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DEPARTMENT OF FOOD AND AGRICULTURE
ANIMAL HEALTH AND FOOD SAFETY SERVICES
PROPOSED REGULATIONS
EGG-LAYING HENS CONFINEMENT STANDARDS

The Department of Food and Agriculture, Animal Health and Food Safety Services Division, proposes to adopt Chapter 10 of Division 2 of Title 3 of the California Code of Regulations, as specified below.

1) Adopt Chapter 10 of Division 2 of Title 3 of the California Code of Regulations, to read as follows:

Chapter 10. Animal Confinement.

2) Adopt Article 1 and sections 1320 through 1320.10 of Chapter 10 of Division 2 of Title 3 of the California Code of Regulations, to read as follows:

Article 1. Egg-laying Hens.

Section 1320. Definitions.

Unless the context otherwise requires, the following definitions apply to this Article and words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand:

(a) "Audit trail" means records that are in sufficient detail to document the identification, source, supplier, transfer of ownership, transportation, storage, segregation, handling, packaging, distribution and sale of shell eggs or liquid eggs that were derived from an egg-laying hen confined in compliance with sections 25991 and 25992 of the Health and Safety Code and this Article.

(b) "Certifying agent" means any private entity accredited by the Department as a third-party certifying agent for the purpose of certifying a production or handling operation as a certified operation, or any government entity, including but not limited to the Department, that provides certification services.

(c) "Commercial sale" means to sell, offer for sale, expose for sale, possess for sale, exchange, barter, trade or otherwise distribute in California commerce including, but

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not limited to, transactions by a retailer with a consumer. It shall not include transactions for, or transfers of possession of, shell eggs or liquid eggs produced outside of the state that enter and exit California, without additional processing or repackaging, exclusively for purposes of transshipment or export for human consumption outside of the state.

(d) "Consumer" means any person who purchases shell eggs or liquid eggs for the sole purpose of his or her own family use or consumption, or that purchases or consumes eggs at a restaurant, food facility or other similar business that serves cooked eggs to customers or patrons.

(e) "Container" means any box, case, basket, tote, can, carton, sack, pouch, bag, package, wrapper, receptacle or any other device which is used to facilitate the handling, distribution, transportation or commercial sale of shell eggs or liquid eggs.

(f) "Cottage food operation" for purposes of this Chapter means an establishment as defined in section 113758 of the Health and Safety Code.

(g) "Egg handler" means a person engaged in the business of packing, repacking or otherwise preparing or manufacturing/processing shell eggs or liquid eggs for commercial sale (as an egg producer or otherwise) within or into California. This definition shall not apply to any person or business that only handles shell eggs or liquid eggs as an end-user.

(h) "Egg-laying hen" means any female domesticated chicken, turkey, duck, goose, or guineafowl kept for the purpose of egg production pursuant to section 25991(g) of the Health and Safety Code. For purposes of this subsection and this Article, a female kept for egg production means a sexually mature female confined for the purpose of laying eggs.

(i) "Egg producer" means a person engaged in the business of producing eggs from domesticated chickens, turkeys, ducks, geese or guineafowl.

(j) "Enclosure" means any cage, crate, pen or other structure used to confine an egg-laying hen.

(k) "End-user" means any of the following:

(1) A consumer.

(2) A retailer that conducts no packaging or repackaging of shell eggs or liquid eggs.

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(3) A food processing facility or cottage food operation that receives shell eggs or liquid eggs solely for use as an ingredient in a combination food product that does not meet the definition of a shell egg or liquid egg as defined in this Article.

(4) A restaurant, food facility or other similar business that only cooks and serves shell eggs or liquid eggs to customers, patrons or guests for purposes of consumption.

(l) "Flavoring" for purposes of section 25991(l) of the Health and Safety Code and this Article means any substance, whether artificial or natural, the function of which is to impart flavor rather than nutrition, and includes the substances listed and described in sections 172.510, 172.515(b), 182.10, 182.20, 182.40, and 182.50, and part 184 of Chapter 1, Title 21, of the Code of Federal Regulations.

(m) "Food facility" for purposes of this Article means a facility as defined in section 113789 of the Health and Safety Code.

(n) "Food processing facility" for purposes of this Article means a facility as defined in section 109947 of the Health and Safety Code.

