



COK.net • 310-375-2280 • info@cok.net



Animal Legal
Defense Fund

SENT VIA EMAIL AND PRIORITY MAIL



March 20, 2013

Mr. Alfred V. Almanza, Administrator
Food Safety and Inspection Service
U.S. Department of Agriculture
300 12th Street SW
Room 102, Cotton Annex
Washington, D.C. 20250

Dear Mr. Almanza,

This letter is regarding the Citizens' Petition to Change the Labeling Requirements for Eggs Sold in the United States (the Petition) submitted by Compassion Over Killing (COK), the Animal Legal Defense Fund (ALDF), and others to the Food Safety Inspection Service (FSIS) in 2007 and subsequently updated in 2010. This Petition seeks regulatory action requiring disclosure of production method labels on egg cartons, in light of the rampant misleading labeling in the egg marketplace.

The United Egg Producers (UEP), a group representing the owners of nearly ninety five percent of the egg-laying hens in the United States, supports a bill introduced in 2012 that would set federal requirements for the treatment of egg-laying hens and standardize the labeling of eggs.¹ The bill, S. 3239, requires that all egg cartons be conspicuously marked with housing related information clearly stating the method used to produce the eggs inside.² This is very similar to the regulatory action sought by the Petition. Both the petition and the bill seek requirements for egg cartons to clearly state whether the hens used to produce the eggs were raised in free-range or cage-free conditions, or

¹ United Egg Producers, About Us, <http://www.unitedegg.org>; United Egg Producers, *HR 3798 Support the Egg Bill – United Egg Producers*, <http://www.eggbill.com>; United Egg Producers and the Humane Society of United States, *Federal Bill Introduced to Improve Housing for Egg-Laying Hens and Provide Stable Future for Egg Farmers*, <http://www.uepcertified.com/pdf/Senate-Egg-Bill-Press-Release.pdf>.

² S. 3239 died at the end of the 112th session of Congress. It has not been reintroduced in the current session, though it is expected to be.

whether they are eggs from caged hens.³ As a result of these labels, consumers would be presented with reliable, standardized, statements giving them information about the welfare of the birds that produced the eggs they plan to buy. There is clearly a wide-reaching consensus on the creation of such a scheme. Despite this lack of opposition, the FSIS has declined to do so, incorrectly claiming that it lacks authority over the labeling of eggs. FSIS's denial of the Petition is arbitrary and inexplicable, especially in the face of the overwhelming evidence of routine consumer deception by egg producers presented by the Petitioners.

One clear example of FSIS' involvement in production method egg labeling is its oversight of the Process Verified Program, discussed in petitioners' 2010 update. Since that update letter, an investigation done by Mercy For Animals further highlights the need for labeling reform. In 2011, Mercy For Animals conducted an undercover investigation at Sparboe Farms, which was the fifth largest producer of eggs and egg products in the U.S., producing eggs from caged hens, and the only egg company that was a member of the Process Verified Program,⁴ which included animal welfare production method claims. This investigation found appalling animal cruelty and disregard for the welfare of egg-laying hens. Undercover video of Sparboe workers torturing and killing hens and exposing the filthy conditions under which eggs were produced for human consumption garnered media attention and shocked the public

The FSIS has arbitrarily and unlawfully refused to regulate the labeling of eggs despite ample evidence of the willful deception of consumers by egg producers. Unless the Petition is granted in the next 5 days, Compassion Over Killing, the Animal Legal Defense Fund, and individual members of each organization intend to file suit under the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, to overturn the denial of the Petition and to require the FSIS to protect consumers by promulgating regulations ensuring the accurate labeling of eggs.

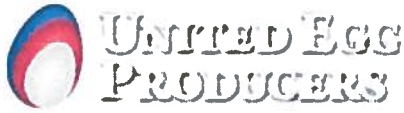
Sincerely,

Cheryl Leahy, General Counsel
Compassion Over Killing
P.O. Box 9773
Washington, DC 20016
cleahy@cok.net
773.259.7760

Carter Dillard, Director of Litigation
Animal Legal Defense Fund
170 East Cotati Avenue
Cotati, CA 94931
cdillard@ALDF.org
707.795.2533

³ S. 3239, 112th Cong. (2012).

⁴<http://www.fda.gov/downloads/AboutFDA/CentersOffices/ORA/ORAElectronicReadingRoom/UCM280441.pdf>



THE HUMANE SOCIETY
OF THE UNITED STATES

Senate Bill Introduced to Improve Housing for Egg-Laying Hens and Provide Stable Future for Egg Farmers

Egg Industry and Animal Welfare Groups Enthusiastically Support Legislation

WASHINGTON (May 24, 2012) – The Humane Society of the United States and the United Egg Producers applaud the introduction of S. 3239, the Egg Products Inspection Act Amendments of 2012, in the U.S. Senate by Sen. Dianne Feinstein, D-Calif., with Sens. Richard Blumenthal, D-Conn., Scott Brown, R-Mass., Maria Cantwell, D-Wash., Jeff Merkley, D-Ore., David Vitter, R-La., and Ron Wyden, D-Ore. joining as original cosponsors. This measure is the Senate companion to H.R. 3798, introduced in January by Reps. Kurt Schrader, D-Ore., Elton Gallegly, R-Calif., Sam Farr, D-Calif., and Jeff Denham, R-Calif.

