

**DEPARTMENT OF FOOD AND AGRICULTURE  
MEAT, POULTRY AND EGG SAFETY BRANCH  
EGG SAFETY AND QUALITY MANAGEMENT PROGRAM  
INITIAL STATEMENT OF REASONS**

**Hearing Date**

No hearing is 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 of Food and Agriculture no later than 15 days prior to the close of the written comment period.

**Subject Matter of Proposed Regulations**

Administrative Penalties for Egg Quality Control

**Section Affected**

Adopt section 1358.6 of Title 3 of the California Code of Regulations

**Specified Purpose of Each Adoption, Amendment, or Repeal**

Existing law, section 27521 of the Food and Agricultural Code authorizes the Department of Food and Agriculture (Department) to assure that healthful and wholesome eggs of known quality are sold in this state; to facilitate the orderly marketing of shell eggs in a uniform manner; and to prevent the marketing of deceptive or mislabeled containers of eggs.

Existing law, section 27531 of the Food and Agricultural Code, authorizes the Department to adopt regulations pertaining to the preparation for market and marketing of shell eggs.

Existing law, section 27541 of the Food and Agricultural Code, requires any California egg producer or egg handler, or any out-of-state egg producer or egg handler selling eggs in California, to register with the Department. An egg handler is defined in section 27510 of the Food and Agricultural Code to mean a person engaged in the business of producing, candling, grading, packing, or preparing shell eggs for market or who engages in the operation of selling or marketing eggs that he or she has produced, purchased, or acquired from a producer, or which he or she is marketing on behalf of a producer, whether as owner, agent, or employee.

Existing law, section 27571 of the Food and Agricultural Code, authorizes the establishment of an advisory committee on 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 in accordance with section 27573 of the Food and Agricultural Code.

Existing law, section 27581.1 of the Food and Agricultural Code, authorizes the Department to adopt regulations, on or before January 1, 2017, classifying violations of the chapter or any regulation adopted pursuant to the chapter as "minor," subject to a penalty from \$50 to \$400, inclusive, "moderate," subject to a penalty from \$401 to \$1,000, inclusive, or "serious," subject to

a penalty from \$1,001 to \$10,000. The penalty schedule described in this section shall apply to penalties imposed pursuant to sections 27581.4 and 27583.

Existing law, section 27581.4 of the Food and Agricultural Code, authorizes the Secretary of the Department or a commissioner for violations in his or her county, to bring a civil action against any person who violates the chapter or any regulation adopted pursuant to the chapter, and any person who commits that violation is liable civilly in an amount not to exceed \$10,000. The court shall set the civil penalty imposed for a violation of the chapter or any regulation adopted pursuant to the chapter, in accordance with the penalty schedule adopted by the Department in accordance with section 27581.1 of the Food and Agricultural Code.

Existing law, section 27583 of the Food and Agricultural Code, specifies that in lieu of prosecution, the Secretary of the Department or the commissioner may levy an administrative penalty, in an amount not to exceed \$10,000 and in accordance with section 27583.2 or 27583.4, as applicable, against a person who violates the chapter or any regulation implemented pursuant to the chapter. Commencing on the date the Department posts notice of the adoption of the penalty schedule described in section 27581.1, a penalty levied pursuant to this section shall be in accordance with that schedule.

No regulations exist to implement section 27581.1 of the Food and Agricultural Code. Therefore, the Department is proposing to adopt section 1358.6 of Title 3 of the California Code of Regulations to establish procedures for the implementation of administrative penalties against any person found to be in violation of specified statutes and/or regulations relating to eggs, including the adoption of an administrative penalty schedule in regulation section 1358.6, in accordance with section 27581.1 of the Food and Agricultural Code.

The Department has conducted a search of applicable existing regulations relating to the marketing of shell eggs in the state. The Department does not believe the proposed regulations are inconsistent or incompatible with existing state regulations. This proposal will establish an administrative penalty schedule in regulation.

