



**For the Attention of: Executive Officer: Agricultural Product Standards**  
Per email: [Puritym@daff.gov.za](mailto:Puritym@daff.gov.za)

1 July 2019

Dear Honorable Representative

**RE: COMMENTS ON DRAFT REGULATIONS REGARDING THE GRADING, PACKING AND MARKING OF EGGS INTENDED FOR SALE IN THE REPUBLIC OF SOUTH AFRICA**

We refer to the Draft Regulations Regarding the Grading, Packing and Marking of Eggs Intended for Sale in the Republic of South Africa published on 31 May 2019, Notice 289 of 2019 (the “**Regulations**”).

We welcome these efforts by the Department to provide for better regulation. It is critical to ensure the interests of both human and nonhuman animals as well as ensure transparency as required by our Constitution and other legislation, such as the Consumer Protection Act.

Please find attached some high-level comments of Animal Law Reform South Africa (“**ALRSA**”) on the Regulations

ALRSA is a non-profit organisation composed of legal professionals, passionate about animals, humans, the environment and the law. We are committed to connecting issues of the law; animal wellbeing and social justice in South Africa. We are the only non-profit in South Africa focused on Animal Law issues and collectively have decades of experience in matters pertaining to the law, animals, humans and the environment. As an organisation that believes that animals have intrinsic worth and thus have the right and interests in having that worth protected, they should not be utilised.

We do not support the caging of birds – particularly for egg production. This practice must be completely eliminated, and the necessary policies and laws implemented to do this. However, as animals are utilised we wish to attempt to provide the highest level of protection for them in law and policy. Thus, the spirit of our comments is to ensure the protection of animals utilised, the protection of people who are purchasing these products as well as ensuring industry accountability.

These Regulations only came to our attention a few days ago, and accordingly, we have not had an opportunity to properly consider these in their totality, nor to provide detailed comments on each and every regulation nor its potential effects.

This is a very important matter which affects guaranteed human constitutional rights, animal interests, transparency, industry accountability, human and animal health, consumer protection and rights and various other issues. South Africa has both domestic and international duties which need



to be complied with. Accordingly, this issue cannot be considered in a silo, and must be given due attention. We would like the opportunity to consider in further detail. If we have not provided specific comments on a particular regulation, or if we have and additional information comes to light, we reserve the right to amend our comments and/or make new comments.

Please confirm receipt of our comments. In addition, please add Animal law Reform South Africa (ALRSA) to your list of interested stakeholders and include Amy P. Wilson ([amywilson@animallawreform.org](mailto:amywilson@animallawreform.org)) on your list.

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## 1. General

- a. On each and every container in which eggs are sold, the source of the eggs must be included. Thus, eggs must always contain either “Cage Eggs”, “Free Range Eggs” or “Barn Eggs”, without exception. (Further comments on these terms contained below).
- b. In Cage Eggs there are still restrictions that should apply. For example, hens should not be kept in cages on top of one another. This is not only inhumane, but unhygienic as faeces and other matter permeates the levels causing sickness and diseases.
- c. Any persons responsible for inspections including assignees or others must be completely independent. They must also have the requisite skills and knowledge to enforce the act and regulations. This includes all persons designated as “inspectors”, “assignees” and otherwise.
- d. In our comments we have referred broadly to hens, but this should be read to include all relevant egg laying birds included in the Regulations, as well as those that may have been excluded, but should have been included.
- e. There must be a policy level decision to phase out cages for egg producing hens as a matter of urgency. There are a multitude of issues for both nonhuman and human animals relating to this practice. Other jurisdictions around the world are recognising this and taken the relevant action. The Department has an opportunity to deal with some of these issues and be a leader for the African continent on these matters.
- f. We are happy to provide you with materials or resources for any suggestions/comments made herein.

## 2. Specific Comments

- a. Regulation 1:
  - i. Definition of “Barn Eggs” and usage
    1. A more accurate term would be “Indoor Eggs” as these animals do not have access to outdoors. Barn would still appear to indicate the traditional idea consumers have of a Barn where the animals can move in and out as they please, whereas in Barn Eggs, this is not the case.



2. Alternatively, an expression that the animals that produced these eggs did not go outside should be included.
- ii. Definition of “Cage Eggs”
    1. The requirements specified in the definition must rather be included in a separate requirements section and not in the definition. (As it has been done for “Barn Eggs” and “Free range Eggs”). By including the requirements in the definition, it creates a potential loophole – i.e. if producers do not meet these requirements, the eggs are not “Cage eggs” and not required to label them as such.
    2. Once moved to the correct regulation (12), the size of the cage must be specified. The birds must be able to turn around and spread their wings as an absolute minimum. There should be additional welfare provisions included for them.
    3. It must be an absolute requirement that “Cage Eggs” must be labeled as such. Thus, in distinguishing between the three types of eggs – if eggs do not meet the requirements for either Free Range or Barn Eggs, they must be labeled as cage eggs.
    4. In addition, when there are vertical cages, it must be ensured that faeces and other matter from the higher cages do not drop to other birds.
    5. We are happy to provide further wording on this section as well as materials and literature from around the world on this matter specifically.
  - iii. Definition of “DAFF”
    1. This must be amended to reflect the new name of the “Department Agriculture, Land Reform and Rural Development”.
    2. Same must be replaced throughout the Regulations.
  - iv. “Cage” has not been defined. More accurately, the term should be “Battery Cage Eggs”. There are also no requirements for the cage – which should be specified with regard to the welfare of the animals involved.
  - v. Definition of “sale/sell” or similar terms. A definition for the word “sell” and related terms should be included in the legislation to refer to all forms of commerce and other trade, including marketing and promotion of the goods and other matters covered by the Consumer Protection Act.
- b. Regulation 8
    - i. Sub regulation (1)(b):