(o) "In its shell form" for purposes of section 25991(p) of the Health and Safety Code and this Article means an egg as developed, proportioned and shaped in the shell by an egg-laying hen, whether it is in the shell, raw, pasteurized in the shell, hardboiled or otherwise cooked in whole form, peeled, co-packaged with other foods, or subsequently sold sliced, chopped or otherwise cut.

(p) "Liquid eggs" means the product defined in section 25991(l) of the Health and Safety Code, whether it is raw or pasteurized, co-packaged with other foods, or sold frozen, dried, or as a cooked patty, puck or other cooked form.

(q) "Manufacturing/processing" means making food from one or more ingredients, or synthesizing, preparing, treating, modifying or manipulating food, including food crops or ingredients. Examples of manufacturing/processing activities include: Baking, boiling, bottling, canning, cooking, cooling, cutting, distilling, drying/dehydrating raw agricultural commodities to create a distinct commodity (such as drying/dehydrating grapes to produce raisins), evaporating, eviscerating, extracting juice, formulating, freezing, grinding, homogenizing, irradiating, labeling, milling, mixing, packaging (including modified atmosphere packaging), pasteurizing, peeling, rendering, treating to manipulate ripening, trimming, washing, or waxing.

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(r) “Pasteurized” means a pasteurization process applied to eggs in the shell or liquid eggs by any method approved by the United States Food and Drug Administration, the Department of Public Health, or the Department.

(s) “Person” means any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate.

(t) “Principal display panel” means that part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

(u) “Retailer” means any person who conducts commercial sales of shell eggs or liquid eggs to a consumer.

(v) “Seasoning” for purposes of section 25991 (l) of the Health and Safety Code and this Article is synonymous with the term “spice” and means any aromatic vegetable substance in the whole, broken, diced or ground form, whose primary function in food is seasoning rather than nutritional and from which no portion of any volatile oil or other flavoring principle has been removed. Spices include onions, garlic, peppers, and the spices listed in section 182.10, and Part 184 of Chapter 1, Title 21, of the Code of Federal Regulations.

(w) “Shell egg” means a whole egg of an egg-laying hen in its shell form, intended for use as human food pursuant to section 25991(p) of the Health and Safety Code.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Section 25991, Health and Safety Code.

Section 1320.1. Egg-laying Hen Confinement.

No egg producer or egg handler shall knowingly sell or contract to sell within the state a shell egg or liquid egg for human consumption if it is the product of an egg-laying hen that was confined in an enclosure that fails to comply with all of the following standards:

(a) The enclosure shall provide access to drinking water and feed trough(s) without restriction.

(b) Commencing January 1, 2020, an enclosure shall provide a minimum of 144 square inches of usable floor space per hen.

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(c) Commencing January 1, 2022, an enclosure shall be a cage-free housing system that complies with all of the following:

(1) The enclosure shall be an indoor or outdoor controlled environment within which hens are free to roam unrestricted.

(2) The enclosure shall provide enrichments that allow hens to exhibit natural behaviors, including, at a minimum, scratch areas, perches, nest boxes, and dust bathing areas.

(3) Employees can provide care while standing within the egg-laying hens' usable floorspace.

(4) The enclosure shall provide the minimum amount of usable floorspace per hen required by the 2017 edition of the United Egg Producers' Animal Husbandry Guidelines for U.S. Egg-laying flocks as follows:

(A) Multitiered aviaries in which hens have access to multiple elevated platforms shall provide a minimum of one (1) square foot of usable floor space per hen.

(B) Partially slatted systems in which hens have access to elevated flat platforms shall provide a minimum of one (1) square foot of usable floor space per hen.

(C) Single-level all-litter floor systems bedded with litter in which hens have limited or no access to elevated flat platforms shall provide a minimum of one and one-half (1.5) square feet of usable floor space per hen.

(D) Any other cage-free housing system not described in this section shall provide a minimum of one (1) square foot of usable floor space per hen in systems that provide hens with access to vertical space and shall provide a minimum of one and one-half (1.5) square feet of usable floor space per hen in systems that do not provide hens access to vertical space.

(d) For purposes of this section "usable floorspace" means the total square footage of floorspace provided to each egg-laying hen, as calculated by dividing the total square footage of floorspace provided to egg-laying hens in an individual enclosure by the number of egg-laying hens in that individual enclosure. Usable floor space shall include both ground-space and elevated level flat platforms upon which hens can roost but shall not include perches or ramps.

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Note: Authority cited: Section 25993, Health and Safety Code. Reference: Section 25991, Health and Safety Code.

