This Little Piggy Went to Market…or Why it's Better to be a Market-Bound Pig in the U.S.:

Looking South will Guide Canadians in their Reform of Live Animal Transportation Laws

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Introduction: Why Canadian Live Transport Laws are in the News

Recently, 42 pigs injured or killed en route from farm to abattoir in the City of Burlington, Ontario, Canada (located between Hamilton and Toronto) raised public awareness of lax Canadian laws governing the transportation of live animals.

The driver involved in the Burlington incident was charged with careless driving as a result of the roll-over.[1] In a related incident (pigs en route to the same abattoir), a woman was charged with mischief for allegedly giving water to trailered pigs.[2] The Ontario Society for the Prevention of Cruelty to Animals (SPCA) is currently investigating the crash in Burlington; although at this time, no allegations of impropriety have been made by the SPCA.[3]

This article examines how U.S. laws are, comparatively, more progressive. We begin with an examination of the Canadian regulatory landscape for animal transport. Jonathan then explains that the enforcement policies surrounding the U.S. laws changed last decade as a result of the U.S. Humane Society's intervention. Lastly, we conclude with recommendations for humane, and economically

Animal supporters take advantage of the truck slowly turning into the abattoir entrance to give the pigs water through the slats of the container. H.C. Devine

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advantageous, reforms to Canada's legislation.

Canadian Laws Governing Animal Transport: The 36-Hour Law

While many Canadians may not contemplate how their bacon travels from farm to processing plant, our review shows that Canadian animal transport laws are not only vague in language and application, but are also outdated and comparatively inhumane relative to those in the U.S.

The transportation of live animals by all modes of transport – land, air and water – is regulated by the Canadian federal government under Part XII (Transportation of Animals) of the *Health of Animals Regulations*, CRC, c 296, which regulates the conditions for humanely transporting all animals in Canada.[4] These regulations apply to anyone involved in the transportation process, including owners and producers, processors, auction markets, assembly yards, feedlots, shippers, and drivers.

The enabling statute for these regulations is the *Health of Animals Act*, SC 1990, c 21. [5] These laws, both the regulations and the statute, are in turn enforced by the Canadian Food Inspection Agency (CFIA), with the assistance of other federal, provincial and territorial authorities.[6]

While some provinces have additional statutes and/or regulations governing the transportation of animals, Ontario primarily relies upon, and adopts, the federal regulations set out above.

These regulations are expressly intended to prohibit:

- overcrowding of animals;
- transporting of animals that are unfit for transport; and,
- loading, transporting or unloading of animals in a way that could cause injury or suffering.

They also establish requirements for:

- providing food, water and rest at specific intervals;
- protecting animals from adverse weather;
- providing adequate ventilation;
- using proper containers and transport vehicles; and,
- segregating incompatible animals.

Essentially, the regulations provide that pigs and chickens can be in transit for up to 36 hours without access to food or water, while cattle can be deprived thereof for up to 52 hours. However, the implementation of the regulations leaves tremendous scope for interpretation by all interested parties. Many aspects of the regulations' practical application are discretionary and are governed only by a Code of Practice. For example, the National Farm Animal Care Council's Recommended Code of Practice for the Care and Handling of Farm Animals – Transportation is a code of industry best practice rather than law, and, therefore, is not binding.

Even within this Code, proscriptions are drafted as mere recommendations. By way of example, 'Appendix L –"Should this Pig be Loaded?" Decision Tree' provides only recommendations – not legislated prohibitions. For instance, this Decision Tree states:

> **IMPORTANT NOTICE:**
>
> If an animal has difficulty walking or loading, it is likely that the animal will go down during transport. It is also very likely that it will be subjected to additional suffering and/or injury from trampling as a result of becoming non-ambulatory during the journey. If this is the case, transportation is not recommended.[7]

Currently, the issue in Canada is the disconnect between the humane reasons presented in the Code of Practice supporting removal of such pigs from the supply chain, on the one hand, and the *Health of Animals Act* and its implementing regulations, on the other. Ultimately, the owner, consignee, or transporter often makes the economic decision to take the risk that the pig will not go down during transport, and will instead survive the transport long enough to be processed and converted to value.

