

*Moo-ving for Reliable Animal Welfare Certification on Dairy Farms: Aligning the Interests of
Consumers, Farmers, and Animal Advocates in the Dairy Industry*

by

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I. Introduction

In September, 2014, a video released by Mercy for Animals, an animal welfare organization, made national news because it depicted dairy workers kicking and whipping cows, throwing calves, and prodding animals inappropriately.¹ Instead of exposing the acts of one farm with abusive practices, the video painted a terrible picture of the entire dairy industry.² The incident demonstrated the level of contention between animal welfare organizations and the entire dairy industry.

Animal welfare organizations have historically portrayed the dairy industry in a negative light by exposing specific instances of dairy animal abuse and placing responsibility for the abuse on the industry as a whole. The dairy industry has responded by refusing to work with animal welfare organizations. Both sides have promulgated their own animal welfare practices, but neither side has acknowledged that they are both interested in promoting the welfare of dairy animals, even though the guidelines published by both organizations reveal that both sides have similar views on individual practices employed in the dairy industry.

The contention between the dairy industry and animal welfare organizations has resulted in a lack of consumer trust of the treatment of animals in the dairy industry. Current laws do not adequately address this concern, and they do not ensure that specific bad actors within the dairy industry are caught and prosecuted. Although Michigan does have standards of animal care that attempt to ensure the welfare of dairy animals, they are voluntary and compliance is not generally communicated to members of the general public.

¹ Lawrence, *Domino's Pizza Targeted After Abuse at Dairy Farm*, DETROIT FREE PRESS (Sept. 17, 2014, 3:39 P.M.), available at <http://www.freep.com/story/news/local/michigan/2014/09/17/cheese-animal-cruelty-dominos/15774569/>.

² *Id.*

In order to resolve these issues, it is clear that an animal welfare certification system is necessary. However, current certification systems are inadequate because they do not acknowledge the needs of all interested parties, and they are practically impossible for many producers to follow.

II. Today's Dairy Industry and Animal Welfare

a. Michigan's Dairy Industry and its Relationship with National Animal Welfare Organizations

The dairy industry is an important component of Michigan's agricultural economy. Michigan ranks seventh in the nation in milk production, and it is home to approximately 380,000 dairy cows.³ The average dairy farm has 176 cows, and over 98% of Michigan dairy farms are family owned.⁴ Milk produced by dairy farms is used to produce cheese, yogurt, sour cream, ice cream, and many other foods. Dairy products contain nine essential nutrients and may help reduce the risk of osteoporosis and hypertension.⁵ Milk provides many benefits to consumers, but some organizations feel that the benefits milk provides come with the cost of animal mistreatment.

Animal welfare organizations play a vital role in shaping consumer's perceptions of the dairy and veal industries. These organizations distribute advertisements and materials that highlight the practices in animal industries that they believe harm the well-being of the animals. When these advertisements reach consumers, they may harm the perception that consumers have on the dairy industry as a whole. This impact has the potential to harm dairy producers who provide their animals with the highest level of care possible. The two organizations in the United States that seem to have the greatest impact on the dairy industry are the Humane Society of the

³ *Dairy Facts*, UNITED DAIRY INDUSTRY OF MICHIGAN (Oct. 29, 2014), <http://www.milkmeansmore.org/local-milk/dairy-facts>.

⁴ *Id.*

⁵ *Id.*

United States (“HSUS”) and the American Society for the Prevention of Cruelty to Animals (“ASPCA”).

In order to counter the negative impact that these animal welfare organizations have on the dairy industry, the industry has formed many groups that promote dairy farms and the dairy industry in a positive manner. In Michigan, the two main organizations formed by dairy producers in order to promote dairy are the United Dairy Industry of Michigan and Michigan Milk Producers. In addition, Michigan State University Extension educates Michigan dairy farmers on humane animal care practices and encourages them to respond to animal welfare concerns in a positive manner through the Michigan Dairy Review.

Part of the reason that the animal welfare organizations and the dairy industry are unable to agree on appropriate animal welfare practices may be that they have different definitions of animal welfare. At one extreme, animal rights activists believe that animal welfare means that animals should have their own rights, and they should not be owned or utilized by humans for any reason. This view is impossible to reconcile with agricultural practices, so it is pragmatic to focus on a definition of animal welfare that is widely accepted, such as Brambell’s Five Freedoms.⁶ The Five Freedoms of animal welfare are:

1. **Freedom from hunger and thirst**, by ready access to water and a diet to maintain health and vigor.
2. **Freedom from discomfort**, by providing an appropriate environment.
3. **Freedom from pain, injury and disease**, by prevention or rapid diagnosis and treatment.
4. **Freedom to express normal behavior**, by providing sufficient space, proper facilities and appropriate company of the animal’s own kind.

⁶ Brambell’s five freedoms were originally published in 1965 for Great Britain, but they have been cited to internationally, and they have been updated since the original publication through reports released by the Great Britain’s Animal Farm Animal Welfare Council. Wathes, Christopher, *Farm Animal Welfare in Great Britain: Past, Present and Future*, FARM ANIMAL WELFARE Council (Oct. 2009), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319292/Farm_Animal_Welfare_in_Great_Britain_-_Past_Present_and_Future.pdf.

