



Animal Welfare Institute

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July 29, 2010

Ohio Livestock Care Standards Board
Ohio Department of Agriculture
8995 E. Main Street
Reynoldsburg, OH 43068

RE: Nonambulatory Animals

Dear Members of the Board:

I am writing on behalf of the Animal Welfare Institute (AWI) to offer recommendations regarding the setting of standards for the handling of nonambulatory animals. We understand that this issue is currently being addressed by the Ohio Livestock Care Standards Board.

Since its founding in 1951, AWI has been alleviating suffering inflicted on animals by people. Major goals of the organization include abolishing factory farms and achieving humane slaughter and transport for all animals raised for food. In 2006 AWI launched a high-welfare food labeling program called Animal Welfare Approved (AWA). As part of this program AWA collaborates with scientists and farmers to set animal care standards. The program employs a highly trained field staff to audit farms for compliance with these standards, and communicates regularly with hundreds of family farmers in dozens of states, including Ohio. The program covers the full lives of the animals from birth through slaughter.

Federal Law

For decades, animal advocates have urged federal agriculture officials and members of Congress to enact legal protections to provide for the humane treatment of nonambulatory animals during transport¹ and at market facilities and slaughterhouses. As part of the Farm Security and Rural Investment Act of 2002, Congress directed the Secretary of Agriculture to investigate and submit to Congress a report on the problem of nonambulatory animals. The report was to include: the scope of nonambulatory animals, the causes that render animals nonambulatory, the humane treatment of nonambulatory animals, and the extent to which nonambulatory animals may present handling problems at market facilities.

¹ The federal Twenty-Eight Hour Law governing transport only limits the length of time that an animal may be transported before food, water and rest must be provided. The law does not address other transport-related conditions including the treatment of nonambulatory animals. See 49 U.S.C. § 80502.

To our knowledge, the U.S. Congress never received such a report, although USDA did complete an estimate of the number of nonambulatory cattle, sheep and goats.² The Act also granted the U.S. Department of Agriculture (USDA) the authority to enact regulations “to provide for the humane treatment, handling, and disposition of nonambulatory livestock by stockyards, market agencies, and dealers.”³ To date, no regulations have been proposed.

In early 2004, following the discovery in December 2003 of bovine spongiform encephalopathy (BSE or “mad cow”) in a downed dairy cow in Washington State, the USDA issued an interim final regulation requiring that all nonambulatory disabled cattle presented for slaughter be condemned and deemed inappropriate for human consumption.⁴ However, the regulation included a loophole allowing USDA personnel to determine the disposition, on a case-by-case basis, of cattle who went down after having passed a pre-slaughter veterinary inspection. This permitted some downed cows to continue to enter the food supply, despite public opinion polls showing strong public disapproval of the practice of slaughtering downed animals.

In 2006, the USDA Office of Inspector General (OIG) criticized the loophole, saying that continuing to allow some nonambulatory animals to be slaughtered was “inconsistent with both published regulations and public policy announcements.”⁵ The OIG documented 29 downer cattle slaughtered for food at two of 12 slaughter plants audited during a 10-month period. OIG could find no documentation of any acute injury for these animals or of the animals’ fitness for consumption. Despite the findings of the OIG audit, in July 2007, USDA codified the downer loophole in a final rule.⁶

In May 2008, following an incident involving the inhumane handling of downed cows at a slaughter plant in California, the agency reversed its position and proposed to eliminate the exception in its ban on the slaughter of nonambulatory cattle, which was eventually finalized and became effective April 17, 2009.⁷ A loophole still exists, however. Young calves “unable to rise from a recumbent position and walk because they are tired or cold” may be held for slaughter.⁸ Because slaughter of these animals is permitted, slaughter plants have an incentive to attempt to get downed calves to rise, sometimes employing inhumane methods like kicking and the use of electrical prods. One slaughter plant in Vermont was suspended four times during 2009 for its inhumane handling of nonambulatory week-old calves.⁹

In conclusion, there are no federal laws governing the treatment of nonambulatory animals at market or during transport. Although a federal ban on the slaughter of nonambulatory animals is in place, it was enacted for reasons of food safety, not animal welfare, and applies only to adult cattle.

² USDA National Agricultural Statistics Service, *Nonambulatory Cattle & Calves*, May 5, 2005; USDA National Agricultural Statistics Service, *Nonambulatory Sheep & Goats*, May 4, 2006.

³ 7 U.S.C. § 1907(b).

⁴ *Federal Register*, Vol. 69, 1/12/04, p. 1861.

