738.

²⁴³ Id. at 740

“toxicant” as a “harmful substance or agent that may injure an *exposed* organism.”²⁴⁴

Thus, under American Chemistry Council, the USDA cannot reasonably exclude trucks from regulation under the Twenty-eight Hour Law while simultaneously including trucks in its construction of similar statutes.

In sum, the USDA has not and cannot offer a principled explanation of why, on the one hand it interprets the Twenty-eight Hour Law’s restriction on interstate commerce narrowly, and on the other hand it interprets substantively indistinguishable restrictions on transport in turn-of-the-century quarantine statutes broadly. To remedy this profound policy conflict, and to comply with the commands of the Twenty-eight Hour Law, the USDA should promulgate rules applying the Twenty-eight Hour Law as Congress intends: to regulate all interstate land transport of animals. The USDA’s exclusion of truck transport eviscerates the manifest humane purpose of the Act because it leaves more than 95 percent²⁴⁵ of animal transporters free from providing even the bare minimums—food, water and rest—to the millions of animals in their care.

B. The Animal Health Protection Act Mandates that the USDA Issue Regulations Protective of Animal’s Health During Truck Transport

As mentioned above, the recently enacted Animal Health Protection Act (AHPA) provides an additional and independent ground for issuance of new regulations concerning truck transportation of animals. Congress passed the AHPA in 2002 and

²⁴⁴ Id.

²⁴⁵ U.S. Department of Transportation, Bureau of Transportation Statistics, *Table 7 - Shipment Characteristics by Two-Digit Commodity and Mode of Transportation for the United States: 2002, SCTG Code: 01 - SCTG Description (2-digit): Live animals and live fish* (2002) at http://www.bts.gov/publications/commodity_flow_survey/2002/united_states_final/html/table_07.html.

stated in findings accompanying the Act that “the health of animals is affected by the methods by which animals and articles are transported in interstate and foreign commerce.”²⁴⁶ Despite express congressional findings regarding the need to regulate interstate animal transport, the USDA’s regulations promulgated under the AHPA to date do not generally regulate interstate animal transport but rather apply to foreign importation of animals.²⁴⁷

Notwithstanding the USDA’s generally narrow regulatory focus on imported animals, the AHPA allows the USDA to exercise its power over the interstate transport of animals. The AHPA provides: “The Secretary may prohibit or restrict the movement in interstate commerce of any animal . . . and the use of any means of conveyance or facility in connection with movement in interstate commerce of any animal.”²⁴⁸ In the Act, “means of conveyance” is defined broadly to include “any personal property used for or intended for use for the movement of any other personal property.”²⁴⁹ Together, these two sections give the USDA the authority to regulate interstate transport of animals and regulate any property used to transport such animals. However, the USDA’s AHPA regulations largely concern imported animals of international origin and do not generally regulate interstate animal transport.²⁵⁰

The USDA has implemented its AHPA authority to regulate interstate animal transport by promulgating regulations that quarantine, or restrict, certain areas of the

²⁴⁶ 7 U.S.C. § 8301(3) (2005).

²⁴⁷ *See, e.g.*, 9 C.F.R. §§ 93.201, 93.301, 93.401, 93.501 (2004) (respectively allowing for USDA inspectors to inspect the means of conveyance and holding facilities of imported poultry, horses, ruminants, and pigs).

²⁴⁸ 7 U.S.C. § 8305.

²⁴⁹ *Id.* § 8302(11).

²⁵⁰ *See, e.g.*, 9 C.F.R. §§ 93.201, 93.301, 93.401, 93.501 (2004).

country because of cattle scabies.²⁵¹ In prohibiting or restricting interstate transport, the cattle scabies regulations do not provide separate rules for the various means of transport. On the contrary, without reservations or distinctions these regulations apply across-the-board to all means of interstate transport.²⁵² Some of the cattle scabies regulations involve the means of conveyance used to ship such cattle by requiring placards to be displayed on any means of conveyance carrying cattle from quarantined areas.²⁵³ The cattle scabies regulations show that the USDA clearly has authority under the AHPA to regulate interstate transport of animals regardless of the means by which the animals are transported. Moreover, the USDA cites the AHPA as authority for its power to establish quarantines when necessary for several livestock diseases, including: Foot and Mouth,²⁵⁴ Johnes,²⁵⁵ and Exotic Newcastle.²⁵⁶

As discussed above, long-distance transport of animals can facilitate the spread of these diseases, sometimes with disastrous consequences as seen in the 2001 United Kingdom outbreak of foot and mouth disease.²⁵⁷ USDA relies on the AHPA as its authority to quarantine entire regions of the country to prevent the spread of these diseases. The agency can and should likewise rely on it to promulgate regulations that may prevent an outbreak in the first place. Indeed Congress deems such regulation “necessary” in order to “protect the agriculture, environment, economy, and health and

²⁵¹ 9 C.F.R. § 73.1(b).

²⁵² *Id.* § 73.1(a).

²⁵³ *Id.* § 73.6.

²⁵⁴ *Id.* § 53.

²⁵⁵ *Id.* § 80.

²⁵⁶ *Id.* § 82.

²⁵⁷ *See, supra* section V. C. (discussing incidence of Johnes’s disease and foot and mouth disease, and avian influenza among animals in transport).

welfare of the people of the United States.”²⁵⁸ Because the protection of U.S. agriculture, economy and public health are animating purposes of both the AHPA and the Twenty-eight Hour Law, the USDA should issue regulations applying the Twenty-eight Hour Law to the truck transport of animals.

In sum, the congressional findings in the AHPA recognize that “the health of animals is affected by the methods by which animals and articles are transported in interstate commerce and foreign commerce.”²⁵⁹ These findings demonstrate that Congress intends for the USDA to regulate all forms of animal transport because transport can profoundly affect animal health. The USDA has the authority to regulate interstate truck transport of animals under both the Animal Health Protection Act as well as the Twenty-eight Hour Law to effectuate a shared purpose of both acts: protecting the nation’s public health, economy and agriculture from transportation related harms.

VII. CONCLUSION

In light of the overwhelming evidence indicating that animals currently suffer extreme cruelty and duress during long duration truck transport in the U.S., petitioners urge the USDA to initiate rulemaking to apply the humane requirements of the Twenty-eight Hour Law to truck transport of animals. The text of the Twenty-eight Hour law, as well as its legislative history, applicable caselaw, and the USDA’s own 1918 bulletin on

²⁵⁸ *Id.* at (5)(B) (emphasis added).

²⁵⁹ 7 U.S.C. § 8301(3); regarding the nexus between humane treatment and public health concerns, *see also*, 7 U.S.C. § 8304(a)(4)- “[Secretary can prohibit or restrict] the use of any means of conveyance in connection with the exportation of livestock if the Secretary determines that the prohibition or restriction is necessary because the means of conveyance has not been maintained in a clean and sanitary condition or does not have accommodations for the safe and proper movement and humane treatment of livestock.”) (emphasis added).

the Act all point unequivocally to the conclusion that the Act's primary purpose is to make long-distance transport of animals more humane. Nevertheless, the USDA's regulations promulgated to date allow the overwhelming majority of animals to be transported without the benefit of even the minimal protections provided by the Twenty-eight Hour Law. Accordingly, and without any delay, the USDA should engage in rulemaking as mandated by both the Twenty-eight Hour Law and the AHPA to regulate all land-based interstate animal transport.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of petitioner's Petition for Rulemaking and all materials in support thereof, was served this ____ day of August, 2005 by first class mail, hand delivery and electronic mail to:

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