5. **Freedom from fear and distress**, by ensuring conditions and treatment, which avoid mental suffering.⁷

This widely cited definition of animal welfare could be interpreted differently by animal welfare organizations and members of the dairy industry. For example, animal industry advocates may argue that individual medium-sized veal pens that are close together are sufficient because calves can interact through sight and sound with calves in the other pens, but animal welfare organizations would argue that the calves should be kept together or with their mothers so they can physically interact as well, and mimic natural behaviors. The organizations would also argue about what “normal behaviors” are. In most cases, animal industry members will feel that they are promoting animal welfare if the animals in their care are physically fit and clinically healthy, but animal welfare organizations will argue that the animals additionally need to be mentally fit and able to perform all activities that they would naturally perform if they were given ample space and opportunities.

In general, the contention between the national animal welfare organizations and the local dairy farms that derives from the different views of animal welfare concerns certain animal care practices. Some of these practices are seen as acceptable in the dairy industry, but other practices are seen as unacceptable to the vast majority of dairy farmers. Ultimately, most dairy farmers are concerned with the physical well-being of their animals because healthy animals are more productive, but they may not be concerned with the mental well-being of their animals, which is important to animal welfare organizations. In order to find middle ground between the animal welfare organizations and the dairy industry, the organizations must be willing to work together and determine what practices are truly necessary, what practices are truly harmful, and what practices are the best options.

⁷ *Id.* at 2.

b. Practices that serve as points of contention between the dairy industry and animal welfare organizations

In general, animal welfare organizations have concerns with the following practices: tail docking, housing facilities, animal health, and handling and transport practices.⁸ In addition, the animal welfare organizations have concerns about the housing and care of veal calves. The dairy industry also has many of the same concerns, and in order to alleviate some of the concerns, and explain where it stands on the practices, it has developed a set of industry guidelines.⁹

The industry guidelines should be seen as a reliable source of the industry's position on specific practices because it was specifically formed to reflect the diversity and strength of the dairy industry.¹⁰ The coalition that created the guidelines included individual farmers, large-scale producers, processors, cooperatives, academics, and many regional state, and national dairy organizations.¹¹ Although the principals contained in the document created by the coalition are voluntary, producers may sign an endorsement form supporting the principals, and they may even participate in an on-farm well-being program based on the guidelines.¹² However, even if the guidelines represent the practices that the dairy industry is willing to adhere to, it would be misleading to state that all members of the industry current follow the practices. It would be more proper to view the guidelines as a starting point, and to assume that the dairy industry would be willing to conform to them if it was required by national policy or law.

If the industry has the same concerns that animal welfare organizations have, then it will be much easier to develop a system that promotes animal welfare and consumer trust because the

⁸ *An HSUS Report: The Welfare of Cows in the Dairy Industry*, THE HUMANE SOCIETY OF THE UNITED STATES, (2009), <http://www.humanesociety.org/assets/pdfs/farm/hsus-the-welfare-of-cows-in-the-dairy-industry.pdf>; *Fight Cruelty: Cows on Factory Farms*, THE AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, (2014).

⁹ *Principles and Guidelines for Dairy Animal Well-Being*, NATIONAL DAIRY WELL-BEING INITIATIVE, (Oct. 2, 2008), <http://www.dairywellbeing.org/pdfs/NDAWI%20Principles%20&%20Guidelines.pdf>.

¹⁰ *Id.* at 5.

¹¹ *Id.*

¹² *Id.*

industry will be willing to ensure that it has appropriate animal welfare standards. However, if there is disagreement between the animal welfare organizations and the industry, a legal solution will require open communication between the parties and scientific research to determine what practice actually promotes the well-being of the animals.

1. Tail Docking

One practice that is repeatedly cited by animal welfare organizations as a cruel practice is tail docking. According to the ASPCA, “[d]airy cows often have up to two-thirds of their tails surgically removed without painkillers.”¹³ In addition, HSUS disproves of tail docking because it prevents the cow from repelling flies and there may be pain associated with the banding process that removes the tail.¹⁴

Historically, dairy farmers docked the tails of dairy cows because they believed that the practice resulted in cleaner cows and lower rates of infection.¹⁵ However, scientific studies have shown that there is little to no benefit to the animal’s cleanliness as a result of tail docking.¹⁶ Following the release of the scientific studies, the American Veterinary Medical Association released a policy statement indicating that it opposed the practice, and if tail docking is medically necessary, it should be performed by a licensed veterinarian.¹⁷

There is no reliable evidence showing how prevalent tail docking is in the industry today. However, the Michigan Dairy Review encouraged producers to discontinue the practice or look

¹³ *Fight Cruelty: Cows on Factory Farms*, *supra* note 4.

¹⁴ *An HSUS Report: The Welfare of Cows in the Dairy Industry*, *supra* note 4.

¹⁵ *Animal Welfare: Stay Informed, Maintain Best Practices*, 14 MICHIGAN DAIRY REVIEW 3 (July 2009).

¹⁶ See Eicher, et al., *Tail-docking alters fly numbers, fly-avoidance behaviors, and cleanliness, but not physiological measures*, 84 JOURNAL OF DAIRY SCIENCE 1822-1828 (2001); Tucker, *Tail docking dairy cattle: effects on cow cleanliness and udder health*, 84 JOURNAL OF DAIRY SCIENCE 84-87 (2001); Schreiner, *Effects of tail docking on milk quality and cow cleanliness*, 84 JOURNAL OF DAIRY SCIENCE 2503-2511 (2002).

¹⁷ *Welfare Implications of Tail Docking of Cattle*, AMERICAN VETERINARY MEDICAL ASSOCIATION (August 29, 2014), <https://www.avma.org/KB/Resources/LiteratureReviews/Pages/Welfare-Implications-of-Tail-Docking-of-Cattle.aspx?PF=1>.

for alternatives.¹⁸ The practice is not scientifically supported, so standards that prevent it, unless it is medically necessary, should be supported by the industry and the animal welfare organizations. The elimination of tail docking is one example of a standard that the industry and animal welfare organizations should be able to come to an agreement on.

