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What about Wilbur? Proposing a Federal Statute to Provide Minimum Humane Living Conditions for Farm Animals Raised for Food Production

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WHAT ABOUT WILBUR? PROPOSING A FEDERAL STATUTE TO PROVIDE MINIMUM HUMANE LIVING CONDITIONS FOR FARM ANIMALS RAISED FOR FOOD PRODUCTION

*Amy Mosel**

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I. INTRODUCTION

*[W]e are ignorant of the abuse of living creatures that lies behind the food we eat. Our purchase is the culmination of a long process, of which all but the end product is delicately screened from our eyes . . . There is no reason to associate a neat plastic package with a living, breathing, walking, suffering animal.*¹

As the average consumer sinks his teeth into a piece of meat, it is unlikely that he thinks about how that meat got to his plate. Decades ago, we could be comforted that the animals that were slaughtered to make our meals lived out their albeit short lives on a family farm among their species where they had ample living and roaming space, enjoyed natural sunlight

¹ Steven M. Wise, *Of Farm Animals and Justice*, 3 Pace Env'tl. L. Rev. 191, 219 (1986) (quoting P. Singer, *Animal Liberation, A New Ethic For Our Treatment of Animals* 92-93 (1975)).

and remained free from abuse. Sadly, today, the family farm is a rarity and corporate America has transformed many rural farms into factory assembly lines where profit takes precedent over even minimal humane standards of animal care.² Today, many consumers would rather be kept in the dark as to the horrific process that transforms a living animal into food.

Animals raised on the factory farm are treated like mere economic units, or widgets, as if they have no life, breath, nerves or feelings. These sad creatures live out their lives packed together by the thousands, confined in unacceptable living spaces without room to even comfortably turn their bodies or lie down.³ They are often kept in perpetual darkness, drugged and subjected to painful body alterations without anesthetics.⁴ These inhumane conditions promote disease and stress, which in turn cause abnormal behavior, such as cannibalism and aggression, in normally passive animals.

Farm animals raised for food production have no fate other than the slaughterhouse, yet this final purpose does not mean that while alive farmers should treat them as inanimate objects and deprived of the most basic needs. In the past, public outcry against similar animal abuses outside of the farming industry has prompted Congress to protect animals by statute. Most progressive European countries have statutes protecting farm animals by regulating their living conditions.⁵ Though farm animals number in the millions and live under more deplorable daily conditions than other animals that Congress has afforded statutory protection, Congress has overlooked them and they remain unprotected. As a result, Congress has given no incentive to the factory farm industry to discontinue its despicable practices.

This Comment will focus on the type of animal cruelty that deprives factory farm animals of humane living conditions. It will describe the birth of animal protection laws. It will explain the purpose that motivated and supports existing statutes that protect other animals — that being the humane treatment of animals — and the statutes' administration and

² Steven J. Haverkamp, *Are Moderate Animal Welfare Laws and a Sustainable Agricultural Economy Mutually Exclusive? Laws, Moral Implications, and Recommendations*, 46 Drake L. Rev. 645, 645-46, 662 (1998); Richard R. McCarthy & Richard E. Bennett, *Statutory Protection for Farm Animals*, 3 Pace Envtl. L. Rev. 229, 230 (1986); Neil D. Hamilton, *Anglo-American Agricultural Law Symposium: Part 2: Theme III: Agri-Business: The Way Ahead: Reaping What We Have Sown: Public Policy Consequences of Agricultural Industrialization and the Legal Implications of a Changing Production System*, 45 Drake L. Rev. 289, 292 (1997).

³ Nicole Fox, *The Inadequate Protection of Animals Against Cruel Animal Husbandry Practices Under United States Law*, 17 Whittier L. Rev. 145, 146 (1995).

⁴ *Infra* pt. II (B)(2) (discussing how factory farms routinely subject their animals to procedures such as debarking young chickens).

⁵ Council Directive 98/58/EC of 20 July 1998 Concerning the Protection of Animals Kept for Farming Purposes, 1998 O.J. (L 221).

enforcement. This Comment will describe the daily living conditions of factory farm animals. Next, this Comment presents the reasons that would motivate Congress to act, including Congressional humane concerns in similar instances of animal abuse that are, in part, a response to public outcry and a booming organic food industry that shows the public is concerned with the treatment animals receive before processing. In addition, there are immediate human health concerns over the public consumption of food raised under intensive, factory farm conditions. Administering feed laced with sub-therapeutic doses of antibiotics⁶ creates antibiotic resistant strains of bacteria that are capable of transmission to humans.

Other countries have already enacted statutes that specifically protect factory farm animals. One economic argument in favor of restrictions on factory farm practices is animals that lead happier lives produce better quality food for human consumption.⁷ Because factory farms are big businesses, factory farms should be treated like other big businesses and subjected to health and safety regulations. State anti-cruelty statutes exist, but are inadequate protection for factory farm animals.

This Comment will propose a federal statute with suggested minimum requirements for the living conditions of animals raised in intensive environments. To this end, this Comment will compare the proposed statute to other federal statutes and foreign statutes that promulgate humane standards for the treatment of animals. Finally, this Comment will discuss the enforcement and administration of such a statute. The Commerce Clause of the United States Constitution gives Congress the authority to enact such a statute because animals raised for food substantially affect commerce.⁸ Congress could follow the administration and enforcement of existing protective statutes, authorizing the Secretary of Agriculture to oversee and create an agency to implement guidelines and enforce compliance.

II. BACKGROUND

Factory farm animals existing circumstances must be understood. This

⁶ Sub-therapeutic doses are doses "not producing a therapeutic effect." *Merriam Webster's Medical Desk Dictionary* 780 (1996). For example, feeding livestock daily doses of penicillin that are below the dosage level used to treat disease.

⁷ H.R. Rpt. 95-1336, at 2651-52 (July 10, 1978); Barbara O'Brien, *Animal Welfare Reform and the Magic Bullet: The Use and Abuse of Subtherapeutic Doses of Antibiotics in Livestock*, 67 U. Colo. L. Rev. 407, 411 (1996).

⁸ *Animal Welfare Act*, 7 U.S.C. § 2131 (1994).

Section will explain that: (A) past and current animal welfare laws fail to protect factory farm animals from inhumane living conditions; (B) factory farm animals are deprived of humane living conditions by an unregulated industry and (C) European governments have enacted legislation and regulated factory farm animals for decades.

A. Past and Current Animal Welfare Laws Fail to Protect Factory Farm Animals From Inhumane Living Conditions

Animals have received some form of protection against abuse since 1641.⁹ Though early laws protecting animals did so to protect man's interest in his *property*, some laws have evolved to consider the needs of animals themselves. However, though animal protection laws have evolved in other areas, (1) lawmakers have not addressed factory farm animals' daily living conditions and (2) existing federal animal welfare statutes fail to address factory farm animals' daily living conditions.

1. State Lawmakers Have Not Addressed the Daily Living Conditions of Factory Farm Animals

Providing inadequate living conditions to dependent living creatures is a form of abuse. Abuse, neglect or deprivation each constitutes inhumane treatment of animals.¹⁰ Abuse is the maltreatment of animals and can consist of beatings or torture.¹¹ Neglect is the failure of humans to insure the health of animals that are unable to fend for themselves because humans confine them, such as when animals are denied adequate, life-sustaining necessities such as food, water and air. Deprivation, the focus of this Comment, is the denial of other environmental needs that do not necessarily sustain life but do affect animal welfare, such as overcrowding and lack of natural light. The Secretary of Agriculture has stated that animals may be harmed when essential behavioral patterns have been significantly modified and actual injury or death results.¹²

Animals have gradually received more protection from abuse. In 1641, a

⁹ Fox, *supra* n. 3, at 156.

¹⁰ McCarthy & Bennett, *supra* n. 2, at 239.

¹¹ McCarthy & Bennett, *supra* n. 2, at 239.

¹² *Palila v. Haw. Dept. of Land and Nat. Resources*, 852 F.2d 1106, 1108 (9th Cir. 1988) (citing 50 C.F.R. § 17.3 and holding that permitting mouflon sheep in the critical habitat of a federally protected finch-billed bird called the palila, constituted an unlawful "taking" of the palila's habitat under the Endangered Species Act because the definition of "taking" under the Act includes *harm*, which can include injury to essential behavior patterns through habitat modification).

Puritan writing, *Body of Liberties*, contained a provision making it illegal to exercise tyranny or cruelty toward any creatures kept for human use, making Massachusetts the first government in America to enact anti-cruelty legislation.¹³ In response to public beating of domestic animals, in 1822 the English Parliament passed Martin's Act, which criminally punished the cruel or careless beating of farm animals, including cattle, sheep and mules.¹⁴ The Society for the Prevention of Cruelty to Animals was created soon after, pushed forward by reformers active in women's suffrage and slave abolitionist movements. Initially focusing on the protection of domestic animals, the Society later expanded its focus to animal experimentation cruelties.¹⁵

In 1828, New York enacted anti-cruelty legislation, making it illegal to maliciously kill, wound or torture farm animals, such as horses, oxen, cattle or sheep.¹⁶ By 1907, every state had an anti-cruelty statute of some sort. In theory, modern state anti-cruelty statutes protect animals. However, there are no statutes that specifically protect *farm* animals and loopholes and exceptions in existing laws allow farm animals to remain unprotected.¹⁷

2. Existing Federal Animal Welfare Statutes Fail to Address the Daily Living Conditions of Factory Farm Animals

Three statutes primarily focus on animal welfare. The (a) Twenty-Eight Hour Law ("28-Hour Law"); (b) Animal Welfare Act ("AWA") and (c) Humane Methods of Slaughter Act of 1978 ("Humane Methods of Slaughter Act") protect animals during transport, research and slaughter, respectively.¹⁸

a. The 28-Hour Law Protects Animals During Transportation Only

The 28-Hour Law protects animals during transportation within the

¹³ Fox, *supra* n. 3, at 156.

¹⁴ Fox, *supra* n. 3, at 157.

¹⁵ In 1876, the Cruelty to Animals Act limited the range of animal experiments and the animals on which such experiments could be performed. Haverkamp, *supra* n. 2, at 669.

¹⁶ Fox, *supra* n. 3, at 158.

¹⁷ Fox, *supra* n. 3, at 158; *infra* pt. III(E) (explaining the inadequacy of state anti-cruelty statutes).

¹⁸ McCarthy & Bennett, *supra* n. 2, at 236. Other statutes exist that protect animals, but their primary concern is something other than the welfare of the animals themselves. See e.g. *Endangered Species Act of 1973*, 16 U.S.C. § 1531 (1994 & Supp. IV 1998); *Marine Mammal Protection Act of 1972*, 16 U.S.C. § 1361 (1994 & Supp. IV 1998); *Fish and Wildlife Protection Act*, 16 U.S.C. § 742 (1994 & Supp. IV 1998).

United States or a territory of the United States, with specific rules on confinement.¹⁹ The 28-Hour Law does not set requirements for the daily living conditions of animals that are not being transported. The statute reads in part:

[A carrier transporting animals] may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest. . . . Animals being transported shall be unloaded in a humane way into pens equipped for feeding, water, and rest for at least 5 consecutive hours.²⁰

The species of animals covered by the 28-Hour Law are not enunciated, but should be construed broadly because the general term animals replaced the original phrase "cattle, sheep, swine, or other animals."²¹ If the animals have sufficient space within the carrier to rest, move around, eat and drink, unloading is not necessary.²²

The purpose of the statute is to ensure that livestock in transport are fed, watered, and rested at least once within the prescribed time.²³ Having an opportunity to rest means that animals must be able to lie down.²⁴ Transporters must provide "sufficient space for all the livestock to lie down at the same time."²⁵ Floors are to be constructed of "concrete, cinders, gravel, hard-packed earth, or other suitable material."²⁶ The Department of Agriculture is the agency in charge of inspecting rest stations to ensure compliance.²⁷ Thus, while the 28-Hour Law protects transported animals, it offers no protection for the factory farm animals' daily living conditions.

b. The AWA Protects Animals Kept For Research and Exhibition From Inhumane Treatment By Providing Requirements For Their Daily Living

¹⁹ 49 U.S.C. § 80502 (1994). The statute does not cover common carriers traveling by air or water. *Id.* Sheep may be confined for an additional eight hours when the 28 hour period ends at night. *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *U. S. v. Or. Short Line R. Co.*, 218 F. 868, 869 (S.D. Idaho 1914) (holding it irrelevant whether under the 28-Hour Law transported livestock are fed, watered and rested upon the train or unloaded into pens and that a continuing violation equals only one offense).

²⁴ *U. S. v. Powell*, 65 F.2d 793, 794 (4th Cir. 1933) (holding that under the 28-Hour Law the provision providing that animals confined in travel for more than 28 hours must have an opportunity to rest means that they must have an opportunity to lie down).

²⁵ Fox, *supra* n. 3, at 161 (citing 9 C.F.R. § 89.5 (1995)).

²⁶ Fox, *supra* n. 3, at 161 (citing 9 C.F.R. § 89.5 (1995)).

²⁷ Fox, *supra* n. 3, at 160-61.

Conditions, But Specifically Excludes Farm Animals From Protection

The AWA narrowly protects animals kept for research or exhibition and does not reach the mass of animals living on factory farms. The AWA protects animals kept for research, experimentation or exhibition purposes.²⁸ Animals covered under the AWA include dogs, cats, monkeys and any other nonhuman primates, guinea pigs, hamsters, rabbits or other warm blooded animals the Secretary of Agriculture determines are being used for research, exhibition or as pets.²⁹ The AWA explicitly denies coverage to farm animals. The AWA covers any facility performing or intending to perform experiments or research if that organization has purchased animals in commerce or received funds from the United States for the purpose of carrying out research. Also, the AWA covers any person or entity exhibiting animals if that person or entity either purchased animals in commerce or intended to distribute animals in such a way that they will affect commerce. For example, the AWA covers zoos, carnivals and circuses. However, the AWA does not cover retail stores, fairs and rodeos. The statute reads in part:

Congress . . . finds . . . it . . . essential to regulate . . . the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.³⁰

The Secretary of Agriculture is authorized to create humane standards for the care of animals living under these conditions that should include, at minimum, requirements for "handling, housing, feeding, watering, sanitation, ventilation, shelter . . . adequate veterinary care, and separation . . . [when] necessary; . . . for exercise of dogs . . . for a physical environment adequate to promote the psychological well-being of primates," and for treatment that ensures animal pain and distress are minimized.³¹ The principal researcher conducting any experiments must consider alternatives to procedures that have even the possibility of causing

²⁸ 7 U.S.C. § 2131 (1994).

²⁹ 7 U.S.C. § 2132 (1994).

³⁰ 7 U.S.C. § 2131 (1994).

³¹ 7 U.S.C. § 2143 (1994).

the animal pain or distress.³² The primary focus of the AWA is the *quality* of an animal's life and living conditions directly affecting its psychological well-being, pain and distress.³³

Amendments to the initial AWA show an increased and continuing concern for the humane treatment of animals. Congress was concerned with existing transporter and handler abuses, and wanted to protect national values from such dehumanizing activities.³⁴ The 1970 amendment explicitly addressed concerns with "the humane ethic that animals should be afforded the basic creature comforts of adequate housing, ample food and water, reasonable handling, decent sanitation, sufficient ventilation, shelter from extremes of weather and temperature, and adequate veterinary care. . . ."³⁵ The 1970 amendment extended the definition of *animal* and the scope of entities affected by the AWA and the 1976 amendment further extended the scope.³⁶ The term *animals* were broadened to include most warm-blooded animals and the Secretary of Agriculture's powers increased.³⁷

c. The Humane Methods of Slaughter Act Protects Livestock From Inhumane Slaughter, But Fails to Protect Livestock From Inhumane Daily Living Conditions

The Humane Methods of Slaughter Act protects animals during slaughter from unnecessary suffering by requiring certain methods of

³² *Id.*

³³ *Animal Leg. Def. Fund, Inc. v. Glickman*, 154 F.3d 426, 438 (D.C. Cir. 1998), *rev'd, sub nom. Animal Leg. Def. Fund, Inc. v. Natl Assn for Biomedical Research*, 340 U.S. App. D.C. 191 (D.C. Cir. 2000) (emphasis added); *infra* n. 138.

