

THE U.S. EGG INDUSTRY – NOT ALL IT’S CRACKED UP TO BE FOR THE WELFARE OF THE LAYING HEN: A COMPARATIVE LOOK AT UNITED STATES AND EUROPEAN UNION WELFARE LAWS

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PROLOGUE

The European Union's ("EU") animal agriculture industry is undergoing progressive change thanks to new legislative enactments. This sweeping legislation is being implemented to protect the welfare of animals raised for food and food production.¹ It is important for the United States animal agriculture industry to take note of these changes because "usually things happen [in Europe] and then . . . come to the United States."²

"Animals raised for food or food production in the United States are, in large part, excluded from legal protection against cruelty."³ Even of those statutes that provide protection for livestock animals, often poultry, and more specifically chickens, are either explicitly or implicitly exempted from the definitions.⁴ Notably, the poultry industry is one of the most pervasive agricultural industries in the United States.⁵ This equates to little legal protection for millions of chickens and leaves them at the mercy of the industry.

Contrary to the United States' actions, the recent trend in the EU has been to increase legal protections for poultry through legislation. Specifically, the EU has recognized the welfare of laying hens through directives⁶ and has recently approved proposed new legislation focusing on the welfare of broilers.⁷

1. See generally European Convention for the Protection of Animals Kept for Farming Purposes, Mar. 10, 1976, Europ. T.S. No. 87 (expressing the desirability of regulations for the protection of farm animals); European Convention for the Protection of Animals for Slaughter, May 10, 1979, Europ. T.S. No. 102 (expressing the desirability for the protection of slaughter animals); Council Directive 1999/74, art. 1, 1999 O.J. (L 203) 53 (EC) (urging for the protection of animals in the EU).

2. Susan C. Kahler, *Animal Welfare Regulations: A Rough Crossing From Europe to US*, J. AM. VETERINARY MED. ASS'N, Dec. 1, 2000, available at <http://www.avma.org/onlnews/javma/dec00/s120100c.asp>.

3. David J. Wolfson, *Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production*, 2 ANIMAL L. 123 (1996) (quoting the article's preamble).

4. See Twenty-Eight Hour Law of 1877, 49 U.S.C. § 80502 (2000); Humane Methods of Livestock Slaughter, 7 U.S.C. §§ 1901-1906 (2000) (stating in both statutes failing to protect poultry).

5. See VERONICA HIRSCH, ANIMAL LEGAL & HISTORICAL CTR., LEGAL PROTECTIONS OF THE DOMESTIC CHICKEN IN THE UNITED STATES AND EUROPE (2003) [hereinafter LEGAL PROTECTIONS], available at <http://www.animallaw.info/articles/dduschick.htm> (last visited Mar. 2, 2006) (stating that "[o]ver 90% of the 10 billion animals used in animal agriculture in the United States each year are chickens").

6. Council Directive 1999/74, *supra* note 1.

7. For more information about the current development of legislation in the European Union regarding the welfare of broilers see SCIENTIFIC COMM. ON ANIMAL HEALTH & ANIMAL WELFARE, EUROPEAN COMM'N, THE WELFARE OF CHICKENS KEPT FOR MEAT PRODUCTION

Generally, the purpose of this Note is to provide a basic understanding of the comparative differences between current practices in the United States egg industry and the changes occurring through use of legislation in the EU and its implications for the future regarding the welfare of the laying hen. This Note will focus on current legislation in force at both the federal and state levels, and its applicability to the United States egg industry and the laying hens. Further, it will discuss current trends in the fast food industry and egg industry indicating a growing awareness of public concern over the welfare of layers and address the pro-active attempts to change industry practices. This Note will then compare the extensive legislation existing in the European Union and its Member States, not only regarding the broad protections for animals raised for food and food production, but also specifically, protections for the welfare of laying hens. The differences of several particular rearing practices within the egg industry, where the greatest disparity exists between the nations, will also be examined. Finally, this Note will highlight the issue of consumer awareness and touch briefly upon the economic impact of these changes.

I. CHICKENS USED FOR FOOD AND FOOD PRODUCTION IN THE UNITED STATES EGG INDUSTRY: AN OVERVIEW

To better understand the impact animal welfare legislation would have on the layers in the United States egg industry, it is important to recognize the enormity of the industry itself. The poultry industry is a multi-billion dollar industry and the largest animal agriculture industry in the United States.⁸ In the United States, laying hens, together with broiler chickens, compose nearly nine billion animals used in and for agricultural food production.⁹ In fact, the United

(BROILERS) (2000), available at http://europa.eu.int/comm/food/fs/sc/scsh/out39_en.pdf. This legislation is not likely to be controversial and will most likely be adopted for incorporation by all Member States. *Chicken Welfare Proposals Launched*, AGRA EUROPE, Jan. 14, 2005, available at 2005 WLNR 1013034; see also *EU Proposes Measures to Improve Welfare of Broiler Chickens*, HEALTH & CONSUMER VOICE (European Commission's Health and Consumer Protection DG), June 2005, at 1.

8. See generally LEGAL PROTECTIONS, *supra* note 5 (stating that chickens constitute over ninety percent of the ten billion animals used each year in U.S. agriculture production).

9. See Veronica Hirsch, ANIMAL LEGAL & HISTORICAL CTR., OVERVIEW OF THE LEGAL PROTECTIONS OF THE DOMESTIC CHICKEN IN THE UNITED STATES AND EUROPE (2003) [hereinafter OVERVIEW], available at <http://www.animallaw.info/articles/ovuschick.htm> (last visited Mar. 2, 2006).

States is the second-largest egg-producing country in the world,¹⁰ exporting over \$114 million worth of eggs and egg products in 2002.¹¹

In 2003, layers produced more than 87.3 billion eggs.¹² Perhaps a surprise for many, Iowa was the leading producer-state in the nation, with a production of almost 10.5 billion eggs.¹³ This total surpassed Ohio, the next largest producer, by 2.9 billion eggs.¹⁴ These numbers are in part a result of the industrialization of egg production. “The commercial egg industry . . . has grown rapidly over the past 50 years, . . . and the modern egg industry was born in response to [the] demand for eggs [increasing]”.¹⁵

“Prior to WWII, most chickens were raised on small family farms, but today, technology, antibiotics, and mechanization lets factory farmers raise more birds in less space, and with lower costs.”¹⁶

Factory farming is big business, even if the end product is small. In 2002, the U.S. exported over \$114 million worth of eggs and egg products, and the increasingly consolidated nature of the animal product industry meant that the top 11% of the country’s egg producers supplied over 40% of the nation’s eggs. In 1987 an estimated 2,500 producers were in the egg business, while today that number has shrunk to only 650 producers.¹⁷

This process, or industrialization, of agriculture is also known as intensive farming.¹⁸ Those in favor of intensive farming rationalize its use based on the belief that it “uses less land and protects the animals from the extremes of climate.”¹⁹

10. USA POULTRY & EGG EXPORT COUNCIL, EGG & EGG PRODUCTS BUYER’S GUIDE, http://www.usapeec.org/buyersguide/egg_overview.cfm?cache=025002&buyerguide=egg (last visited Mar. 2, 2006).

11. LEGAL PROTECTIONS, *supra* note 5.

12. USDA, NATIONAL AGRICULTURAL STATISTICS SERVICE, EGG PRODUCTION BY STATES (2003), available at <http://www.usda.gov/nass/aggraphs/eggmap.htm> (last visited Mar. 2, 2006).

13. *Id.*

14. *Id.*

15. UNITED EGG PRODUCERS, ANIMAL HUSBANDRY GUIDELINES FOR ‘UNITED EGG PRODUCERS CERTIFIED’ U.S. EGG LAYING FLOCKS 1 (2004), currently titled UNITED EGG PRODUCERS, ANIMAL HUSBANDRY GUIDELINES FOR ‘UNITED EGG PRODUCER CERTIFIED’ U.S. EGG LAYING FLOCKS 1 (2D ED. 2005).

16. LEGAL PROTECTIONS, *supra* note 5.

17. *Id.*

18. See EUROPEAN ENVIRONMENT AGENCY, http://glossary.eea.eu.int/EEAGlossary//intensive_farming (defining intensive farming as “characterized by high input use that strives for maximum production”).