2. Housing Systems

Another practice that animal welfare organizations express repeated concern over is the housing systems used for dairy cows and veal calves. There are many different housing systems used in the industry, so uniformed standards that both sides agree upon may be more difficult to develop. The housing system concern encompasses related issues such as the overcrowding of the animals, the type or lack of bedding in the facility, and the amount of access the animals are given to the outdoors.

Animal welfare organizations advocate for housing systems that provide soft bedding, access to the outdoors, and adequate space. Cows can be kept in tie stalls, free stalls (open barns), hutches, strawyards, drylots, or large pastures. According to the USDA, most dairy cows are primarily kept in tie stalls or free stalls.¹⁹ About 50% of lactating cows and 60% of dry cows are given access to pasture.²⁰ HSUS does not advocate for a particular type of housing system, but it does oppose tie stalls and systems that cause overcrowding.²¹ It also advocates for bedding that “provides sufficient thermal insulation, a low risk of abrasion, and an appropriate degree of softness and friction.”²² In addition, HSUS advocates for natural living conditions for cows, but

¹⁸ *Animal Welfare: stay Informed, Maintain Best Practices*, *supra* note 11.

¹⁹ Reference of Dairy Cattle Health and Management Practices in the United States, 2007, UNITED STATES DEPARTMENT OF AGRICULTURE: ANIMAL AND PLANT INSPECTION SERVICE, VETERINARY SERVICES, NATIONAL ANIMAL HEALTH MONITORING SYSTEM (February 2009), *available at* http://www.aphis.usda.gov/animal_health/nahms/dairy/downloads/dairy07/Dairy07_dr_PartIV.pdf.

²⁰ *Id.*

²¹ *An HSUS Report: The Welfare of Cows in the Dairy Industry*, *supra* note 4.

²² *Id.*

it does not explain what they might consist of.²³ ASPCA also opposes housing systems that have hard surfaces and unnatural environments.²⁴ Although animal welfare organizations have made their positions clear, they have not proposed any comprehensive solutions.

Another concern that animal welfare organizations have with housing systems relates to the raising of veal calves. Historically, veal calves were raised in restrictive environments and given very little chance to exercise because it was thought that this would produce more tender meat. However, many states, including Michigan, have passed laws requiring a certain amount of mobility for veal calves, so this practice is losing popularity and veal calves are at least being given the minimum amount of space required by the law.²⁵ The Michigan law mandates that veal calves should have enough room to lie down, stand up, fully extend its limbs, and turn around freely.²⁶ Many animal industry members support this provision, but animal welfare advocates argue that it does not go far enough because it does not allow calves to run and play freely, and it does not mandate that they be allowed to interact with other cows and calves. One way that this concern could be addressed is by advocating for group housing systems instead of single housing, which is usually more popular for veal calves.

The National Dairy Well-Being Initiative does speak specifically to the housing systems to be used for dairy cows. As mentioned earlier, the principals and guidelines were developed by representatives of the dairy industry, so they reflect the industries stance on the issues. However, since they are simply principles and guidelines, they are voluntary, and there is no way to know what percentage of the industry is actually following them. The guidelines' general principle state that “[f]acilities should be designed, constructed and maintained to provide and promote

²³ *Id.*

²⁴ *Fight Cruelty: Cows on Factory Farms*, *supra* note 4.

²⁵ See M.C.L. § 287.746.

²⁶ *Id.*

animal health, comfort and safety.”²⁷ In addition, the principals address veal by stating that “[c]alves and young stock should be given space to stand, lie down, and turn around without difficulty, provided an environment that is clean and dry and be protected from seasonal weather extremes.”²⁸ Additional guidelines for adult cows state that “[a]dult cattle should be given space to stand and lie down, be provided with an environment that is clean and dry and be protected from seasonal weather extremes, Facilities should be designed, constructed and maintained to reduce the risk of injury and the development of leg lesions.”²⁹ As these principals demonstrate, the dairy industry is concerned with providing housing facilities that promote the health of dairy animals, but it does not advocate for the same amount of space per animal that animal welfare organizations would like. If the guidelines from both sides asked for group housing with adequate per animal space, the animals would have the opportunity to interact naturally.

Given all of this, it seems apparent that animal welfare organizations and the dairy industry should be able to develop housing standards that promote the health and well-being of the animals. The standards may not advocate a particular type of housing, but they should recognize that different animals have different needs depending on their individual health, age, and environment. The standards may also set minimum space requirements for all types of housing. The organizations should also be able to reach an agreement on the type and amount of bedding animals should be provided, the amount of space the animals should be given, and any other relevant details that the parties deem important. The standards may be able to prohibit certain practices, but they should also recognize that there might be special situations where the practices are warranted.

²⁷ *Principles and Guidelines for Dairy Animal Well-Being*, *supra* note 5.

²⁸ *Id.*

²⁹ *Id.*

3. Animal Health

Many of the concerns animal welfare organizations express about dairy animal well-being concern the physical health of the animals. Organizations are concerned about infections, over-milking, and nutrition. If animals are taken care of adequately, many of these concerns can be alleviated or eliminated entirely. However, some animal health problems are naturally caused and unavoidable, just like many human health problems, so animal welfare organizations should not assume that all problems affecting the health of dairy cows are attributable to the farmers raising the animals.