⁵ USDA Office of Inspector General, *Audit Report: APHIS Bovine Spongiform Encephalopathy (BSE) Surveillance Program – Phase II & FSIS Controls Over BSE Sampling, Specified Risk Materials, and Advanced Meat Recovery Products – Phase III*, January 2006.

⁶ *Federal Register*, Vol. 72, 7/13/07, p. 38729.

⁷ *Federal Register*, Vol. 74, 3/18/09, p. 11463.

⁸ 7 U.S.C. § 309.13(b).

⁹ USDA Food Safety and Inspection Service, Quarterly Enforcement Reports.

State Law

Over the past two decades several states have passed laws and/or regulations governing the treatment of nonambulatory animals (see attached table). For the most part, these laws address the handling of downed animals at markets or auctions, and, unlike the federal law, they cover all species of animals typically raised for food. There are a number of serious weaknesses in the laws, however, and as a result, the protection they offer is limited. For example, some of the laws do not prohibit the marketing of nonambulatory animals, and some don't require that downed animals be either promptly treated or humanely euthanized. In addition, not all of the laws prohibit inhumane handling practices, such as pushing animals with equipment or dragging an animal by the neck or an extremity.

Recommended Standards

With the goal of minimizing animal suffering, the Animal Welfare Institute (AWI) offers the following recommended legal standards for the treatment of nonambulatory animals:

On a farm or feedlot

- If an animal becomes nonambulatory but continues to eat and drink, the producer shall provide food, water and shelter and contact a veterinarian to determine the appropriate course of action. If the animal's condition is obviously irreversible, the animal shall be humanely euthanized.
- Before transport off the farm or feedlot the producer shall evaluate each animal's fitness to travel. Non-ambulatory animals shall not be moved off the premises unless for the purpose of receiving veterinary treatment.
- The following additional animals at high risk for becoming nonambulatory shall not be transported off the farm unless for the purpose of treatment: pregnant females for whom 90% or more of the expected gestation period has passed, females who have given birth in the previous week, pigs of less than three weeks, lambs of less than one week and calves of less than ten days of age.

At a market or auction

- All markets shall train employees in proper animal care and handling.
- All animals received at market facilities shall be assessed for fitness by a licensed veterinarian, and nonambulatory animals shall not be accepted for marketing.
- A nonambulatory animal may be unloaded at a market for the purpose of euthanasia if the procedure cannot be safely performed on the transport vehicle.
- All markets shall have written policies, procedures and equipment in place to handle animals that become nonambulatory after delivery to the facility.
- Animals becoming nonambulatory on the grounds of a livestock market shall be humanely euthanized or provided with treatment as prescribed by a licensed veterinarian without delay.

At a slaughterhouse

- Nonambulatory animals shall not be accepted for slaughter; however, a nonambulatory animal may be unloaded at a slaughter establishment for the purpose of euthanasia if the procedure cannot be safely performed on the transport vehicle.
- Animals that arrive at a slaughter establishment in a nonambulatory condition, or who go down after arrival, shall be euthanized immediately and not taken to slaughter.

At all times

- Nonambulatory animals shall be segregated from ambulatory animals to prevent injury.

- Under no circumstances shall a nonambulatory animal be thrown, dragged or pulled by the neck or other extremity, or pushed with equipment, but shall be moved with a sling or on a stoneboat or other sled-like or wheeled conveyance.
- Euthanasia, if required, shall be performed by a competent and trained individual by a single blow of a penetrating captive bolt or gunshot, or by chemical means that immediately renders the animal unconscious with complete unconsciousness remaining until death.

AWI has analyzed existing state laws governing the handling of nonambulatory animals, using the above standards. The results are presented in the attached table (states not listed have no relevant laws).

Conclusion

AWI appreciates the opportunity to offer recommendations on farm animal care standards for Ohio, and looks forward to seeing our views incorporated in the proposed regulations on nonambulatory animals. Please do not hesitate to contact me by phone at 202-446-2146 or email at dena@awionline.org if you have any questions or require additional information.

Sincerely,

A handwritten signature in cursive script that reads "Dena Jones".