Section 1320.2. Registration.

(a) Any person engaged in business in this state as an egg handler, or any out-of-state egg handler conducting commercial sales of shell eggs or liquid eggs into California for purposes of human food use in the state, shall register with the Department.

(b) Any person required to register pursuant to this section shall submit an application for registration to the Department on a form provided by the Department.

(c) The registration shall not be transferable to any person and shall be applicable only to the location for which originally issued.

(d) Registration is required for the principal place of business and each facility location where any of the business practices requiring a registration will be conducted.

(e) A person shall not engage in the commercial sale of shell eggs or liquid eggs within, or into, the state unless such person has obtained and holds a valid registration from the Department for each facility location pursuant to this section.

(f) Any change in ownership, change of business name, or change in business location must be reported to the Department within 30 business days of such change on a form provided by the Department.

(g) All information set forth on applications for registrations and renewals for registrations shall be truthful and not misleading.

(h) Every registration expires at the end of each calendar year but shall remain in force during the month of January of the next succeeding year as may be necessary for the renewal of such registration by the Department.

(i) A registration may be renewed each successive year by the Department in response to an application for renewal by an egg handler if the business of the facility applying for renewal was conducted in accordance with the requirements of this Article and sections 25990 and 25991 of the Health and Safety Code during the year preceding that for which the renewal is requested.

(j) An application to the Department by an egg handler for initial registration, or for purposes of renewal, shall be accompanied by documentation of valid certification

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pursuant to Article 5, section 1326.6 of this Chapter for each location where registration is being sought. A registration shall not be issued for any facility location for which a valid certification required by this section has not been submitted to the Department, except for a facility that is an official plant inspected under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.).

(k) Prior to January 1, 2022, a copy of a valid facility registration issued pursuant to section 27541 of the Food and Agricultural Code for purposes of the Shell Egg Food Safety Program as specified under section 1350 of Title 3 of the California Code of Regulations may be submitted in lieu of the certification required by subsection (j) of this section.

(l) Notwithstanding the requirements of subsection (j) of this section, a registration may be granted for the period of January 1, 2020 through December 31, 2020, to an applicant that self-certifies on a form provided by the Department that a facility complies with all applicable requirements of sections 1320.1, 1320.3, 1320.4 and 1320.5 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Section 25991, Health and Safety Code.

Section 1320.3. Inspection and Audit of Registered Facilities.

(a) Every person required to be registered pursuant to section 1320.2 of this Article shall comply with this section.

(b) Every egg handler by submitting an application for registration of a facility agrees as a condition of registration to provide the Department, and/or certifying agent, entrance and access to the premises and business records of the facility for purposes of inspection and audit as described in Article 5, sections 1326.2 and 1326.5 of this Chapter.

(c) This section shall not apply to a facility that is an official plant inspected under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.).

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Section 25991, Health and Safety Code.

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Section 1320.4. Shipping Document and Labeling Requirements.

(a) Shipping Documents:

(1) Prior to January 1, 2022, all shipping invoices, bills of lading, and shipping manifests for all shipments of shell eggs and liquid eggs entering the state or transported within the state for commercial sale in California shall include the statement “California 144 Compliant” and may be abbreviated to read “CA 144”. The statement “CA Cage Free” may be used, provided the shell eggs and liquid eggs were produced in compliance with section 1320.1(c) of this Article. The statement shall be clearly legible and plainly printed or stamped.

(2) Commencing January 1, 2022, all shipping invoices, bills of lading, and shipping manifests for all shipments of shell eggs and liquid eggs entering the state or transported within the state for commercial sale in California shall include the statement “CA Cage Free” or “California 144+ Compliant” which may be abbreviated to read “CA 144+”.

(b) Containers: Commencing January 1, 2022, the principal display panel for each container of all shell eggs for commercial sale, or destined for commercial sale, in California shall contain the statement “CA Cage Free” or “144+ Compliant” which may be abbreviated to read “144+”. The statement shall be clearly legible, without obscuring designs, vignettes or crowding, and be plainly printed, stamped or marked.

(c) No person shall label, identify, mark, advertise, or otherwise represent, shell eggs or liquid eggs for purposes of commercial sale in California using the statements in subsections (a) and (b) of this section, or as meeting the requirements of Proposition 12 (2018) or otherwise meeting California cage size or enclosure space requirements for egg-laying hens, unless the shell eggs or liquid eggs were produced in compliance with section 25991 of the Health and Safety Code and this Article.

