

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE EGG SAFETY RULE

Questions and Answers

The following questions are being asked in relation to Title 3 of the California Code of Regulations (CCR) Section 1350 (Shell Egg Food Safety) and amended 3 CCR Section 1354 (Marking Requirements).

- **If the lawsuit between the Missouri Attorney General et al. v. the State is not resolved by January 1, 2015, does this change the enforcement date of these regulations?**

No, unless the federal district court enjoins the state from enforcement.

- **Do the following products need to comply with the requirements of 3 CCR Section 1350?**

- Liquid eggs (whole, yolk, or white)
- Frozen/dried eggs
- Hard-boiled eggs (in shell or peeled)
- Cooked eggs (e.g. breakfast sandwiches)
- Shell eggs that are pasteurized in the shell

Sales of eggs for human consumption in California that are pasteurized or otherwise processed to reduce the risk of salmonella (SE), consistent with Food and Drug Administration (FDA) standards (5 log reduction), are exempt from compliance with the requirements of 3 CCR Section 1350.

The requirements of 3 CCR Section 1350 only apply to shell eggs sold for consumption in California.

- **If any or all of these are exempt, does this exemption include the space requirements listed?**
Yes.
- **Is compliance with 3 CCR Section 1350 required for products that contain egg if made in the state of California (salad dressing, pasta, egg-nog, candy bars)?**
Yes, the requirements of 3 CCR Section 1350 apply to the sale of eggs for consumption in California, if not pasteurized or otherwise processed, to reduce the risk of SE consistent with Food and Drug Administration (FDA) standards (5 log reduction), regardless of ultimate use.
- **If yes, how do the requirements of 3 CCR Section 1350 affect products made elsewhere, e.g., in Illinois (using eggs) and shipped for retail sales in California?**
The requirements of the Egg Safety and Quality Management program (Program) do not apply to eggs sold to manufacturers outside of California who thereafter ship egg products into the state. Accordingly, 3 CCR Section 1350 does not apply to the eggs purchased by these manufacturers.

- **How do these rules apply to in-company transfers of eggs [i.e. division to division, outlet to outlet (e.g. restaurant chain XYZ purchases eggs in another state and through company transfers the eggs end up in restaurants in California)]?**

The Program will evaluate such transfers on a case by case basis. If the restaurant chain meets the definition of an egg handler, as set forth in Food and Agricultural Code (FAC) Sections 27510 and 27510.1, the restaurant must ensure that the eggs have been produced in compliance with the requirements of 3 CCR Section 1350. A restaurant chain will generally qualify as an egg handler if it markets or sells eggs for California purchasers, including franchisees, or prepares them for sale in the California market.

- **How does 3 CCR Section 1350 apply to eggs and egg products purchased for the school lunch Program in California (a Program governed by federal rules and purchased with federal dollars)?**

3 CCR Section 1350 applies to eggs sold for consumption within California, regardless of the purchaser, with the exception of military bases, and the source of funding for the purchase.

- **How do these rules apply to the purchase of eggs on military bases in California where eggs are a commodity purchase using federal rules and consumed on federal grounds?**

The requirements of the Program do not apply to eggs sold and purchased at federal military facilities. Accordingly, 3 CCR Section 1350 does not apply to them.

- **How do the requirements of 3 CCR Section 1350 apply to cruise lines where eggs are consumed at sea, but are loaded when ships are in California ports?**

The requirements of the Program do not apply to eggs purchased for consumption in international waters that travel through California. Accordingly, 3 CCR Section 1350 does not apply to them.

- **How does CDFA plan to enforce the requirements of 3 CCR Section 1350 in relation to eggs coming from Mexico/Canada?**

If an international entity is required to register in California as an egg handler, then the eggs sold and marketed in California by that entity must satisfy the requirements of the Program, including those set forth in 3 CCR Section 1350. Such an entity must comply with these requirements as a condition of being licensed to ship eggs into California as an egg handler.

- **When will enforcement inspections start for Phase II of the rules?**

January 1, 2015.

- **Will companies be notified of Phase II inspections? If yes, how far in advance?**

Yes, unless the Program is in possession of facts that indicate no notice should be given in order to conduct an effective investigation. As a general policy, the California Department of Food and Agriculture (Department) will work with companies to ensure adequate time is provided for collecting documents and assuring appropriate people are available.