³⁴ *Glickman*, 154 F.3d at 444-45; Sen. Rpt. 89-1281, at 2636 (June 15, 1966). The Secretary of Agriculture licenses facilities once the facilities have demonstrated compliance with the statute's provisions. 7 U.S.C. § 2133 (1994). Every registered facility must retain records with respect to the animals and at the Secretary's request, any regulatory government agency may require the records. 7 U.S.C. § 2140 (1994). The Secretary may inspect and interrupt experimentation, and must be given access to the facilities. *Id.* The facility directors must be present during annual inspection and report, at minimum, that the standards are being followed. *Id.* If deficiencies are found, the Secretary must conduct follow-up investigations until the violations are corrected. 7 U.S.C. § 2146 (1994). The Secretary may suspend or revoke the license, and in addition, the Secretary may assess civil penalties for violations. 7 U.S.C. § 2149 (1994). The facility must establish at least one committee to monitor treatment that should include at least one veterinarian and one person unaffiliated with the facility. 7 U.S.C. § 2143 (1994). Congress found that activities involving animals had a substantial affect on interstate commerce, and thus, federal regulations were necessary to prevent burdens on such commerce. 7 U.S.C. § 2131 (1994).

³⁵ H.R. Rpt. 91-1651, at 5104 (Dec. 2, 1970), (reprinted in 1970 U.S.C.C.A.N. 5103, 5104). Congress passed the Bill (H.R. 19846) unanimously.

³⁶ *Id.*

³⁷ H.R. Rpt. 94-801, at 758-59 (Jan. 29, 1976).

slaughter.³⁸ The Humane Methods of Slaughter Act's purpose is to prevent needless suffering.³⁹ The statute reads in part:

No method of slaughtering or handling . . . shall be deemed to comply with the public policy of the United States unless it is humane. Either of the following . . . are hereby found to be humane:

(a) in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or

(b) by slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering.⁴⁰

The Humane Methods of Slaughter Act was the result of public outrage against animal abuse in meat packing plants.⁴¹ Congress responded by enacting a statute that promoted humane methods of slaughter, determining that the methods embodied in the statute were humane.⁴² Congress found

³⁸ *Humane Methods of Slaughter Act of 1978*, 7 U.S.C. § 1902 (1994).

³⁹ Wise, *supra* n. 1, at 210.

⁴⁰ 7 U.S.C. § 1902 (1994). The Secretary of Agriculture enforces compliance with the Humane Methods of Slaughter Act. 7 U.S.C. § 1904 (1994). The Humane Methods of Slaughter Act is enforced through the Meat Inspections Act and violations are punishable by federal injunction and a criminal penalty of fines or imprisonment. H.R. Rpt. 95-1336, at 2652-53 (July 10, 1978); 21 U.S.C. § 676. Benefits of this law expedite the orderly flow of products in interstate commerce. 7 U.S.C. § 1901 (1994 & Supp. V 1999).

⁴¹ H. R. Rpt. 95-1336, at 2651-52 (July 10, 1978).

⁴² *Id.* at 2653-54. Problems exist with regards to the religious exception to the definition of *humane* in 7 U.S.C. §1902. The Department of Agriculture does not permit the slaughter of an animal on the ground. The animals are thus "shackled and hoisted" while still conscious. *Jones v. Butz*, 374 F. Supp. 1284, 1290 (S.D.N.Y. 1974) (granting plaintiffs standing to sue based on aesthetic injuries but finding that Congress was aware of kosher slaughter practices when enacting the Humane Slaughter Act and that the proper forum for plaintiffs concerned with the humanity in allowing such ritual slaughter was therefore Congress and not the courts). The animals weigh between one to two thousand pounds and when jerked upside down before their throats can be slit, their skin often breaks open and slides off the bone or the bone breaks altogether. *Id.* This obliterates the purpose of rendering the animal insensitive to pain. *Id.*; Fox, *supra* n. 3, at 173. Further, the statute explicitly excludes poultry from protection. 7 U.S.C. § 1901 (1994 & Supp. V 1999); Fox, *supra* n. 3 at 153. "In many cases, chickens are conscious and breathing not only as they move towards the knife but, afterward, upon entering the scald tank." Fox, *supra* n. 3, at 153 (internal quotation omitted).

that slaughtering animals in a humane manner resulted in safer working conditions for slaughterhouse employees, improved products and economies in operation, and prevented needless suffering.⁴³

B. Factory Farm Animals Are Deprived of Humane Living Conditions By an Unregulated Industry

The law affords legal protection to other animals living under similar conditions, while protection for factory farm animals remains non-existent at both the federal and state level.⁴⁴ The 28-Hour Law narrowly governs only the humane treatment of animals in transport and the Humane Methods of Slaughter Act narrowly regulates only the act of slaughter. The only statute today that applies to daily living conditions of any animal is the AWA, but it explicitly excludes farm animals from protection in its definition of animal.⁴⁵ This exclusion permits the cruel treatment of farm animals. Large corporations that are not governed by any animal welfare laws have taken over the farming industry and they treat animals as mere economic units, subject them to horrid living conditions and lace their food with daily drug doses.

This section will explain: (1) the transformation of the family farm to factory farms; (2) the living conditions factory farm animals endure and (3) the habitual drug lacing of factory farm animals' feed.

1. Smaller Family Farms That Provided for the Basic Needs of Farm Animals Have Been Largely Replaced By Industrial Factory Farms That Ignore the Needs of Farm Animals

Before 1940, animals raised for food production were primarily raised on small family farms.⁴⁶ Outdoor pastures and sunlight fulfilled animals' needs and provided benefits for the small farmer, such as natural disease control and an unlimited natural supply of vitamin D for the animals.⁴⁷ In the last half-century, large corporations have purchased the majority of

⁴³ 7 U.S.C. § 1901 (1994). In a related statute regulating the transportation of animals to the slaughterhouse, Congress found that the equine species have unique and special needs that must be addressed. *Commercial Transportation of Equine for Slaughter*, Pub. L. No. 104-127, Title IX, Subtitle A, 110 Stat. 1184 (1996).

⁴⁴ Wise, *supra* n. 1, at 203.

⁴⁵ The AWA states in relevant part, "such term excludes horses not used for research purposes and other farm animals." 7 U.S.C. § 2132 (1994).

⁴⁶ Fox, *supra* n. 3, at 145.

⁴⁷ Natural sunlight supplies sufficient vitamin D for an animal. Haverkamp, *supra* n. 2, at 653.

available farmland, pushing the small farmer out, and turning farming into a commercial enterprise.⁴⁸

The United States has changed from a rural to an urban land.⁴⁹ Less than a century ago, eighty percent of the population was employed in some form of agriculture.⁵⁰ Today, that percentage has drastically decreased to two percent and most people are two or three generations removed from agricultural occupations.⁵¹ Though world population and the demand for food are increasing, the few but larger farms of today will meet this demand.⁵² Small farms cannot compete with industrial factory farms and there is little incentive for anyone to go into the agricultural field.⁵³ The "industrialization of agriculture" has allowed further transformation of the family farm into the factory farm — large, concentrated operations raising animals outside of their natural habitat solely for food production, in an automated manner.⁵⁴

Factory farming is a method of raising livestock characterized by overcrowding, restricted movement, unnatural diets, and unanesthetized surgical procedures. . . . The factory farm is indeed a far cry from the notion of a peaceful, bucolic farm, on which some might believe most food animals are raised.⁵⁵

These large confinement facilities create "stressful, sickly and grotesquely inhumane existences."⁵⁶ Animals are treated as mere economic units that must be multiplied, while living space is minimized in order to maximize profit.⁵⁷ In some cases, over five million animals could be raised in small, overcrowded cages.⁵⁸

⁴⁸ Fox, *supra* n. 3, at 145; McCarthy & Bennett, *supra* n. 2, at 230.

⁴⁹ Havercamp, *supra* n. 2, at 661.

⁵⁰ Havercamp, *supra* n. 2, at 662.

⁵¹ However, in some areas of the country large percentages of people are engaged in some form of agricultural production. Havercamp, *supra* n. 2, at 662; *see also* Anne Fitzgerald & Thomas A. Fogarty, *IBP Cuts Seen as Illustrating Pork Industry's Decline in Iowa*, Des Moines Reg. 1A (Feb. 26, 1997).

⁵² Department of Labor, 1996-97 Occupational Outlook Handbook <http://www2.jobtrak.com/help_manuals/outlook/ocos17.html> (accessed Aug. 14, 2001).

⁵³ *Id.*

⁵⁴ Havercamp, *supra* n. 2, at 645-46, 662; McCarthy & Bennett, *supra* n. 2, at 230; Hamilton, *supra* n. 2, at 292.

⁵⁵ O'Brien, *supra* n. 7, at 414.

⁵⁶ Fox, *supra* n. 3, at 146 (internal quotation omitted).

⁵⁷ McCarthy & Bennett, *supra* n. 2, at 230; Fox, *supra* n. 3, at 146.

⁵⁸ Fox, *supra* n. 3, at 146.

Confined living conditions cause abnormal, aggressive behaviors, sometimes even cannibalism in these animals.⁵⁹ The animals become stressed, weak and more susceptible to disease.⁶⁰ Instead of creating more space for the animals, factory farmers opt to lace their food with sub-therapeutic doses of antibiotics to ward off the inevitable spread of infectious disease or other health problems. The animals are further subjected to genetic engineering experimentation, embryo transfers and the injection of growth hormones.⁶¹

2. Living Conditions On Factory Farms Are Horribly Inhumane

The conditions at factory farms reflect the fact that they are unregulated. There is presently no law that stops factory farmers from crowding, mutilating and neglecting their stock. The living conditions provided for chickens are examples of the inhumane treatment factory farm animals endure.

Chickens are hatched out of incubators.⁶² The females and males are separated because the farmers want the eggs from laying hens and males cannot produce eggs. Useless males are casually dumped into plastic garbage bags where they "suffocate under the weight of other chicks dumped on top of them."⁶³

Each coop contains around 80,000 chickens.⁶⁴ Each cage averages one cubic foot to four and one half cubic feet, and contains four to nine chickens each.⁶⁵ In essence, this confines the animals in something no larger than a cat carrier. The chickens cannot turn around easily and may spend their entire lives without even fully stretching their wings.⁶⁶ Some farmers keep the chickens in darkness for much of their lives to keep them calm. Other farmers use artificial light that remains on constantly to keep egg production continuous. When the excrement removal system is inadequate and the ventilation is poor, high concentrations of ammonia fill the air, causing the chickens to suffer nausea, eye irritation and respiratory degeneration. The wire-bottom cages cause sores and feather shedding

⁵⁹ Fox, *supra* n. 3, at 146.

⁶⁰ Wise, *supra* n. 1, at 194.

⁶¹ Wise, *supra* n. 1, at 192, 194.

⁶² Fox, *supra* n. 3, at 151.

⁶³ Fox, *supra* n. 3, at 151. Male bodies are then sold to fertilizer companies. Fox, *supra* n. 3, at 151.

⁶⁴ Fox, *supra* n. 3, at 151.

⁶⁵ O'Brien, *supra* n. 7, at 418.

⁶⁶ Fox, *supra* n. 3, at 152.

when chickens groom and rub against them. Chickens naturally scratch the ground and have nowhere to do so. As they grow, their toes get caught in the wire and actually adhere to it, growing around it.⁶⁷

The stressful conditions in which chickens live cause cannibalistic behavior.⁶⁸ One industry specialist has stated such behavior is “a result of ‘overcrowding, lack of adequate feeder or waterer space, poor ventilation, dietary deficiencies, feather change, improper lighting, failure to remove injured or crippled birds and sheer boredom.’”⁶⁹ The mortality rate for chickens living on the factory farm is very high.⁷⁰ Ten to fifteen percent of chickens die each year as a direct effect of the living conditions on a factory farm.⁷¹ While laying hens raised under normal conditions have a life span of twenty years, factory farm laying hens generally live only one or two years.

Broiler hens⁷² are kept in similar conditions as laying hens.⁷³ The factory farmer’s purpose of raising broiler hens is to fatten them up for slaughter and then sell them for food. Hens are kept under warm lights to encourage feeding until they reach market weight and thereafter are kept in the dark until it is time for slaughter. Genetically altered strains of growth hormones have been developed and injected into the chickens.⁷⁴ Hormones, which may cause the chickens to grow too fast, can mutate chickens so badly that they cannot walk or even stand up.

As a further example of inhumane treatment, veal calves are taken from their mother before they are even weaned and then fed with vitamins and

⁶⁷ O’Brien, *supra* n. 7, at 418.

⁶⁸ Fox, *supra* n. 3, at 151.

⁶⁹ O’Brien, *supra* n. 7, at 415 (internal quotation omitted). Instead of providing the chickens with more room to deter them from pecking each other to death, farmers preventively mutilate the chickens when they are mere chicks through a process known as “debeaking.” The “debeaker,” a guillotine-like instrument with hot blades, accomplishes this quickly, having the ability to debeak about 15 birds per minute. A baby chick’s beak is forced into the debeaker, its tongue held away from the blade, while the blade slices off the tip. Fox, *supra* n. 3, at 151; O’Brien, *supra* n. 7, at 416. Researchers have compared the sensation of being debeaked to that of having a limb amputated, contrary to what industry agents will divulge. The blade cuts through horn, bone, and sensitive tissue, with pain continuing after the operation is completed. Further, the speed in which such a delicate process is performed can cause an accident that further mutilates birds. If the temperature of the blades is not appropriate — kept either too hot or too cold — blisters or growths may form in the chickens’ mouths. Fox, *supra* n. 3, at 151; O’Brien, *supra* n. 7, at 416-17.

⁷⁰ Fox, *supra* n. 3, at 153.

⁷¹ Fox, *supra* n. 3, at 153.

⁷² Broiler hens are defined as “a chicken or other bird fit for broiling.” *Webster’s Third New International Dictionary* 281 (1993).

⁷³ O’Brien, *supra* n. 7, at 451.

⁷⁴ Fox, *supra* n. 3, at 174.

powdered milk.⁷⁵ They are deprived of drinking water and solid food at times to encourage the starving animals to eat drug-laced formulas the animals instinctively do not want, in order to increase body weight.⁷⁶ They are purposefully kept anemic, their diet intentionally void of iron, so that their flesh will be lighter and more alluring to consumers. Hundreds of thousands of veal calves live chained in wooden crates so small they cannot walk, turn around or even move.⁷⁷ The standard crate at the factory farm measures twenty-two inches wide, the confinement preventing their muscles from turning a healthy, reddish brown or from burning too many calories.⁷⁸ The confinement also forces the calves to stand in their own excrement, breathing harmful ammonia gasses.⁷⁹ Factory farm conditions make them susceptible to intestinal problems and respiratory disorders such as pneumonia.⁸⁰ About ten percent of factory farm calves die before they have a chance to be slaughtered and that percentage would be much higher if not for antibiotics that keep them alive.⁸¹

The standard sow barn is 340 feet by 60 feet, holding 1076 crates.⁸² Pregnant sows are isolated in "gestation crates" which prevent them from walking or turning around.⁸³ When ready to give birth, a sow is moved to a crate large enough for her to lie down and stand up, but not to turn. Once a sow has had her piglets, an iron maiden is sometimes used to keep the sow completely still, so that she cannot roll over and accidentally crush her piglets.⁸⁴ The sensory overload of sounds and smells in the packed barns can cause a sow to become confused and unable to recognize the smell or sound of her own piglets. This may cause the sow to crush the piglets

⁷⁵ O'Brien, *supra* n. 7, at 420.

⁷⁶ Carole Lynn Nowicki, Student Author, *The Animal Welfare Act: All Bark and No Bite*, 23 Seton Hall Legis. J. 443, 444 (1999).