19. LEGAL PROTECTIONS, *supra* note 5.

The laying system is the most highly automated of any agricultural industry.²⁰ “It . . . allows farmers to diagnose and treat diseases and other problems quickly, and control the length and intensity of daylight to increase egg production and/or encourage faster growth.”²¹ In essence, “[l]aying hens live a season-free life of unending 16 hour days.”²² The methods used by this industry have been profitable, as evidenced by their pervasive use, not only to United States producers, but to international producers as well. However, other nations, such as the Member States of the European Union, are recognizing that intensive rearing may not protect the welfare of the laying hen, and they are thus adopting new legislation to implement change.

II. THE IMPLICATIONS FOR LAYING HENS: PLIGHT AND PROTECTION

In order to understand the consequences of different legal protections in the United States and the EU, it is important to understand some of the practices applied to the handling of layers in intensive rearing systems. These specific practices include the battery cage system, beak trimming, forced molting, and the methods of transportation and slaughter. As will be discussed later in this Note, a disparity exists between the United States legislation and its EU counterpart, which may stem from the United States’ and European Union’s different views of the welfare of the layer in the egg industry’s production process.

A. Cage Systems

The common housing system for laying hens in the egg industry is the battery cage. “The battery cage system for laying hens was introduced commercially [in the United States] on a wide scale in the 1950s.”²³ “Since that time, it has become the predominant method for maintaining hens.”²⁴ The battery cage is typically a wire mesh cage with “sloping floors (through which manure passes), feed troughs, and drinkers.”²⁵ These cages are “arranged in rows and tiers within

20. Joy A. Mench, *Chickens*, in *ENCYCLOPEDIA OF ANIMAL RIGHTS AND ANIMAL WELFARE* 101 (Marc Bekoff & Carron A. Meaney eds., 1998).

21. *LEGAL PROTECTIONS*, *supra* note 5.

22. *Id.*

23. JOY A. MENCH & PAUL B. SIEGEL, *POULTRY*, available at <http://ars.sdstate.edu/animaliss/poultry.html> (last visited Mar. 2, 2006).

24. *Id.*

25. FARM ANIMAL WELFARE COUNCIL, *REPORT ON THE WELFARE OF LAYING HENS*, ¶ 95, <http://www.fawc.org.uk/reports/layhens/lhgreto.htm> (last visited Mar. 2, 2006).

a building which usually provides a controlled environment.”²⁶ Typically, there are enough cages in a building to hold 80,000 birds.²⁷

An example of one of these facilities is located in Rembrandt, Iowa. Rembrandt Enterprises was designed to hold 1.5 million chickens when the facility opened, and it may hold up to four million layers in the future depending on the success of the operation.²⁸ As of December 2004, the company had increased its flock to 2.6 million layers.²⁹ Rembrandt Enterprises’ operation is not unique to the industry. In fact, Iowa alone has an estimated sixty-four of these large layer operations.³⁰

“Cages became popular in response to the need for improved sanitation practices.”³¹ The “systems provide hens with protection from soil-borne diseases and predation.”³² “Cages [also] provide the egg producer with an efficient and cost-effective means of collecting eggs, disposing of wastes, reducing feed wastage, maintaining an adequate environmental temperature, and inspecting the condition of individual birds.”³³ Although there are recognized economic benefits to the battery cage system, this type of system has been the most criticized for its effect on the welfare of the layer. Perhaps the most significant criticism of these cages is they restrict the natural behaviors of the birds and cause physical deformities that result in unnecessary suffering.³⁴ Nevertheless, the battery cage remains the most prevalent housing method in the United States today.³⁵ It is important to recognize that the United States was not alone in the use of battery cages; these systems were used in the EU and its Member States as well, until the passage of the 1999 Directive banning the use of the cages by 2012.³⁶

26. *Id.*

27. See JORDAN CURNUTT, ANIMALS AND THE LAW: A SOURCEBOOK 162 (ABC-CLIO, Inc. 2001).

28. See Tina Donath, *Rembrandt Egg-Breaking Facility Opens Next Month: 1.5 Million Chickens Laying*, STORM LAKE TIMES, Aug. 7, 2002, at 1A.

29. U.S. POULTRY & EGG ASS’N, TOP COMPANY RATINGS (MILLION LAYERS IN PRODUCTION ON 12/31/2004), <http://www.poultryegg.org/economicinfo/docs/TopEggCompany05.pdf> (last visited Mar. 2, 2006).

30. EPA, REGION 7: CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs): ARE THERE CAFOs IN REGION 7?, http://www.epa.gov/region7/water/cafo/are_cafos_in_r7.htm (last visited Mar. 2, 2006).

31. DONALD BELL ET AL., EGG-TYPE LAYER FLOCK CARE PRACTICES 9 (Univ. of Cal., Davis, 2d ed., 1998).

32. Mench, *supra* note 20, at 102.

33. Mench & Siegel, *supra* note 23.

34. *See id.*

35. BELL ET AL., *supra* note 31 (discussing the results of a 1991 survey of California farms that showed nearly 100% of layers were housed in cages).

36. Council Directive 1999/74, *supra* note 1, at art. 5, p. 55.

1. *The United States Cage System*

“Typical battery cages are barren and lack the features that the hen requires to perform [natural] behaviors.”³⁷ In the United States egg industry, laying hens are typically afforded forty-eight square inches per hen in the battery cage system,³⁸ an area almost *forty percent* smaller than a sheet of notebook paper. Three to six birds are placed into one cage.³⁹ This small confinement results in an inability to accomplish natural behaviors, such as creating a pecking order.⁴⁰ Birds cannot stand properly, stretch their wings, or scratch.⁴¹ The sloping wire mesh of the cage floor can also cause foot and leg deformities.⁴²

In response to criticism over the small cage size, the United Egg Producers (“UEP”) has developed animal husbandry guidelines.⁴³ The guidelines open with the statement that an estimated “98% or more of the commercial egg production in the U.S. and an estimated 70-80% of the world’s egg production are derived from caged layers.”⁴⁴ The guidelines recommend “cage configuration should be such that manure from birds in upper cage levels does not drop directly on birds in lower cage levels, [h]ens should be allowed to stand comfortably . . . [t]he slope of the . . . floor should not exceed 8 degrees, . . . 67 to 86 square inches of usable space per bird. . . , [and] allow all birds [to eat at the same time].”⁴⁵

The cage regulations also recommend appropriate climate conditions, lighting, and noise levels.⁴⁶ Although this is an attempt to change the cage system, the UEP’s guidelines pale in comparison to the progressive changes seen across Europe for the benefit of the laying hen.⁴⁷

37. Mench, *supra* note 20, at 102.

38. *Id.*

39. CURNUTT, *supra* note 27.

40. *See id.*

41. *Id.*

42. FREE FARM ANIMALS, THE WELFARE OF HENS IN BATTERY CAGES: A SUMMARY OF THE SCIENTIFIC EVIDENCE, http://www.freefarmanimals.org/bc_evidence.htm (last visited Mar. 2, 2006).

43. *See* UNITED EGG PRODUCERS, *supra* note 15, at 4.

44. *Id.* at 1.

45. *Id.* at 4.

46. *See id.* at 5 (listing additional guidelines for the appropriate environment for laying hens).

47. *See generally* European Convention for the Protection of Animals Kept for Farming Purposes, *supra* note 1 (listing guidelines for the appropriate environment for laying hens in Europe).

2. *The EU Standards: Out with the Old, In with the New*

As will be discussed, prior to the adoption of the EU's Minimum Standards for the Rearing of Laying Hens⁴⁸ ("Directive"), cage systems were the traditional method used in much of the EU.⁴⁹ However, the Directive may be viewed as a "phase out" process because it limits the length of time these traditional battery cage systems may be used by producers in the egg industry.⁵⁰ The Directive distinguishes three types of rearing systems for laying hens either currently in use or to be implemented in the EU:

- Non-enriched cage systems where hens have at least [85.25 square inches] 550 square centimeters of cage area per hen.⁵¹
- Enriched cage systems where laying hens have at least [116.25 square inches] 750 square centimeters of cage per hen.⁵²
- Non-cage systems with nests (at least one for seven hens), adequate perches where the stocking density does not exceed nine laying hens per square meter of usable area.⁵³

a. *Unenriched Cage Systems: The End of the Traditional Battery Cage*

Under the Directive, unenriched cage systems⁵⁴ are akin to the battery cage system in use in the United States.⁵⁵ While most of these systems will be "phased out, . . . those that are being retained [will have] to meet tough standards."⁵⁶ The article requires at least eighty-five square inches per hen of cage area.⁵⁷ The area is measured in a horizontal plane and its use is unrestricted.⁵⁸ Note this minimum space requirement exceeds the UEP guidelines by approxi-

48. Council Directive 1999/74, *supra* note 1.

49. James Moynagh, *EU Regulation and Consumer Demand for Animal Welfare*, 3 *AGBIOFORUM* (Nos. 2 & 3) 107, 111 (2000).

50. *See id.*; Council Directive 1999/74, *supra* note 1, at art. 5, p. 54.