1. It should be made absolutely clear that eggs must contain at least one of the three categories of methods of production, being Caged Eggs; Indoor Eggs (Barn Eggs) or Free-Range Eggs.
  2. The above applies regardless of whether the eggs were produced in South Africa or imported into South Africa.
- c. Regulation 6:
- i. All containers and outer containers must include the category of eggs being either Free Range, Barn (Indoor) Eggs or Cage Eggs.
- d. Regulation 8:
- i. See comments relating to Regulation 6 above.
- e. Regulation 11:
- i. Loose eggs must also bear the category of eggs as set out in Regulation 6 comments above.
- f. Regulation 12:
- i. Sub regulation (1):
    1. The lead in wording should also refer to images and pictures and any other representations that do not fall with the categories already specified.
    2. (a)(ii) - the word “humane”, should be included among the list and any statements regarding the state of being of the animals (i.e. “happy”, “humane treatment”) and/or their welfare.
    3. (a)(iii) – the words “or any wording relating to representing the animals as happy, their state of being other than the three defined categories of eggs, their welfare or otherwise” should be included in some form.
    4. (d) – this should include the state of being of the animals (i.e. “happy”, “humane treatment” and similar claims made) and all other factors set out in paragraph (a) to be included in relation to the images as well.
  - ii. Sub regulation (2):
    1. (a)(i) - ten hens per square meter **should not be considered free range**. This is an extremely small amount of space and the number of birds must be reduced accordingly. This is deceitful to consumers and must be amended.
    2. (a)(ii) – the daily access must include a time period – i.e. accessible for at least 12 hours of the day (during daylight), weather permitting. This access must also be accessible by all the animals, i.e. it is not sufficient to just make it accessible on one side if there are blockages from all the animals being able to get to the door. If there is only one access point but the animals cannot get there, they may never go outside.



- iii. Sub regulation (3):
  - 1. This should be limited to five hens and not ten hens.
- iv. Sub regulation (5):
  - 1. This should include any and all marketing, promotional activities, marketing activities and other activities to consumers. It is essential that transparency is ensured through all levels in the supply chain.

### **3. International and Foreign Best Practice**

- a. South Africa has the opportunity to be progressive - which allows us to eliminate harmful practices altogether.
- b. For example, certain jurisdictions are banning the use of cages altogether,<sup>1</sup> and we see a huge growth in similar movements – including other cruel methods of animal confinement – such as sow stalls, veal crates and the like. The European Union for example adopted a ban on battery cages as early as the 90s<sup>2</sup> and continues to make changes for the welfare of animals. South Africa should similar push for such initiatives and support a completely cage free system.

### **4. Litigation – Potential**

- a. We can also look to litigation and other cases in other jurisdictions such as the USA (only one example as these cases appear in various jurisdictions globally), to pre-empt similar problems in South Africa.
- b. Such cases include suing producers and others involved for falsely labelling, advertising or otherwise marketing eggs or the conditions of the birds who produced them. In particular, this relates to the source of the eggs and the treatment/lives of the birds involved. This is not limited to birds but includes other agricultural animals.
- c. Other cases include large recalls of eggs (with far reaching economic, reputational, health and other consequences). By turning to other jurisdictions, we may look to protect all relevant groups from unnecessary harm and other economic and legal consequences.

### **5. General**

- a. We have only included high level policy considerations, unless otherwise stated. There are numerous comments that could be made in relation to the Regulations, its objectives and other considerations, however for purposes of this submission, we have limited our comments to policy considerations.

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<sup>1</sup> In the USA, this has been done in States such as Washington, California and Massachusetts (<https://blog.humanesociety.org/2019/05/breaking-news-washington-governor-signs-historic-law-to-end-cage-confinement-of-egg-laying-hens.html>)

<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31999L0074>. Another useful resource in this regard: <https://www.eurogroupforanimals.org/new-report-aims-at-higher-welfare-cage-free-egg-production-in-the-eu>



- b. In addition, we do not necessarily have the scientific and technical background, and accordingly our comments relate mostly to the wording of the Regulations. We have not been exhaustive, and merely illustrative; thus, we wish our comments to be construed broadly for the purposes for which they were intended (being the protection of humans, nonhuman animals and the environment).
- c. Due to the importance of the matters covered by the Regulations, best international practice should be followed. South Africa has an opportunity to be a world leader in this regard, and set a precedent for the rest of Africa.
- d. In addition to best practice to be recorded in the relevant law and its regulations, enforcement will be critical. Designated, independent and suitably qualified persons should perform relevant activities. Resources (including financial, intellectual and otherwise) should be provided and allocated. Accountability and transparency are of the utmost importance in this area, given the public nature of this industry and far reaching effects. These effects are not limited to our borders, but extend regionally, and even have a global impact.
- e. We look forward to similar regulations being enacted in respect of other agricultural animals as there are huge misrepresentations and false claims currently in this regard, which are deceitful to consumers and harmful to nonhuman animals.

We look forward to receiving your acknowledgment of receipt and information in respect of the Regulations or our submission.

We are happy to answer any queries you may have or provide you with any further information (Kindly contact us on [amywilson@animallawreform.org](mailto:amywilson@animallawreform.org)). We are also happy to provide resources/materials or input that may be of assistance.

Yours sincerely,

**Amy P. Wilson**

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