

TITLE 3. FOOD AND AGRICULTURE

SECOND 15-DAY NOTICE OF MODIFIED TEXT AND DOCUMENT ADDED TO THE RULEMAKING FILE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department), Meat, Poultry and Egg Safety Branch, Egg Safety and Quality Management Program, is proposing to modify the originally proposed text for section 1358.6 and Table "A" under Subchapter 3, Chapter 1, Division 3 of Title 3 of the California Code of Regulations. The proposal pertains to the action described in the Informative Digest published in the *California Regulatory Notice Register* on April 1, 2016 [Notice File No. Z2016-0322-07, Register 2016, No.14-Z], relating to establishing an administrative penalty schedule in regulation for the marketing of shell eggs in California. The Department is now providing notice of further modifications to the regulation text to add further provisions regarding an informal hearing process and add statutes and regulation citations from the Food and Agricultural Code and Title 3 of the California Code of Regulations to the table. A copy of the modified text and Table "A" is enclosed.

NOTICE IS HEREBY GIVEN of the following document added to the rulemaking file pursuant to Government Code sections 11346.8(d), 11346.9(a)(1) and 11347.1: "Second Supplemental Initial Statement of Reasons". The document pertains to the regulatory action as described above [*California Regulatory Notice Register* on April 1, 2016 [Notice File No. Z2016-0322-07, Register 2016, No.14-Z]. The Second Supplemental Initial Statement of Reasons is added to this proposal to provide explanation and justification for the regulation text that was not a part of the text as provided in the first 15-day notice or that was noticed for the initial 45-day public comment period. It also describes that Table "A" was modified to add statute and regulation citations that were not a part of the first 15-day notice or that was noticed to the public during the initial 45-day comment period. A copy of the Second Supplemental Initial Statement of Reasons is enclosed. A copy of the document is also available for viewing at the Department of Food and Agriculture, Meat, Poultry and Egg Safety Branch, 2800 Gateway Oaks, Sacramento, California, between the hours of 8 AM and 5 PM, or by requesting a copy from the contact person named in this notice.

Written comments regarding the original proposal: The written comments received during the original 45-day public comment period which began on April 1, 2016 and ended on May 16, 2016 and/or received during the first 15-day notice period for the modified text, table and document added to the rulemaking file, beginning August 15, 2016 and ending on August 30, 2016, remain in the Department's rulemaking file.

Written comments regarding the second modified text, Table "A" as modified a second time or the Second Supplemental Initial Statement of Reasons: If any person wishes to submit a comment on the proposed modifications to the text, Table "A" or to the Second Supplemental Initial Statement of Reasons, it must be submitted to the contact person named in this notice beginning on **September 19, 2016** and ending at 5:00 p.m. on **October 4, 2016**. All written comments are to be restricted to the most recent modifications as shown in the attached regulatory text, Table "A" and/or Second Supplemental Initial Statement of Reasons. The Department is not required to respond to comments received in response to this notice on other aspects of the proposal. All written comments previously submitted regarding this proposal remain in the Department's rulemaking file. All written comments received by 5:00 p.m. on **October 4, 2016**, which pertain to the indicated changes, will be reviewed and responded to by Departmental staff as part of the compilation of the rulemaking file.

Contact Persons: Written comments concerning this proposal are to be addressed to the following:

Tony Herrera, Egg Quality Manager
Department of Food and Agriculture,
Meat, Poultry and Egg Safety Branch
Egg Safety and Quality Management Program
1220 N Street, Sacramento, CA 95814
E-mail: tony.herrera@cdfa.ca.gov

The backup contact person is:

Nancy Grillo, Regulation Coordinator
Department of Food and Agriculture
Animal Health and Food Safety Services
Division/Administration
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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>

Dated: September 15, 2016



Tony Herrera, Egg Quality Manager

**DEPARTMENT OF FOOD AND AGRICULTURE
MEAT, POULTRY AND EGG SAFETY BRANCH
EGG SAFETY AND QUALITY MANAGEMENT PROGRAM
PROPOSED REGULATIONS
ADMINISTRATIVE PENALTIES FOR EGG QUALITY CONTROL
SECOND MODIFIED TEXT**