51. Council Directive 1999/74, *supra* note 1, at art. 5, p. 54.

52. *Id.* at art. 6, p. 55 (noting that enriched cages are also known as "alternative systems").

53. *Id.* at art. 4, p. 54.

54. *See id.* at ch. 2, p. 54.

55. *See* Moynagh, *supra* note 49.

56. *Id.*

57. Council Directive 1999/74, *supra* note 1, at art. 5, p. 54. The Directive requires a minimum of 550 square centimeters, roughly the equivalent of 85 square inches.

58. *Id.*

mately eighteen square inches for new cages.⁵⁹ Moreover, even applying the UEP's minimum cage sizes for layers under the suggested phase-in schedule, would not afford the laying hen the same amount of room in a cage as that provided under the Directive.⁶⁰ Along with a minimum size requirement, the Directive also sets forth other provisions for the welfare of the hen in the cage system. A feed trough must be provided with a length of at least ten centimeters per hen in the cage, and must either have a continuous drinking channel, nipple drinkers, or cups.⁶¹ The article also sets minimum height standards, requirements of the floor construction, and that all cages are "fitted with suitable claw-shortening devices."⁶² These requirements only apply to existing systems.⁶³ After January 1, 2003, no cages of this kind could be "built or brought into service for the first time."⁶⁴ Further, the article actually prohibits the use of these systems after January 1, 2012.⁶⁵ In essence, this article, if effectively implemented, would dismantle the primary rearing system currently in use in the United States. Along with this major contribution to the welfare of the layer, the Directive also establishes two other alternative rearing systems.

b. *Enriched Cages*

Enriched cage systems are an extension of the battery cage system. However, these cages provide much larger usable space for the layers in the system, as well as other special functional devices to ensure the birds' primary health and welfare.⁶⁶ The Directive required that all cages in the Member States

59. *Compare id.* (stating that the Directive requiring a minimum of 550 square centimeters, approximately 85 square inches), with UNITED EGG PRODUCERS, *supra* note 15, at 4 (stating that the UEP requiring a minimum of 67 inches of usable space).

60. *Compare* UNITED EGG PRODUCERS, *supra* note 15, at 13 (requiring a minimum of 67 square inches of usable space per bird), with Council Directive 1999/74, *supra* note 1, at art. 5, p. 54 (requiring at least 550 square centimeters or approximately 85 square inches per hen of cage area).

61. Council Directive 1999/74, *supra* note 1, at art. 5, p. 55 (noting that the length of the drinking trough must be equal to the length of the feed trough; however, where nipples or drinking cups are used, there must be at least two within reach of each cage).

62. *Id.* The cage is to be "at least 40 [centimeters] high over at least 65% of the cage area and not less than 35 [centimeters] at any point." Similarly, for the requirements of the alternative systems, the floors must "adequately [support] each of the forward-facing claws of each foot." Also, the slope of any rectangular wire mesh floor cannot exceed 14% or 8%. *Id.*

63. *See id.*

64. *Id.*

65. *See id.*

66. *See id.* at art. 6, p. 55 (setting forth usable space requirements, providing for nests, and other systems that facilitate natural behaviors).

must comply with the requirements by January 1, 2002.⁶⁷ The requirements set out minimum cage areas per hen,⁶⁸ and provide for nests, litter, and perches.⁶⁹ Beyond laying out the minimum requirements for the cage systems the article sets forth provisions for inspections at facilities.⁷⁰ The facilities regulated under the Directive must also register and be “given a distinguishing number” to be used for identifying and tracing the eggs that originate from that system in the marketplace.⁷¹

c. *Alternative Systems: The Free Range or Cage-Free System*

The Alternative system, also known as the “free range, barn raised, or perchery” systems, allows birds to be raised without cages either indoors or outdoors.⁷² This article of the Directive requires that hens must have a nest, adequate perches, and litter area.⁷³ This system provides for the physical, as well as sociological, well-being of the bird by allowing them to engage in many of their natural behaviors.⁷⁴ Clearly, these three different rearing systems established and governed by the Directive are more comprehensive than any legislation or industry policies currently in use in the United States. As such, the United States egg industry should be aware of these vast changes and consider the future impact these changes may have.

B. *Beak Trimming*

Beak trimming has become a common procedure in the keeping of laying hens and broilers.⁷⁵ “Debeaking began around 1940 when a San Diego poultry farmer found that if he burned off the upper beaks of his chickens with a blow

67. *See id.*

68. *See id.* (noting that each cage must have “at least 750 [centimeters]² of cage area per hen, 600 [centimeters]² of which shall be usable” further, the cages can be no lower than 20 centimeters and “no cage shall have a total area that is less than 2000 [centimeters]²”).

69. *See id.* (requiring that the perches must allow at least 15 centimeters per hen).

70. *Id.* at art. 7, p. 55.

71. *See id.*

72. *Id.* at art. 4, p. 54; *see* LEGAL PROTECTIONS, *supra* note 5.

73. Council Directive 1999/74, *supra* note 1, at art. 6, p. 55.

74. *See id.* at 53 (discussing “a balance must be kept between the various aspects to be taken into consideration, as regards both welfare and health, economic and social considerations, and also environmental impact”); *see also* CURNUTT, *supra* note 27 (discussing how battery cages limit natural behavior-in comparison to the alternative system).

75. *See* MENCH & SIEGEL, *supra* note 23 (noting that beak trimming is “[a] common procedure to reduce the incidence of cannibalism” in chickens).

torch, they were unable to pick and pull at each other's feathers."⁷⁶ Beak trimming has evolved into a "procedure in which a substantial part of the upper beak is removed with the hot blade of a debeaking machine."⁷⁷ This practice is routinely done as a way to prevent activities resulting in injury and death.⁷⁸ Debeaking is considered a common management practice and is recommended to prevent "various vices such as feather pecking and cannibalism."⁷⁹ The practice is necessary in large-scale farming operations because when chickens are confined to small quarters, they peck and injure one another from a natural instinct necessary to survive in the wild.⁸⁰ The restriction of movement and lack of elements found in a chicken's natural environment increase the presence of the pecking behavior.⁸¹

However, the debeaking procedure has been found to cause profound pain to the animal.⁸² Nevertheless, the industry maintains the position that when debeaking is done properly it "has very minimal effects on the young chicken"⁸³ The industry often compares debeaking to the clipping of a human fingernail.⁸⁴ Though this may have been a valid belief, current evidence suggests otherwise.⁸⁵

As early as the 1960s, it has been noted that debeaking leads to "acute and chronic pain."⁸⁶ Studies have further indicated that "[b]etween the horn and bone [of the beak] is a thin layer of highly sensitive soft tissue, resembling the quick of the human fingernail. The hot knife blade used in debeaking cuts through this complex . . . causing severe pain."⁸⁷ Moreover, this practice may not even be necessary and is arguably a result of the underlying welfare problem – the battery cage system.

76. KAREN DAVIS, PRISONED CHICKENS POISONED EGGS: AN INSIDE LOOK AT THE MODERN POULTRY INDUSTRY 67 (1996).

77. Diane Halverson, *Inhumane Practices in the Egg Industry Need Reform* (1987), reprinted in ANIMAL WELFARE INSTITUTE, FACTORY FARMING: THE EXPERIMENT THAT FAILED 69, 74-75 (1987).

78. Mench, *supra* note 20, at 102.

79. BELL ET AL., *supra* note 31, at 4.

80. DAVIS, *supra* note 76, at 65-66.

81. *Id.* at 66.

82. *See id.* at 67 ("Debeaked birds have been shown to be in chronic pain and distress."); Mench, *supra* note 20, at 102 ("[I]t is now known that hens that have their beaks trimmed using a hot blade experience both acute and chronic pain.").

83. BELL ET AL., *supra* note 31.

84. DAVIS, *supra* note 76, at 68.

85. *Id.* (discussing the Brambell Committee report "that there is no physiological basis for the assertion that the operation is similar to the clipping of human fingernails").

86. *Id.* (evidencing the findings of a 1992 University of Guelph, Ontario study).

87. *Id.* (quoting Jim Mason & Peter Singer, *Animal Factories* 39-40 (1990)).

