

FAST Act Implementation: Motor Carrier Provisions

**Written Testimony of Mr. Mike VanMaanen, Owner, Eastern Missouri Commission
Company on behalf of the Livestock Marketing Association**

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Highways and Transit**

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I. Introduction

Chairman Graves, Ranking Member Norton, and Members of the Subcommittee, thank you for inviting testimony about the real-world impacts of the Fixing America's Surface Transportation Act (FAST Act, Pub. L. 114-94). Specifically, we appreciate that perspectives from agriculture as a whole and the livestock hauling industry in particular were sought regarding industry's interactions with and regulation by the Federal Motor Carrier Safety Administration (FMCSA), funding for which is authorized by the FAST Act. Vigilant oversight of the regulatory agencies under this Subcommittee's purview is a stated priority to ensure the worthwhile aim of improving the safety of our nation's roadways.

FAST Act reforms to the regulatory process require FMCSA to use the best available science and data to develop rulemakings. Unfortunately, the data upon which several regulations that pre-date the FAST Act—and which greatly impact the trucking industry—was founded are outdated. Reliance on old data oftentimes leads to illogical and inefficient rules. Thankfully, the FAST Act further improves the process under which the public or the motor carrier industry can petition FMCSA to revise or repeal regulations if they are no longer current, consistent, and uniformly enforced.

Although not part of the FAST Act, the Moving Ahead for Progress in the 21st Century Act (MAP-21, P.L. 112-141) included a provision mandating the use of electronic logging devices (ELDs) for those Commercial Motor Vehicle (CMV) drivers who are required to keep a record of duty status under the hours of service (HOS) regulations. This includes many in the farming and agricultural industries. FMCSA is charged with the roll-out of the ELD mandate. The implementation of the ELD rule has caused individuals who raise and sell livestock to take great interest in the regulatory structure surrounding the safe transport of those animals. As such, the industry and FMCSA have begun to work together to seek clarity and understanding as it relates to both the ELD and HOS rules. Rigid, one-size-fits all HOS requirements do not work when hauling live animals. We appreciate the recognition of Congress and the Agency that livestock haulers are a unique and look forward to continuing to work together to find solutions for this targeted segment of drivers.

II. Background

This testimony is provided by Mike VanMannen, owner, Eastern Missouri Commission Company and Missouri Valley Commission Company. Mr. VanMaanen testifies on behalf of the Livestock Marketing Association (LMA), an organization for which he serves on the board of directors. LMA is the leading national trade organization for more than 800 livestock marketing businesses located throughout the United States. LMA represents more than 75 percent of the regularly selling local livestock auction markets in the U.S. Livestock auction markets serve as a hub to gather and sell livestock for farmers and ranchers in a competitive bidding environment. This stimulates economies in local communities and provides farmers and ranchers the opportunity to receive a good price for their livestock. It also facilitates buyers gathering loads of livestock to be shipped to the next part of the production chain.

Mr. VanMaanen joined the livestock marketing business in 1984. His wife Lori and the Angell family have been in the business for three generations. Currently, the family business owns and operates two livestock auction markets located in Bowling Green and Boonville, Missouri. Livestock from across the region are hauled into the markets and sold to the highest bidder each Tuesday and Friday.

III. Impact of Transportation Laws and Regulations on Agriculture and the Livestock Industry

The cornerstone of livestock auction businesses is selling livestock on behalf of farmers and ranchers to buyers who gather loads to be shipped to the next phase of production. This movement drives the economy of Missouri and other states across the country. This movement is also dependent upon the use of a very limited population of highly skilled drivers who tend to be independent owner-operators. While the Agency has safety oversight of more than 500,000 motor carrier companies and 5 million active commercial driver's license holders operating across the nation, it estimates that only 3 percent of trucks on the road are agricultural haulers.

A. Structure of Livestock Hauling Business

Livestock auction markets, farmers, and ranchers are particularly impacted by transportation laws and regulations. Livestock markets serve as a hub and gathering point for more than 40 million head of livestock each year. *See* 2016 Annual Report, Packers and Stockyards Program (available at https://www.gipsa.usda.gov/psp/publication/ar/2016_psp_annual_report.pdf). Livestock, primarily cattle, but also sheep, goats, and others, are trucked to market for sale and then hauled again to the country's highest quality grazing lands and feedyards in the central and southern plains. Livestock do not travel frequently in their lifetimes, but when they do, they can travel significant distances. For example, according to a survey conducted as part of the Beef Quality Assurance program, the mean distance traveled by feeder calves to Texas and Nebraska feedyards was approximately 467.89 miles. This is a significant average given the immense quantity of "local" cattle raised within Texas, Nebraska, and their neighboring states, which need not travel significant distances to arrive at a feedyard.

