

DEPARTMENT OF FOOD AND AGRICULTURE
NOTICE OF MODIFICATIONS AND
NOTICE OF DOCUMENT ADDED TO THE RULEMAKING FILE
RELATING TO
REPACKING AND REGRADING EGGS

NOTICE IS HEREBY GIVEN of modifications to the originally proposed regulatory text, and the addition of a document to the rulemaking file for the Meat, Poultry and Egg Safety Branch.

Proposed modifications pertain to the originally proposed regulatory text and documents referred to in the Informative Digest published in the *California Regulatory Notice Register* on March 2, 2012, [Notice File No. Z 2012-0217-01, Register 2012, No. 9-Z] relating to the Egg Safety and Quality Management Program. The Department is now providing notice of proposed modifications to sections 1351, 1352.4, and 1358.4 of Subchapter 3, Chapter 1, Division 3 of Title 3 of the California Code of Regulations. The Department is also adding to the rulemaking file, minutes from the California Shell Egg Advisory Committee Meeting, dated May 18, 2012 held in Sacramento, CA. Enclosed is a copy of the modified text and the added material.

Any person who wishes to comment on the text, as modified, may do so by submitting written comments* beginning **July 16, 2012** and ending at 5:00 p.m., **July 31, 2012**, to the following person:

Tony Herrera, Program Supervisor
Egg Safety and Quality Management
Department of Food and Agriculture
Meat, Poultry, and Egg Safety Branch
Mailing: 1220 N Street
Sacramento, CA 95814

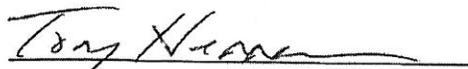
The backup contact person is:

Thamarah Rodgers, Associate Analyst
Department of Food and Agriculture
Animal Health and Food Safety Services
Mailing: 1220 N Street
Sacramento, CA 95814

Materials relating to this proposal may be found on the Department's website at:
<http://www.cdfa.ca.gov/ahfss/regulations.html>

***Please note:** Any written comments are to be restricted to the recent modifications as shown in the attached regulatory text or to the document added to the rulemaking file. The Department is not required to respond to comments received in response to this notice on other aspects of the proposed regulation. All written comments previously submitted during the initial public comment period ending April 16, 2012, remain in the rulemaking file. All written comments received by July 31, 2012, which pertain to the indicated changes, or to the document added to the file, will be reviewed and responded to by the Department as part of the compilation of the rulemaking file.

DATED: 7/10/12


Tony Herrera, Program Supervisor

DEPARTMENT OF FOOD AND AGRICULTURE

Meat, Poultry and Egg Safety Branch

PROPOSED REGULATIONS

MODIFIED TEXT

Repacking and Regrading Eggs

Legend for Modified Text:

- Single underline and ~~strikeout~~ is text that was noticed to the public for a 45-day comment period ending at 5:00 p.m., April 16, 2012.
- Modified text is shown in ~~double strikeout~~ and single underline for deleted text, and double underline for added text.
- All written comments must address the modified text only.

The Department of Food and Agriculture, Meat, Poultry and Egg Safety Branch, proposes to amend sections 1351 and 1358.4, and adopt new section 1352.4 of Subchapter 3, Chapter 1, Division 3 of Title 3 of the California Code of Regulations, to read as follows:

Section 1351. Definitions - General Terms.

(a) "Balut." Shell eggs from any species of fowl, removed from incubation after partial embryo development, intended for human consumption.

(b) "Case." Quantity of 30 dozen eggs.

(c) "Denature." Application of a substance which, by sight or smell, readily identifies an egg, or egg meat, as unfit for human consumption.

(d) "Inedible." Any eggs of any of the following descriptions: black rots; yellow rots; white rots; mixed rots; sour eggs; green whites, stuck yolks; moldy eggs; and eggs showing embryo development at blood ring stage or beyond.

(e) "Loss." Any egg classed as "inedible"; also eggs with contents leaking, frozen, cooked, contaminated or which contain bloody whites, large blood/meat spots, or other foreign matter.

(f) "Lot." Any number of containers labeled with one size, grade, brand and code date and in one location.

(g) "Origin Grade." Standards applicable to eggs at the plant where ~~graded and packed~~ processed.

(h) "Processed." Shell eggs that have been washed, cleaned, sanitized, candled, graded, sized, and placed in containers.

(i) "Regraded." Shell eggs that have been ~~previously~~ processed.

(j) "~~Repacked.~~" ~~Shell eggs that are visually damaged or dirty, and removed and replaced with clean, non-damaged eggs from the same lot.~~

~~(h)~~ ~~(i)~~ (i) "Restricted eggs." Shell eggs classed as Dirty, checks, leakers, loss, inedibles, and incubator rejects.

NOTE: Authority cited: Sections 44, 407 and 27531, Food and Agricultural Code. Reference: Sections 27521 and 27531, Food and Agricultural Code.

Section 1352.4. Regraded and Repacked Eggs.

