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The Rise of Concentrated Animal Feeding Operations, Their Effects, and How We Can Stop Their Growth

Andrea Prisco

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The Rise of Concentrated Animal Feeding Operations, Their Effects, and How We Can Stop Their Growth

Andrea Prisco*

ABSTRACT

Dramatic changes in the agricultural industry over the last century have led to the rise of concentrated animal feeding operations—industrial facilities that raise a large number of animals in confined spaces. Animals raised in these facilities suffer from poor quality of life and abuse. For humans, these facilities have had adverse effects on the environment and public health, but they are also associated with high productivity and low food costs. This Comment analyzes the effects of concentrated animal feeding operations on animal well-being, the environment, and public health. This Comment also analyzes current federal legislation that helps combat the negative effects of concentrated animal feeding operations. It recommends more comprehensive federal legislation to recognize that the negative effects of concentrated animal feeding operations are interrelated and to protect animals from abuse.

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* J.D. Candidate 2022.

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I. INTRODUCTION

When we think of farm animals, we likely picture cows grazing and pigs playing in mud. Recently, however, animal activists have exposed a new reality for animals on certain farms.¹ Undercover investigations have revealed horrifying footage: diseased pigs feeding on the carcasses of their fellow pigs, chickens covered in droppings trapped in cages with no room to sleep, and cows kept perpetually pregnant, their calves taken from them while trying to nurse.²

The American agricultural industry looks vastly different today than it did a century ago.³ Large industrial facilities have replaced many independent family farms.⁴ The transformation of the family farm has brought the emergence of concentrated animal feeding operations (“CAFOs”), which often maintain thousands of animals for slaughter in shockingly poor conditions.⁵ The harm associated with CAFOs is not limited to animal abuse.⁶ CAFOs pose a serious threat to both the environment and public health.⁷

Part II of this Comment discusses the history of the American farm and the rise of CAFOs, the negative effects of CAFOs on the animals they maintain, the environment, and public health, as well as some benefits of CAFOs.⁸ It also provides an overview of federal legislation aimed at addressing some of the negative effects of CAFOs.⁹ Part III of this Comment analyzes further the issue of animal abuse, why the negative effects of CAFOs outweigh any

1. *Undercover Investigations*, MERCY FOR ANIMALS, <https://bit.ly/3sQLJHC> [<https://perma.cc/72E9-EEZQ>] (last visited Feb. 20, 2022).

2. E.g., Rekha Basu, *Grim Findings at Senator’s Hog Farm Add Context to Push for ‘Ag-Gag’ Law Preventing Undercover Investigations*, DES MOINES REGISTER (Jan 24, 2020, 10:56 AM), <https://bit.ly/2Ovchzy> [<https://perma.cc/ZF9D-WHKP>]; *Animal Cruelty Is the Way We Pay for Free Meat*, ROLLING STONE (Dec. 10, 2013), <https://bit.ly/2OuVug1> [<https://perma.cc/324Q-73VH>].

3. See Mark Koba, *Meet the ‘4%’: Small Number of Farms Dominates US*, CNBC, <https://cnb.cx/2MmdGHV> [<https://perma.cc/F2H8-RR75>] (May 6, 2014, 2:45 PM).

4. *Id.*

5. CARRIE HRIBAR, UNDERSTANDING CONCENTRATED ANIMAL FEEDING OPERATIONS AND THEIR IMPACT ON COMMUNITIES 1 (Mark Schultz ed. 2010), <https://bit.ly/3HHQQks> [<https://perma.cc/2UWK-W4YN>].

6. See *infra* Part II.B.

7. See *infra* Part II.B.

8. See *infra* Part II.A–B.

9. See *infra* Part II.C.

benefits, and why current federal legislation is inadequate to combat the negative effects associated with CAFOs.¹⁰ To combat these negative effects, this Comment recommends the adoption of comprehensive federal legislation that recognizes the issues associated with CAFOs are interrelated and that targets CAFOs at the heart of the problem: animal abuse.¹¹

II. BACKGROUND

A. *The Changing American Farm and the Rise of Concentrated Animal Feeding Operations.*

1. *The agricultural industry in America has changed drastically in the last century.*

Beginning in the 1940's, the American agricultural landscape began to change dramatically.¹² Large-scale, stream-lined industrial farms began to replace the traditional family farm.¹³ Today, the agricultural industry is dominated by these large farming operations.¹⁴

In the last century, the number of farms in the United States has decreased, while the average size of farms has increased.¹⁵ In 1900, there were about six million farms in the United States; that number dropped to about two million farms by 2007.¹⁶ In 1900, the average size of a farm was about 150 acres.¹⁷ In 2007, the average size of a farm was about 450 acres.¹⁸ In addition to fewer farms, and the increasing size of these farms, there are far fewer Americans involved in farming than there were over a century ago.¹⁹ In 1900, about 40 percent of the population in the United States worked on farms; today, only about 1 percent of Americans work on farms.²⁰

Much of this change began in the 1940's, mostly due to the invention and increased usage of new technologies including synthetic fertilizers, improved seeds, and new farming tools.²¹ These

10. See *infra* Part III.

11. See *infra* Part III.E.

12. See Holly Cheever, *Concentrated Animal Feeding Operations: The Bigger Picture*, 5 ALB. L. ENV'T OUTLOOK 43, 44 (2000).

13. *Id.*

14. Koba, *supra* note 3.

15. JAYSON L. LUSK, *THE EVOLVING ROLE OF THE USDA IN THE FOOD AND AGRICULTURAL ECONOMY* 7 (2016), <http://bit.ly/3pZbXZR> [<https://perma.cc/Z7VV-5KMS>] (reviewing USDA policies and offering some ideas for change based on economic efficiency).

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* at 10.

new technologies made farming much more efficient by increasing output and decreasing the amount of time and labor necessary to farm.²² Recent technological developments adopted by farmers include robots, temperature sensors, and GPS technology.²³

Farming today looks very different from farming a century ago. Today, there are fewer large farms and people who work on those farms. This change is largely attributable to new technologies that have transformed the farming industry, increased productivity, and decreased the amount of necessary labor.