The chicken is not a cannibal by nature.⁸⁸ Rather, the behavior is “fostered by the extreme overcrowding process” found in the traditional battery cage and cage systems.⁸⁹ Alleviating the need for this cruel practice may require reforming the cage system. While debeaking continues in the United States, the UEP recommends guidelines to be used “only when necessary to prevent feather pecking and cannibalism”⁹⁰ The guidelines recommend debeaking be done before the chick is 10 days old with a “heated-blade” trimmer.⁹¹ Further, it is recommended only trained crews should trim and those crews should be monitored.⁹² The guidelines even allow for a second trim if needed.⁹³

Although the legislation in the EU is progressive regarding the cage system, beak trimming is still permitted, “provided it is carried out by qualified staff on chickens less than 10 days old.”⁹⁴ This regulation, however, does discourage beak trimming when not necessary. Nevertheless, both the United States and the EU could provide greater protection in this area. If a change in the cage system proves effective, debeaking may become obsolete as it will no longer be needed to prevent feather-pecking where the bird has the ability to engage in more of its natural behaviors.

C. Forced Molting

The common industry practice of forcing a molt to make hens “enter the next laying cycle” has also come under scrutiny.⁹⁵ Molting is a natural, yearly cycle in which old feathers are replaced by new ones.⁹⁶ Methods of inducing the molt include feed restriction and feed deprivation.⁹⁷ The UEP’s guidelines state:

88. *Id.* at 69 (citing a 1991 Report on the *Welfare of Laying Hens in Colony Systems* that debeaking is “a serious welfare insult [injury, attack, or trauma] to the hens” that “should not be necessary in a well managed system where the hens’ requirements are met.”); *see also* CURNUTT, *supra* note 27 (discussing connections between debeaking and battery cases).

89. *Life in an Egg Factory*, ANIMAL WELFARE INST. Q., Spring 1982, *reprinted in* FACTORY FARMING: THE EXPERIMENT THAT FAILED 69 (1987) (noting a 1980 study showing that “in cages housing six hens the frequency of cannibalism is approximately double that of cages holding three or four.”).

90. UNITED EGG PRODUCERS, *supra* note 15, at 7.

91. *Id.*

92. *Id.*

93. *Id.* at 8.

94. Council Directive 1999/74, *supra* note 1, at 57.

95. Wolfson, *supra* note 3, at 134 (discussing common practices in the poultry industry that result in cruelty).

96. DAVIS, *supra* note 76, at 74.

97. MENCH & SIEGEL, *supra* note 23.

[m]olting is currently an integral part of the replacement programs used on egg farms to extend the life of the hen and rejuvenate the reproductive cycle of the bird, . . . [and] results in the use of approximately 50% fewer hens than would be needed to supply the . . . market . . . if induced molting was not allowed.⁹⁸

However, animal welfare activists claim this act is cruel.⁹⁹

Hens naturally molt periodically, but the industry induces the molt to return to egg production cycle more quickly.¹⁰⁰ “The most common procedure used to induce molt in the United States is to withdraw feed for several days to several weeks.”¹⁰¹ The UEP’s new guidelines still recommend induced molting.¹⁰² The recommendations declare that “[a] fast of 4 to 5 days will usually cause a flock to cease egg production” and “[l]onger fasts usually give superior results.”¹⁰³ Therefore, the industry is still reluctant to prohibit this starvation practice even though it recognizes “[n]on-feed withdrawal molt research projects have shown promise.”¹⁰⁴ The induced molt may continue until the birds have lost up to thirty percent of their starting weights, at which time feeding should be returned to normal.¹⁰⁵ “Once food and water are restored, laying rebounds vigorously, with bigger eggs in greater quantities.”¹⁰⁶

D. Transportation and Slaughter

Transportation and slaughter also causes unnecessary suffering to poultry used for food and food production. “Rough handling and poor transport conditions can cause stress, bruising, bone breakage, and mortality.”¹⁰⁷ Once again, the cause of suffering for many hens stems back to the cage system.¹⁰⁸ While in the wire battery cages, the hens’ claws, which are normally worn down from scratching in the dirt in their natural environment, grow long and can fix around the wire

98. UNITED EGG PRODUCERS, *supra* note 15, at 8. *See also* AMERICAN VETERINARY MEDICAL ASSOCIATION, POSITION STATEMENT, INDUCED MOLTING OF LAYER CHICKENS, at http://www.avma.org/issues/policy/animal_welfare/molting.asp (highlighting an almost identical position on molting in commercial chicken flocks as that of the United Egg Producers).

99. *See* POULTRY.ORG, A FARM SANCTUARY CAMPAIGN, FORCED MOLTING OF LAYING BIRDS, at <http://www.poultry.org/molting.htm> (describing the claims by United Poultry concerns and the Association of Veterinarians for Animal Rights that forced molting is extremely cruel).

100. Mench, *supra* note 20, at 102.

101. *Id.*

102. UNITED EGG PRODUCERS, *supra* note 15, at 10.

103. *Id.* at 8.

104. *Id.* at 9.

105. UNITED EGG PRODUCERS, *supra* note 15, at 10.

106. CURNUTT, *supra* note 27.

107. Mench, *supra* note 20, at 105.

108. FREE FARM ANIMALS, *supra* note 42.

mesh on the bottom of the cage.¹⁰⁹ When the animals are removed for transportation to slaughter, limbs can be left behind due to forceful removal.¹¹⁰ The UEP has addressed the issue of bone frailty in layers and set minimum standards of care for the birds when being caught for transportation to slaughter.¹¹¹

More problems arise for poultry at slaughter. At slaughter, poultry may be hung upside down before being stunned – making them one of the only groups that do not have to be registered unconscious beforehand.¹¹² As will be later discussed, the federal Humane Slaughter Act proscribes methods of slaughter for animals used for food and food production; however, it exempts chickens from its protected list of animals.¹¹³ Only several different states have laws requiring the chickens to be unconscious before slaughter.¹¹⁴ Otherwise, once they arrive “[a]t the processing plant, the birds are uncrated, hung upside down on a shackle line, stunned using an electrical current, and then killed by a mechanical knife.”¹¹⁵ The industry has room to increase its self-imposed standards and require that all birds be stunned to unconsciousness before being shackled to prevent any further unnecessary suffering. Although the poultry industry started some self-regulation, there remains room for improvement.

The EU has recognized “[t]ransport can seriously damage animal health.”¹¹⁶ The EU has several articles of legislation protecting animals in transport.¹¹⁷ These provisions protect the transport of “domestic birds” and require that any injured animal not be transported without first receiving proper veterinary care.¹¹⁸ Further, the legislation provides for appropriate methods of unload-

109. *Id.* (discussing the damage suffered to a hen’s foot as a result of the wire mesh floor of a battery cage).

110. *See id.* (stating that battery cages cause bone fragility in hens, causing broken bones, lameness, and osteoporosis).

111. UNITED EGG PRODUCERS, *supra* note 15, at 11-12 (discussing recommended handling techniques prior to transportation for slaughter, and indicating a need for a minimum amount of care when removing the hens from cages).

112. CURNUTT, *supra* note 27, at 163.

113. *See* Humane Methods of Livestock Slaughter, 7 U.S.C. §§ 1901-1907 (2000).

114. CURNUTT, *supra* note 27, at 163 (citing, as an example, California state law requiring “processors to ensure all poultry are unconscious before being cut, shackled, or hoisted”).

115. Mench, *supra* note 20, at 105.

116. *Animal Welfare: Transport Damages Animal Health Concludes EFSA Report*, EUROP. INFO. AGRIC., May, 14, 2004 [hereinafter *Animal Welfare*].

117. *See* European Convention on the Protection of Animals During International Transport, Nov. 6, 2003, Europ. T.S. No. 193; European Convention for the Protection of Animals Kept for Farming Purposes, *supra* note 1.