Dena Jones, M.S.
Farm Animal Program Manager

Attachment: State Laws Related to the Handling of Nonambulatory Animals at Market or Slaughter

State	Statute/ Regulation	Definition of Nonambulatory	Animals Covered	Included Protections	Omitted Protections
California	Cal Pen Code 599f	Unable to stand and walk without assistance	Cattle, swine, sheep, or goats	<ul style="list-style-type: none"> • No slaughterhouse, stockyard, auction, market agency, or dealer shall buy, sell, or receive a nonambulatory animal. • No slaughterhouse shall hold a nonambulatory animal without taking immediate action to humanely euthanize the animal. • No stockyard, auction, market agency, or dealer shall hold a nonambulatory animal without taking immediate action to humanely euthanize the animal or to provide immediate veterinary treatment. • While in transit or on the premises of a stockyard, auction, market agency, dealer, or slaughterhouse, a nonambulatory animal may not be dragged at any time, or pushed with equipment at any time, but shall be moved with a sling or on a stoneboat or other sled-like or wheeled conveyance. • No person shall accept a nonambulatory animal for transport or delivery to a slaughterhouse, stockyard, auction, market agency, or 	<ul style="list-style-type: none"> • No provision for unloading nonambulatory animals for purpose of euthanasia. • No requirement that markets have written policies and equipment to handle nonambulatory animals. • No requirement that nonambulatory animals be segregated. <p>GRADE: B</p>

				<p>dealer.</p> <ul style="list-style-type: none"> Euthanasia shall be performed by a mechanical, chemical or electrical means that rapidly and effectively renders the animal insensitive to pain. 	
Colorado	CRS 35-55-113 8 CCR 1201-13	Unable to rise to its feet and walk with minimal stimulus	Horses, mules, cattle, burros, swine, sheep, goats, poultry, alternative livestock as defined in 35-41.5-102(1) and any other animal presented to the market for sale	<ul style="list-style-type: none"> All livestock consigned and delivered on the premises of any licensed public livestock market, before being offered for sale, shall be inspected by an authorized veterinarian of the department of agriculture. No animal may be sold or offered for sale at a public livestock market if the animal is injured, disabled, or diseased beyond recovery, or if such injury or disease permanently renders the animal unfit for human consumption. This subsection includes, but is not limited to, any animal with severe neoplasia, any animal that is unable to rise to its feet by itself, and any animal with obviously fractured long bones. If, in the judgment of an authorized veterinarian of the department, an animal presented at a public livestock market is injured, disabled, or diseased beyond recovery, the veterinarian shall humanely euthanize the animal or direct the consignor to 	<ul style="list-style-type: none"> No requirement that markets have written policies and equipment to handle nonambulatory animals. No prohibition on transporting nonambulatory animals to slaughter. No requirement that nonambulatory animals be segregated. No prohibition on the dragging of conscious downed animals. No description of acceptable euthanasia methods. <p>GRADE: D</p>

				<p>immediately remove the animal from the premises of the public livestock market. All expenses incurred for euthanasia and disposal of an animal are the responsibility of the consignor.</p> <ul style="list-style-type: none"> • The cost of euthanasia shall be determined annually by the Commissioner and posted at the livestock sale market and the Department. Said cost shall be borne by the owner. 	
Florida	Fla. Stat. 828.252	Unable to stand and walk unassisted	Cattle, calves, sheep, swine, horses, mules, goats, ostriches, rheas, emus, and any other domestic animal that can or may be used in the preparation of animal products, not including poultry and aquatic species	<ul style="list-style-type: none"> • A person may not buy, sell, give, receive, transfer, market, hold without providing proper care within 24 hrs, or drag any nonambulatory animal unless the animal has been humanely euthanized, except in cases where providing proper care requires animal be moved. 	<ul style="list-style-type: none"> • No prohibition on accepting nonambulatory animals for marketing. • No requirement that markets have written policies and equipment to handle nonambulatory animals. • No requirement that nonambulatory animals be promptly humanely euthanized or treated. • No prohibition on transporting nonambulatory animals to slaughter. • No requirement that nonambulatory animals be segregated. • No description of acceptable euthanasia methods. <p>GRADE: F</p>
Illinois	510 ILCS 70/7.5	Incapable of	Any animal	<ul style="list-style-type: none"> • No downed animal shall be sent 	<ul style="list-style-type: none"> • No requirement that markets