2. *The changing agricultural landscape has led to the emergence of concentrated animal feeding operations.*

The agricultural transformation of the past half-century has led to the rise of a type of industrial farm known as a concentrated animal feeding operation.²⁴

An animal feeding operation (“AFO”), as defined by the U.S. Environmental Protection Agency (EPA), is “a lot or facility where animals are kept confined and fed or maintained for 45 days or more per year, and crops, vegetation, or forage growth are not sustained over a normal growing period.”²⁵ A CAFO is a sub-category of animal feeding operations “that raises animals, usually at high-density, for the consumption of meat, eggs, or milk.”²⁶ These facilities are identified by the number of animals that they maintain and the amount of animal waste that comes in contact with the water supply.²⁷ The United States Department of Agriculture reports that there are 450,000 animal feeding operations in the United States.²⁸ In 2011, the EPA reported that 15 percent of animal feeding opera-

22. *See id.*

23. *See* USDA, *Agriculture Technology*, U.S. DEP’T OF AGRIC., NAT’L INST. OF FOOD AND AGRIC., <https://bit.ly/3urT2rl> [<https://perma.cc/PPY3-H74M>] (last visited Mar. 4, 2022) (providing an overview of new technologies in modern agricultural practice). For example, GPS technology is “a group of orbiting satellites that transmit precise signals, allowing GPS receivers to calculate and display accurate location, speed, and time information to the user.” *Id.* This information technology is used for, among other things, farm planning, tractor guidance, soil sampling, and providing farmers with the ability to work during conditions that cause low visibility such as in the rain. *Agriculture*, Gps.GOV (Nov. 17, 2021), <https://bit.ly/2NHZCxl> [<https://perma.cc/E7SN-6ZXF>] (explaining the implementation of precision agriculture).

24. HRIBAR, *supra* note 5, at 1 (2011).

25. *Id.*

26. *Id.*

27. *Id.*

28. USDA *Animal Feeding Operations*, NAT’L RES. CONSERVATION SERV., <https://bit.ly/2MoLmV8> [<https://perma.cc/N4YZ-PRKA>] (last visited Feb. 20, 2022).

tions met the regulatory standard of a CAFO.²⁹ In 2019, the EPA reported that 20,883 AFOs met the criteria of a large CAFO.³⁰

CAFOs have caused negative effects on the animals they maintain, environment, and public health.³¹ However, large farms are also associated with lower costs and increased profits.³²

B. The Effects of CAFOs on the Well-Being of Animals, the Environment, Public Health, Production Levels, and the Cost of Food.

1. CAFOs have been associated with a low quality of life for animals and rampant abuse.

As industrial farms have replaced the traditional family farm, quality of life for animals has taken a turn for the worst.³³

The United States agricultural industry raises around 10 billion animals for food each year.³⁴ The largest CAFOs maintain at least 2,700 or more cows, 12,500 or more swine, or 125,000 or more chickens among thousands of other animals.³⁵ Although it is impossible to know exactly how many animals are maintained on CAFOs in the United States, it is likely that the number is at least in the millions.³⁶

The rise of CAFOs has led to many reports of animal abuse.³⁷ The American Society for the Prevention of Cruelty to Animals (“ASPCA”) and the Animal Legal Defense Fund (“ALDF”) have

29. Elizabeth Overcash, *Detailed Discussion of Concentrated Animal Feeding Operations: Concerns and Current Legislation Affecting Animal Welfare*, ANIMAL LEGAL & HIST. CENTER, MICH. STATE UNIV. COLL. OF LAW (2011) <https://bit.ly/3uJa2tZ> [<https://perma.cc/D8PV-X6JZ>] (expressing concern over whether the law can change to keep up with the growing agricultural industry).

30. *NPDES CAFO Permitting Status Report: National Summary*, U.S. ENV'T PROT. AGENCY, (July 20, 2020), <https://bit.ly/3q1XRnA> [<https://perma.cc/DNB8-XGYK>].

31. Cheever, *supra* note 12.

32. HRIBAR, *supra* note 5, at 1.

33. *Id.*

34. See Pamela Fiber-Ostrow & Jarret S. Lovell, *Behind a Veil of Secrecy: Animal Abuse, Factory Farms, and Ag-Gag Legislation*, 19 CONTEMP. JUST. REV. 230, 233 (2016) (stating that more than 10 billion animals are raised for consumption each year in the United States). *But see Farmed Animals*, ANIMAL LEGAL DEF. FUND, <https://bit.ly/36urFCK> [<https://perma.cc/B2SU-J44P>] (last visited Mar 4, 2022) (estimating that around nine billion animals are raised for consumption each year in the United States).

35. Overcash, *supra* at 29.

36. *Id.*

37. See *What's A CAFO? Let Us Explain.*, MERCY FOR ANIMALS, <https://bit.ly/3qnEIEZ> [<https://perma.cc/3ZU2-4BV8>] (last visited Mar. 20, 2022) and *Animals on Factory Farms*, ASPCA, <https://bit.ly/3qnznXm> [<https://perma.cc/P5X2-8PE9>] (last visited Feb. 20, 2022), for examples of animal abuse reports.

exposed many forms of animal abuse on CAFOs.³⁸ Animals are kept in small, overcrowded cages with poor lighting and air quality.³⁹ Sometimes the animals are physically altered, such as the removal of tails or beaks; these alterations are performed without anesthesia.⁴⁰ They are often starved and slaughtered in cruel ways.⁴¹ The animals are rarely allowed to go outside, are fed unnatural diets, and can exhibit aggressive behaviors not seen in counterparts raised without similar confinement.⁴²

For example, workers take male veal calves to veal operations when they are only a few days old, keep them in cages in which they can barely move, and feed them a grossly deficient and abnormal diet until they are slaughtered at a few months old.⁴³ On large chicken farms, workers confine chickens in tiny cages and systematically starve them for weeks at a time to keep their egg productions steady.⁴⁴

CAFOs are normally located in isolated areas because of the harm they pose to the environment and public health.⁴⁵ As a result, CAFOs are largely isolated from public view and few people can acquire firsthand knowledge of any animal abuse occurring on them.⁴⁶ Many who have attempted to expose animal abuse on CAFOs have done so by posing as undercover employees or secretly taking photos of living conditions.⁴⁷

The fact that modern factory farms are shielded from the public creates what one scholar calls “cognitive dissociation.”⁴⁸ Americans are increasingly unaware of where our food comes from, which may free us from considering the effects of meat-heavy diets on animals.⁴⁹

38. *Animals on Factory Farms*, *supra* note 37; see also *Farmed Animals*, *supra* note 34.

39. *Animals on Factory Farms*, *supra* note 37.

40. *Farmed Animals*, *supra* note 34.

41. See e.g., Fiber-Ostrow, *supra* note 34, at 237 (noting some brutal ways in which animals are killed including piglets being slammed to the ground).

42. *Animals on Factory Farms*, *supra* note 37.

43. *Id.*

44. *Id.*

45. Fiber-Ostrow, *supra* note 34, at 233.

46. *Id.*

47. See Jessalee Landfried, Note, *Bound & Gagged: Potential First Amendment Challenges to “Ag-Gag” Laws*, 23 DUKE ENVTL. L. & POL’Y F. 377, 377–78 (2013).

48. See Fiber-Ostrow, *supra* note 34, at 233.

49. See *id.* at 233 (discussing a 2000 study that found that 36% of people aged 16–23 did not know that bacon came from pigs and 40% did not know that milk came from a dairy cow).

