



ANIMAL WELFARE INSTITUTE

Legal Protections for Nonambulatory (or “Downed”) Farm Animals

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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.

To our knowledge, Congress never received such a report, although the US Department of Agriculture (USDA) did complete an estimate of the number of nonambulatory cattle, sheep, and goats.² The Farm Security and Rural Investment Act also granted the 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

In early 2004, following the discovery in December 2003 of bovine spongiform encephalopathy (BSE or “mad cow disease”) 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 passing 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 cattle to be slaughtered was “inconsistent with both published regulations and public policy announcements.”⁵ The OIG documented 29 downed cattle slaughtered for food at 2 of 12 slaughter plants audited during a 10-month period.⁶ The OIG could find no documentation of acute injuries or fitness for consumption for these animals.⁷ Nevertheless, in July 2007, the USDA codified the nonambulatory loophole in a final rule.⁸

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, 2009.⁹ A loophole still existed, however. Young calves “unable to rise from a recumbent position and walk because they are tired or cold” could be held for slaughter.¹⁰ Because slaughter of these animals was permitted, slaughter plants had an incentive to get downed calves to rise, sometimes employing inhumane methods such as 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.¹¹

In February 2011, the USDA published a request for comments on two citizen rulemaking petitions the department received regarding the treatment of downed animals—one would remove the loophole regarding young calves and the other would apply the current prohibition on the slaughter of nonambulatory cattle to other species, including pigs, sheep, and goats.¹² In March 2013, the USDA announced that it would grant the first petition requesting that the department remove the regulatory provision allowing nonambulatory disabled veal calves to be held for possible slaughter.¹³ Also in March 2013, the USDA denied the second downed animal petition requesting that the department amend its antemortem inspection regulations to require that all nonambulatory animals be condemned and promptly and humanely euthanized.¹⁴ Several animal advocacy organizations submitted yet another rulemaking petition in June 2014, this one to prohibit the slaughter of nonambulatory disabled pigs.¹⁵

In May 2015, the USDA finally published a proposed rule removing the antemortem inspection provision that allows slaughter establishments to set apart and hold for treatment nonambulatory veal calves. Under the proposed rule, downed calves offered for slaughter would be condemned and promptly euthanized. In proposing the rule change, the USDA noted that prohibiting the slaughter of downed calves would improve compliance with the Humane Methods of Slaughter Act and its regulations.¹⁶ The rule was finalized in July 2016, at which time the USDA also amended a provision of the Federal Meat Inspection Act regulations that animal welfare advocates had feared could provide a loophole to the downed veal calf ban.¹⁷ The provision, which restricted antemortem inspection to animals in pens, could have allowed

downed veal calves on trucks to be set aside and offered for antemortem inspection at a later time.¹⁸ The USDA revised the regulation to allow antemortem inspection to take place on trucks, as well as in holding pens.¹⁹

Unfortunately, one loophole still remains that impedes proper enforcement of the downed cattle ban. In some cases, the USDA allows trucks carrying nonambulatory cattle to leave the premises of a slaughtering facility. This situation typically occurs at small independent slaughterhouses where the company does not own either the trucks or the animals they carry. As of 2019, the USDA is investigating the question of when an animal has been officially “offered for slaughter”—is it when the truck enters the slaughterhouse premises, or is it only after the animal has been unloaded?

In September 2019, the USDA denied the rulemaking petition submitted by several animal advocacy organizations in 2014 seeking to prohibit the slaughter of nonambulatory pigs. It denied the petition in conjunction with finalizing a new regulation on the “modernization of swine slaughter inspection.” According to the department, the Food Safety and Inspection Service “concluded its existing regulations and inspection procedures are sufficient and effective in ensuring that [nonambulatory disabled] pigs are handled humanely at slaughter and in preventing diseased animals from entering the human food supply.”²⁰

In February 2020, the petitioners sued the USDA for denying the petition and for failing to investigate and regulate the humane treatment of nonambulatory pigs as required by Congress in 2002.²¹ As of writing, the case is still ongoing after defendants’ motion to dismiss was denied in June 2021.²²

In conclusion, there are currently 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 applies only to cattle.

