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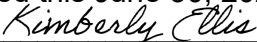
CERTIFICATION

I, Kimberly Ellis, am the person who compiled this rulemaking file.

I declare under the penalty of perjury under the laws of the State of California that the record in this matter closed on June 30, 2022, and that the file and this copy of the file are complete.

In accordance with Government Code section 11347.3(b)(12), I certify under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this June 30, 2022, at Sacramento, California.



Kimberly Ellis, AGPA
Department of Food and Agriculture
Animal Health and Food Safety Services

**TITLE 3. FOOD AND AGRICULTURE
DIVISION 3. ECONOMICS
CHAPTER 1. FRUIT AND VEGETABLE STANDARDIZATION
SUBCHAPTER 3. EGGS
Section 1354. Marking Requirements**

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed actions.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Comments may also be submitted via facsimile (FAX) at (916) 900-5334 or by e-mail to michael.abbott@cdfa.ca.gov. The written comment period begins on December 3, 2021 and closes on January 17, 2022. The Department will consider only comments received at the Department by that time. Submit comments to:

Michael Abbott, Supervising Environmental Scientist
Meat Poultry and Eggs Safety Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 900-5062; Fax: (916) 900-5334

AUTHORITY AND REFERENCE

Food and Agricultural Code (FAC) section 14 authorizes the Department to adopt rules and regulations in accordance with the Administrative Procedure Act. Additional authority vested in the FAC grants the Department Secretary the authority to amend or repeal rules and regulations.

FAC section 407 authorizes the Secretary of the Department to adopt such regulations as are reasonably necessary to carry out the provisions of the FAC which the Secretary is directed or authorized to administer or enforce.

FAC section 27531 specifies, in part, that the director may adopt regulations relating to the preparation for market and marketing of shell eggs as they determine are reasonably necessary to carry out the purposes of the chapter including the requirements for

marking containers, displays and advertising of eggs sold in California, or any other matter necessary to accomplish the purpose of this chapter

FAC section 27521 specifies, in part, that the purpose of the chapter is to ensure the orderly marketing of shell eggs in a uniform manner and to prevent the marketing of deceptive or mislabeled containers of eggs.

FAC section 27573 specifies the purposes of the Shell Egg Food Safety Committee which include the quality of shell eggs and uniformity of inspection.

FAC section 27631 provides that it is unlawful to violate any provision of the chapter or any regulation adopted pursuant to it.

FAC section 27637 provides, in part, that it is unlawful for any person to make any statement about the quality, size, weight, source, origin, or any other matter relating to eggs which is false, deceptive or misleading.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action proposed to amend the California Code of Regulations (CCR), Title 3, Division 3, section 1354. Specifically, this rulemaking action clarifies and makes specific the requirements to label consumer containers of eggs as “cage free”.

The Department’s Egg Safety and Quality Management (ESQM) Program is responsible for the regulatory authority for shell eggs and egg products produced, shipped, or sold in California. This includes the marketing and truth in labeling of shell eggs or egg products.

Benefits of the Proposed Action: This proposed regulatory action will assure the Consumers of California that when they purchase eggs that are labeled “cage free” that they meet minimum standards outlined in the cage free definition. Producers will have a consistent standard applied equally across the industry for eggs sold to California consumers.

CONSISTENCY EVALUATION

The Department has determined that this proposed regulatory action is not inconsistent with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the marketing of shell eggs.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or Savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with the Government Code section 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or business: Cost impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.” This is more consistent with the Administrative Procedure Act (APA) language of Gov. Code sec. 11346.5(a)(9).

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes that it is: (1) likely that the proposal will not create or eliminate jobs and not eliminate existing business; (2) likely that this proposal will not create new business or expand current business opportunities; (3) likely that this proposal will not eliminate jobs; (4) Also, enhanced enforcement activities will protect consumers and the industry, and assure that they are provided an accurate and standardized definition of “cage free”. Finally, this proposed rulemaking will have no impact on the general public and protection of public health and safety.

Significant effect on housing costs: None.

SMALL BUSINESS DETERMINATION

The Department has initially determined that the proposed changes to the regulations would have no significant impact directly affecting small businesses. These regulations do not require any additional costs or outputs for small businesses. These regulations do not establish any new limitations on small businesses. All egg producers would be operating under the same regulatory structure with regards to the regulatory changes.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The alternative to not pursue this regulatory action would result in deceptive or fraudulent labeling and an unfair marketing of the eggs. The adoption of a different definition from the one proposed here could cause conflict and confusion as this definition supports the most common understanding of cage free.

CONTACT PERSONS

Michael Abbott, Supervising Environmental Scientist
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E-mail: michael.abbott@cdfa.ca.gov

The backup contact person is:
Andrew Halbert, Staff Services Manager
Department of Food and Agriculture Animal Health & Food Safety Services 1220 N
Street, Sacramento, CA 95814
Telephone: (916) 900-5372
E-mail: andrew.halbert@cdfa.ca.gov

Please direct requests for copies of the proposed text of the regulations, the initial statement of reason, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Michael Abbott at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the rulemaking file available for inspection and copying throughout the rulemaking process at its office at: 2800 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Michael Abbott at the address or phone number listed previously.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may amend the proposed regulations substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Maria Tenorio at the address listed above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Michael Abbott at the address listed previously.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Department's website at: <http://www.cdfa.ca.gov/ahfss/regulations.html>

**DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED REGULATIONS**

MARKING REQUIREMENTS – CAGE FREE

Text proposed to be added is displayed in underline type. Text proposed to be deleted is displayed in ~~strikethrough~~ type.

California Code of Regulations
Title 3. Food and Agriculture
Division 3. Economics
Chapter 1. Fruit and Vegetable Standardization
Subchapter 3. Eggs
Section 1354. Marking Requirements

Section 1354. Marking Requirements.

(a) Grade and Size Designation. Where eggs are not produced by the person whose name appears on the label, the name shall be qualified by a phrase that reveals the connection such person has with such eggs; such as, “Produced for _____”, “Distributed by _____”, or any other wording that expresses the facts. Each container or subcontainer of shell eggs shall be marked with the name, address and zip code of the person by or for whom the eggs were graded and packed, and the unabbreviated designation of one of the following sizes and grades:

<i>Size</i>		<i>Grade</i>	
Jumbo	Medium		Grade AA
Extra Large	Small		Grade A
Large	Peewee		Grade B

Only one size and grade shall appear upon a container, subcontainer or placard. Size and grade shall be plainly marked in letters not less than 1/4 inch in height, as follows:

(1) Containers holding three dozen or less, on the outside top face; and

(2) Containers holding more than three dozen, on one outside top, side or end, except that oblong containers shall be marked on one outside end.

(b) Price Advertising. Any advertisement, sign or placard, which indicates the price of eggs for sale, must also use the full designation of size and grade.

(1) Superlative descriptions or other amplification of grade or size are not permitted on containers. Prohibited words related to grade include, but are not limited to: “fancy,” “select,” “premium,” and “superior.” Prohibited words related to size include, but are not limited to: “oversize,” and “giant.”

(2) Brand names on consumer size containers which use a superlative term shall be separated from the size and grade designation in a style of lettering which makes it obvious that the brand name is not related nor intended to be read in conjunction with size or grade designation. Additionally, each such brand name shall be followed immediately by the word

“brand” in letters at least one-half the size of letters or figures used in the brand name, and in the same color, style, and prominence.

(d) Descriptive Terms.

(1) Descriptive terms, such as “polyunsaturated,” “plus polyunsaturates,” “higher in iodine,” “flavored with iron” or other wording, indicating a quality or ingredient different than found in a normally produced egg, may not appear in labeling unless approved by the department. Information concerning the altered constituent(s) must be submitted to the department, describing the method used to create and verify the change. If determined that a statistically significant difference exists, relative to the descriptive term used, and provided the term is not judged misleading, permission may be granted for its use.

(2) Terms such as “organic” and “organically produced” or similar description relating to production, qualities, nature of the product or other descriptive terms, if determined by the department not to be misleading or deceptive, may be used.

(3) Eggs labeled with the descriptive term “Cage Free”, on consumer size containers, must be raised in Cage Free Housing Systems that meet the following minimum standards:

(A) 1 (one) square foot of useable floor space per bird for egg laying hens in a multi-tiered aviary and partially slatted systems, or 1.5 (one point five) square feet of useable floor space per bird for egg laying hens in a single-level all-litter floor system.

(B) Hens are allowed to roam unrestricted, except for external walls, and contain the following enrichments: scratch areas, perches, nest boxes, and dust bathing areas.

(C) Farm employees are able to provide care while standing in the hen’s usable floor space.

(e) Shell eggs packed in California in consumer size containers exclusively for out-of-state sales are exempt from the prohibitions of (c) above.

(f) In accordance with section 1350 of Title 3 of the California Code of Regulations, commencing January 1, 2015, the principal display panel for containers for all eggs sold in California shall have the following statement: “California Shell Egg Food Safety Compliant”. The statement may be abbreviated to read “CA SEFS Compliant” or a similar abbreviation or other descriptive term may be used if determined by the Department not to be misleading or deceptive. The statement shall be legible and plainly marked on each container in letters not less than 1/4 inch in height.

Note: Authority cited: Sections 407, 27531 and 46002, Food and Agricultural Code. Reference: Sections 27521, 27573, 27631 and 27637, Food and Agricultural Code.

**DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS**

Title 3. Food and Agriculture
Division 3. Economics
Chapter 1. Fruit and Vegetable Standardization
Subchapter 3. Eggs
Section 1354. Marking Requirements

INITIAL STATEMENT OF REASONS

The California Department of Food and Agriculture (the Department) proposes to amend the California Code of Regulations (3 CCR), Title 3, Division 3, section 1354.

PROBLEM STATEMENT

The Department's Egg Safety and Quality Management (ESQM) Program is responsible for the regulatory authority for shell eggs and egg products produced, shipped, or sold in California. They review package labeling to ensure it is truthful and in compliance with marking requirements. Pursuant to Food and Agricultural Code Section 27521, ESQM ensures eggs have been properly handled, labeled, transported, refrigerated; and are wholesome and safe to eat.

California Consumers make purchasing choices based on labels such as "Organic" or "Cage Free". While the former has clear standards that assure truth in labeling, the latter does not. California consumers expect that "Cage Free" means something and is not a nebulous statement that creates perceived value. The ambiguity around this term is becoming increasingly important as sales in California shift to eggs from housing that can be described as "cage free." When the label says "cage free," consumers expect it to mean something in particular and be truthful.

The market for "Cage Free" eggs drives a higher price, in many cases. In general, a cage free egg is more expensive to produce than conventional cages. Total operating costs in the cage free aviary system were 23% higher than conventional cages. In between conventional cages and cage free is what the industry refers to as Enriched Colony Cage. An Enriched Colony cage houses a larger number of birds in confinement but does not adhere to the definition of cage free. This leads to producers labeling their eggs as cage free when in fact they are not. While the operating costs of the enriched colony were slightly higher (4%) than conventional cages, the correlating costs are not equal to a true cage free operation. Therefore, it creates the opportunity for eggs from Enriched Colony Cages to be sold as cage free at cage free prices. Current USDA Egg Market data shows cage free egg prices at an average range of 111% - 125% more expensive. This gap increases greatly if they are organic cage free (295%- 342%). The higher value of a "Cage

Free” carton of eggs opens the door to labeling eggs as “Cage Free” when they aren’t in fact cage free and could result in an unfair market.

In fiscal year 2019 / 2020 ESQM formed a labeling claim focused workgroup that investigated labeling claims such as “Omega 3’s” and “lower saturated fat”, “Choline”, and enclosure type statements. In order to ensure a fair marketplace, and provide consumer clarity, clearly defined parameters and definitions are necessary. ESQM does not have a regulatory avenue to determine whether egg firms are raising their animals in a “cage free” environment.

Beginning in 2015 there has been a gradual industry progression to provide the market with “Cage free” options. Over time California Consumers have dictated their desire to prioritize animal welfare when consuming animal products. This was reflected in the 2018 general election when California voted in favor of Proposition 12 which required that certain animal species be confinement free by 2022. This can further be extrapolated to reflect that California Consumers make purchasing choices based on the humane raising of animals, and labeling statements are how consumers are able to make that determination. Additionally, the industry at large supports codifying an industry standard definition of “Cage Free”. On April 21, 2021 the Shell Egg Advisory Committee voted unanimously in favor of the definition proffered in this rulemaking.

Cage Free has been interpreted differently across industry and among consumers. There are a wide variety of housing types and styles across the Shell Egg industry. In order to provide clarity to the industry, as well as consumers, there is a clear need for the Department to provide minimum requirements for use of the term, “Cage Free”. Labeling regulations cannot be enforced without minimum requirements established in regulation.

PURPOSE

This regulatory action is intended to provide a definition of “cage free” to ensure that eggs labelled cage free meet the minimum standards in the definition. Defining cage free and establishing minimum requirements ensures that the consumers of California are purchasing eggs that are being marketed fairly and equitably. Promulgating regulations which align and interpret changed market demands and label statement is determined to be the most effective mechanism to protect and promote the fair and equitable marketing of shell eggs in California.

BENEFITS

Consumers of California will be assured that when they purchase eggs that are labeled “cage free” that they meet the minimum standards outlined in the cage free definition. Producers will have a consistent standard applied equally across the industry for eggs sold to California consumers.

SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE 11346.2(b)(1):

1354. Marking Requirements.

Subsection 1354(d)(3)(A), (d)(3)(B), (d)(3)(C) are adopted to specify the minimum standards that must be met in order to label consumer containers with the term “cage free”.

1354(d)(3)(A) specifies the enclosure space required for laying hens, to meet the definition of “Cage Free”, in two different cage free system types. 1 (one) square foot per bird in a multi-tiered aviary or partially slatted system and 1.5 (one point five) square feet per bird for egg laying hens in a single-level all-litter floor system. This will ensure adequate space for hens to move naturally and safely in their space.

1354(d)(3)(B) specifies the movement allowances and housing enrichments that an enclosure must have to meet the definition of “cage free”. This allows for external walls to keep hens safe from predators and inclement weather and still practice their natural behaviors like perching, scratching, dust bathing, etc.