⁷⁷ *Id.* at 443. Conditions for calves are not only abhorrent due to the deprivation of basic creature comforts, more direct cruelties exist. *Downers* are injured or sick animals that cannot stand. These animals are regularly beaten, kicked, shocked and left to die without veterinary care. They are even deprived of food and water by farmers who are not willing to waste the money on animals that will not make them a substantial profit. They are dragged to slaughterhouses in chains, sometimes pushed in droves by forklifts or tractors, and then put on the market daily. *Id.* at 444.

⁷⁸ O'Brien, *supra* n. 7, at 420; Fox, *supra* n. 3, at 171.

⁷⁹ O'Brien, *supra* n. 7, at 421.

⁸⁰ O'Brien, *supra* n. 7, at 421.

⁸¹ O'Brien, *supra* n. 7, at 421.

⁸² Haverkamp, *supra* n. 2, at 654.

⁸³ O'Brien, *supra* n. 7, at 419.

⁸⁴ An *iron maiden* used for animal husbandry purposes is an iron frame device that keeps sows completely still. O'Brien, *supra* n. 7, at 419. The device gets its name due to its likeness to the medieval torture device called an *iron maiden*, which consisted of "an iron frame in the form of a person in which the victim was enclosed and impaled on interior spikes." *Dictionary.com* <<http://www.dictionary.com/cgi-bin/dict.pl?term=iron%20maiden>> (accessed Apr. 20, 2001).

because she cannot see them.

When the piglets are old enough, they are transferred to their own crates, which have concrete or slatted floors, sometimes sloped to make waste disposal easier for the farmer. These hard floors sometimes cause leg and foot injuries. The narrow, metal crates are barely larger than piglet bodies.⁸⁵ The barn is akin to an assembly line, food being dispensed to the animals through automated overhead dispensers with a tube for water.

3. Factory Farmers Routinely Drug Factory Farm Animals With Drug-Laced Feed That Can Cause Mutations and Antibiotic Resistance

For the last forty years, farmers fed animals feed laced with antibiotic drugs.⁸⁶ Veterinarians, researching possible benefits of using human antibiotics on sick animals, learned that such administration treats disease, prevents infection and as a bonus for farmers, promote growth. Antibiotics that a veterinarian must otherwise prescribe can now be purchased over the counter laced in animal feed.⁸⁷ Prescription requirements are waived for animal feed because dosage amounts contained in feed are smaller than those used to treat disease and are thus considered *nutritional* rather than therapeutic.⁸⁸ As tolerance levels rise in the recipient animals, doses are increased to maintain growth rate.⁸⁹ Today, "fifteen to seventeen million pounds of antibiotics [are] used subtherapeutically [on animals] each year in this country alone."⁹⁰ In addition, an estimated 10,000 farmers lace feed with illegal levels of drugs to maintain growth.⁹¹

Ingested antibiotics kill most of the bacteria present in an animal's system.⁹² Bacteria, however, often contain slight mutations that allow them to survive.⁹³ These mutant bacteria, now resistant to the antibiotic, remain and reproduce quickly, passing on their resistance to millions of new

⁸⁵ Havercamp, *supra* n. 2, at 654.

⁸⁶ O'Brien, *supra* n. 7, at 422.

⁸⁷ O'Brien, *supra* n. 7, at 422; United States General Accounting Office ("GAO Report"), *Food Safety: The Agricultural Use of Antibiotics and Its Implications for Human Health (RCED-99-74)*, at 1-2 (Apr. 28, 1999).

⁸⁸ O'Brien, *supra* n. 7, at 422.

⁸⁹ O'Brien, *supra* n. 7, at 423.

⁹⁰ O'Brien, *supra* n. 7, at 423.

⁹¹ Susie Whalley, *Bacteria Threat of Mass-Farmed Meat*, Supermarketing, 12 (Dec. 11, 1998) (available in LEXIS, Individual Publications).

⁹² O'Brien, *supra* n. 7, at 422.

⁹³ Alternative Medicine Update, *Researchers Cite Link Between Sub-therapeutic Antibiotic Dosing In Livestock and Resistance In Humans*, <<http://www.colemannatural.com/news-researchers-cite-link.html>> (accessed Jan. 8, 2001).

bacterium.⁹⁴ For example, one *Escherichia coli* bacterium ("E. coli")⁹⁵ can produce more than one million offspring in only seven hours.⁹⁶ Even more frightening, these antibiotic resistant mutations can pass on their resistance to other species of bacteria. As a result, "[b]acteria immune to antibiotics flourish in animals whose feeds contain antibiotics."⁹⁷

C. European Governments Have Enacted Legislation and Regulated Factory Farm Animals for Decades

In response to public outcry, in 1964, the English government appointed a committee to investigate the living conditions of livestock kept for intensive farming purposes and to advise whether to set new standards with animal interests in mind.⁹⁸ The Brambell Committee investigated and subsequently suggested, that farm animals should be allowed the most basic needs, which they labeled the "Five Freedoms."⁹⁹ The Five Freedoms read "[a]n animal should at least have sufficient freedom of movement to be able without difficulty to turn around, groom itself, get up, lie down, [and] stretch its limbs."¹⁰⁰ Europe essentially follows this model today.¹⁰¹

III. ARGUMENT

Congress should enact a federal statute protecting farm animals from abuse. Factory farm animals are subjected to deplorable and inhumane daily living conditions. These conditions impact humans because (A) humans are concerned with preventing the unnecessary suffering of animals and (B) housing animals under poor conditions produces unhealthy

⁹⁴ *Id.*

⁹⁵ *E. coli* is any of several, sometimes, pathogenic, strains of anaerobic bacteria, occurring in the large intestine of humans and other animals. *Webster's Third New International Dictionary* 775 (1993).

⁹⁶ Alternative Medicine Update, *supra* n. 93.

⁹⁷ *Animal Leg. Def. Fund Boston, Inc. v. Provimi Veal Corp.*, 626 F. Supp. 278, 279 (D. Mass. 1986) (holding that the plaintiff's complaint that defendant veal corporation acted deceptively under state law by not informing consumers that its calves were raised inhumanely was preempted by the Food, Drug, and Cosmetic Act and the Food and Drug Administration). The court stressed, however, that its decision was based narrowly on the preemption issue and that the serious risk posed by lacing animal feed with drugs was not to be minimized. *Id.* at 286 n. 5.

⁹⁸ Minister of Agriculture, Fisheries, and Food ("MAFF"), *Summary of the Law Relating to Farm Animal Welfare* <<http://www.defra.gov.uk/animalh/welfare/publications/legislation/sumoflaw.htm>> (accessed Mar. 28, 2001).

⁹⁹ Wise, *supra* n. 1, at 212.

¹⁰⁰ Wise, *supra* n. 1, at 212; MAFF, *supra* n. 98.

¹⁰¹ Council Directive 98/58/EC at annex 2.

and dangerous meat that humans later consume. Further, (C) other countries have successfully legislated effective protection for factory farm animals; (D) providing protection for farm animals would not harm the national economy and (E) state anti-cruelty legislation has proven inadequate protection for animals. Therefore, Congress should pass legislation that protects farm animals by requiring farmers to meet minimum humane living condition requirements.

A. Congress Should Regulate Factory Farming Because Humans Are Concerned With Preventing the Unnecessary Suffering Of Animals

It is natural to wish to prevent the unnecessary suffering of any living creature. The history of animal welfare law shows that once the public becomes aware of animal cruelty, efforts have been made to stop such practices.¹⁰² It has long been recognized that animals are more than inanimate objects and they are capable of feeling pain.¹⁰³ There are many animal lovers who would go to great lengths to defend animals from harm. Humans are concerned with the suffering of animals. This concern is demonstrated in (1) the legislative purposes behind existing animal protection statutes; (2) the public concern over animal welfare and (3) the booming organic food industry, a development that proves consumers and producers are willing to change to farming practices that result in improved living conditions for animals raised for food production.

1. The Legislative Purpose Behind Other Federal Animal Protection Statutes Evidences Congressional Intent to Prevent Unnecessary Suffering and a Concern For Animal Welfare

In enacting animal welfare statutes, Congress expressed an intent to prevent the abuse of animals and to maximize animal welfare to the extent possible. Farm animals suffer the abuses that Congress sought to prevent when it enacted federal statutes that protect non-farm animals from abuse. The intent behind such statutes should extend to farm animals. The 28-Hour Law, AWA and Humane Methods of Slaughter Act all a) resulted from public reaction to animal cruelty practices, b) defined animal cruelty as confinement or other abhorrent living conditions and c) expressed the

¹⁰² H.R. Rpt. 95-1336, at 2651-52 (July 10, 1978); *Animal Welfare Act Amendments of 1985*, Pub. L. No. 99-198, §1751, 99 Stat. 1645 (1985) (codified as amended in 7 U.S.C. §§ 2131- 2146 (1994)).

¹⁰³ Wise, *supra* n. 1, at 202.

purpose of ensuring the humane treatment of animals.

a. Animal Welfare Statutes Were Created In Response to the Public Outcry Against Animal Cruelty Practices

Congress enacted the 28-Hour Law, AWA and Humane Methods of Slaughter Act in response to public outrage against unnecessary, cruel treatment of animals in transport, in experimentation and at the slaughterhouse.¹⁰⁴ The 28-Hour Law was a result of public outcry against the mistreatment of cattle during transportation.¹⁰⁵ Some mistreatment included animals transported under extreme temperatures, crowded and confined with no food or water.¹⁰⁶ After transport, many animals were left injured, emaciated or dead.¹⁰⁷ The 28-Hour Law was enacted to guard against mistreatment in the handling and care of transported livestock.¹⁰⁸

The AWA was enacted when the public began to fear that pets would be sold to researchers.¹⁰⁹ One purpose of the AWA was to prevent the sale of stolen pets for research purposes.¹¹⁰ Later amendments, however, reflect an added concern for the humane treatment of research animals in general.¹¹¹ The 1970 amendment expressed a "continuing concern" for kindness to animals.¹¹² Public concern for animals was an important factor assessed when Congress amended the AWA in 1985.¹¹³

The Humane Methods of Slaughter Act responded to public outcry against the inhumane slaughter of farm animals when meatpacking plants were exposed for their cruel treatment of animals.¹¹⁴ Methods of slaughter were found to directly affect consumer health; consumers became so revolted that they became physically and emotionally ill, and subsequently refused to eat meat.¹¹⁵ Congress recognized the need for a remedial, uniform statute ensuring humane methods of slaughter.¹¹⁶

¹⁰⁴ H.R. Rpt. 95-1336, at 2651-52; 7 U.S.C. §§ 2131-2146 (1994); Fox, *supra* n. 3, at 159.

¹⁰⁵ Fox, *supra* n. 3, at 159.

¹⁰⁶ Fox, *supra* n. 3, at 159, 170.

¹⁰⁷ Fox, *supra* n. 3, at 159.

¹⁰⁸ *U.S. v. Or. R. & Nav. Co.*, 163 F. 640 (D. Or. 1908) (explaining that the 28-Hour Law is a constitutional humane declaration that confining animals in close quarters at any time is cruelty).

¹⁰⁹ H. R. Rpt. 94-801, at 758-59 (Jan. 29, 1976).

¹¹⁰ Sen. Rpt. 89-1281, at 2636 (June 15, 1966).

¹¹¹ H. R. Rpt. 94-801, at 758 (Jan. 29, 1976).

¹¹² H. R. Rpt. 91-1651, at 5104 (Dec. 2, 1970).

¹¹³ 7 U.S.C. §§ 2131-2146 (1994).

¹¹⁴ H.R. Rpt. 95-1336, at 2651-52 (July 10, 1978).

¹¹⁵ *Id.* at 2653-54.

¹¹⁶ *Id.* at 2651-52.

Congress should enact a statute protecting the welfare of factory farm animals in response to growing awareness and concern over factory farm conditions. Increased membership in animal welfare groups that focus on farm animal conditions and work to deter economic support of such practices show that the informed public disapproves of factory farm methods.¹¹⁷ Protests have increased as awareness has increased. The Internet is overflowing with cites that warn consumers of factory farm animal abuses and offer alternative food products. Part of the public has rebelled against factory farming by purchasing higher priced food produced utilizing humane farming practices. This purchasing pattern proves consumers feel strongly that humanity is an important concern for which they are willing to pay more.

It is easy to ignore practices that are hidden from our everyday view. The general public does not experience the daily living conditions of factory farm animals and can pretend that they do not exist. Congress, however, has passed animal welfare statutes to protect zoo and other animals from abuses that the general public is not affected by. Congress should respond to the public outcry against farm animal abuses just as they responded to public outcry against the abuses practiced on other types of animals.

b. Legislators Are Concerned With Close Confinement Practices In the Non-Farm Animal Context

Congress considers animal confinement cruel.¹¹⁸ Intensely restricting and confining an animal for long periods of time without rest is cruel and unusual treatment.¹¹⁹ The longer the confinement period, the more severe the cruelty becomes.¹²⁰ In *Oregon R. & Nav. Co.*, the District Court of Oregon explained the purposes of the 28-Hour Law.¹²¹ The court held that:

¹¹⁷ Haverkamp, *supra* n. 2, at 669. The People for the Ethical Treatment of Animals ("PETA"), for example, urges consumers to buy food from companies that do not raise animals under intensive farming conditions and discourages increasing the profits of these companies by unknowingly buying products that they sell. PETA, as well as many other animal welfare organizations, provides shopping guides for consumers who wish to purchase only cruelty-free products. PETA: People for the Ethical Treatment of Animals <<http://www.peta.com>> (accessed Apr. 23, 2001); see generally The National Anti-Vivisection Society ("NAVS"), *Personal Care For People Who Care* (8th ed., 1996).

¹¹⁸ H.R. Rpt. 94-801, at 760 (Jan. 29, 1976); *Or. R. & Nav. Co.*, 163 F. at 641.

¹¹⁹ *Or. R. & Nav. Co.*, 163 F. 640 at 641.

¹²⁰ *Id.*

¹²¹ *Id.*

[i]t is unusual treatment to confine animals in close quarters at any time, as in the course of transportation, which subjects them to the rocking and swerving of the vehicles in which they are carried. . . . [I]t needs no elaboration to convince one that the treatment will be attended with cruelty, and the cruelty will increase in severity the longer the treatment is administered.¹²²

There is no justification for animals having to endure confinement and deprivation for long periods of time.¹²³

The House Report to the 1976 amendments to the AWA recounted in great and dramatic detail one witness's testimony before the Subcommittee on Livestock and Grains.¹²⁴ A cougar was shipped in a small wire crate with only two slits for ventilation and was left in the crate all day in 90-degree heat at an airport.¹²⁵ The Report described in part:

[t]he animal could not turn around in the coffin-like crate but tore the wire mesh and suffered severe abrasions in its desperate struggle for air. The animal later died. The Director of the National Zoo subsequently stated that he would never ship an animal in such a crate, which he described as inadequate for any purpose other than to transfer an animal between cages.¹²⁶

The Report further observed that animals are needlessly left for long periods of time without food, water or exercise.¹²⁷

Congress was obviously deeply moved by the cougar's one-day struggle and this was a factor influencing Congress to enact measures that would protect against confining animals in transport for over 28 hours. Countless factory farm animals endure the pain and cruelty every day of their lives that this cougar endured for a mere day. It is no wonder that fatality rates are so high on factory farms, because enduring only one day in such conditions killed a cougar. The cougar's plight pales in comparison to the fact that factory farm animals are confined in coffin-like crates from birth until death.

It is no less cruel and unusual to subject animals to confinement for their

¹²² *Id.*

¹²³ *See Wise, supra* n. 1, at 210.