2. CAFOs have had adverse effects on the environment.

CAFOs have been the cause of adverse environmental effects.⁵⁰ These effects include contaminated water and air supplies as well as the emission of greenhouse gases that contribute to global warming.⁵¹

Many of the environmental effects of CAFOs can be linked to the staggering amount of animal waste produced on these farms.⁵² The U.S. Government Accountability Office (“GAO”) reported in 2008 that large CAFOs can produce upwards of 1.6 million tons of animal waste in one year, which is more than the annual waste of some U.S. cities.⁵³ Due to the sheer volume of waste and because most CAFOs do not grow their own crops as feed, CAFOs have limited ability to use manure as fertilizer and have trouble disposing of excess manure effectively.⁵⁴ CAFOs may dump excess manure onto the ground, discard it in pits deep in the ground, or store it in lagoons or ponds for later use.⁵⁵ In relation to CAFOs, a “lagoon” is an “open-air pit filled with urine and manure.”⁵⁶

Contaminants from the animal waste can leak into nearby water supplies when lagoons are not constructed properly or when

50. See William S. Eubanks II, *The Future of Federal Farm Policy: Steps For Achieving A More Sustainable Food System*, 37 VT. L. REV. 957, 968–971 (2013) (advocating that we should subsidize farmers transitioning from concentrated livestock to more traditional grazing patterns); see also Reagan M. Marble, *The Last Frontier: Regulating Factory Farms*, 43 TEX. ENV'T. L. J. 175, 191–92 (2013) (proposing a mandatory public information disclosure program, a hazard warning program, a green-label program, and procedure-based standards).

51. See *supra* note 50.

52. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-08-944, CONCENTRATED ANIMAL FEEDING OPERATIONS: EPA NEEDS MORE INFORMATION AND A CLEARLY DEFINED STRATEGY TO PROTECT AIR AND WATER QUALITY FROM POLLUTANTS OF CONCERN 23 (2008), <https://bit.ly/2JxMzrZ> [<https://perma.cc/H9HP-J77T>] (stating that, “according to some agricultural experts, the clustering of large operations in certain geographic areas may result in large amounts of manure that cannot be effectively used as fertilizer on adjacent cropland and could increase the potential of pollutants reaching nearby waters and degrading water quality”).

53. See *id.*; see also HRIBAR, *supra* note 5, at 2 (pointing out that 1.6 million tons of animal waste a year is about 1.5 times more than the annual sanitary waste produced in Philadelphia, Pennsylvania); M. MERKEL, RAISING A STINK: AIR EMISSIONS FROM FACTORY FARMS 2 (2002), <https://bit.ly/2VsFafI> [<https://perma.cc/T33Z-UA47>] (noting that “one factory farm in Northern Missouri generates more feces and urine than the entire St. Louis metropolitan area, but without the treatment that cities are required to provide”).

54. HRIBAR, *supra* note 5, at 2–3.

55. *Id.* at 3.

56. *Pollution from Giant Livestock Farms Threatens Public Health*, INST FOR AGRIC. & TRADE POL'Y (July 25, 2001), <https://bit.ly/3ohGCOa> [<https://perma.cc/5KAG-LLBS>].

rain floods the fields inundated with manure.⁵⁷ Among these contaminants are pathogens, heavy metals, veterinary pharmaceuticals, pesticides, and antibiotics.⁵⁸ The waste also contains high amounts of parasites, viruses, and bacteria that cause disease in humans.⁵⁹ Many states have identified CAFOs as contributing to a decrease in their water quality.⁶⁰ In nearly every state, water pollutants from excess manure have disrupted aquatic ecosystems resulting in incidents of mass fish deaths.⁶¹ According to a 2001 EPA study, the agriculture sector is the primary cause of pollutants found in lakes, rivers, and reservoirs.⁶² The study found that states with more CAFOs experienced about 20 to 30 serious water quality problems a year due to manure management issues.⁶³

CAFOs also negatively affect air quality.⁶⁴ The decomposition of excess manure on land causes gaseous emissions that contain pollutants such as ammonia, hydrogen sulfide, nitrogen, and methane.⁶⁵ Dust—called particulate matter—is generated from animal movement, animal dander, and feed, and also pollutes the air.⁶⁶

Additionally, CAFOs emit greenhouse gases (principally methane and nitrous oxide) that contribute to climate change.⁶⁷ Greenhouse gases harm the planet by capturing solar radiation in the

57. JoAnn Burkholder et al., *Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality*, 115 ENV'T. HEALTH PERSPECTIVES 308, 308 (2006).

58. See *id.* at 309 (estimating that about one-third of the antibiotics used in the United States each year is added to animal feed so that the animals will grow faster).

59. See *id.* (estimating that “animal wastes also carry parasites, viruses, and bacteria as high as 1 billion” per gram).

60. See CLAUDIA COPELAND, CONG. RSCH. SERV., RL31851, ANIMAL WASTE AND WATER QUALITY: EPA REGULATION OF CONCENTRATED ANIMAL FEEDING OPERATIONS 4 (2010), <https://bit.ly/3tvZHk9> [<https://perma.cc/EGB3-XV4Y>] (citing U.S. ENV'T PROT. AGENCY, EPA-841-R-08-001, NATIONAL WATER QUALITY INVENTORY: REPORT TO CONGRESS FOR THE 2004 REPORTING CYCLE 18 (2009)) (stating that “29 states specifically identified animal feeding operations as contributing to water quality impairment”).

61. *Id.* at 4.

62. HRIBAR, *supra* note 5, at 4 (citing ENV'T. PROT. AGENCY, EPA-821-B-01-001, ENVIRONMENTAL ASSESSMENT OF PROPOSED REVISIONS TO THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM REGULATION AND THE EFFLUENT GUIDELINES FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (2001)).

63. *Id.* (citing ENV'T. PROT. AGENCY, EPA- 821-B-01-001, ENVIRONMENTAL ASSESSMENT OF PROPOSED REVISIONS TO THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM REGULATION AND THE EFFLUENT GUIDELINES FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (2001)).

64. *Id.* at 5.

65. *Id.*

66. Merkel, *supra* note 53, at 2.

67. HRIBAR, *supra* note 5, at 7.

atmosphere and warming up the Earth.⁶⁸ The EPA estimates that the agricultural industry is responsible for about 10 percent of the human contributions to greenhouse gas emissions in the United States.⁶⁹

CAFOs have adverse effects on the environment, including the contamination of local air and water supplies and the emission of greenhouse gases that contribute to global warming.