1354(d)(3)(C) requires that farm employees must be able to stand-up in the laying hen’s enclosure while providing them care, to meet the definition of “cage free”. This will ensure a safe and comfortable work environment for hens while employees are providing care.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

- Lewis, Tara. “Free Range or Free Reign? False Advertising in the Egg Industry”. 2017
- USDA “Egg Market News Report” June 16, 2021.
 - <https://www.ams.usda.gov/mnreports/pybshellegg.pdf>
- General Election – Statement of Vote, November 6,2018.
 - www.sos.ca.gov/elections
- Shell Egg Advisory Committee (SEAC) Meeting Minutes. April 21st, 2021

ECONOMIC IMPACT ASSESSMENTS/ANALYSIS

In accordance with Government Code §11346.3(b), the Department has made the initial determination that the proposed regulations would not have an impact on the general public or protection of public health and safety; the creation or elimination of jobs; the creation of new businesses; the elimination of existing businesses; the expansion of businesses currently doing business within this state, that would insignificantly affect a

private person or business, and would not impact the ability of California businesses to compete with businesses in other states, or on representative private persons.

Expanding on the Marking Requirements regulations to include the definition of the term “cage free” will be an effective way to promote the fair and equitable marketing of eggs and ensure that the market is free of fraud, deception and mislabeling. Therefore, this regulation will contribute to an already robust body of statutory and regulatory precedent which will promote consumer confidence in the Egg Industry and enhance the conditions for an equitable marketplace, thereby supporting continued growth of the Egg Industry. Conversely, if these regulations are not promulgated, enforcement activities would lack the tools to ensure that the sale of shell eggs is free of fraud, deception and mislabeling. This could lead to a lack of consumer confidence and could be harmful to the industry.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

Based upon the reasons stated in the economic impact assessment/analysis, the Department has initially determined that these proposed changes to the regulations would not have a significant adverse economic impact to persons that are compliant with the FAC and 3 CCR. This determination is supported by the addition of a definition includes no mandates that require producers to change any existing or future layer facility to cage free but rather intends to define what “cage free” means for labeling purposes. The Cage Free labeling is an opt-in marketing term.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. The alternative to not pursue this regulatory action would result in deceptive or fraudulent labeling and an unfair marketing of the eggs. The adoption of a different definition from the one proposed here could cause conflict and confusion as this definition supports the most common understanding of cage free.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

The proposed regulations do not duplicate or conflict with federal regulations.

FREE RANGE OR FREE REIGN? FALSE ADVERTISING IN THE EGG INDUSTRY

TARA LEWIS
J.D. CANDIDATE, 2017
GEORGETOWN UNIVERSITY LAW CENTER

INTRODUCTION

The average American will eat 250 eggs this year, and to feed its hungry consumers the United States produces more than 83 *billion* eggs each year.¹ 288 million egg laying hens produce these eggs and only 186 companies account for 99 percent of the industry.² A quick stroll down the refrigerated section of any grocery store will reveal egg cartons adorned with a myriad of claims about the quality and production methods of eggs including, but by no means limited to: organic, free-range, cage-free, and “United Egg Producers Certified.” In 2015, 9.9 percent of U.S. eggs were labeled as organic or cage-free.³ It is estimated that about 80 percent of eggs received the United Egg Producers certification last year.⁴ There are no statistics available that document how many eggs are labeled free-range.

While the terms organic, cage-free, and free-range tend to invoke images of happy chickens frolicking across a sunny farm, this scenario is one of pure fantasy in the commercial egg industry. Instead, a large majority of egg-laying hens are confined to battery cages and spend their entire lives allotted to a space smaller than a sheet of paper, often crammed so tightly with

¹ UNITED EGG PRODUCERS, *General US Stats* (May 2016), <http://www.unitedegg.com/GeneralStats/default.cfm#>.

² *Id.*

³ *Id.*

⁴ *Id.*

other birds that they will never be able to spread their wings.⁵ These millions of hens will never engage in natural behaviors such as nesting, foraging, or dust bathing, and many are trapped between the metal bars of the cages and trampled to death.⁶ Undercover investigations by groups such as PETA and the Humane Society of the United States have exposed some of these horrific practices and sparked a generation of conscious consumers who are willing to pay more for eggs from hens that are not subjected to cruel conditions.⁷ Indeed, eighty-one percent of the respondents to a Zogby International poll in 2000 indicated that they would be willing to pay more for eggs from chickens raised in a humane manner.⁸

While the demand for more humane standards exists, consumers must be able to identify the types of conditions hens are raised in to make informed purchasing decisions. Free-range, organic, and cage-free labeled eggs cost significantly more than eggs produced in battery cages,⁹ but the treatment of hens is strikingly similar, and no standard may truly be humane. This paper will begin by describing what the terms United Egg Producers Certified, organic, free-range, and cage-free legally mean for egg producers and the perceptions that they imply. It will then argue that the terms free-range and cage-free are misbranded under the Federal Food, Drug and Cosmetics Act, and false and misleading under the Federal Trade Commission Act. Finally, this paper will advocate for a clear federal definition of these labels and look towards the European

⁵ THE HUMANE SOCIETY OF THE U.S., *Barren, Cramped Battery Cages*, http://www.humanesociety.org/issues/confinement_farm/facts/battery_cages.html (last visited Feb. 26, 2017).

⁶ *Id.*

⁷ ANIMAL WELFARE INST., *Consumer Perceptions of Farm Animal Welfare*, https://awionline.org/sites/default/files/uploads/documents/fa-consumer_perceptionsoffarmwelfare_-112511.pdf (last visited Feb. 26, 2017) [hereinafter Consumer Perceptions Poll].

⁸ *Id.*

⁹ Jeffrey Kluger, *Organic Eggs: More Expensive, but Not Healthier*, TIME (Jul. 8, 2010), <http://content.time.com/time/health/article/0,8599,2002334,00.html>.

Union as a model for humane standards and transparent advertising that lend truth to the terms cage-free and free-range. A major theme pervasive in all aspects of this paper is that the regulatory scheme responsible for ensuring truthful egg labeling is perhaps not all that it is cracked up to be.

I. THE REGULATORY LANDSCAPE

A. FEDERAL REGULATION OF EGGS

Eggs are regulated by the U.S. Department of Agriculture (“USDA”), the Food Safety and Inspection Service (“FSIS”), the Agricultural Marketing Service (“AMS”), and the Food and Drug Administration (“FDA”). Additionally, claims have been brought against egg producers for misleading advertisements under the Federal Trade Commission Act (“FTCA”) and state false advertising laws.

The USDA is responsible for regulating egg products such as liquid, frozen, or dehydrated eggs, as well as laying facilities, and packaging claims on egg product cartons under the Egg Products Inspection Act (“EPIA”).¹⁰ The FSIS, an agency within the USDA, administers the EPIA. Under the EPIA, the Secretary is tasked with “prevent[ing] the movement or sale for human food, of eggs¹¹ and egg products which are . . . misbranded.”¹² The purpose of the Act is to prevent “improperly labeled or packaged products [that] can be sold at lower prices and compete unfairly with . . . properly labeled and packaged goods.”¹³ Curiously, the definition of “misbranded” under the EPIA only mentions *egg products*, which are subject to an entirely different regulatory regime than shell eggs, however, the Congressional Statement of Purpose

¹⁰ See 21 U.S.C. § 1031 *et. seq.*

¹¹ *Id.* § 1033 (g) (“The term ‘egg’ means the shell egg of the domesticated chicken . . .”).

¹² *Id.* § 1032 (emphasis added).

¹³ *Id.* § 1031.

expressly subjects both eggs, defined as shell eggs under section 1031, *and* egg products, to the prohibition on misbranding.¹⁴ The Ninth Circuit, however, recently confirmed that the FSIS has no authority to regulate the labeling of shell eggs under the EPIA and is limited in its regulatory authority to the labeling of egg products.¹⁵

The AMS, also within the USDA, regulates few specific aspects of shell egg labeling. Under the Agricultural Marketing Act's ("AMA") shell egg surveillance program, the AMS is responsible for administering the voluntary shell egg grading service and ensuring that shell eggs are properly graded (for example as Grade A, AA, or B¹⁶) and packed, and that restricted eggs are properly disposed of.¹⁷ The Ninth Circuit ruled that the AMS does not have the authority to promulgate *mandatory* labeling requirements for shell eggs, and its role is limited to developing and improving "standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices."¹⁸ The AMS does put forth brief, informal guidance on its website defining the terms cage-free and free-range, but its role in enforcing proper use of these terms is aspirational at best.¹⁹

The FDA bears the primary responsibility for ensuring that egg cartons are not misbranded. Under the FDCA, a food is "misbranded" if "its labeling is false or misleading in

¹⁴ *Id.* § 1032(l).

¹⁵ *See* *Compassion Over Killing v. FDA*, 849 F.3d 849, 854-55 (9th Cir. 2017).

¹⁶ 7 C.F.R. § 56.1.

¹⁷ *See* 7 C.F.R. § 56.1 *et. seq.*; USDA, *Complying with Shell Egg Surveillance*, <https://www.ams.usda.gov/rules-regulations/eggs/complying> (last visited Mar. 15, 2017). "Restricted eggs" are those with "cracks or checks in the shell, dirty eggs, incubator rejects, and inedible, leaker or loss eggs." *Id.*

¹⁸ *Compassion Over Killing v. USDA*, 849 F.3d 849, 854-55 (9th Cir. 2017).

¹⁹ USDA, *Questions and Answers about Shell Eggs*, <https://www.ams.usda.gov/publications/qa-shell-eggs> (last visited Mar. 17, 2017).

any particular.”²⁰ This prohibition has never been enforced in regards to misleading claims on egg cartons, and the FDCA does not contain a citizen suit provision for private enforcement of the statute.²¹

As a result of these hurdles, and perhaps the lack of clarity in the regulatory scheme generally, animal welfare groups, consumers, and producers have historically brought claims against misleading egg carton labels through other statutes such as the FTCA²² and state specific false advertising laws.²³ These lawsuits are generally settled for undisclosed sums of money, and producers have entered into agreements to discontinue misleading labels.²⁴ Although proven effective in some cases, piecemeal enforcement is costly and time-consuming for private citizens and non-profit organizations to undertake. Additionally, it is becoming increasingly difficult to collect enough evidence to mount a case under newly implemented “ag-gag” laws that prohibit the filming and photographing of industrial agricultural operations.²⁵ Further complicating the

²⁰ 21 U.S.C. § 343(a)(1) (emphasis added).

²¹ James Springer, *The Success of the Citizen Suit: Protecting Consumers from Inaccurate Information by Amending the Federal Food, Drug, and Cosmetic Act*, 68 FOOD & DRUG L.J. 401, 404 (2013).

²² See Complaint for Action to Stop False or Deceptive Advertising at 1, Humane Society of the U.S. v. Rose Acre Farms,

http://www.humanesociety.org/assets/pdfs/farm/complaint_rose_acre.pdf (alleging that Rose Acre Farms, a subsidiary of Egglan’s Best, engaged in false advertising relating to the labeling of egg cartons and the welfare of its laying hens) [hereinafter HSUS Complaint].

²³ ALDF Announces Settlement of False Advertising Lawsuit Against Bay Area Egg Producer, ALDF (Feb. 5, 2014), <http://aldf.org/press-room/press-releases/aldf-announces-settlement-of-false-advertising-lawsuit-against-bay-area-egg-producer/>.

²⁴ See HSUS Complaint, *supra* note 22, at 15.

²⁵ THE HUMANE SOCIETY OF THE U.S., *Ag-Gag Laws Keep Animal Cruelty Behind Closed Doors*, http://www.humanesociety.org/issues/campaigns/factory_farming/fact-sheets/ag_gag.html?referrer=https://www.google.com/ (last visited Mar. 19, 2017).

identification of non-compliant producers is the USDA's recent retraction of all animal welfare violation data from publicly accessible databases.²⁶

B. REGULATION OF ADVERTISED CLAIMS

Today, over 95 percent of commercial shell eggs in the United States are produced in conventional battery cage systems.²⁷ Conscious consumers, influenced by viral images depicting floor-to-ceiling wire cages crammed tightly with sick and panicked hens, have demanded better animal welfare standards; the market has answered and tapped into this demand by sprinkling promises on egg cartons of more humane production methods. Four main advertisements now consistently appear that entice consumers to choose their product: United Egg Producers Certified, organic, free-range, and cage-free. While these claims suggest superiority as compared to eggs without the label, and are thus priced accordingly, it is worth pointing out that they intentionally suggest a superior production method related to the welfare of the hens,²⁸ rather than a health²⁹ or safety³⁰ claim. In reality, the animal welfare standards under all four of these labels are only different in name.

²⁶ Karin Brulliard, *USDA abruptly purges animal welfare information from its website*, WASH. POST (Feb. 3, 2017), https://www.washingtonpost.com/news/animalia/wp/2017/02/03/the-usda-abruptly-removes-animal-welfare-information-from-its-website/?utm_term=.44770174df07.

²⁷ JOEL L. GREENE & TADLOCK COWAN, TABLE EGG PRODUCTION AND HEN WELFARE: AGREEMENT AND LEGISLATIVE PROPOSALS 7 (Feb. 14, 2014) <https://pdfs.semanticscholar.org/47ce/d140eac346b2b8d59781291411dd60148bfe.pdf>.

²⁸ United Egg Producers notes that the certification is intended to ensure “humane” standards in caged hens and requires specific hen welfare standards in order to receive certification for eggs. *See* UNITED EGG PRODUCERS, *United Egg Producers Certification*, <http://uepcertified.com/> (last visited Apr. 29, 2017).

²⁹ Some scientists believe that eggs produced in cage-free and free-range systems are nutritionally superior, but the Ninth Circuit has recently deferred to the FDA's disapproval of this claim. *See* *Compassion Over Killing v. USDA*, 849 F.3d 849, 856 (9th Cir. 2017).