~~(a) Processing plants may regrade previously processed eggs, and use new containers and apply new Julian pack and sell-by dates. The identification number of the processing plant engaged in the regrading of eggs shall be identified on the containers.~~

~~(b)~~ (a) Registered Producers and wholesalers may repack eggs into overwraps, flats, or hand sort into new clean containers. New Clean containers shall be labeled with original Julian pack and sell-by dates, and the original plant identification number of the producer or wholesaler repacking the eggs.

~~(c)~~ (b) Registered egg handlers who also act as a retailer shall only replace damaged or dirty eggs with clean, undamaged eggs from the same lot and in the original container.

NOTE: Authority cited: 407 and 27531, Food and Agricultural Code. Reference: Sections 27541, 27631, and 27644, Food and Agricultural Code.

Section 1358.4. Records/Invoices.

(a) Each egg handler shall maintain business records of egg transactions for three years, subject to audit by the department. The records shall indicate the date, egg quality and quantity, and identity of purchaser and seller. For small quantities of restricted eggs sold by egg handlers directly to consumers under provisions of Section 1356.2, or incidental sales of consumer grade eggs, the name of purchaser is not required.

(b) An invoice on egg sales shall be furnished to the purchaser, stating the seller's name and address, quantity, size and grade or quality of the eggs. Exempt from this requirement are eggs which are:

(1) Sold or delivered by a producer for candling and grading.

(2) Sold at retail.

(3) Sold by an egg handler from the handler's own production directly to a consumer on the premises where produced.

~~(c) When regrading eggs, e~~ Egg handlers shall maintain records of the original plant where the eggs were first processed for not less than one year from the date of original processing.

NOTE: Authority cited: Sections 407 and 27531, Food and Agricultural Code. Reference: Sections 27631, Food and Agricultural Code.

-APPROVED-

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
SHELL EGG ADVISORY COMMITTEE**

Sacramento, CA

May 18, 2012

MINUTES

MEMBERS

Wayne Winslow, Chairman
Michael Sencer, Vice Chairman
David Will
Michael Gemperle
Gary Foster
Steve Mahrt
Gary Caseri
Richard Jenkins, Alternate

CDEA

Anthony Herrera
Jenna Celigija
Rosie Martin
John Ramos
Bill Rohner
Penny Short
Dr. Doug Hepper
Dave Preciado

INTERESTED PARTIES

Neal Rye, Hidden Villa Ranch
Debbie Murdock, Pacific Egg
& Poultry Association
Glenn Hickman, Hickman
Eggs
Mark Perigen, USDA
Milton O'Haire, Stanislaus
County
Tim Pelican, Stanislaus
County
Gerald Brockman, USDA

CALL TO ORDER

Chairman Wayne Winslow called the Shell Egg Advisory Committee (SEAC) meeting to order at 10:03 a.m. and a quorum was established.

APPROVAL OF MINUTES

Mr. Winslow asked the Committee to review the minutes from the February 17th meeting.

MOTION: A motion was made by Mr. Gary Foster to amend the previously adopted motion to accept the minutes. Mr. David Will seconded the motion. The motion passed unanimously.

DISCUSSION: REGULATION LANGUAGE FOR RE-PACKING AND RE-GRADING

Chairman Wayne Winslow wanted to begin with item four on the agenda, as there were representatives from the United States Department of Agriculture (USDA) there to take part in the discussion. Mr. Winslow began with the proposed regulation language, and why it was reworded when it was submitted to the Executive Office. Mr. Herrera explained it was reworded in order for the average egg registrant to understand. He continued to explain that the language was there, but just in a different format.

Mr. Herrera explained re-grading and re-packing definitions were just the bare minimum and that a more in depth definition would be included in the language as soon as re-packing, re-grading and processed terms were agreed upon.

Mr. Herrera began with the “processed” term, and said it was a shell egg that has been cleaned, candled, graded, sized, and placed in containers. When that language was sent out for comment, one of the things that was proposed is the addition on the word sanitized being added to the definition; as most big companies already sanitize eggs when they are being packed, and smaller companies should practice that as well.

Mr. Herrera continued on to Section 1352.4 (a) of the proposed regulations, stating he wanted to limit a re-grade to an operation that has the authority to process eggs. Mr. Mike Gemperle asked that if one of the listed things (cleaned, sanitized, candled, graded, sized and placed in containers) did not take place then the eggs technically aren’t processed, in which Mr. Herrera confirmed.

Mr. Steve Mahrt asked about the usage of new cartons versus cleaned cartons, in which Mr. Winslow and Mr. Gemperle stated the Egg Quality Assurance Program required the usage of new cartons and flats. Mr. Winslow asked Mr. Gerald Brockman about USDA’s position on the reusing of cartons and flats, and Mr. Brockman answered that it can be clean used. Mr. Winslow then stated that the regulations set forth by the Department should mirror those set forth by USDA. Mr. Herrera said that cartons were okay to be reused at farmer’s markets if all previous information, with the exception of Keep Refrigerated, Eggs, and One Dozen, was obliterated.

After much discussion, Mr. Herrera read the definition of processed as follows: “Shell eggs that have been washed, cleaned, sanitized, candled, graded, sized and placed into containers.” Mr. Winslow asked the committee if re-grade definition is needed, in which the committee discussed and defined.