LEGEND FOR MODIFIED TEXT

- Single underline was text, including Table "A", that was noticed to the public for a 45-day written comment period that closed on May 16, 2016.
- The modified text was shown in double underline for added text and single underline and ~~strikeout~~ for deleted text and was text that was noticed to the public for a 15-day comment period that closed on August 30, 2016.
- Table "A" [as referenced in section 1358.6(c)] contained modifications as shown in double underline for added text and ~~strikeout~~ for deleted text and was also noticed to the public for a 15-day comment period that closed on August 30, 2016.
- The **second modified text** is shown in double underline and *italics* for added text and ~~strikeout~~, *italics* and double underline for deleted text.
- The **second modified Table "A"** [as referenced in section 1358.6(c)] contains modifications as shown in double underline and *italics* for added text and ~~strikeout~~, *italics* and double underline for deleted text.

All written comments must address the SECOND modified text and table only.

The Department of Food and Agriculture, Meat, Poultry and Egg Safety Branch, Egg Safety and Quality Management Program, proposes to adopt section 1358.6 of Subchapter 3, Chapter 1, Division 3 of Title 3 of the California Code of Regulations, to read as follows:

Section 1358.6. Administrative Penalties for Egg Quality Control.

(a) Failure to comply with the provisions of this Chapter and the statutes relating to the marketing of shell eggs and shell egg food products under Chapter 1 (commencing with section 27501) of Part 4, Division 12 of the Food and Agricultural Code and any regulations adopted pursuant to them, constitutes a violation punishable by a fine of not less than fifty dollars (\$50) or more than ten thousand dollars (\$10,000). The Department shall use the provisions of this section to determine the severity of the violation in order to establish the appropriate penalty range.

(b) For the purposes of this section, violations are designated as "serious," "moderate," and or "minor" as required by Food and Agricultural Code section 27581.1. Repeat violations may result in an escalation of the designation of the violation. Serious and moderate violations may be downgraded based upon the evidence, the factual circumstances, mitigating factors, and the cooperation of the violator.

(1) "Serious." Violations that may include, but are not limited to, causing a significant threat to shell egg food safety for resulted, or reasonably could have resulted, in the creation of a hazard to human health or the environment, or in the disruption of the marketing of shell eggs that are marketed in California and intended for human consumption; repetitive failure to comply with statutes and/or regulations for pertaining to shell egg food safety or the marketing of shell eggs in California; misrepresenting eggs not produced in California; and/or unregistered persons marketing shell eggs in California.

(2) "Moderate." Violations in which there is a potential for harm to the public if unregistered persons are marketing shell eggs in California or actions that could cause a threat to shell egg food safety for human health or the environment or disruption of the marketing of shell eggs marketed in California and intended for human consumption.

(3) "Minor." Violations that are unintentional and have minimal impact upon shell egg food safety human health or the environment, or the marketing of shell eggs in California intended for human consumption. The Department may issue a notice of warning for minor violations.

(c) Table "A" Administrative Penalty Schedule for Egg Quality Control, shall be used by the Department to establish the level of severity of a particular violation and the corresponding penalty range for "serious," "moderate," and "minor" violation classes.

See attached image Table A

(d) Enforcement shall commence within three years of the occurrence of the violation. Once investigation is completed, the Department shall commence action within one year.

(e) Administrative penalties levied pursuant to this section may be appealed in accordance with Food and Agricultural Code section 27583.2 by requesting an informal hearing within 20 days of the issuance of the notice of proposed action. Hearing requests shall be submitted in writing to the California Department of Food and Agriculture, Legal Office, 1220 "N" Street, Suite 400, Sacramento, California 95814.

(f) If a formal hearing is requested by the respondent or otherwise required by statute or regulation, it shall be conducted consistent with the provisions of Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2 of the Government Code. Any request for an informal hearing shall include a copy of the notice of adverse determination; and state the grounds for the appeal.