3. *CAFOs have had adverse effects on public health.*

CAFOs have caused serious public health concerns in the United States.⁷⁰ The bad odors, contaminated food and water supplies, and air pollution created by CAFOs may pose a threat to human health.⁷¹

People can smell the odor from CAFOs from miles away and this odor is one of the most common complaints that these facilities receive.⁷² Living in an area affected by chronic odors can decrease quality of life by driving people to remain indoors.⁷³ Studies on the effects of odors have suggested that populations living near large-scale hog facilities are more prone to depression, fatigue, confusion, headaches, and respiratory infections among other harmful symptoms.⁷⁴

As previously discussed, poorly managed excess manure often runs into nearby lakes and rivers.⁷⁵ When humans swim in these lakes and rivers, they can encounter pollutants from manure that can cause serious infections.⁷⁶ Human consumption of fish and other species plucked from contaminated waters can be dangerous

68. RAY MASSEY & DREW KIENTZY, *AGRICULTURE AND GREENHOUSE GAS EMISSIONS* 1 (2021), <https://bit.ly/3trLftK> [<https://perma.cc/SE8M-VUZX>].

69. *Id.* at 2.

70. HRIBAR, *supra* note 5, at 3.

71. *Id.*

72. *Id.* at 7.

73. *Id.* at 7.

74. See S.S. Schiffman et al., *The Effect of Environmental Odors Emanating from Commercial Swine Operations on the Mood of Nearby Residents*, 37 *BRAIN RES. BULL.* 369, 369 (1995) (finding that “[p]ersons living near the intensive swine operations reported significantly more tension, more depression, more anger,” fatigue, and confusion, in addition to less vigor than the control group). *But see* K. Thu et al., *A Control Study of the Physical and Mental Health of Residents Living Near a Large-scale Swine Operation*, 3 *J. OF AGRIC. SAFETY AND HEALTH* 13, 19–20 (1997) (finding that residents living near the large-scale swine operation reported experiencing significantly higher rates of symptoms of an inflamed respiratory tract but no higher rates of symptoms associated with psychological well-being).

75. Burkholder, *supra* note 57, at 309.

76. COPELAND, *supra* note 60, at 5.

if the seafood has been contaminated with pathogens.⁷⁷ Nitrogen contained in manure often ends up in drinking water as nitrates.⁷⁸ The EPA has identified nitrates as the most prevalent agricultural contaminant in drinking water.⁷⁹ If consumed in high amounts, nitrates are associated with an increased risk of health issues including diabetes, unfavorable reproductive outcomes, and certain cancers.⁸⁰

Another public health issue associated with CAFOs is that the hormones or medicines fed to the animals are in turn consumed by the humans who eat those animals. Workers sometimes add drugs to animal feed to enhance growth so that the animals will mature faster.⁸¹ These drugs include hormones to increase milk production and antibiotics to combat diseases that the animals may be more prone to because of filthy living conditions.⁸² These chemicals can end up in humans when we consume meat.⁸³

CAFOs have been shown to cause adverse effects on human health. Some of these effects include contaminated food and water supplies, higher risk of disease, and bad odors associated with a lower quality of life.

4. *The animal abuse, environmental effects, and public health effects associated with CAFOs are all related.*

Many sources of information separate the problems associated with CAFOs into three categories: animal abuse, adverse environmental impacts, and public health concerns.⁸⁴ However, each of these problems are intertwined with the other. Many of the environmental and public health issues associated with CAFOs result from excess manure.⁸⁵ Gaseous emissions from decomposing excess manure affects air quality while contaminants from excess manure

77. *Id.*

78. *Id.*

79. *Id.*

80. *See id.* (explaining that nitrate poisoning can be harmful to humans, especially infants and is the cause of “blue baby syndrome”); *see also* Burkholder, *supra* note 57, at 310 (stating that “high nitrate levels in drinking water is associated with an increased risk of hyperthyroidism,” diabetes, poor reproductive health, and some types of cancer including prostate cancer and cancer of the uterus).

81. Cheever, *supra* note 12, at 47.

82. *Id.*

83. *Id.*

84. *See e.g.*, Cheever, *supra* note 12, at 43; *see* Overcash, *supra* note 29; *see also* Eubanks, *supra* note 50, at 959.

85. HRIBAR, *supra* note 5, at 5.

leak into nearby water reservoirs.⁸⁶ Excess manure contributes to the foul odor affecting local communities.⁸⁷ Even issues not caused by excess manure can be linked to the practice of keeping a large number of animals confined in a small space. For example, gaseous emissions which come from the animals themselves contribute to global warming.⁸⁸ In sum, it would be impractical to separate the environmental and public health impacts of CAFOs from animal abuse.

5. *CAFOs increase food output and decrease the cost of food.*

The agricultural transformation that has led to the rise of CAFOs, and indeed, CAFOs themselves, have had positive effects in our society.⁸⁹ CAFOs can produce large amounts of food for fairly cheap.⁹⁰ The price of food for consumers has decreased while the amount of food produced has increased.⁹¹ With lower food prices, and higher food output, more struggling Americans can feed their families. Moreover, families who could already afford their food have additional funds to allocate elsewhere. For these reasons, some argue that CAFOs can stimulate the local economy wherever they are constructed and that they are a source of decently paying jobs for locals.⁹²

Despite these benefits, legislators recently have seen the need to reform the CAFO system due to negative impacts.

C. *An Overview of Federal Legislation That Addresses the Effects of CAFOs.*

There are two major federal laws that pertain to the animal abuse associated with CAFOs: the Animal Welfare Act and the Humane Methods of Slaughter Act. Both these acts are limited in scope. Accordingly, federal legislation that effectively regulates CAFOs or addresses animal abuse on CAFOs is severely limited.

86. *See id.*; Burkholder, *supra* note 57, at 308.

87. *See Schiffman et al.*, *supra* note 74, at 369.

88. HRIBAR, *supra* note 5, at 7.

89. *See LUSK*, *supra* note 15, at 53.

90. *Id.*

91. *Id.*

92. ROMAN KEENEY, COMMUNITY IMPACTS OF CAFOs: LABOR MARKETS 1-2 (2008), <https://bit.ly/39yk51E> [<https://perma.cc/8ALF-TL2W>].

1. *The Animal Welfare Act is limited in scope to transportation and its language is too general to combat animal abuse on CAFOs.*

The Animal Welfare Act, originally signed into law in 1966, regulates the transportation of animals.⁹³ It applies to “animals and activities . . . in interstate or foreign commerce or [that] substantially affect such commerce or free flow thereof . . . to assure the humane treatment of animals in commerce.”⁹⁴ This Act is limited in scope and does not aim to assure the humane treatment of animals before or after transportation. Furthermore, if the animals or activities are not in interstate commerce or substantially affecting interstate commerce, the Act does not apply at all.⁹⁵

As a result of the limited scope, most actions taken pursuant to the Animal Welfare Act involve the buying and selling of animals for exhibition purposes.⁹⁶ The case law is mostly related to the transportation of animals for participation in fighting.⁹⁷ Only one case included in an American Law Report for the application of the Animal Welfare Act mentions “minimum requirements for handling, housing, feeding, watering, and sanitation,” stating that “the indoor and outdoor housing facilities must be structurally sound and maintained in good repair to protect the animals from injury and to contain them.”⁹⁸ Although the opinion of the court specifically encompasses the safety and well-being of animals during

93. Animal Welfare Act of 1970, 7 U.S.C. § 2131.

94. *Id.*

95. *Id.*

96. James L. Buchwalter, Annotation, *Validity, Construction, and Application of Animal Welfare Act*, 74 A.L.R. Fed. 2d 275 (2013).