STATE LAW

Over the past two decades, several states have passed laws and/or regulations governing the treatment of nonambulatory animals (see tables, pages 5–20). 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.²³ 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.

INDUSTRY STANDARDS

Historically, nonambulatory animals have been most often associated with the dairy industry, as a consequence of some producers delaying slaughter to maximize productivity and profits. It has been speculated that a calcium-phosphorus imbalance (hypocalcemia), leading to milk fever, is a primary cause of downed dairy cows.²⁴ The National Milk Producers Federation (NMPF) standards recommend a written protocol and employee training for dealing with nonambulatory cattle.²⁵ If the downed animal can be successfully treated, the animal should be protected from further injury and provided with food, water, and protection from predators. If an animal becomes nonambulatory, the animal caretaker must determine immediately whether the animal is otherwise healthy and can be nursed back to health or cannot be saved.²⁶ Euthanasia is appropriate when an animal's quality of life is decreased or when pain and suffering cannot be alleviated.²⁷

The Livestock Marketing Association (LMA) has developed a guide to animal handling that covers in detail the treatment of nonambulatory animals at livestock markets or auctions in the United States. The guide's section on downed animals describes methods for moving nonambulatory animals, and offers handling guidelines to reduce the number of animals who become disabled.²⁸ LMA advises markets to have a clearly defined policy, which is posted for public viewing, and train their employees on the proper treatment of nonambulatory animals.²⁹ The LMA also recommends that markets make every effort not to accept or unload injured or disabled animals. If an animal goes down at a market and recovery is deemed unlikely, the LMA recommends immediate euthanasia.³⁰ Unfortunately, livestock markets may encounter difficulty contacting the seller of an animal to obtain permission for euthanasia, or the seller may choose to move the animal elsewhere.

INTERNATIONAL STANDARDS

The World Organisation for Animal Health (known by its French initials, "OIE") addresses the treatment of nonambulatory animals in several chapters within its Terrestrial Animal Code. Chapters addressing animal welfare in dairy cattle,³¹ beef cattle,³² and pig production systems³³ all recommend that nonambulatory animals not be transported unless absolutely necessary for diagnosis or treatment. The pig chapter advises humanely killing animals as soon as possible when treatment has failed or is not feasible, recovery is unlikely, or the animal is suffering severe pain that cannot be alleviated.³⁴ The OIE chapter on the transport of animals by land also addresses nonambulatory animals. It identifies animals "unfit to travel" as including (but not limited to) "those that are unable to stand unaided and bear weight on each leg. Animals found unfit to travel should not be loaded onto a vehicle, except for transport to receive veterinary attention, according to the OIE transport standard."³⁵

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

- All facilities shall maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care.
- If an animal becomes nonambulatory but continues to eat and drink, the producer shall provide food, water, a padded surface, shelter, and treatment under the guidance of a veterinarian. If the animal's condition is obviously irreversible, the animal shall be humanely and immediately euthanized. Cattle who do not regain the ability to stand within 24 to 48 hours shall be humanely euthanized.
- Before transport off the farm or feedlot, the producer shall evaluate each animal's fitness to travel. Nonambulatory animals shall not be moved off the premises unless for the purpose of receiving veterinary treatment.

- The following animals are at high risk for becoming nonambulatory and shall not be transported off the farm unless for the purpose of treatment: pregnant females for whom 90 percent or more of the expected gestation period has passed; females who have given birth in the previous week; and 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 have the necessary equipment for humanely moving downed animals.
- 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 in a humane manner 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 moved or 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, scooted, 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 persisting until death.

STATE LAWS/REGULATIONS GOVERNING THE TREATMENT OF NONAMBULATORY ANIMALS

AWI has analyzed existing state laws governing the handling of nonambulatory animals, using the recommended standards above. The results are presented in the table below (no relevant laws were found for the states not listed). Because each state codifies its requirements differently, the laws vary as to what conditions (e.g., disease, broken bones) qualify an animal for treatment as a nonambulatory animal.