(g) Informal hearings shall be conducted pursuant to Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2 of the Government Code.

(1) The informal hearing shall be presided over and conducted by a hearing officer designated by the Department.

(2) The standard of proof to be applied by the hearing officer shall be preponderance of the evidence unless statutes or regulations applicable to the determination provide a higher standard.

(3) Hearings may be conducted by telephone at the discretion of the hearing officer subject to Government Code section 11440.30.

(4) Hearings may be tape recorded with either a transcript of the recording, or a copy of the recording, provided to any interested party upon request.

(4) (5) Subject to the provisions of Government Code section 11425.50, the decision of the hearing officer shall be in writing with a brief statement of the conclusion and findings to support the conclusion.

(5) (6) The decision shall be issued within ~~14~~ 30 days after the conclusion of the hearing.

(6) (7) The decision shall be served on the respondent either by personal service, or a method requested by the respondent.

(7) (8) The hearing officer's decision shall be effective immediately upon *first articulation under subsection (g)(4) or (g)(5) above, and shall be final service on the respondent.*

(8) (9) The respondent may appeal the hearing officer's decision by filing a petition for a writ of administrative mandamus in accordance with the provisions of the Code of Civil Procedure section 1085, subject to the statutes relating to the Department 1094.5.

(9) (10) The Department shall provide a copy of the decision to any interested party upon written request.

NOTE: Authority cited: Sections 407 and 27531, 27581.1, and 27583, Food and Agricultural Code.

Reference: Sections 27521, 27531, 27541, 27581.4, 27581.1, 27581.9, 27583, 27583.2, 27583.4, 27584 and 27585, Food and Agricultural Code

2nd Modified text of Table “A” of section 1358.6 of Title 3 of the California Code of Regulations

Table “A” Administrative Penalty Schedule for Egg Quality Control						
Food and Agricultural Code	Title 3, Cal. Code Reg.	Description of <u>Section</u> Violation ed	Minor \$50-\$400 <u>or</u> <u>notice of warning</u>	Moderate \$401-\$1,000	Serious \$1,001-\$10,000	Suspend or Revoke Registration
27543(a)		Failure to pay in full by established date, any fine, assessment or penalty levied by the Department.				1 st violation
27621		Willful failure or refusal to stop the transportation of eggs after being notified by an enforcement officer that eggs are in violation of statutes and/or regulations relating to shell egg food safety and the marketing of shell eggs in California. <u>Person forwarding company, or common carrier willfully fails or refuses to stop the transportation of the eggs with reasonable dispatch after being notified in writing by an enforcing officer of this chapter or regulation adopted pursuant to this chapter that such eggs are found to be delivered for shipment in violation of this chapter or regulation adopted pursuant to this chapter.</u>			1 st violation	
27632		Misrepresenting eggs not produced in California with a statement that they were “Produced in California”. <u>Misrepresenting eggs to be product of this state.</u>			1 st violation	
27633	1358.3	Egg handlers engaged in business in California and not registered with the Department. <u>Acting as egg handler without registering.</u>	<u>1st violation</u>	<u>2nd violation</u> <u>1st violation</u>	<u>3rd violation</u> <u>2nd violation</u>	
27634		Any person who sells eggs in containers using someone else’s business, trademark, or brand name without the owner’s permission. <u>Unauthorized use of name, trademark, or trade name.</u>	1 st violation in a 12-month period	2 nd violations in a 12-month period	3 rd violations <u>in a</u> 12-month period	
27635		Representing or selling eggs from species other than chickens unless the containers or subcontainers of eggs are marked, as specified. <u>Misrepresentation as chicken eggs.</u>	1 st violation in a 12-month period	2 nd violations in a 12-month period	3 rd violations in a 12-month period	
27636		Selling eggs as “fresh ranch” or “farm” when they are below Grade A quality and have been packed over 30 days.		1 st violation	2 nd violation	

2nd Modified text of Table “A” of section 1358.6 of Title 3 of the California Code of Regulations