ASPCA and HSUS both express concerns about the prevalence of mastitis in dairy herds. Mastitis is an infection affecting causing inflammation of the udder.³⁰ It can be cause death in dairy cows, but it is usually not fatal.³¹ Although proper care methods cannot completely prevent mastitis, it can greatly reduce its frequency in dairy herds.³² Mastitis can greatly reduce the milk production of dairy cows, so its reduction furthers the interests of the dairy industry and animal welfare organizations.

Excessive milking and over-calving are two related practices that animal welfare organizations feel that the dairy industry is not adequately addressing. The industry guidelines attempt to prevent this problem by asking that dairy farms have a valid veterinary-client-patient relationship and a herd health plan.³³ These precautions ensure that the animals are not being over-milked or over-calved because they involve a veterinarian in all stages of the process. Over-milking and excessive calving cause other health problems in cows, such as mastitis, so the veterinarian has an interest in informing farmers when it appears that the cows are being over-

³⁰ *Mastitis Control*, FAO CORPORATE DOCUMENT REPOSITORY, <http://www.fao.org/docrep/004/T0218E/T0218E04.htm>

³¹ *Id.*

³² *Id.*

³³ *Principles and Guidelines for Dairy Animal Well-Being*, *supra* note 5.

milked or calved too often. However, in order for the veterinarian to be able to address these problems, they must visit the farm regularly, so the animal health plan should include provisions for routine veterinarian visits.

One aspect of dairy health that animal welfare organizations repeatedly identify harmful is the quality and amount of nutrition dairy cows receive. Specifically, HSUS claims that the content of the feed may lead to rumen acidosis and laminitis, which are both caused by concentrated feed composed of organic materials such as grain and animal products.³⁴ In addition, the major animal welfare organizations express concern over the use of bovine growth hormone because it can lead to a diminished body condition, elevated risk of mastitis, lameness, and other health problems. Although the industry guidelines do not specifically address the concerns of the animal welfare organizations, it does provide the following guidance for animal nutrition: “All calves should receive colostrums replacer and be fed in a way that promotes health and reduces the risk of disease. . . . All cattle should receive adequate nutrition and water to achieve a proper body condition score and be fed in a way that promotes health and reduces the risk of disease.”³⁵ This definition is very broad, but it recognizes that many different types of food may be suitable for cows and calves, so long as the food promotes health. The guidelines should prohibit types of foods that have been proven to be harmful to cows and calves. The guidelines would be improved if they grouped certain food types, such as grains or grasses, and explained approximately what percentage of an animal’s diet should consist of each food type.

4. Handling and Transportation

Animal welfare organizations have repeatedly identified and exposed the mistreatment of animals by using inhumane handling and transportation methods. These inhumane handling and

³⁴ *An HSUS Report: The Welfare of Cows in the Dairy Industry*, *supra* note 4.

³⁵ *Principles and Guidelines for Dairy Animal Well-Being*, *supra* note 5.

transportation methods are generally not accepted by the industry because of the amount of pain suffered by the animal and the bad publicity suffered by the entire dairy industry following the exposure of practices harmful to the animals. However, as demonstrated by recent exposes, current efforts, such as animal cruelty laws, have been ineffective at completely eradicating the problem. Once the general public is ensured that the industry does not approve of the practices, the industry can gain the public's trust by taking part in efforts to stop producers that treat their animals cruelly.

Specifically, HSUS and ASPCA are concerned with using chains and forklifts to drag animals, beating cows with sticks and prods, and overcrowding in transport.³⁶ Animals may be transported for slaughter, exhibition, or sale. The industry guidelines address handling, movement and transportation. Specifically, the guidelines state that “[f]acilities should be designed and maintained in a manner that reduces the risk of slips, falls and collisions.”³⁷ The principals go on to state that non-ambulatory cattle should be moved with a sled, sling, or bucket, and they should not be pulled or dragged through direct contact with the cattle.³⁸ The principals also ask that transport vehicles and ramps be equipped with appropriate non-slip material, be free of dangerous protruding objects, and be filled to proper loading densities.³⁹ These principals reiterate the point that the animal welfare organizations and the industry have interests that are aligned when it comes to the handling and transport of dairy animals.

c. Overall Animal Welfare Positions

The previous sections demonstrate that animal welfare organizations and the dairy industry are similarly aligned when it comes to animal welfare practices. Although both sides are

³⁶ *An HSUS Report: The Welfare of Cows in the Dairy Industry*, *supra* note 4.

³⁷ *Principles and Guidelines for Dairy Animal Well-Being*, *supra* note 5.

³⁸ *Id.*

³⁹ *Id.*

commonly pitted against one another, they both ultimately place extreme importance on the welfare of the animal. However, animal welfare organizations have a much more expansive definition of animal welfare, which includes the mental well-being of animals. Industry members view animal welfare as an extension of animal health. Often, it appears that animal welfare organizations try to portray farmers as heartless and purely driven by profit. This is an inaccurate depiction because most farmers care about the welfare of their animals, and they understand that they will not be profitable if their animals are unhealthy. Overall, it is fair to say that animal welfare organizations and the dairy industry as a whole have interests that can be reconciled.

III. Identifying the Disconnect between Consumers, Animal Welfare Advocates, and Farmers

a. The Essence of the Problem

If the dairy industry and the animal welfare organizations both value the humane treatment of dairy animals, why is there contention between the two groups? The answer to this question is multi-faceted. One identifiable reason is that the dairy welfare organizations commonly direct advertisements and stories against the dairy industry as a whole, instead of individual actors who mistreat animals. Presumably, the organizations target the entire industry because it fosters consumer distrust of the industry, and if consumers, who also happen to be voters, distrust the industry, it will be easier to get favorable animal welfare legislation in place. Even when the organizations do target individual bad actors, the dairy industry as a whole suffers because consumers assume that all dairy animals are mistreated because there is very little transparency in the industry.

