

DEPARTMENT OF FOOD AND AGRICULTURE
Meat, Poultry and Egg Safety Branch
Initial Statement of Reasons

Subject Matter of Proposed Regulations:

Repacking and Regrading Eggs

Sections Affected:

Amend sections 1351 and 1358.4; Adopt section 1352.4

Specific Purpose of Each Adoption, Amendment, or Repeal:

The Department of Food and Agriculture (Department) 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 (CCR) for the purpose of clarifying uniform procedures for the regrading and repacking of shell eggs by California registered egg handlers, which include as it pertains to this proposal, processing plants, producers, and wholesalers. These changes come at the request of the California Shell Egg Advisory Committee (SEAC) and approved at its February 28, 2011 committee meeting.

Existing law, section 27531 of the Food and Agricultural Code (FAC), authorizes the Department to adopt regulations pertaining to the preparation for market and marketing of shell eggs. As it pertains to this proposal, section 27531 authorizes the establishment of requirements for the packing and marking of eggs for retail sales, and for the collection and maintenance of data pertaining to egg production and processing.

Existing law, section 27571 of the FAC, authorizes the Department to establish an advisory committee to assist the Secretary in the administration of all matters pertaining to standards for shell eggs including egg quality and sampling, inspection, fee adjustment for administrating and enforcement purposes, budget administration, regulation adoption, and voluntary food safety programs (FAC section 27573). Members of the California SEAC are appointed by and may hold office at the pleasure of the Secretary.

In compliance with sections 27531 and 27573, the Department proposes to amend section 1351 (Definitions – General Terms) to update the general terms and definitions used within the subchapter; to amend section 1358.4 (Records/Invoices) to specify recordkeeping requirements for entities regrading eggs; and to adopt section 1352.4 (Regraded and Repacked Eggs) to clarify procedures used by processing plants when regrading previously processed eggs, producers and wholesalers when repacking eggs, and egg handlers acting as a retailer when replacing eggs. The Department believes this proposal would benefit California's shell egg industry, and would also benefit the public health and safety of California and national consumers purchasing eggs marketed by California processing plants, producers, and wholesalers. As a result, common and widely acceptable industry practices will be uniformly implemented throughout the State, and no longer be subject to interpretation. These uniform and prescribed procedures will help to ensure a consistent representation of eggs of the highest quality and marketing practices, and additionally include mechanisms for disease traceability in the event of a food borne illness outbreak.

Based on an initial evaluation, the Department does not believe that the proposed regulations are inconsistent or incompatible with existing state or federal regulations.

Problems Intended to Address:

The inconsistent practices associated with repacking and regrading eggs among California registered egg handlers.

Statement of Factual Basis and Rationale:

This proposal pertains to the Egg Safety and Quality Management (ESQM) program within the Department's Meat, Poultry and Egg Safety Branch (MPES.) The ESQM serves to provide California consumers with eggs that are wholesome, properly labeled, refrigerated, and of established quality, while maintaining fair and equitable marketing standards in the California egg industry. Specifically, the program monitors egg quality at production, wholesale, and retail levels, requires persons engaged in the business of marketing eggs in California to be registered, conducts inspections, and provides supervision and training to employees of the County Agricultural Commissioners to ensure consistency and uniform application of standards throughout the State. The program also enforces and controls the movement of restricted and inedible eggs through the USDA Shell Egg Surveillance Program.

The California egg industry plays a significant role in California agriculture, producing about 5 billion eggs per year with approximately 20 million laying hens. Of the 215.7 million cases of California shell eggs produced in 2009, 66.4 million cases were further processed for food service, manufacturing, retail and export; 124.6 million cases went to retail; 18.3 million cases went for food service use; and 6.4 million cases were exported. In value, California egg production is estimated at \$340 million, with total sales generating approximately \$1 billion. At the national level, California is the fifth largest egg producing state, producing about six percent of the national total of table eggs; however, egg consumption in California is nearly 12 percent, based on population share, thus leaving California's egg supply for its own consumers at a deficit.

To supplement the State's high demand for table eggs, California processing plants, producers, and wholesalers, must acquire shipments of table eggs from other states, mainly Iowa, Minnesota, Utah, Missouri, and Michigan. Most of these eggs are in liquid form, however approximately one-third of the shell eggs consumed in California are produced out of the State.