Table “A” Administrative Penalty Schedule for Egg Quality Control						
Food and Agricultural Code	Title 3, Cal. Code Reg.	Description of <u>Section</u> Violationed	Minor \$50-\$400 or <u>notice of warning</u>	Moderate \$401-\$1,000	Serious \$1,001-\$10,000	Suspend or Revoke Registration
		<u>It is unlawful for any person to sell as “fresh eggs,” “ranch eggs,” or “farm eggs,” or to represent as being fresh, any eggs which are below the quality of grade A or which have been held in cold storage more than 30 days.</u>				
<u>27637</u>		<u>False, deceptive, or misleading representation.</u>		<u>1st violation</u>	<u>2nd violation</u>	
27638		Failure to comply with any lawful order of an enforcement officer or any court decision. <u>It is unlawful for any person to fail to comply with any lawful order of an enforcement officer, or any court, in any proceeding pursuant to this chapter or any regulation adopted pursuant to this chapter.</u>			1 st violation	
27639		Refuse to submit eggs for inspection or refuse to stop for an enforcement officer when transporting eggs. <u>Refusal to submit to inspections; Refusal to stop vehicle.</u>			1 st violation	
27640	<u>1355</u>	Removing any affixed warning tag, hold card, or notice affixed to eggs without permission upon the direction of an enforcement officer. <u>Unauthorized moving of eggs or container having warning tag affixed; Removal of tag.</u>		2 nd violation	3 rd violation <u>1st violation</u>	
<u>27641</u>	<u>1357;</u> <u>1358.5</u>	<u>Preparation, delivery, or sale of nonconforming eggs or containers</u>		<u>1st violation</u>	<u>2nd violation</u>	
	1350	Failure to meet Shell Egg Food Safety requirements.			1 st violation	2 nd violation
27643	1358.5	Failure to have eggs held, stored, transported, or displayed in an ambient temperature of 45 degrees or lower. <u>Temperature requirements for eggs.</u>		1 st violation	2 nd violation	
	1352.4	Nonregistered egg handlers, producers, and wholesalers, repacking eggs. <u>Regraded and Repacked Eggs.</u>	1 st violation in a 6-month period	2 nd violations in a 12-month period	3 rd violations in a 12-month period	

2nd Modified text of Table “A” of section 1358.6 of Title 3 of the California Code of Regulations

Table “A” Administrative Penalty Schedule for Egg Quality Control						
Food and Agricultural Code	Title 3, Cal. Code Reg.	Description of <u>Section</u> Violationed	Minor \$50-\$400 or <u>notice of warning</u>	Moderate \$401-\$1,000	Serious \$1,001-\$10,000	Suspend or Revoke Registration
<u>27644</u>	<u>1352.4;</u> <u>1354;</u> <u>1356;</u> <u>1356.2</u>	<u>Signs and labels on eggs.</u>		<u>1st violation</u>	<u>2nd violation</u>	
<u>27644.5</u>		<u>Signs and labels on pasteurized in-shell eggs.</u>	<u>1st violation</u>	<u>2nd violation</u>	<u>3rd violation</u>	
27651	<u>1352;</u> <u>1353;</u> <u>1353.2;</u> <u>1353.4</u>	Selling eggs to any retailer, consumer or institution that have not been graded, except if an emergency has been proclaimed by the Secretary of the Department. <u>Unlawful sale of ungraded eggs absence of finding and proclamation of emergency.</u>	<u>1st and 2nd violation</u>	3 rd violation	4 th violation	
<u>27652</u>		<u>Authorized sale of ungraded eggs during emergency; Required marking of containers.</u>		<u>1st violation</u>	<u>2nd violation</u>	
	<u>1357</u>	Failure to meet Registered Brand requirements. <u>Registered Brands.</u>	<u>4 violations</u> in a 3-month period	<u>5 violations</u> in a 3-month period	<u>6 violations</u> in a 3-month period	
	<u>1358.4</u>	Failure to meet records, invoices, and premises inspection requirements. <u>Inspection of Records, Invoices, and Premises.</u>			<u>1st violation</u>	2 nd violation
<u>27661</u>	<u>1357</u>	<u>Brand name on master container; Registration requirement.</u>	<u>1st violation</u>	<u>2nd violation</u>	<u>3rd violation</u>	
<u>27662</u>	<u>1357</u>	<u>Misuse of Registered Brand at Production.</u>	<u>1st violation</u>	<u>2nd violation</u>	<u>3rd violation</u>	
<u>27663</u>	<u>1357</u>	<u>Unauthorized possession of Registered Brand Master Containers.</u>	<u>1st violation</u>	<u>2nd violation</u>	<u>3rd violation</u>	
<u>27664</u>	<u>1357</u>	<u>Requirements to operate a Registered Brand Container Exchange.</u>		<u>1st violation</u>	<u>2nd violation</u>	
<u>27665</u>	<u>1357</u>	<u>Authorized licensing of Container Exchanges.</u>		<u>1st violation</u>	<u>2nd violation</u>	
<u>27666</u>	<u>1357</u>	<u>Container Exchange service records.</u>	<u>1st and 2nd violation</u>	<u>3rd violation</u>	<u>4th violation</u>	
<u>27667</u>	<u>1357</u>	<u>Unauthorized sale of master containers by Container Exchange.</u>		<u>1st violation</u>	<u>2nd violation</u>	
<u>27669</u>	<u>1357</u>	<u>Unlawful transportation of master containers.</u>		<u>1st and 2nd violation</u>	<u>3rd violation</u>	