The dairy industry perpetuates the problem by speaking against the animal welfare organizations and attempting to mitigate the problem by condoning bad actors. This tactic does

not work because many consumers are sympathetic to the views of the animal welfare organizations, so they are unwilling to listen to organizations speaking out against the organizations. This leads to more consumer distrust, which is really the heart of the problem. If consumers trusted the dairy industry, there would be a better chance that they would not form blanket opinions of the industry as a whole when individual bad actors are ousted. Consumer demand for animal welfare practices is evident from consumer surveys performed in the entire United States and Michigan.⁴⁰ In order to understand why there is a lack of transparency and consumer confidence in the dairy industry, it is important to examine the ways that current laws influence the industry.

b. Animal Welfare Laws

Although Michigan has comprehensive animal welfare laws, the statutes stop short of instilling consumer confidence in the industry and ensuring that individuals are treating dairy cows humanely. There are two distinct bodies of law that can affect animal welfare in Michigan, and there are only a few federal statutes that concern animal welfare. These laws do not address the consumer confidence issue because they are not strong enough or broad enough to affect consumer's views of the entire

1. Michigan's Animal Cruelty Statutes

Michigan's general animal cruelty statute requires owners or caretakers of animals to: provide the animal with adequate care, refrain from cruelly driving, beating, or working the animal, refrain from transporting the animal with its limbs tied together, provide the animal with a minimum amount of space during transportation, refrain from abandoning the animal, and

⁴⁰ Tonsor, *Consumer Demand for Animal Welfare Practices*, MICHIGAN STATE UNIVERSITY (Dec. 17, 2008), http://www.agmanager.info/about/contributors/Presentations/Tonsor/2008_MPPC_AnimalWelfareDiscussion.pdf.

refrain from inflicting unnecessary pain, neglect, or torture on the animal.⁴¹ At first glance, this statute would appear to ensure that dairy animals are treated humanely and in accordance with the dairy industry's and animal welfare organization's views concerning animal care and treatment. However, the statute's fatal weakness, as applied to dairy animals, is the exception at the end of the statute that states that "[t]his section does not prohibit the lawful killing or other use of animal, including the following: . . . (f) farming or a generally accepted animal husbandry practice or farming practice involving livestock."⁴² This exception is so broad that it essentially renders the provisions of the animal cruelty statute useless when applied to a dairy farm. This makes it rather clear that Michigan's animal welfare statute does nothing to ensure consumers that dairy cows are being treated humanely and appropriately.

Several other Michigan statutes involve animal cruelty, but they are similarly under inclusive. For example, there is also a statute prohibiting the torture of animals, but animal torture would not be viewed as an accepted practice by any industry member or farmer. This statute is effective for punishing individuals that commit particularly egregious acts towards animals, but it does not ensure consumers that individual farmers are acting in the best interests of their animals. Michigan also has a statute that specifically protects veal calves; it requires that veal calves be given enough room to lie down, stand up, extend their limbs, and turn around freely.⁴³ This statute provides very little comfort to consumers concerned about the welfare of veal calves because it does not ensure that calves can run around and interact with other calves. It also does not apply to dairy cows, and the presence of a law does not necessarily assure consumers that all farmers who raise veal follow it because there is no inspection provision included. Finally, the Michigan Humane Slaughter of Livestock Act regulates the slaughter of

⁴¹ M.C.L. § 750.50.

⁴² *Id.*

⁴³ M.C.L. § 287.746.

livestock and prescribes methods of slaughter that may and may not be used.⁴⁴ This Act does provide assurance that animals will be treated appropriately at the end of their lives, but it does not provide any assurance for the animals during their lives.

2. Generally Accepted Agricultural and Management Practices

The policy derived from Michigan's Right to Farm Act also provides guidance on acceptable animal welfare practices. The Michigan Right to Farm Act provides private or public nuisance protection for farmers that conform to generally accepted agricultural and management practices ("GAAMPs"). GAAMPs are developed and published by the Michigan Department of Agriculture and Rural Development. They are statewide standards that are reviewed annually, and, according to the preamble included in the document, they are based on sound science and industry, university, and government input.⁴⁵ However, they do not consider views of animal welfare organizations, so they may be skewed towards accepted industry practices. The biggest weakness of the GAAMPs is that they are voluntary and the only purpose they serve is to provide individual farmers that adhere to the GAAMPs with protection from private or public nuisance claims. There is no inspection or certification system, so there is no way to identify the producers who follow them. Since there is no verification, the guidelines do not provide consumers with any assurance that the products they buy come from animals that were raised humanely.

Even though they are voluntary, the GAAMPs are helpful for several reasons. They are guidelines published by the government, so they provide insight into the government's view of appropriate and acceptable agricultural practices, which include animal welfare practices. In

⁴⁴ M.C.L. § 287.551.