(d) Commencing January 1, 2022, no person shall label, identify, mark, advertise, or otherwise represent shell eggs or liquid eggs for purposes of commercial sale in the state using the term “cage free” or other similar descriptive term unless the shell eggs or liquid eggs were produced in compliance with section 1320.1 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Section 25991, Health and Safety Code.

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Section 1320.5. Handler Recordkeeping.

(a) An egg handler, as a condition of registration pursuant to section 1320.2, shall maintain records that comply with all the requirements of this section.

(b) Records shall be sufficient for purposes of an audit trail as defined in section 1320, subsection (a) of this Article and the applicable recordkeeping requirements described in section 1326.2 of this Chapter.

(c) Records shall document in a traceable manner that shell eggs and liquid eggs being sold into or within California originate from producers that are certified operations pursuant to Article 5, sections 1326.1 through 1326.8 of this Chapter or to producers in compliance with section 1320.2, subsections (k) or (l), of this Article.

(d) Records shall be maintained for two years from the date of creation and be made accessible for inspection and audit by the Department and/or certifying agent as required by section 1320.3.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1320.6. Inspection of Conveyances.

(a) Every egg handler by submitting an application for registration agrees as a condition of registration to provide the Department or other enforcement officer, and/or a certifying agent, access to inspect any vehicle or other conveyance under the registrant's operation or control that is transporting shell eggs or liquid eggs into or within the state.

(b) Every person shall stop at the request of any enforcement officer in California for purposes of inspection of cargo and any accompanying shipping documents, invoices, manifests, and bills of lading, any vehicle or other conveyance transporting into or within the state shell eggs or liquid eggs intended for commercial sale.

(c) The Department, or other enforcement officer in California, may deny entry to or order diversion from the state any vehicle or other conveyance transporting shell eggs or liquid eggs for commercial sale that was produced, packaged, identified, or shipped in violation of the requirements of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article, including but not limited to labeling and marking requirements specified in section 1320.4.

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Note: Authority cited: Section 25993, Health and Safety Code. Reference: Section 25991, Health and Safety Code.

Section 1320.7 Tagging and Seizure.

(a) The Department or other enforcement officer may affix a warning tag or notice to shipping documents, manifests, containers, sub-containers, lots or loads of shell eggs or liquid eggs which have been produced, packaged, stored, labeled, marked, identified, transported, delivered, or sold in violation of the requirements of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article, and may give notice of such violation to the egg producer, egg handler, owner, or other person in possession of the shell eggs or liquid eggs.

(b) No person shall remove a warning tag or notice from the place it is affixed except upon written permission or specific direction of the Department or other enforcement officer.

(c) An enforcement officer may seize and hold any containers, sub-containers, lots or loads of shell eggs or liquid eggs in California which he or she has reasonable cause to believe is in violation of the provisions of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article. If the Department or other enforcement officer seizes any container, sub-container, lot or load of shell eggs or liquid eggs, a hold notice shall be issued to the person that has control of the eggs, and a tag or notice may be affixed to the container, sub-container, lot or load which states it is so held.

(d) Any shell eggs or liquid eggs for which a hold notice is issued shall be held by the person having control of the eggs and shall not be disturbed, moved, diverted or offered for sale except under the specific directions of the Department or other enforcement officer.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Section 25991, Health and Safety Code.

Section 1320.8. Written certification.

(a) For purposes of section 25993.1 of the Health and Safety Code, any written certification from a supplier to a buyer that shell eggs or liquid eggs were not derived from

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an egg-laying hen confined in a cruel manner shall be based upon an audit trail as defined in section 1320, subsection (a), of this Article, and shall be traceable to producers certified pursuant to Article 5, sections 1326.1 through 1326.8 of this Chapter or to producers in compliance with section 1320.2, subsections (k) or (l), of this Article.

(b) A retailer or food processing facility that is an end-user and takes possession, whether by use of a common carrier, private carrier or other means of conveyance, of shell eggs or liquid eggs at, or directly from, an official plant inspected under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.), shall:

(1) Maintain records documenting written certifications that meet the requirements of subsection (a) for shell eggs or liquid eggs received during the preceding 12-month period.

(2) Make the records required by this subsection available onsite for inspection by the Department and other state or local health agencies upon request. Electronic records are considered onsite if they are accessible from an onsite location.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Section 25991, Health and Safety Code.