Alaska

Statute/Regulation	Alaska Admin. Code tit. 18, §§ 36.520(i), 36.530(f)
Qualifying Condition(s)	Unable to move
Animals Covered	Cattle and other ruminants, pigs
Included Protections	<ul style="list-style-type: none"> - Nonambulatory disabled cattle and other animals unable to move shall be separated from ambulatory cattle for transport. - These animals may not be dragged while conscious, except if necessary to provide lifesaving treatment. - [Same language as above repeated for “swine” section of regulation]
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No prohibition on accepting nonambulatory animals for marketing - No requirement that markets have written policies and equipment to handle and humanely move nonambulatory animals - No requirement that nonambulatory animals be promptly and humanely euthanized or treated - No prohibition on transporting nonambulatory animals to slaughter - No description of acceptable euthanasia methods
Grade	D

California

Statute/Regulation	CAL. PENAL CODE § 599f
Qualifying Condition(s)	Unable to stand and walk without assistance
Animals Covered	Cattle, swine, sheep, or goats
Included Protections	<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 dealer.* - Euthanasia shall be performed by a mechanical, chemical, or electrical means that rapidly and effectively renders the animal insensitive to pain. - No slaughterhouse shall process, butcher, or sell meat or products of nonambulatory animals for human consumption. - No person shall sell, consign, or ship any nonambulatory animal for the purpose of delivering a nonambulatory animal to a slaughterhouse, stockyard, auction, market agency, or dealer. <p><i>*Application of this provision to animals other than cattle when on the grounds of a federal slaughterhouse, or to animals other than cattle for sale at a federal slaughterhouse, was voided by a January 2012 US Supreme Court decision. Nat'l Meat Ass'n v. Harris, 565 U.S. 452, 132 S. Ct. 965 (2012)</i></p>
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No provision for unloading nonambulatory animals for purpose of euthanasia - No requirement that markets have written policies and equipment to handle and humanely move nonambulatory animals - No requirement that nonambulatory animals be segregated
Grade	B

Colorado

Statute/Regulation	COLO. REV. STAT. ANN. § 35-55-11(4); 8 COLO. CODE REGS § 1201-13
Qualifying Condition(s)	Any animal that is unable to rise to its feet by itself, and any animal with obviously fractured long bones
Animals Covered	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
Included Protections	<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 Colorado 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 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.
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No requirement that markets have written policies and equipment to handle and humanely move 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
Grade	D

Florida

Statute/Regulation	FLA. STAT. § 828.252; FLA. STAT. § 588.13
Qualifying Condition(s)	Unable to stand and walk unassisted
Animals Covered	All animals of the equine, bovine, or swine class, including goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals
Included Protections	<ul style="list-style-type: none"> - A person may not buy, sell, give, receive, transfer, market, hold without providing proper care within 24 hours, or drag any nonambulatory animal unless the animal has been humanely euthanized, except in cases where providing proper care requires that the animal be moved.
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No prohibition on accepting nonambulatory animals for marketing - No requirement that markets have written policies and equipment to handle and humanely move nonambulatory animals - No requirement that nonambulatory animals be promptly and 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
Grade	F

Illinois

Statute/Regulation	510 ILL. COMP. STAT. 70/7.5; 510 ILL. COMP. STAT. 70/2.01
Qualifying Condition(s)	Incapable of walking without assistance
Animals Covered	Any animal
Included Protections	<ul style="list-style-type: none"> - No downed animal shall be sent to a stockyard, auction, or other facility where its impaired mobility may result in suffering. An injured animal, other than an equine, may be sent directly to a slaughter facility. - A downed animal sent to a stockyard, auction, or other facility in violation of § 7.5 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.
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No requirement that markets have written policies and equipment to handle and humanely move 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 animal - No description of acceptable euthanasia methods
Grade	D

Indiana

Statute/Regulation	345 Ind. Admin. Code 7-3.5-16(b); 345 Ind. Admin. Code 7-3.5-2; Ind. Code Ann. § 15-17-2-47
Qualifying Condition(s)	Unable to stand or walk without assistance
Animals Covered	Domestic animals, except aquatic animals, fish, dogs, cats, poultry and other birds (however, domesticated ratites—e.g., ostriches, emus, rheas—are covered)
Included Protections	<ul style="list-style-type: none"> - Market facilities in Indiana <ul style="list-style-type: none"> - may not accept delivery of nonambulatory livestock. - may unload nonambulatory livestock for the purpose of euthanizing the livestock at the market facility. - 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 be disposed of within 24 hours of discovering or receiving notice of the animal's condition.
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No requirement that markets have written policies and equipment to handle and humanely move nonambulatory animals - 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
Grade	D