97. *Id.*; see *West Valley City v. Streeter*, 849 P.2d 613, 614 (Utah Ct. App. 1993) (holding that the Animal Welfare Act does not preempt a municipal code provision that prohibits the possession of animals for fighting). The Court explains that the Animal Welfare Act prohibits the transportation of animals in interstate commerce for the purposes of fighting unless that activity is legal in the destination state. *Id.* at 617–618; see *United States v. Thompson*, 118 F. Supp. 2d 723, 725 (W.D. Tex. 1998) (explaining that animal fighting is substantially related to interstate commerce if involving gambling participants “who have crossed state lines, or advertised across state lines, or any of the animals involved in the venture have been transported across state lines”); *United States v. Charles*, No. 09CR2006, 2009 WL 3055231, at *2 (W.D. Ark. Sept. 18, 2009) (holding that defendants violated the Animal Welfare Act by transporting knives, gaffs, and other sharp instruments across state lines. Even though the items did not substantially affect interstate commerce, they were instruments used in cockfighting and therefore transporting them across state lines was a federal crime); see also *Cox v. U.S. Dept. of Agric.* 925 F.2d 1102, 1107 (8th Cir. 1991) (holding that breeders violated the Animal Welfare Act by transporting underage dogs across state lines).

98. *Hocor v. U.S. Dept. of Agric.*, 82 F.3d 165, 168 (7th Cir. 1996).

transportation, it does little to actually further protection for animals.⁹⁹

Additionally, courts have held that Congress clearly did not intend to preempt state and local regulations with the passage of the Animal Welfare Act. Courts have held that “the Act expressly contemplates state and local regulation of animals.”¹⁰⁰ This weakens the Animal Welfare Act’s influence tremendously because it is not the only legislation that state and local enforcers must look at.

The Animal Welfare Act is limited in scope to the transportation of animals and the Act is weakened by state and local regulations.

2. *The Humane Methods of Slaughter Act does little to protect the well-being of animals or prevent animal abuse on CAFOs.*

Congress originally passed the Humane Methods of Slaughter Act in 1958.¹⁰¹ This Act states that it is the “policy of the United States that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods.”¹⁰² It aims to ensure that methods “prevent needless suffering,” “result in safer and better working conditions,” and “bring out improvement of products and economies” among other goals.¹⁰³ This Act does not apply to any poultry.¹⁰⁴

The Humane Methods of Slaughter Act also does little to provide animals with protection from abuse. There are many exemptions to inspection resulting in the Act rarely being enforced.¹⁰⁵ For

99. See *id.* at 172. (holding that a rule requiring a perimeter fence with a minimum height for dangerous animal enclosures was arbitrary).

100. See *Black Hawk Cnty. v. Jacobsen*, No. 01-0875, 2002 WL 1429365, at *3 (Iowa Ct. App. July 3, 2002) (holding that the Animal Welfare Act does not preempt state regulation of federally licensed kennels); *Hendricks Cnty. Bd. of Zoning Appeals v. Barlow*, 656 N.E.2d 481, 484 (Ind. Ct. App. 1995) (holding that a county zoning ordinance prohibiting the housing of exotic animals on residential property is not preempted by the Animal Welfare Act; see also *Medlock v. Bd. of Tr. of Univ. of Mass.*, 580 N.E.2d 387, 389 (Mass. App. Ct. 1991) (stating that the Animal Welfare Act allows states to promulgate their own standards); *Good v. Zoning Hearing Bd. of Heidelberg Twp.*, 967 A.2d 421, 422 (Pa. Commw. Ct. 2009) (stating that the Animal Welfare Act did not preempt a local regulation relating to animal ownership, breeding, or sale and that the Secretary of Agriculture can cooperate with state officials to carry out the purposes of the Animal Welfare Act and of animal welfare legislation and ordinances at the state and local level).

101. Humane Methods of Slaughter Act, 7 U.S.C. § 1901 (1958).

102. *Id.*

103. *Id.*

104. *Id.*

105. See generally Constantinos Hotis, *The Anthropological Machine at the Abattoir: The Humane Methods of Slaughter Act*, 2006 U. CHI. F. 503 (2006) (using

example, the Act expressly finds the following method of slaughter to be humane:

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.¹⁰⁶

Additionally, the GAO released a report in 2004 detailing the work of the U.S. Department of Agriculture in enforcing the provisions of the Humane Methods of Slaughter Act.¹⁰⁷ According to the report, inspection records were incomplete and inconsistent. Specifically, a number of records documenting violations were never produced and violations were not always documented.¹⁰⁸ The report states that enforcement of regulations was also inconsistent.¹⁰⁹ For example, Department of Agriculture officials used their own criteria to determine whether plant operations should be suspended.¹¹⁰ Therefore, whether provisions of the Humane Methods of Slaughter Act were enforced depended upon which district the facility was located in.¹¹¹

The GAO published a report in 2010 on the weaknesses of enforcement of the Humane Methods of Slaughter Act in which it detailed many of the same issues.¹¹² The report concludes that inspectors with the Department of Agriculture have taken inconsistent approaches to enforce the Humane Methods of Slaughter Act.¹¹³ A review of noncompliance records showed that inspectors failed to shut down operations even when suspension was clearly justified.¹¹⁴ The review also showed that the Department of Agri-

the theoretical construct of the anthropological machine to analyze animal life in today's society).

106. 7 U.S.C. § 1901.

107. U.S. GOV'T ACCOUNTABILITY OFF., GAO-04-247, HUMANE METHODS OF SLAUGHTER ACT: UNITED STATES DEPARTMENT OF AGRICULTURE HAS ADDRESSED SOME PROBLEMS BUT STILL FACES ENFORCEMENT CHALLENGES 1 (2004), <https://bit.ly/36A4hnw> [<https://perma.cc/TF5F-SXCK>].

108. *Id.* at 4.

109. *Id.* at 5

110. *Id.*

111. *Id.* at 8–10.

112. U.S. GOV'T ACCOUNTABILITY OFF., GAO-10-487T, HUMANE METHODS OF SLAUGHTER ACT: WEAKNESSES IN UNITED STATES DEPARTMENT OF AGRICULTURE ENFORCEMENT 1–2 (2010), <https://bit.ly/3myQeEb> [<https://perma.cc/WDU2-E3YL>].

113. *Id.* at 2.