2nd Modified text of Table “A” of section 1358.6 of Title 3 of the California Code of Regulations

Table “A” Administrative Penalty Schedule for Egg Quality Control						
Food and Agricultural Code	Title 3, Cal. Code Reg.	Description of <u>Section</u> Violationed	Minor \$50-\$400 or <u>notice of warning</u>	Moderate \$401-\$1,000	Serious \$1,001-\$10,000	Suspend or Revoke Registration
27671(a)(3)		<p>Any person whose intentional violation of statutes and/or regulations pertaining to shell egg food safety and the marketing of shell eggs in California that resulted or could have resulted in the creation of a hazard to human health or the environment or in the disruption of marketing of eggs or egg products.</p> <p><u>Any person whose intentional violation of this chapter, or regulations adopted pursuant to this chapter, resulted, or reasonably could have resulted, in the creation of a hazard to human health or the environment, or in the disruption of the marketing of eggs.</u></p>			1 st violation	
<u>27680</u>	<u>1358.4</u>	<u>Production records inspection.</u>		<u>1st violation</u>	<u>2nd violation</u>	
<u>27684</u>		<u>Failure to comply with audit request.</u>			<u>1st violation</u>	
<u>27686</u>		<u>Refrigeration requirements for shipped eggs.</u>			<u>1st violation</u>	
<u>27687</u>		<u>Shipping non-compliant eggs or failing to register before marketing.</u>		<u>1st violation</u>	<u>2nd violation</u>	
<u>27688</u>		<u>Failure to submit assessment reports as specified.</u>			<u>1st violation</u>	
27690		<p>Registered brokers’ failure to meet requirements of this chapter.</p> <p><u>Itemization of all eggs brokered into California.</u></p>			1 st violation	2 nd violation

**End
September 2016**

**DEPARTMENT OF FOOD AND AGRICULTURE
MEAT, POULTRY AND EGG SAFETY BRANCH
EGG SAFETY AND QUALITY MANAGEMENT PROGRAM
SECOND SUPPLEMENTAL
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 Salmonella¹, in shell eggs.

The proposal is outlined below.

¹ 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. Such as, any person intentionally causing or creating a hazard to human health, the environment, or in the disruption of the marketing of shell eggs in California that are intended for human consumption.

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 [subsection (b)(2)] and minor [subsection (b)(3)] 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 and the eggs are intended for human consumption. 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. In some cases, the Department may issue a notice of warning for minor violations and conduct training, public outreach, and education to ensure egg registrants are aware of the statutes and regulations governing the marketing of shell eggs in California, and those eggs are intended for human consumption.

