



Aquatic Livestock: Protecting the State's Internal from the External

Readers easily get confused in the area of what a State can prohibit and what the Federal Government can require. One short paper cannot fully describe the vast interactions of our nation's origins and functions. We were founded and continue to this day with Federal and State concerns that need to be protected. Attempting to understand the basics, we can remember the Constitution is where all laws begin and the Supreme Court is where the final decision is made on what is valid or constitutional.

Every State when admitted to the Union had the clear understanding that it will fully support the US Constitution and all the laws created from the Constitution. The Constitution including its many Amendments also describes what is called State Rights. Therefore, as being a part of the United States, every State is required to fully support interstate commerce. The Federal Government regulates trade amongst the States and with foreign nations. To balance that concept is the State's Rights to Police its citizens and their property. Confused yet? A typical reader will experience some overwhelming intimidation in coming to appreciate this pivotal concept. The author personally relates with that experience and understands why there are scholars and justices at all levels that study (to decipher) what this "Great American Experiment" balance was, is, could be, and should be. The author is not a scholar or justice but has many years at the "bench" working in international, national, and state levels with the regulations that came into existence from this concept.

From the perspective of Interstate Commerce being reserved as a Federally regulated function, we can see why Congress wrote the Animal Health Protection Act, amongst many things, to consolidate all the previous animal health laws on the books since the late 19th century. Why did Congress begin writing laws to regulate animal diseases in the United States? Because disease can be spread by moving animals and their conveyances. The movement of animals and their conveyances is regulated amongst the States as interstate commerce by legislation going back to the early years of this nation. Our recent Congress understood from over 100 years of effective disease control programs that disease was best controlled by controlling animal and conveyance movement. Congress was quite sure of itself in making this consolidation since many Supreme Court decisions have upheld the federal laws in this capacity of regulation. Nothing new being reported to the reader in this paragraph and so far this has been simple historical perspective of facts, laws, and court decisions.

The consolidation of federal laws also affected the States, because States in some cases have regulated what the Federal government didn't appear to regulate during the years of disjointed federal laws. This author will only venture to suggest the so-called Dormancy Clause may be related and intertwined. The consolidation of legislation at the Federal level seems to have brought some apparent overlaps between what the Federal government had regulated in a less structured framework as Interstate Commerce and what the States felt was Police Powers, by precedent in some cases. However, Federal law pre-empts State Laws when it comes to Commerce.

A little note of more recent history lets the reader understand that Congress was also obliged to create the Animal Health Protection Act out of obligations to the 1994 GATT Agreement and the associated Sanitary and Phytosanitary (SPS) Agreement. Our country's Phytosanitary (plant) obligations were addressed in the Plant Protection Act a number of years before Congress acted to address the Sanitary (animal) obligations. Finally, in 2002, Congress was able to address our Nation's obligations to animal health in the Animal Health Protection Act.

Thus, the one time consolidation of our animal disease laws AND alignment with our Trade Agreements is more difficult for some States than others in the consequential task of aligning State laws and regulations with the Interstate Commerce law regarding livestock movements. Nonetheless the effort by States to align their animal health laws with interstate commerce requirements will avoid the often-serious distraction and disruption of being Federally pre-empted in a potential court dispute.

But there is great advantage to those that also understand the State Rights to Police powers. The States can rest assured, on the one hand, that animals coming across the State's boundary by or through Interstate Commerce have a set of requirements to satisfy before those animals are moved from State to State. But, what if a given State needs to protect

their livestock (property of citizens) from a disease that does not exist in their State, that same State has the right to create a standard or restriction to protect the property and citizens within its' boundaries. The caveat is that the State, putting the restriction in place, must be able to show that the disease does not exist in the State. In other words, someone must have looked for the unwanted disease through what is called surveillance. If the restriction is not supported with hard evidence and history, there will be a disputed trade barrier. Likewise, if an exporting State has done surveillance and can certify by State officials endorsing Certificates of Veterinary Inspection that the animals are not infected or exposed to a specified disease, the importing State will not require those animals originating in the disease free state to be tested for the disease that does not exist.

Another area of discussion in interstate commerce is that a State cannot require more of imported livestock than it requires of its own domestic or internal livestock. A State in traditional livestock areas cannot require, for example, testing and certification for brucellosis if the animals already present in the State are not required to be free of brucellosis. Furthermore, a State cannot accept animals moved in interstate commerce that has not fulfilled the interstate requirements of Federal Law and Regulations. This could put the livestock of the importing State at risk of losing their export commerce privileges or livestock markets in other States.

Aquatic livestock producers face yet another area of disarray in the matter of who can certify their livestock to move to another State. This is where Federal requirement to regulate interstate commerce and State Rights to Police through licensing of Veterinarians meld. Veterinarians examine animals in order to diagnose disease and certify animal disease status (health certification in lay terminology). The USDA cannot require a State to police or protect its citizens in a particular way except to require certain standard of qualification for those that examine animals for interstate certification purposes. In the case of the Animal Health Protection Act, the Congress described to the Secretary of Agriculture that the persons certifying animals moved in interstate commerce must be accredited. The requirement for acquiring USDA Accreditation is to be a licensed veterinarian to practice veterinary medicine in the specific State. A veterinarian can be licensed in more than one State but must be licensed in each State that the practitioner has Accreditation from USDA to certify animals for interstate commerce.

It is noted via a recent email from a USDA official who was claiming USDA had the authority to accredit or authorize anyone the USDA deemed fit and qualified to certify interstate movement of livestock. Not so by any authority that this author can identify that originated from Congress. USDA simply has no authority if Congress didn't pass a law for them to enforce. The Animal Health Protection Act is the only Act of Congress to control the movement of animals in interstate commerce for the purpose of controlling disease. This confused state of the regulatory mind is apparently widespread in USDA since in a recent article written for OIE publication, the authors could only quote "other legislation" as the authority given by USDA for explanation of other federal agencies controlling aquatic livestock disease and commerce. So, the aquatic livestock producers and accredited veterinarians aren't the only ones left in limbo, so are our trading partners in the World Trade Organization looking for specific laws that actually say what USDA attempts to quote.

States can and should expect full support and consistent action from the USDA in this matter of controlling animal disease in interstate commerce of livestock. The control of animal movement between States to control, prevent, or eradicate disease is given to no one else other than our USDA. If USDA does not give full support in setting an unvarying standard and enforcing uniform regulations the cost to each separate State is crippling - to the aquatic livestock industry and State regulators. The National Association of Governors have clearly stated in its policies that no State funds shall be spent to control and eliminate a foreign animal disease. The Governors' Association state that it is clearly the responsibility of USDA to fund and regulate foreign animal diseases. This author asks why private aquatic livestock producers are being asked to foot the testing bill on a disease that the USDA is charged with protecting their animals and business from?

States have a very large responsibility to protect the marketability of livestock produced within their State. That protection of healthy livestock and important markets comes from active programs of surveillance and aligning State Statutes and Regulations with our National and International standards of livestock commerce and trade.