114. *Id.*

culture did not “clearly outline goals, needed resources, time frames, or performance metrics” for the plans and strategies in place.¹¹⁵

Although the 2004 GAO report was rather scathing in its detailing of the enforcement of the Humane Methods of Slaughter Act, there seems to have been little done to improve the enforcement of this Act.¹¹⁶

The Humane Methods of Slaughter Act does little to provide animals with protection from abuse. There are many exceptions to the Act and its provisions are poorly enforced.

3. *A closer look at why reform has been slow to occur.*

Not everyone is a proponent of increasing the welfare of animals on CAFOs. In response to highly publicized undercover investigations conducted by animal activists to expose the cruel treatment of animals on industrial farms such as CAFOs, several states began enacting what are commonly known as “ag-gag” laws, which are generally framed as prohibitions on fraud.¹¹⁷

For example, Iowa passed a law making it a crime to film or record a facility without the permission of the animal facility owner.¹¹⁸ The U.S. District Court for the Southern District of Iowa held the law to be unconstitutional under the First Amendment’s free speech protections.¹¹⁹ Following this, Iowa legislators passed a bill that makes it a crime to enter without permission a place “where a ‘food animal’ is kept or where meat is sold or processed.”¹²⁰

Although “ag-gag” laws have faced constitutional scrutiny, some legislators have continued their attempt to protect industrial agricultural facilities from the exposure of animal cruelty.

115. *Id.*

116. 2010 is the most current account of the enforcement of the Humane Methods of Slaughter Act.

117. Lewis Bollard, *Ag-Gag: The Unconstitutionality of Laws Restricting Undercover Investigations on Farms*, 42 ENVTL. L. REP. NEWS & ANALYSIS 10960, 10960–61 (2012). This Comment only provides a brief overview of “ag-gag” laws and what motivated their passage in various states.

118. Dan Flynn, *Iowa Approves Nation’s First ‘Ag-Gag’ Law*, FOOD SAFETY NEWS (March 1, 2012), <https://bit.ly/3ogaHxY> [<https://perma.cc/2J82-6Z5K>].

119. *Animal Legal Defense Fund v. Reynolds*, 353 F. Supp. 3d 812, 821–22 (S.D. Iowa 2019).

120. Alleen Brown, *Iowa Quietly Passes It’s Third Ag-Gag Bill After Constitutional Challenges*, INTERCEPT (June 10, 2020, 4:55pm), <https://bit.ly/2JIKr6I> [<https://perma.cc/4NUU-8B5J>].

4. *Some federal legislation combats the negative environmental and public health effects associated with CAFOs.*

a. The Clean Water Act regulates water pollution.

In 1972, Congress passed the Clean Water Act with the purpose of regulating pollutants that end up in American waters.¹²¹ The EPA enforces the Act by setting up programs to monitor pollution.¹²² Additionally, the EPA authorized the National Pollutant Discharge Elimination System, a program through which businesses apply to receive permits allowing them to discharge a limited amount of pollution into water “to ensure that the discharge does not hurt water quality or people’s health.”¹²³

Unfortunately, research has shown that enforcement of the Clean Water Act and its accompanying permit programs is poor.¹²⁴ The programs are mainly enforced at the state level and many states report severe underfunding.¹²⁵ Permits are often slow to be renewed and many facilities are operating on expired permits.¹²⁶ Often, state agencies fail to inspect facilities or fail to punish them for violating a permit.¹²⁷

b. The Clean Air Act regulates air pollution.

Congress passed the Clean Air Act in 1970 with the purpose of regulating air pollution in the U.S.¹²⁸ The Act authorizes the EPA to establish National Ambient Air Quality Standards “to protect public health and public welfare and to regulate emissions of hazardous air pollutants.”¹²⁹ The EPA establishes emission standards for hazardous pollutants for major sources.¹³⁰ A major source is “a stationary source or group of stationary sources that emit or have the potential to emit 10 tons per year or more of a hazardous air

121. *Summary of the Clean Water Act*, U.S. ENV’T PROT. AGENCY, <https://bit.ly/3qmG7TX> [<https://perma.cc/5VFL-KH5P>] (last visited Mar. 4, 2022).

122. *Id.*

123. *National Pollutant Discharge Elimination System (NPDES)*, U.S. ENV’T PROT. AGENCY, <https://bit.ly/3boH7mv> [<https://perma.cc/7JGV-V5YZ>] (last visited Mar. 4, 2022).

124. CLIFFORD RECHTSCHAFFEN, *ENFORCING THE CLEAN WATER ACT IN THE TWENTY-FIRST CENTURY: HARNESSING THE POWER OF THE PUBLIC SPOTLIGHT*, THE CENTER FOR PROGRESSIVE REGULATION 1 (2004), <https://bit.ly/3b2wmpv> [<https://perma.cc/3EAJ-N2S7>].

125. *Id.*

126. *Id.*

127. *Id.*

128. *Summary of the Clean Air Act*, U.S. ENV’T PROT. AGENCY, <https://bit.ly/2O9IIDc> [<https://perma.cc/NZC4-5T5V>] (last visited Mar 4, 2022).

129. *Id.*

130. *Id.*

pollutant or 25 tons per year or more of a combination of hazardous air pollutants.”¹³¹

However, the Clean Air Act is also not well-enforced.¹³² Reports have shown that state agencies charged with enforcing the Act have suffered deep budget cuts in recent years.¹³³ Sources state that agency staff are unable to keep up with issuing permits that limit emissions.¹³⁴ Very little data exists to show whether the Act has been successful in reducing air pollution.¹³⁵

5. *Proposed federal legislation would place a moratorium on CAFOs.*

In recognition of the lack of regulation for CAFOs, U.S. Senator Cory Booker, a Democrat from New Jersey, introduced the Farm System Reform Act of 2019.¹³⁶ The main goal of this act is to strengthen independent family farm agriculture and create greater opportunities for these farms to compete in the agricultural industry.¹³⁷ The bill would place a moratorium on new and expanding large CAFOs, phase out the largest CAFOs, and provide a voluntary buyout for farmers who want to transition out of operating a CAFO.¹³⁸ Additionally, the bill seeks to “hold corporations responsible for pollution and other harms caused by concentrated animal feeding operations,” “restore mandatory country-of-origin labeling requirements,” and “prohibit the United States Department of Agriculture from labeling foreign imported meat products as “Product of USA.”¹³⁹

131. *Id.*

132. Jie Jenny Zou, *State Cutbacks, Recalcitrance Hinder Clean Air Act Enforcement*, CTR. FOR PUB. INTEGRITY (Oct. 11, 2016), <https://bit.ly/3q4mtft> [<https://perma.cc/Q5ZB-HNTW>].