- **In addition to compliance with 3 CCR Section 1350, would any other compliance item be reviewed at the same time (e.g. government inspections on the Egg Rule, FSMA Rules, and California air rules)?**
 Yes, as 3 CCR Section 1350 relates to the FDA Egg Rule.
- **What role will third party certification audit findings play in compliance with the new rules (e.g. SQF, Animal Welfare Audits, etc.)?**
 If the Department determines that a third party certification audit ensures compliance with the requirements of the Program, including those set forth in 3 CCR Section 1350, such audits will be accepted.
- **Who will be doing compliance inspections for these rules in the other states that supply eggs to California?**
 California Department of Food and Agriculture.
- **What kind of biosecurity measures have been put in place by inspectors to ensure no disease transfer occurs between flocks?**
 The biosecurity policy of the company being audited will be followed.
- **Please define where the Department plans to investigate for compliance with the requirements of 3 CCR Section 1350 (e.g. grocery stores, farms, restaurants, etc.)?**
 Sales in California will be audited in any location. Egg handlers and producers, as defined in FAC Sections 27510 and 27510.1, will also be audited.
- **If non-compliance is found, who receives the non-compliance notice for each of the entities mentioned above?**
 The person in possession of the eggs will receive a notice and a copy will be sent to the handler that shipped the eggs. The eggs will be put off sale until the violation is corrected.
- **What happens when a non-compliance to these rules is found? Please explain at each relevant level as affected by the questions above.**
 Our authority provides for putting the eggs off sale, seeking injunctive relief and revoking an egg handler's license.
- **If a farm is found "out of compliance" what is the process to get re-approved for sale?**
 Depends on the violation.
- **How long is this process "back to market" anticipated to take once a farm says we now feel we are in compliance?**
 As soon as the company is found to be in compliance, they can resume sales in California.
- **How will the agency, retailers, or consumers know eggs sold after January 1, 2015 are compliant with additional requirements if the "carton mark" is already being used by companies that meet the current California shell**

egg safety requirements?

The Department is operating under the presumption that companies will be accurately labeling their product until facts are discovered to the contrary.

- **What are California consumers being told regarding the space requirements and their relation to food safety for these rules?**

See the rule making file.

- **Are these two rules the only ones being used to enforce the passage of Assembly Bill (AB) 1437? If not, who can provide guidance on other areas of enforcement?**

The Program lacks authority to enforce the statutory requirements of AB 1437. The Program only has the authority to enforce the requirements of 3 CCR Section 1350, which are based upon the Program's authority to ensure that "*healthful and wholesome eggs of known quality are sold in California*" as set forth in FAC Section 27521. Please consult with counsel as to who has the authority to enforce AB 1437.

- **Will the Department inspect California farms for compliance?**

Yes.

- **Will the Department inspect farms outside the state for compliance?**

Yes.

- **If so, will there be inspection fees?**

Any additional costs for these inspections will be factored into any increase in shell egg case assessments.

- **Will there be any state-line inspections of trucks?**

Yes.

- **Is there any paperwork or shipping certificate that must accompany each load? If so, can you provide a sample?**

The Department is in the process of developing this rule.

- **Is there a compliance manual? If so, where can I obtain it?**

The Department is planning to post the final version of the manual, and any updates to it, on the Department's website. The manual is currently being beta tested.

- **Will non-compliant eggs destined for Hawaii or export be allowed through the state?**

Yes.

- **Will there be an enrollment process or certification process that farms must go through prior to shipping eggs into California?**

No, the Department is operating under the presumption that companies will be in compliance and accurately labeling their eggs for sale in California until facts are discovered to the contrary.

- **If our eggs are passing through California and are not sold in California, are special labels required to make this clear to inspectors?**

Special documents or labels are not required, but may speed commerce and add clarity if included with the shipments passing through California.

- **Do all California producers have to comply with the requirements of 3 CCR Section 1350, regardless of the final destination of eggs?**

No. A California producer may sell and market eggs out-of-state without being in compliance with 3 CCR Section 1350; however, they must be able to document that any eggs sold and marketed within California have been obtained from compliant flocks.

- **Does the Department consider the 3 CCR Section 1350 space requirements of 116 square inches a minimum cage requirement as set forth in Health and Safety Code Sections 25990-25994 relating to egg-laying hens? If these standards are not considered minimum requirements, is the Department planning on writing cage size requirements for Sections 25990-25994?**

For reasons set forth in the rulemaking record, the Department has concluded that the space requirements of 3 CCR Section 1350 are harmonious with those set forth in FAC Sections 25990-25994. Given, however, that it lacks the authority to enforce the minimum space requirements of Health and Safety Code Sections 25990-25994, it cannot state that compliance with 3 CCR Section 1350 necessarily entails compliance with Sections 25990-25994. In the absence of such authority, it is also precluded from seeking the adoption of a regulation that would clarify the requirements of Sections 25990-25994.

- **When enlarging existing enclosures by cutting openings between separated spaces, how large does the opening need to be to consider the connected units one enclosure?**

While the space requirements of 3 CCR Section 1350 do not specify requirements for such an opening, a reasonable person would expect the opening to be large enough *for a hen to freely move between sections*. For example, an opening measuring one foot by one foot may provide this freedom of movement and therefore enable the connected units to be considered one space, but consideration of the particular enclosure type and hens may suggest other sizes.

Prepared by the Egg Safety and Quality Management program of the California Department of Food and Agriculture for general guidance purposes only. It should not be considered a substitute for consulting with the Program or legal counsel regarding specific factual situations related to shell egg safety in California.