

A transport vehicle in which eggs are placed for shipment or storage and which is found to have the refrigeration unit discharging a mean average air flow temperature above 7 degrees Celsius (45 degrees Fahrenheit), the unit shall be brought into compliance within four hours from the time of rejection. If compliance cannot be accomplished within such time, the transport vehicle shall not be used, and the eggs shall be removed and placed in a transport vehicle or storage facility which is in compliance.

(3) If a transport vehicle, store room, or display unit is found to be in noncompliance and is to be used for transporting or storing eggs, the responsible party shall repair the refrigeration unit and submit a copy of the repair tag to the enforcing officer. The repair tag shall include:

- i. The name, address and telephone number of the person or company that made the repairs.
  - ii. The date and time of repair.
  - iii. The refrigeration unit's delivery temperature taken by the repair person, following the unit's repair.
- Unless otherwise instructed by the enforcing officer, the responsible party may place the store room, display unit, or transport vehicle back in use upon repair and submission of the repair tag. The tag may be submitted by facsimile. Upon receipt of the repair tag, the enforcing officer may approve the continued use verbally, in writing or by facsimile. If approval is made verbally, the enforcing officer shall record the time, date and name of the person to whom approval was given.

(h) Tolerance.

A tolerance of one degree Celsius (two degrees Fahrenheit) shall be allowed.

(i) Good Faith Effort.

Enforcing officers shall take into consideration refrigeration efforts of an industry egg handler or transporter when determining whether to initiate any legal proceedings.

Note: Authority cited: Sections 407 and 27531, Food and Agricultural Code. Reference: Sections 27631, 27641 and 27643, Food and Agricultural Code.

#### **HISTORY**

1. New section filed 9-27-2000; operative 10-27-2000 (Register 2000, No. 39).

This database is current through 10/30/20 Register 2020, No. 44

### **3 CCR § 1358.6**

#### **§ 1358.6. Administrative Penalties for Egg Quality Control.**

(a) Failure to comply with the provisions of this Chapter and the statutes relating to the marketing of shell eggs and shell egg food products under Chapter 1 (commencing with section 27501) of Part 4, Division 12 of the Food and Agricultural Code and any regulations adopted pursuant to them, constitutes a violation punishable by a fine of not less than fifty dollars (\$50) or more than ten thousand dollars (\$10,000). The Department shall use the provisions of this section to determine the severity of the violation in order to establish the appropriate penalty range.

(b) For the purposes of this section, violations are designated as "serious," "moderate," or "minor" as required by Food and Agricultural Code section 27581.1. Repeat violations may result in an escalation of the designation of the violation. Serious and moderate violations may be downgraded based upon the evidence, the factual circumstances, mitigating factors, and the cooperation of the violator.

(1) "Serious." Violations that resulted, or reasonably could have resulted, in the creation of a hazard to human health or the environment, or in the disruption of the marketing of shell eggs in California intended for human consumption; repetitive failure to comply with statutes and/or regulations pertaining to shell egg food safety or the marketing of shell eggs in California; misrepresenting eggs not produced in California; and/or unregistered persons marketing shell eggs in California.

(2) "Moderate." Violations in which there is a potential for harm to human health or the environment or disruption of the marketing of shell eggs in California intended for human consumption.

(3) "Minor." Violations that are unintentional and have minimal impact upon human health or the environment, or the marketing of shell eggs in California intended for human consumption. The Department may issue a notice of warning for minor violations.

(c) Table "A" Administrative Penalty Schedule for Egg Quality Control shall be used by the Department to establish the level of severity of a particular violation and the corresponding penalty range for "serious," "moderate," and "minor" violation classes.