³⁰ Indeed, many producers believe that cage-free systems actually increase the risk of contamination and disease because hens are able to freely access others in the henhouse, as opposed to caged hens which may only come in direct contact with five to six other birds their lifetime. *See* Dan Flynn, *Cage-free hens don't improve egg food safety, nutrition levels*, FOOD

The most common advertising claim on shell eggs in the United States is the United Egg Producers Certification, appearing as a green check-mark with the words “United Egg Producers Certified.”³¹ The United Egg Producers (“UEP”) is a Capper-Volstead³² cooperative of egg farmers and includes over 95 percent of all egg-laying hens.³³ Under the Capper-Volstead Act, the UEP is granted limited immunity from antitrust laws so that it may “process, prepare for market, handle, and market” all of its own commodities.³⁴ The UEP purports to work directly with the USDA and the FDA and certifies approximately 76 percent of all commercial shell eggs each year.³⁵ In order to obtain certification, a producer must pass an audit after filing an “Application for Certification,” comply with the UEP Guidelines, and pay a yearly fee.³⁶ The UEP Guidelines were created by a nine-member scientific advisory committee for the purpose of ensuring “caged egg production is humane.”³⁷ However, the guidelines are permissive of battery cages “so restrictive that the hens have no opportunity to exercise” and “provide that each . . . hen need be allotted only sixty-seven square inches per bird, an amount of floor space equivalent to less than a single sheet of letter-sized (8.5 by 11 inch) paper.”³⁸ Indeed, it is possible to have

SAFETY NEWS (Mar. 1, 2017), <http://www.foodsafetynews.com/2017/03/cage-free-hens-dont-improve-egg-food-safety-nutrition-levels/#.WM7BpxIrKR>s.

³¹ UNITED EGG PRODUCERS, ANIMAL HUSBANDRY GUIDELINES 2016 EDITION 4 (2003) [hereinafter UEP GUIDELINES].

³² UNITED EGG PRODUCERS, *About Us*, www.unitedegg.org (last visited Mar. 19, 2017); Christine A. Varney, *The Capper-Volstead Act, Agricultural Cooperatives, and Antitrust Immunity*, AMERICAN BAR ASS’N (Dec. 2010) http://www.americanbar.org/content/dam/aba/publishing/antitrust_source/Dec10_Varney12_21.authcheckdam.pdf.

³³ *About Us*, *supra* note 32.

³⁴ Varney, *supra* note 32.

³⁵ UEP GUIDELINES, *supra* note 31 at 5.

³⁶ *Id.* at 6.

³⁷ *Id.* at 5.

³⁸ HSUS Complaint, *supra* note 22, at 7.

“toxic ammonia levels; hens unable to stand upright in cage; unclean water; [and] a lack of ventilation” and still receive the certification.³⁹

Most telling, in 2003, the Better Business Bureau’s (“BBB”) National Advertising Division (“NAD”) ruled that the UEP label was misleading to consumers because it included an “animal care certified logo.”⁴⁰ The BBB believed that while treatment of caged hens was marginally better under the new guidelines, it was still not at the level that consumers would find “humane.”⁴¹ The UEP has since entered into an Assurance of Voluntary Compliance with the FTC and sixteen states where it agreed that the advertisement was misleading, and paid settlement claims to mislead consumers.⁴² As a result, the “animal care certified” claim no longer appears, but the label’s graphic and “United Egg Producers Certified” text still appears in an identical fashion. Because a large majority of eggs on the market are UEP certified, and the large majority of shell eggs are produced in traditional battery cages, this paper will use the UEP Certification as the baseline minimum for animal welfare standards⁴³ and price.

The term organic is regulated by the USDA under the Organic Foods Production Act of 1990⁴⁴ (“Organic Foods Act”). In order to use the USDA’s official organic label, a product must be produced and handled without the use of any synthetic chemicals and in compliance with the producer’s organic plan.⁴⁵ This means that egg laying hens cannot be treated with antibiotics or

³⁹ *Id.* at 15.

⁴⁰ THE ASSOCIATED PRESS, *Business Group Shells Egg-Industry Ads: Better Business Bureau Disputes Humane Claim* (May 11, 2004), <http://www.nbcnews.com/id/4951194/#.WM7JMhIrKRr>.

⁴¹ *Id.*

⁴² See HSUS Complaint, *supra* note 22, at 10.

⁴³ The author does not believe that these Guidelines *should* represent the minimum animal welfare standards required for laying hens, but believes they nonetheless serve as the minimum in the egg industry.

⁴⁴ The Organic Foods Production Act of 1990, as amended, 7 U.S.C. § 6501 *et. seq.* (1990).

⁴⁵ *Id.* § 6504.

hormones in the absence of illness or fed synthetic feed.⁴⁶ Regulations require “[y]ear-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight”⁴⁷ Although many consumers believe that the organic label indicates better treatment for the animal,⁴⁸ most eggs labeled organic are produced using traditional industrial-scale henhouses, which house tens of thousands of hens, and “offer[] only tiny enclosed porches as ‘outdoor access’—or no outside access whatsoever.”⁴⁹ Some certified organic farms have over one million hens and still use traditional cramped industrial-style barns, but offer a small screened in porch, blocked by industrial-strength fans, to pay lip service to the regulation.⁵⁰

Free-range is widely used at the discretion of producers because the USDA provides no legal definition for the term.⁵¹ Brief guidance, couched as a generally recognized industry standard on the AMS website, adds some meaning to the term and notes that hens must have “continuous access to the outdoors during their laying cycle. The outdoor area may be fenced and/or covered with netting-like material.”⁵² In practice, this often means that the egg-laying

⁴⁶ *Id.* § 6509(e)(1) (“all poultry from which meat or eggs will be sold or labeled as organically produced shall be raised and handled in accordance with this chapter prior to and during the period in which such meat or eggs are sold.”).

⁴⁷ 7 C.F.R. § 205.239.

⁴⁸ Consumer Perceptions Poll, *supra* note 7 (“When asked to identify their top three reasons for purchasing “natural” or “organic” . . . respondents to an online poll conducted by the American Meat Institute and the Food Marketing Institute chose “better health and treatment of the animal.”).

⁴⁹ THE CORNUCOPIA INST., SCRAMBLED EGGS 6 (2d ed., Dec. 2015) <https://www.cornucopia.org/egg-report/scrambledeggs.pdf>.

⁵⁰ *Id.*

⁵¹ The USDA does provide a legal definition for “free-range” as it relates to poultry, but not eggs. See CERTIFIED HUMANE, “Free Range” and “Pasture Raised” officially defined by HFAC for Certified Humane Label (Jan. 16, 2014), <http://certifiedhumane.org/free-range-and-pasture-raised-officially-defined-by-hfac-for-certified-humane-label/> [hereinafter CERTIFIED HUMANE].

⁵² USDA, *Questions and Answers about Shell Eggs*, <https://www.ams.usda.gov/publications/qa-shell-eggs> (last visited Mar. 17, 2017).

hens get the same tiny screened-in porch as the organic egg-laying hens, only accessible to a few hens at a time. Mark Kastel of the Cornucopia Institute explains,

“Access” typically means a few small doors that lead to a screened-in porch with cement, dirt, or a modicum of grass. And often . . . industrial fans that suck ammonia out of the building create “hurricane winds” through the small doorways, and the birds don’t really want to walk through that.⁵³

There are no regulations in place for how large or accessible the access to outdoors must be.

Additionally, sometimes a small “pop hole” is provided, which allows hens to look outside but have no full body access.⁵⁴

The only difference between organic and free-range labels is that free-range hens may be fed synthetic feed and treated with hormones and antibiotics, while organic hens may not be. However, hormones cannot legally be added to poultry,⁵⁵ and “no large-scale farms in the U.S. do so.”⁵⁶ The UEP also notes that egg-laying hens are *rarely*, if ever, given antibiotics, and if so, it is usually for a short time to treat a disease or prevent a recurring disease.⁵⁷ In reality, the two terms may be used for eggs that are identically produced and often appear on egg cartons in tandem.

⁵³ Anders Kelto, *Farm Fresh? Natural? Eggs Not Always What They’re Cracked Up to Be*, NPR (Dec. 23, 2014), <http://www.npr.org/sections/thesalt/2014/12/23/370377902/farm-fresh-natural-eggs-not-always-what-they-re-cracked-up-to-be>.

⁵⁴ CERTIFIED HUMANE, *supra* note 51.

⁵⁵ FSIS, *Meat and Poultry Labeling Terms*, [//www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education](http://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education) (last visited Apr. 29, 2017) (“*Hormones are not allowed in raising hogs or poultry*. Therefore, the claim “no hormones added” **cannot be used** on the labels of pork or poultry unless it is followed by a statement that says ‘Federal regulations prohibit the use of hormones.’”) (emphasis in original).

⁵⁶ FDA, *Steroid Hormone Implants Used for Food-Producing Animals*, <https://www.fda.gov/AnimalVeterinary/SafetyHealth/ProductSafetyInformation/ucm055436.htm> (last visited Mar. 23, 2017); *See Kelto, supra* note 53.

⁵⁷ UNITED EGG PRODUCERS, *Are antibiotics given to egg-laying hens?* (Sept. 18, 2015), <http://uepcertified.com/faq/are-antibiotics-given-to-egg-laying-hens-2/>.

The standards for cage-free eggs are even more ambiguous. According to the AMS website, cage-free egg laying hens must be “housed in a building, room, or enclosed area that allows for unlimited access to food, water, and provides the freedom to roam within the area during the laying cycle.”⁵⁸ In other words, rather than numerous small cages, hundreds of thousands of hens may be kept in one large cage and still satisfy the industry standard. Although the hens in many “cage free” houses can technically move freely, they are often still packed so tightly that they engage in cannibalism and feather-plucking from stress and will never step foot outside.⁵⁹

Common to all four of these labels are other cruel practices that are not limited in any way. For example, all systems may still kill male chicks by placing them directly into a grinder upon hatching.⁶⁰ It is common practice in all systems to burn the beaks off hens to limit fighting, however this painful mutilation is done without analgesics and causes many hens to starve to death in fear of the pain from eating.⁶¹ Hens may still be kept in large commercial henhouses and forced to live atop inches of feces, crushed cage-mates, and breathe in levels of ammonia so high that the toxins result in blindness and respiratory diseases.⁶² Lastly, hens lay less eggs as they age and are often slaughtered at less than two years old.⁶³ While in transit to the slaughterhouse, hens

⁵⁸ *Id.*

⁵⁹ Gregory Barber, *Are Cage-Free Eggs All They're Cracked Up to Be?*, MOTHER JONES (Feb. 10, 2016), <http://www.motherjones.com/blue-marble/2016/02/corporations-are-going-cage-free-whats-next-hens>.

⁶⁰ THE HUMANE SOCIETY OF THE U.S., *Cage-Free v. Battery-Cage Eggs*, http://www.humanesociety.org/issues/confinement_farm/facts/cage-free_vs_battery-cage.html?referrer=https://www.google.com/ (last visited Mar. 13, 2017) [hereinafter *HSUS Cage-free vs. Battery-cage*].

⁶¹ *Id.*

⁶² Darrin Karcher, *Poultry housing: Is cage-free the solution?*, FARM PROGRESS (Nov. 2009), <http://magissues.farmprogress.com/mif/mf11nov09/mif052.pdf>.

⁶³ See *HSUS Cage-free vs. Battery-cage*, *supra* note 60.

are deprived of food and water, and slaughter itself is painfully cruel, as poultry are explicitly excluded from the Humane Methods of Slaughter Act and the federal Animal Welfare Act.⁶⁴

While each of these labels is meant to indicate something different in the mind and in the pocket-book of the consumer, the standards for each are deceptively similar, and deceptively suggestive of humane practices.

II. EGG CARTON LABELS DECEIVE CONSUMERS AND A FEDERALLY REGULATED STANDARD IS NEEDED

Two main problems exist with respect to current egg carton labels: (1) the free-reign of producers to use terms that are legally and practically meaningless to deceive consumers as to the welfare of egg-laying hens; and (2) the lack of a meaningful, regulated definition for the terms free-range and cage-free. The animal welfare standards for eggs bearing the labels United Egg Producers Certified, organic, cage-free, and free-range are not different in regards to animal welfare in any meaningful way. Because consumers are misled into paying a premium for products bearing the cage-free and free-range labels, they are plainly violative of the FDCA and the FTCA. In order for consumers to make informed decisions when purchasing eggs, the FDA should issue regulations explicitly defining the terms free-range and cage-free in order to hold producers accountable for misuse of these labels.

⁶⁴ ANIMAL WELFARE INST., *Humane Methods of Slaughter Act*, <https://awionline.org/content/humane-methods-slaughter-act> (last visited Mar. 13, 2017); THE HUMANE SOC'Y OF THE U.S., *Cruel Poultry Slaughter*, http://www.humanesociety.org/issues/slaughter/facts/cak_slaughter.html?referrer=https://www.google.com/ (last visited Mar. 13, 2017) (“Birds are first dumped or pulled from transport crates and snapped into shackles, often causing broken bones, bruising, and hemorrhaging, Next, they are shocked with electric water; the majority are paralyzed but may not be rendered unconscious. Some miss the water tank and aren’t even paralyzed. Birds then have their throats cut, but according to the USDA, millions miss the blade and drown in tanks of scalding water while conscious and able to feel pain.”).

A. FREE-RANGE AND CAGE-FREE EGGS ARE “MISBRANDED” UNDER THE FDCA

The FDCA leaves much to be desired in determining what constitutes a legally “misbranded” food. The standard set forth by the statute is simply that the label must be “false and misleading in *any* particular.”⁶⁵ Courts interpret this language in light of the reasonable consumer’s understanding of what the label indicates, and in order to prove a claim of fraudulent representation, “a jury must be given evidence about the meaning (unless obvious) of the representation claimed to be fraudulent[.]”⁶⁶ In order to be misbranded, the representations must be misleading to a reasonable consumer.⁶⁷

The terms free-range and cage-free as they are currently defined by the AMS are misleading to consumers because they plainly indicate higher levels of animal welfare, namely that free-range hens are able to freely roam outside and cage-free hens are not confined to cages. The Oxford dictionary defines free-range as “kept in natural conditions, with freedom of movement.”⁶⁸ A commercial henhouse with a small, inaccessible screened-in porch is certainly not natural, and in many cases does not allow for *any* freedom of movement. The term cage-free is plainly false, as hens may still be kept in enclosed, cramped industrial houses with no access to fresh air, although many consumers inaccurately believe they are raised outdoors.

There is ample reason to believe that reasonable consumers would not find the terms free-range and cage-free to accurately represent the actual conditions of egg-laying hens.⁶⁹

⁶⁵ 21 U.S.C. § 343 (emphasis added).

⁶⁶ U.S. v. Farinella, 558 F.3d 695, 701 (9th Cir. 2009).

⁶⁷ See *id.*

⁶⁸ OXFORD DICTIONARY, *Free-range*, <https://en.oxforddictionaries.com/definition/us/free-range> (last visited Mar. 17, 2017).

⁶⁹ Discussed *infra*. in CONSUMER PERCEPTIONS.

