Farm Animal Treatment in the United States: What Role Is There for Additional Federal Regulations?

By Daniel A. Sumner

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Key Points

- The federal government mostly leaves policy about the housing and treatment of farm animals to the states, but there is increasing interest in a more active federal role, perhaps through the next farm bill.

- Many states regulate in-state farm animal housing and treatment, and some regulate interstate marketing of animal products based on farm animal treatment elsewhere.

- One argument for federal legislation is to preempt state-by-state rules to help assure national consistency. Another is to impose federal regulations that would raise standards in laggard jurisdictions and perhaps set more restrictive regulations for animal agriculture generally.

- This report argues for more recognition of buyers’ willingness to pay to satisfy their individual preferences, more transparency about public policy goals, and better clarity about the nature of the public good related to on-farm treatment of farm animals.

Animal agriculture worldwide is experiencing strong demand as global markets grow, with more potential consumers reaching incomes that support regular consumption of animal products. At the same time, in recent decades, with consolidation and application of improved genetics and feeding practices, costs of production have declined in inflation-adjusted terms. In response to growing global demand, US animal product exports have increased and, after some cattle-cycle adjustments, are projected to continue moderate growth, especially for dairy products, pork, and poultry.

However, the public and policy atmosphere surrounding animal agriculture is anything but positive. Several claims underlie a litany of bad press. First, consuming animal products uses more resources than if people would simply eat the grains and oilseeds that are fed to livestock.

Second, bovines emit methane, a powerful greenhouse gas, and manure handling often contributes additional methane to the atmosphere. Moreover, livestock feed production also entails greenhouse emissions, so the life-cycle greenhouse gas emissions attributed to livestock product consumption far exceed such emissions from direct consumption of most crops.

Third, although the health indictments of animal product consumption have moderated with better
nutrition information, many people in North America and other places are thought to overconsume animal-based fats. These and other concerns have led to a conventional wisdom that the future of animal agriculture is limited at best. Social and ethical distress about farm animal treatment adds one more concern to the mix.

My focus in this report is the potential for US federal policy to regulate the treatment of animals on farms, including, especially, farm animal housing rules that have been the subject of much controversy when implemented by state jurisdictions. Although farm animal treatment was not included in the 2018 Farm Bill (i.e., the Agriculture Improvement Act of 2018), there is interest in doing more in the next farm bill.

For example, the American Society for the Prevention of Cruelty to Animals (ASPCA) has targeted the 2023 Farm Bill as “our chance to make real meaningful change.” The ASPCA farm bill discussion lists Senate Agriculture Committee member Sen. Cory Booker (D-NJ), Rep. Ro Khanna (D-CA), and House Agriculture Committee member Rep. Jim McGovern (D-MA) as reintroducing proposals that would require dramatic changes in animal farm practices in the United States. These members of Congress have also expressed aversion toward confined animal feeding operations and large vertically integrated livestock farms in general.

Administered by the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA), as amended in periodic farm bills, including the 2018 Farm Bill, the Animal Welfare Act applies to pets, animals for exhibiting, and research lab animals, but it explicitly does not regulate farm animals. The USDA does administer extensive regulations on humane treatment of farm animals, but those apply only after they have left the farm and are being readied for slaughter.

The Food Safety Inspection Service (FSIS), which inspects slaughter plants primarily to assure that animal products are safe for human consumption, also has a responsibility to ensure “humane animal handling” under the Humane Methods of Slaughter Act. These regulations, along with accompanying food safety and labeling regulations, are enforced at slaughter plants. They do not apply to animals at farms before transport to federally inspected processing facilities. This report devotes no further attention to policies governing animal treatment regulations and enforcement by APHIS or FSIS.

Farm animal treatment is often discussed under the rubric of “animal welfare.” It is a term I avoid because applicable regulations, although sometimes called “animal welfare policies,” actually deal with observable treatment of animals and farm practices that affect animals, especially their housing.

Further, the welfare consequences for the animals of alternative treatments or farm practice regulations are often complicated factually and inherently complex intellectually. It is often not straightforward to establish conclusively which of several farm practices improve the well-being of farm animals. As a consequence, claims about welfare-enhancing practices are controversial. In addition, parties in the public policy debate include animal industry organizations and groups whose objective is to eliminate animal agriculture and consumption of animal products, not simply improve the treatment of livestock.

Of course, much of the economics literature and broad public discussion have adopted the term “animal welfare,” as will I, especially in comments on the literature’s use of the term.

**Regulation of Farm Practices and the Treatment of Farm Animals in the United States**

Hardly anyone noticed or cared when Florida passed a constitutional amendment to ban gestation crates for pregnant sows in 2002. The Florida ban and similar measures in Arizona and Oregon in 2006 and 2007 were mostly ignored because they applied only to the few pregnant sows in those states.

