

**TITLE 3. FOOD AND AGRICULTURE  
DIVISION 3. ECONOMICS  
CHAPTER 1. FRUIT AND VEGETABLE STANDARDIZATION  
SUBCHAPTER 3. EGGS  
Section 1354. Marking Requirements**

**NOTICE OF PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed actions.

**PUBLIC HEARING**

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Comments may also be submitted via facsimile (FAX) at (916) 900-5334 or by e-mail to [michael.abbott@cdfa.ca.gov](mailto:michael.abbott@cdfa.ca.gov). The written comment period begins on December 3, 2021 and closes on January 17, 2022. The Department will consider only comments received at the Department by that time. Submit comments to:

Michael Abbott, Supervising Environmental Scientist  
Meat Poultry and Eggs Safety Branch  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 900-5062; Fax: (916) 900-5334

**AUTHORITY AND REFERENCE**

Food and Agricultural Code (FAC) section 14 authorizes the Department to adopt rules and regulations in accordance with the Administrative Procedure Act. Additional authority vested in the FAC grants the Department Secretary the authority to amend or repeal rules and regulations.

FAC section 407 authorizes the Secretary of the Department to adopt such regulations as are reasonably necessary to carry out the provisions of the FAC which the Secretary is directed or authorized to administer or enforce.

FAC section 27531 specifies, in part, that the director may adopt regulations relating to the preparation for market and marketing of shell eggs as they determine are reasonably necessary to carry out the purposes of the chapter including the requirements for

marking containers, displays and advertising of eggs sold in California, or any other matter necessary to accomplish the purpose of this chapter

FAC section 27521 specifies, in part, that the purpose of the chapter is to ensure the orderly marketing of shell eggs in a uniform manner and to prevent the marketing of deceptive or mislabeled containers of eggs.

FAC section 27573 specifies the purposes of the Shell Egg Food Safety Committee which include the quality of shell eggs and uniformity of inspection.

FAC section 27631 provides that it is unlawful to violate any provision of the chapter or any regulation adopted pursuant to it.

FAC section 27637 provides, in part, that it is unlawful for any person to make any statement about the quality, size, weight, source, origin, or any other matter relating to eggs which is false, deceptive or misleading.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

This rulemaking action proposed to amend the California Code of Regulations (CCR), Title 3, Division 3, section 1354. Specifically, this rulemaking action clarifies and makes specific the requirements to label consumer containers of eggs as “cage free”.

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. This includes the marketing and truth in labeling of shell eggs or egg products.

Benefits of the Proposed Action: This proposed regulatory action will assure the Consumers of California that when they purchase eggs that are labeled “cage free” that they meet 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.

### **CONSISTENCY EVALUATION**

The Department has determined that this proposed regulatory action is not inconsistent with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the marketing of shell eggs.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or Savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with the Government Code section 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or business: Cost impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.” This is more consistent with the Administrative Procedure Act (APA) language of Gov. Code sec. 11346.5(a)(9).

## **RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The Department concludes that it is: (1) likely that the proposal will not create or eliminate jobs and not eliminate existing business; (2) likely that this proposal will not create new business or expand current business opportunities; (3) likely that this proposal will not eliminate jobs; (4) Also, enhanced enforcement activities will protect consumers and the industry, and assure that they are provided an accurate and standardized definition of “cage free”. Finally, this proposed rulemaking will have no impact on the general public and protection of public health and safety.

Significant effect on housing costs: None.

## **SMALL BUSINESS DETERMINATION**

The Department has initially determined that the proposed changes to the regulations would have no significant impact directly affecting small businesses. These regulations do not require any additional costs or outputs for small businesses. These regulations do not establish any new limitations on small businesses. All egg producers would be operating under the same regulatory structure with regards to the regulatory changes.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered 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 or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision 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.

### **CONTACT PERSONS**

Michael Abbott, Supervising Environmental Scientist  
Department of Food and Agriculture Animal Health & Food Safety Services Meat,  
Poultry, and Egg Safety Branch  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 900-5103  
E-mail: michael.abbott@cdfa.ca.gov

The backup contact person is:  
Andrew Halbert, Staff Services Manager  
Department of Food and Agriculture Animal Health & Food Safety Services 1220 N  
Street, Sacramento, CA 95814  
Telephone: (916) 900-5372  
E-mail: [andrew.halbert@cdfa.ca.gov](mailto:andrew.halbert@cdfa.ca.gov)

Please direct requests for copies of the proposed text of the regulations, the initial statement of reason, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Michael Abbott at the above address.

### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Department will have the rulemaking file available for inspection and copying throughout the rulemaking process at its office at: 2800 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Michael Abbott at the address or phone number listed previously.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, the Department may amend the proposed regulations substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Maria Tenorio at the address listed above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Michael Abbott at the address listed previously.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Department's website at: <http://www.cdfa.ca.gov/ahfss/regulations.html>