⁴⁵ *Generally Accepted Agricultural and Management Practices for the Care of Farm Animals*, MICHIGAN DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT: MICHIGAN COMMISSION OF AGRICULTURE AND RURAL DEVELOPMENT (March 2014), available at http://www.michigan.gov/documents/mdard/2014_CARE_OF_FARM_ANIMALS_GAAMPs_452762_7.pdf.

addition, the GAAMPs are developed with industry input, so they provide guidance on the type of guidelines the industry would be willing to accept. This point is solidified by the fact that Michigan Farm Bureau, which is Michigan’s largest farm organization, has policy that specifically states that it supports the GAAMPs.⁴⁶

The GAAMPs have an entire section devoted to the management of dairy animals, and there are several statements included in the GAAMPs that promote animal welfare. The GAAMPs specify that calves should be born in a clean and dry environment and be fed milk and milk replacer.⁴⁷ In addition, the GAAMPs require that the cows be given good nutritional diets that vary based on the age and status of the cows in accordance with National Research Council guidelines.⁴⁸ The GAAMPs provide a significant amount of latitude for housing systems, and they state that bedding packs, free stalls, pasture, and everything in between may be acceptable, so long as it is well ventilated and the cows are kept clean and dry.⁴⁹

The GAAMPs address animal handling by encouraging farms to have facilities designed to “handle dairy cattle for health checks or treatment, vaccinations, weighing, or hoof trimming and for handling bulls during hand mating will decrease risk of injury to cattle and people, as well as, reducing the stress of handling.”⁵⁰ In addition, the guidelines call for non-skid surfaces in traffic areas and restraint devices that provide the minimum amount of control necessary in order to ensure animal and handler safety.⁵¹

⁴⁶ *Animal Care #3*, MICHIGAN FARM BUREAU (2013), available at https://www.michfb.com/mi/policy_and_politics/policies/agriculture/animal_care/.

⁴⁷ *Generally Accepted Agricultural and Management Practices for the Care of Farm Animals*, *supra* note 40.

⁴⁸ *Id.* at 11.

⁴⁹ *Id.* at 13.

⁵⁰ *Id.* at 11.

⁵¹ *Id.*

The transportation GAAMP specifically states that “[s]afety and comfort of dairy cattle should be the primary concerns in their transportation.”⁵² Specifically, the GAAMP requires adequate ventilation, anti-slip flooring, and the provision of food and water during long trips.⁵³ The housing GAAMP requires that each animal have enough space for eating, drinking, and resting and it also requires that bedding be clean and dry.⁵⁴ The GAAMPs also provide for the establishment of a herd health program and a relationship with a licensed veterinarian.⁵⁵ According to the GAAMPs, “[s]uggested husbandry procedures such as castration, dehorning, removal of extra teats, etc. should . . . follow the veterinarian’s recommendations or accepted management practices.”⁵⁶ This provision seems to suggest that tail docking would not be acceptable under the GAAMPs because, in accordance with national veterinary policy, the veterinarian would not approve of the practice. The GAAMPs also state that dragging of animals is unacceptable, and euthanasia should be performed in accordance with the American Veterinary Medicine Association guidelines when the animal is in extreme distress and suffering from an irreversible condition.⁵⁷

There is a separate section in the GAAMPs that is specific for veal calves. In general the guidelines for veal mimic the guidelines for dairy animals, but there are additional requirements included. The guidelines state that veal calves should be observed several times of day and the feed intake of the calf and its health should be observed.⁵⁸

When the standards that the GAAMPs set are compared to the standards the animal welfare organizations advocate for and the standards that the industry has accepted, it becomes

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 13.

⁵⁶ *Id.* at 13.

⁵⁷ *Id.* at 14.

⁵⁸ *Id.* at 17.

clear that the state government also places a high value on animal welfare. As stated previously, it appears that all of the parties would generally disprove of tail docking, and this disapproval would be based on the American Veterinary Medicine Association's disapproval of the practice. All of the organizations seem to agree that animals should be given enough space to eat, lie down, and move around, but animal welfare organizations want animals to be given even more space. In addition, the organizations all advocate for housing that is clean and dry with adequate bedding. In general, the organizations also share the same viewpoints when it comes to animal health. All of the organizations agree that the animals should be provided with adequate nutrition and the prevention of disease and infection should be a central concern. However, the GAAMPs and the industry guidelines do not seem to address the concern that the animal welfare organizations have in regard to the possible over milking of cows. However, the guidelines both express concern for the health and welfare of the cow, and if over milking would negatively impact the health of the animal, neither organization would approve of it. The industry, animal welfare organizations, and the state government all agree that handling and transportation should not be injurious to the animals, and procedures should be put into place in order to prevent injuries. Overall, it is apparent that the dairy industry, animal welfare organizations, and the Michigan Department of Agriculture and Rural Development are all concerned with the health and welfare of dairy animals, and they would be able to agree on acceptable practices for all farmers and producers.

3. Federal Animal Welfare Protections

There are two federal laws that provide animal welfare protection. The first statute places regulations on the transportation of animals, and the second set of statutes govern the humane slaughter of livestock. Under 49 U.S.C. 80502, commonly called the twenty-eight hour rule,

animals generally cannot be confined in transportation vessels for more than twenty-eight hours without a rest stop where the animals can be unloaded and given food and water. This law provides a minimum amount of protection to the animals in transportation, and it does not address the concerns of the industry, animal welfare organizations, or the state government in regard to the amount of space and non-slip surfaces provided during transportation. The Humane Slaughter Act establishes a public policy in the United States of humane slaughter and prescribes acceptable humane methods of slaughter.⁵⁹ When observed in conjunction with the Michigan Humane Slaughter Act, the acts ensure humane slaughter, so there should be limited animal welfare concerns with the slaughter process.

c. Summary of the Current Law

The current federal and state statutes provide a bare minimum standard of welfare for dairy animals. The Michigan statutes exclude any animal husbandry practices that are generally accepted by the industry, so it only serves a limited value and its existence does not ensure consumers that the products they purchase were derived from animals raised humanely. The federal laws are also of limited value because they only provide the bare minimum level of care that is necessary for the transportation and slaughter of livestock animals. For the most part, Michigan's GAAMPs do provide a necessary amount of care for animals, but they are voluntary and there is no system to identify what farms adhere to the guidelines. A system that fosters the development of consumer trust of animal products must be transparent, visible, and obvious.