U.S. Laws Governing Animal Transport: The 28-Hour Law

The principal U.S. law governing the transportation of livestock is referred to as "The 28-Hour Law", which is set forth in 49 USC § 80502. The law applies broadly to "a rail carrier, express carrier, or common carrier (except by air or water)" performing transportation in interstate commerce.

In general, it is prohibited to confine animals in any transportation vehicle or other vessel for more than 28 consecutive hours without unloading the animals to provide food, water, and rest for 5 hours. Unloading must be performed in a humane manner into pens. The owner or person in custody of the animals must provide the necessary food and water, or if a third-party performs such tasks for the owner's benefit, then additional measures provide for such party's financial and legal protection.

Knowing and willful violations of the Twenty-Eight Hour Law carry a civil penalty of at least $100, but not more than $500, for each violation. There are four exceptions to the general rule under the Twenty-Eight Hour Law: (1) sheep may be confined for an additional 8-hour period if the 28-hour period ends at night; (2) confinement of any animal may exceed 28 hours due to an accident or unavoidable cause; (3) the owner or person having custody may request in writing, separate from the bill of lading, that the 28 hour period be extended up to 36 hours; and, (4) additional time spent loading and unloading

animals is not included in the calculation of the confinement period.

The United States Department of Agriculture ("USDA") bears responsibility for enforcement of the Twenty-Eight Hour Law. USDA regulations prescribe feed quantities and feeding periods for extended stays at feed stations, watering requirements, and pen standards.[8] These regulations were enacted in 1963 and are part of a broader USDA regulatory regime crafted to promote the health of animals during transportation.[9]

In addition, the *Animal Welfare Act* provides other protections, under certain circumstances, to ensure the humane treatment of animals during transportation in interstate commerce.[10] The implementing regulations provide species-specific requirements for handling and for the provision of food, water, and ventilation.[11] The Secretary of Agriculture enjoys the authority to further regulate the transportation of animals pursuant to the *Animal Health Protection Act*.[12]

A majority of U.S. states have enacted legislation addressing the transportation of livestock in intrastate commerce, although those that address the offering of food, water, and rest during transportation typically prescribe timelines no more stringent than the federal standard.[13]

History and Controversy of the U.S. Law

The Twenty-Eight Hour Law was enacted on June 29, 1906, though its origins can be traced to legislation dating back to 1873. The law was intended to protect animals against inhumane treatment and their owners and consignees against receiving animals in poor condition.[14] Prior to enactment of this legislation, it was not uncommon for livestock to be held in railcars for over 60 hours without food, water or rest.

As a result, animals were arriving "at destination in a feverish condition and the quality of the meat [was] affected."[15] The prevalence of claims against railroad carriers for injury to the animals provided a significant impetus for the passage of the legislation.[16] Enforcement of the Twenty-Eight Hour Law was swift, totaling penalties of $426,818 in just over ten years, and the speed of compliance by carriers was deemed a success.[17]

The Twenty-Eight Hour Law was the subject of tremendous scrutiny during the last decade, after the Humane Society of the United States, along with other interested parties, filed a petition before the USDA in 2005 regarding the absence of enforcement. Historically, the USDA had taken the position that motor carriers were outside the scope of the law, despite the express inclusion of common carriers.[18] This stance, combined with the rise of motor carriage and the steep decline of rail for transportation of livestock, resulted in virtually no enforcement of the Twenty-Eight Hour Law after 1960.[19]

The Humane Society petition was motivated by this lack of enforcement, frustration with USDA responses to *Freedom of Information Act* requests, and a body of then-recent undercover investigations by activist groups into conditions of animal captivity during interstate motor carriage.

The Humane Society petition requested that the USDA observe congressional intent in passing the law by recognizing its application to motor carriers. The petition documented graphic accounts of allegedly inhumane conditions during motor carriage that deviated from both the Twenty-Eight Hour Law and industry best practices set forth in academic literature. The petition went so far as to assert that failure to adequately regulate motor carriage of livestock poses a national security threat due to the potential for terrorist activity.