		walking without assistance		<p>to a stockyard, auction, or other facility where its impaired mobility may result in suffering. An injured animal may be sent directly to a slaughter facility.</p> <ul style="list-style-type: none"> • A downed animal sent to a stockyard, auction, or other facility in violation of this Section shall be humanely euthanized, the disposition of such animal shall be the responsibility of the owner, and the owner shall be liable for any expense incurred. • If an animal becomes downed in transit it shall be the responsibility of the carrier. • A downed animal shall not be transported unless individually segregated. 	<p>have written policies and equipment to handle nonambulatory animals.</p> <ul style="list-style-type: none"> • No prohibition on transporting nonambulatory animals to slaughter. • No requirement that nonambulatory animals be segregated. • No prohibition on the dragging of conscious downed animals. • No description of acceptable euthanasia methods. <p>GRADE: D</p>
Indiana	345 IAC 7-3.5-16	Unable to stand or walk without assistance	Domestic animals, except aquatic animals, fish, dogs, cats, poultry and other birds; however, includes ratites that are domestic animals	<ul style="list-style-type: none"> • Market facilities in Indiana may not accept delivery of nonambulatory livestock. Market facilities in Indiana may unload nonambulatory livestock for the purpose of euthanizing the livestock at the market facility. Market facilities must have written policies, procedures, and equipment in place to handle animals that become nonambulatory after delivery to the market facility. Livestock that becomes nonambulatory after arriving at a market facility must 	<ul style="list-style-type: none"> • No requirement that nonambulatory animals be promptly euthanized or treated. • No prohibition on transporting nonambulatory animals to slaughter. • No requirement that nonambulatory animals be segregated. • No prohibition on the dragging of conscious downed animals. • No description of acceptable euthanasia methods. <p>GRADE: D</p>

				be disposed of within twenty-four (24) hours of discovering or receiving notice of the animal's condition.	
Kansas	KSA 47-1008	Unable to rise to its feet by itself	Cattle, swine, sheep, goats, horses, mules, domesticated deer, and all creatures of the ratite family that are not indigenous to the state	<ul style="list-style-type: none"> • All livestock consigned and delivered on the premises of any public market, before being offered for sale, shall be inspected by a veterinarian. • If in the opinion of an accredited veterinarian an animal is unable to rise to its feet by itself the vet shall euthanize humanely the livestock or direct the consignor to immediately remove the livestock from premises of the market. • All expenses incurred for euthanasia and disposal of the livestock shall be the responsibility of the consignor. 	<ul style="list-style-type: none"> • No requirement that markets have written policies and equipment to handle nonambulatory animals. • No prohibition on transporting nonambulatory animals to slaughter. • No requirement that nonambulatory animals be segregated. • No prohibition on the dragging of conscious downed animals. • No description of acceptable euthanasia methods. <p>GRADE: D</p>
Maryland	15.11.17.03	Unable to rise even with assistance. Also, livestock, which, after being assisted to rise, cannot stand and walk without assistance	Cattle, swine, sheep, horses, asses, mules, or goats	<ul style="list-style-type: none"> • An operator of a livestock market may not accept downers for sale at its markets. In the case of livestock that become downers after acceptance for sale at the market the operator shall provide needed equipment for handling, moving, and if necessary euthanizing animals, separate and separately pen the livestock from healthy animals, and notify the Department [of Agriculture] that an animal has become a downer. 	<ul style="list-style-type: none"> • No requirement that animals becoming nonambulatory at market be promptly euthanized or treated. • No prohibition on transporting nonambulatory animals to slaughter. • No prohibition on the dragging of conscious downed animals. • No description of acceptable euthanasia methods. <p>GRADE: D</p>

	15.11.17.04			<ul style="list-style-type: none"> • At the close of a livestock sale, if any downers remain unsold, the market operator immediately shall euthanize the livestock as provided under 9 CFR 313 or place them in the care of a licensed veterinarian. • A person transporting downers from an auction market shall either: A. If transporting downers with healthy animals, segregate them from the healthy animals, using a rigid barrier; or B. transport downers in a separate vehicle from that used for healthy animals. 	
Massachusetts	Guideline only (MA Dept of Agricultural Resources, “Biosecurity for Livestock Auctions”)	No definition	Cattle	<ul style="list-style-type: none"> • Segregate and refuse entry to any downer animal. Inform state/federal personnel of their arrival. • Segregate any sick, injured or incompatible animal. • Any animals that “go down” shall be humanely euthanized and/or be removed to a nearby slaughtering facility. 	<ul style="list-style-type: none"> • No provision for unloading nonambulatory animals for purpose of euthanasia. • No requirement that markets have written policies and equipment to handle nonambulatory animals. • No prohibition on transporting nonambulatory animals to slaughter. • No prohibition on the dragging of conscious downed animals. • No description of acceptable euthanasia methods. <p>GRADE: D</p>
New Jersey	NJAC 2:8-2.6 (cattle), 2:8-6.6	As defined in 9 CFR 301.2	Cattle, small ruminants, pigs	<ul style="list-style-type: none"> • Nonambulatory animals shall be separated from ambulatory 	<ul style="list-style-type: none"> • No provision for unloading nonambulatory animals for