Kansas

Statute/Regulation	KAN. STAT. ANN. § 47-1008(A)(4)-(B); KAN. STAT. ANN. § 47-1001
Qualifying Condition(s)	Infected with a disease that permanently renders it unfit for human consumption, has severe neoplasia, has severe actinomycosis, is unable to rise to its feed by itself, or has an obviously fractured long bone or dislocation of a joint that renders the livestock unable to bear weight on the affected limb without collapsing
Animals Covered	Cattle, bison, swine, sheep, goats, horses, mules, domesticated deer, camelids, domestic poultry, domestic waterfowl, and all creatures of the ratite family that are not indigenous to the state, including, but not limited to, ostriches, emus, and rheas
Included Protections	<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 the premises of the market. - All expenses incurred for euthanasia and disposal of the livestock shall be the responsibility of the consignor. - Livestock shall not be offered for sale or sold at any licensed public livestock market if such livestock . . . is unable to rise to its feet by itself; or has an obviously fractured long bone or other fractures or dislocation of a joint that renders the livestock unable to bear weight on the affected limb without that limb collapsing.
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No requirement that markets have written policies and equipment to handle and humanely move 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
Grade	D

Kentucky

Statute/Regulation	302 Ky. Admin. Regs. 21:020(5)(1)-(5); 302 Ky. Admin. Regs. 21:001(7)
Qualifying Condition(s)	Being unable to rise from a recumbent position or being unable to walk
Animals Covered	Livestock and poultry
Included Protections	<ul style="list-style-type: none"> - The responsible party must provide appropriate protection from other animals, predators, and weather extremes as required by the condition of the animal. - The animals must have access to water, and if maintained longer than 24 hours, access to feed. - Handling and moving of the animal must be done in a way that minimizes the risk of additional distress. - The animal can only be loaded for transport to a terminal market or for treatment. - If the animal is in severe distress with an irreversible condition it must be euthanized.
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No requirement that markets have written policies and equipment to handle and humanely move 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 - 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 accepting nonambulatory animals for marketing
Grade	D

Maryland

Statute/Regulation	MD. CODE REGS. 15.11.1703; MD. CODE. REGS. 15.11.1702; MD. CODE. REGS. 15.11.1704
Qualifying Condition(s)	Unable to rise even with assistance or, after being assisted to rise, cannot stand and walk without assistance
Animals Covered	Cattle, swine, sheep, horses, asses, mules, or goats
Included Protections	<ul style="list-style-type: none"> - An operator of a livestock market may not accept downed animals for sale at its markets. - In the case of livestock that become downed 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 downed animal. - At the close of a livestock sale, if any downed animals remain unsold, the market operator immediately shall euthanize the livestock as provided under 9 C.F.R. § 313 or place them in the care of a licensed veterinarian. - A person transporting downed animals from an auction market shall either, (1) if transporting downed animals with healthy animals, segregate them from the healthy animals, using a rigid barrier, or (2) transport downed animals in a separate vehicle from that used for healthy animals.
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No requirement to promptly euthanize or treat animals that have become nonambulatory at market - No prohibition on transporting nonambulatory animals to slaughter - No prohibition on the dragging of conscious downed animals - No description of acceptable euthanasia methods
Grade	D

Massachusetts

Statute/Regulation	Guideline only (MA Dept of Agricultural Resources, “Biosecurity for Livestock Auctions”)
Qualifying Condition(s)	No definition
Animals Covered	Cattle
Included Protections	<ul style="list-style-type: none"> - Segregate and refuse entry to any downed 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 removed to a nearby slaughtering facility.
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No provision for unloading nonambulatory animals for purpose of euthanasia - No requirement that markets have written policies and equipment to handle and humanely move 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
Grade	D