Many animals, not born in the center of the country must travel great distances. In fact, one quarter of the nation's cow herd is located in the Southeast. Most farmers in this area have small herds, typically fewer than 20 head, and depend upon the services rendered by livestock markets and livestock dealers to gather their small calf crops into marketable groups. These calves must be shipped quickly and safely to grasslands and feedyards in the central and southern plains. The weather and access to feedstuffs in these regions are uniquely suited to successful cattle feeding. Time is everything for the wellbeing of the animals being transported. (Schwartzkopf-Genswein, Ahola, Edwards-Callaway, Hale, and Paterson, 2016) ("From an animal welfare perspective, the total duration an animal is transported is more important than the total distance it travels."). Animals can sustain long distances of travel if they are expediently and carefully transported by skilled drivers.

B. Stopping with Livestock is Impractical

The key to safely hauling live animals, especially in times of great heat and humidity, is to stop as infrequently as possible and to keep the trailer moving to provide ventilation. The trailer environment has been identified as having the greatest effect on animal welfare during transport. (Mitchell and Kettlewell, 2008). In North America, transport trailers are ventilated by perforations in the aluminum walls of the trailer as well as openings in the roof. Consequently, the potential to have poor welfare outcomes is significant if the trailer is not moving, especially under extreme weather conditions. The association between decreased animal welfare and increased transport duration is well established and includes greater in-transit weight loss, lameness, incidence of nonambulatory cattle, and death, as well as increased morbidity in the feedyard upon arrival.

The majority of livestock hauls can be concluded within the timeframe outlined by HOS regulations without significant stops which limit airflow. However, unfortunately, for livestock located in or heading to states outside the center of the country, this is not the case. When a driver “runs out of time” while hauling live animals, they are given the grim prospects of unloading the livestock or leaving them on the trailer for a 10-hour stretch.

Unlike the haulers of non-living products, a livestock hauler cannot merely find a safe place to park for their 10-hour rest and leave the cargo on the trailer. Leaving animals on a trailer to suffer from the elements, lack of ventilation, and probable injury is unacceptable.

Simply unloading the animals for 10 consecutive hours of rest is also not a good option. First, there is often nowhere to unload them. A hauler of live animals cannot simply unload their charges on the side of the road or at a local hotel. There are no pen systems available along major American highways, and the owners of feedyards and livestock markets are extremely hesitant to accept livestock in transport due to liability, staffing, and biosecurity concerns.

With respect to biosecurity, facility and livestock owners, as well as state and federal animal health officials, spend significant time creating and following procedures to minimize risk of animal diseases spreading. This includes laws requiring certain livestock crossing state lines travel with interstate certificates of veterinary inspection that detail where the load came from and where it is going. The trouble with unloading livestock at some waypoint along the trip is that it is almost impossible for a driver to know where they will need to stop in 11 hours with any measure of certainty. These movement documents and the disease traceability programs associated with them are in place to track and prevent contagious disease outbreaks in this country. Every time animals in-transit are unnecessarily unloaded and penned next to other animals in-transit, the risk of disease spread increases.

Furthermore, these locations are rarely equipped to handle and house species other than cattle, providing a challenge to haulers of horses, sheep, goats, and pigs. For those hauling bees and fish, the situation is even more challenging as these animals cannot be unloaded at all while in transit. Additional challenges exist if livestock are to be exported over the road to Canada or Mexico, as stringent trailer sealing and biosecurity measures are required for these exports. This

process would be complicated by a rest period necessitating that the doors to the trailer be opened before they reach their destination across the border.

Even if a location is willing to take animals in, unloading and re-loading those animals has a negative impact on their wellbeing. The act of loading and unloading have been reported to be more stressful (elevated heart rate and stress-related hormones such as cortisol) than the effect of transport itself. (Camp et al., 1981). Animals that are unloaded, “rested,” and then re-loaded will not have rested at all. *See Recommendations for Cattle Transport Duration in the U.S. - Executive Summary*. Capable animal handlers, such as livestock transporters, know that loading and unloading is extremely stressful, therefore, it is recommended that handling during these events be conducted slowly, gently, and quietly. (Grandin, 2014). Unloading and re-loading livestock in transit takes significant time. González et al. (2012) reported loading and unloading times for commercially transported cattle to be on average 20 and 30 minutes with maximums of 5 and 3 hours, respectively.

C. Livestock Haulers are Rare, Skilled, and Have a Proven Track Record of Safety

Not just anyone can be a livestock hauler; many see themselves as cattlemen/women first and truckers second. Our drivers are often part of small businesses consisting of an owner-operator or perhaps a few trucks. Their trailers are designed exclusively for the transport of livestock, which means when a driver decides to become a livestock hauler, they are usually unable to haul other types of cargo. As such, there is very little cross-over between the haulers of live animals and the haulers of traditional cargo, which can lead to serious trucker shortages, especially during peak sale seasons.

The drivers that transport our animals work hard to further the interests of motorists and the wellbeing of the animals with which they are charged. Simply put, a livestock hauler is required by the nature of their live cargo to drive slower and more cautiously than a conventional cargo hauler because the live animals being hauled can move throughout the trailer and can be severely injured if the driver turns too suddenly, drives too fast, or stops too quickly. Safety of other motorists, our drivers, and the animals they haul is so important to the livestock industry that many livestock haulers have participated in additional specialized training, including the pork industry’s Transport Quality Assurance (TQA) program and the beef industry’s Master Cattle Transporter (MCT) program.