Many consumers feel bewildered by the existing labeling regime. The National Chicken Council reports that 60 percent of U.S. consumers find chicken labels confusing.⁷⁰ A survey conducted by egg producer Vital Farms revealed that the majority of consumers believe that the terms free-range and cage-free indicate that the hens were raised primarily outdoors, although this is simply false.⁷¹ As explained by a former senior-vice president of the UEP, “[consumers] can’t imagine that you put hens in cages, take away feed and trim beaks.’ When consumers are told that producers do cage, molt by feed withdrawal and trim breaks, they are shocked[.]”⁷²

Evidence of misbranding might include pictures of henhouse conditions in which free-range and cage-free egg-laying hens are kept in order to illustrate the lack of free movement and outdoor access. Photographs of the facilities are telling. Figure one depicts a traditional operation that uses battery cages and meets the United Egg Producers Certification standards (this paper’s baseline comparison of minimum animal welfare). Figure two shows a facility that labels its eggs as cage-free. Figure three claims that it meets the standards for free-range and organic and labels its eggs as such.

Figure One⁷³

⁷⁰ *Over 60 Per Cent of Consumers Find Chicken Labels Confusing*, THE POULTRY SITE (Mar. 16, 2016), <http://www.thepoultrysite.com/poultrynews/category/38/labelling-traceability/>.

⁷¹ Jane Black, *Scratching out a market eager for “pasture-raised” eggs*, WASH. POST (Apr. 8, 2015).

⁷² HSUS Complaint, *supra* note 22, at 20.

⁷³ Chris Isidore, *Bill Maher to Costco ‘Free the hens already’*, CNN MONEY (Jul. 10, 2015), <http://money.cnn.com/2015/07/10/news/companies/maher-costco-chickens-eggs/>.



Figure Two⁷⁴



Figure Three⁷⁵

⁷⁴ Aj Mast, *Eggs That Clear the Cages, but Maybe Not the Conscience*, N.Y. TIMES (Jul. 16, 2016), https://www.nytimes.com/2016/07/17/business/eggs-that-clear-the-cages-but-maybe-not-the-conscience.html?_r=0.

⁷⁵ PETA (2014), <http://www.peta.org/wp-content/uploads/2014/03/Free-Range-Hens-Overcrowded.jpg> (last visited Mar. 14, 2017).



The photographs beg the question: do the marketing claims free-range and cage-free mean anything at all?

B. FREE-RANGE AND CAGE-FREE CLAIMS ARE DECEPTIVE UNDER THE FTCA

Free-range and cage-free egg advertising claims are unlawful under the FTCA because they mislead consumers to pay more for a nearly identical product. Section 5 of the FTCA prohibits deceptive acts and practices in or affecting commerce.⁷⁶ In order to prove deception, three elements must be shown: (1) a representation, omission or practice that is likely to mislead the consumer; (2) the consumer must be acting reasonably under the circumstances; and (3) the representation, omission or practice must be a “material” one, or in other words, the practice must be likely to affect the consumer’s conduct or decision with regard to the product.⁷⁷ The first

⁷⁶ 15 U.S.C. § 45(a)(1).

⁷⁷ Deceptive and Unfair Acts and Practices Principles: Evolution and Convergence, Federal Trade Commission, Guide/Report, 2007 WL 2506620 (May 18, 2007).

two elements are similar to the elements needed to prove misbranding and are discussed *supra*. The third element required to solidify a deceptive trade practice claim under the FTCA focuses on market distortion and unfair competition with other brands that do not use deceptive labeling.

Evidence of actual consumer perceptions is critical to prove that the terms free-range and cage-free are likely to affect a consumer's decision whether or not to purchase a particular carton of eggs. Consumers are willing to pay more for eggs that they believe were humanely produced, and labels that advertise heightened animal welfare standards are extremely persuasive to consumers. The NAD has recognized that animal welfare concerns are an important motivator in consumer behavior:

Advertising claims which tout that the advertiser is addressing particular social or ethical concerns can provide consumers with important information about their purchasing choices.⁷⁸

In a survey conducted by the ASPCA, two-thirds of consumers responded that they purchase animal welfare certified food products “even when it means a modest increase in price.”⁷⁹ A study by UEP revealed that “50 percent of consumers rate animal welfare issues as an important factor in deciding which foods and brands to buy, and which stores to shop.”⁸⁰ In another poll, the UEP discovered that “54 percent of consumers were willing to pay 5 to 10 percent more for eggs with the label ‘Animal Care Certified,’ 10 percent were willing to pay 15 to 20 percent more, and 77 percent reported they would consider switching to a brand with such a label.”⁸¹ The

⁷⁸ Starbucks Corporation (Free Trade Certified Coffee), Report #4592, NAD Case Reports (Nov. 2006); United Egg Producers (Animal Care Certified Eggs), Report #4108, NAD Case Reports (Nov. 2003).

⁷⁹ *New Research Finds Vast Majority of Americans Concerned about Farm Animal Welfare*, ASPCA (July 7, 2016), <http://www.aspc.org/about-us/press-releases/new-research-finds-vast-majority-americans-concernedabout-farm-animal>.

⁸⁰ HSUS Complaint, *supra* note 22, at 19.

⁸¹ *Id.*

FTC itself has acknowledged that “claims about the production methods of eggs are material to consumers’ egg purchasing decisions.”⁸² Consumers in California were so concerned about the welfare of laying-hens that in 2008 a ballot measure was passed to ban the use of battery cages and set standards for the confinement of hens.⁸³ The ballot measure specifically prohibited “confinement of farm animals in a manner that does not allow them to turn around freely, lie down, stand up, and fully extend their limbs,”⁸⁴ and an overwhelming 63.5 percent of voters voted yes to the measure, even though egg farmers would incur significant costs to comply and pass those costs down to the consumer.⁸⁵ The constitutionality of the measure, as an undue burden on interstate commerce, was challenged but upheld in the Ninth Circuit.⁸⁶ Consumers are interested in purchasing products they believe to be ethically and humanely produced and will pay a much higher price for products advertised as such.

The FTC recently denied to take regulatory action in response to a petition by Compassion Over Killing, a non-profit organization, to regulate misleading egg carton labels.⁸⁷ Compassion Over Killing submitted rulemaking petitions to the FDA, FTC, AMS, and FSIS “requesting that each agency take regulatory action to revise the current labeling requirements for eggs . . . and/or to promulgate new regulations that would require all egg cartons to identify the conditions in which the egg-laying hens were kept during production.”⁸⁸ The FTC denied the

⁸² *Compassion Over Killing v. FDA*, 2014 WL 7336231, *4 (N.D. Cal. Dec. 23, 2014).

⁸³ *California Proposition 2, Standards for Confining Farm Animals (2008)*, BALLOTPEdia, [https://ballotpedia.org/California_Proposition_2,_Standards_for_Confining_Farm_Animals_\(2008\)](https://ballotpedia.org/California_Proposition_2,_Standards_for_Confining_Farm_Animals_(2008)) (last visited Mar. 27, 2017).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ The 9th Circuit held that egg farmers did not have standing because they could not establish fluctuations in egg prices as a result of the California law and therefore lacked an injury needed to establish Article III standing. *See generally* *Missouri v. Harris*, 847 F.3d 646 (9th Cir. 2017).

⁸⁷ *See generally* *Compassion Over Killing v. FDA*, 849 F.3d 849 (9th Cir. 2017).

⁸⁸ *Id.* at 852.

petition and stated that it lacked sufficient evidence to establish that unfair or deceptive acts were “prevalent,” because it had not issued cease-and-desist orders regarding the practice of free-range and cage-free egg advertising.

While the FTC is permitted to initiate rulemaking proceedings “only where it has reason to believe that the unfair or deceptive acts or practices . . . are prevalent,”⁸⁹ the FTC is not limited to examining the extent of previous enforcement actions to make a finding of prevalence. Under the FTCA, the FTC may use “any [] information available that indicates a widespread pattern of unfair or deceptive acts or practices.”⁹⁰ The FTC claimed that the Plaintiffs in *Compassion Over Killing* submitted only “isolated examples of potentially misleading egg labels,”⁹¹ but how many egg cartons must the Plaintiffs submit to make a showing of prevalence? The AMS guidance itself promotes misleading standards, and there is no reason to believe that any industrial egg producer adheres to higher welfare standards than is what is listed on the AMS website, because it would place them at a disadvantage in the marketplace. Higher animal welfare standards are costlier, and if producers are able to take advantage of cage-free advertisements without actually providing cage free conditions, they have no incentive to do so. It is thus likely that a *majority* of eggs on the market bearing these labels are deceptive, and the FTC cannot ignore this important aspect of the problem.⁹²

⁸⁹ See 15 U.S.C. § 57a(b)(3)(A)–(B).

⁹⁰ *Id.* (emphasis added).

⁹¹ *Compassion Over Killing v. FDA*, 849 F.3d 849, 855 (9th Cir. 2017).

⁹² See *Motor Vehicle Mfr. Ass’n v. State Farm Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (“[A]n agency rule would be arbitrary and capricious if it . . . entirely failed to consider an important aspect of the problem[.]”).

C. THE FDA SHOULD PROMULGATE A REGULATION DEFINING FREE-RANGE AND CAGE-FREE

It is reasonable for a consumer to believe that the words free-range and cage-free represent that the eggs were produced in humane conditions and egg-laying hens are primarily kept outdoors without significant confinement. It is also reasonable for a consumer to believe that the FDA regulates these terms and ensures that they are not false. Neither of these beliefs are true under the current regulatory regime, and a federal definition of both terms should be enacted by the FDA to remedy consumer deception.

While AMS does put forth scant guidance on its website to define free-range and cage-free, this guidance is not legally binding and far from clear, and is therefore often disregarded. A standard promulgated by the FDA through notice and comment rulemaking procedures would clarify the conditions that hens must be housed in, so that both producers and consumers are not left to formulate their own mismatched interpretations. The FDA has the primary authority to regulate the labeling of shell eggs under the FDCA, and thus is best situated to regulate these misleading claims. The FDA is only responsible for food and drug products, and has specific expertise with regard to shell eggs, as opposed to the FTCA, which is responsible for a wide variety of consumer practices and products.⁹³ Although the USDA is responsible for administering the organic certification program, it has traditionally been sympathetic to the interests of food producers and has failed to enforce its own standards with regards to organic eggs.⁹⁴ Additionally, its authority is limited to that of egg-products, as opposed to eggs in the

⁹³ Anything in or affecting interstate commerce is within reach of the FTC. *See* 15 U.S.C. § 45(a)(1).

⁹⁴ The USDA has generally turned a blind eye to the requirement that organic hens have “access . . . to the outdoors.” 7 C.F.R. § 205.239; *See generally* THE CORNUCOPIA INSTITUTE, *supra* note 49.

shell.⁹⁵ The FDA possesses the regulatory authority “to promulgate regulations for the efficient enforcement of [the FDCA],” which tasks the agency to ensure that shell eggs are not misbranded; although, this authority is discretionary.⁹⁶ The Ninth Circuit has made clear that the FDA has the authority, rather than the AMS and FSIS, to promulgate such a regulation, and has warned the FDA to pay attention to mislabeled egg cartons in the future.⁹⁷

In *Compassion Over Killing*, the FDA also rejected Plaintiff’s petition to require mandatory egg-carton labels specifying the conditions of egg-laying hens.⁹⁸ Plaintiffs challenged the FDA’s denial as arbitrary and capricious because the agency “summarily exercise[d] its discretion to prioritize other agency goals in order to avoid addressing Plaintiff’s request for rulemaking.”⁹⁹ Indeed, the FDA determined that it would “take enforcement action against misbranded eggs on a case-by-case basis, as opposed to promulgating regulations that would apply to all producers.”¹⁰⁰ But, even if an agency chooses to exercise its discretion to pursue ad hoc enforcement actions, it must “at a minimum, clearly indicate that it has considered the potential problems identified in the petition and ‘provide a reasonable explanation as to why it cannot or will not exercise its discretion’ to initiate rulemaking.”¹⁰¹ An agency cannot entirely fail to consider an important aspect of a problem,¹⁰² and an agency must “support and explain its conclusions with reasoned analysis.”¹⁰³ The FDA, in its short 19-page denial letter,¹⁰⁴ *nowhere*

⁹⁵ See 21 U.S.C. § 1031 *et. seq.*

⁹⁶ *Id.*

⁹⁷ *Compassion Over Killing v. FDA*, 849 F.3d 849, 857 (9th Cir. 2017).

⁹⁸ *Id.* at 856.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 857.

¹⁰¹ *Id.* at 854 (citing to *Mass. v. EPA*, 549 U.S. 497, 533 (2007)).

¹⁰² See *Motor Vehicle Mfr. Ass’n v. State Farm Automobile Ins. Co.*, 463 U.S. 29, 43 (1983).

¹⁰³ *Ctr. For Biological Diversity v. U.S. Dept. of Interior*, 623 F.3d 633, 648 (9th Cir. 2010).

¹⁰⁴ See FDA, Petition Denial Docket No. FDA 2007-P-0122 (Aug. 28, 2013), http://saova.org/rulemaking/FDA_petition_denial.pdf.

addressed the Plaintiff's argument that *affirmative* misrepresentations on egg cartons (i.e. the claims that they are produced in free-range or cage-free conditions) are misleading to consumers. This is a critical aspect of the problem. Additionally, the FDA failed to mention the evidence of currently misbranded egg cartons that the Plaintiff put forth in the petition. Instead, the letter focused on explaining why the terms free-range and cage-free are not facts *material* to the representation of the product, and thus not misleading. But this argument conflates the two standards for misbranded. Under the FDCA, "labels may be misleading in two ways: through an affirmative misrepresentation or, alternatively by an omission of material fact,"¹⁰⁵ whereas only an omission must be a material fact; an affirmative representation requires no finding of materiality. By using the standard for an *omission* of material fact to determine whether egg cartons are misbranded, the FDA failed to take into account an important aspect of the problem: the affirmative representations made about animal welfare. Even the Ninth Circuit was skeptical of the FDA's review of the petition and noted,

[S]uch broad discretion should not be construed as providing a blanket exception to APA review in any matter involving the allocation of agency resources . . . Here, the FDA's explanation for denying Plaintiff's rulemaking petition barely meets this low burden. The FDA could have better addressed Plaintiffs' evidence of misleading representations that appear on egg cartons to demonstrate that the agency fully appreciated one of the primary bases for Plaintiffs' rulemaking petition—that information concerning egg-laying hens' living conditions is necessary in order to correct the affirmative representations that frequently appear on egg labels and convey misleading information.¹⁰⁶

¹⁰⁵ Appellants Opening Brief at 24, *Compassion Over Killing v. FDA*, 849 F.3d 849 (2017) (No. 15-15107), 2015 WL 3819577; 21 U.S.C. § 321(n) ("If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling or advertising fails to reveal facts material in light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates under the conditions of use prescribed in the labeling or advertising thereof or under such conditions of use as are customary or usual.").

