

**§ 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.

| <b>Table “A” Administrative Penalty Schedule for Egg Quality Control</b> |                                 |   |  |                               |                                 |
|--|---------------------------------|---|--|-------------------------------|---------------------------------|
| <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. |  |                               | 1 <sup>st</sup> violation       |
| 27632  |                                 | Misrepresenting eggs to be product of this state.   |  | 1 <sup>st</sup> violation     | 2 <sup>nd</sup> violation       |

|         |                                     |   |   |                           |                           |
|---------|-------------------------------------|---|---|---------------------------|---------------------------|
| 27633   | 1358.3                              | Acting as egg handler without registering   |   | 1 <sup>st</sup> violation | 2 <sup>nd</sup> violation |
| 27634   |                                     | Unauthorized use of name, trademark, or trade name.   | 1 <sup>st</sup> violation                     | 2 <sup>nd</sup> violation | 3 <sup>rd</sup> 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. |   | 1 <sup>st</sup> violation | 2 <sup>nd</sup> violation |
| 27637   |                                     | False, deceptive, or misleading representation.   |   | 1 <sup>st</sup> violation | 2 <sup>nd</sup> violation |
| 27638   |                                     | It is unlawful for any person to fail to comply with any lawful order of an enforcement officer, or any court, in any proceeding pursuant to this chapter or any regulation adopted pursuant to this chapter.                   |   |                           | 1 <sup>st</sup> violation |
| 27639   |                                     | Refusal to submit to inspections; Refusal to stop vehicle.  |   |                           | 1 <sup>st</sup> violation |
| 27640   | 1355                                | Unauthorized moving of eggs or container having warning tag affixed; Removal of tag.  |   |                           | 1 <sup>st</sup> violation |
| 27641   | 1357;<br>1358.5                     | Preparation, delivery, or sale of nonconforming eggs or containers  |   | 1 <sup>st</sup> violation | 2 <sup>nd</sup> violation |
|         | 1350                                | Failure to meet Shell Egg Food Safety requirements.   |   |                           | 1 <sup>st</sup> violation |
| 27643   | 1358.5                              | Temperature requirements for eggs.  |   | 1 <sup>st</sup> violation | 2 <sup>nd</sup> violation |
|         | 1352.4                              | Regraded and Repacked Eggs.   | 1 <sup>st</sup> violation                     | 2 <sup>nd</sup> violation | 3 <sup>rd</sup> violation |
| 27644   | 1352.4;<br>1354;<br>1356;<br>1356.2 | Signs and labels on eggs  |   | 1 <sup>st</sup> violation | 2 <sup>nd</sup> violation |
| 27644.5 |                                     | Signs and labels on pasteurized in-shell eggs.  | 1 <sup>st</sup> violation                     | 2 <sup>nd</sup> violation | 3 <sup>rd</sup> violation |
| 27651   | 1352;<br>1353;<br>1353.2;<br>1353.4 | Unlawful sale of ungraded eggs absence of finding and proclamation of emergency.  | 1 <sup>st</sup> and 2 <sup>nd</sup> violation | 3 <sup>rd</sup> violation | 4 <sup>th</sup> violation |
| 27652   |                                     | Authorized sale of ungraded eggs during emergency; Required marking of containers.  |   | 1 <sup>st</sup> violation | 2 <sup>nd</sup> violation |
| 27661   | 1357                                | Brand name on master container; Registration requirement.   | 1 <sup>st</sup> violation                     | 2 <sup>nd</sup> violation | 3 <sup>rd</sup> violation |
| 27662   | 1357                                | Misuse of Registered Brand at Production.   | 1 <sup>st</sup> violation                     | 2 <sup>nd</sup> violation | 3 <sup>rd</sup> violation |

|             |        |  |   |   |                           |
|-------------|--------|--|---|---|---------------------------|
| 27663       | 1357   | Unauthorized possession of Registered Brand Master Containers.   | 1 <sup>st</sup> violation                     | 2 <sup>nd</sup> violation                     | 3 <sup>rd</sup> violation |
| 27664       | 1357   | Requirements to operate a Registered Brand Container Exchange.   |   | 1 <sup>st</sup> violation                     | 2 <sup>nd</sup> violation |
| 27665       | 1357   | Authorized licensing of Container Exchanges.   |   | 1 <sup>st</sup> violation                     | 2 <sup>nd</sup> violation |
| 27666       | 1357   | Container Exchange service records.  | 1 <sup>st</sup> and 2 <sup>nd</sup> violation | 3 <sup>rd</sup> violation                     | 4 <sup>th</sup> violation |
| 27667       | 1357   | Unauthorized transportation of master containers.  |   | 1 <sup>st</sup> violation                     | 2 <sup>nd</sup> violation |
| 27669       | 1357   | Unlawful transportation of master containers.  |   | 1 <sup>st</sup> and 2 <sup>nd</sup> violation | 3 <sup>rd</sup> 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. |   |   | 1 <sup>st</sup> violation |
| 27680       | 1358.4 | Production records inspection.   |   | 1 <sup>st</sup> violation                     | 2 <sup>nd</sup> violation |
| 27684       |        | Failure to comply with audit request.  |   |   | 1 <sup>st</sup> violation |
| 27686       |        | Refrigeration requirements for shipped eggs.   |   |   | 1 <sup>st</sup> violation |
| 27687       |        | Shipping non-compliant eggs or failing to register before marketing.   |   | 1 <sup>st</sup> violation                     | 2 <sup>nd</sup> violation |
| 27688       |        | Failure to submit assessment reports as specified.   |   |   | 1 <sup>st</sup> violation |
| 27690       |        | Itemization of all eggs brokered into California   |   |   | 1 <sup>st</sup> 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 4/28/17 Register 2017, No. 17  
3 CCR § 1358.6, 3 CA ADC § 1358.6