⁵⁹ 7 U.S.C. § 1901 *et. al.*

IV. Creating a Certification Program that Incentivizes Farmers, Satisfies Animal Welfare Organizations, and Provides Consumers with Confidence that their Food was Raised Humanly

Consumers will be more likely to buy animal products, and less likely to associate bad actors with the entire livestock industry, if they are provided with assurance that the animals were raised humanely. It is very important that consumers trust the dairy industry because many beneficial products are derived from milk. If consumers trust local farmers, they will be more likely to purchase from local dairy farms, and the local economy will benefit. In addition, if consumers feel that dairy animals are being mistreated, they will not buy or use milk. One way to address this problem is to create a certification program that is cognizant of the interests of the animal welfare organizations, dairy farmers, and consumers. If farmers and animal welfare organizations can agree on what practices are acceptable and unacceptable, they can create and endorse standards. In addition, the state government would serve a crucial role in the development of the standards and it would also be responsible for the verification and enforcement of the standards. The standards would promote consumer confidence in the industry by allowing products derived from farms that follow the standards to be labeled as such.

a. Existing Certification Programs are not Effective

One criticism to the development of this kind of certification program that people may express is that there are already certification programs for farms interested in promoting the humane way that they treat their animals. However, these programs would not solve the problem of consumer confidence and mend the disconnection between animal welfare organizations and farmers because they are not responsive to the needs of all of the involved players.

One example of this is the Humane Farm Animal Care standards for Dairy Cows.

Humane Farm Animal Care is a non-profit charity that provides certification to farmers that adhere to their guidelines.⁶⁰ The dairy cow guidelines were written to “incorporate scientific research, veterinary advice, and the practical experience of farmers.”⁶¹ The program requires the farmer to pay an application fee, adhere to over forty pages of guidelines applicable to dairy animals, and pay a \$600 fee for an annual inspection.⁶² Although there is a subsidized rate for farms that cannot afford the fee, it is prohibitively costly for many farmers.⁶³ Once certified, the program allows the farmer to label their products as “Certified Humane.”⁶⁴ In theory, this label should signal to consumers that the animals were raised humanely, but many laypeople do not know what the label means, and the vast majority of the people buying the products are not going to look up the standards in order to find out what they actually cover.

There are many more certification programs available such as: American Humane Certified: the Humane Touch, Animal Welfare Approved, Global Animal Partnerships 5-Step Program, and Milk and Dairy Beef Quality Assurance Program. These programs all have their own standards and they were developed by groups of people with different interests. None of the programs are endorsed by the government, and they all provide producers with their own labels. The myriad of programs and labels confuses consumers, which does little to promote consumer trust of the industry.

⁶⁰ *Animal Care Standards: Dairy*, HUMANE FARM ANIMAL CARE (January 2014), available at <http://certifiedhumane.org/wp-content/uploads/2014/02/Std14.DairyCattle.1J.pdf>.

⁶¹ *Id.*

⁶² *Fee Schedule*, HUMANE FARM ANIMAL CARE, available at <http://certifiedhumane.org/wp-content/uploads/pdfs/Fee%20Schedule.13.2E.pdf>.

⁶³ *Id.*

⁶⁴ *Id.*

b. Two Sets of Standards: Minimum Involuntary Standards and Maximum Voluntary Standards with the Reward of Certification

Even though certification programs do exist, they have not bridged the gap between animal welfare organizations and members of the dairy industry. In order for the certification program to work, it has to be developed through a unified effort by animal welfare organizations, members of the dairy industry, and the state government. There should be a workgroup formed by the government that brings together the leaders from all of the interested parties. The workgroup's ultimate goal should be to develop standards and a program that works for everyone.

The first step of development should involve setting up an administrative framework. There should be two sets of standards: minimum statutory animal care standards and higher voluntary standards that farmers must meet in order to achieve state certification. The statutory standards should be developed by legislators, animal welfare advocates and farmers, and they should prohibit obvious bad acts, such as dragging dairy cows. Other acts that should be statutorily prohibited include needless mutilation (such as unnecessary tail docking), confined housing that does not allow adult dairy animals to stand, lie down, or turn around, and failing to provide needed veterinary care. The statutes should encompass more practices than Michigan's animal cruelty statutes because they will apply to dairy animals specifically, and there will be no doubt as to what practices are acceptable and what practices are not. If there are practices that should generally be prohibited, but may be permissible in emergency situations, the statute should set out times when the practices are acceptable. The statutes should set minimum standards that members from all aspects of the industry can universally agree on. If the industry

can agree that these practices should not be happening on dairy farms, these statutes should be enacted without any significant obstacles.

The second set of standards should lay out the requirements for voluntary farm certification. There are several benefits to having voluntary standards instead of involuntary standards. In general, people are much happier to choose to act a certain way than they are when they are told that they need to act a certain way. The voluntary nature of the program gives farms that have been certified a competitive edge over farms that have not been certified because consumers and retailers are more likely to buy products derived from animals that were humanely treated if they value animal welfare. If the program were involuntary, the incentives that farmers would receive for completing the certification would not mean as much because every farm would receive the incentives. Farms that are certified would be able to label their products as such, and they can also have signage at their farm stating that they are certified. Certification may also provide other incentives, such as tax incentives or grants for the acquisition of humane handling devices or the building of humane facilities in order to meet certification goals. Other incentives may be developed as time progresses, depending on budgetary allowances and consumer demands.

