

July 2, 2003

BY FACSIMILE AND EXPRESS MAIL

Dr. Nancy Halpern, Director
New Jersey Department of Agriculture
Division of Animal Health
P.O. Box 330
Trenton, NJ 08625

**Re: The Humane Treatment of Domestic Livestock; Proposed New Rule:
N.J.A.C. 2:8**

Dear Dr. Halpern:

On behalf of the 32,000 New Jersey supporters of the American Society for the Prevention of Cruelty to Animals (ASPCA), I am writing to respectfully urge you to revise the Department of Agriculture's proposed humane standards. It is the considered opinion of the experts¹ we have consulted that, in their present form, the proposed standards do not satisfy the terms of N.J.S.A. 4:22-16.1(a), which directed the promulgation of these standards in order to ensure the humane treatment of New Jersey's farm animals.

As you know, farming operations throughout this country regularly employ intensive confinement systems that prevent animals from moving freely or engaging in normal activity. Housed in small, barren cages and stalls, animals such as pigs, chickens, dairy cows, and veal calves cannot exercise, turn around, or engage in other natural behaviors. As a result, they are subject to an array of physical and emotional problems, including joint disorders, lameness, bone weakness, chronic stress, and depression. Further, animals' body parts are often altered and their diets manipulated both to prevent injury due to aggression among the closely confined animals and also to maximize production. In addition, the extreme confinement of so many animals, the improper nature of the housing, and the absence of incentives for employees to handle the animals carefully, make injury more likely when the animals are ultimately collected for transport to slaughter.

Unfortunately, the proposed standards, as drafted by the Department, would do little to change the lives of factory-farmed animals and certainly would not result in their humane treatment or protection from abuse and neglect. Although the Department is to be commended for calling for

¹ Andrew G. Lang, D.V.M.; Stephen Zawistowski, Ph.D.; Adele Douglass, Executive Director, Humane Farm Animal Care.

the individual assessment of each animal's health (rather than the averaging of the health of animals in a group), the standards are otherwise unacceptably vague – rendering enforcement unlikely if not impossible – inconsistent, and excessively permissive. Indeed, in many cases, they expressly sanction practices that constitute animal cruelty and are thus clearly at odds with the legislative intent underlying the enabling statute.

The following represents a comprehensive, albeit not exclusive, statement of the areas in which the proposed humane standards do not satisfy the terms of N.J.S.A. 4:22-16.1(a), which, again, was enacted to ensure the humane treatment of New Jersey's farm animals:

General Provisions

- As noted above, the proposed standards require that the health of each species – cattle, small ruminants (e.g., sheep, goats), horses, swine, fowl, rabbits – be assessed individually. This is a necessary and beneficial requirement as long as the intent is to protect the animal and is not used to excuse unacceptable body condition scores or detrimental feeding and watering practices. Unfortunately, almost immediately after stating this requirement, the proposed standards render it essentially meaningless by permitting body condition scores and feeding and watering practices wholly insufficient to ensure animal health.

Feeding

- The proposed standards for cattle, horses, and swine would permit their body condition to be assessed on the basis of weight. However, in general, weight cannot be used as an indicator of body condition without comparison to standards for age, breed, etc. Only through the examination of muscling and fat cover of representative body regions (e.g., body condition scoring) can body condition be individually assessed as the proposed standards require.
- Under the proposed standards, cattle, horses, and swine may be maintained at an unacceptably low level both while on the farm, where a BCS of 2.0 is permitted, and also at market, where a BCS of 1.0 is permitted. It is worth noting here that for horses, a score of 1.0 is characterized as “poor,” and the description includes phrases such as “ribs easily visible” and “prominent backbone.” For swine, a score of 1.0 is considered “emaciated.” This rule is in clear conflict with the legislature's wish to provide for the humane treatment of farm animals.
- According to the proposed standards, the body condition of birds and small ruminants need only be “adequate.” This rule is vague and unenforceable, even if applied on an individual level (as opposed to averaging the group).
- No mention is made in the proposed standards of the need for each animal to have sufficient room while eating in order to prevent conflict.