¹²⁴ Testimony before the Subcommittee involved hundreds of examples of animals treated cruelly by transporters. H.R. Rpt. 94-801, at 760 (Jan. 29, 1976).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

entire lives simply because their crates are not rocking with the motion of a moving vehicle. The purpose in enacting the 28-Hour Law was to give an animal rest from confinement to stretch, lie down and breathe outside of such quarters. The length of time an animal is kept in close confinement was at the forefront of their concern, not the movement of the vehicle they are being transported in. It is more appalling to confine an animal for a lifetime than to confine an animal during a short trip. Factory farm animals are destined to stand as though their legs were made of wood, and unable to even turn their bodies. Packed in like sardines, they compete for the little air available in a building with so many bodies. Transported livestock are protected from the same confined conditions. A twenty-nine hour train ride and daily living quarters are indistinguishable. Indeed, their similarities only strengthen the case for improved conditions for farm animals. There is no justification for allowing refuge for animals in transport while simultaneously ignoring the needs of the millions of animals that endure these conditions daily.

c. The Federal Animal Welfare Statutes Express the Purpose of Treating Non-Farm Animals Humanely

Congress enacted the federal animal welfare statutes expressly to provide for the humane treatment of animals.¹²⁸ Amendments to the AWA reflect the fact that humane treatment of animals was, and remains, a Congressional concern.¹²⁹ Requiring the humane treatment of animals protects human values by preventing factory farms from engaging in dehumanizing activity.¹³⁰ The word *humane* conveys "compassion, sympathy, and consideration for animals' health, safety, and well-being. . ."¹³¹ Humane concerns indicate that the laws were intended to benefit and

¹²⁸ See generally 49 U.S.C. § 80502 (1994); 7 U.S.C. § 2131 (1994); 7 U.S.C. § 1902 (1994); H.R. Rpt. 95-1336, at 2651-52 (July 10, 1978); *Or. R. & Nav. Co.*, 163 F. at 640-41. One initial purpose of the AWA was to foster the humane treatment of animals. H.R. Rpt. 94-801, at 761-62 (Jan. 29, 1976). Congress enacted the 28-Hour Law for the humane purposes of protecting animals from cruel treatment. *U.S. v. N. Pac. Terminal Co.*, 181 F. 879, 880 (D. Or. 1909), *rev'd, sub nom. N. P. Terminal Co. v. U.S.*, 184 F. 603 (9th Cir. 1911) (holding that the 28-Hour Law was enacted to prevent the inhumane abuse of animals and in pursuit of that end that each carrier in violation is independently liable). "[T]he Humane Slaughter Act had its genesis in concern for the humane treatment of animals." H.R. Rpt. 95-1336, at 2651-52 (July 10, 1978). The Congressional declaration of policy found that "the use of humane methods in the slaughter of livestock prevents needless suffering." 7 U.S.C. § 1901 (1994).

¹²⁹ H. R. Rpt. 91-1651, at 5104 (Dec. 2, 1970); H. R. Rpt. 94-801, at 758 (Jan. 29, 1976); 7 U.S.C. § 2131 (1994).

¹³⁰ H.R. Rpt. 94-801, at 762 (Jan. 29, 1976).

¹³¹ *Glickman*, 154 F.3d at 434.

protect animals, while restricting the rights of their owners or handlers.¹³²

The Senate Report for Research or Experimentation labeled cramped, uncomfortable or unsanitary quarters as inhumane.¹³³ The words *cramped* and *inadequate* were used repeatedly in the report.¹³⁴ It is inhumane to deny an animal true rest by not allowing it sufficient space to lie down.¹³⁵ The 1970 amendment to the AWA established, "by law the humane ethic that animals should be accorded the basic creature comforts of adequate housing, ample food and water, reasonable handling, decent sanitation, [and] sufficient ventilation . . ."¹³⁶

This definition of inhumane living conditions no longer stops at intensive confinement and lack of proper ventilation. The AWA now recognizes the importance of providing for the psychological well-being of primates and for the exercise of dogs.¹³⁷ The AWA now requires not only minimization of animal pain, but also minimization of animal distress, or even the possibility of animal pain or distress.¹³⁸ In *Animal League Defense Fund v. Glickman*, the Circuit Court for the District of Columbia held that by seeking to promote the psychological well-being of animals, "the Animal Welfare Act . . . is explicitly concerned with the *quality* of animal life."¹³⁹ The court held that when determining humane treatment, the focus should be on the conditions under which an animal lives.¹⁴⁰ Animals in persistent states of suffering are seriously injured. Similarly, people are aesthetically injured from knowing that such inhumane treatment is occurring.¹⁴¹

Like the animals governed by the AWA, factory farm animals are subjected to inhumane treatment that Congress should address. Congress

¹³² *McGinley v. Union P. R.R. Co.*, 263 N.W. 393, 398 (Neb. 1935).

¹³³ Sen. Rpt. 89-1281, at 2636 (June 15, 1966).

¹³⁴ *Id.*

¹³⁵ See *U.S. v. Powell*, 65 F.2d 793, 794 (4th Cir. 1933); *N. Pac. Terminal Co.*, 181 F. at 880.

¹³⁶ H.R. Rpt. 91-1651, at 5104 (Dec. 2, 1970) (reprinted in 1970 U.S.C.C.A.N. 5103, 5104).

¹³⁷ 7 U.S.C. § 2143 (1994).

¹³⁸ 7 U.S.C. §§ 2131-2146 (1994).

¹³⁹ *Glickman*, 154 F.3d at 438 (emphasis added) (interpreting the purpose behind the Animal Welfare Act as concern for the well-being of animals). Though the main issue the D.C. Circuit determined was the plaintiff's standing, the D.C. Circuit held that claims based on the quality of animal life are just as important as claims based on the extinction of a species. In *Glickman*, a frequent visitor to the Long Island Game Farm Park and Zoo sued the zoo due to his concern that primates were being treated inhumanely because certain primates were isolated from their companions and their cages void of anything but a swing. The court granted the plaintiff standing to sue for the humane treatment of mistreated primates, holding that the D.C. Circuit, along with the Ninth Circuit, recognized that people have a valid interest in viewing animals free from harm and inhumane treatment. *Id.* at 426, 429, 433-34.

¹⁴⁰ *Id.* at 438.

¹⁴¹ *Id.*

has expressed concern over the inhumane treatment of animals and inhumane treatment has been defined in terms of confinement. Factory farm animals' basic creature comforts are not being met. Their housing is inadequate because there is not enough space. The lack of space harms both ventilation and sanitation.

Currently, the AWA provides for the exercise of dogs.¹⁴² In 1976, the Committee on Agriculture expressed the hope that laboratories would expand efforts to maintain the well-being of dogs through exercise.¹⁴³ Congress has recognized that animals (or at least dogs) need exercise and that it is unhealthy for them to be confined in a cage for their entire lives without any freedom of movement. Similarly, it is unhealthy for chickens, pigs, calves and cows to remain confined without freedom of movement for the duration of their lives. It is natural and healthy for them to graze in pastures, roll around in the mud or simply stretch their limbs. Existing conditions on the factory farm are not normal, healthy or humane.

The AWA shows that Congress is becoming more concerned with the psychological well-being of animals.¹⁴⁴ A scan of the legislative history shows an increasing concern with animal welfare that may stem from public outrage.¹⁴⁵ Environmental living conditions of animals affect quality of life, psychological well-being and animal distress, which are all topics of Congressional concern.¹⁴⁶ Research animals and factory farm animals are confined, kept solely for and die for human interests, and affect our economy. Because of the similarities between research animals and factory farm animals, the interest in the quality of animal life of research animals should prompt a concern for factory farm animals.

Factory farms take no interest in their livestock's psychological well-being. No living creature could possibly remain psychologically sound

¹⁴² 7 U.S.C. § 2143 (1994).

¹⁴³ H.R. Rpt. 94-801, at 762 (Jan. 29, 1976). The Committee recommended the passage of H. R. 5808, the AWA amendments of 1976.

¹⁴⁴ 7 U.S.C. § 2143 (1994).

¹⁴⁵ The definition of protected *animals* was expanded in 1970 and the definition of *dog* was further expanded in 1976. H. R. Rpt. 91-1651, at 5104 (Dec. 2, 1970); H. R. Rpt. 94-801, at 759-59 (Jan. 29, 1976). In 1966 the Act set out "to establish humane standards for the treatment of dogs, cats, and certain other animals (monkeys, guinea pigs, hamsters, and rabbits). . . ." Sen. Rpt. 89-1281, at 2635 (June 15, 1966). By 1970, the AWA included in text the animals, which had previously been in parenthesis only, adding and including all warm-blooded animals. The AWA further expanded regulation to more animal handlers. H. R. Rpt. 91-1651, at 5104 (Dec. 2, 1970). The 1976 Amendment made clear, in response to a misinterpretation by the Secretary of Agriculture, that *dog* included and protected all dogs used for any purpose. H. R. Rpt. 94-801, at 758-59 (Jan. 29, 1976). Today, monkeys are afforded the most protected status of all. Not only their pain and suffering is to be minimized, but their psychological well being is to be promoted. 7 U.S.C. § 2143 (1994).

¹⁴⁶ *Glickman*, 154 F.3d at 438.

living under factory farm conditions. Mortality rates, aggressive behaviors, and emotional disturbances of animals kept in factory conditions show lack of psychological well-being. Therefore, Congress should apply the same reasoning used to enact the AWA to enact a statute to extend the same protection to farm animals.

2. The Public Is Concerned With Humans Destroying and Harming the Natural Environment and With Harming Animals Specifically

The public is concerned about the environment and generally disapproves of intensive farming techniques.¹⁴⁷ The public is well aware of the effects of human caused environmental destruction. These include acid rain, landfills, extinction of plants and animals, pollution of land, water and air, deforestation and nuclear waste.¹⁴⁸ Surveys indicate that if a choice must be made, the concern over animals and nature outweighs an interest in economic growth by three to one.¹⁴⁹ The public is demanding more protection for the environment in general.¹⁵⁰ Membership in animal rights and animal welfare groups has dramatically increased in the last several decades; in the late 1990's, activists estimated members to number around ten million.¹⁵¹

A reason for public concern is that humans recognize a need to protect those who cannot protect themselves to prevent unnecessary suffering.¹⁵² This need should be especially strong where humans cause the destruction, harm or suffering. It is now generally accepted that animals are more than mere automatons. They are cognitive, can feel pain, and are worthy of moral concern.¹⁵³ "[F]arm animals raised for food production are sentient and should be free from abuse and neglect. . . ."¹⁵⁴ Farm animals' suffering is not isolated to a few instances; the animals suffer in great numbers. This widespread harm strengthens the need to address their conditions.¹⁵⁵

¹⁴⁷ Havercamp, *supra* n. 2, at 651-52.

¹⁴⁸ Havercamp, *supra* n. 2, at 661.

¹⁴⁹ Havercamp, *supra* n. 2, at 661 n. 98.

¹⁵⁰ Hamilton, *supra* n. 2, at 299.

¹⁵¹ Animal rights groups claim that animals have inherent rights to be free from torture, abuse, and death. Animal rights groups advocate legal standing for animals. Animal welfare groups, on the other hand, simply believe that the well-being of animals should always be a consideration and that practical means should be taken to ensure that animals do not suffer needlessly. Havercamp, *supra* n. 2, at 669, 671.

¹⁵² Havercamp, *supra* n. 2, at 672.

¹⁵³ Wise, *supra* n. 1, at 202.

¹⁵⁴ McCarthy & Bennett, *supra* n. 2, at 229.

¹⁵⁵ Wise, *supra* n. 1, at 203.

Perhaps as a result of growing public concern, the judicial system is taking animal cruelty more seriously.¹⁵⁶ In 1999, three factory farm employees of a pig-breeding farm in North Carolina were subjecting the housed pigs to horrific and shocking cruelties.¹⁵⁷ Investigators witnessed workers violently beating animals daily, bludgeoning pregnant sows with wrenches and iron poles, sawing off conscious animals legs and skinning pigs alive.¹⁵⁸ North Carolina made history by handing down the first felony indictments for charges of animal cruelty.¹⁵⁹ One of the indicted workers paid fines, served 125 days in jail, with an additional 120 days suspended, and received three years of supervised probation.¹⁶⁰ This sentence is the strongest penalty given to an individual for farm animal cruelty in United States history.¹⁶¹ This result sends a strong message that animal cruelty is a serious matter and conditions on factory farms must change.¹⁶²

3. The Booming Organic Food Industry Proves That Consumers and Producers Are Willing to Shift Towards More Humane Methods of Farming

Public concern over the environmental effects of factory farming is responsible for more consumers opting for organic food.¹⁶³ Consumers are willing to pay more for products that are morally, environmentally and physically safe.¹⁶⁴ After all, "we are what we eat."¹⁶⁵ Consumers decided that environmentally safe products were worth paying extra money to seek a guarantee of safeness.¹⁶⁶ In 1990, consumers received this guarantee

¹⁵⁶ PETA, *Peta's Success Stories for Animals: Animals Used for Food* <<http://www.peta.org/feat/rir/farm.html>> (accessed Feb. 15, 2001).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Linda Pettit, *As Prince Charles Addressed an Audience of Organic Farmers At the Organic Food Awards In London This Week, the Focus Fell Once Again On This Sector*, Supermarketing, 4 (Oct. 30, 1998) (available in LEXIS, Individual Publications). Organic food is food produced using only plant or animal products. *Webster's Third New International Dictionary*, 1590 (1993). Organic meat comes from free-range livestock that are not routinely treated with drugs. HDRA, the Organic Organization, *What is Organic Food* <<http://www.hdra.org.ud/food.htm>> (accessed Aug. 14, 2001).

¹⁶⁴ Havercamp, *supra* n. 2, at 673.

¹⁶⁵ *Provimi Veal Corp.*, 626 F. Supp. at 278.

¹⁶⁶ Coleman Natural Products, "Natural" - The Coleman Definition <<http://www.colemannatural.com/organic2html>> (accessed Feb. 06, 2001).

when Congress passed the Organic Foods Production Act to assure consumers of a consistent, safe standard for organic food.¹⁶⁷

A market exists for food that promises that animals were treated humanely before their slaughter. Consumers do not always seek low prices when those prices include health risks and damage the environment.¹⁶⁸ The health benefits of consuming meat that comes from local farmers using only natural farming methods attracts consumers who care about their health.¹⁶⁹ Eggs laid by free-range hens raised on a pasture have thirty-four percent less cholesterol.¹⁷⁰ Farmers devoted to producing traditional, quality food at higher prices "sell wholesomeness and the traditional image of American agriculture and . . . will reap a larger share of the consumer food dollar by doing so."¹⁷¹ European consumers have shown a willingness to pay extra money for products when the animals they consume are raised cruelty-free.¹⁷² People are even choosing organic food options for their pets.¹⁷³ A survey conducted in the United Kingdom showed that eighty-five percent of pet owners who buy their pets organic food placed importance on the quality of the lives of the animals that eventually become food, when making pet food selections.¹⁷⁴

Recent market analysis estimates that the organic United States market will be worth twelve billion dollars and other reports have estimated that organic products will steal five percent of mainstream markets within five years.¹⁷⁵ The organic food market is predicted to continue to grow and expand its range.¹⁷⁶ In the United States, Spectrum Foods reported an eighty-seven percent increase in profits in 1999, mainly from organic investments.¹⁷⁷ As demand increases, supermarkets around the world are offering more organic options.¹⁷⁸ Safeway currently offers eighteen organic

¹⁶⁷ *Id.*

¹⁶⁸ Hamilton, *supra* n. 2, at 305.

¹⁶⁹ *Id.*

¹⁷⁰ Jenny Callison, *Waynesville Market More Than Fresh Produce* <http://enquirer.com/editions/2000/05/21/loc_waynesville_market.html> (accessed Apr. 23, 2001).

¹⁷¹ Hamilton, *supra* n. 2, at 307.

¹⁷² Fox, *supra* n. 3, at 176.

¹⁷³ See generally Andrew Lewer, *Yarrah Offers Healthy Option for Pet Lovers*, *Supermarketing*, 7 (Oct. 20, 2000) (available in LEXIS, Individual Publications).

¹⁷⁴ *Id.*

¹⁷⁵ *Net Gain? Tapping the Potential of the Organic Food Market* <http://www.just-food.com/features_detail.asp?art=303&c=1> (accessed Jan. 29, 2001).

¹⁷⁶ Pettit, *supra* n. 163.

¹⁷⁷ *Net Gain?*, *supra* n. 175.