¹⁰⁶ *Compassion Over Killing v. FDA*, 849 F.3d 849, 857 (9th Cir. 2017).

Additionally, while the FDA is entitled to exercise its discretion by choosing to regulate through ad hoc enforcement actions, it cannot argue that it will bring enforcement actions against individual egg producers when it currently has no legal definition of the disputed labeling terms. The FDA would first need to decide on a uniform definition of free-range and cage-free before bringing any action for misbranding. Whether the FDA chooses to exercise its discretion in ad hoc enforcement actions, or in a sweeping regulation, it should still promulgate a definition of the labeling terms to eliminate misbranding and consumer deception.

III. THE EUROPEAN UNION AS A MODEL FOR FREE-RANGE AND CAGE-FREE REGIMES

The European Union is a leader in farmed animal welfare and is home to the most stringent legal protections for egg-laying hens. As early as 1976, the Council of Europe signed the European Convention for the Protection of Animals Kept for Farming Purposes, which requires that “all farm animals be provided with care in a manner ‘appropriate to their physiological and ethological needs.’”¹⁰⁷ In 1999, a Council Directive (“the Directive”) was adopted which prohibited “barren” battery cages (those without any perches, nest boxes, or litter for dust bathing) from construction and required existing systems to be phased out by 2012.¹⁰⁸ The Directive recognized that “[t]he protection of laying hens is a matter of Community competence” and “[d]ifferences which may distort conditions of competition interfere with the smooth running of the organization of the market in animals and animal products.”¹⁰⁹ The

¹⁰⁷ Gaverick Matheny & Cheryl Leahy, *Farm-animal Welfare, Legislation, and Trade*, 70 *LAW & CONTEMP. PROBS.* 325, 339 (2007), <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1415&context=lcp>.

¹⁰⁸ *Id.* at 339; Council Directive 1999/74, 1999 O.J. (L203) 1, 5 (EC), *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1999:203:0053:0057:EN:PDF> [hereinafter *Laying Hens Directive*].

¹⁰⁹ *Laying Hens Directive*, *supra* note 108, at preamble.

Directive's standards are based on recommendations from a Scientific Veterinary Committee and seek to provide minimum welfare requirements for all laying hens.¹¹⁰

The Directive describes three different types of hen rearing systems that are similar to the systems used in the United States. The systems are described as unenriched cages, enriched cages, and alternative systems.¹¹¹ Unenriched cages are battery cage systems and their construction is no longer permitted.¹¹² Enriched cage systems require:

- (a) at least 750 cm² of cage area per hen, 600 cm² of which shall be usable . . . and no cage shall have a total area that is less than 2000 cm²;
- (b) a nest;
- (c) litter such that pecking and scratching are possible;
- (d) appropriate perches allowing at least 15 cm per hen.¹¹³

Although the enriched systems do allow the hens to be housed in cages, the standards require that each hen be allotted enough space (nearly a square foot, as opposed to the 432 cm² recommended by the UEP¹¹⁴) to engage in natural behaviors, such as nesting and scratching. The hens must also have continuous access to food and water.¹¹⁵

The third type of housing is referred to as an alternative system and accounts for 42 percent of egg production in the European Union.¹¹⁶ Alternative housing requires at least one nest for every seven hens (with at least 1 m² of nest space for a maximum of 120 hens), adequate perches, at least 250 cm² of littered area per hen, as well as adequate access to food and water.¹¹⁷

¹¹⁰ *Id.* at art. 1. Establishments with fewer than 350 hens and establishments rearing breeding laying hens are not subject to the Directive. *Id.* at art. 1(2).

¹¹¹ *See id.* at art. 3.

¹¹² *Id.* at art. 5(2).

¹¹³ *Id.* at art. 6(1).

¹¹⁴ The UEP recommends about 67 square inches of space per bird, which translates to approximately 432 cm². *See* UEP GUIDELINES, *supra* note 31, at 21.

¹¹⁵ *See* Laying Hens Directive, *supra* note 108, at art. 6(2)-(3).

¹¹⁶ HUMANE SOC'Y INT'L, EGG PRODUCTION IN THE EU AND US 2, http://www.hsi.org/assets/pdfs/ttip_briefing_eggs.pdf (last visited Mar. 29, 2017).

¹¹⁷ Laying Hens Directive, *supra* note 108, at art. 4(1).

Stocking density “must not exceed nine laying hens per m²” of usable area.¹¹⁸ There are additional requirements for access to open runs outdoors, including:

- (i) there must be several popholes giving direct access to the outer area, at least 35 cm high and 40 cm wide and extending along the entire length of the building; in any case, a total opening of 2 m must be available per group of 1000 hens;
- (ii) open runs must be . . .
—equipped with shelter from inclement weather and predators and, if necessary, appropriate drinking troughs.¹¹⁹

In addition to welfare standards, the Directive requires all production facilities to register with the agricultural authority in the Member State and place on each egg a number, which can then be used to determine the type of production method the egg was produced in as well as its farm of origin.¹²⁰

The European Unions’ system of standards illustrates the type of transparency that allows consumers to make informed purchasing decisions. The FDA should adopt a definition of cage-free that includes a space requirement (no less than 750 cm² to allow for natural behaviors) for each hen, similar to the requirement under the Directive for enriched cages. The cage-free standard should require that hens are able to engage in nesting, scratching, and pecking behaviors and have continuous access to food and water, which the EU’s Scientific Veterinary Committee has determined are the *bare minimum* standards required for animal wellbeing.

If an egg is labeled free-range, the FDA should require that the hens have continuous and meaningful access to the outdoors and put forth a specific space requirement, as the Directive does. A specific space requirement, and a specific doorway requirement, will ensure that egg

¹¹⁸ *Id.* at art. 4(4).

¹¹⁹ *Id.* at art. 4(3).

¹²⁰ EUROPEAN COMMISSION, *Laying Hens*, https://ec.europa.eu/food/animals/welfare/practice/farm/laying_hens_en (last visited Mar. 29, 2017).

producers cannot comply with the free-range requirements by providing a small, but in practice inaccessible, outdoor area. The free-range definition should also include the nesting requirements as put forth in the Directive, which require hens to have adequate access to nesting space. By adopting regulations through notice-and-comment rulemaking, the public will be able to help shape what they believe free-range and cage-free indicate and will also have a cause of action under the APA to challenge the promulgated standards should they fall short.

Lastly, the FDA should require that eggs labeled free-range and cage-free bear a number that can be traced back to the farm from which the egg was produced, as the Directive requires. The FDA could easily require egg producers to register with the agency, as only 186 different companies produce 99 percent of eggs on the market.¹²¹ If the eggs are required to bear a number that corresponds to the facility they were produced in, concerned consumers will have direct access to information needed in order to make informed decisions and can “vote with their dollar” for or against increased animal welfare standards in the egg industry. Although this would require the FDA to compel commercial speech, producers would likely be receptive to this type of labeling because it in no way immediately suggests anything about the product, but is simply a numerical marking. Producers who do follow heightened animal welfare standards will benefit because they will be able to show consumers that their eggs are produced in a superior manner and deserve the free-range and cage-free labels. Consumers have a right to be informed about the products they are purchasing and this method has already proven highly effective in the European Union.

¹²¹ *General US Stats, supra* note 1.

CONCLUSION

The current egg labeling regime is misleading and toothless. Animal welfare is increasingly important to consumers and visible in the media as each day more and more companies decide to switch to cage-free eggs.¹²² The FDA possesses the authority to enact regulations defining the terms free-range and cage-free, and should do so in order to protect consumers, who often make purchasing decisions under the false belief that they are supporting more humane animal production methods. The FDA should also enact clear definitions of these labeling terms to protect the egg producers that do produce eggs under humane conditions and truthfully market their eggs. The difference in price between free-range and cage-free eggs distorts the market by making it impossible for truly humanely produced products to successfully compete, because egg producers that do not follow heightened animal welfare standards may still reap the benefit of selling their eggs for increased prices. The FDA must catch up with a changing society and hatch a new regulatory scheme.

¹²² *Walmart aims to switch to cage-free egg supply chain by 2025*, REUTERS (Apr. 6, 2016), <http://www.cnbc.com/2016/04/06/wal-mart-aims-to-switch-to-cage-free-egg-supply-chain-by-2025.html>; *Costco Finally Changes to Cage-free Eggs*, THE ODYSSEY (May 9, 2016), <https://www.theodysseyonline.com/costco-finally-cage-free-eggs>.

NATIONAL EGG REVIEW

Regional and California prices are unchanged on Jumbo, 2 to 12 cents lower for Extra Large, down 2 to 14 cents for Large, 7 to 12 cents lower for Medium and steady to 12 cents lower for Small. New York prices are steady on all weights. The undertone is steady to weak. Offerings are moderate to instances heavy. Demand is in a full range with retail demand light to mostly moderate and distributive demand moderate to at times good. Current supplies are moderate to instances heavy for trade purposes to start the week. Market activity is slow to moderate. Breaking stock floor stocks are mostly moderate to heavy; breaking schedules are full-time. Spent fowl offerings are at least adequate for the light demand.

Prices to Retailers, Sales to Volume Buyers, USDA Grade A and Grade A, White Eggs in Cartons, Cents per Dozen, Unless Otherwise Noted

Delivered to Warehouse:

	Range	Mostly
Midwest Regional AMS_2845		
EXTRA LARGE	71-80	74-77
LARGE	70-79	72-75
MEDIUM	64-73	66-69

Northeast Regional AMS_2735		
EXTRA LARGE	80-100	84-92
LARGE	74-88	79-83
MEDIUM	70-83	75-77

South Central AMS_2846		
EXTRA LARGE	90.5-99	92-95
LARGE	83.5-92	85-88
MEDIUM	74.5-83	76-79

Southeast Regional AMS_2736		
EXTRA LARGE	84.5-92	86-89
LARGE	82.5-90	84-87
MEDIUM	73.5-81	74-78

Delivered to Store Door:

Midwest Regional AMS_2845		
EXTRA LARGE	78-86	79-81
LARGE	76-84	77-79
MEDIUM	70-78	71-73

New York AMS_2734		
EXTRA LARGE	88-92	--
LARGE	86-90	--
MEDIUM	82-86	--

(Fri) Prices to Consumers Major Chains, New York Metropolitan Area

EXTRA LARGE	139-299	169-189
LARGE	119-279	159-179
MEDIUM	109-229	149-169

Prices Paid to Producers

IA, MN & WI AMS_2845		
LARGE	52-62	56
MEDIUM	46-50	48
SMALL	40-46	

Midwest: IA, IL, IN, KY, MI, MN, OH, NE, ND, SD, WI, WV, western NY, & western PA; **Northeast:** CT, DC, DE, MA, MD, ME, NH, eastern NJ, eastern NY, PA, RI, northern VA, & VT; **South Central:** AR, AZ, CO, KS, LA, MO, NM, OK, & TX; **Southeast:** AL, GA, MS, NC, SC, eastern TN, & southern VA

[North Carolina AMS_3155](#) - Prices wtd avg, in small lots, nearby retail outlet.

	Mostly
EXTRA LARGE	107.17
LARGE	103.18
MEDIUM	87.35
SMALL	82.00

[Weekly New England Shell Eggs AMS_2739](#)

Prices paid per dozen Grade A brown eggs in cartons delivered store door.

	Extra Large	Large	Medium	Small
MAINE MOSTLY	142	132	120	94
NEW HAMPSHIRE MOSTLY	135-139	125-129	113-117	87-91
RHODE ISLAND MOSTLY	138-145	128-135	116-123	90-97
VERMONT MOSTLY	142-269	132-259	120-169	-

[USDA Wholesale Certified Organic Brown Shell Eggs AMS_2759](#)

Prices cents per carton delivered to first receivers

	Price Range	Mostly
Extra Large	doz.	
	1/2 doz.	Data not Available.
Large	doz.	
	1/2 doz.	

Certified Organic are products grown and processed according to USDA's national organic standards and certified by USDA accredited State and private certification organizations. For more information, visit the National Organic Program www.ams.usda.gov/NOPNationalOrganicProgramHome

[California AMS_2844](#)

Benchmark prices are unchanged for Jumbo, 12 cents lower for Extra Large, 14 cents lower for Large and 12 cents lower for Medium and Small. The undertone is steady. Offerings are moderate to instances heavy. Supplies are mostly moderate. Demand is light to moderate. Market activity is slow. Small benchmark price 88 cents.

California: Shell egg marketer's benchmark price for negotiated egg sales of USDA Grade AA and Grade AA in cartons. This price does not reflect discounts or other contract terms.

	Range
JUMBO	175
EXTRA LARGE	130
LARGE	123
MEDIUM	108

(Fri) Southern California: Prices to Retailers, Sales to Volume Buyers, USDA Grade AA & Grade AA, White Eggs in Cartons, Delivered Store Door, Cents/Dozen

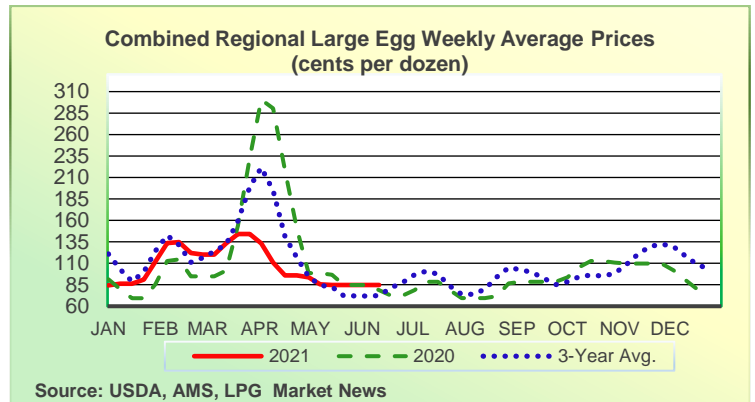
JUMBO	167-181
EXTRA LARGE	130-141
LARGE	124-135
MEDIUM	106-121

[Weekly Combined Regional AMS_2848](#)

Average prices on sales to volume buyers, delivered warehouse.