### **Problem Intended To Address**

Assembly Bill (AB) 689 (Statutes of 2015, Chapter 302) became effective on January 1, 2016. The legislative action amended section 27581.4 of the Food and Agricultural Code and adopted sections 27561.5, 27581.1, 27583, 27583.2, 27583.4, 27584, and 27585 of the Food and Agricultural Code, relating to eggs.

On or before January 1, 2017, Food and Agricultural Code section 27581.1 requires the Department to adopt a penalty schedule through regulation categorizing violations as “minor” [\$50 to \$400], “moderate” [\$401 to \$1,000] and “serious” [\$1,001 to \$10,000]. This section of law does not provide any discretion for the Department to reduce a penalty below or above the range provided by the schedule.

Food and Agricultural Code section 27583 authorizes the Department, in lieu of prosecution, to levy an administrative penalty in an amount not to exceed \$10,000, against any person in violation of the Department’s Egg Safety and Quality Management Program requirements, as specified. Commencing on the date the Department posts notice of the adoption of a penalty schedule described in section 27581.1, a penalty levied pursuant to this section shall be in accordance with that schedule.

Therefore, there is an immediate need for the Department to adopt regulations specifying violation categories and to establish an administrative penalty schedule pursuant to section 27581.1 of the Food and Agricultural Code.

### **Statement of Factual Basis and Rationale**

The Department's Meat, Poultry and Egg Safety Branch licenses and inspects the following meat and poultry establishments that are exempt from federal inspection (i.e., the United States Department of Agriculture (USDA)):

- Meat Processing Establishments that prepare meat and poultry products by curing, smoking for preservation, drying, or rendering for retail sales only, except products of fallow deer, which can be transported and sold in commerce.
- Custom Livestock Slaughterhouses that slaughter cattle, sheep, swine, goats and fallow deer raised or bought live by owners. The meat from cattle, sheep, swine and goats is used by the animal's owner, members of the owner's household, nonpaying guests and employees. It cannot be sold. Fallow deer meat can be transported and sold in commerce.
- Poultry Plants that slaughter species that don't require (non-amenable) federal inspection: rabbits; small game birds such as quail, pheasant, and partridge, or
  - Retail Poultry Plants that sell live poultry and slaughter them for customers or
  - Non-retail Poultry Plants that slaughter or process fewer than 20,000 poultry of all amenable species (chickens, ducks, geese, guineas, squab and ratites) or fewer than 5,000 turkeys a year.
- The branch trains, licenses and evaluates Poultry Meat Inspectors (PMIs) who inspect poultry and rabbits in licensed poultry plants, Livestock Meat Inspectors (LMIs) who inspect livestock in licensed custom livestock slaughterhouses and Processing Inspectors (PIs) who inspect meat and poultry products in licensed retail meat processing establishments. PMI's, LMI's and PI's also enforce sanitation standards, pest control, humane handling and slaughter, inedible/condemned material control, marking and labeling and record-keeping requirements in licensed plants.

Additionally the Meat, Poultry and Egg Safety Branch licenses and inspects the following:

- Renderers who recycle animal carcasses, packinghouse waste and inedible kitchen grease into animal feed ingredients and inedible industrial fats, oils, and other products.
- Collection Centers used for temporary storage of animal carcasses, packinghouse waste and inedible kitchen grease before transport to a licensed rendering plant.
- Dead Animal Haulers who transport carcasses of dead livestock and horses.
- Pet Food Slaughterers who slaughter animals for use as pet food.
- Pet Food Processors who prepare fresh or frozen raw meat products for pet food.
- Pet Food Importers of fresh or frozen raw meat, meat by-products, horsemeat, poultry meat or poultry meat by-products for pet food or horsemeat for human food.
- Registers transporters of inedible kitchen grease for commercial or personal use.
- Inspection of imported, slaughtered non-amenable poultry species shipped to California from other countries and reviews for approval or disapproval inspection systems of other states and foreign countries desiring to ship slaughtered non-amenable poultry species to California.
- Review sanitation and records at federally exempt establishments (locker plants that cut, wrap and process meat from farm killed livestock; custom livestock slaughterhouses; poultry plants).