¹⁷⁸ Andrew Lewer, *Iceland Pledge Puts Producers in a Spin*, *Supermarketing*, 11 (Aug. 18, 2000) (available in LEXIS, Individual Publications).

meat choices.¹⁷⁹ Sales have soared for Organic Valley, an organic meat and dairy producer committed to humane farming practices.¹⁸⁰ Sales grew from \$20 million in 1997 to over \$72 million in 2000.¹⁸¹ The company predicts sales of over \$108 million in 2001.¹⁸²

Statistics on the organic food industry's success proves that consumers care about the quality of life that animals raised for food production have before slaughter. People are willing to pay slightly higher prices for the comfort of knowing that animals were not mistreated while alive. Some consumers are unwilling to sacrifice their values by purchasing meat that was raised under cruel conditions. Treating farm animals humanely provides justification for their subsequent slaughter and consumption that is important to many people.

B. Congress Should Regulate Factory Farming Because Factory Farming Creates Dangerous Health Risks for Humans

Animals are not the only creatures harmed by factory farming. Factory farm conditions create health risks for humans as well. Factory farming is dangerous because 1) daily administration of sub-therapeutic doses of antibiotics create strains of antibiotic resistant bacteria that can infect humans and result in untreatable bacteria, 2) many health organizations around the world have warned against the dangers of administering sub-therapeutic doses of antibiotics, 3) the administration of sub-therapeutic doses of antibiotics is unnecessary and 4) massive amounts of waste contaminate the land on and around factory farms, creating dangerous toxins that remain in the soil for long periods of time.

1. The Administration of Sub-Therapeutic Doses of Antibiotics Endangers Human Health

The administration of sub-therapeutic doses of antibiotics is dangerous to human health because a) continuous exposure to antibiotics contributes to antibiotic resistance bacteria and b) antibiotic resistant bacteria, when transmitted to humans, will be untreatable.

¹⁷⁹ *Id.*

¹⁸⁰ Letter from CROPP Cooperative (Organic Valley Farms), to Amy Mosel, Managing Ed., 8 (Apr. 24, 2001) (copy on file with the University of Dayton Law Review).

¹⁸¹ *Id.*

¹⁸² *Id.*

a. Continuous Exposure to Antibiotics Contributes to the Growing Problem of Antibiotic Resistant Bacteria

Experts warn that the use of antibiotics in animal feed contributes to antibiotic resistance that will eventually result in ineffective antibiotics in humans.¹⁸³ The consistent administration of antibiotics evolves bacteria into strains that are antibiotic resistant.¹⁸⁴ Stuart Levy, a microbiologist and professor at Tufts University School of Medicine, warns that agricultural use of antibiotics "contributes to the increasing ineffectiveness of antibiotics in treating infections in humans."¹⁸⁵ In addition, Professor Levy warns that once a human is infected, bacterium reproduce quickly.¹⁸⁶ "One *Escherichia coli* bacterium, for instance, can produce more than a million progeny in seven hours – a quickly growing problem if an antibiotic resistant organism infects a person."¹⁸⁷ "Human overuse . . . [of antibiotics] contributes to th[e] problem, but the volume of antibiotics administered to animals vastly exceeds the amount taken by humans."¹⁸⁸

Scientific evidence shows a direct link between long term antibiotic use in animals and human antibiotic resistance.¹⁸⁹ In 1984, the Centers for Disease Control ("CDC") concluded that there was a direct correlation between antibiotic feed and eighteen serious salmonella cases that occurred the previous year.¹⁹⁰ The CDC discovered further evidence of the connection in 1987.¹⁹¹ In 1990, a Denmark study concluded that use of the antibiotic avoparcin in animals was linked to the emergence of vancomycin-resistant enterococi in humans.¹⁹²

Recent studies have discovered bacteria in chickens that are resistant to fluoroquinolones, the most recently approved class of antibiotics that scientists had hoped would effectively treat a variety of infections for a

¹⁸³ GAO Report, *supra* n. 87, at 1-2.

¹⁸⁴ Wise, *supra* n. 1, at 195.

¹⁸⁵ O'Brien, *supra* n. 7, at 423.

¹⁸⁶ O'Brien, *supra* n. 7, at 426.

¹⁸⁷ Alternative Medicine Update, *Researchers Cite Link Between Sub-therapeutic Antibiotic Dosing In Livestock and Resistance In Humans*, <<http://www.colemannatural.com/news-researchers-cite-link.html>> (Jan. 8, 2001).

¹⁸⁸ O'Brien, *supra* n. 7, at 424.

¹⁸⁹ O'Brien, *supra* n. 7, at 425.

¹⁹⁰ O'Brien, *supra* n. 7, at 425.

¹⁹¹ O'Brien, *supra* n. 7, at 438.

¹⁹² Enterococcus is an organism that causes serious and sometimes untreatable conditions in humans. Vancomycin is an extremely important human antibiotic, sometimes the only one that treats certain diseases. Though neither avoparcin or vancomycin is used legally in the United States in agriculture, the Food and Drug Administration (FDA) has discovered instances of illegal administration on veal calves and possibly other meat products. GAO Report, *supra* n. 87, at 5.

long time into the future.¹⁹³ Bacteria that have developed resistances cause common diseases such as pneumonia, tuberculosis and common childhood infections.¹⁹⁴ Livestock feed is laced with many of the drugs used to treat humans, such as amoxicillin, ampicillin, erythromycin, neomycin, penicillin and tetracycline.¹⁹⁵

b. Antibiotic Resistant Bacteria, When Transmitted to Humans, Will Be Untreatable

Consistent administration of antibiotics to animals is dangerous for humans who consume them because resistance to antibiotics is a serious human health risk.¹⁹⁶ Bacteria may spread from species to species.¹⁹⁷ John Schmitz, the head of the University of Nebraska-Lincoln Department of Veterinary Science, states that "[a]pproximately 90 percent of all food-borne illnesses can be passed from animals to humans. . . ."¹⁹⁸ Antibiotics often treat infectious disease, the third leading cause of death in the United States.¹⁹⁹ "Resistant organisms passed to humans in meat render normal antibiotics ineffective against a wide range of infections. Patients may suffer prolonged illness or death while being treated with ineffective medicines."²⁰⁰

Disease can be transmitted to anyone who either has every day contact with animals or their waste, or eats contaminated food.²⁰¹ If a field is fertilized with contaminated waste, for example, harvested crops could become contaminated and transmitted to the humans who consume such crops.²⁰²

In the United Kingdom, there have been outbreaks of salmonella, botulism, bovine spongiform encephalopathy ("BSE," commonly known as Mad Cow Disease)²⁰³ and paratuberculosis in animals.²⁰⁴ In 1996,

¹⁹³ Denise Grady, *Antibiotic Use in Livestock Stirs Fears*, N.Y. Times, <<http://www.colemannatural.com/news-article-nytimes.html>> (accessed Feb. 06. 2001).

¹⁹⁴ GAO Report, *supra* n. 87, at 3.

¹⁹⁵ Alternative Medicine Update, *supra* n. 187.

¹⁹⁶ GAO Report, *supra* n. 87; Wise, *supra* n. 1, at 195.

¹⁹⁷ O'Brien, *supra* n. 7, at 426.

¹⁹⁸ Industry Report, *Attack Salmonella on the Farm*, Food Engineering, 18 (Mar. 1993).

¹⁹⁹ GAO Report, *supra* n. 87.

²⁰⁰ *Provimi Veal Corp.*, 626 F. Supp. at 279.

²⁰¹ GAO Report, *supra* n. 87, at 2.

²⁰² GAO Report, *supra* n. 87, at 2.

²⁰³ BSE originated when farmers fed cows the body parts of other dead cattle. Symptoms of BSE are akin to the symptoms of Alzheimer's disease and include loss of motor skill. Mad Cow Charity, *About CJD and BSE* <<http://www.madcowcharity.com/about.html>> (accessed Mar. 27, 2001).

research indicated a link between Creutzfeldt-Jakob Disease ("CJD"), the human variant of BSE,²⁰⁵ and BSE.²⁰⁶ Experts believe that consuming contaminated meat has exposed victims to CJD.²⁰⁷ More cases of CJD emerge every year and experts estimate a growth rate of twenty to thirty percent.²⁰⁸ As of September 2000, there were eighty-two confirmed cases of CJD.²⁰⁹

"Last year, The New England Journal of Medicine reported the . . . emergence of a superstrain of . . . salmonella that was resistant to most forms of drug treatments."²¹⁰ Salmonella bacteria infect around 1.4 million Americans yearly; approximately 8,000-18,000 people are hospitalized and approximately 500 will die of salmonella poisoning every year.²¹¹ Young children and the elderly are most at risk because their immune systems are weak.²¹² For example, in Nebraska, salmonella bacteria resistant to Rocephin, a widely used pediatric drug, infected a boy who lived on a farm.²¹³ Researchers at the University of Nebraska Medical School and the CDC concluded that the resistant bacteria in the boy were the same bacteria prevalent in the cattle on his ranch.²¹⁴ This led the researchers to believe that the bacteria became resistant to the antibiotic in the cattle and then the bacteria were passed to the boy with that resistance.²¹⁵ Research has shown that Ceftriaxone, an antibiotic used on cattle, pigs and poultry, is closely related to Rocephin.²¹⁶ Thus, when antibiotic resistant bacteria in animals

²⁰⁴ Kim Brooks, *History, Change and Policy: Factors Leading to Current Opposition to Food Biotechnology*, 5 Geo. Pub. Policy Rev. 153, 154 (2000) (available in 5 Geo. Pub. Policy Rev 153, LEXIS).

²⁰⁵ CJD affects the human brain and causes symptoms such as depression, loss of motor skills, anxiety, and mood changes. Most victims die within thirteen months, because there is no treatment or cure. Mad Cow Charity, *supra* n. 203; CJD Voice, *Creutzfeldt-Jakob Disease Fact Sheet* <<http://members.aol.com/larmstr853/cjdvoice/facts.htm>> (accessed Mar. 28, 2001).

²⁰⁶ Brooks, *supra* n. 204, at 157.

²⁰⁷ Brooks, *supra* n. 204, at 157.

²⁰⁸ James Meikle, *Rapidly Rising Death Toll from Human BSE*, The Guardian <http://www.mad-cow.org/00/sep00_news.html> (accessed Mar. 2, 2001).

²⁰⁹ *Id.*

²¹⁰ *U.S. Takes Shy Step Toward Curbing Antibiotic Use On Farms*, USA Today <<http://www.colemannatural.com/news-article-usatoday.html>> (accessed Feb. 06, 2001).

²¹¹ GAO Report, *supra* n. 87, at 4; Marc Kaufman, *Boy's Drug-Resistant Germ Tied to Antibiotics in Cattle*, Washington Post A02 (Apr. 27, 2000).

²¹² GAO Report, *supra* n. 87, at 3.

²¹³ Kaufman, *supra* n. 211, at A02. According to the CDC, there is no good alternative for Rocephin at this time. Kaufman, *supra* n. 211, at A02.

²¹⁴ Kaufman, *supra* n. 211, at A02.

²¹⁵ Kaufman, *supra* n. 211, at A02.

²¹⁶ Kaufman, *supra* n. 211, at A02.

are transmitted to a human the bacteria are also resistant to closely related antibiotics used on humans.

2. Congressional Response Is Warranted Because Many Health Organizations Around the World Have Warned Against Administration of Sub-Therapeutic Doses of Antibiotics

Due to concern with the safety issues of resistant bacteria and transferability, the United States General Accounting Office ("GAO") first questioned the implications of using antibiotics in agriculture in 1977.²¹⁷ The GAO recommended that the FDA investigate the safety of agricultural use of antibiotics and withdraw approval, if necessary.²¹⁸ The FDA subsequently proposed withdrawing its approval of the agricultural use of penicillin and tetracycline in 1978, but Congress denied the proposal.²¹⁹ Critics assert that Congress acted in response to lobbying by the livestock and pharmaceutical industries.²²⁰ At that time, the National Academy of Sciences recommended additional research to fill data gaps as well.²²¹

Other organizations have recommended altering the use of antibiotics on factory farms. The World Health Organization ("WHO"), the United Nation's arm responsible for monitoring global health, favors a ban on the agricultural use of drugs used to treat humans.²²² The CDC supports restricting antibiotic use.²²³ The Department of Health and Human Services contends that safety measures need to be taken now.²²⁴ The National Academy of Sciences now wants to monitor drug resistance and is researching alternatives to drug administration on farms.²²⁵ The FDA has begun revising its guidelines for the agricultural approval of antibiotics.²²⁶ Some farmers have even cut back voluntarily, perhaps in response to

²¹⁷ GAO Report, *supra* n. 87, at 8.

²¹⁸ The Department of Health and Human Services' Food and Drug Administration ("FDA") approves antibiotics used in agriculture for animals. Monitoring the development of antibiotic resistance in humans is the responsibility of the Department of Agriculture. GAO Report, *supra* n. 87, at 2, 8.

²¹⁹ GAO Report, *supra* n. 87, at 8; *Provimi Veal Corp.*, 626 F. Supp. at 286 (the case incorrectly gives the year as being 1977).

²²⁰ *Provimi Veal Corp.*, 626 F. Supp. at 286 n. 5.

²²¹ GAO Report, *supra* n. 87, at 8.

²²² GAO Report, *supra* n. 87, at 8; *Shy Step*, *supra* n. 210.

²²³ GAO Report, *supra* n. 87, at 11.

²²⁴ GAO Report, *supra* n. 87, at 1.

²²⁵ *Shy Step*, *supra* n. 210.

²²⁶ Grady, *supra* n. 193.

publicity of the health dangers.²²⁷ For example, Tyson Foods uses no antibiotics or growth hormones on its animals.²²⁸

The international community has taken aggressive steps towards minimizing the risk posed to human health by the agricultural use of antibiotics.²²⁹ In 1970, the United Kingdom banned the use of sub-therapeutic drugs after a committee of microbiologists and doctors concluded that over long periods of time, resistant bacteria would emerge that would threaten human health.²³⁰ Other European countries soon followed.²³¹ Sweden banned any and all growth antibiotics in 1986, Denmark banned one antibiotic in 1998, and Canada has taken measures to reduce the amounts of antibiotics used in agriculture.²³² Iceland pledged to remove conventional foods from the market and replace them with organic products at no increased cost to the consumer.²³³

Since 1985, there has been a European Union²³⁴ blanket ban on hormones used in farm animal feed. The ban made it illegal to administer antibiotics to farm animals, absent a prescription from a qualified veterinarian.²³⁵ It has survived legal challenges from producers and interest groups, but was repealed for procedural reasons and readopted in 1988.²³⁶

²²⁷ O'Brien, *supra* n. 7, at 438.

²²⁸ Tyson, *How Tyson Chickens Are Grown and Processed* <<http://www.tyson.com/corporate/news/viewNews.asp?article=772>> (accessed Aug. 14, 2001).

²²⁹ *Shy Step*, *supra* n. 210.

²³⁰ The Committee considered cases of salmonella transmitted from animals to humans. However, the United Kingdom should not be used as a comparison model for the effects of farming without antibiotics because antibiotics can still be obtained by prescription. O'Brien, *supra* n. 7, at 424-25.

²³¹ GAO Report, *supra* n. 87, at 9.

²³² GAO Report, *supra* n. 87, at 9.

²³³ Lewer, *supra* n. 173, at 11.

²³⁴ The European Union member states include Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. GAO Report, *supra* n. 87, at 8.

²³⁵ *Hormones: EU Farm Ministers Tighten up Restrictions*, Europe Env., 477 (May 14, 1996); *Hormones: We Do Not Need Them, Says European Farmers Coordination*, Europe Env., 464 (Oct. 31, 1995). Europe has had problems with devastating infectious diseases spread by afflicted farm animals. Two diseases that have raised much public concern are BSE and Foot and Mouth Disease. For general information on BSE, consult Mickle, *supra* note 208. There is no known treatment for Foot and Mouth, a highly contagious disease that kills or severely debilitates cloven-hoofed animals. Symptoms include fever and blisters on the tongue, lips, mouth, teats and between the claws. MSNBC, *Why is Everybody Afraid of Foot-and-Mouth?* <<http://www.msnbc.com/news/550713.asp>> (accessed Mar. 28, 2001). However, there should be no misconception that lack of hormone-laced feed is the cause of such disease. First, although banned over the counter, antibiotics are still used in the United Kingdom. O'Brien, *supra* n. 7, at 425. More importantly, both BSE and Foot and Mouth Disease are viral diseases. Therefore, the fact that Europe prohibits the administration of agricultural antibiotics has no bearing on their problems with disease, as antibiotics have no effect on viruses. John C. Brown, *What the Heck is a Virus?* <<http://people.ku.edu/~jbrown/virus.html>> (accessed Mar. 24, 2001).