133. *Id.*

134. *Id.*

135. *Id.*

136. *See Booker Unveils Bill to Reform Farm System*, CORY BOOKER (Dec. 16, 2019), <https://bit.ly/37r2DDW> [<https://perma.cc/V98M-6CAY>]. Senator Booker notes that independent family farms are being run out of the agriculture business by large, multinational corporations. *Id.* He states that “[l]arge factory farms are harmful to rural communities, public health, and the environment and we must immediately begin to transition to a more sustainable and humane system.” *Id.* In January of 2020, the Bill was referred to the Senate Committee on Agriculture, Nutrition, and Forestry. *Farm System Reform Act of 2019*, CONGRESS.GOV, <https://bit.ly/2I2UpJi> (last visited Mar. 4, 2022). The Bill is co-sponsored by Senator Elizabeth Warren from Massachusetts, Senator Bernie Sanders from Vermont, and Senator Edward Markey from Massachusetts. *Id.*

137. *Booker Unveils Bill to Reform Farm System*, *supra* note 136.

138. *Id.*

139. *Id.*

The bill would also strengthen the Packers and Stockyards Act by prohibiting “the use of unfair ranking systems for paying contract growers, protect[ing] livestock and poultry farmers from retaliation, and creat[ing] market transparency to protect farmers and ranchers from predatory purchasing practices.”¹⁴⁰ The Packers and Stockyards Act was passed in 1921 to foster fair competition and fair-trade practices in the meat and livestock market.¹⁴¹

III. ANALYSIS

A. *CAFOs Could Not Exist Without Animal Abuse.*

Animal activists have exposed instances of the animal abuse that occur on CAFOs.¹⁴² Instances of animal abuse can be shocking and effective in garnering public support for laws promoting animal welfare. Videos of the rough handling of animals and knowledge of starvation tactics or physical alterations can be jarring to the public.¹⁴³ However, abused animals suffering on CAFOs are not limited to these specific instances. By its very definition, CAFOs keep large numbers of animals confined in a small area.¹⁴⁴ These animals often live in their own filth, are fed poor diets often laced with antibiotics, and live unnatural lives that lead to overly aggressive behavior.¹⁴⁵ The animals on CAFOs suffer a worse kind of abuse than tail docking or inhumane slaughter: a horrifyingly low quality of life.¹⁴⁶

Current federal legislation focusing on specific types of abuse, like the Animal Welfare Act and the Humane Methods of Slaughter Act, are inadequate to protect animals on CAFOs.

B. *The Benefits Associated with CAFOs Are Not as Beneficial as They May Seem.*

Those in favor of industrial agriculture point to benefits associated with CAFOs such as an increase in food output, lower cost of food, and stimulation of local economies.¹⁴⁷ They argue that CAFOs are a benefit to our society. However, a closer look reveals that this may not be true.

140. *Id.*

141. See Christopher R. Kelley, *An Overview of the Packers and Stockyards Act*, 2003 Ark. L. Notes 35 (2003), for an overview of the Act.

142. *Protecting Farm Animals*, ASPCA, <https://bit.ly/3szXYbu> [<https://perma.cc/DP65-7632>] (last visited Mar. 4, 2022).

143. Fiber-Ostrow, *supra* at 34, at 235–36.

144. HRIBAR, *supra* note 5, at 1.

145. *Animals on Factory Farms*, *supra* note 37.

146. See *supra* Part II.B.1.

147. KEENEY, *supra* note 92, at 2.

Some proponents argue that CAFOs increase food production in the United States, but food shortages do not plague the United States.¹⁴⁸ Of course, not everyone has access to an endless supply of food. For those with little resources, figuring out where to get their next meal can pose a serious problem.¹⁴⁹ However, this issue would be best addressed by a better food distribution system rather than by simply producing more food. For example, the U.S. Department of Agriculture estimates that the United States wastes about 30 to 40 percent of the food supply each year.¹⁵⁰ Hunger in the U.S. could be addressed in part by reallocating excess food to portions of the population who need it, instead of letting food go to waste.¹⁵¹

Some proponents argue that CAFOs lower the cost of food. Yet, the cost issue is best addressed by a consideration of quality versus quantity. Food produced by CAFOs is often of low quality because the animals are raised in such poor conditions, fed poor diets, and are given unnecessary medication, like steroids and antibiotics.¹⁵² While food produced on CAFOs may be cheap, it is low in nutritional value.¹⁵³

Finally, although some proponents of CAFOs argue that CAFOs stimulate local economic growth, whether this is true is unclear.¹⁵⁴ Because of the strong odors and poor water and air quality associated with these facilities, very few people want to live near CAFOs.¹⁵⁵ The same factors make the working conditions at these facilities poor.¹⁵⁶

C. *The Negative Effects of CAFOs Outweigh Any Benefits.*

Scientific research has shown that CAFOs have had disastrous effects on the environment and on public health.¹⁵⁷ Contaminants

148. *Food Supply Chain*, U.S. DEP'T. OF AGRIC., <https://bit.ly/36ys7Q9> [<https://perma.cc/BND6-LRZG>] (last visited Mar. 4, 2022).

149. See *Hunger in America*, FEEDING AMERICA, <https://bit.ly/3bKc8A5> [<https://perma.cc/2NQA-3FJ6>] (last visited Mar. 4, 2022) (explaining that 60 million people in the United States struggled with hunger in 2020).

150. *Food Waste FAQs: How Much Food Waste Is There in the United States?*, U.S. DEP'T OF AGRIC., <https://bit.ly/3dRuNg7> [<https://perma.cc/52SB-4EST>] (last visited Mar. 4, 2022).

151. See generally WILLIAM McLEOD RIVERA, *AGRICULTURAL EXTENSION, RURAL DEVELOPMENT, AND THE FOOD SECURITY CHALLENGE* (2003) (ebook). Although this source discusses food scarcity on a global scale, it can shed light on food scarcity in the United States as well.

152. Burkholder, *supra* note 57, at 310.

153. *Id.*

154. KEENEY, *supra* note 92, at 1–2.

155. Schiffman et al., *supra* note 74, at 369.

156. *Id.*

157. See *supra* Part II.B.2–3.

from the large amount of animal waste on CAFOs leaks into the nearby water supply, decreasing water quality.¹⁵⁸ Gaseous emissions from the large amount of animals on CAFOs contain pollutants that decrease the air quality.¹⁵⁹ CAFOs emit greenhouse gases that contribute to climate change.¹⁶⁰ The odor from CAFOs has been shown to decrease the quality of life of people living nearby.¹⁶¹ Medication added to animal feed poisons the food supply of humans.¹⁶² Simply put, the negative environmental and public health effects linked to CAFOs outweigh any benefits to humans.

D. Federal Legislation Aimed at Combatting the Negative Effects of CAFOs is Inadequate.

1. Current federal legislation does not adequately combat the issues associated with CAFOs.

The United States has passed some legislation to help combat some of the negative effects associated with CAFOs. Each of these pieces of legislation focuses on a particular issue with CAFOs. However, the legislation ultimately is inadequate because it fails to consider that the problems of CAFOs are interrelated.