In response to the Humane Society petition, a USDA spokesperson announced in 2006 that the agency had in fact changed its internal position regarding application of the Twenty-Eight Hour Law to motor carriers just three years earlier.[20] The USDA had not, however, made this policy change public until it was prompted to do so by the Humane Society's intervention.

Science-based Reforms to Transportation Laws can Enforce Humane Choices, Improve Meat Quality, and Reduce Losses

Recent research supports the proposition that economic incentives align with regulatory change for animal transport. The CFIA has reported that between two and three million animals die every year during transport in Canada, with chickens and pigs among the most severely affected.[21] Indeed, some observers note that the true figure may be far higher. Given the significant loss of animals from the food supply chain, ensuring that more poultry and livestock survive the trip to the processing plant will result in a significant economic benefit. Further, it is acknowledged that animals transported in more humane conditions produce better quality meat.

The Prairie Swine Centre, a non-profit research and technology corporation with expertise in animal behavior, nutrition and engineering, reviewed the CFIA Trucking Regulations and reported that:

> Long distance transport of animals has become more common, the science regarding animal physiology, welfare and health has evolved making certain current requirements inadequate, and the regulations insufficiently address the needs of all species."[22]

We suggest that there exist compelling economic and humane reasons to target at least the following areas for improvement by way of regulatory amendments in Canada:

- Overcrowding
- Feed/water/rest intervals
- Loading/unloading

Overcrowding

The Western Hog Journal recognizes that reducing overcrowding is both humane and an economically preferable:

"Overcrowding can result in increased mortality rates, food safety concerns, and reduced meat quality…"[23]

Other studies have found that providing the correct amount of floor space per pig during transport can reduce transport losses, with the current incidence of transport losses (dead and non-ambulatory during transport) reported as being as high as 1% for market-weight pigs.[24]

Feed/Water/Rest Intervals

The Prairie Swine Centre reported in 2007 that "some areas of the Canadian regulations need improvement, such as those pertaining to feed/water/rest intervals and loading density".[25] We have set out above the more progressive – albeit imperfect – U.S 28-hour law, which mandates more humane feed/water and rest intervals. If Canada were to adopt the same or similar laws, this would provide continuity throughout North America, ensure the availability of food and water to farm animals in a more humane manner, improve animal farming yields, and reduce economic losses.

Loading/Unloading

Finally, the loading and unloading of pigs is also specifically recognized as being both an animal treatment issue and one that is directly tied to the economic incentive of transporting live animals to the processing plant with fewer losses, and with better quality meat:

> "Research on loading and unloading during long distance travel and the methods used to load and unload animals is urgently needed from the point of view of animal welfare and meat quality," says Dr. Bench. "Further studies need to determine if it would be better to allow animals to remain on the transport truck and continue their journey, with access to food and water on a 'higher standard' vehicle, or if it would be better to transport them shorter distances on a 'basic' vehicle and unload them for a rest period with access to food and water." [26]

But at What Cost?

It is quite conceivable that such amendments could be implemented with little to no impact on operating cost. The European Union, which recently reviewed such reforms and their associated costs, reported that "for most species the increase in costs due to the Regulation" (similar amendments to those in the U.S. and proposed here) "is estimated at less than 1% of the total cost for transporting animals", [27] with the additional costs for upgrading a truck with trailer (insulated roof and drinking devices with tank, satellite navigation system including temperature monitoring and recording system, and ventilation) being approximately €11,900[28]. The possibility of saving 1% of the animals on each load by increasing transportation costs by 1% may be both feasible and pro-competitive in the face of changing public expectations about the food we eat.