²³⁶ *Hormones: We Do Not Need Them*, *supra* n. 235, at 464.

In addition to the ban, the European Union in 1989 barred the import of meat and livestock by non-compliant producers.²³⁷

The United States should follow the European Union's example or at least decrease the use of antibiotics in agriculture. Enough conclusive evidence and agency concern exists to justify such action.²³⁸ The United States should go further than WHO's narrow goal of banning the agricultural use of only those drugs used to treat humans because it may be insufficient, proven by cases such as the one involving the Nebraska child, infected with bacteria found in the cattle on his farm. His cattle were not given sub-therapeutic doses of Rocephin, the antibiotic doctors attempted to treat him with, but instead with an antibiotic merely related to Rocephin.²³⁹ His case proves the broad scope of the link between the agricultural use of antibiotics and human resistance. There is a direct correlation between administering antibiotics to our livestock and creating mutated antibiotic resistant bacteria. More people should not have to die before something is done about this known connection.

3. Congressional Regulation Is Warranted Because There Are Effective Alternatives to the Constant Administration of Antibiotics On the Farm

Farming without antibiotic use or decreased use is the key to halting these tragedies.²⁴⁰ Professor Stuart Levy suggests that if farms would "[e]liminate most agricultural usage[,] . . . [the] bacteria's evolution would likely slow down to a pace that would allow researchers to stay ahead with new, effective antibiotics."²⁴¹ Alternatives include improved hygiene and sanitation.²⁴² Farming with antibiotics is not necessary, as proven by existing American beef industry practices that do not include administering antibiotics to their cattle.²⁴³ Beef cattle are the least confined of farm animals, allowed to freely graze until one or two years old.²⁴⁴ This open farming method allows farmers to forgo the use of antibiotics, which are used partly to ward off diseases rampant in close quarters.²⁴⁵

Coleman Natural Beef, the nation's leading supplier of organic beef and

²³⁷ *Hormones: We Do Not Need Them*, *supra* n. 235, at 464.

²³⁸ See *supra* nn. 222-33 and accompanying text.

²³⁹ Kaufman, *supra* n. 211, at A02.

²⁴⁰ GAO Report, *supra* n. 87, at 10.

²⁴¹ O'Brien, *supra* n. 7, at 424.

²⁴² GAO Report, *supra* n. 87, at 11.

²⁴³ O'Brien, *supra* n. 7, at 421.

²⁴⁴ O'Brien, *supra* n. 7, at 421.

²⁴⁵ O'Brien, *supra* n. 7, at 421.

lamb in the United States, allows their calves to remain with their mothers for eight to ten months so that natural antibodies can be transferred through their mother's milk.²⁴⁶ Once the calves are weaned, they are allowed to graze freely in a pasture, an outdoor environment making disease less likely.²⁴⁷ The cattle do not need, and Coleman does not use, antibiotics or growth stimulating hormones.²⁴⁸ Organic Valley produces dairy and meat products across the United States.²⁴⁹ Organic Valley never uses antibiotics in production.²⁵⁰ Organic Valley guarantees the humane treatment of animals, by providing them access to the outdoors that prevents health problems.²⁵¹

Beef and other meat producers should follow the lead of Coleman and Organic Valley in adopting methods that have proven farming without antibiotic usage is successful. Freeing factory farm animals from their confinement and placing them in a natural and open environment will naturally alleviate the problems with disease that result from intensive farming techniques. Allowing farm animals to live less confined lives will promote their psychological well being in the process, a shown concern of Congress.²⁵²

4. Factory Farming Exposes Humans to Unhealthy Toxins Created From Massive Amounts of Waste

Antibiotic administration is not the only factory farming practice endangering humans.²⁵³ The massive amounts of waste produced at the factory farm can adversely affect human health as well.²⁵⁴ Because thousands of animals produce great amounts of waste, there are resulting problems with the "atmospheric deposition of nitrogen and accumulation of heavy metals and phosphorus in soils."²⁵⁵ Furthermore, this waste results in contaminating the water around the farm. In some cases, the water only becomes drinkable after significant periods of time have passed, sometimes

²⁴⁶ Margie Russell, *Improving the Safety Net*, Food Engineering, 51 (July, 1994); Coleman Natural Products, *supra* n. 166.

²⁴⁷ Coleman Natural Products, *supra* n. 166.

²⁴⁸ Russell, *supra* n. 246, at 51.

²⁴⁹ Leaflet from Organic Valley Family of Farms and CROPP Cooperative to Amy Mosel, Managing Ed., bullet 3 on the back (Apr. 24, 2001) (copy on file with the University of Dayton Law Review).

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² 7 U.S.C. § 2143 (1994).

²⁵³ Havercamp, *supra* n. 2, at 656.

²⁵⁴ Havercamp, *supra* n. 2, at 656.

²⁵⁵ Havercamp, *supra* n. 2, at 657.

as long as twenty years.²⁵⁶ Contamination from the toxic water is a realistic possibility and could happen during the flooding of basins or when waste is improperly applied to fields.²⁵⁷

During the many years that the waste is decomposing, odors are emitted from feces, urine, skin, hair, feed and bedding contained in the water.²⁵⁸ Humans exposed to these odors experience nausea, vomiting, headache, respiratory problems — such as shallow breathing, coughing, irritation of eyes, nose, and throat, — and depression.²⁵⁹ Farm workers and farm neighbors are constantly exposed to chemical or biological hazards, poisonings, and respiratory disease.²⁶⁰

An open farming method would alleviate these problems, which would force farmers to reduce the massive numbers of animals housed at each facility. Fewer animals would mean less noise, less waste and less pollution. In turn, this would benefit the animals by allowing them more room per facility.

C. Congress Should Regulate Factory Farming Because Other Countries Have Already Enacted Legislation to Protect Farm Animals

Most countries outside of the United States have enacted some form of legislation to protect farm animals or to regulate farm animal practices. Most of these laws were enacted within the last couple of decades and either set limits on the administration of antibiotics or set requirements for housing. These laws were created to ensure the humane treatment of farm animals, specifically within the context of current farming practices. The competing interests of each individual species' needs versus the farmer's economic needs have been balanced. The result is a fair compromise that allows animals basic creature comforts, while not overburdening the farmer with outrageous restrictions. The two most comprehensive protective statutes belong to 1) the European Union and 2) the United Kingdom.

²⁵⁶ Havercamp, *supra* n. 2, at 657.

²⁵⁷ Havercamp, *supra* n. 2, at 657.

²⁵⁸ Havercamp, *supra* n. 2, at 657.

²⁵⁹ Havercamp, *supra* n. 2, at 657.

²⁶⁰ Havercamp, *supra* n. 2, at 659.

1. The European Union Has Enacted Legislation Providing for the Humane Treatment of Farm Animals

The European Union has created statutes to ensure uniformity within its member's states and to avoid unfair competition from areas less locally regulated. The protective statutes focus on the principle of free movement and each animal species' physiological and ethological needs. The European Union provides for a) a general law protecting farm animals and b) laws that are species or situation specific.

a. The European Council Directive for the Protection of Animals Kept For Farming Purposes Provides for the Humane Treatment of Farm Animals In General

The European statutes that protect farm animals focus on promoting animal welfare and preventing their suffering.²⁶¹ European legislators have recognized that lack of space and overstocking leads to avoidable behavioral problems.²⁶² Intensive farming systems lead to excessive and unnecessary suffering that creates the need for uniform minimum standards of protection.²⁶³

The European Council Directive for the Protection of Animals Kept for Farming Purposes ("Directive") sets forth standards to promote animal welfare in farming systems.²⁶⁴ The Directive contains requirements on housing, freedom of movement, nutrition, sanitation and ventilation.²⁶⁵ Requirements include inspection, adequate lighting and adequate cage sanitation.²⁶⁶ Farmers must care for sick or injured animals immediately.²⁶⁷ Farmers must feed animals nutritious diets appropriate to their age and species and no other substance may be administered as food, except for therapeutic or prophylactic purposes.²⁶⁸ The buildings in which the animals

²⁶¹ Council Directive 98/58/EC at art. 2.

²⁶² Case C-1/96, *R v. Minister of Agric., Fisheries and Food ex parte Compassion In World Farming Ltd.*, 1998 E.C.R. I-1251, [1998] 2 C.M.L.R. 661 (1998), at 22.

²⁶³ Council Directive 98/58/EC at art. 3; Council Directive 86/113/EEC of 25 March 1986 Laying Down Minimum Standards for the Protection of Laying Hens Kept in Battery Cages, 1986 O.J. (L 95), art. 1.

²⁶⁴ Member states of the European Union are responsible for enforcing the provisions by inspecting for compliance, taking into consideration every animal's species, age, and physiological and ethological needs. Council Directive 98/58/EC at art. 4, 6.

²⁶⁵ *Id.* at annex 7-11, 14-18.

²⁶⁶ *Id.* at annex 2, 8, 11.

²⁶⁷ *Id.* at annex 13.

²⁶⁸ *Id.* at annex 14, 18.

are kept must have sufficient ventilation.²⁶⁹ Air circulation, dust levels, temperature, humidity, and gas concentrations must not be harmful.²⁷⁰ Farmers must not keep animals in permanent darkness or permanent artificial lighting without periods of rest.²⁷¹

The freedom of movement of an animal, having regard to its species and in accordance with established experience and scientific knowledge, must not be restricted in such a way as to cause it unnecessary suffering or injury. Where an animal is continuously or regularly tethered or confined, it must be given the space appropriate to its *physiological and ethological needs* in accordance with established experience and scientific knowledge.²⁷²

In addition, "[n]o animal shall be kept for farming purpose unless . . . it can be kept without detrimental effect on its health or welfare."²⁷³

b. Other European Union Laws Providing for the Humane Treatment of Farm Animals Address the Needs of Individual Species of Farm Animals

Europe also addresses the needs of individual species through legislation focused on their particular living conditions and needs.²⁷⁴ Laying hens are specifically protected in the European Union by the Council Directive Laying Down Minimum Standards for the Protection of Laying Hens Kept in Battery Cages.²⁷⁵ Member states must ensure that at least 450 square centimeters (69.72 square inches) of unrestricted cage area is available for each individual laying hen, that each cage is at minimum forty centimeters (15.75 inches) high over sixty five percent of the cage area and not less

²⁶⁹ *Id.* at annex 10.

²⁷⁰ *Id.*

²⁷¹ "Where the natural light is insufficient to meet the *physiological and ethological needs of the animals*," farmers must provide artificial light. *Id.* at annex 11 (emphasis added).

²⁷² *Id.* at annex 7 (emphasis added).

²⁷³ *Id.* at annex 21.

²⁷⁴ See generally Council Directive 86/113/EEC at art. 1; Council Directive 91/629/EEC of 19 November 1991 Laying Down Minimum Standards for the Protection of Calves, 1991 O.J. (L 340), art. 1.

²⁷⁵ Battery cage systems are systems where cages are placed beside and/or on top of each other. The Council found that the conditions under which egg production takes place to be of major importance to market organization and that uniform rules were needed to alleviate competitive interests in member states that had varying degrees of regulations. A commission that makes on the spot inspections enforces the provisions. Council Directive 86/113/EEC at art. 1, 2, 7.

than thirty-five centimeters (13.78 inches) at any point.²⁷⁶ This requirement applies regardless of the number of hens in each cage.²⁷⁷ Hens must have access to continuous fresh drinking water and fed nothing other than feed and therapeutic or prophylactic substances.²⁷⁸

Veal calves confined for fattening are specifically protected in the European Union by the Council Directive Laying Down Minimum Standards for the Protection of Calves.²⁷⁹ The law requires calves confined in groups to have unrestricted, unobstructed floor space of at least 1.5 square meters (16 square feet) for each calf that weighs 150 kilograms (401.88 pounds), allowing them to turn around and lie down without hindrance.²⁸⁰ Where calves are confined in individual stalls, the walls should be perforated so that they can view and touch other calves.²⁸¹ The width of the stalls must measure at least ninety centimeters (35.43 inches) plus or minus ten percent or .80 times the height at the withers.²⁸² Each calf must have the ability to lie down, rest, stand up and groom itself without difficulty.²⁸³ The lying area must be comfortable, clean and not slippery or dangerous.²⁸⁴ Calves must have some form of lighting (whether natural or artificial) that functions for at least eight hours — the length of time that natural light is available to them.²⁸⁵ Their diets should be based on their individual “age, weight, and behavioral and physiological needs, to promote a positive state of health and well-being.”²⁸⁶

Farm animals traveling for longer than eight hours are specifically protected by the Council Regulation on Animal Protection Standards Applicable to Road Vehicles used for the Carriage of Livestock on Journeys Exceeding Eight Hours (“8-Hour Law”).²⁸⁷ Animals transported

²⁷⁶ Council Directive 86/113/EEC at art. 3.

²⁷⁷ *Id.*

²⁷⁸ In addition, farmers must use cages with openings wide enough for an adult hen may pass through without injury. Floors must be constructed to support the hen's forward facing claws and the slope should not exceed eight degrees. Farmers must give them rest from artificial lighting. *Id.* at annex 2, 4.

²⁷⁹ The commission is authorized to submit reports, create the rules of inspection, and report the results of inspections. Council Directive 91/629/EEC at art. 1, 2, 6, 7.

²⁸⁰ Council Directive 91/629/EEC at art. 3.

²⁸¹ *Id.*

²⁸² *Id.* Withers is “the part between the shoulder bones at the base of the neck in various animals.” *Webster's Third New International Dictionary* 2627 (1993).

²⁸³ Council Directive 91/629/EEC at art. 1, annex 7.

²⁸⁴ *Id.* at annex 10.

²⁸⁵ *Id.* at annex 5.

²⁸⁶ *Id.* at annex 11.

²⁸⁷ Council Regulation (EC) 411/98 on Additional Animal Protection Standards Applicable to Road Vehicles Used for the Carriage of Livestock on Journeys Exceeding Eight Hours, 1998 O.J. (L52), art. 1.

for periods longer than eight hours must be provided certain travel conditions.²⁸⁸ The 8-Hour Law places great emphasis on the principle of free movement.²⁸⁹

The only United States law that even compares to any of these European laws is the 28-Hour Law, which is similar to the European 8-Hour Law.²⁹⁰ Both address livestock conditions during transport and provide detailed requirements for their care. The 28-Hour Law requires that the animals have rest after a certain amount of time has passed, just to place them back into the same conditions.²⁹¹ Whereas the European law focuses on ensuring the travel conditions themselves are more comfortable when travel exceeds eight hours. European legislators have concluded that eight hours of travel is uncomfortable enough to warrant regulation. The United States, by contrast, allows animals to remain uncomfortable for twenty additional hours of travel before requiring rest.²⁹²

European regulations reflect the recognition that different species have different needs that should be considered if welfare interests are to be truly advanced. The laws were created to protect the comfort of the animal, rather than just the economic interests of the farmer or even the interests of people who are aesthetically injured by the suffering of another living creature.²⁹³ The laws appear to evolve from a concern for the animal's interests.

In the United States, we have seen a trend towards recognizing the need to maintain the psychological well-being and freedom of movement of certain animals. Providing for the psychological well-being of primates is now part of the AWA requirements. The exercise of dogs is now a recognized need as well. This Congressional acknowledgement that various species have special needs should prompt the enactment of a statute that considers farm animals' special needs and protects them from abusive living conditions.