New Jersey

Statute/Regulation	N.J. ADMIN. CODE § 2:8-2.6(A)-(c) (cattle), N.J. ADMIN. CODE § 2:8-6.6(A)-(c) (small ruminants), N.J. ADMIN. CODE § 2:8-7.6(A)-(c) (swine)
Qualifying Condition(s)	As defined in 9 C.F.R. § 301.2
Animals Covered	Cattle, small ruminants, pigs
Included Protections	<ul style="list-style-type: none"> - Nonambulatory animals shall be separated from ambulatory animals. - 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.
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No provision for unloading nonambulatory animals for purpose of euthanasia - No requirement that markets have written policies and equipment to handle and humanely move nonambulatory animals - No prohibition on transporting nonambulatory animals to slaughter - No description of acceptable euthanasia methods
Grade	C

Ohio

Statute/Regulation	OHIO ADMIN. CODE 901:12-4-01–12-4-04; OHIO ADMIN. CODE 901:12-3-01(B)
Qualifying Condition(s)	Unable to rise from a recumbent position or cannot walk
Animals Covered	Livestock
Included Protections	<ul style="list-style-type: none"> - Nonambulatory disabled livestock must be (1) cared for and provided feed and water, (2) provided necessary treatment, (3) transported for treatment, (4) slaughtered on the farm using an acceptable method of euthanasia, (5) transported to an inspected slaughter plant (except cattle), or (6) euthanized using an acceptable method if animal is in distress and condition is irreversible. - Handling of nonambulatory disabled livestock must be done in a humane manner. - If nonambulatory disabled livestock are at a nonterminal market or collection facility, and there is no option for immediate sale, animal must either be released by authorization from the department or euthanized (exceptions for fatigued pigs and calves unable to rise due to being tired or cold). - Nonambulatory disabled livestock must not be loaded for transport to a nonterminal market or collection facility.
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No provision for unloading nonambulatory animals for purpose of euthanasia - No requirement that markets have written policies and equipment to handle and humanely move nonambulatory animals - No requirement that nonambulatory animals be segregated - No prohibition on transporting nonambulatory animals to slaughter (other than cattle)
Grade	C

Oregon

Statute/Regulation	OR. REV. STAT., § 167.310, OR. REV. STAT., § 167.351; OR. REV. STAT., § 609.125
Qualifying Condition(s)	Unable to stand or walk unassisted
Animals Covered	Ratites, psittacines (parrots), horses, mules, jackasses, cattle, llamas, alpacas, sheep, goats, swine, domesticated fowl, and any fur-bearing animal bred and maintained commercially or otherwise, within pens, cages, and hutches
Included Protections	<ul style="list-style-type: none"> - “Minimum care” for a livestock animal that cannot walk or stand without assistance is either (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 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.
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No requirement that markets have written policies and equipment to handle and humanely move 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
Grade	C

Rhode Island

Statute/Regulation	Not codified in law or regulation. Requirements can be found within <i>Livestock Welfare and Care Standards</i> adopted by Rhode Island’s Livestock Welfare and Care Standards Advisory Council.
Qualifying Condition(s)	Unable to rise from a recumbent position or cannot walk
Animals Covered	Bovine, equine, caprine (goat), ovine (sheep), swine, poultry, or other animal that is raised for production of food or fiber, or is used for work, commerce, or exhibition
Included Protections	<ul style="list-style-type: none"> - Nonambulatory livestock must be <ul style="list-style-type: none"> · cared for and provided feed and water; · provided necessary treatment; · transported for treatment; · slaughtered on the farm using an acceptable method of euthanasia; · transported to an inspected slaughter plant or a state custom exempt plant (except for cattle); or · euthanized using acceptable method of euthanasia if the animal is in distress and the condition is irreversible. - Nonambulatory livestock must not be loaded for transport to a nonterminal market or a collection facility. - Responsible party must provide appropriate protection from other livestock, predators, and adverse weather conditions.
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No provision for unloading nonambulatory animals for purpose of euthanasia (other than cattle) - No requirement that markets have written policies and equipment to handle and humanely move nonambulatory animals - No prohibition on transporting nonambulatory animals to slaughter (other than cattle) - No prohibition on the dragging of conscious downed animals
Grade	C