REGIONS	EX LARGE	LARGE	MEDIUM
NORTHEAST	88.50	84.00	83.00
SOUTHEAST	90.50	88.50	83.00
MIDWEST	77.50	75.50	74.50
SOUTH CENTRAL	100.50	89.50	84.50
COMBINED REGIONAL	89.81	84.57	81.37

Computed from simple weekly averages weighted by regional area populations



[National Weekly Shell Egg Inventory](#)

Regions	Total Stocks on Hand Available for Marketing (30-dozen cases in thousands)	
Northeast	Total	248.4
	% Change	5.3%
Southeast	Total	275.5
	% Change	-3.6%
Midwest	Total	486.8
	% Change	-9.6%
South Central	Total	291.8
	% Change	-2.3%
Southwest	Total	168.5
	% Change	7.4%
Northwest	Total	100.6
	% Change	4.4%
6-Area Total	Total	1,571.4
	% Change	-2.5%

	Cases	Percent Change
Shell Egg Inventory	1,571.4	-2.5%
Breaking Stock Inventory	358.5	-2.9%
Total Inventory	1,929.9	-2.6%

Specialty/Organic/Cage Free: Stocks on Hand to be Marketed as Specialty/Organic/Cage Free from totals above (30-dozen cases in thousands)

6-Area Total		
Specialty	This Week	41.1
	% Change	-7.6%
Organic	This Week	129.6
	% Change	1.2%
Cage Free	This Week	175.5
	% Change	1.6%

1/ Cooperators normally have stocks on hand each Monday A.M. and must report in both the current and previous weeks conventional and specialty 3/ Specialty eggs include nutritionally enhanced and vegetarian-fed types.

Regional Definitions: Northeast = CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, & VT; Southeast = AL, FL, GA, MS, NC, SC, TN, VA, & WV; Midwest = IA, IL, IN, KY, MI, MN, ND, NE, OH, SD, & WI; South Central = AR, AZ, CO, KS, LA, MO, NM, OK, TX, & UT; Southwest = CA & NV; Northwest = ID, MT, OR, WA, & WY.

[Shell Eggs Processed Under Federal Inspection](#)

Total Production in Thousands of Pounds W/E 6/5/2021						
TOTAL PRODUCTION	Cases Broken	Liquid Whole	Liquid White	Liquid Yolk	Dried	Inedible
CW	1,429,071	33,806	14,325	6,939	2,423	4,111
PW	1,482,616	33,017	16,002	8,079	2,503	4,434
% Change	-3.6%	2.4%	-10.5%	-14.1%	-3.2%	-7.3%
LY	1,153,720	26,171	11,762	5,818	1,955	3,623
% Change	23.9%	29.2%	21.8%	19.3%	24.0%	13.5%
2021 YTD	31,459,416	714,488	328,644	164,522	52,778	97,533
2020 YTD	32,533,157	727,151	339,969	171,939	67,980	103,208
% Change	-3.3%	-1.7%	-3.3%	-4.3%	-22.4%	-5.5%

Average Yields Per Case			
	Yield with Inedible	Yield W/O Inedible	
CW	41.41	38.54	
PW	41.50	38.51	
LY	41.06	37.92	
2021 YTD	41.49	38.39	
2020 YTD	41.26	38.09	

In Line Production in Thousands of Pounds				
	In-line Cases Broken	In-line % of Total Cases Broken	In-line Liquid Whole Egg	In-line % of Total Liquid Whole Egg
CW	781,362	54.7%	18,511	54.8%
PW	779,514	52.6%	17,180	52.0%
LY	645,643	56.0%	14,438	55.2%
2021 YTD	17,040,641	54.2%	382,861	53.6%
2020 YTD	18,099,379	55.6%	398,484	54.8%

[Weekly National Egg Products](#) f.o.b. Shipper Dock Basis; Wholesale prices; cents per pound unless otherwise noted.

Liquid Eggs

All liquid egg products remain too few participants to report prices. Trade sentiment is mostly steady for whole egg and whites and steady to lower for yolk. Offerings are light for whole egg and whites and light to moderate for yolk. Spot demand is light to moderate for whole egg and whites and moderate for yolk. Market activity is moderate.

Non-certified in trucklots; current trading for delivery within 14 days.

Class	Current Week			May Averages	
	Range	Loads	Wtd Avg	Loads	Wtd Avg
Whole	TFEWR			21	53.17
Whites	TFEWR			TFEWR	44.50
Yolk	TFEWR			34	91.46

Certified in trucklots; current trading for delivery within 14 days.

Class	Current Week			May Averages	
	Range	Loads	Wtd Avg	Loads	Wtd Avg
Whole	TFEWR			6	52.17
Whites	TFEWR			32	44.88
Yolk	TFEWR			TFEWR	

Frozen Eggs

Frozen egg product prices are steady to lower for whole, whites and salt and sugar yolks. Trade sentiment is steady on whole, lower on white and yolks. Demand is fairly good to good on whole and yolks, moderate on white with a noted increase for season needs. Offerings and supplies vary by location and are light to moderate. Market activity is moderate to instance active.

Packed in 30-pound containers; Prices in cents per pound

Trucklot	Current Week		May Averages	
	Range	Mostly	This Month	Last Month
Whole	72.00 - 90.00	75.00 - 80.00	82.50	84.50
Whites	62.00 - 82.00	67.00 - 69.00	73.00	73.50
Sugar Yolk ^{1/}	111.00 - 135.00	115.00 - 120.00	124.00	120.00
Salt Yolk ^{1/}	109.00 - 135.00	113.00 - 118.00	123.00	119.00

1/ Minimum 43% solids.

Dried Eggs

Prices of dried eggs are steady to lower on albumen, steady on the balance. The undertone is higher for whole, lower for albumen, steady for yolk. Offerings are light to moderate. Demand ranges moderate to good with trading centered on spot sales. Supplies are light to moderate for current seasonal needs. Market activity is moderate to at times active.

Prices in dollars per pound; in containers; includes trucklot and less-than-trucklot volumes.

Class	Current Week		May Averages	
	Range	Mostly	This Month	Last Month
Whole	2.90 - 3.85	3.05 - 3.20	3.35	3.28
Yolk	2.15 - 2.90	2.20 - 2.35	2.53	2.35
Albumen ^{2/}	4.55 - 5.10	4.75 - 4.95	4.85	4.90
Blends ^{3/}	-	-	-	-

2/ Spray Dried; 3/ Whole plus sweetener.

Central and Eastern Region Breaking Stock	
Prices in cents/doz., delivered to breakers, 48 lb. minimum net weight per 30 dozen case, eggs from table egg layers. Packaging may vary.	
Central Region	Eastern Region
Breaking Stock	
Range 46-50 Mostly	Range 46-54 Mostly 48-53
Checks & Undergrades	
Range 38-44 Mostly 38-42	Range 38-45 Mostly
Central States Area: AR, CO, IA, IL, IN, KS, LA, MI, MN, MO, NM, ND, NE, OH, OK, SD, TX, & WI	Eastern States Area: AL, CT, DE, FL, GA, KY, ME, MD, MA, MS, NC, NH, NJ, NY, PA, RI, SC, TN, VT, VA, & WV

[Daily 5-Day Weighted Average Trailer Load Egg Sales](#)

NATIONAL TRADING FOR JUNE 7, 2021-JUNE 11, 2021
 COURTESY OF U.S.D.A. FEDERAL/STATE MARKET NEWS

CURRENT LOADS 118.25 FUTURE LOADS 4.00 TOTAL LOADS 122.25

CLASS	SE		NE		MW		LOADS
	ORG	DST	ORG	DST	ORG	DST	
GL W J	--	--	--	70.00	52.00	--	1.00
GL W XL	58.75	62.33	50.52	56.84	53.00	59.00	13.25
GL W LG	--	55.00	40.70	47.25	46.17	49.75	27.00
GL W MD	--	--	39.00	45.00	39.83	40.00	14.00
GL W SM	--	--	30.00	33.00	--	--	2.00
NRBS - 48	--	--	--	54.00	44.92	47.38	57.00
NRBS - 45	--	--	--	45.00	35.00	--	1.00

CLASS	SC		NW		SW		LOADS
	ORG	DST	ORG	DST	ORG	DST	
GL W J	55.00	68.00	--	--	--	--	1.00
GL W XL	56.00	69.50	--	--	--	72.00	4.00
GL W LG	59.33	59.13	--	67.25	--	--	24.00
GL W MD	55.20	54.10	--	--	--	56.00	17.00
GL W SM	50.00	--	--	--	--	--	1.00

Weighted average prices are listed for various classes priced by origin and/or destination for 6 regions. The loads column reflects total loads reported and includes loads with prices to be determined later. NRBS categories represent net weight - material may or may not be included.

Load movement represents total movement within 6 regions.

[Live Spent Light Fowl](#)

Prices are trending steady at best. Demand is light for the at least sufficient offerings of spent hens. Processing schedules for next week are normal to less than normal. Market activity is slow. The majority price for removal cost are unchanged at 0-7 cents per head.

(live hens are predominately egg-layers averaging about 3.5 lbs. live weight per bird.)

Eastern region = AL, CT, DE, GA, KY, MA, MD, ME, MS, NC, NH, NJ, NY, PA, RI, SC, TN, VA, VT, and WV; **North Central** = IA, IL, IN, MI, MN, ND, NE, OH, SD, WI; **South Central** = AR, CO, KS, LA, MO, NM, OK, TX.

[Weekly Cold Storage Holdings](#) -

~in Selected Centers, Includes Government Stocks in Thousands of Pounds~

Frozen Eggs 6/7/2021	6/1/2021	Change from First of the Month in Total Pounds	% Change from First of the Month
2,481	2,502	-21	-1%

Cold Storage Holdings - Pacific Coast

Frozen Eggs	6/7/2021	05/31/21	06/08/20
Pacific w/out Denver:	47	47	37
Los Angeles:	0	0	0

[National Retail Egg Purchases](#)

Cooperators estimate orders for the week ending June 18, 2021 will decrease by 1 percent. Present week purchases for the week ending June 11, 2021 were 248,329 cases which was 20 percent above the prior week and 21 percent above estimates.

	CARTONED	LOOSE	TOTAL
Cases purchased			
present week.....	208,806	39,523	248,329
% change from the prior week.....	+34	-24	+20

Comparison figures are compiled on a matched plant basis. Purchases and estimates by 14 cooperators; 30 dozen cases or equivalent.

[Canadian Eggs](#)

Minimum prices for producers' f.o.b. farm as set by Ontario egg producers (Canadian dollars per dozen) as reported by Agriculture and Agri-Food Canada, AISD, AID, Poultry Section Week Ending Jun 5, 2021

GRADE A	XLG	LRG	MED	SMALL
	2.27	2.27	1.99	1.59

[Agriculture and Agri-Food Canada](#)

California Quick Guide to Propositions

Secretary of State
Dr. Shirley N. Weber

Home Voter Information Guide Power Search Contact Information

Quick Guide to Props » November 6, 2018 » Proposition 12

Prop 11 Prop 12

PROP 12

ESTABLISHES NEW STANDARDS FOR CONFINEMENT OF SPECIFIED FARM ANIMALS; BANS SALE OF NONCOMPLYING PRODUCTS. INITIATIVE STATUTE.

SUMMARY

Establishes minimum requirements for confining certain farm animals. Prohibits sales of meat and egg products from animals confined in noncomplying manner. Fiscal Impact: Potential decrease in state income tax revenues from farm businesses, likely not more than several million dollars annually. State costs up to \$10 million annually to enforce the measure.

MONEY RAISED

Chart depicts total fundraising by all committees primarily formed for and against Prop 12. Totals are updated daily with contributions from [Power Search](#) and adjustments from the most recent [Political Reform Division analysis](#).

Yes on 12	\$13,489,618
No on 12	\$618,766

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)
ANIMAL HEALTH AND FOOD SAFETY SERVICES (AHFSS)
MEAT, POULTRY AND EGG SAFETY BRANCH (MPES)
SHELL EGG ADVISORY COMMITTEE (SEAC)
MEETING MINUTES
APRIL 21, 2021**

California Department of Food and Agriculture
2800 Gateway Oaks Drive, Room 267
Sacramento, CA 95833

Item
No.

(1) ADJOURN SUBCOMMITTEE MEETING

Mike Gemperle motioned to adjourn the previous Subcommittee Meeting that was held on March 30, 2021. Steve Mahrt seconded the motion.

The subcommittee meeting was adjourned.

(2) ROLL CALL

Roll call was taken by Mr. Michael Abbott, Egg Quality Manager, Egg Safety and Quality Management (ESQM). A quorum was established at 9:05 a.m.

Michael Gemperle was appointed as Acting Chair for this meeting due to David Wills absence and John Bedell was a voting member.

COMMITTEE MEMBERS PRESENT:

Mike Gemperle, Vice Chair
John Bedell, Acting Chair
Mike Sencer, Hidden Villa Ranch
Steve Mahrt, Petaluma Farms
Andrew Demler, Demler Brothers
Kaliko Orian, Kaliko Farms
Lupe Gutierrez, NuCal Foods
Glenn Hickman, Hickman Family Farms
Richard Breitmeyer, Public Member
John Bedell, Alternate
Frank Hilliker, Alternate
Cathy Roache, CACASA Representative, Non-Voting Member

INTERESTED PARTIES:

Debbie Murdock

CDFA:

William Rohner
Dr. Elizabeth Cox
Logan Bartley

Michael Abbott
Paula Batarseh
Laura Barlow

(3) **INTRODUCTIONS**

Members of the Shell Egg Advisory Committee as well as the staff working with the California Department of Food and Agriculture introduced themselves.

(4) **APPROVAL OF MINUTES**

Mike Gemperle asked SEAC to review the meeting minutes from March 9, 2021.

Motion #1: Mike Sencer made a motion to accept the minutes. Steve Mahrt seconded the motion. All members agreed with no abstentions. The motion passed unanimously.

(5) **SUBCOMMITTEE RECOMMENDATION**

Michael Abbott introduced the Proposed Definition of Cage-Free as discussed in the Subcommittee Meeting held on March 30, 2021.

The Proposed Definition of Cage-Free:

“Cage Free” labeling means at a minimum, eggs come from hens that have been raised in a Cage Free Housing System that includes an indoor or outdoor controlled environment for egg-laying hens within which hens are free to roam unrestricted except by external walls. Hens are provided enrichments that allow them to exhibit natural behaviors including, at a minimum, scratch areas, perches, nest boxes, and dust bathing areas, within which farm employees can provide care while standing within the hens’ usable floorspace. Egg laying hens are raised in a housing system that meets the minimum requirements of 1 square foot of useable floor space per bird for multi-tiered aviaries and partially slatted systems or 1.5 square feet of useable floor space per bird for single-level all-litter floor systems.”