²⁸⁸ Farmers must provide animals with bedding material that "guarantees their comfort," with feed kept separated from contaminants such as dust and animal waste, equipment secured so that the animals cannot be injured by its shifting in transit, and the ventilation must be adequate. *Id.* at annex 1-2, 4.

²⁸⁹ *Id.* at annex 4.

²⁹⁰ Council Regulation (EC) 411/98 at art. 1; 49 U.S.C. § 80502 (1994).

²⁹¹ 49 U.S.C. § 80502 (1994).

²⁹² 49 U.S.C. § 80502 (1994).

²⁹³ Council Directive 86/113/EEC; Council Directive 91/629/EEC; Council Directive 98/58/EC; Council Regulation (EC) 411/98.

2. The United Kingdom Has Enacted Legislation Providing for the Humane Treatment of Farm Animals

The United Kingdom has followed the European Community's model and created their own protective statutes for farm animals.²⁹⁴ The United Kingdom is concerned with the welfare of farm animals and in the past the United Kingdom considered the European Union directives inadequate protection for the welfare of animals.²⁹⁵ The Welfare of Farmed Animals Regulations ("Regulations") parallels the European Union Directives, while exceeding their scope.²⁹⁶ In general, the Regulations are a mirror image of the European model, but special sections for each species accommodate the specific needs of that species.²⁹⁷

The special sections set forth painstakingly detailed requirements with great focus on freedom of movement.²⁹⁸ The area of room each animal is given depends on how many animals are housed in one cage or stall and the individual animal's size.²⁹⁹ For instance, laying hens kept in battery cages are allowed 1,000 square centimeters (155 square inches) of room when housed alone and 450 square centimeters (69.72 square inches) when housed with four or more other hens.³⁰⁰ Individual stalls in which calves are kept in must have a width equal to the height of the calf at the withers and a length equal to the body length of the calf multiplied by 1.1.³⁰¹ Where calves are kept in groups, each calf must have at least 1.5 square

²⁹⁴ Other countries have followed the European Union model as well. Wise, *supra* n. 1, at 212. The Swedish Animal Protection Act gives cattle grazing rights and pigs freedom from tethers (restraining ropes), separate bedding, adequate water, food and living space. Fox, *supra* n. 3, at 176. Non-compliant farmers may be forbidden to procure animals, fined, imprisoned or have mistreated animals taken by the police. Fox, *supra* n. 3, at 176-77. Denmark, Sweden, Norway and Luxembourg have laws prohibiting certain factory farming practices. Wise, *supra* n. 1, at 212. Ireland has implemented strict standards for the humane transportation of farm animals through the Diseases of Animals (Carriage of Cattle by Sea) Order, 1996 (SI No 17 of 1996). *Hinde Livestock Exports Ltd. v. Pandoro Ltd.*, [1997] 2 I.R. (Ire.).

²⁹⁵ The United Kingdom was the only member-state in the European Union to vote against the 1991 directive, due in part to the feeling that slowly eliminating the use of tethers was inadequate protection for pigs. The Welfare of Farmed Animals (England) Regulations 2000, (2000) SI 2000/1870; MAFF, *Animal Welfare on the Farm: Pigs, Sow Stalls and Tethers: History of the Ban* <<http://www.maff.gov.uk/animalh/welfare/on-farm/stalhist.htm>> (accessed Mar. 28, 2001).

²⁹⁶ The Welfare of Farmed Animals (England) Regulations 2000.

²⁹⁷ *Id.* at sched. 1-6.

²⁹⁸ *Id.* at sched. 1.

²⁹⁹ *Id.* at sched. 2, 4.

³⁰⁰ *Id.* at sched. 2. The European model, in contrast, allows only a standard 450 square centimeters, regardless of how many birds are in one cage. Council Directive 86/113/EEC at art. 3.

³⁰¹ The Welfare of Farmed Animals (England) Regulations 2000 at sched. 4. The European model, in contrast, allows only a standard 90 centimeters (35.43 inches) plus or minus 10% or .80 times the height at the withers. Council Directive 91/629/EEC at art. 3.

meters (16 square feet) of room when weighing less than 150 kilograms (401.88) and at least three square meters (32.26 square feet) of room when weighing over 200 kilograms (535.85 pounds).³⁰² Calves weighing in between 150 (401.88 pounds) and 200 kilograms (535.85 pounds) are allowed at least two square meters (21.72 square feet) of room.³⁰³ Pig stalls must have an area no less than the square length of the pig and no internal side may measure less than seventy five percent of the length of the pig.³⁰⁴

The Regulations take into consideration not only the needs of different species but the needs of each individual animal. Each animal is an individual entity with unique needs. However, farmer's interests are not forgotten. For instance, the Regulations provide that an animal's weight be considered in determining the minimum required space of its stall. The Regulations further provide that the number of animals per stall be considered, usually decreasing the required minimum space per animal when animals are housed in groups. Thus, individual animal's needs are a factor, while keeping in mind the room the farmer realistically has available. These Regulations strike a balance between compassion for animal welfare and the farmer's financial resources. Farmers who are financially able to house animals individually may have the room to afford each animal more space, while farmers who group animals together may not.

The United States should follow the example of foreign nations in enacting a protective statute for farm animals. England first investigated the need for reforms over a quarter of a century ago. Other countries have recognized that animals have ethological and physiological needs and place great importance on their welfare and ability to move freely. Intensive farming techniques in the United States are so distressing and uncomfortable that the basic creature comforts envisioned by the Brambell Committee's "Five Freedoms"³⁰⁵ would serve as minimum requirements.

³⁰² The Welfare of Farmed Animals (England) Regulations 2000 at sched. 4.

³⁰³ *Id.* The European model, by contrast, allows a standard 1.5 square meters (16 square feet) without providing provisions for heavier calves. Council Directive 91/629/EEC at art. 3. The English Regulation, in addition, prohibits tethering, muzzles and isolation after eight weeks, with exceptions. Farmers must feed calves twice a day with sufficient levels of iron to ensure a proper blood hemoglobin level. The Welfare of Farmed Animals (England) Regulations 2000 at sched. 4. The European model is absent any of these requirements. See generally Council Directive 91/629/EEC.

³⁰⁴ In addition, each piglet should have enough room to comfortably suckle and rest away from its mother and piglets are not to be weaned earlier than three weeks. Keeping pigs in high temperature or humidity environments known as "sweat-box systems" is prohibited. The Welfare of Farmed Animals (England) Regulations 2000 at sched. 6.

³⁰⁵ The "Five Freedoms" were discussed *supra* notes 99-101 and accompanying text.

D. Congress Should Regulate Factory Farming Because Providing Protection for Farm Animals Would Not Harm the National Economy

Opponents of factory farm regulation may express concern about any economic disadvantages created by implementing regulations. Though any limitation on free enterprise may involve some cost, the end result will substantially improve poor industry practices, and those who will incur the most cost will be those who can most afford it. Therefore, the national economy will not suffer unduly from such regulations. Providing farm animals with the most basic creature comforts will not harm the economy because 1) regulations will not disadvantage the family farmer and 2) the benefits of a farming system that considers animal welfare outweigh the burdens a statute would impose.

1. Regulations On Factory Farming Would Not Harm the National Economy Because Regulations Will Not Disadvantage the Family Farmer

The majority of Americans do not reap great benefits from the intensive factory farming system. Small, family farms have been taken over by large corporations.³⁰⁶ These large corporations may generate capital from factory farming, but it is only a small percentage of the population who reaps the rewards from this capital.³⁰⁷ A law, therefore, that forces the industry to provide its profit-making animals with humane living conditions will not substantially burden the overall economy.³⁰⁸ In fact, in the late 1990's, forty percent of smaller Midwest swine producers were competitive with large-scale producers, showing that large-scale facilities are not a necessity.³⁰⁹ Further, as intensive farming has become industrialized, Congress should treat it like every other industry that pays costs to meet environmental regulations.³¹⁰

Intensive farming benefits neither farmers nor their employees.³¹¹ The savings generated by greater efficiency and lower food prices are offset overall by economic and health risks to the farmers and their employees.³¹² Instead of running their own businesses, factory farmers are given the

³⁰⁶ Havercamp, *supra* n. 2, at 653.

³⁰⁷ Hamilton, *supra* n. 2, at 294.

³⁰⁸ Hamilton, *supra* n. 2, at 294.

³⁰⁹ Havercamp, *supra* n. 2, at 659.

³¹⁰ Hamilton, *supra* n. 2, at 300.

³¹¹ Hamilton, *supra* n. 2, at 294.

³¹² Hamilton, *supra* n. 2, at 294.

status of independent contractors who, in reality, are wage employees of large corporations without employee benefits or workers compensation.³¹³ A statute regulating intensive techniques will benefit the small farmer by allowing him to avoid the need to invest in high tech confinement systems to compete in the industry.³¹⁴ The majority of family farmers would most likely already meet the requirements.³¹⁵

Though farmers may incur some cost, they could save money elsewhere as a result of requiring more humane housing conditions.³¹⁶ For instance, animals treated better will become calmer and aggressive behaviors that farmers have spent money curtailing would lessen or disappear, saving money for the farmer.³¹⁷ If hens were given a larger living space in which they could stretch their wings and turn around, they might not be so stressed that they became unnaturally cannibalistic and barbaric debeaking³¹⁸ would become unnecessary.

In addition, employees of factory farms would not be negatively affected by regulations.³¹⁹ Big businesses prefer intensive systems because the automation prompts the need for *fewer* employees.³²⁰ Regulations that demand more supervision would create the need for more jobs, not fewer jobs.³²¹ Automated systems could be partially replaced by more human supervision. Regulation would further create jobs by the investigation and licensing requirements.

³¹³ Hamilton, *supra* n. 2, at 294.

³¹⁴ O'Brien, *supra* n. 7, at 441.

³¹⁵ Havercamp, *supra* n. 2, at 675.

³¹⁶ Fox, *supra* n. 3, at 172.

³¹⁷ Physique altering equipment that prevents aggressive behavior, such as debeakers and iron maidens (discussed in pt. II(B)(2)), might become unnecessary. So too would the cost of the procedures.

³¹⁸ The "debeaker," a guillotine-like instrument with hot blades, accomplishes this quickly, having the ability to debeak about fifteen birds per minute. See *supra* n. 69 and accompanying text (discussing the debeaking process).

³¹⁹ McCarthy & Bennett, *supra* n. 2, at 231.

³²⁰ McCarthy & Bennett, *supra* n. 2, at 231.

³²¹ McCarthy & Bennett, *supra* n. 2, at 231. Employee wages have been lost from illness attributable, in part, to the factory farming process. In 1987, it was estimated that one billion dollars was lost in work wages due to food borne illnesses. Industry Report, *supra* n. 198, at 18.

2. Regulations On Factory Farming Would Not Harm the National Economy Because the Benefits of a Compassionate System Outweigh the Burdens

When animals are happy, their productivity increases.³²² The declaration of policy in the Humane Methods of Slaughter Act states that humane methods of slaughter bring about the improvement of products and economies.³²³ In 1991, Congress and Purdue University created the Center for Food Animal Well-Being.³²⁴ This experimental farm was designed to determine environmental conditions that increase productivity.³²⁵ Researchers found that calves allowed to play outside with other calves were more content and relaxed and that dairy cows exposed to classical music increased milk production by five and a half percent, while those exposed to heavy metal music decreased production by six percent.³²⁶ Animals raised outdoors with fresh air, exercise and sunlight grow naturally to their full potential, while animals raised under confined factory farm conditions will not.³²⁷ Animals that are uncomfortable do not gain weight and are susceptible to disease.³²⁸

Curing animal abuses is good business.³²⁹ When animals that are to be sold for a profit are damaged, the producer is damaging his own livelihood.³³⁰ Depriving livestock of the most basic needs deteriorates the animals.³³¹ The longer an animal goes without water, food and rest, the greater the deterioration.³³² Establishing humane standards, therefore, should improve the meat market.³³³ Humane methods applied in slaughterhouses have actually proven more efficient and have eliminated bruising that caused the industry to lose money.³³⁴ In addition, consumers are concerned with animal abuse and farmers who treat their animals humanely will reap the rewards of repeat business from concerned

³²² O'Brien, *supra* n. 7, at 411.

³²³ 7 U.S.C. § 1901 (1994 & Supp. V 1999).

³²⁴ O'Brien, *supra* n. 7, at 411.

³²⁵ O'Brien, *supra* n. 7, at 411.

³²⁶ O'Brien, *supra* n. 7, at 411.

³²⁷ O'Brien, *supra* n. 7, at 426.

³²⁸ Tyson, *supra* n. 228.

³²⁹ *N. Pac. Terminal Co.*, 181 F. at 881.

³³⁰ *Id.*

³³¹ *See Or. R. & Nav. Co.*, 163 F. 640.

³³² *Id.*

³³³ H.R. Rpt. 95-1336, at 2653-54 (July 10, 1978).

³³⁴ *Id.* at 2651-52.

consumers.³³⁵

The regulation will not adversely affect the economy of the family farm, unless they use intensive systems. Even those who do use intensive systems will balance out the cost of compliance in other areas, by reducing or erasing the cost of expensive automatic equipment, large quantities of antibiotics and/or the costs associated with becoming ill from exposure to the environmental effects of factory farming. Society will reap benefits by promoting a healthier environment. If factory farms continue to go unregulated and the problem with antibiotic resistant bacteria comes to fruition, medical costs will likely increase.

Because large corporations run the most intensive systems, they will not likely experience serious harm from regulations because they can afford the costs of change. These corporations, whose merchandise is meat, should not be exempt from environmental regulations that Congress imposes on other industries manufacturing other products. For instance, in other areas of the agriculture industry the use of pesticides is strictly regulated by the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act.³³⁶ The Food Quality Protection Act provides requirements the food industry must comply with regarding the amount of pesticide residue in food.³³⁷ Though these requirements cost the industries time and money, the government requires them because the benefits outweigh the burdens. Likewise, the benefits that humans will receive from regulating farm animal treatment will outweigh the burdens placed on the factory farm industry.

E. Congress Should Regulate Factory Farming Because State Anti-Cruelty Legislation Has Failed to Protect Farm Animals Adequately

In this country's history, animal protection was left primarily to the states, yet state statutes have proven inadequate in both scope and enforcement.³³⁸ State statutes are generally aimed at prohibiting intentional conduct against animals such as torture, beating and mutilation.³³⁹ The deprivation of basic needs is not normally prohibited, but this is the kind of

³³⁵ *Net Gain?*, *supra* n. 175.

³³⁶ Environmental Protection Agency ("EPA"), Office of Pesticide Programs, <<http://www.epa.gov/pesticides/fifra.htm#sec3>> (access Nov. 5, 2001).

³³⁷ EPA, Laws and Policies, <[http://es.epa.gov/oeca/ag/lqpa.html#Health-Based Safety Standard for Pesticide Residues in Food](http://es.epa.gov/oeca/ag/lqpa.html#Health-Based%20Safety%20Standard%20for%20Pesticide%20Residues%20in%20Food)> (accessed Nov. 5, 2001).

³³⁸ Sen. Rpt. 89-1281, at 2636 (June 15, 1966); Havercamp, *supra* n. 2, at 665; McCarthy & Bennett, *supra* n. 2, at 238.

³³⁹ Havercamp, *supra* n. 2, at 666; McCarthy & Bennett *supra* n. 2, at 239.

abuse that factory farm animals endure the most.³⁴⁰ Further, most state anti-cruelty laws were passed before 1871 and "did not envision the necessity of the protection of farm animals living on the factory-farm. . . ." ³⁴¹

Some states expressly exclude farm animals from the protection of even general anti-cruelty statutes, as though they are not animals. These statutes exempt "customary farming practices" from the definition of cruelty or abuse.³⁴² This exclusion permits farmers to define acceptable practices, which results in farm animals receiving no protection at all.³⁴³ Standards for customary farming practices are generally determined by profit, not farm animal welfare.³⁴⁴

Enforcement in the states is left to public prosecutors or other overburdened agencies, with no private enforcement rights.³⁴⁵ "While the criminal process fails," the civil process is unavailable because the Constitution requires a claimant to "show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant," in order to prove standing and bring suit.³⁴⁶ Therefore, the efforts of well-meaning private citizens who sue on an abused animal's behalf are frustrated.³⁴⁷ Animals are left defenseless because they cannot sue on their own behalf and standing issues prevent concerned citizens from defending them because they lack the required direct injury.³⁴⁸

States may decline to enforce legislation because of pressure from local interest groups.³⁴⁹ Even where violations are found, fines are small and prison terms short.³⁵⁰ Sometimes violators are subject to only one punishable occurrence, though violations are ongoing.³⁵¹ In these situations, violators receive no realistic deterrent from continuing cruel practices after they have received a minimal penalty. In fact, "[a]nti-cruelty statutes generally provide so little protection to farm animals that in reality there is no distinction between those states which do and those that do not exclude farm animals from their anti-cruelty statutes."³⁵²

³⁴⁰ McCarthy & Bennett, *supra* n. 2, at 239.