- Conducts Compliance Investigations into alleged violations of sections of the Food and Agricultural Code pertaining to the above activities.

This proposal pertains to the Egg Safety and Quality Management Program (program) within the Meat, Poultry and Egg Safety Branch. The program performs the following registration, enforcement, and inspection activities:

- Inspects and regulates shell egg quality and production at the wholesale and retail levels.
- Ensures that egg handlers market eggs that conform to grade, size, quality and labeling requirements. It is also responsible for ensuring that these handlers market eggs that are wholesome and safe to eat by requiring them to market eggs that have been produced in compliance with shell egg food safety standards. Egg handlers are required to register with the program on a yearly basis.
- 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.
- Monitors egg quality at production, wholesale, and retail levels, and 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 California.
- Enforces and controls the movement of restricted and inedible eggs through the USDA Shell Egg Surveillance Program. The program is entirely industry-funded through mill assessment and registration fees paid by the in-state and out-of-state egg producers, packers, and shippers.

In accordance with Food and Agricultural Code section 27571, the Department has an established Shell Egg Advisory Committee (SEAC) to assist the Secretary with the administration of all matters pertaining to standards for shell eggs including egg quality and sampling, inspection, fee adjustments for administration and enforcement purposes, budget administration, regulation adoption, and food safety programs [Food and Agricultural Code section 27573].

At the December 1, 2015 SEAC meeting, members discussed various issues which included the proposed adoption of regulations to implement specified provisions of AB 689 (Statutes of 2015, Chapter 302). Therefore, the Department is now proceeding with a regulatory proposal to implement AB 689 relating to administrative penalty provisions to serve to ensure California egg registrants are in compliance with program requirements and to provide clarity as to the violation categories and the fines and penalties that may be imposed by the Department for a violation of specified statutes and regulations relating to eggs. The enforcement activities relating to the marketing of shell eggs in California will serve to ensure that shell eggs and shell egg products are safe and wholesome for human consumption to prevent or mitigate the occurrence of food borne illnesses, such as Salmonella<sup>1</sup>, in shell eggs.

The proposal is outlined below.

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<sup>1</sup> Salmonella infection or salmonellosis, is a bacterial disease of the intestinal tract in humans and animals. *Salmonella enteritidis* is the contamination of shell eggs during egg production. Salmonella is a group of bacteria that cause typhoid fever, food poisoning, gastroenteritis, enteric fever and other illnesses. People become infected mostly through contaminated water or foods, especially meat, poultry and eggs.

## Adopt Section 1358.6. Administrative Penalties for Egg Quality Control.

Subsection (a) provides the statutory authority for the Department to impose fines and penalties should individuals willfully and knowingly violate statutes and/or regulations relating to the marketing of shell eggs and shell egg food products in California. The Department has the authority to seek prosecution for a violation of the provisions under Chapter 1 (commencing with section 27501) of Part 4, Division 12 of the Food and Agricultural Code. Section 27581.1 of the Food and Agricultural Code, authorizes the Department to impose a fine from \$50 to \$10,000 based upon the severity of the violation. The intent of the regulation is to provide clarity to the public on how the Department categorizes violations of specified statutes and regulations and the appropriate fine and penalty range, as determined on a case by case basis.

Subsections (b)(1), (2) and (3) are needed to provide the public with an explanation and definition of what the Department considers to be serious, moderate and minor violations of its statutes and regulations relating to the marketing of shell eggs and shell egg food products in the state. The Department believes only the most egregious and repeated violations relating to shell egg food safety would warrant serious penalties. As an example, a serious offense is an individual who willfully and repeatedly violates regulations relating to the prevention and mitigation of Salmonella contamination in shell eggs and in the environment where shell eggs are produced, which could cause serious illness in humans if those contaminated shell eggs are sold in the marketplace. This means producers are to implement and maintain a shell egg food safety surveillance program to ensure the environment where egg-laying hens are housed are kept sanitary, which will serve to ensure that safe and wholesome shell eggs and shell egg food products are marketed to consumers in the state.