Motion #2: Glenn Hickman motioned to adopt this definition of Cage-Free and to direct staff to put it into regulation. Mike Sencer seconded. All members agreed with no abstentions. The motion passed unanimously.

(6) **PROPOSITION 12 - LABELING**

Michael Abbott began this agenda item by stating that there had been comments made about whether the “CA SEFS Compliant” label would be necessary going forward. He explained that Shell Egg Food Safety requirements and Proposition 12 requirements are separate, and thus the existing Shell Egg Food Safety label would still be in place once Proposition 12 has regulations in effect.

Dr. Elizabeth Cox explained that there is a draft of Proposition 12 that proposes that all shell egg cartons would be required to have “CA Cage-Free” or “California Cage-Free” as a label. She further stated that once that draft goes into its Public Comment period, there can possibly be updates made to the draft based on feedback.

Steve Mahrt expressed concern with the proposed labeling as stated by Dr. Cox. He explained that the term “California Cage-Free” could be easily misunderstood by consumers into believing that the eggs were produced in the State of California.

There was also concern that the proposed label would not differentiate eggs produced in California and eggs produced out of state, and that some would take advantage of that and advertise out of state eggs as California-Produced eggs.

This item will be considered during the next Shell Egg Advisory Committee Meeting.

(7) **AB 954**

Michael Abbott introduced this agenda item by explaining that this bill is a suggestion, not a requirement. The goal of the bill was to make it easier for consumers to understand that when products get to their Sell-By Date, they are still edible.

The committee decided to not pursue any action regarding Assembly Bill 954.

(8) **2022 BUDGET DISCUSSION**

Discussion regarding the 21/22 FY Budget was opened to the committee.

Steve Mahrt and Glenn Hickman expressed disappointment in the proposed budget and wanted it to be reconsidered. They felt that there was nothing being done with the money taken from the Mill Fee Assessments and wanted to rescind the proposed mill fee increase.

Motion #2: Steve Mahrt motioned to accept the budget, and to modify the Mill Fee to keep it at ten cents per case. Glenn Hickman seconded the motion. The motion passed with four in favor, two opposed, and three abstentions.

This item will be considered during the next SEAC Meeting.

(9) **FORM 700 UPDATE**

Michael Abbott offered to create a checklist of required training that is needed to simplify it for those taking it.

(10) **IN PERSON MEETING DISCUSSION**

Michael Abbott began by stating that limited gatherings are possible, however not recommended.

Paula Batarseh stated that if a committee member feels that they will function better or feels strongly that they need to be in a room, there may be flexibility to create a hybrid model where a few members can meet in person while the remaining participants meet virtually.

(11) **PUBLIC COMMENTS**

No public comments were made.

(12) **FUTURE AGENDA ITEMS**

- Proposition 12 - Labeling
- Mill Fee Update
- Proposition 12 Update

(13) **UPCOMING SEAC MEETING DATES**

The next Shell Egg Advisory Committee Meeting will be held on July 21, 2021 at 10:00am via Zoom and in Room 267 at 2800 Gateway Oaks Drive in Sacramento, California.

(14) **ADJOURN**

Chair Gemperle asked for a motion to adjourn the meeting.

Motion #3: John Bedell made a motion to adjourn the meeting. Rich Breitmeyer seconded the motion. All members agreed with no abstentions. The motion passed unanimously.

The meeting adjourned at 11:06 a.m.

Respectfully submitted:

Logan Bartley

WRITTEN COMMENTS

From December 3, 2021 through January 17, 2022, the Department published a 45-day comment period. The Department received no comments within this timeframe, only a request to extend the timeframe to a 60-day comment period.

The original comment was received, February 14, 2022, which was after the comment period closed. The following document is a verbatim copy of the original emailed comment received on February 14, 2022, 7:26 am and the response email sent March 9, 2022.

European Union G/TBT/N/USA/1813 - The European Union (EU) would like to thank the authorities of the United States of America for providing the opportunity to comment on the draft "Marking Requirements - Cage-Free Eggs" notified on 15 December 2021 (G/TBT/N/USA/1813).

The EU takes this opportunity to recall that according to Article 2.9.4 of the TBT Agreement, Members shall, without discrimination, allow reasonable time for other Members to make comments on notified draft technical regulations. Furthermore, in its recommendation G/TBT/9 of 13 November 2000, the TBT Committee agreed that the normal time limit for comments on notifications should be at least 60 days.

The final date for providing comments on this notification is 17 January 2022 although the United States requested that comments be submitted by the 14th January to accommodate the Federal holiday. Hence, the commenting period is significantly shorter than that recommended by the TBT Committee. The comment deadline date would have to be extended to 13 February 2022 in order to allow for 60 days of comment period, as encouraged under the WTO TBT Agreement. The EU apologizes for sending these comments after the deadline specified by the United States but believes that they could still be of use and hopes they can be taken into consideration when finalising the notified legislation.

The EU welcomes the measures that concern the labelling of consumer containers of eggs as "cage free" and that clarify and make specific the requirements for the use of this labelling. The European Union takes note of the voluntary character of the labelling "cage free" and when used it refers to mandatory minimum standards to be applied for all eggs sold in California, therefore also applicable to third countries producers.

Given the strong interest of European citizens in animal welfare matters¹, the EU watches with interest the regulatory approach that California is proposing to adopt in the area of animal welfare. As announced in the Farm to Fork Strategy, adopted by the Commission on 20 May 2020, the Commission also intends to propose a revision of the EU animal welfare legislation by the end of 2023 and possibly introduce an animal welfare labelling framework.

Current EU rules concerning the welfare of laying hens are laid down in Council Directive 98/58/EC and in Council Directive 1999/74/EC. While Directive 98/58/EC provides for general minimum rules for the protection of farmed animals, Directive 1999/74/EC lays down rules specific to the welfare of laying hens. It makes a distinction between 3 types of rearing systems for laying hens. Of these, the non-enriched cage systems have been prohibited since 1 January 2012. The systems which remain in use are: enriched cages where laying hens have at least 750 cm² of cage area per hen and alternative systems where the stocking density does not exceed 9 laying hens per m² usable area, with at least one nest for every 7 hens and adequate perches. Whichever system is used, all hens must have a nest, perching space, litter to allow pecking and scratching, and unrestricted access to a feed trough. The directive also states that all egg production units must be registered with the competent authorities in EU countries and have a distinguishing number, which can be used to trace eggs back to their farm of origin. For full details please refer to the directive that is available under https://ec.europa.eu/food/animals/animal-welfare_en. With the revision of the animal welfare legislation, we will be looking at the use of cage-free systems in the future. We will also look at labelling options.

In order to exchange our best practices, the EU would like to ask the United States to share the scientific and technical information which has been used for the development of the measures. Similarly, the EU would further like to ask if the United States could share the details of its

impact assessment annexed to the notified draft, notably on the impact of the new labelling requirements on producers and the global supply chain of eggs.

The EU would be grateful if the above-mentioned comments could be taken into account and replied to before adoption of the notified draft.

¹ See in particular Animal welfare – ‘End the Cage Age’ European citizens’ initiative (europa.eu)

Ellis, Kim@CDFA

From: Abbott, Michael@CDFA
Sent: Tuesday, April 19, 2022 12:36 PM
To: Ellis, Kim@CDFA
Subject: FW: EU's Comments on USA WTO Notification G/TBT/N/USA/1813 on California's Proposed Marking Requirements for Cage-Free Eggs
Attachments: CF-UEP-Guidelines_17-3.pdf; STD 399_CageFree_signed.pdf

Save this just in case I can't find my copy. This is the follow up response to their comment.

Michael Abbott
Egg Quality Program Manager
Senior Environmental Scientist (Supervising) California Department of Food and Agriculture Meat, Poultry, & Egg Safety Branch
Office: 916-900-5060
HQ Phone: 916-900-5062
Fax: 916-900-5334
Email: Michael.abbott@cdfa.ca.gov

-----Original Message-----

From: Abbott, Michael@CDFA
Sent: Wednesday, March 9, 2022 11:48 AM
To: jennifer_a_stradtman@ustr.eop.gov; usatbtep <usatbtep@nist.gov>
Cc: Jones, Annette@CDFA <annette.jones@cdfa.ca.gov>
Subject: RE: EU's Comments on USA WTO Notification G/TBT/N/USA/1813 on California's Proposed Marking Requirements for Cage-Free Eggs

All,

This is a follow up email regarding the information earlier requested.

We appreciate receiving comments from the European Union (EU) regarding notification g/tbt/n/usa/1813 Marking Requirements - Cage-Free Eggs. We have accepted, reviewed, and considered them. As the EU comments do not make any specific recommended changes to the proposed regulatory language, and rather suggest an ongoing dialogue and exchange of information, we can continue follow-up communication outside of the official California rule-making structure.

As noted in your comments, the proposed regulations defining “cage-free” housing for egg-laying hens are only applicable to voluntarily use of the term “Cage-Free” on egg containers. Also as alluded to in your comments, the 2018 public initiative passed in California (Proposition 12: Farm Animal Confinement) mandates that after December 31, 2021, shell eggs and liquid eggs sold in California be from hens confined in a system that meets a minimum usable floor space per hen and the “cage-free housing standards” as defined and chaptered in California Health and Safety Code (HSC) Sections 25990 and 25991. These standards for “cage-free” housing were fixed in the initiative by the sponsors and can only be altered by another public initiative or a 4/5th vote of both legislative houses.

The regulation in notification g/tbt/n/usa/1813 makes it clear that when the term “cage-free” is used in California commerce, the definition must align with public understanding of “cage-free systems” as established when Proposition 12 passed and became law. The standards for “cage-free systems” were largely based on the United Egg Producers (UEP) 2017 guidelines for cage-free housing. It is our understanding that UEP, at least in part, relied on standards

adopted in Europe and recommended by the Royal Society for the Prevention of Cruelty to Animals (RSPCA). It is our further understanding that UEP used these standards in conjunction with an Independent Scientific Committee and UEP's Animal Welfare Committee to create the UEP guidelines. These guidelines were reviewed and endorsed by the Food Marketing Institute and the National Council of Chain Restaurants. See attached UEP Guidelines for reference and we urge the EU to reach out directly to UEP if additional information is needed.

The economic impact assessment was included with the notice that was published and has not been changed. Attached to this email is the STD Form 399 that adds some clarifying details to the assessment summarized in the published notice.

Thank you,

Michael Abbott
Egg Quality Program Manager
Senior Environmental Scientist (Supervising) California Department of Food and Agriculture Meat, Poultry, & Egg Safety Branch
Office: 916-900-5060
HQ Phone: 916-900-5062
Fax: 916-900-5334
Email: Michael.abbott@cdfa.ca.gov

-----Original Message-----

From: Abbott, Michael@CDFA
Sent: Friday, February 18, 2022 10:11 AM
To: jennifer_a_stradtman@ustr.eop.gov; usatbtep <usatbtep@nist.gov>
Cc: Jones, Annette@CDFA <annette.jones@cdfa.ca.gov>
Subject: RE: EU's Comments on USA WTO Notification G/TBT/N/USA/1813 on California's Proposed Marking Requirements for Cage-Free Eggs

Good morning,

The comments submitted by the EU will be addressed in the final rulemaking record. We will follow up separately to provide documentation requested and facilitate information sharing.

Thank you and please let me know if you have further questions.

Michael Abbott
Egg Quality Program Manager
Senior Environmental Scientist (Supervising) California Department of Food and Agriculture Meat, Poultry, & Egg Safety Branch
Office: 916-900-5060
HQ Phone: 916-900-5062
Fax: 916-900-5334
Email: Michael.abbott@cdfa.ca.gov

-----Original Message-----

From: Stradtman, Jennifer A. EOP/USTR <Jennifer_A_Stradtman@ustr.eop.gov>
Sent: Monday, February 14, 2022 7:26 AM
To: Sokolowski, Sophia P. EOP/USTR <Sophia.P.Sokolowski@ustr.eop.gov>; Emily Desai <emily.desai@gobiz.ca.gov>; Kayla Ungar <Kayla.Ungar@GOV.CA.GOV>; Ferrell, Samantha S. EOP/USTR <Samantha.S.Ferrell@ustr.eop.gov>
Subject: EU's Comments on USA WTO Notification G/TBT/N/USA/1813 on California's Proposed Marking Requirements for Cage-Free Eggs

All,

Attached please find the EU's comments on California's Marking Requirements for Cage Free Eggs. USTR notes the Governor's office will pass these comments to the correct point of contact, which we understand to be:

Michael Abbott

Email: Michael.abbott@cdfa.ca.gov

Egg Quality Program Manager

Senior Environmental Scientist (Supervising) California Department of Food and Agriculture (CDFA) Meat, Poultry, & Egg Safety Branch

Office: 916-900-5060

HQ Phone: 916-900-5062

Fax: 916-900-5334

We also have good news. Canada will not raise Proposition 12 regarding animal confinement requirements (G/TBT/N/USA/1737) in our bilateral meeting. I will know whether China will raise Proposition 65 Article 6 Acrylamide in Food Warnings by February 17.

I still need dates to share with Colombia on the food labeling and GMP training they have requested.

Please let me know if you have any questions.

Regards,

Jennifer Stradtman

Director, Technical Barriers to Trade

Office of the United States Trade Representative

202-492-0779 (mobile)

PUBLIC HEARING

The Department did not schedule a public hearing for this proposal and no member of the public requested a hearing.

**DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED REGULATIONS**

MARKING REQUIREMENTS – CAGE FREE

Text proposed to be added is displayed in underline type. Text proposed to be deleted is displayed in ~~strikethrough~~ type.

California Code of Regulations
Title 3. Food and Agriculture
Division 3. Economics
Chapter 1. Fruit and Vegetable Standardization
Subchapter 3. Eggs
Section 1354. Marking Requirements

Section 1354. Marking Requirements.