Section 1320.9. Denial, Suspension or Revocation of Registration.

(a) The Department may deny, suspend or revoke a registration issued pursuant to this Article for any of the following:

1) Violations that resulted in the commercial sale of shell eggs or liquid eggs from egg-laying hens that were not confined in compliance with this Article.

2) Repetitive failure to comply with the requirements of this Article and/or statutes pertaining to shell eggs, liquid eggs or egg-laying hens in sections 25990, 25991, 25992 of the Health and Safety Code.

3) Refusal to grant access for, or interference with, inspections or audits described in sections 1320.3 or 1320.6;

4) Misrepresenting shell eggs or liquid eggs as being produced in compliance with this Article;

5) Providing false information on an application for registration.

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(b) A party may appeal the Department's decision to refuse to issue, or to deny, suspend or revoke a registration certificate by requesting an informal hearing pursuant to section 1320.10 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Section 25991, Health and Safety Code.

Section 1320.10. Informal Hearing Procedures.

(a) A respondent, or his or her duly authorized representative, may contest a notice of adverse determination from the Department under this Article by requesting an informal hearing as outlined in this section.

(b) Informal hearing requests shall be submitted by written correspondence to the California Department of Food and Agriculture, Legal Office of Hearings and Appeals, 1220 "N" Street, Suite 315, Sacramento, California 95814 within 30 days from the date of receipt of the Department's notice of adverse determination.

(c) Any request for an informal hearing shall include a copy of the notice of adverse determination and may state the grounds for the appeal.

(d) Any objection to the Department's selection of the informal hearing procedure shall be made in writing to the Legal Office of Hearings and Appeals and shall be resolved by the Hearing Officer prior to the hearing pursuant to Government Code section 11445.30.

(e) Failure to submit a timely request for a hearing constitutes a waiver of the respondent's right to contest the notice of an adverse determination. Untimely requests for a hearing may be denied by the Department.

(f) The Department shall schedule an informal hearing within 30 days from the receipt of the request from the respondent.

(g) At least 10 business days prior to the informal hearing, the Department shall provide a notice of the informal hearing to the respondent containing all of the following information:

(1) Date, location, and time of the informal hearing;

(2) Departmental contact information including applicable telephone and facsimile numbers; and

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(3) Subject matter of the adverse determination.

(h) The notice of an informal hearing shall be sent to the address of the person charged as provided by any application, license, registration, certification, or permit on record with the Department and/or as provided by a driver's license record obtained from the Department of Motor Vehicles.

(i) A notice that is sent pursuant to subsection (h) shall be considered effective even if delivery is refused or if the notice is not accepted at that address.

(j) Any documents to be considered by the hearing officer shall be received at least three business days prior to the scheduled informal hearing at the Legal Office of Hearings and Appeals. Any documents not timely submitted may be considered at the discretion of the Hearing Officer.

(k) The informal hearing shall be presided over and conducted by a hearing officer designated by the Secretary.

(l) The standard of proof to be applied by the hearing officer shall be preponderance of the evidence unless statutes or regulations applicable to the determination provide a higher standard.

(m) A teleconference line shall be made available at every hearing.

(n) Hearings shall be recorded by the Department. A transcript of the recording or an electronic copy of the recording shall be provided to any interested party upon written request.

(o) The decision of the hearing officer shall be in writing, issued within 30 days after the conclusion of the hearing, and shall be effective immediately upon issuance.

(p) The respondent may appeal the hearing officer's decision and order by filing a petition for a writ of administrative mandamus in accordance with the Code of Civil Procedure section 1094.5.

Note: Authority cited: Section 25993, Health and Safety Code, and section 11400.20, Government Code. Reference: Article 10 (commencing with section 11445.10), Chapter 4.5 (commencing with section 11400); and Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, Government Code.

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Section 1320.11. Registration with the California Department of Public Health.

(a) Notwithstanding section 1320.2, any person operating a food processing establishment in California shall also register with the California Department of Public Health (CDPH) pursuant to Health and Safety Code (HSC) section 110460. The registration requirement applies to all forms of processed eggs.

(b) Evidence of this registration shall be provided to the Department of Food and Agriculture or its designee upon request.

Note: Authority cited: Sections 25993 and 110065, Health and Safety Code. Reference: Sections 25991, 109875, 109935, 110045, and 110460, Health and Safety Code.