

**State of California
Office of Administrative Law**

In re:
Department of Food and Agriculture

Regulatory Action:

Title 03, California Code of Regulations

Adopt sections:
Amend sections: 1354
Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2022-0519-01

OAL Matter Type: Regular (S)

This action by the Department of Food and Agriculture amends regulations to add requirements for eggs sold in consumer size containers labeled as "cage-free."

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2022.

Date: July 1, 2022



Kevin D. Hull
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Karen Ross, Secretary
Copy: Michael Abbot

REGULAR

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2021-1122-02	REGULATORY ACTION NUMBER 2022-0519-01	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Department of Food and Agriculture			AGENCY FILE NUMBER (If any)

ENDORSED - FILED
In the office of the Secretary of State
of the State of CaliforniaJUL 01 2022
1:52PMOFFICE OF ADMIN. LAW
2022 MAY 19 PM 12:23**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE Marking Requirements - Cage-Free	TITLE(S) 3	FIRST SECTION AFFECTED 1354	2. REQUESTED PUBLICATION DATE December 3, 2021
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Michael Abbott	TELEPHONE NUMBER 916-900-5004	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Cage-Free Marking Requirements	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) n/a
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 1354
TITLE(S) 3	REPEAL
3. TYPE OF FILING	
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
	<input type="checkbox"/> File & Print
	<input type="checkbox"/> Print Only
	<input type="checkbox"/> Other (Specify) _____
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) n/a	
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State
	<input type="checkbox"/> \$100 Changes Without Regulatory Effect
	<input type="checkbox"/> Effective other (Specify) _____
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission
<input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> State Fire Marshal
7. CONTACT PERSON Michael Abbott	TELEPHONE NUMBER (916) 628-1761
FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) michael.abbott@cdfa.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE Annette Jones, D.V.M. Digitally signed by Annette Jones, D.V.M. Date: 2022.05.02 11:25:35 -0700	DATE
TYPED NAME AND TITLE OF SIGNATORY Dr. Annette Jones, AHFSS Program Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 01 2022

Office of Administrative Law

**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.