(a) Grade and Size Designation. Where eggs are not produced by the person whose name appears on the label, the name shall be qualified by a phrase that reveals the connection such person has with such eggs; such as, “Produced for _____”, “Distributed by _____”, or any other wording that expresses the facts. Each container or subcontainer of shell eggs shall be marked with the name, address and zip code of the person by or for whom the eggs were graded and packed, and the unabbreviated designation of one of the following sizes and grades:

<i>Size</i>		<i>Grade</i>	
Jumbo	Medium		Grade AA
Extra Large	Small		Grade A
Large	Peewee		Grade B

Only one size and grade shall appear upon a container, subcontainer or placard. Size and grade shall be plainly marked in letters not less than 1/4 inch in height, as follows:

(1) Containers holding three dozen or less, on the outside top face; and

(2) Containers holding more than three dozen, on one outside top, side or end, except that oblong containers shall be marked on one outside end.

(b) Price Advertising. Any advertisement, sign or placard, which indicates the price of eggs for sale, must also use the full designation of size and grade.

(1) Superlative descriptions or other amplification of grade or size are not permitted on containers. Prohibited words related to grade include, but are not limited to: “fancy,” “select,” “premium,” and “superior.” Prohibited words related to size include, but are not limited to: “oversize,” and “giant.”

(2) Brand names on consumer size containers which use a superlative term shall be separated from the size and grade designation in a style of lettering which makes it obvious that the brand name is not related nor intended to be read in conjunction with size or grade designation. Additionally, each such brand name shall be followed immediately by the word

“brand” in letters at least one-half the size of letters or figures used in the brand name, and in the same color, style, and prominence.

(d) Descriptive Terms.

(1) Descriptive terms, such as “polyunsaturated,” “plus polyunsaturates,” “higher in iodine,” “flavored with iron” or other wording, indicating a quality or ingredient different than found in a normally produced egg, may not appear in labeling unless approved by the department. Information concerning the altered constituent(s) must be submitted to the department, describing the method used to create and verify the change. If determined that a statistically significant difference exists, relative to the descriptive term used, and provided the term is not judged misleading, permission may be granted for its use.

(2) Terms such as “organic” and “organically produced” or similar description relating to production, qualities, nature of the product or other descriptive terms, if determined by the department not to be misleading or deceptive, may be used.

(3) Eggs labeled with the descriptive term “Cage-Free”, on consumer size containers, must be raised in Cage-Free Housing Systems that meet the following minimum standards:

(A) 1 (one) square foot of useable floor space per bird for egg laying hens in a multi-tiered aviary and partially slatted systems, or 1.5 (one point five) square feet of useable floor space per bird for egg laying hens in a single-level all-litter floor system.

(B) Hens are allowed to roam unrestricted, except for external walls, and contain the following enrichments: scratch areas, perches, nest boxes, and dust bathing areas.

(C) Farm employees are able to provide care while standing in the hen’s usable floor space.

(e) Shell eggs packed in California in consumer size containers exclusively for out-of-state sales are exempt from the prohibitions of (c) above.

(f) In accordance with section 1350 of Title 3 of the California Code of Regulations, commencing January 1, 2015, the principal display panel for containers for all eggs sold in California shall have the following statement: “California Shell Egg Food Safety Compliant”. The statement may be abbreviated to read “CA SEFS Compliant” or a similar abbreviation or other descriptive term may be used if determined by the Department not to be misleading or deceptive. The statement shall be legible and plainly marked on each container in letters not less than 1/4 inch in height.

Note: Authority cited: Sections 407, 27531 and 46002, Food and Agricultural Code. Reference: Sections 27521, 27573, 27631 and 27637, Food and Agricultural Code.

Updated Informative Digest

(Government Code section 11346.9(b))

There have been no changes in applicable laws or to the effect of the proposed regulation from the laws and effects described in the Informative Digest/Policy Statement Overview published in the *California Regulatory Notice Register* on December 3rd, 2021 [Notice File No. Z2021-1122-02, Register 2021, No.49-Z].

From December 3, 2021 through January 17, 2022, the Department published a 45-day comment period. The Department received no comments within this timeframe, only a request to extend the timeframe to a 60-day comment period.

The actual comment was received, February 14, 2022, after the comment period closed. It was not a comment for modifications to the proposed regulation, but rather a request for information. Furthermore, the information requested is referenced in the Initial Statement of Reasons (ISOR), Technical Documents section, and is publicly available information. See section E for comments.

Error in the Existing Text of Regulations:

The Department identified a scrivener's error in the formatting of the text of the existing regulation submitted with the Initial Statement of Reasons. The Department inadvertently omitted a subsection marker. The error is non substantive and is in existing text that is not being changed in this rulemaking action.

The text submitted read:

(b) Price Advertising. Any advertisement, sign or placard, which indicates the price of eggs for sale, must also use the full designation of size and grade.

(1) Superlative descriptions or other amplification of grade or size are not permitted on containers. Prohibited words related to grade include, but are not limited to: "fancy," "select," "premium," and "superior." Prohibited words related to size include, but are not limited to: "oversize," and "giant."

The text should read:

(b) Price Advertising. Any advertisement, sign or placard, which indicates the price of eggs for sale, must also use the full designation of size and grade.

(c) Superlative and Brand Names.

(1) Superlative descriptions or other amplification of grade or size are not permitted on containers. Prohibited words related to grade include, but are not limited to: "fancy," "select," "premium," and "superior." Prohibited words related to size include, but are not limited to: "oversize," and "giant."

**DEPARTMENT OF FOOD AND AGRICULTURE
Animal Health Branch
FINAL STATEMENT OF REASONS**

Hearing Date

No hearing was scheduled by the Department of Food and Agriculture (Department), or requested by the public, regarding this proposal.

Update Of Initial Statement of Reasons

There has been no change to the initial Statement of Reasons.

Mandate on Local Agencies or School Districts

The Department has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts

Economic Impact on Small Businesses

The Department received no proposed alternatives from the public which would lessen any adverse economic impact on small businesses.

Summary and Response to Comments Received During the 45-Day Public Comment Period from December 3, 2021 through January 17, 2022:

From December 3, 2021 through January 17, 2022, the Department published a 45-day comment period. The Department received no comments within this timeframe, only a request to extend the timeframe to a 60-day comment period.

The actual comment was received, February 14, 2022, after the comment period closed. It was not a comment for modifications to the proposed regulation, but rather a request for information. Furthermore, the information requested is referenced in the Initial Statement of Reasons (ISOR), Technical Documents section, and is publicly available information.

Comments:

European Union G/TBT/N/USA/1813 - The European Union (EU) would like to thank the authorities of the United States of America for providing the opportunity to comment on the draft "Marking Requirements - Cage-Free Eggs" notified on 15 December 2021 (G/TBT/N/USA/1813).

The EU takes this opportunity to recall that according to Article 2.9.4 of the TBT Agreement, Members shall, without discrimination, allow reasonable time for other Members to make comments on notified draft technical regulations. Furthermore, in its recommendation G/TBT/9 of 13 November 2000, the TBT Committee agreed that the normal time limit for comments on notifications should be at least 60 days.

The final date for providing comments on this notification is 17 January 2022 although the United States requested that comments be submitted by the 14th January to accommodate the Federal holiday. Hence, the commenting period is significantly shorter than that recommended by the TBT Committee. The comment deadline date would have to be extended to 13 February 2022 in order to allow for 60 days of comment period, as encouraged under the WTO TBT Agreement. The EU apologizes for sending these comments after the deadline specified by the United States but believes that they could still be of use and hopes they can be taken into consideration when finalising the notified legislation.

The EU welcomes the measures that concern the labelling of consumer containers of eggs as "cage free" and that clarify and make specific the requirements for the use of this labelling. The European Union takes note of the voluntary character of the labelling "cage free" and when used it refers to mandatory minimum standards to be applied for all eggs sold in California, therefore also applicable to third countries producers.

Given the strong interest of European citizens in animal welfare matters¹, the EU watches with interest the regulatory approach that California is proposing to adopt in the area of animal welfare. As announced in the Farm to Fork Strategy, adopted by the Commission on 20 May 2020, the Commission also intends to propose a revision of the EU animal welfare legislation by the end of 2023 and possibly introduce an animal welfare labelling framework.

Current EU rules concerning the welfare of laying hens are laid down in Council Directive 98/58/EC and in Council Directive 1999/74/EC. While Directive 98/58/EC provides for general minimum rules for the protection of farmed animals, Directive 1999/74/EC lays down rules specific to the welfare of laying hens. It makes a distinction between 3 types of rearing systems for laying hens. Of these, the non-enriched cage systems have been prohibited since 1 January 2012. The systems which remain in use are: enriched cages where laying hens have at least 750 cm² of cage area per hen and alternative systems where the stocking density does not exceed 9 laying hens per m² usable area, with at least one nest for every 7 hens and adequate perches. Whichever system is used, all hens must have a nest, perching space, litter to allow pecking and scratching, and unrestricted access to a feed trough. The directive also states that all egg production units must be registered with the competent authorities in EU countries and have a distinguishing number, which can be used to trace eggs back to their farm of origin. For full details please refer to the directive that is available under https://ec.europa.eu/food/animals/animal-welfare_en. With the revision of the animal welfare legislation, we will be looking at the use of cage-free systems in the future. We will also look at labelling options.

In order to exchange our best practices, the EU would like to ask the United States to share the scientific and technical information which has been used for the development of the measures. Similarly, the EU would further like to ask if the United States could share the details of its impact assessment annexed to the notified draft, notably on the impact of the new labelling requirements on producers and the global supply chain of eggs.

The EU would be grateful if the above-mentioned comments could be taken into account and replied to before adoption of the notified draft.

¹ See in particular Animal welfare – 'End the Cage Age' European citizens' initiative (europa.eu)

Response:

Rejected. CDFA acknowledged the receipt of, and reviewed the comments submitted by the EU and informed them that the comments would be addressed in the final rulemaking record. The comments were received after closing of the 45-day comment period. Since the comments referenced a request for documents and materials that were clearly referenced in the Initial Statement of Reasons and available publicly and electronically, the department followed up with informal communications that included requested materials. The entirety of The Department's response can be found in section E.

Determination of Alternatives Considered

The Department received no alternatives to this proposal. Therefore, the Department has determined that no reasonable alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Nor were there any alternatives that proposed or otherwise brought to the Department's attention that would lessen adverse economic impact on small businesses than the adopted regulation. This proposal is necessary to amend the regulations to include a definition of the term "cage-free" to the Marking Requirements regulation.

Statement of Mailing Notice

I certify that CDFA has complied with the requirements of Government Code section 11346.4(a)(1) through (4) and that the 45-day notice was mailed and e-mailed on April 19, 2019.

Date

Kimberly Ellis, AGPA

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME Food and Agriculture	CONTACT PERSON Michael Abbott	EMAIL ADDRESS michael.abbott@cdfa.ca.gov	TELEPHONE NUMBER 916-900-5060
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Marking Requirements			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- a. Impacts business and/or employees e. Imposes reporting requirements
 b. Impacts small businesses f. Imposes prescriptive instead of performance
 c. Impacts jobs or occupations g. Impacts individuals
 d. Impacts California competitiveness h. None of the above (Explain below):

Provides minimum standard from labeling shell eggs "cage free"***If any box in Items 1 a through g is checked, complete this Economic Impact Statement.******If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.*****Food and Agriculture**2. The _____ estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- Below \$10 million
 Between \$10 and \$25 million
 Between \$25 and \$50 million
 Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a [Standardized Regulatory Impact Assessment](#) as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total
businesses impacted that are small businesses: _____4. Enter the number of businesses that will be created: **0** eliminated: **0**Explain: **this regulation change has no impact on businesses or current labeling requirements. There are no associated costs**5. Indicate the geographic extent of impacts: Statewide
 Local or regional (List areas): _____6. Enter the number of jobs created: **0** and eliminated: **0**Describe the types of jobs or occupations impacted: **n/a**7. Will the regulation affect the ability of California businesses to compete with
other states by making it more costly to produce goods or services here? YES NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT (CONTINUED)**B. ESTIMATED COSTS** *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ 0
- a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
- b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
- c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____
- d. Describe other economic costs that may occur: This regulation has no associated costs as it provides minimum standards for using "cage free" on a label for shell eggs.
2. If multiple industries are impacted, enter the share of total costs for each industry: _____
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ _____
4. Will this regulation directly impact housing costs? YES NO
If YES, enter the annual dollar cost per housing unit: \$ _____
Number of units: _____
5. Are there comparable Federal regulations? YES NO
- Explain the need for State regulation given the existence or absence of Federal regulations: The Federal Government has failed to produce minimum standards for over 5 years and relies on the egg industry to establish their own minimum standards.
- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ 0

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: This clarification ensures the California consumers are getting a product that meets the industry accepted minimum standards for cage free shell eggs. It will help to prevent shell eggs from being labeled as "cage free" when they don't meet the minimum requirements.
2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?
Explain: The benefits come from ensuring a fair and open marketplace for Californian consumers and producers.
3. What are the total statewide benefits from this regulation over its lifetime? \$ 0
4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: The only alternative to this would be the adoption of Federal minimum standards that currently do not exist. There are no other feasible alternatives.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ 0 Cost: \$ 0Alternative 1: Benefit: \$ 0 Cost: \$ 0

Alternative 2: Benefit: \$ _____ Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? YES NOExplain: There are no performance standards that would lower compliance costs as they are zero.**E. MAJOR REGULATIONS** *Include calculations and assumptions in the rulemaking record.****California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.***1. Will the estimated costs of this regulation to California business enterprises **exceed \$10 million**? YES NO***If YES, complete E2. and E3
If NO, skip to E4***

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

 YES NO*If YES, agencies are required to submit a [Standardized Regulatory Impact Assessment \(SRIA\)](#) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.*

5. Briefly describe the following:

The increase or decrease of investment in the State: there will not be an impact in the investment in the State.The incentive for innovation in products, materials or processes: n/aThe benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: this regulation ensures a fair and open marketplace for shell eggs and ensures California consumers that minimum standards are met.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

a. Implements the Federal mandate contained in _____

b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

3. Annual Savings. (approximate)

\$ _____

4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

5. No fiscal impact exists. This regulation does not affect any local entity or program.

6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (Rev. 10/2019)

FISCAL IMPACT STATEMENT (CONTINUED)

B. FISCAL EFFECT ON STATE GOVERNMENT *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the _____ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain _____

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain _____

FISCAL OFFICER SIGNATURE

 **Nathan
Johnson**

Digitally signed by Nathan
Johnson
Date: 2022.05.18
12:05:14 -07'00'

DATE

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY

 **Annette
Jones, D.V.M.**

Digitally signed by
Annette Jones, D.V.M.
Date: 2022.05.19
09:47:38 -07'00'

DATE

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER



DATE