The standards should address each of the practices discussed earlier in detail. In addition, the standards should reiterate the practices that are forbidden by law. They should also take into account that some practices that are appropriate in certain situations may not be appropriate in all situations. The guidelines should leave the dairy farmer with discretion to operate his or her farm they way that he or she wants, but they should ensure that the animals are treated appropriately as well. The guidelines can be loosely modeled off of the current GAAMPs since many livestock

producers already follow the GAAMPs, and the provisions in the GAAMPs generally align with the interests of animal welfare organizations and livestock producers.

Examples of guidelines that would likely be deemed acceptable follow. The examples are not meant to be all-inclusive, but they are meant to show that there are many principles that animal welfare advocates and the dairy industry can come to an agreement on.

a. Tail Docking

Dairy animals should not have their tails docked unless the procedure is deemed medically necessary by a licensed veterinarian. If a licensed veterinarian determines that the procedure is medically necessary, the procedure should be performed by the veterinarian, and the farm should retain documentation explaining why the procedure was medically necessary.

b. Housing Systems

- All housing systems should be designed to protect animals from seasonal weather extremes.
- Housing systems should provide adequate space for each animal. Each animal has adequate space if it can perform all functions that animals would naturally perform.
- Housing should be clean, dry, and well ventilated.
- All surfaces in heavily trafficked areas should be constructed with non-slip material.
- All animals should be provided with adequate and soft bedding material.

c. Animal Health

- Each animal should be provided with an adequate amount of nutritionally valuable food.
- Animals should have access to water at all times, unless they are being withheld from water in compliance with a licensed veterinarian's recommendations.
- Each farm should have an active relationship with a licensed veterinarian.
- Each farm must have a comprehensive animal health plan that includes provisions for disease prevention and response, vaccination and medication procedures, and all other aspects pertaining to animal health. The animal health plan must be approved by a licensed veterinarian.

d. Handling and Transportation

- All animals should be handled and transported in a manner that reduces animal stress.
- Animals should not be dragged, unless it is necessary due to an emergency, and they should be handled with alternative devices such as carts or slings.
- Animals should have plenty of room to lie down, stand, and turn around during transportation.

These sample guidelines express the bare minimum standards that will be necessary in the actual guidelines in order to satisfy animal welfare advocates and the industry. Many more provisions will need to be added, and it may be necessary to add in provisions that align the standards with national programs, so that there is no question as to what is allowable or unallowable under the program. Once the standards are developed and finalized, they should be endorsed by all of the organizations that contributed to them, and additional endorsements should be sought from other interested organizations. If the guidelines are endorsed by both sides, it will

be difficult to spread generalizations about the entire industry treating animals poorly. The endorsements will explain the industry's position on animal welfare is the similar to the interests of the animal welfare organizations, so animal welfare organizations will not be able to attack to the industry as a whole. Instead, the industry and animal welfare organizations can come together to target and stop specific bad actors that mistreat their animals.

Once a farm decides to become certified, it will be required to submit an application to the state. The application will include the farm's animal health plan. If the government determines that the animal health plan is satisfactory, it will visit and inspect the farm in order to make sure that it is in compliance with the guidelines. If a farm is in compliance with the guidelines, it will be issued its certification, and it will be able to place a sign outside of its farm saying that it is certified, and it will also be able to label its products as certified. The farm will have to renew its certification each year, which will require re-inspection. If there are reports that a farm is not in compliance with the guideline, there will be an investigation performed, and if the farm committed a violation, it would have its certification revoked or suspended.

Since the program will influence and benefit a wide segment of the population, funding should not be an issue. Private or public corporations that wish to support the program can donate money to the program, and if they donate a certain amount, they will be declared partners, and they will get special recognition by the program. In addition, funding for the program can come from fines derived from violations of the involuntary statutory program. So long as the program meets the needs of animal welfare organizations and dairy producers, it should receive adequate support from these programs.

The goal of the program should be to get all dairy producers in Michigan certified, and in order to achieve this, there should be incremental goals each year. If there are aspects of the

program that are preventing producers from joining, those aspects should be reevaluated in order to achieve maximum compliance. Once the program is established, there should be a focus on promotion and education, so consumers understand what the labels mean and what standards producers had to follow in order to be able to use the labels. The program should be run with as much transparency as possible, so consumers can trust the program's certification. This may mean publically posting inspection reports and photographs of participating farms. Overall, this program would function to ensure dairy animal welfare, and it would mend the disconnect between the dairy industry and animal welfare organizations.

V. Conclusion

The clash between animal welfare organizations and the dairy industries has caused consumers to demand assurance that the dairy animals that produced their milk were treated humanely. A comparison of the positions of animal welfare organizations and the dairy industry, as they relate to specific practices, results in the conclusion that both sides have an interest in promoting animal welfare. A certification program ran by the state government and developed by the collaboration of the animal welfare organizations and representatives from the dairy industry would resolve the angst between the parties and ensure consumers that dairy animals are treated humanely. In addition, laws that impose minimum dairy animal welfare standards would shift the focus of mistreatment from the entire industry to specific bad actors. The certification program, along with the animal welfare laws, could serve as a model for other industries and states.