Washington

Statute/Regulation	WASH. REV. CODE § 16.36.116, WASH. REV. CODE § 16.52.225
Qualifying Condition(s)	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
Animals Covered	Cattle, sheep, swine, goats, horses, mules, or other equine
Included Protections	<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 any livestock market, feedlot, slaughtering facility or similar facility that trades in livestock.
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No provision for unloading nonambulatory animals for purpose of euthanasia - No requirement that markets have written policies and equipment to handle and humanely move 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
Grade	D

Wisconsin

Statute/Regulation	Wis. ADMIN. CODE ATCP § 12.08; Wis. ADMIN. CODE ATCP § 12.01; Wis. Admin. Code ATCP § 12.04; Wis. Admin. Code ATCP § 12.045; Wis. Admin. Code ATCP § 12.07
Qualifying Condition(s)	Any animal that is in a sitting or prone position and cannot move to a normal standing or upright position under its own power, without application of inhumane stimulus
Animals Covered	Any animal
Included Protections	<ul style="list-style-type: none"> - A person who receives, transports, or handles downed animals shall register with the Department of Agriculture, and shall have adequate facilities and equipment for the humane transportation, handling, and holding of the animals. - Downed animals may not be dragged or pulled by the neck or other extremity, or subjected to any other mistreatment or abuse. - Downed animals shall be confined in separate holding pens and shall be segregated from healthy animals when transported. - A downed animal may not be held for more than 24 hours by any market operator, animal dealer, or animal trucker before the downed animal is shipped to slaughter.
Omitted Protections	<ul style="list-style-type: none"> - No requirement that all farm facilities maintain the necessary staff and equipment to humanely move nonambulatory animals to a location that will permit segregation from other animals, treatment, and nursing care - No requirement that markets have written policies and equipment to handle and humanely move nonambulatory animals - No prohibition on accepting nonambulatory animals for marketing - No requirement that nonambulatory animals be promptly euthanized or treated - No prohibition on transporting nonambulatory animals to slaughter - No description of acceptable euthanasia methods
Grade	D

OTHER REPORTS IN THIS SERIES

- [Legal Protections for Animals on Farms](#)
- [Legal Protections for Farm Animals During Transport](#)
- [Legal Protections for Farm Animals at Slaughter](#)

1. The federal 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 any other transport-related conditions. See 49 U.S.C. § 80502 (1994) (limiting transport to no more than “28 consecutive hours without unloading the animals for feeding, water, and rest”).

2. NAT'L AGRIC. STATS. SERV., U.S. DEP'T OF AGRIC., NONAMBULATORY CATTLE AND CALVES 1-4 (2005); NAT'L AGRIC. STATS. SERV., U.S. DEP'T OF AGRIC., NONAMBULATORY SHEEP AND GOATS 1-3 (2006).

3. 7 U.S.C. § 1907(b) (2002).

4. See generally Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle, 69 Fed. Reg. 1862 (proposed Jan. 12, 2004) (to be codified at 9 C.F.R. pt. 309, 310, 311, 318, 319).

5. OFFICE OF INSPECTOR GEN., U.S. DEP'T OF AGRIC., AUDIT REPORT: ANIMAL AND PLANT HEALTH INSPECTION SERVICE BOVINE SPONGIFORM ENCEPHALOPATHY (BSE) SURVEILLANCE PROGRAM – PHASE II AND FOOD SAFETY AND INSPECTION CONTROLS OVER BSE SAMPLING, SPECIFIED RISK MATERIALS, AND ADVANCED MEAT RECOVERY PRODUCTS – PHASE III 67 (2006).

6. *Id.*

7. *Id.*

8. 9 C.F.R. § 310.22 (2007).

9. See generally Requirements for the Disposition of Cattle that Become Non-Ambulatory Disabled Following Ante-Mortem Inspection 72 Fed. Reg. 11463 (Mar. 18, 2009) (to be codified at 9 C.F.R. pt. 309); see also 9 C.F.R. § 309.1 (2016).