118. European Convention on the Protection of Animals During International Transport, *supra* note 116, at art. 9, § 2(c).

ing cages after transport and also methods of slaughter.¹¹⁹ This current legislation in the EU is just the tip of the iceberg. Other legislation exists to protect the welfare of the chickens in intra-EU transport and international transport,¹²⁰ as well as regulating slaughter methods.¹²¹ It is important to note that all of this legislation either exists for the chicken specifically, or chickens are included within the protections of these acts.¹²²

Clearly, there are major differences in the rearing practices of the laying hen and the conditions the layers live in when used for egg production. In the EU, the member states are attempting to make the battery cage system obsolete, whereas it remains the primary system in use in the United States egg industry.¹²³ It is important for producers and consumers to be aware of the true nature of the systems and consider all viable alternatives, especially where trends indicate consumers are more willing to pay for food raised more humanely.¹²⁴

III. THE DISPARITY: UNITED STATES WELFARE LAW AND POLICY AND THE EU'S PROGRESSIVE LEGISLATIVE VISION

Both the United States and the EU have legislation protecting the welfare of animals.¹²⁵ However, the extent of protection afforded by the different laws and regulations exhibit the extensive variations. The United States has historically led the way for providing protection for animals,¹²⁶ but it is falling behind the progressive trends emerging in the EU for protecting the welfare of animals raised for food production. Where the United States continues to exempt such animals, especially poultry, the EU has recognized the birds' need for protec-

119. See *id.* at art. 12-14; European Convention for the Protection of Animals for Slaughter, *supra* note 1, at ch. III.

120. See, e.g., Council Directive 90/539 1990 O.J. (L 303) 6 (EC) (establishing the general health conditions for importing live poultry into the EU Member States).

121. See Council Directive 93/119 1993 O.J. (L 340) 21 (EC) (including chickens in the protection and requiring animals to be spared "any avoidable excitement, pain or suffering during movement, lairing, restraint, stunning, slaughter or killing).

122. See, e.g., Council Directive 90/539, *supra* note 119; Council Directive 93/119, *supra* note 120.

123. Wolfson, *supra* note 3, at 149.

124. Kahler, *supra* note 2.

125. See, e.g., Animal Welfare Act, 7 U.S.C. §§ 2131-2157 (2000); European Convention for the Protection of Animals Kept for Farming Purposes, *supra* note 1.

126. See Wolfson, *supra* note 3, at 127.

tion.¹²⁷ In fact, the EU has enacted specific legislation to protect the welfare of the laying hen.¹²⁸

A. *The United States Law & Policy: Falling Behind*

The United States has hundreds of animal welfare statutes and regulations.¹²⁹ Few of these, however, address the welfare of animals raised for food or food production. The slow trend in protecting the welfare of these animals may be in part due to the view of the animals' roles in American culture. American society views animals as property, and as such, animals are afforded little or no protection as living beings under the law.¹³⁰

1. *Non-Existent Federal Protection for the Laying Hen*

Animal protection laws have been on the books in the United States “[s]ince the early nineteenth century.”¹³¹ One of the most comprehensive federal animal protection acts is the Animal Welfare Act (“AWA”).¹³² Despite the AWA’s protection for laboratory animals, it fails to afford any protection for animals raised for food production.¹³³ Although this legislation is extremely important to animal welfare in general, it is “irrelevant to the issue at hand.”¹³⁴ Moreover, of the more than fifty statutes that Congress has passed regarding animal welfare, “only two laws in particular address the welfare of animals raised

127. Compare Animal Welfare Act, 7 U.S.C. §§ 2131-2157 (2000), Twenty-Eight Hour Law, 49 U.S.C. § 80502 (2000), and Humane Methods of Livestock Slaughter, 7 U.S.C. §§ 1901-1907 (2000), with Council Directive 1999/74, *supra* note 1.

128. See generally Council Directive 1999/74, *supra* note 1 (giving standards for the protection of laying hens).

129. See, e.g., Animal Welfare Act, 7 U.S.C. §§ 2131-2157 (2000); Twenty-Eight Hour Law, 49 U.S.C. § 80502 (2000); Humane Methods of Livestock Slaughter, 7 U.S.C. §§ 1901-1907 (2000); Ariz. Rev. Stat. Ann. § 13-2910.03 (2004); Iowa Code § 717.2 (2004); Mo. Ann. Stat. § 578.007(8) (2004); S.D. Codified Laws Ann. § 40-1-33, 40-1-2.4 (2004).

130. See Gary L. Francione, *Law and Animals*, in ENCYCLOPEDIA OF ANIMAL RIGHTS AND ANIMAL WELFARE 230-31 (Marc Bekoff & Carron A. Meaney eds., Greenwood Press, 1998) (discussing that animals are regarded as property in the United States and are thus only “means to the ends of persons and . . . cannot have rights . . .”); see also CURNUTT, *supra* note 27, at 27-28 (suggesting “[a]nimals have traditionally been regarded as property, or as potential property, which as such has no legally protected interests,” even though anticruelty statutes appear to create “narrowly confined” rights for some animals).

131. Wolfson, *supra* note 3.

132. Animal Welfare Act of 1970, 7 U.S.C. §§ 2131-2157 (2000).

133. See *id.* (noting the absence of language protecting livestock and/or farm animals).

134. See Wolfson, *supra* note 3, at 125.

for food or food production[:]”¹³⁵ the Humane Methods of Livestock Act¹³⁶ and The Twenty-Eight Hour Law.¹³⁷

a. *The Humane Methods of Livestock Slaughter Act*

The Humane Methods of Livestock Slaughter Act requires that animals be handled and slaughtered in a humane method.¹³⁸ Although this statute affects methods of slaughter for livestock and ensures the livestock is humanely killed, poultry are entirely excluded from the protection of the law.¹³⁹ Shockingly, this exclusion constitutes “over 90 percent of . . . [nearly ten billion] animals killed for commercial food products.”¹⁴⁰ Potentially, over 337 million battery-hens may survive to be slaughtered.¹⁴¹

b. *The Twenty-Eight Hour Law*

A second federal statute that protects animals raised for food and food production is the Twenty-Eight Hour Law of 1877.¹⁴² The Twenty-Eight Hour Law restricts the methods of transporting animals across state lines and dictates minimum standards for confinement, feeding, and rest, among others.¹⁴³ The Law requires that animals may not be confined “for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.”¹⁴⁴ However, the statute contains exceptions, and as such results in weak protection for the welfare of layers.

The Twenty-Eight Hour Law “does not apply when animals are transported in a vehicle or vessel in which [they] have food, water, space and an opportunity for rest.”¹⁴⁵ The law specifically does not apply to transportation by truck.¹⁴⁶ Thus, because laying hens who have reached the end of their egg pro-

135. Jimena Uralde, Note, *Congress' Failure to Enact Animal Welfare Legislation for the Rearing of Farm Animals: What is Truly at Stake?*, 9 U. Miami Bus. L. Rev. 193, 203 (2001).

136. Humane Methods of Livestock Slaughter, 7 U.S.C. §§ 1901-1906 (2000).

137. Twenty-Eight Hour Law, 49 U.S.C. § 80502 (2000).

138. See 7 U.S.C. §§ 1901-1906.

139. CURNUTT, *supra* note 27, at 31; see also 7 U.S.C. § 1901-1906.

140. CURNUTT, *supra* note 27, at 31; see also LEGAL PROTECTIONS, *supra* note 5.

141. LEGAL PROTECTIONS, *supra* note 5.

142. 49 U.S.C. § 80502.

143. *Id.*

144. *Id.* at § 80502(a).

145. *Id.* at § 80502(c).

146. See CURNUTT, *supra* note 27, at 163 (stating that Twenty-Eight Hour Law doesn't cover poultry which is transported in trucks).

ducing lives (also referred to as spent hens)¹⁴⁷ are almost exclusively transported by truck when sent to slaughter,¹⁴⁸ the statute does not protect their welfare.

An additional issue of concern with this statute is that it permits the owner or custodian of the animals, through written consent to the transporter, to extend the confinement time period from twenty-eight to thirty-six hours.¹⁴⁹ Finally, the fines imposed for a willful violation of the Law are capped at a maximum of \$500 for each transportation violation.¹⁵⁰

Due to the lack of protection provided by the federal government for the laying hen, and other poultry raised for food and food production, it is necessary to look at state law and industry standards as alternative sources of protection. All states in the United States have anticruelty laws; however, their application regarding animals raised for food production is inconsistent and minimal at best.

2. *State Anticruelty Laws and the Failure to Act*

“While every state has an anticruelty law that forbids cruelty to animals in general, they vary significantly in degree and coverage.”¹⁵¹ State law traditionally protected farm animals.¹⁵² However, due to many external pressures, such as those from farmers and the animal agriculture industry, the states have failed, just as the federal government to provide adequate legal protection for the welfare laying hen.¹⁵³ Almost all states with a significant agricultural presence exempt accepted animal husbandry practices.¹⁵⁴ Even more alarming is the current “trend within [the] states to remove legal protection from animals raised for food or food production altogether; if a farming practice is viewed by the agriculture industry as ‘accepted,’ ‘common,’ ‘customary’ or ‘normal’”¹⁵⁵ Moreover, even of those states whose statutes do not exempt customary animal hus-

147. See Halverson, *supra* note 77, at 74.

148. Mench, *supra* note 20, at 104-105.

149. 49 U.S.C. § 80502(a)(2)(B).