Watering

- Under the proposed standards, the animals need only be provided with water “in sufficient quantity and quality to satisfy [their] physiologic needs as evidenced by...hydration status.” Hydration status can be estimated in a number of ways, but the only one readily available to caretakers, animal control officers, or livestock inspectors is physical examination, which requires knowledge, is partly subjective, and will not detect mild dehydration. For all species, the standards should, at the very least, establish a minimum frequency of watering and amount per body weight. This is especially important for horses, as they are particularly sensitive to inadequate water, a significant risk factor for colic. National Research Council guidelines can be used to establish appropriate minimums.

Keeping

- The proposed standard requiring that each of the covered species be given “relief from elements... that result in detrimental hyperthermia or hypothermia is too vague. Guidance must be provided on the warning signs (e.g., hazardous body temperatures) that might indicate the onset of these conditions. For example, in horses, sustained rectal temperatures over 104 degrees Fahrenheit or transient temperatures over 106 degrees Fahrenheit would be dangerously elevated.
- The proposed standard concerning appropriate shelter size – most notably for cattle, horses, small ruminants, and swine – are also insufficient. In addition to being able “to stand, lie down, get up, rest, and move [their] head[s] freely,” all animals should specifically be afforded sufficient space to turn around completely, as well as the freedom to do so. In this regard, the proposed standards’ express sanctioning of sow gestation crates and the tethering of cattle and horses, and its implicit sanctioning of veal crates, are wholly unacceptable.

With respect to horses, in particular, the proposed rule that “[h]orses not in transit may be tied...for 12 hours if feed and water are not available and for longer periods of time if feed and water are offered at reasonable intervals and the horses can lie down safely” could potentially allow horses to be tethered indefinitely as long as they are fed and watered more than twice a day. Further, it would be difficult for a tethered horse to “lie down safely” given that a tether long enough for a horse to lie down completely (lateral recumbency) would be dangerous due to the risk of leg entanglement, while one only long enough to allow sternal recumbency would not permit a horse to lie flat, thus preventing deep REM sleep. Although a horse’s requirement for REM sleep is less than that of other species, it is needed. Moreover, movement is essential to a horse’s physical and behavioral health. Thus, horses should not be tied except briefly for a specific purpose, especially when they lack proximity, or at least visual access, to other horses.

As to the appropriate water intake for horses not in transit, adequate water is essential to the health of any animal, and especially to that of the horse. Although horses in the wild may not have access to water for prolonged periods during the day, they are almost constantly moving and eating grass, which has a much higher water content than hay. Consequently, water should be available to them more frequently than every twelve hours, whether in transit or not.

Regarding the tethering of veal calves and their confinement in crates, it is worth observing that calves raised in group pens – and thus permitted sufficient space to turn around – do not simply fail to exhibit signs of stress but in fact demonstrate affirmative signs of contentment such as engagement in group play. This may be due to the “contact comfort” and concomitant reduction in stress that they experience when housed in a group. By contrast, calves housed in veal crates suffer from both leg and joint problems – making walking difficult – as well as chronic stress. Not only do they require approximately five times more medication than calves living in more spacious conditions, they also generally display abnormal coping behaviors associated with frustration such as head tossing, head shaking, kicking, scratching, and stereotypical chewing behavior.

Finally, as mentioned in the above comments on the proposed feeding standards, sufficient space must be required such that animals may eat unharassed by other animals.

- The proposed standards are too vague regarding the nature of the “sharp objects or debris” to be “minimized” in an animal’s environment, stating only that they should pose an “actual threat” to animal health. The phrase “actual threat” should be better defined to preclude the possibility that animals would first have to be injured before action is taken by caretakers, animal control officers, or livestock inspectors.