As California processing plants, producers, and wholesalers purchase eggs from other sources, as received, the eggs have already been "processed", which includes cleaning the exterior of the egg, candling (used to examine the interior quality of the egg), grading (rating overall egg quality), sizing (weight classification), and placing (packing) the finished eggs into some form of a container to facilitate their handling. Processors, producers, and wholesalers however, will regrade and repack the eggs into (new) containers, affixing their companies' own label or one of several different labels, and (re)sell the eggs. This practice is a common and widely acceptable industry practice, and necessary, to supply the high demand for eggs and egg products within the State. However, these processes are not uniform throughout the State, as every processor has their own interpretation of existing laws and regulations for their use.

To address the industry's inconsistent, yet common and widely acceptable, practices of regrading and repacking eggs, the Department is proposing to amend existing and adopt new regulations. Specifically, this proposal will amend sections 1351 and 1358.4 and adopt new

section 1352.4 of Subchapter 3, Chapter 1, Division 3, of Title 3 of the CCR, as outlined below. These changes also come at the request of the California Shell Egg Advisory Committee which approved the proposed changes at its February 28, 2011 meeting.

The Department proposes to amend section 1351 as follows:

Section 1351. Definitions - General Terms.

Subsection (g) amends the term “origin” by adding “grade” to clarify “origin grade” as the correct use of the term within the egg industry. The Department goes on to add “processed” and deletes “graded and packed” to the definition; “processed” is defined in subsection (h) below making it redundant to use it in conjunction with graded and packed within the definition. Therefore, these changes are necessary to clarify the correct use of the term and its definition as it applies to the subchapter.

Subsections (h), (i), and (j) add new terms, “processed”, “regraded”, and “repacked”, respectively, and subsequent definitions as used within the egg industry and to clarify their use within the subchapter.

Subsection (k) adds a new subsection for organizational purposes, and amends the definition for clarity and consistency within the subchapter.

The Department also deletes an obscure authority citation.

The Department proposes to add section 1352.4 to specify the requirements associated with the practices of regrading and repacking of eggs as follows:

Section 1352.4 Regraded and Repacked Eggs.

Subsections (a) and (b) apply to processing plants, producers, and wholesalers where the practice of regrading and repacking previously processed eggs is common and acceptable. The intent of this section is to formalize the process while providing specific requirements to ensure egg quality, and to facilitate traceability in the event of a food borne illness.

Subsection (a), in addition to formalizing the feasibility of both regrading and repacking of eggs, further requires processing plants to use new containers for sanitary purposes, and to apply new Julian pack and sell-by dates, as defined in FAC section 27644. The new Julian pack date represents the date the eggs were put into the new container, and is allowable because the eggs have been regraded, or reexamined for quality and given a rating or score as defined in Title 3, Section 1352, CCR. Additionally, because these eggs are regraded and repacked it is lawful for the processor to apply a new sell-by date, which by law shall not exceed 30 days from the (Julian) pack date (FAC section 27644).

Subsection (a) goes on to require the identification number of the processing plant regrading the eggs be identified on the new container. In the event of a food borne illness, the plant identification number may help identify the source of illness. Investigators may be able to trace lots [Title 3, CCR section 1351(f)] of eggs back to the processor(s) where they can then access records to further trace contaminated eggs to a potential source. The pack and sell-by dates in combination with the plant identification number are vital to containing and preventing further spread of a food borne illness outbreak.

Subsection (b) applies to only “producers and wholesalers”, and confirms the practice of only repacking eggs, the process of removing visually damaged or dirty eggs and replacing them with clean non-damaged eggs from the same lot. For producers and wholesalers, this process requires the new group of eggs be placed into overwraps (several stacks of egg flats wrapped in plastic or boxed), flats (open tray sold individually), or new containers (generally speaking, consumer cartons) and that this new container must have the original Julian pack and sell-by dates. Because these eggs are not being regraded, the original dates are appropriate and reflective of the interior quality (as a result of candling) and exterior quality (grade) at a particular time (pack date) and until a particular date (sell-by date) as required by FAC section 27644. When eggs from different pack dates are assembled and repacked, use of the oldest pack date and subsequent sell-by date is the common industry practice as it represents the oldest possible egg in the container.

Subsection (b) further specifies that the original plant identification number be represented on the new container. Because the eggs are only being repacked (replaced) with eggs from the same lot, their source is unchanged and therefore traceable to the original plant conducting the processing. For reasons specified in subsection (a) above, it is necessary to trace lots of eggs back to processor(s) where inspectors can subsequently access records to further trace potentially contaminated eggs to a likely source.