Lesser offenses would be considered moderate and minor depending on the type of violation, such as, a person who sells eggs in containers using another person's business, trademark or brand name without the owner's permission or failure to meet certain labeling requirements on containers of shell eggs destined for the California marketplace. However, repeated "moderate" or "minor" offenses could escalate and be considered serious offenses when a person appears to be ignoring the statutory and regulatory requirements of the Department after being cited repeatedly by the Department, and the person is made aware of the violation.

Subsection (c), the Department is adopting Table A, Administrative Penalty Schedule for Egg Quality Control into Title 3 of the California Code of Regulations. Each violation cited on the table is from existing sections of the Food and Agricultural Code and Title 3 of the California Code of regulations relating to the marketing of shell eggs in California and provides a list of each penalty associated with each violation and the range of the penalty based on severity of the offense or repeated offenses, as specified on the schedule. There are no new penalty provisions being adopted into the table. The information is consistent with the statutes and regulations cited and placed in a table format. After determination and a review of the facts and evidence presented in the matter, on a case by case basis, a penalty will be assessed to alleged violators according to the schedule. The violations table will provide the public with clear information on how the Department cites and fines persons, and what it considers to be serious, moderate and minor violations for persons found to be in violation of the statutes relating to the marketing of shell eggs and egg food products under Chapter 1 (commencing with section 27501) of Part 4, Division 12 of the Food and Agricultural Code, and any regulations implementing those statutes.

Authority and reference citations. The Department is also adopting the authority and reference citations for the section pursuant to Government Code section 11349.1 and section 14 of Title 1 of the California Code of Regulations.

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

No technical, theoretical or empirical study, report, or similar document was used in the formulation of this proposal. However, the following supportive factual documents are included in this filing:

- AB 689 (Statutes of 2015, Chapter 302)
- December 1, 2015 Shell Egg Advisory Committee meeting minutes

### **Statement of Justification for Prescriptive Standards**

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

### **Consideration of Reasonable Alternatives**

No reasonable alternative 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 action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. This proposal is necessary to implement specified provisions of AB 689 (Statutes of 2015, Chapter 302).

### **Reasonable alternatives the Department has identified that would lessen any adverse impact on small business**

No alternatives were identified by the Department and no adverse impact to small businesses is anticipated. This proposal is necessary to implement specified provisions of AB 689 (Statutes of 2015, Chapter 302).

### **Benefits of the Proposed Regulations**

This proposal benefits the health and welfare of the citizens of California by serving to ensure egg registrants are in compliance with statutes and regulations to serve to ensure that only healthful and wholesome eggs are marketed to consumers in accordance with Food and Agricultural Code section 27521. It also serves to ensure that the Department has effective enforcement mechanisms in place by clearly classifying the violation categories and establishing a penalty schedule in regulation that applies to penalties that may be imposed pursuant to sections 27581.4 and 27583 of the Food and Agricultural Code. Monetary benefits could include the potential reduction of violations that could result in the occurrence of contamination in shell eggs, such as Salmonella, which could cost the industry millions in recalling contaminated eggs from the marketplace and could lead to illnesses to the public. Nonmonetary benefits would be consumer confidence that comes from knowing that eggs sold in California meet the nation's highest food safety standards and market stability derived from strong food borne illness prevention measures applied equally to all suppliers into California markets.

### **Facts, evidence, documents, testimony, or other evidence of no significant adverse impact on business**

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

### **Persons/Businesses affected by this proposal:**

- This proposal affects persons registered with the Department as an egg producer or egg handler in California or any out-of-state egg producer or egg handler selling eggs in California in accordance with section 27541 of the Food and Agricultural Code. An egg handler is defined in section 27510 of the Food and Agricultural Code to mean a person engaged in the business of producing, candling, grading, packing, or preparing shell eggs for market or who engages in the operation of selling or marketing eggs that he or she has produced, purchased, or acquired from a producer, or which he or she is marketing on behalf of a producer, whether as owner, agent, or employee.
- There are approximately 2,320 egg registrants. Of that number 1,521 are in-state and 799 are out-of-state.
- Commercial egg production in the western United States is concentrated in California, and in the eastern United States is centered in Iowa, Ohio, Indiana, and Pennsylvania. Other States in which major producers are located include Texas, Minnesota, and Georgia. California ranks 7 in the nation of the top 10 egg producing states ranked by the number of hens in the state.
- In Fiscal Year 2014/15 the Egg Safety and Quality Management Program inspected 46 counties in the state with approximately 1,191 violations issued by the program to egg registrants relating to production, wholesale and retail noncompliance issues.