Due to all of this, livestock haulers boast a fantastic safety record. For instance, the Large Truck Crash Causation Study, conducted by the FMCSA and the National Highway Traffic Safety Institute, showed that of 1,123 accidents involving trucks hauling cargo, a mere five involved livestock transporters. Similarly, Trucks Involved in Fatal Accidents Factbook 2008, a report conducted by the Transportation Research Institute, shows that of 4,352 trucks involved in fatal accidents, livestock haulers accounted for just 0.6 percent.

IV. Outreach and Enforcement Continue to be a Challenge

Although the discussion surrounding implementation of the ELD mandate has shed light on the specifics of HOS compliance and existing agricultural flexibilities, it has become clear that additional outreach to drivers and law enforcement is still necessary. Because our haulers are often owner-operators, they do not have access to the massive infrastructure and communication advantages of national freight companies. Many of them are independent by nature and are association “non-joiners.” Further, the majority of haulers are of an age, from a culture, and drive through remote geographic regions such that are not easily reachable by mediums such as email, websites, or social media. It has become apparent that Agency outreach, although well-intentioned, in the form of webinars or articles in national trucking publications is simply ineffective for reaching this population.

Additionally, many drivers are frustrated by inconsistent interpretations of federal laws and regulations by carrier enforcement in various jurisdictions. Thankfully, just under a year ago, FMCSA clarified in writing that the 150-air mile agricultural commodity exemption does indeed apply to livestock haulers. Unfortunately, confusion in the carrier enforcement community continues to exist with respect to application. It has also become apparent that carrier enforcement requires specific training on what to do with livestock in-transit when a livestock hauler is taken out of service. It is simply unacceptable for live animals to suffer by being left to stand on a hot, stagnant trailer because of driver non-compliance. As such, we would strongly support continued coordination and cooperation between the Agency and industry to create plans for these situations and to troubleshoot issues as they arise. Some states have a head start with the livestock industry and transportation officials already making plans for these situations while others have not broached the topic.

V. Need for Relief

Incompatibilities between the HOS rules and the live animal hauling industry highlighted by the ELD mandate have caused considerable disruption and freight price increases. Many farms and ranches are not within 11 hours of where the animals they raise must be shipped. Live animal haulers can safely travel greater distances than prescribed by HOS if they are allowed to more naturally manage their rest and work times.

The current HOS provide a too-rigid one-size-fits-all framework for transportation that results in live animals being left to stand for 10 hours at a time on trailers leading to significant mortality losses or being unloaded at midway pen systems presenting challenges from logistics, liability, animal welfare, and biosecurity standpoints. The reality is that the current HOS rules and the strict compliance with those regulations made necessary by ELDs will result in cattle on the coasts, in the Southeast, and the rangelands of the Northwest experiencing a regional discount or, even worse, being unmarketable or wholly unprofitable to raise. This will lead to livestock haulers, farmers, and ranchers going out of business. It will also be felt in a very real way by the American consumer trying to put an affordable meal on the table.

The goal of the HOS regulations is to prevent driver fatigue and therefore reduce the number and severity of both fatal and non-fatal accidents. The long record of safe operation by the

agricultural commodity hauling industry is evidence of the seriousness which the industry takes these issues.

VI. Requested Relief

The HOS framework needs to be changed with respect to live animal haulers. These individuals need more flexibility in order to safely get their live cargo to its destination. The LMA sincerely appreciates several members of this subcommittee for their assistance and diligent work toward safe and practical solutions for our nation's agricultural haulers.

The LMA participates in regular conversations with the FMCSA in conjunction with a cross-industry coalition of associations. Through these meetings, the coalition is pursuing a two-pronged approach to relief. First, we continue to explore ways to secure from FMCSA more permanent relief from HOS provisions that are incompatible with live animal hauling. Second, the LMA would also encourage Congress to support a technical amendment and clarification to apply the agricultural exemption found in 49 CFR 395.1(k)(1) to the both the source and destination of a livestock haul to account for unloading and wait time at livestock processing facilities, which can equate to delays of more than 1 hour.

Additionally, LMA and its fellow coalition members would support modifications to the HOS that would allow haulers to "count" rest taken, regardless of when and how much, toward a driver's required rest. Illogically, the current HOS disincentives drivers from stopping to rest when they are tired and in a safe location.

We are confident driver and animal safety can both be preserved and even improved through logical, data-driven modifications to the existing HOS structure.

VII. Conclusion

In the end, agricultural haulers and livestock transporters are sincerely concerned with the impact transportation regulations—both new and old—are having on our country's safe and economical food supply. Rigid HOS requirements do not work for livestock haulers. We appreciate the recognition of Congress and the agency that livestock haulers are a unique and look forward to continuing to work together to find solutions for this targeted segment of drivers. The safety of our roadways is of great importance and it can be coupled with practical solutions to address the need for humane and efficient transportation of live animals.