

TITLE 3. FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person beginning March 2, 2012 and ending at 5 p.m. April 16, 2012. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 407 and 27531, Food and Agricultural Code, and to implement, interpret or make specific sections 27521, 27541, 27631, and 27644, of said Code, the Department proposes to amend sections 1351 and 1358.4 and adopt section 1352.4 of Subchapter 3, Chapter 1, Division 3 of Title 3 of the California Code of Regulations, as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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 specifically as it pertains to this proposal, processing plants, producers, and wholesalers, and approved by the California Shell Egg Advisory Committee (SEAC) 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. Specifically, 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.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 et seq. Require Reimbursement: None

Business Impact: The Department of Food and Agriculture has made an initial determination that the proposed regulatory action will not have any significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

This initial determination is based on the fact that the proposed regulation does not impose new requirements on California registered egg handlers, including producers, processors, and wholesalers; rather it clarifies the practices and processes required should these entities choose to engage in the practice of regrading and repacking shell eggs. 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.

Impact on Jobs/New Businesses: The Department has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

Cost Impacts on Representative Private Persons or Businesses: The Department of Food and Agriculture is not aware of any cost impacts that a representative private person or businesses would necessarily incur in reasonable compliance with the proposed action.

This proposal does not impose new requirements on California registered egg handlers, including producers, processers, and wholesalers; rather it clarifies the practices and processes required should these entities choose to engage in the practice of regrading and repacking shell eggs. 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.

In making these determinations the Department has not considered alternatives that would lessen any adverse economic impact on businesses and invites the public to submit such proposals during the written comment period. Submissions may include the following considerations:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- The consolidation or simplification of compliance and reporting requirements for businesses.
- The use of performance standards rather than prescriptive standards.
- Exemption or partial exemption from the regulatory requirements for businesses.

Effect on Housing Costs: None

ECONOMIC IMPACT ANALYSIS

The Department of Food and Agriculture (Department) has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulation does not impose new requirements on shell egg processing plants, producers, and wholesalers; rather, it proposes to clarify the processes and procedures for repacking and replacing eggs should these entities chose to engage in those practices.

As part of its Economic Impact Analysis, the Department has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, that it will not create or eliminate jobs or occupations, and the proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services. The Department's proposal does not impact multiple industries.

Small Businesses: The Department's proposal may affect small businesses; however the Department does not have nor does it maintain data to determine if any of its registered egg handlers (shell egg processing plants, producers and wholesalers) are "small businesses" as defined in Government Code Section 11342.610.

Impact on Jobs/New Businesses: The Department has determined that this regulatory proposal will not have a significant impact on the creation of new or elimination of existing jobs, businesses or the expansion of businesses in the State.

Occupations/Businesses Impacted: The Department has made an initial determination that this regulatory proposal will impact shell egg processing plants, producers, and wholesalers should they choose to engage in the practices of repacking and regrading eggs. As of January 1, 2012, the Department had approximately 1,151 registered egg handlers consisting of 10 processing plants only, 608 both processing plants and producers, 202 wholesalers only, and 331 producers only that would not be affected by this proposal (producers do not (re)grade or process eggs.)

Business Reporting Requirement: The regulation does not require a report, which shall apply to businesses.

Comparable 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 Food and Agricultural Code section 27532. Egg cartons from these plants will bear a grade mark however without the USDA shield.

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.

Documents Incorporated by Reference: None.

Documents Relied Upon in Preparing Regulations:

- 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 for the Repacking and Regrading of Eggs

CONSIDERATION OF ALTERNATIVES

The Department of Food and Agriculture must determine that no reasonable alternative considered or that has otherwise been identified and brought 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.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the hearing (if a hearing is requested) or during the written public comment period.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all the information upon which the proposal is based, may be obtained by contacting the persons named below or by accessing the Department of Food and Agriculture's website as indicated below in this Notice.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the persons named below.

Any person may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact persons named below or by accessing the website listed below.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations, or any written comments concerning this proposal are to be addressed to the following:

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Website Access: Materials regarding this proposal can be found by accessing the following Internet address: <http://www.cdfa.ca.gov/ahfss/regulations.html>