Marketing and Sale (Transport)/Exceptions

- The proposed standards require that all animals be transported “with minimal delay.” This phrase should be defined and, in particular, distinguished from transport with adequate rest stops for rest and watering. As currently written, this proposed rule could be interpreted to the animals’ detriment and thus to minimize the number of stops during transport.
- Similarly, the requirement that animals be “handled (loaded and off-loaded) and transported in a manner that minimizes injury, illness, and death” is much too vague, generally failing to clarify what a satisfactory outcome would be (e.g., ratio of healthy to injured animals), and how this outcome could be achieved. For example, the standards should require that birds be caught and carried by both legs.
- The proposed standards explicitly allow the transport of “downer” cattle, small ruminants, and swine. Unquestionably, this practice is inhumane and should be clearly proscribed. Instead, it should be required that all animals either be treated by a veterinarian or be humanely euthanized.

- During transport, as on the farm, the proposed standards require that animals be given “relief from elements...that result in detrimental hyperthermia or hypothermia.” Again, this proposed rule is too vague, and guidance must be provided on the warning signs (e.g., hazardous body temperatures) that might indicate the onset of these conditions. Likewise, the phrase “adequate ventilation” – an additional requirement for animals during transport – should be clarified, as should the meaning of the requirement that “consideration shall be given to minimize exposure of poultry...to excessive solar radiation and excessive precipitation.”
- The proposed standards permit the excessive withholding of food and water both prior to and during transport. In accordance with the Humane Slaughter Act, 9 C.F.R. §313.2, all of the species addressed in the proposed standards except birds (which are not covered by the federal law) may be deprived of food for up to twenty-four hours while confined in holding cages and pens. The proposed standards allow birds to be so deprived but mistakenly reference the federal law as justification.

In addition, the proposed standards adhere to the terms of the Twenty-Eight Hour Law, 49 U.S.C. §80502, permitting transport (except by air, water, and possibly trucks, which are not regulated) of all of the species addressed in the proposed standards except birds (which, again, are not covered by the federal law) for up to twenty-eight hours without their receiving food or water. The proposed standards allow birds to be so deprived in this case as well but again mistakenly reference the federal law as justification.

Also in accordance with the Twenty-Eight Hour law, sheep may be confined for an additional eight consecutive hours when the twenty-eight hour period of confinement ends at night, and all of the animals may be confined for thirty-six consecutive hours upon the request of the owner or the person having custody of the animals.

Thus, the proposed standards would conceivably allow animals to be held in a pen or cage without food for twenty-four hours, followed by twenty-eight hours without either food or water. In the case of horses, who, under the proposed standards “must be transported in a manner that complies with the Commercial Transportation of Equines to Slaughter Act, 9 C.F.R. §88” – which requires that horses receive food and water for not less than six consecutive hours before transport – such an occurrence would clearly be in conflict with this Act and would constitute cruelty. In fact, even with six-hour pre-loading access to food and water, some horses will become dehydrated after twenty-eight hours in transit, and twenty-five to twenty-eight hours in transit is associated with twelve percent morbidity. Further, horses, unlike humans, secrete stomach acid continuously and are thus prone to gastric ulceration with infrequent feeding. Indeed, research has shown that three days of feeding every twenty-four hours can induce ulcers. For all of these reasons, horses, at a minimum, should have ready access to clean stores of hay most of the time.

Care and Treatment

- The proposed standards expressly permit inhumane industry practices such as the tail docking of dairy cows and the forced molting of egg-laying hens, both of which should be proscribed.
- Equally inadequate is the proposed standards' requirement that "medical care and treatment" and various "routine husbandry practices" – such as branding and castration – be performed only "in a sanitary manner by a knowledgeable individual and in such a way as to minimize pain." This rule is too permissive and employs dangerously vague and relative terms (e.g., "knowledgeable," "minimize"). If a procedure does not necessarily require the services of a veterinarian, the standards should make clear what can be done and at what ages.