Spurred by a strong commitment to both animal welfare and agriculture, Sen. Feinstein introduced the bill to push forward improvements in housing for 280 million hens used in U.S. egg production, while providing a stable future for egg farmers.

The legislation will require egg producers to essentially double the space allotted per hen and make other important animal welfare improvements during a tiered phase-in period that allows farmers time to make the investments in better housing, with the assurance that all will face the same requirements by the end of the phase-in period. The legislation has an unusually diverse coalition of backers in industry, animal welfare, science-based groups, and consumer protection, including the UEP, The HSUS, American Veterinary Medical Association, American Association of Avian Pathologists, Association of Avian Veterinarians, American Society for the Prevention of Cruelty to Animals (ASPCA), Farm Sanctuary, Consumer Federation of America, National Consumers League, and state and regional agricultural and egg producer groups, including the Arkansas Egg Council, Association of California Egg Farmers, Colorado Egg Producers Association, Florida Poultry Association, Georgia Egg Association, Michigan Agri-Business Association, Michigan Allied Poultry Industries, New England Brown Egg Council, North Carolina Egg Association, Ohio Egg Processors Association, and Rocky Mountain Farmers Union.

“This legislation will help ensure the American consumers continue to have a wide variety and uninterrupted supply of eggs at affordable prices,” said Gene Gregory, president of United Egg Producers, which represents farmers who produce nearly 90 percent of the eggs in the U.S. “Our industry is being endangered by the growing patchwork of differing and contradictory state laws and ballot initiatives that are impeding the free flow of interstate commerce in eggs that is so vital to grocers, restaurateurs, food manufacturers and consumers.”

“This legislation is a compromise between HSUS and UEP, with both organizations stretching themselves in order to find a solution that’s good for animal welfare, for the industry, and for the nation as a whole,” said Wayne Pacelle, president and CEO of The Humane Society of the United States. “There’s no reason for Congress to do anything but enthusiastically embrace this sort of problem-solving by the primary stakeholders.”

“This is legislation that egg farmers want and need to survive,” said David Lathem, second-generation egg farmer from Georgia and chairman of United Egg Producers. “Because it is an amendment to the Egg Products Inspection Act it only affects egg farmers: no other farmers would be impacted. We thank the Senator for her leadership.”

The Egg Products Inspection Act Amendments of 2012 would:

- require conventional cages to be replaced during an ample phase-in period with new, enriched colony housing systems that provide each egg-laying hen nearly double the amount of current space;
- require that, after a phase-in period, all egg-laying hens be provided with environmental enrichments, such as perches, nesting boxes and scratching areas, that will allow hens to express natural behaviors;
- require labeling on all egg cartons nationwide to inform consumers of the method used to produce the eggs: “eggs from caged hens,” “eggs from hens in enriched cages,” “eggs from cage-free hens” and “eggs from free-range hens”;
- prohibit feed- or water-withdrawal molting to extend the laying cycle, a practice already prohibited by the United Egg Producers Certified program;
- require standards approved by the American Veterinary Medical Association for euthanasia of egg-laying hens;
- prohibit excessive ammonia levels in henhouses; and
- prohibit the transport and sale of eggs and egg products nationwide that don’t meet these requirements.

If enacted, the proposal would require egg producers to increase space per hen in a tiered phase-in, with the amount of space hens are given increasing, in intervals, over the next 15 to 18 years. (Phase-in schedules are more rapid in California, consistent with a ballot initiative approved earlier by that state’s voters.) Currently, the majority of hens are each provided 67 square inches of space, with up to 50 million receiving just 48 square inches. The proposed phase-in would culminate with a minimum of 124 square inches of space for white hens and 144 for brown hens nationwide.

Farmers have begun to invest in enrichable cage housing systems in hopes that this legislation will pass and provide clarity for what is acceptable hen housing in all states in the future.

-30-

The Humane Society of the United States is the nation’s largest animal protection organization—backed by 12 million Americans, or one of every 28. For more than a half-century, The HSUS has been fighting for the protection of all animals through advocacy,

education, and hands-on programs. Celebrating animals and confronting cruelty—on the web at humanesociety.org.

United Egg Producers (UEP) is a Capper-Volstead cooperative for U.S. egg farmers, representing the ownership of approximately 88 percent of the nation's egg-laying hens. UEP members produce eggs using various systems including modern cage production, enriched cages, cage-free, free range, organic and other specialty eggs. For more information about UEP, please go to www.eggbill.com.