

**DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS**

Title 3. Food and Agriculture  
Division 3. Economics  
Chapter 1. Fruit and Vegetable Standardization  
Subchapter 3. Eggs  
Section 1354. Marking Requirements

**INITIAL STATEMENT OF REASONS**

The California Department of Food and Agriculture (the Department) proposes to amend the California Code of Regulations (3 CCR), Title 3, Division 3, section 1354.

**PROBLEM STATEMENT**

The Department's Egg Safety and Quality Management (ESQM) Program is responsible for the regulatory authority for shell eggs and egg products produced, shipped, or sold in California. They review package labeling to ensure it is truthful and in compliance with marking requirements. Pursuant to Food and Agricultural Code Section 27521, ESQM ensures eggs have been properly handled, labeled, transported, refrigerated; and are wholesome and safe to eat.

California Consumers make purchasing choices based on labels such as "Organic" or "Cage Free". While the former has clear standards that assure truth in labeling, the latter does not. California consumers expect that "Cage Free" means something and is not a nebulous statement that creates perceived value. The ambiguity around this term is becoming increasingly important as sales in California shift to eggs from housing that can be described as "cage free." When the label says "cage free," consumers expect it to mean something in particular and be truthful.

The market for "Cage Free" eggs drives a higher price, in many cases. In general, a cage free egg is more expensive to produce than conventional cages. Total operating costs in the cage free aviary system were 23% higher than conventional cages. In between conventional cages and cage free is what the industry refers to as Enriched Colony Cage. An Enriched Colony cage houses a larger number of birds in confinement but does not adhere to the definition of cage free. This leads to producers labeling their eggs as cage free when in fact they are not. While the operating costs of the enriched colony were slightly higher (4%) than conventional cages, the correlating costs are not equal to a true cage free operation. Therefore, it creates the opportunity for eggs from Enriched Colony Cages to be sold as cage free at cage free prices. Current USDA Egg Market data shows cage free egg prices at an average range of 111% - 125% more expensive. This gap increases greatly if they are organic cage free (295%- 342%). The higher value of a "Cage

Free” carton of eggs opens the door to labeling eggs as “Cage Free” when they aren’t in fact cage free and could result in an unfair market.

In fiscal year 2019 / 2020 ESQM formed a labeling claim focused workgroup that investigated labeling claims such as “Omega 3’s” and “lower saturated fat”, “Choline”, and enclosure type statements. In order to ensure a fair marketplace, and provide consumer clarity, clearly defined parameters and definitions are necessary. ESQM does not have a regulatory avenue to determine whether egg firms are raising their animals in a “cage free” environment.

Beginning in 2015 there has been a gradual industry progression to provide the market with “Cage free” options. Over time California Consumers have dictated their desire to prioritize animal welfare when consuming animal products. This was reflected in the 2018 general election when California voted in favor of Proposition 12 which required that certain animal species be confinement free by 2022. This can further be extrapolated to reflect that California Consumers make purchasing choices based on the humane raising of animals, and labeling statements are how consumers are able to make that determination. Additionally, the industry at large supports codifying an industry standard definition of “Cage Free”. On April 21, 2021 the Shell Egg Advisory Committee voted unanimously in favor of the definition proffered in this rulemaking.

Cage Free has been interpreted differently across industry and among consumers. There are a wide variety of housing types and styles across the Shell Egg industry. In order to provide clarity to the industry, as well as consumers, there is a clear need for the Department to provide minimum requirements for use of the term, “Cage Free”. Labeling regulations cannot be enforced without minimum requirements established in regulation.

## **PURPOSE**

This regulatory action is intended to provide a definition of “cage free” to ensure that eggs labelled cage free meet the minimum standards in the definition. Defining cage free and establishing minimum requirements ensures that the consumers of California are purchasing eggs that are being marketed fairly and equitably. Promulgating regulations which align and interpret changed market demands and label statement is determined to be the most effective mechanism to protect and promote the fair and equitable marketing of shell eggs in California.

## **BENEFITS**

Consumers of California will be assured that when they purchase eggs that are labeled “cage free” that they meet the minimum standards outlined in the cage free definition. Producers will have a consistent standard applied equally across the industry for eggs sold to California consumers.

**SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE 11346.2(b)(1):**

**1354. Marking Requirements.**

**Subsection 1354(d)(3)(A), (d)(3)(B), (d)(3)(C)** are adopted to specify the minimum standards that must be met in order to label consumer containers with the term “cage free”.

1354(d)(3)(A) specifies the enclosure space required for laying hens, to meet the definition of “Cage Free”, in two different cage free system types. 1 (one) square foot per bird in a multi-tiered aviary or partially slatted system and 1.5 (one point five) square feet per bird for egg laying hens in a single-level all-litter floor system. This will ensure adequate space for hens to move naturally and safely in their space.

1354(d)(3)(B) specifies the movement allowances and housing enrichments that an enclosure must have to meet the definition of “cage free”. This allows for external walls to keep hens safe from predators and inclement weather and still practice their natural behaviors like perching, scratching, dust bathing, etc.

1354(d)(3)(C) requires that farm employees must be able to stand-up in the laying hen’s enclosure while providing them care, to meet the definition of “cage free”. This will ensure a safe and comfortable work environment for hens while employees are providing care.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

- Lewis, Tara. “Free Range or Free Reign? False Advertising in the Egg Industry”. 2017
- USDA “Egg Market News Report” June 16, 2021.
  - <https://www.ams.usda.gov/mnreports/pybshellegg.pdf>
- General Election – Statement of Vote, November 6, 2018.
  - [www.sos.ca.gov/elections](http://www.sos.ca.gov/elections)
- Shell Egg Advisory Committee (SEAC) Meeting Minutes. April 21<sup>st</sup>, 2021

**ECONOMIC IMPACT ASSESSMENTS/ANALYSIS**

In accordance with Government Code §11346.3(b), the Department has made the initial determination that the proposed regulations would not have an impact on the general public or protection of public health and safety; the creation or elimination of jobs; the creation of new businesses; the elimination of existing businesses; the expansion of businesses currently doing business within this state, that would insignificantly affect a

private person or business, and would not impact the ability of California businesses to compete with businesses in other states, or on representative private persons.

Expanding on the Marking Requirements regulations to include the definition of the term “cage free” will be an effective way to promote the fair and equitable marketing of eggs and ensure that the market is free of fraud, deception and mislabeling. Therefore, this regulation will contribute to an already robust body of statutory and regulatory precedent which will promote consumer confidence in the Egg Industry and enhance the conditions for an equitable marketplace, thereby supporting continued growth of the Egg Industry. Conversely, if these regulations are not promulgated, enforcement activities would lack the tools to ensure that the sale of shell eggs is free of fraud, deception and mislabeling. This could lead to a lack of consumer confidence and could be harmful to the industry.

### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES**

Based upon the reasons stated in the economic impact assessment/analysis, the Department has initially determined that these proposed changes to the regulations would not have a significant adverse economic impact to persons that are compliant with the FAC and 3 CCR. This determination is supported by the addition of a definition includes no mandates that require producers to change any existing or future layer facility to cage free but rather intends to define what “cage free” means for labeling purposes. The Cage Free labeling is an opt-in marketing term.

### **REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES**

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. The alternative to not pursue this regulatory action would result in deceptive or fraudulent labeling and an unfair marketing of the eggs. The adoption of a different definition from the one proposed here could cause conflict and confusion as this definition supports the most common understanding of cage free.

### **DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS**

The proposed regulations do not duplicate or conflict with federal regulations.