Subsection (c) applies only to “egg handlers” (FAC section 27510) who also act as a “retailer” (FAC section 27518). This subsection would generally apply to the producer selling eggs locally at farmers’ markets or company-owned retail stores. This section would not however, apply to retail (grocery) stores as they are not considered egg handlers (See Office of Legislative Counsel, Retail Egg Sales - # 20795.) The Department is proposing that this category of entities/persons handling eggs, whether they are regrading and/or repacking eggs, to only replace damaged or dirty eggs, with clean, undamaged eggs from the same lot, and that the eggs as a whole, remain in their original container. What is common practice at the retail level is employees will replace damaged eggs with eggs from various sources (lots), rendering it impossible to trace eggs to their source in the event a food borne illness outbreak. The intent of this section is to require that a replacement egg come from the same lot as the damaged egg so that every egg in a particular container is coming from the same source (lot) for traceability purposes.

The Department proposes to amend section 1358.4 as follows:

Section 1358.4 Records/Invoices.

Subsection (c) adds new language to require the maintenance of records by egg handlers engaged in the practice of regrading eggs for not less than one year from the date of original processing. In the event of a food borne illness outbreak, investigators at the local, state, and/or federal level will return to the egg handler as identified by the processing plant number proposed by new section 1352.4(a) to review the (business) records to further identify where the eggs were first processed. The Department believes that one year to retain such records is reasonable as any necessary investigation into a food borne illness outbreak would may require inquiry into records up to, but no longer than, the period of one year. However, maintenance of these records is a critical piece to solving and ceasing the spread of food borne illnesses.

Technical, Theoretical, and Empirical Study, Report, or Similar Document

- Minutes from the Department's Shell Egg Advisory Committee Meeting, February 28, 2011, Anaheim, CA
- Office of Legislative Counsel, Retail Egg Sales - # 20795
- STD. 399 w/attached Economic Impact Assessment, Repacking and Regrading of Eggs

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Reasonable Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Department would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed regulation.

Reasonable Alternatives The Department Has Identified That Would Lessen Any Adverse Impact On Small Businesses

The Department has not identified any reasonable alternatives to the proposed action and no adverse impacts to small businesses are expected as a result of this proposed action. The anticipated compliance requirements are as follows:

- Records/Invoices: Egg handlers registered with the Department are required to keep certain records or invoices as specified in existing regulation section 1358.4. This proposal expands upon that requirement by adding that if egg handlers regrade eggs, they 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. The Department believes this requirement does not adversely affect businesses or small businesses engaged in marketing eggs in California. The Department believes the one-year requirement is necessary and is reasonable as any needed investigation into a food borne illness outbreak would require inquiry into records up to, but no longer than, the period of one year. This requirement is not anticipated to incur increased costs to businesses as record keeping is a standard business practice for persons marketing eggs in California. The maintenance of records will assist the Department in ensuring only safe and wholesome products are marketed in California.

Benefits:

The purpose of the proposed regulatory changes will benefit the public and industry to ensure that shell egg processing plants, producers, and wholesalers registered with the Department as egg handlers who choose to regrade and repack eggs, do so in a uniform and prescribed manner to ensure consistent representation of eggs of the highest quality and marketing practices. Additionally, the regulatory changes include mechanisms for disease traceability that are critical to solving and ceasing food borne illness events which will protect the health and welfare of the public.

Facts, Evidence, Documents, Testimony, or Other Evidence of No Significant Adverse Impact on Business:

No facts, evidence, documents, testimony, or other evidence of any significant adverse economic impact on business have been identified.

Duplication or Conflicts with Federal Regulations:

The United State Department of Agriculture (USDA), Agricultural Marketing Service (AMS) administers a voluntary egg-quality grading program (9 CFR Part 56) for shell eggs paid for by processing plants. Cartons from these plants bear the USDA shield and grade mark on the carton which means that the eggs were graded for quality and checked for weight (size) under the supervision of a trained USDA grader and that the plant processing the eggs followed USDA's sanitation and good manufacturing processes. The voluntary grading program also establishes a basis for quality and price relationship and enables more orderly marketing. Consumers can purchase officially graded product with the confidence of receiving quality in accordance with the official identification. The USDA/AMS prohibits the repackaging of eggs packed under this voluntary grading program.

The Department monitors compliance with official U.S. standards, grades, and weight classes by California egg packers who do not use the USDA/AMS shell egg grading service pursuant to FAC section 27532. Egg cartons from these plants will bear a grade mark however without the USDA shield.