MOTION: A motion was made by Mr. Steve Mahrt to accept the processed definition as stated above. Mr. Michael Gemperle seconded the motion. The motion was passed unanimously.

MOTION: A motion was made by Mr. Gary Foster to amend the previously adopted motion that by definition, re-grade shall mean processed. Mr. Steve Mahrt seconded the motion. Mr. Michael Sencer abstained. The motion was passed.

Mr. Winslow then moved on to the definition of re-pack, mentioning Section 1352.4(b). The group spoke about the original plant identification number, and questioning whether both the original and repacking company’s numbers need to be included on the new label.

MOTION: A motion was made by Mr. Michael Gemperle that definition of 1352.4(b) is as follows: Registered producers and wholesalers may repack eggs into overwraps, flats, or hand sort into clean containers. Clean containers shall be labeled with original Julian pack and sell-by dates, and the re-packer plant identification number. Mr. Steve Mahrt seconded the motion. Mr. Michael Sencer abstained. The motion was passed.

Mr. Herrera then spoke about 1352.4(c), confirming the language. Mr. Steve Mahrt had a concern that the original container is more often than not damaged along with the eggs, and should not be in the original container.

MOTION: A motion was made to amend the previously adopted motion. Mr. Gary Foster stands by his original motion that the last five words from 1352.4 (c) be stricken from the definition, so it reads as follows: Registered egg handlers who also act as a retailer shall only replace damaged or dirty eggs with clean, undamaged eggs from the same lot. Mr. David Will seconded the motion. The motion passed unanimously.

Mr. Herrera spoke of 1358.4 (c), asking about the definition and if any changes should be made. The group discussed, and decided re-grading should be stricken from the definition. The definition should be as follows: Egg handlers shall maintain records of the original plant where the eggs were first processed for not less than one year from the date of original processing.

MOTION: A motion was made by Mr. Gary Foster that 1358.4 (c) should be defined as stated above. Mr. Michael Sencer seconded the motion. The motion was passed unanimously.

MOTION: A motion was made by Mr. David Will that 1352.4 (a) should be taken out all together. Mr. Steve Mahrt seconded the motion. The motion was passed unanimously.

Mr. Herrera then said regulation language would be rewritten to reflect all changes made today on definitions. It would then be sent out for comments, and then sent to the legal office of the Department for approval.

DEPARTMENT/DIVISION/BRANCH UPDATE

Mr. Dave Preciado began by stating the Department would be taking a 2.5 million dollar reduction, based on current revenue. It is still being discussed where and how the Department will be making cuts. The division has lost ten positions in the last year because of budget cuts, and in the upcoming fiscal year would have to lay off an additional two to three staff to accommodate the new budget. It was stated that even though the Egg Program is not general fund, but agricultural fund, cuts would still be considered, but justifications can be made for staff.

He continued on the Food Safety regulations, stating they are currently in the Executive Office being reviewed by the legal office, and should be out for public notice in roughly two weeks.

DRAFT REGULATION LANGUAGE FOR CERTIFICATE OF MOVEMENT

Mr. Herrera discussed the draft addition to Egg Regulations, and suggested companies receiving egg shipments should notify the Department when eggs have been delivered. Mr. Glenn Hickman asked what kind of penalties would be enforced if shipments are found without previously notifying the Department. Mr. Herrera stated the eggs would be held off sale until the completed certificate is submitted. In addition, the shipper and receiving companies would be penalized.

After discussion by the committee, Mr. Wayne Winslow suggested 1358.6 (1) and (2) of the Draft of the Certificate of Movement should be removed, due to being already mentioned in previous regulations. The committee agreed.

Mr. Herrera suggested Mr. Winslow appoint SEAC members to draft verbiage for regulations. Mr. Richard Jenkins, Mr. Michael Gemperle, Mr. Gary Foster and Mr. Mike Sencer were chosen to develop the Certificate of Movement form and language.

ESQM OVERVIEW

Mr. Herrera began with a power point presentation showing counties contracted with the program. He followed with locating the grading stations, wholesalers and distributors, Shell Egg Surveillance locations, producers with 3000 laying hens or more, and finally producers with 3000 laying hens or less. Mr. Winslow complimented Mr. Herrera, stating the presentation was an eye-opener to the committee on how many registrants are in the state.

FY 2012/13 AND FY 2013/14 BUDGET

Mr. Herrera segued into the budget, stating they program is requesting an increase in the budget. He is requesting an increase in the assessment rate from \$0.05 to \$0.06. Mr. Herrera then spoke about the new staff for the program, including CASS employees, as well as a veterinarian position.

After much discussion with the committee and Mr. Herrera, including the committee wanting a breakdown of staff, audit amounts, liquid egg product revenue, and other various costs it was agreed that an additional meeting would be needed to review the budget.

NEXT MEETING

The next SEAC meeting will be held in Sacramento June 19, 2012 from 10:00 am to 2:00 pm to discuss the budget.

ADJOURN

MOTION: Mr. Winslow adjourned the meeting at 1:29 p.m.