Similarly, the directives that horses be given "proper hoof care," and that, in particular, "all horses for public hire" be given "routine hoof care," are too vague. "Routine" and "proper" should be defined, or guidelines provided (e.g., "proper hoof care may include but is not limited to trimming and shoeing as recommended by a licensed farrier at six to eight week intervals").

- The rule applied to each species that sick, injured, and dead animals must be removed from contact with live animals within twenty-four hours is also much too permissive. The time frame should be reduced, for example, where a carcass poses a health risk to other animals.

Investigation/Enforcement

- The proposed standards allow "any interested party" to "request training on how to interpret" the standards and do not make such training mandatory. This proposed rule would work at cross purposes with the legislature's explicit interest in seeing farm animals treated humanely. Instead, training should be required not only for farm animal owners/custodians, but also for any driver of an animal transport vehicle or any individual present in the vehicle for the purpose of animal transport, given that under the proposed standards, they would be responsible for the welfare of animals during transport.
- The proposed standards inappropriately require the performance of various biosecurity measures, including comprehensive cleaning and disinfecting, at the commencement of every investigation, whether applicable or not. These measures should instead be discretionary, with greater concern shown for the preservation of evidence.
- The proposed standards state that cruelty complaints may be rejected and thus not investigated if they "fail to provide sufficient information" concerning the date of the observed acts; the identifying characteristics of the animals at issue; the animals' location at the time of the incident and current location, if different; and the nature of the alleged

cruelty. However, while the desire for complete information is understandable, and every effort should be made to obtain it, the lack thereof should not serve as a bar to an investigation and ensuring that the animals are treated humanely.

- The proposed rule permitting a Certified Livestock Investigator (CLI) to “appoint a representative of his choosing for the limited purpose of making a specific inspection on behalf of the CLI” would likely result in the performance of inspections by untrained individuals, placing in jeopardy millions of animals.
- The proposed standards require investigators to “make reasonable efforts to contact” individuals against whom a cruelty complaint has been lodged unless “emergent circumstances require that the inspection occur immediately.” Although this rule confers some discretion on an investigator to determine whether consent or a warrant should be sought at the outset, it should be revised to make this discretion more evident and place the warrant option in a more favored position.
- Unlike New Jersey’s animal anti-cruelty law, and unless there is a “severe violation” that is continuing, the proposed standards do not permit the seizure of animals, only their quarantine on the premises of the individual against whom a cruelty complaint has been made. Both to safeguard the animals’ well-being, and also to preserve the evidence that the animals may embody, seizure must be permitted.
- The respective definitions of “minor violation” and “severe violation” – the chief distinction being whether an animal’s life has been placed in “imminent peril” – inure only to the defendant’s benefit, as even the most inhumane act could result in no more than a written warning on the first offense as long as an animal’s life is not so imperiled. Further, the phrase “imminent peril” is itself ambiguous and could be construed to exclude many situations where the risk to an animal’s life is real but can be counted only in days, for example, not seconds.

Moreover, under the proposed standards, only inspections conducted by the State Veterinarian would necessarily result in a written warning/notice that “also include[s] corrective measures to be taken [by the defendant] to achieve compliance with the standards....” This rule should be revised to provide for the inclusion of corrective measures in any investigator’s written warning.

- Where there has been a severe, continuing violation, investigators should not simply have the discretion to invoke any and all steps authorized by the animal anti-cruelty statute (e.g., feeding/watering, seizure), but should be required to do so. Indeed, this should be mandatory whether the severe violation is continuing or not.

Given that compliance with the proposed standards would preclude a cruelty charge under New Jersey’s animal anti-cruelty law, it is absolutely essential that they be revised so that they neither sanction cruel animal husbandry practices nor remain so vague or elastic as to be meaningless. Instead, I again respectfully request that the Department of Agriculture ensure that the proposed

standards do, in fact, provide for the humane treatment of New Jersey's farm animals in accordance with the intent of the New Jersey legislature.

Yours truly,

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