**Table "A" Administrative Penalty Schedule for Egg Quality Control**

<b>Food and Agricultural Code</b>	<b>Title 3, Cal. Code Reg.</b>	<b>Description of Section Violated</b>	<b>Minor \$50-\$400 or notice of warning</b>	<b>Moderate \$401-\$1,000</b>	<b>Serious \$1,001-\$10,000</b>
27621		Person forwarding company, or common carrier willfully fails or refuses to stop the transportation of the eggs with reasonable dispatch after being notified in writing by an enforcing officer of this chapter or regulation adopted pursuant to this chapter that such eggs are found to be delivered for shipment in violation of this chapter or regulation adopted pursuant to this chapter.			1st violation
27632		Misrepresenting eggs to be product of this state.			1st violation
27633	1358.3	Acting as egg handler without registering.		1st violation	2nd violation
27634		Unauthorized use of name, trademark, or trade name.	1st violation	2nd violation	3rd violation
27635		Misrepresentation as chicken eggs.	1st violation	2nd violation	3rd violation
27636		It is unlawful for any person to sell as "fresh eggs," "ranch eggs," or "farm eggs," or to represent as being fresh, any eggs which are below the quality of grade A or which have been held in cold storage more than 30 days.		1st violation	2nd violation
27637		False, deceptive, or misleading representation.		1st violation	2nd violation
27638		It is unlawful for any person to fail to comply with any lawful order of an enforcement officer, or any			1st violation

		court, in any proceeding pursuant to this chapter or any regulation adopted pursuant to this chapter.			
27639		Refusal to submit to inspections; Refusal to stop vehicle.			1st violation
27640	1355	Unauthorized moving of eggs or container having warning tag affixed; Removal of tag.			1st violation
27641	1357; 1358.5	Preparation, delivery, or sale of nonconforming eggs or containers		1st violation	2nd violation
	1350	Failure to meet Shell Egg Food Safety requirements.			1st violation
27643	1358.5	Temperature requirements for eggs.		1st violation	2nd violation
	1352.4	Regraded and Repacked Eggs.	1st violation	2nd violation	3rd violation
27644	1352.4; 1354; 1356; 1356.2	Signs and labels on eggs.		1st violation	2nd violation
27644.5		Signs and labels on pasteurized in-shell eggs.	1st violation	2nd violation	3rd violation
27651	1352; 1353; 1353.2; 1353.4	Unlawful sale of ungraded eggs absence of finding and proclamation of emergency.	1st and 2nd violation	3rd violation	4th violation
27652		Authorized sale of ungraded eggs during emergency; Required marking of containers.		1st violation	2nd violation
27661	1357	Brand name on master container; Registration requirement.	1st violation	2nd violation	3rd violation
27662	1357	Misuse of Registered Brand at Production.	1st violation	2nd violation	3rd violation
27663	1357	Unauthorized possession of Registered Brand Master Containers.	1st violation	2nd violation	3rd violation

27664	1357	Requirements to operate a Registered Brand Container Exchange.		1st violation	2nd violation
27665	1357	Authorized licensing of Container Exchanges.		1st violation	2nd violation
27666	1357	Container Exchange service records.	1st and 2nd violation	3rd violation	4th violation
27667	1357	Unauthorized sale of master containers by Container Exchange.		1st violation	2nd violation
27669	1357	Unlawful transportation of master containers.		1st and 2nd violation	3rd violation
27671(a)(3)		Any person whose intentional violation of this chapter, or regulations adopted pursuant to this chapter, resulted, or reasonably could have resulted, in the creation of a hazard to human health or the environment, or in the disruption of the marketing of eggs.			1st violation
27680	1358.4	Production records inspection.		1st violation	2nd violation
27684		Failure to comply with audit request.			1st violation
27686		Refrigeration requirements for shipped eggs.			1st violation
27687		Shipping non-compliant eggs or failing to register before marketing.		1st violation	2nd violation
27688		Failure to submit assessment reports as specified.			1st violation
27690		Itemization of all eggs brokered into California.			1st violation

(d) Enforcement shall commence within three years of the occurrence of the violation. Once investigation is completed, the Department shall commence action within one year.

(e) Administrative penalties levied pursuant to this section may be appealed in accordance with Food and Agricultural Code section 27583.2 by requesting an informal hearing within 20 days of the issuance of the notice of proposed action. Hearing requests shall be submitted in writing to the California Department of Food and Agriculture, Legal Office, 1220 "N" Street, Suite 400, Sacramento, California 95814.

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

(g) Informal hearings shall be conducted pursuant to Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2 of the Government Code.

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

(2) 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.