California voters passed a similar measure for sows in 2008, which also went unnoticed. However, that same vote also mandated more space for egg-laying hens housed in California. That rule garnered national attention because it threatened the economic viability of California’s large commercial egg industry by raising its per-egg costs of production. Most California egg consumers were unwilling to buy the more expensive local eggs when allowed a choice. Thus, by itself, Proposition 2, as it was called, spelled doom for most commercial
California egg producers. A regulation that raised costs for only California egg suppliers would have ceded the local market to shipments from the Midwest, which already had about half the market.12

In 2010, California legislation that was rationalized not on animal welfare grounds but food safety claims banned the marketing of shell eggs in the state unless hens laying those eggs, no matter where, met precisely the same housing standards that had been mandated for California hens on animal welfare grounds. The US Supreme Court declined to consider commerce clause challenges to this economically transparent state-created protectionist import barrier, which was conceived clearly to allow high-cost in-state producers to remain competitive with eggs shipped in.12

With no success in the courts, out-of-state opponents of California’s egg marketing rules attempted to preempt their implementation with a farm bill ban on such actions. That too failed to gain enough support in 2014, and the cage-size standards were implemented for shell eggs sold in California on January 1, 2015.13

A voter proposition that passed in 2018 used explicit animal welfare rationales to set rules about what eggs and pork could be sold in California. These rules mandated that only cage-free eggs and a more restrictive variant of gestation-crate-free pork could be marketed in California starting in 2022. The egg marketing rules were met with a yawn, but the pork marketing mandate launched a set of legal challenges that led to a delay in implementation and a prominent Supreme Court challenge accompanied by attention-grabbing oral arguments in October 2022.

The economics of the pork marketing mandate are straightforward, although documenting quantitative implications is complicated.14 The marketing mandate would limit pigs destined for California to those from sow farrowing farms in North America that were willing to adopt group housing with about 20 percent more space per sow than the industry standard and a few other costly practices. Hanbin Lee, Richard Sexton, and Daniel Sumner estimate that these rules would raise per-pig costs of farrowing operations by a few percentage points but would add much more in costs of segregation and tracing as pork moves through the supply chain from slaughter to the retail market in California. As a result, they estimated that California pork consumers would pay about 6.8 percent more for the pork cuts covered by the rules, buy less pork, and, as a group, face annual losses of consumer welfare of about $300 million.15

Since California has no significant sow farrowing industry, the national pork industry did not claim import protection as the basis for its court challenge. Instead, it claimed that meeting the California mandates by some hog producers would indirectly cause major disruptions to the rest of the national market for pork outside California. That claim is hard to substantiate for five reasons.

First, about one-third of the sows in North America are already housed in gestation-crate-free facilities, and the cost of the upgrade is small per pig. Second, the California mandate would therefore mostly cause on-farm cost increases and only on the 8 percent of North American farms needed to supply the California market. Third, additional segregation and other supply-chain costs would also apply only to pork destined for California. Fourth, all the added costs would be paid for by California consumers. Fifth, the rest of the pork industry would supply the rest of North American consumers as usual.16 The pork industry and the rest of the food industry have long been adept at meeting the demands of consumers who pay more for product attributes that are based on farm production practices, including cage-free, organic, and local sourcing.

**Broader Concerns About State-by-State Product Regulations That Limit Farm Practices**

Beyond the potential for only modest pork industry disruptions, oral arguments at the Supreme Court raised legitimate concerns about political balkanization of national markets for food and other goods and services. Such state-by-state political actions and reactions might destroy the advantages of national free trade in goods and services. For example, if some California voters are allowed to impose their moral views about how mother sows are treated in Minnesota or Manitoba, perhaps Mississippi could impose its views about farm employment of undocumented immigrants on out-of-state
shipments of berries and Massachusetts could mandate farm minimum wage standards on marketing of peach shipments from Georgia. For these reasons, the United States Department of Justice supported the pork producers against California.

A state mandate on what pork is allowed in the market also raises questions about the nature of the public good surrounding treatment of farm animals. Economic principles and data show that the economically effective way to change treatment of farm animals is simply to have farms adopt new practices rather than mandate practices as a condition of marketing in specific jurisdictions.

Lee, Sexton, and Sumner found that for the same cost ($300 million), voters could have offered to pay farms to comply with the new housing standards for about two million sows, rather than only the 600,000 sows the marketing mandate would reach. In addition, the tax-based sow housing subsidy would have been transparent about costs and allowed advocates for the program, such as vegans and others who don’t buy pork, to share in paying for the cost of improved sow housing.17

The Nature of the Public Good

Consumers can already buy products with attributes that are consistent with their personal values for animal treatment. Markets have long been adept at meeting demands for kosher, halal, and other specific meat standards. A broader public good issue arises when potential buyers seem to also care about their neighbors’ food choices and excise that preference through policy limits on what foods are available.18

To see this clearly, consider an individual who is not willing to pay an extra $7 per year to purchase gestation-crate-free pork but is willing to pay $7 per year for a mandate that imposes rules on their neighbors so that 600,000 sows have more space. In effect, the voter expresses a public good demand for the perceived benefits to sows that has low individual costs. That voter may not notice or care that the policy imposes a $300 million cost on that voter’s human neighbors, who, like the individual voter, were not willing to pay the $7 voluntarily. The voter takes into account an interpersonal welfare benefit of the sow but not the welfare losses imposed on the other humans.19

Broad public good issues related to farm animal treatment need to be clarified before sound policy to supply those public goods can be developed. For example, if the public good revolves directly around what products are allowed in the market—say, because people feel discomfort (perhaps guilty) buying or even seeing products tied to troublesome farm practices—then market mandates may be the appropriate policies. If, however, the public good is truly related to perceptions about how farm animals are treated—that is, voters simply want better treatment for animals unrelated to what specific products are allowed to be sold—then regulations, taxes, and subsidies directly on farm animal treatment standards may be appropriate. The 2023 Farm Bill debate, led by Sen. Booker, among others, may allow for a comprehensive and insightful public exploration of these issues.

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Notes

3. For an economic approach to many “sustainability” meat issues in a global context, see Parlasca and Qaim, “Meat Consumption and Sustainability.” For a distinctly noneconomic perspective on broad global diet questions, the EAT-Lancet Commission laid out many claims in summary form, with reference to an extensive literature. See Walter Willett, “Food in the Anthropocene: The EAT-


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