150. *Id.* at § 80502(d).

151. Wolfson, *supra* note 3, at 128.

152. See *id.* at 127.

153. Note, *Challenging Concentration of Control in the American Meat Industry*, 117 HARV. L. REV. 2643, 2653 (2004); see also CURNUTT, *supra* note 27, at 77 (noting eighteen states “‘normal’ or ‘generally accepted’ methods employed in animal agriculture, such as slaughtering for food” are exempted from state anticruelty laws) (internal citations omitted).

154. See Wolfson, *supra* note 3, at 132.

155. *Id.*

bandry practices, some remain under-inclusive by exempting poultry from the definition of animals.¹⁵⁶

While some anticruelty laws exhibit legal protection for the welfare of animals, most afford no protection for the laying hen. At least one state, California, has enacted a humane slaughter act for poultry.¹⁵⁷ The law requires processors to “ensure that all chickens, . . . are unconscious before being cut, shackled, or hoisted.”¹⁵⁸ However, little state regulation exists on the transportation of poultry, which is also exempted from federal protection under the Twenty-Eight Hour Law.¹⁵⁹ Only Connecticut, Pennsylvania, Rhode Island, and Wisconsin have laws that set out standards for transportation.¹⁶⁰ Some states go so far as to explicitly exempt poultry from protection.¹⁶¹ The lack of state legislation protecting the welfare of the layer requires other players in the agricultural arena to respond. The egg industry has attempted its own regulation, but these pseudo-regulations typically are formed around the animal husbandry practices currently in use within the industry.¹⁶²

3. *Voluntary Industry Action: Pseudo-Regulation and Pro-activism*

United States “consumers [are] becoming increasingly intent on food animals being humanely raised.”¹⁶³ As public consumer awareness increases, the egg industry and other animal agriculture industries will begin to feel pressure from animal welfare and animal rights groups to change standards and rearing practices. One sector responding to these pressures is the fast-food industry, which is in turn starting to require changes from its producers, including urging producers to adopt new techniques and standards, thus preventing negative repercussions from consumers.¹⁶⁴ However, the customary husbandry standards in the

156. See Wolfson, *supra* note 3, at 131 (noting that both Louisiana and South Carolina omit poultry from their statutory definitions). For two other statutes that provide some protection for poultry, see CAL. FOOD & AGRIC. CODE § 19501 et al. and IND. CODE § 15-2.1-24-1 et al.

157. CURNUTT, *supra* note 27, at 163.

158. *Id.*

159. *See id.*

160. *See id.* (discussing the lack of state protection for poultry and a general discussion of state laws on transportation).

161. See Wolfson, *supra* note 3, at 129 (referencing Nebraska and Nevada law exempting all animals raised for food and food production from protection).

162. *See generally* UNITED EGG PRODUCERS, *supra* note 15 (stating the various regulations promulgated by the egg industry).

163. Kahler, *supra* note 2.

164. *See* MCDONALD’S CORPORATION, Responsible Purchasing, <http://www.mcdonalds.com/usa/good/products.html> (last visited Mar. 6, 2006) (describing McDon-

egg industry are deeply entrenched and proven to be economically efficient, making them difficult to change.¹⁶⁵

a. *The Egg Industry: Setting Minimum Standards*

The United States egg industry has taken pro-active steps to change the welfare condition of the laying hen. These steps include instituting animal welfare guidelines and various labeling schemes, which indicate to the consumer how the egg was produced. However, despite the seemingly positive aspect of the guidelines and labeling schemes, these new practices may not measure up to the changes taking place in the EU. Further, these practices tend to create confusion for consumers about what constitutes humane care in the industry.

Within the egg industry, Cal-Maine Foods, Inc.¹⁶⁶ is the leader in the market.¹⁶⁷ The company currently sells eggs under the labels Egg-Land's Best™ and Farmhouse.¹⁶⁸ As with many other egg producers, the company, until just recently, used the Animal Care Certified¹⁶⁹ mark on its labeling to indicate its conformity with standard care guidelines. These guidelines, which appeared on the egg cartons, were intended to convey to the consumer that the product meets a particular standard of care for the layers while producing the eggs.¹⁷⁰

The UEP's 'Animal Care Certified' guidelines followed many of the United States standards discussed in this Note. The guidelines recommended the cage system to "provide protection from environmental extremes and predators."¹⁷¹ The requirements dictated a usable space of sixty-seven to eighty-six square inches, and required by April 1, 2008 that all cages meet, at a minimum, the lesser requirement.¹⁷² The guidelines further established appropriate practices

ald's commitment to food safety with regulations exceeding federal requirements) [hereinafter RESPONSIBLE PURCHASING].

165. See Uralde, *supra* note 134, at 194-195.

166. See CAL-MAINE FOODS INC., <http://www.calmainefoods.com/index.htm> (last visited Mar. 6, 2006).

167. U.S. POULTRY & EGG ASS'N, *supra* note 29 (noting that Cal-Maine Foods, Inc. has over 20 million laying hens and listing other top competitors in the United States egg industry).

168. CAL-MAINE FOODS INC., *supra* note 165.

169. *Id.*

170. See UNITED EGG PRODUCERS, *supra* note 15, at 2 (discussing the public perception of the egg industry and the goal of the Animal Care Certified label); see also BRUCE A. BABCOCK ET AL., AN INITIAL ANALYSIS OF ADOPTION OF ANIMAL WELFARE GUIDELINES ON THE U.S. EGG INDUSTRY 10 (2002), available at www.card.iastate.edu/publications/DBS/PDFFiles/02bp37.pdf (noting the new standards adopted by the UEP).

171. BABCOCK ET AL., *supra* note 169.

172. *Id.* (summarizing the UEP guidelines).

for beak trimming and forced molting.¹⁷³ Although these standards established a baseline standard for the protection of the layer, many companies are expanding their practices, in part due to the trends in the fast food industry.¹⁷⁴ Unfortunately, the egg industry relies on these standards when producing for the general consumer and allowed producers who met these guidelines to place the ‘Animal Care Certified’ mark on their product.¹⁷⁵ In essence, the label provided a false sense of security to the consumer that the eggs they purchased were produced in a humane way.

In fact, the ‘Animal Care Certified’ logo recently came under attack as “misleading.”¹⁷⁶ The Better Business Bureau requested the government to examine the use of the ‘Animal Care Certified’ logo because it claimed “the seal is misleading when farmers continue such practices as clipping hens’ beaks to keep them from pecking each other and temporarily starving birds in an attempt to get them to lay more eggs.”¹⁷⁷ At that time, “[m]ore than 85 percent of the nations eggs” were labeled with the ‘Animal Care Certified’ mark.¹⁷⁸ The Better Business Bureau did find the mark misleading and required the UEP to change or remove it from egg cartons. Today, the United Egg Producers Care Certified mark appears in place of the ‘Animal Care Certified’ mark. The look of the little green logo did not change, and, unfortunately, neither did the guidelines a producer must meet to use the mark.¹⁷⁹ Yet other circumstances arise when eggs are labeled with such marks as “Cage-Free,” “Free Range,” and “Natural.”¹⁸⁰

173. See UNITED EGG PRODUCERS, *supra* note 15, at 7-10. Also refer to this Note’s discussion of the cage systems, beak trimming, and forced molting practices in the United States and Europe.

174. See RESPONSIBLE PURCHASING, *supra* note 163 (stating on the website that their standards meet or exceed federal requirements); WENDY’S CORPORATION, CORPORATE INITIATIVES, WENDY’S ANIMAL WELFARE PROGRAM FACT SHEET (2005), <http://www.wendys.com/w-6-3-1.shtml> (last visited Mar. 6, 2006) (stating “We believe it is our obligation to ensure that each of our suppliers exceeds government regulations by meeting Wendy’s more exacting standards pertaining to the humane treatment of animals”).

175. See UNITED EGG PRODUCERS, *supra* note 15 (noting that ‘Animal Care Certified’ has become the “United Egg Producers Certified” program).

176. See Philip Brasher, *Bureau: Egg Labels Are Deceiving; The Better Business Bureau Says Labels Mislead, Because Some Chickens are Abused*, DES MOINES REGISTER, Aug. 26, 2004, at 1D (stating that the Better Business Bureau says the seal is misleading when farmers continue such practices as clipping hens’ beaks to keep them from pecking each other and temporarily starving birds in an attempt to get them to lay more eggs).