(3) Hearings may be conducted by telephone at the discretion of the hearing officer subject to Government Code section 11440.30.

(4) Hearings may be tape recorded with either a transcript of the recording, or a copy of the recording, provided to any interested party upon request.

(5) Subject to the provisions of Government Code section 11425.50, the decision of the hearing officer shall be in writing with a brief statement of the conclusion and findings to support the conclusion.

(6) The decision shall be issued within 30 days after the conclusion of the hearing.

(7) The decision shall be served on the respondent either by personal service, or a method requested by the respondent.

(8) The hearing officer's decision shall be effective immediately upon service on the respondent.

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

(10) The Department shall provide a copy of the decision to any interested party upon written request.

Note: Authority cited: Sections 407, 27531, 27581.1 and 27583, Food and Agricultural Code.

Reference: Sections 27521, 27531, 27541, 27581.1, 27581.4, 27581.9, 27583, 27583.2, 27583.4, 27584 and 27585, Food and Agricultural Code.

### **HISTORY**

1. New section filed 12-19-2016; operative 1-1-2017 pursuant to Government Code section 11343.4(b)(3) (Register 2016, No. 52).

This database is current through 10/30/20 Register 2020, No. 44

### **3 CCR § 1358.7**

#### **§ 1358.7. Denial, Suspension or Revocation of a Registration Certificate.**

(a) The Department may refuse to issue, or may deny, suspend or revoke a registration certificate for a period not to exceed three years based upon the severity of the violations as set forth in Table "A" Denial, Suspension or Revocation of an Egg Handler Registration Certificate.

(b) For the purposes of this section, violations are designated as "serious" or "moderate." Repeat violations may result in an escalation of the designation of the violation. Designation of violations may be downgraded based upon the evidence, the factual circumstances, mitigating factors, and the cooperation of the violator.

(1) "Serious." Violations that resulted, or reasonably could have resulted, in the creation of a hazard to human health or the environment, or in the disruption of the marketing of shell eggs in California intended for human consumption; repetitive failure to comply with statutes and/or regulations pertaining to shell egg food safety or the marketing of shell eggs in California; misrepresenting eggs not produced in California; and/or unregistered persons marketing shell eggs in California.

- (2) "Moderate." Violations in which there is a potential for harm to human health or the environment or disruption of the marketing of shell eggs in California intended for human consumption.
- (c) The Department may refuse to issue, or may deny, suspend or revoke a registration certificate for a period of two or three years for a "Serious" violation. It may refuse to issue, or may deny, suspend or revoke a registration certificate for a period of one year for a "Moderate" violation.
- (d) A party may appeal the Department's decision to refuse to issue, or to deny, suspend or revoke a registration certificate by requesting a hearing in writing within twenty (20) days of being served with notice of the Department's decision.
- (e) Hearing requests shall be submitted to the California Department of Food and Agriculture, Legal Office, 1220 "N" Street, Suite 400, Sacramento, California 95814.
- (f) Informal hearings shall be conducted pursuant to Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2 of the Government Code.
- (1) The informal hearing shall be presided over and conducted by a hearing officer designated by the Department.
- (2) 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.
- (3) Hearings may be conducted by telephone at the discretion of the hearing officer subject to Government Code section 11440.30.
- (4) Hearings may be tape recorded with either a transcript of the recording, or a copy of the recording, provided to any interested party upon request.
- (5) Subject to the provisions of Government Code section 11425.50, the decision of the hearing officer shall be in writing with a brief statement of the conclusion and findings to support the conclusion.
- (6) The decision shall be issued within 30 days after the conclusion of the hearing.
- (7) The decision shall be served on the respondent either by personal service, or a method requested by the respondent.
- (8) The hearing officer's decision shall be effective immediately upon service on the respondent.
- (9) The respondent may appeal the hearing officer's decision by filing a petition for a writ of administrative mandamus in accordance with the provisions of the Code of Civil Procedure section 1094.5.
- (10) The Department shall provide a copy of the decision to any interested party upon written request.