### **Anticipated compliance requirements as a result of this proposal:**

- The proposal contains no specific record keeping, paperwork or reporting requirements. It provides information to the public on violation categories and a penalty schedule to disclose how the Department determines whether a violation is considered minor, moderate, or serious and the amount of the fine that may be imposed, as specified in this proposal.

### **Duplication or Conflicts with Federal Regulations**

This proposal does not duplicate or conflict with federal regulations. There are related federal regulations concerning disease control and flock management in poultry under 7 CFR sections 56.76 and 56.77, 9 CFR Parts 56, 145, 146 and 147 and 21 CFR Parts 16 and 118. However, the Department of Food and Agriculture is the sole state authority to regulate the safety of shell eggs and shell egg food products that are intended for human consumption and marketed to California consumers.

## **ECONOMIC IMPACT ASSESSMENT**

### **Business Impact**

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.

The Department has made an initial determination that the proposed regulatory action will have no significant, statewide adverse economic impact directly affecting California businesses including the ability of California businesses to compete with businesses in other states.

The Department has made an initial determination that this regulatory proposal will impact the shell egg and shell egg food products industry, including persons required to be registered with the Department to market shell eggs and shell egg food products in the state in accordance with Food and Agricultural Code sections 27531 and 27541. The Department's proposal may affect small businesses, however, it does not impact multiple industries.

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

These determinations are based on the fact that this proposal is necessary to establish procedures for the implementation of administrative penalties against any person found to be in violation of specified statutes and/or regulations relating to eggs, including the adoption of a penalty schedule pursuant to section 27581.1 of the Food and Agricultural Code.

### **Benefits of the proposed regulation to the health and welfare of California residents, worker safety, and the State's environment**

The proposed regulation benefits human health and welfare, worker safety, and the environment by serving to ensure egg registrants' compliance with all statutes and regulations relating to the marketing of shell eggs in California. It will serve to ensure that eggs are handled and processed in facilities that safe and sanitary to ensure that healthful and wholesome eggs are marketing to California consumers. This regulatory proposal will provide clarity to the public as to the violation categories and the fines and penalties that may be imposed by the Department for a violation of specified statutes and regulations relating to the marketing of shell eggs in California. The Department's enforcement activities relating to the marketing of shell eggs in the state will serve to ensure that shell eggs and egg products are safe and wholesome for human consumption and to prevent or mitigate the occurrence of food borne illnesses, such as Salmonella, in shell eggs.

The above determinations are based on the fact this regulatory proposal is necessary to establish procedures for the implementation of administrative penalties against any person found to be in violation of specified statutes and/or regulations relating to eggs, including the adoption of a penalty schedule pursuant to section 27581.1 of the Food and Agricultural Code.

### **Economic Impact Assessment Conclusion**

The Department has made an initial determination that the proposed regulatory action will not have any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states by making it more costly to produce goods or services, and that it will not create or eliminate jobs or occupations.

The proposal does not affect the creation of new businesses or the elimination of existing businesses within the State of California, and does not affect the expansion of businesses currently doing business within the State of California. The proposed regulation benefits human health, worker safety, and the environment by serving to ensure egg registrants' compliance with statutes and regulations relating to shell egg food safety and the marketing of shell eggs in California. The proposal will serve to ensure that safe and wholesome eggs are produced under safe and sanitary conditions. This proposal is necessary to establish procedures for the implementation of administrative penalties against any person found to be in violation of specified statutes and/or regulations relating to eggs, including the adoption of a penalty schedule, in accordance with section 27581.1 of the Food and Agricultural Code.