Conclusion

In this paper, we propose that Canadians should look South for guidance on regulatory change in the area of animal transport. Whether we look to our American neighbours, or even to the European Union as recently proposed by The Western Hog Journal, Canada must examine the merits of changing to align with international standards:

> "The World Organization for Animal Health will also soon adopt the first ever global standards for the transport of live animals, including pigs. Ensuring that transport industry standards meet international norms is crucial for a country like Canada which exports about half its annual production – including nearly 10 million live hogs a year."[29]

In conclusion, regulatory change for live animal transportation will likely increase administration fees and result in some additional costs associated with upgrading trucks and trailers. However, those costs may well be offset by increased survival in-transit and consumer interest in buying from a high-quality food supply chain. Conversely, the cost of inaction is of course that poor compliance and the inability to enforce humane, science-based policies compromises animal welfare. Ultimately, emphasis on the economic benefits of humane animal transportation, and the emulation of more progressive regulatory models from the U.S. and/or Europe, should lead to reforms that improve both animal welfare and financial bottom lines.

Endnotes

1 Driver in pig truck crash charged: Activist also charged at rollover site, 42 pigs die after crash, by Adam Carter, CBC News, posted Oct 07, 2016 on CBC.ca

2 The woman was charged with mischief and, if convicted, faces jail time or a maximum fine of $5,000 for allegedly giving water to trailered pigs.

3 OSPCA probing pig truck rollover, October 07, 2016 iNews 880 AM

4 https://www.canlii.org/en/ca/laws/regu/crc-c-296/latest/crc-c-296.html?autocompleteStr=health%20of%20animals%20regu&autocompletePos=1)

5 https://www.canlii.org/en/ca/laws/stat/sc-1990-c-21/latest/sc-1990-c-21.html)

6 http://www.inspection.gc.ca/animals/terrestrial-animals/humane-transport/general-public/eng/1363740981698/1363741144174 http://www.inspection.gc.ca/animals/terrestrial-animals/humane-transport/transport-requirements/eng/1363748532198/1363748620219

7 Code of Practice for the Care and Handling of Pigs, national Farm Animal Care Council, Appendix L – "Should this Pig be Loaded?" Decision Tree, [emphasis added]

8 9 CFR § 89.1 *et seq.*

9 9 CFR Chapter I, Subchapter C.

10 7 USC § 2131 *et seq.*

11 9 CFR § 1.1 *et seq.*

12 7 USC § 8305.

13 The Humane Society of the United States, et al. *Petition Before the United States Department of Agriculture*, at 12 (October 4, 2005).

14 USDA. *The 28-Hour Law Regulating the Interstate Transportation of Live Stock: Its Purpose, Requirements, and Enforcement,* Bulletin No. 589, at 2 (January 5, 1918).

15 *Id.*

16 USDA at 5.

17 USDA at 13.

18 Humane Society at 3.

19 *Id.* at 9.

20 Menzies, James. *USDA Clarifies 28-hour Law for Livestock Transporters,* Truck News (November 1, 2006).

21 http://www.ctvnews.ca/canada/canada-s-livestock-transportation-rules-worst-in-the-western-world-advocate-1.2820563

22 CFIA Trucking Regulations, Cormier, Nicole D. and Gordon Doonan, January 1, 2007, prairieswine.com

23 The Western Hog Journal, July 14, 2011 at prairieswine.com

24 "Effect of floor space during transport of market-weight pigs on the incidence of transport losses at the packing plant and the relationships between transport conditions and losses" Ritter, M.J., M. Ellis, J. Brinkmann, J.M. DeDecker, K.K. Keffaber, M.E. Kocher, B.A. Peterson, J.M. Schlipf and B.F. Wolter, Journal of Animal Science (2006) 84:2856-2864

25 CFIA Trucking Regulations, Cormier, Nicole D. and Gordon Doonan, January 1, 2007, prairieswine.com

26 The Western Hog Journal, July 14, 2011 at prairieswine.com

27 European Commission: Report from the Commission to the European Parliament and the Council on the impact of Council Regulation (EC) No 1.2005 on the protection of animals during transport, Brussels 10l11.2011, CO (2011) 700 final, page 7.

28 Ibid. p. 9

29 The Western Hog Journal, July 14, 2011 at prairieswine.com