	(small ruminants), 2:8-7.6 (swine)			<p>animals.</p> <ul style="list-style-type: none"> • Nonambulatory animals shall not be dragged while conscious, except when necessary to provide life-saving treatment or when unconscious. • Disabled animals must be moved as safely as possible to avoid injury to the animal and handler. • Nonambulatory animals shall be provided appropriate medical care if they can reasonably be expected to survive and the owner chooses treatment. • Nonambulatory animals shall not be transported to a livestock market. • Proper medical care must be provided but nothing shall prohibit owners from providing medical care to their own animals. 	<p>purpose of euthanasia.</p> <ul style="list-style-type: none"> • No requirement that markets have written policies and equipment to handle nonambulatory animals. • No prohibition on transporting nonambulatory animals to slaughter. • No description of acceptable euthanasia methods. <p>GRADE: C</p>
Oregon	<p>ORS 167.310</p> <p>ORS 167.351</p>	Unable to stand or walk unassisted	<p>Ratites, psittacines, horses, mules, jackasses, cattle, llamas, alpacas, sheep, goats, swine, domesticated fowl and any fur-bearing animal bred and maintained commercially or otherwise, within</p>	<ul style="list-style-type: none"> • “Minimum care” for a livestock animal that cannot walk or stand without assistance is (a) humane euthanasia or (b) the provision of immediate and ongoing care to restore the animal to an ambulatory state. • A person commits the crime of trading in nonambulatory livestock if the person knowingly delivers or accepts delivery of a nonambulatory animal at a 	<ul style="list-style-type: none"> • No prohibition on transporting nonambulatory animals to slaughter. • No requirement that nonambulatory animals be segregated. • No prohibition on the dragging of conscious downed animals. • No description of acceptable euthanasia methods. <p>GRADE: C</p>

			pens, cages and hutches	livestock market. This does not apply to the delivery to, or acceptance by, a licensed veterinarian for the purpose of humanely euthanizing or providing medical care to the animal.	
Washington	RCW 16.36.116 RCW 16.52.225	Cannot rise from a recumbent position or cannot walk, including but not limited to those with broken appendages, severed tendons or ligaments, nerve paralysis, a fractured vertebral column, or metabolic conditions	Cattle, sheep, swine, goats, horses, mules, or other equine	<ul style="list-style-type: none"> Any person who knowingly transports or accepts delivery of live nonambulatory livestock to, from, or between any livestock market, feedlot, slaughtering facility, or similar facility that trades in livestock has committed a civil infraction and shall be assessed a monetary penalty not to exceed one thousand dollars. The transport or acceptance of each nonambulatory livestock animal is considered a separate and distinct violation. Livestock that was ambulatory prior to transport to a feedlot and becomes nonambulatory because of an injury sustained during transport may be unloaded and placed in a separate pen for rehabilitation at the feedlot. Nonambulatory livestock must be humanely euthanized before transport to, from, or between locations listed above. 	<ul style="list-style-type: none"> No provision for unloading nonambulatory animals for purpose of euthanasia. No requirement that markets have written policies and equipment to handle nonambulatory animals. No requirement that animals becoming nonambulatory at market be promptly euthanized or treated. No prohibition on the dragging of conscious downed animals. No description of acceptable euthanasia methods. <p>GRADE: D</p>
Wisconsin	ATCP 12.08	Any animal which is in a sitting or	Any animal	<ul style="list-style-type: none"> A person who receives, transports, or handles downer 	<ul style="list-style-type: none"> No prohibition on accepting nonambulatory animals for

		<p>prone position and cannot move to a normal standing or upright position under its own power, without application of inhumane stimulus</p>		<p>animals shall register with the department, and shall have adequate facilities and equipment for the humane transportation, handling and holding of the animals. Adequate facilities and equipment include separate holding pens, skids, mats, and sling-type hoisting equipment.</p> <ul style="list-style-type: none"> • Downer animals may not be dragged or pulled by the neck or other extremity, or subjected to any other mistreatment or abuse. Downer animals shall be confined in separate holding pens and shall be segregated from healthy animals when transported. A downer may not be held for more than 24 hrs by any market operator, animal dealer or animal trucker before the downer animal is shipped to slaughter. 	<p>marketing.</p> <ul style="list-style-type: none"> • No requirement that nonambulatory animals be promptly euthanized or treated. • No prohibition on transporting nonambulatory animals to slaughter. • No description of acceptable euthanasia methods. <p>GRADE: D</p>
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