The two major pieces of federal legislation that protect animals from abuse are woefully inadequate in combatting the problems associated with CAFOs. The Animal Welfare Act aims to protect animals from abuse.¹⁶³ However, it is limited in scope to the transportation of animals and does not preempt state and local laws.¹⁶⁴ As a result, it does little to protect animals from abuse on CAFOs because much of the abuse on CAFOs occurs at the facilities.¹⁶⁵ Additionally, state and local laws may not be aimed at cracking down on animal abuse.

Lawmakers enacted the Humane Methods of Slaughter Act to protect animals from inhumane slaughtering methods.¹⁶⁶ However, the Act includes many exemptions and is enforced haphazardly.¹⁶⁷

158. Burkholder, *supra* note 57.

159. HRIBAR, *supra* note 5, at 5.

160. *Id.* at 7.

161. *Id.*

162. Cheever, *supra* note 12, at 47.

163. 7 U.S.C. § 2131.

164. *See supra* Part II.C.1.

165. *Farm Animal Welfare*, *supra* note 142.

166. 7 U.S.C. § 1901.

167. U.S. GOV'T. ACCOUNTABILITY OFF., GAO-04-247, HUMANE METHODS OF SLAUGHTER ACT: UNITED STATES DEPARTMENT OF AGRICULTURE HAS ADDRESSED SOME PROBLEMS BUT STILL FACES ENFORCEMENT CHALLENGES 4-5 (2004), <https://bit.ly/36A4hnw> [<https://perma.cc/TF5F-SXCK>].

Even though a government report detailed the lackluster enforcement of the Act, there has been no reform in this area.¹⁶⁸ Although some states have their own laws aimed at cracking down on CAFOs, facilities can move fairly easily to states with laws that are more friendly to big agriculture business.¹⁶⁹ Current federal legislation aimed at protecting animals does little to protect animals on CAFOs from abuse.

The U.S. passed the Clean Air Act and the Clean Water Act to curb negative environmental and public health effects.¹⁷⁰ However, these Acts do little to regulate CAFOs. The federal government relies on state agencies to enforce the Clean Water Act, leading to differing levels of enforcement across states.¹⁷¹ Many polluters with permits to emit a certain amount of pollutants are operating with outdated permits or are noncompliant with the requirements of the Clean Water Act.¹⁷² Similarly, the Clean Air Act is also enforced by state agencies and has seen inconsistent enforcement.¹⁷³

2. *Newly proposed legislation aims to strengthen the family farm and phase out CAFOs.*

Senator Booker's proposed legislation would place a moratorium on new and expanding large CAFOs, phase out the largest CAFOs, and hold corporations responsible for pollution emitted from CAFOs.¹⁷⁴ Although this legislation is a step in the right direction, it does not go far enough. This legislation contains serious loopholes. For example, as the bill stands, CAFOs could reduce the amount of animals they maintain to claim that they are "medium" CAFOs instead of "large" ones to get around the moratorium; additionally, the Act does nothing to improve the lives of animals maintained on CAFOs.¹⁷⁵

168. See *supra* note 116 and accompanying text.

169. See *CAFO Regulations, 2020 COUNTY HEALTH RANKINGS*, <https://bit.ly/2O4jN4h> [<https://perma.cc/V9Z7-H6LJ>], (comparing states with strong and weak CAFO regulations).

170. *Summary of the Clean Air Act, supra* note 128; *Summary of the Clean Water Act, supra* note 121.

171. RECHTSCHAFFEN, *supra* note 124, at 1.

172. *Id.*

173. Zou, *supra* note 132.

174. *Booker Unveils Bill to Reform Farm System, supra* note 136.

175. *Id.*

E. The U.S. Needs More Comprehensive Federal Legislation to Combat CAFOs.

This Comment recommends more comprehensive federal legislation to combat the negative effects of CAFOs, and to potentially eliminate them. Instead of focusing on one aspect of the problem like contributions to air and water pollution or humane methods of slaughtering animals, or simply introducing a moratorium, lawmakers should take a more holistic approach to the problem of CAFOs.

In order to achieve this goal, Congress should pass legislation to improve the lives of animals raised on CAFOs. This legislation could establish a minimum lot size for a certain number of animals, mandate that animals have access to the outdoors, and prohibit farms from keeping animals in small crates. Not only would such legislation help address the significant issue of animal abuse, but it would also help reduce the negative environmental and public health effects associated with CAFOs.¹⁷⁶ When the animals are allowed to roam outdoors, live free of their filth, and lead healthier and more natural lives, they won't be as prone to disease.¹⁷⁷ More natural feed for animals would likely mean better quality food for humans.¹⁷⁸ Less animals concentrated in one small area would reduce the manure output of these facilities, making it easier to manage and less likely to pollute nearby water supplies.¹⁷⁹ Less animals concentrated in one area would also reduce gaseous emissions that cause foul odor and contribute to global warming.¹⁸⁰ Because CAFOs thrive by storing many animals in confined spaces, legislation aimed at improving the lives of animals would more effectively stop new CAFOs from springing up and shut down CAFOs that are already in business. Accordingly, this Comment recommends that legislation proposing to place a moratorium on large CAFOs include provisions to improve the lives of animals.

IV. CONCLUSION

The farming industry has changed dramatically over the last century.¹⁸¹ Farms are larger now than they were in the early 1900's and there are far fewer Americans working on farms.¹⁸² One new

176. See *supra* Part II.B.4.

177. *Animals on Factory Farms*, *supra* note 37.

178. Burkholder, *supra* note 57, at 310.

179. *Id.*

180. HRIBAR, *supra* note 5, at 4.

181. LUSK, *supra* note 15, at 7.

182. *Id.*

aspect of the farming industry is the rise of CAFOs. CAFOs can produce large amounts of food at a low cost to consumers.¹⁸³ However, CAFOs also have negative effects on public health, the environment, and the animals living at the facilities.¹⁸⁴ Some federal legislation combats these negative effects—the Clean Air Act, the Clean Water Act, the Animal Welfare Act, and the Humane Methods of Slaughter Act.¹⁸⁵ Each of these pieces of legislation addresses a particular issue with CAFOs.¹⁸⁶ However, this piecemeal legislation is inadequate because it fails to consider that the problems of CAFOs are interrelated. As a result, none of these pieces of legislation effectively combat the negative effects of CAFOs. A proposed bill would place a moratorium on the largest CAFOs, but even this bill does not go far enough.¹⁸⁷ We need comprehensive legislation that includes provisions targeting CAFOs at the heart of the issue: animal abuse.

183. *See supra* Part II.B.5.

184. *See supra* Part II.B.

185. *See supra* Part III.

186. *See supra* Part III.

187. *Booker Unveils Bill to Reform Farm System*, *supra* note 136.