³⁴¹ Wise, *supra* n. 1, at 206.

³⁴² Havercamp, *supra* n. 2, at 666; McCarthy & Bennett, *supra* n. 2, at 243.

³⁴³ Havercamp, *supra* n. 2, at 667-68.

³⁴⁴ O'Brien, *supra* n. 7, at 408.

³⁴⁵ Wise, *supra* n. 1, at 206-07.

³⁴⁶ Wise, *supra* n. 1, at 213-14.

³⁴⁷ Wise, *supra* n. 1, at 214.

³⁴⁸ Wise, *supra* n. 1, at 214-15.

³⁴⁹ *Am. Horse Protection Assn. v. U.S.*, 551 F.2d 432, 438 (D.C. Cir. 1977).

³⁵⁰ Wise, *supra* n. 1, at 207.

³⁵¹ Havercamp, *supra* n. 2, at 668.

³⁵² Wise, *supra* n. 1, at 207.

The time has come for Congress to regulate the factory farming industry. Until now, the industry was able to prevent legislation that would affect their practices. The state legislature is not the entity to provide for uniform protective measures because of pressures placed on legislatures by local interest groups. Those guilty of cruelty have defined cruelty and abuse of that privilege is the result. Further, European legislators have recognized the unfair competition that would result if individual states implemented their own animal welfare requirements for farm animals. Congress realized the need to implement uniform protective legislation for farm animals in transport, animals subjected to scientific experimentation and at the slaughterhouse.³⁵³ The same uniformity is needed to protect farm animals. Therefore, Congress must enact a law for the protection of farm animals.

IV. PROPOSAL

Congress should enact a federal statute that protects the welfare of farm animals raised for food production. In doing so, Congress should be guided by the legislative intent of already enacted animal welfare statutes in the United States, the European Union and the United Kingdom. The statute should acknowledge and accommodate the circumstances under which farm animals are raised and their individual physiological and behavioral needs. The statute should set forth 1) minimum requirements farmers must comply with when raising farm animals and 2) should direct the Secretary of Agriculture to enforce the statute.

A. Proposed Farm Animal Welfare Legislation Should Establish Minimum Requirements Farmers Must Follow In Raising Farm Animals

Adopting portions of the European Union and English welfare models, Congress should base minimum standards on a particular animal's species, weight, sex, health, age, and behavioral and physiological needs.³⁵⁴ Provisions should strive to promote the psychological well-being of farm animals.³⁵⁵ Congress should include requirements for the size of cages or stalls, bedding, lighting, ventilation, food and water administration, sanitation, humane handling and care, interaction with other animals, and

³⁵³ 7 U.S.C. §§ 1902, 2131, 2143 (1994).

³⁵⁴ Council Directive 98/58/EC at annex 7, 14; The Welfare of Farmed Animals (England) Regulations 2000 at sched. 1.

³⁵⁵ 7 U.S.C. § 2143 (1994).

special conditions.³⁵⁶ Most importantly, Congress should implement the Brambell Committee's "Five Freedoms" and, at a bare minimum, every animal should have sufficient, unobstructed space to comfortably turn around, lie down, stand up, groom itself and stretch its limbs without distress or difficulty.³⁵⁷

Animals should have visual and tactile contact with their own species.³⁵⁸ They should be allowed a reasonable amount of time to graze outdoors. Animals should have access to a feed trough.³⁵⁹ The food should be nutritious and provide for their health needs.³⁶⁰ Fresh drinking water should be available at all times.³⁶¹ Sub-therapeutic doses of antibiotics should be severely reduced or banned.³⁶² Cages should be constructed to prevent injury.³⁶³ They should be large enough for each animal to enjoy the Brambell Committee's "Five Freedoms."³⁶⁴ Cage openings should be large enough for the animals to pass through without injury or pain.³⁶⁵ To avoid injuries caused by wire and wood cages and to foster natural grooming habits,³⁶⁶ floors should be hard-earth whenever possible.³⁶⁷ If the floors are wire, they should be able to support each claw or hoof and should allow for enough room for the animal to turn around easily.³⁶⁸

To determine the minimum size requirements for cages or stalls, Congress should balance the European model, the English model and expert opinions to create the proposed federal standards. Considerations should include needs of the specific species, as well as how many animals are housed in the same stall. Calf crates should be a minimum width of 35.46 inches, unless the height of the particular calf at the withers is greater

³⁵⁶ See generally Council Directive 98/58/EC; The Welfare of Farmed Animals (England) Regulations 2000.

³⁵⁷ Council Directive 91/629/EEC at annex 7; Wise, *supra* n. 1, at 212.

³⁵⁸ Fox, *supra* n. 3, at 181.

³⁵⁹ Council Directive 86/113/EEC at art. 3.

³⁶⁰ Council Directive 98/58/EC at annex 14.

³⁶¹ Council Directive 86/113/EEC at art. 3.

³⁶² O'Brien, *supra* n. 7, at 441.

³⁶³ Council Directive 86/113/EEC at annex 1.

³⁶⁴ Wise, *supra* n. 1, at 212.

³⁶⁵ Council Directive 86/113/EEC at annex 2.

³⁶⁶ Chickens naturally groom themselves in the dust, for example. Fox, *supra* n. 3, at 152. Dirt floors would provide them with a proper grooming environment. With more room per cage, and thus fewer animals in concentrated areas, there would be less concentration of dirt in the air and it could revert back to dirt floors.

³⁶⁷ 9 C.F.R. § 89.5 (1995).

³⁶⁸ Council Directive 86/113/EEC at art. 3.

than this number.³⁶⁹ In that case, the height of the particular calf at the withers should be the minimum width of the crate.³⁷⁰ The length of the crate should be a minimum of the body length of the calf multiplied by 1.1.³⁷¹ Chicken cages should have a minimum of 1,000 square centimeters (155 square inches) of room when hens are housed alone and 450 square centimeters (69.72 square inches) of individual room when containing four or more hens.³⁷² Pig stalls should have an area no less than the square length of the pig and no internal side may measure less than seventy five percent of the length of the pig.³⁷³

Buildings should be sufficiently insulated from weather and ventilated to ensure that dust levels, temperature, humidity and gas concentrations are not harmful.³⁷⁴ Good ventilation requires adequate excrement removal systems.³⁷⁵ Ammonia levels should not exceed twenty five parts per million.³⁷⁶ When inside, animals should be provided artificial light for a minimum of eight hours a day, not to exceed twelve hours, so that the animals may rest.³⁷⁷

Congress should prohibit mutilation or physical alterations, unless the animal's health requires it.³⁷⁸ Such alterations should never be used as a remedy for behavioral problems caused by a confined environment.³⁷⁹ If sick, farmers should separate animals from other animals and treated.³⁸⁰ If

³⁶⁹ Fox, *supra* n. 3, at 171; The Welfare of Farmed Animals (England) Regulations 2000 at sched. 4.

³⁷⁰ Scientists have determined these dimensions to be the optimal crate width for calves. Fox, *supra* n. 3, at 171. The English Welfare model, however, takes into consideration differences in body weight that could cause a standard number to be too confining and thus requires the width of the crate to be the height of the calf at the withers. The Welfare of Farmed Animals (England) Regulations 2000 at sched. 4. The European model requires only thirty five inches (ninety centimeters), plus or minus ten percent. Council Directive 91/629/EEC at art. 3.

³⁷¹ The English Welfare Model provides for this dimension. The Welfare of Farmed Animals (England) Regulations 2000 at sched. 4.

³⁷² *Id.* at sched. 2.

³⁷³ *Id.* at sched. 6.

³⁷⁴ Council Directive 86/113/EEC at annex 5.

³⁷⁵ Fox, *supra* n. 3, at 152-53.

³⁷⁶ Researchers have found that animals can live for short periods in conditions where ammonia levels are as high as one hundred parts per million, but it only takes thirty parts per million to cause damage to the respiratory system. Scientists therefore recommend that ammonia levels not exceed twenty five parts per million. Fox, *supra* n. 3, at 153.

³⁷⁷ Council Directive 86/113/EEC at annex 6.

³⁷⁸ Fox, *supra* n. 3, at 181.

³⁷⁹ For example, Congress should outlaw debeaking because it is unnecessary. Fox, *supra* n. 3, at 172, 181. The procedure meets the most basic elements of even state anti-cruelty statutes, but for the farm animal exception.

³⁸⁰ Council Directive 98/58/EC at annex 4.

the illness is serious, the animal should receive immediate veterinary treatment.³⁸¹

Farmers should make pregnant animals comfortable.³⁸² Mothers should not be placed in intensely restricting devices such as iron maidens but should be placed in gestation crates that have more room to provide for the comfort of the mother and her young.³⁸³ Babies should be allowed to stay with their mothers until weaned and taken no sooner than three weeks after birth.³⁸⁴

In reality, these proposed numbers are minimal and farmers could easily accommodate them. The proposed measurement for calf crates, for example, is around the equivalent of confining a human being in a shower stall, with two sides only slightly wider than the width of the human being. Requiring farmers to provide this small amount of room for farm animals to live in is not an outrageous expectation and one already provided by the European community. The proposal only requires farmers to provide animals with the most basic of humane living conditions. Farm animals are sentenced to an inevitable death for human benefit. At a minimum, human beings can assure animals freedom from torture while they live.

B. Proposed Farm Animal Welfare Legislation Should Direct the Secretary of Agriculture to Enforce the Statute

Congress has enacted three other animal welfare statutes and has the ability to enact a fourth for the protection of farm animals. Congress has authority under the Commerce Clause because animals raised for food production are part of interstate commerce. Even if farm animals do not directly affect such interstate commerce, they aggregately effect it.³⁸⁵ Congress has declared that activities with animals are activities that substantially affect the free flow of interstate or foreign commerce to the point where regulation is necessary.³⁸⁶ Congress should recognize the need for a statute that applies uniform standards in the farming industry to ensure the humane handling and care of farm animals.³⁸⁷

Based on Congress' power to regulate interstate commerce, it should

³⁸¹ *Id.*

³⁸² The Welfare of Farmed Animals (England) Regulations 2000 at sched. 6.

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ *Wickard v. Filburn*, 317 U.S. 111, 124-25 (1942) (holding that Congress may regulate so long as an entire class has a substantial economic effect on commerce).

³⁸⁶ 7 U.S.C. § 2131 (1994).

³⁸⁷ H.R. Rpt. No. 95-1336, at 2651-52 (1978); Council Directive 86/113/EEC.

direct the Secretary of Agriculture to establish an agency to oversee and enforce the provisions of the new statute.³⁸⁸ The Secretary should promulgate standards governing the humane care of farm animals.³⁸⁹ Intensive farms should be required to be licensed and maintaining the license would depend on farm compliance with the provisions of the statute.³⁹⁰ An empowered agency should create rules for inspection, could perform inspections and inform the Department of Agriculture of inspection results annually. Licensed farms should be required to cooperate with the agency by allowing inspectors access to their farms and demonstrating that they are complying with the standards.³⁹¹ Farmers should maintain records of purchase, sale, identification and accommodations of animals and made available during inspections.³⁹² Inspectors should be authorized to take dominion over animals found suffering.³⁹³

The Secretary should appoint a committee to research the state of farming and farm conditions, keeping abreast of scientific developments, animal welfare needs, and industry needs, and then striking a balance between them.³⁹⁴ The committee should include a veterinary expert and a private citizen among its members.³⁹⁵ The committee should develop and document a plan to adequately enhance farm animal environments to promote their psychological well-being.³⁹⁶ In promoting an animal's well-being the committee should consider the animal's pathological, zootechnical, physiological and behavioral needs.³⁹⁷

Statute violations should result in suspension or revocation of licenses if not cured within a prescribed amount of time, such as the twenty-one days allotted in the AWA.³⁹⁸ If left uncured, violations should result in criminal punishment of fines or imprisonment.³⁹⁹ Reasonable extensions could be granted to allow time for compliance.⁴⁰⁰ There should be no limit on the

³⁸⁸ Sen. Rpt. 89-1281, at 2635 (June 15, 1966).

³⁸⁹ 7 U.S.C. § 2143 (1994).

³⁹⁰ 7 U.S.C. §§ 2133, 2136, 2142 (1994).

³⁹¹ 7 U.S.C. §§ 2143, 2146 (1994).

³⁹² 7 U.S.C. § 2140 (1994).

³⁹³ 7 U.S.C. § 2146 (1994).

³⁹⁴ 7 U.S.C. §§ 1911, 2143 (1994).

³⁹⁵ 7 U.S.C. § 2143 (1994).

³⁹⁶ *Glickman*, 154 F.3d at 428.

³⁹⁷ Council Directive 91/629/EEC at art 6.

³⁹⁸ 7 U.S.C. § 2149 (1994).

³⁹⁹ Sen. Rpt. 89-1281, at 2636 (June 15, 1966); Fox, *supra* n. 3, at 177.

⁴⁰⁰ Sen. Rpt. 89-1281, at 2637 (June 15, 1966).

number of violations that can be incurred and punishments should become more severe for recidivism.⁴⁰¹ The cost to the Secretary to investigate the violations of the statute and the harm to the animal could be factors in determining fine amounts.

V. CONCLUSION

It is easy to forget that industrialized factory farms contain more than automated machinery. If any pastures exist in the vicinity of a factory farm, they are most likely quiet and empty. Most of the resident animals never see open pastures or the light of day. Instead, hundreds, possibly thousands of living animals, are pinned into spaces so small that they cannot move. Factory farm animals are deprived of room to stretch, to groom, to comfortably lie down and to relieve themselves in separate areas. They are subjected to loud noise, drugging, inadequate lighting and disease. Factory farmers further subject these creatures to mutilation and body alterations. Factory farm animals are subjected to deplorable living conditions. No law exists to protect them.

Congress should enact a new statute that provides farm animals with the basic *creature comforts*. Congress has expressed an interest in promoting animal welfare and in ending any unnecessary suffering of animals by enacting statutes that set minimum requirements for the treatment of other animals. These statutes were enacted, in part, to respond to public outcry against inhumane acts against these other animals. Congress has considered cramped quarters inhumane. Today, a public outcry is rising against inhumane acts against farm animals living under inhumane conditions. Consumers are willing to support the shift towards more humane methods of farming.

Congress should enact a new statute because conditions on factory farms promote dangerous health risks for humans. Health organizations around the world have warned against constantly administering antibiotics to factory farm animals. Injecting animals with sub-therapeutic doses of antibiotics risks the creation of antibiotic resistant bacteria capable of transmission to humans. Alternatives to antibiotics are available.

Other countries have already enacted legislation to protect farm animals living under similar conditions. The European Union and the United Kingdom have contributed the most comprehensive models that provide minimum requirements with which farmers must comply. Most importantly, these laws provide farm animals with basic *creature comforts*.

⁴⁰¹ *Id.* This would alleviate the problem with state statutes that only punish for one violation.

In addition, a law regulating conditions on factory farms would not harm the national economy. The benefits of a protective statute far outweigh any burdens created.

Congress has the power to regulate the agricultural industry under the Commerce Clause of the United States Constitution. Congress should enact a statute that establishes minimum requirements that farmers must follow in raising farm animals. The statute should acknowledge animals individual and behavioral needs, taking great care to provide them with the basic *creature comforts*.