177. *Id.*

178. *Id.*

179. See UNITED EGG PRODUCERS, *supra* note 15.

180. See Elaine Lipson & Dan Luzadder, *Cracking the Organic Egg Market*, THE NATURAL FOODS MERCH., Aug. 1, 2003,

Clearly, these labeling practices, although they afford some protection for the laying hen, in essence only re-establish the current industry standards and may confuse consumers.

b. *McDonalds, Burger King, and Wendy's: Establishing Producer Standards*

The fast food industry is a major player in the United States egg industry.¹⁸¹ When pressured by consumers and public interest groups to adopt animal welfare standards for their producers, the companies have followed through. People for the Ethical Treatment of Animals ("PETA") has been a major driving force behind the food industry changing its standards.¹⁸² In 1997, the group began a massive campaign against McDonald's, Burger King, and Wendy's, calling for the fast-food giants to take responsibility for the suffering endured by animals at the hands of the companies' suppliers.¹⁸³ In fact, all three companies took a pro-active stance and have adopted "Care" standards and guidelines for the laying hens.¹⁸⁴

McDonald's was the first of the corporate fast-food giants to respond to the demands and has heralded itself as an "industry leader" in the animal welfare arena.¹⁸⁵ Its website touts a simple statement as a summary of its animal welfare viewpoint: "McDonald's cares about the humane treatment of animals."¹⁸⁶ "We recognize that our responsibility as a purchaser of food products includes working with our suppliers to ensure good animal handling practices."¹⁸⁷

McDonald's has adopted "Guiding Principles" that establish a corporate philosophy to convey McDonald's message that it cares about the animals used

<http://www.naturalfoodsmerchandise.com/ASP/150/Display-Article> (providing an interesting discussion of these issues).

181. See BURGER KING CORPORATION, 2004 BKC ANIMAL HANDLING POLICY, http://www.bk.com/CompanyInfo/public_policies/2004.aspx (discussing Burger King's strict standards for humane handling of animals); see also McDONALD'S CORPORATION, McDONALD'S USA LAYING HENS GUIDELINES, <http://www.mcdonalds.com/usa/good/products/hen.html> (listing McDonalds' goals for ensuring humane treatment of laying hens) [hereinafter McDONALD'S USA LAYING HENS GUIDELINES].

182. Steven Best, *Chewing on the Rights vs. Welfare Debate: Do Corporate Reforms Delay Animal Liberation?*, *THE ANIMALS' AGENDA*, Mar.-Apr. 2002, at 14.

183. *Id.*

184. See BABCOCK ET AL., *supra* note 169, at 8.

185. RESPONSIBLE PURCHASING, *supra* note 163.

186. McDONALD'S CORPORATION, ANIMAL WELFARE, <http://www.mcdonalds.com/corp/values/socialrespons/market/animalwelfare.html> (last visited Mar. 6, 2006) [hereinafter ANIMAL WELFARE].

187. *Id.*

for food production.¹⁸⁸ The principles include basic concepts: safety, quality, animal treatment, partnership, leadership, performance measurement, and communication.¹⁸⁹ McDonald's has even instituted an audit system to ensure compliance from its producers.¹⁹⁰ McDonald's claims that in 2004 nearly all of its producer facilities were audited, which would constitute more than 500 facilities.¹⁹¹

With specific regard to layers, McDonald's has adopted "USA Laying Hen Guidelines."¹⁹² The web site indicates the guidelines encompass those adopted by the UEP and the Animal Welfare Council.¹⁹³ The guidelines extend these recommendations to "require dedicated facilities to achieve a minimum of 72 square inches of space per bird, providing a minimum of 4 inches of feeder space per bird."¹⁹⁴ The goals indicate McDonald's will "implement a purchasing preference policy" to buy eggs from suppliers who comply with the guidelines.¹⁹⁵ Moreover, McDonald's says it will no longer support forced molting through withdrawal of feed and water.¹⁹⁶ Finally, the company states it will "not support the improperly controlled practice of "beak trimming."¹⁹⁷ These changes, if properly enforced, could affect producers that would refuse to comply with the UEP standards by blocking them from the market.

Following McDonald's lead, Burger King and Wendy's also implemented guidelines for animal welfare in 2002.¹⁹⁸ Burger King, like McDonald's, views itself as "an industry leading champion in the adoption of meaningful requirements to ensure the appropriate and proper treatment of animals by its vendors and suppliers."¹⁹⁹ Burger King's website states that it requires producers "to adhere to strict standards and seeks to encourage permanent improvements in the industry for the care, housing, transport and slaughter of . . . poultry."²⁰⁰ Burger

188. See MCDONALD'S CORPORATION, MCDONALD'S ANIMAL WELFARE GUIDING PRINCIPLES, http://www.mcdonalds.com/corp/values/socialrespons/market/animalwelfare/guiding_principles.html (last visited Mar. 6, 2006) [hereinafter MCDONALD'S ANIMAL WELFARE GUIDING PRINCIPLES].

189. See *id.*

190. MCDONALD'S CORPORATION, PROGRAM IMPLEMENTATION, http://www.mcdonalds.com/corp/values/socialrespons/market/animalwelfare/program_implementation.html (last visited Mar. 6, 2006) [hereinafter PROGRAM IMPLEMENTATION].

191. *Id.*

192. MCDONALD'S USA LAYING HENS GUIDELINES, *supra* note 179.

193. *Id.*; See also UNITED EGG PRODUCERS, *supra* note 15, at 1.

194. MCDONALD'S USA LAYING HENS GUIDELINES, *supra* note 179.

195. *Id.*

196. *Id.*

197. *Id.*

198. BABCOCK ET AL., *supra* note 169, at 10-11.

199. BURGER KING CORPORATION, *supra* note 179.

200. *Id.*

King's guidelines, like those of McDonald's, adopted the UEP's recommendations and also extend the recommendations to include greater protections.²⁰¹ These guidelines "extend the cage size to require a minimum of 75 square inches of usable floor space."²⁰² This size requirement is the largest of the three companies. Moreover, Burger King's guidelines do not support forced molting and discourage the use of beak trimming.²⁰³

Finally, Wendy's corporate position states that "our obligation [is] to ensure that each of our suppliers exceeds government regulations by meeting Wendy's more exacting standards pertaining to the humane treatment of animals."²⁰⁴ Wendy's has established some of its own guidelines for the welfare of laying hens, however, the company has not adopted the UEP guidelines.²⁰⁵ The company requires a minimum seventy-two square inches of cage space, prohibits forced molting, and recommends an incentive program for employees for proper handling of the birds.²⁰⁶

Clearly, these standards adopted by the fast-food industry in some instances provide more protections afforded by the UEP guidelines. These protections, though falling a bit short of the progressive changes in the EU, do provide protection for the laying hen, greater than the protection offered by the United States' federal and state governments.

The United States has fallen behind other nations regarding the welfare of poultry used for food and food production. The utter lack of federal regulation and minimal state regulation proves that the industry itself may be the one to set a trend toward modernization and recognition of animal welfare in practice standards. However, it remains unclear that industry regulation will provide any remedial benefits. Though standards are set, enforcement may be lacking. Nevertheless, the government and the poultry industry may use other nations as models for instituting change.

B. *The European Union: A Progressive Trend*

Although the United States was the first to recognize animal welfare rights under the law,²⁰⁷ it has quickly fallen behind the progressive changes taking place in the EU and its Member States. The recent trend toward recognizing animal welfare issues in Europe can be attributed to the concern over intensive or

201. BABCOCK ET AL., *supra* note 169, at 11.

202. *Id.*

203. *Id.*

204. WENDY'S CORPORATION, *supra* note 173.

205. *See id.*

206. *Id.*

207. Wolfson, *supra* note 3, at 127.

“factory” farming.²⁰⁸ “[T]he greatest driving force for improved animal welfare is public opinion,”²⁰⁹ which has been evidenced in the “various lobbying organizations and through the media and ultimately at policy level, through improved legislation.”²¹⁰ Two major players in the development of animal welfare policy in the EU include the EU Scientific Committee on Animal Health and Welfare (“SCAHAW”)²¹¹ and the Council of Europe.²¹² These committees played an influential role in promulgating legislation after a catalyst act was created in 1976.²¹³

To advise the British government on the need for welfare standards, the government appointed the Brambell Committee “to examine the conditions in which livestock are kept under systems of intensive husbandry.”²¹⁴ The committee set forth the “Five Freedoms” of movement:

1. Freedom from hunger and thirst – access to fresh water and a diet for full health and vigour,
2. Freedom from discomfort – an appropriate environment with shelter and comfortable rest area,
3. Freedom from pain, injury and disease – prevention of rapid treatment,
4. Freedom to express normal behaviour – adequate space and facilities, company of the animal’s own kind,
5. Freedom from fear and distress – conditions and treatment which avoid mental sufferings.²¹⁵

208. *Id.* At 140.