**Table "A" Denial, Suspension or Revocation of an Egg Handler Registration Certificate**

<b>Food and Agricultural Code</b>	<b>Title 3, Cal. Code Reg.</b>	<b>Description of Section Violated</b>	<b>Moderate [One year]</b>	<b>Serious [Two or three years]</b>
27541	1358.3	Any person engaged in business in this state as an egg producer or egg handler, or any out-of-state egg handler or egg producer selling eggs into California, shall register with the secretary. A new registration shall be submitted if any current information changes.	2nd violation	3rd violation
27551		Failure to pay assessment fees.	2nd violation	3rd violation
27553		Payment of assessments, procedures for payment, the procedures for refunds of payment, and penalties for late payment. The Department may triple the assessment for any	2nd violation	3rd violation

		eggs for which the required payment has not been made by the established due date. If a triple assessment is less than five hundred dollars (\$500), the assessment shall be five hundred dollars (\$500).		
27561.5		Applicant fails to pay in full by the due date a fine, fee, assessment, or penalty levied by the Department for violations of the chapter, including a violation that occurred before January 1, 2016.	2nd violation	3rd violation
27621		Person forwarding company, or common carrier willfully fails or refuses to stop the transportation of the eggs with reasonable dispatch after being notified in writing by an enforcing officer of this chapter or regulation adopted pursuant to this chapter that such eggs are found to be delivered for shipment in violation of this chapter or regulation adopted pursuant to this chapter.		1st violation
27632		Misrepresenting eggs to be product of this state.		1st violation
27634		Unauthorized use of name, trademark, or trade name.	2nd violation	3rd violation
27635		Misrepresentation as chicken eggs.	2nd violation	3rd violation
27636		It is unlawful for any person to sell as "fresh eggs," "ranch eggs," or "farm eggs," or to represent as being fresh, any eggs which are below the quality of grade A or which have been held in cold storage more than 30 days.	1st violation	2nd violation
27638		It is unlawful for any person to fail to comply with any lawful order of an enforcement officer, or of any court, in any proceeding pursuant to this chapter or any regulation adopted pursuant to this chapter.		1st violation
27639		Refusal to submit to inspections; refusal to stop vehicle.		1st violation
27640	1335	Unauthorized moving of eggs or container having warning tag affixed; Removal of tag.		1st violation
	1350	Failure to meet Shell Egg Food Safety requirements.		1st violation

27643	1358.5	Temperature requirements for eggs.	1st violation	2nd violation
	1352.4	Regraded and Repacked Eggs.	2nd violation	3rd violation
27644	1356.2	Signs and labels on eggs.	1st violation	2nd violation
27651	1352; 1353; 1353.2; 1353.4	Unlawful sale of ungraded eggs absence of finding and proclamation of emergency.	3rd violation	4th violation
	1357	Failure to meet Registered Brand requirements.	2nd violation	3rd violation
	1358.4	Failure to meet records, invoices, and premises inspection requirements.	1st violation	2nd violation
27671(a)(3)		Any person whose intentional violation of this chapter, or regulations adopted pursuant to this chapter, resulted, or reasonably could have resulted, in the creation of a hazard to human health or the environment, or in the disruption of the marketing of eggs.		1st violation
27690		Itemization of all eggs brokered into California.		1st violation

Note: Authority cited: Sections 407 and 27531, Food and Agricultural Code. Reference: Sections 27541, 27542, 27561 and 27561.5, Food and Agricultural Code.

#### HISTORY

1. New section filed 6-6-2016; operative 6-6-2016. Submitted to OAL for filing and printing only pursuant to Food and Agricultural Code section 27561.5 (Register 2016, No. 24).
  2. Amendment of subsection (f) filed 8-24-2016; operative 8-24-2016 pursuant to agency's request pursuant to Food and Agricultural Code section 27561.5 and Government Code section 11343.8 (Register 2016, No. 35).
  3. Amendment of subsections (b)-(b)(2) and (d)-(e), repealer and new subsection (f), new subsections (f)(1)-(f)(10) and amendment of Table A filed 6-28-2017; operative 6-28-2017. Submitted to OAL for filing and printing only pursuant to Food and Agricultural Code section 27561.5 (Register 2017, No. 26). This database is current through 10/30/20 Register 2020, No. 44
- 3 CCR § 1358.7, 3 CA ADC § 1358.7