10. Compare 9 C.F.R. § 309.13(b) (2007); with 9 C.F.R. § 309.13(b) (2016).

11. See FOOD SAFETY & INSPECTION SERV., U.S. DEP'T OF AGRIC., QUARTERLY ENFORCEMENT: OCTOBER 1, 2009 THROUGH DECEMBER 31, 2009 30 (2010), https://www.fsis.usda.gov/wps/wcm/connect/20741913-2fc8-484b-addc-8b1b0529ae14/QR_Q1_FY10_Tables1-19.pdf?MOD=AJPERES.

12. Non-Ambulatory Disabled Veal Calves and Other Non-Ambulatory Disabled Livestock at Slaughter; Petitions for Rulemaking, 76 Fed. Reg. 6572 (proposed Feb. 7, 2011) (to be codified at 9 C.F.R. pt. 309).

13. See Food Safety & Inspection Serv., *Petitions*, U.S. DEP'T AGRIC., <https://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/petitions> (last visited June 15, 2017) (showing that FSIS granted the Humane Society of the United States' petition to repeal the loophole for veal calves in 9 C.F.R. § 309.13(b)).

14. See *id.* (demonstrating that FSIS denied Farm Sanctuary's petition to amend 9 C.F.R. § 309(e) on March 13, 2013).

15. See FARM SANCTUARY ET AL., PETITION FOR RULEMAKING TO AMEND THE ANTE-MORTEM INSPECTION REGULATIONS TO PROHIBIT THE SLAUGHTER OF NON-AMBULATORY DISABLED PIGS (June 3, 2014), <https://awionline.org/sites/default/files/uploads/documents/fa-nadpigpetition-062014.pdf>.

16. Requirements for the Disposition of Non-Ambulatory Disabled Veal Calves, 80 Fed. Reg. 27269 (May 13, 2015) (to be codified at 9 C.F.R. pt. 309).

17. See Requirements for the Disposition of Non-Ambulatory Disabled Veal Calves, 81 Fed. Reg. 46,577 (July 18, 2016) (to be codified at 9 C.F.R. pt. 309).

18. *Id.*

19. *Id.* at 46,570.

20. Modernization of Swine Slaughter Inspection, 84 Fed. Reg. 52315 (Oct. 1, 2019).

21. First Amended Complaint, Farm Sanctuary v. U.S. Dep't of Agric., No. 20-06081 (W.D.N.Y. Feb. 6, 2020) <https://awionline.org/sites/default/files/uploads/documents/FAC-NAD-Pig-Lit.pdf>.

22. Decision and Order Denying Motion to Dismiss for Lack of Jurisdiction, Farm Sanctuary v. U.S. Dep't of Agric., No. 20-06081 (W.D.N.Y. June 28, 2021) <https://awionline.org/sites/default/files/uploads/documents/Order-Denying-MTD-Downed-Pigs.pdf>.

21. In 2012 the US Supreme Court struck down certain provisions of California's downed animal law dealing with the handling of nonambulatory pigs at federally inspected slaughterhouses and the sale of nonambulatory pigs on the premises of federally inspected slaughterhouses, arguing that the California law is preempted by the Federal Meat Inspection Act. *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452, 468 (2012). As a consequence, restricting the slaughter of nonambulatory animals other than cattle at federally inspected slaughterhouses will require amendment of the FMIA through federal legislation or regulation.

23. BERNARD E. ROLLIN, FARM ANIMAL WELFARE: SOCIAL, BIOETHICAL, AND RESEARCH ISSUES, 106 (1995).

24. *Id.*

25. National Milk Producers Fed., *National Dairy Farm Animal Care Reference Manual Version 4*, 71-77 (2020).

26. *Id.* at 80.

27. *Id.*

28. Livestock Mktg. Ass'n, Guide to Animal Handling: Employee Training for Livestock Auction Markets, 6-8 (2018).

29. *Id.* at 6.

30. *Id.* at 7.

31. World Org. for Animal Health [OIE] Terrestrial Animal Health Code, Chapter 7.11.7 (2018).

32. World Org. for Animal Health [OIE] Terrestrial Animal Health Code, Chapter 79.5 (2018).

33. World Org. for Animal Health [OIE] Terrestrial Animal Health Code, Chapter 7.13.24 (2018).

34. *Id.*

35. *Id.* at Chapter 73.7.