209. Moynagh, *supra* note 49, at 107.

210. *Id.*

211. *See* SCIENTIFIC COMM. ON ANIMAL HEALTH & ANIMAL WELFARE, *supra* note 7, at 4.

For further discussion of SCAHAW *see* Moynagh, *supra* note 49, at 107.

212. *See* Council of Europe, <http://www.coe.int/DefaultEN.asp> (last visited Mar. 6, 2006) (listing Member States of the Council which include Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, “The former Yugoslav Republic of Macedonia,” Turkey, Ukraine, and the United Kingdom). For further discussion of Council of Europe, *see* Moynagh, *supra* note 49, at 107.

213. *See* European Convention for the Protection of Animals Kept for Farming Purposes, *supra* note 1; *see also* Moynagh, *supra* note 49, at 107-108 (explaining the roles of SCAHAW and the Council of Europe have in creating legislation).

214. Wolfson, *supra* note 3, at 140.

215. EUROPA, ANIMAL HEALTH AND WELFARE, http://europa.eu.int/comm/food/animal/welfare/farm/index_en.htm (last visited Mar. 6, 2006).

The Committee concluded the confinement of animals in intensive farming situations should be evaluated, and the stresses of the confinement considered, to determine the appropriate methods for rearing.

In principal we disapprove of a degree of confinement of an animal which necessarily frustrates most of the major activities which make up its natural behavior . . . An animal should at least have the sufficient freedom of movement to be able without difficulty to turn around, groom itself, get up, lie down, stretch its limbs.²¹⁶

This study provided a mechanism for the EU to pass its first progressive animal welfare act in 1976, entitled European Convention for the Protection of Animals Kept for Farming Purposes (“Convention”).²¹⁷ This legislation was passed recognizing the need for “the protection of animals kept for farming purposes, particularly in the modern intensive stock-farming systems.”²¹⁸ The legislation detailed the general principles of the Convention²¹⁹ and set forth a detailed implementation plan.²²⁰ It sparked a change in the animal agricultural systems across the EU and began the progressive shift, especially in the egg industry to implement new practices to protect layer welfare. More importantly, this legislation was viewed as framework that allowed national governments to “adopt more stringent rules provided they are compatible with the provisions of the [Convention].”²²¹

Additional legislation was passed in 1998 that further recognized the concern for protection of animals kept for farming purposes.²²² The EU with the purpose of recognizing all Member States ratification of the Convention adopted this legislation.²²³ This directive set forth the groundwork for further legislation

216. Wolfson, *supra* note 3, at 140.

217. *See id.* at 142; *see also* European Convention for the Protection of Animals Kept for Farming Purposes, *supra* note 1.

218. European Convention for the Protection of Animals Kept for Farming Purposes, *supra* note 1.

219. *See id.* The general principles include the housing appropriate to physiological and ethological needs, the recognition for freedom of movement, the desire to refrain from causing unnecessary suffering or injury, and guidelines for inspection of the equipment used in intensive stock-farming systems.

220. *See id.* The implementation plan called for the establishment of a Standing Committee that would be representative of each Contracting Party. The Standing Committee was to adopt recommendations and reports for Contracting Parties regarding the implementation of principles set forth in the article.

221. EUROPA, *supra* note 213.

222. *See* Council Directive 98/58, 1998 O.J. (L 221) 23 (EC) (establishing minimum standards for the protection of animals among Member States, and not excluding chickens or poultry from the definition of animals).

223. *See id.*

protecting the welfare of animals among Member States, and acted as another stepping-stone in the large regulatory framework.²²⁴

Finally, in 1999, the EU began to target the chicken as needing special protection in the animal agriculture industry. The EU passed the Minimum Standards for the Protection of Laying Hens (“Directive”).²²⁵ This Directive may be considered one of the most influential pieces of legislation for the poultry industry. The Directive specifically addresses the welfare of the layer and requirements necessary for its care.²²⁶ The fundamental provisions of the Directive set forth requirements for traditional cage systems and an enriched-cage system, and, most notably, alternative systems, also known as free range systems. The Directive not only establishes the three different rearing systems, but also creates additional protections for the welfare of the hens in *each* of the systems.²²⁷ The additional requirements establish levels of care, building standards and maintenance, and hygiene.²²⁸

The requirements call for the hens to be inspected at least once a day.²²⁹ Further, the tiers of cages cannot be such that proper inspection is impossible for the upper tiers.²³⁰ The provision requires adequate light levels to “allow all hens to see one another and be seen clearly.”²³¹ The purpose of this is so that the hens may “investigate their surroundings” and be active.²³² Along with these provisions is perhaps the most important requirement of all: “all mutilation shall be prohibited.”²³³ This single requirement could give greater protection for the hens than any provision or industry regulations currently in force in the United States. However, the regulation is qualified. It authorizes beak trimming to prevent pecking and cannibalism.²³⁴ However, the article further requires hens must have a nest, adequate perches, and a litter area.²³⁵ These requirements even protect the

224. *See id.* (recognizing the need to insure a uniform application of the regulations throughout the Member States and ensure a “smooth running of the organization of the market in animals” by preventing distorted competition).

225. Council Directive 1999/74, *supra* note 1, at 54-55.

226. *See id.* at art. 1, p. 53.

227. *Id.* at 54-55.

228. *See id.*

229. *Id.* at 57.

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.* (requiring beak trimming, if done, to be “carried out by qualified staff on chickens that are less than 10 days old and intended for laying”).

235. *Id.* at arts. 4, 6, p. 54-55. There must be “at least one nest for every seven hens” and where “group nests are used, there must be at least 1 meter of nest space for a maximum of 120 hens.” *Id.* at art. 4, p. 54. Perches are to provide at least 15 centimeters per hen, and cannot have

welfare of the laying hen better than any of the other welfare regulations discussed in this Note: they recognize the physiological needs of the animal to prevent undue stress. In fact, the alternative systems are also required to have floors that are constructed to adequately support “the forward-facing claws of each foot.”²³⁶ This type of support can help prevent the damage caused by the claws growing around the wire mesh of the cage.²³⁷ Finally, the provision sets a limit of nine birds per square meter of usable area.²³⁸ These minimum requirements are to be applied to all alternative systems starting in January 1, 2007.²³⁹

It is also important to recognize that there will be economic consequences from these changes. SACHAW has noted that it is likely there would be a five percent cost increase for eggs from laying hens raised in a cage size of 600 square centimeters, a fifteen percent cost increase for eggs from cage sizes of 750 square centimeters, and a fifty percent increase for eggs raised outdoors.²⁴⁰

Clearly, the weight of these provisions alone is much greater protection than any regulations or industry requirement currently in use in the United States egg industry. In fact, they could provide guidance for the United States industry to be pro-active and institute similar change, or work as a framework for governmental bodies to adopt federal provisions. In either case, it is important to look at how these differences are carried out in practice and examine their impact on the welfare of the bird.

IV. CONCLUSION

There is clearly some disparity between the United States egg industry’s common welfare practices and those currently being implemented in the EU. From the extent of these acts, it is clear the EU has been very progressive in regards to welfare for chickens and in the poultry industry. It is important for the United States poultry industry to be aware of these changes in order to be prepared for what the future may hold. “Concern for animal welfare and a desire for improvement is a consumer driven issue and it will not go away.”²⁴¹ Despite the

sharp edges or be mounted above the litter. *Id.* There must be “at least 250 centimeters of littered area per hen . . . occupying at least one third of the ground surface,” *Id.*

236. *Id.* at art. 4, p. 54.

237. Uralde, *supra* note 134, at 198.

238. Council Directive 1999/74, *supra* note 1, at art. 4, p. 54 (noting “where the usable area corresponds to the available ground surface, Member States may, until [December 31, 2011], authorise a stocking density of 12 hens per square meter of available area for those establishments applying this system on [August 3, 1999]”).

239. *Id.*

240. See Moynagh, *supra* note 49, at 112.

241. *Id.* at 113.

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current trend of United States legislation exempting animals raised for food and food production from welfare legislation, a change may be on the horizon that is fueled by growing public awareness and changing, pro-active industry practices.