Subsection (c), the Department is adopting Table A, Administrative Penalty Schedule for Egg Quality Control into Title 3 of the California Code of Regulations. The first and second columns of the table is the Code and/or regulation citations where the Department may cite a person for a violation those sections. The third column provides a brief description of the violation, and the remaining columns show the range of administrative penalties that may be imposed on a person, and it may be dependent on the number of violations for each statute and/or regulation cited, causing the penalty to escalate. The very last column on the table indicated when a violation would warrant a suspension or revocation of a registration certificate which the Department is deleting since it is now addressed in existing section 1358.7 of Title 3 of the California Code of Regulations, which became effective during this initial rulemaking process for this proposal.

Each violation cited on the table is from existing sections of the Food and Agricultural Code and/or 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, they are from existing statutes and regulations. The intent of the table is to inform the public of how the Department may impose penalties. 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, a penalty will be assessed to alleged violators according to the schedule. The administrative penalties table will provide the public with clear information on how the Department may impose penalties, 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.

Subsection (d) specifies that any enforcement actions taken by the Department shall commence within three years of the occurrence of the violation. Once the Department's investigation is complete, the Department shall commence action against the alleged violator within one year. This requirement is specified in Food and Agricultural Code section 27581.9 and is repeated in this regulation so the public may be aware of the time frames in which the Department may take action against a violator of statutes and/or regulations as specified in Table "A" of this proposal.

Subsection (e) specifies that a person may appeal the Department's action with 20 days of the issuance of a notice of proposed action in accordance with Food and Agricultural Code section 27583.2 and request an informal hearing. This section also provides the public with the address in which to send their appeal requests to the Department and that they must be submitted in writing. This section will provide clarity to the public on how to submit an appeal to the Department.

Subsection (f) provides information to the public that if a formal hearing is requested by the respondent or otherwise required by statute or regulation, it shall be conducted consistent with the provisions of Chapter 5 (commencing with section 11500) of Part 1, Division 3 of Title 2 of the Government Code.

Subsection (g) provides information to the public that any request for an informal hearing shall include a copy of the notice of adverse determination and state the grounds for the appeal. The Department believes this information is necessary to ensure the respondent is aware they must have a legal basis to file an appeal with the Department.

Subsection (g)(1) through (g)(9) provides clarity and information to the public on how an informal hearing will be conducted by the Department. This text consistent with the Department's existing informal hearing regulations under section 1310.3 (Conduct of Hearings) of Title 3 of the California Code of Regulations with changes as applicable to this proposal.

- Subsection (g)(1) provides clarity that the informal hearing shall be presided over and conducted by a hearing office designated by the Department.

- Subsection (g)(2) is necessary to specify that the standard of proof to be applied by the hearing officer shall be preponderance of the evidence unless statutes or regulations applicable to the determination provide a higher standard.
- Subsection (g)(3) is necessary to specify that hearings may be conducted by telephone at the discretion of the hearing officer subject to Government Code section 11440.30.
- Subsection (g)(4) is necessary so that all affected parties are aware that hearings may be tape recorded with either a transcript of the recording, or a copy of the recording, provided to any interested party upon request.
- Subsection (g)(5) is necessary to specify that subject to the provisions of Government Code section 11425.50, the decision of the hearing officer shall be in writing with a brief statement of the conclusion and findings to support the conclusion.
- Subsection (g)(6) is necessary to inform the respondent that the Department's decision shall be issued within 30 days after the conclusion of the hearing. The Department believes this is a reasonable time to provide the decision in writing to the respondent.
- Subsection (g)(7) is necessary to inform the respondent that the decision issued by the Department shall be served on the respondent either by personal service, or a method requested by the respondent. Specifying that it may be sent by facsimile has been omitted from this proposal as it was not needed. The respondent may work with the Department on the manner in which the decision is received.
- Subsection (g)(8) is need to specify that the Department's decision shall be served on the respondent either by person service or a method requested by the respondent. The Department will work with the respondent a timely method to serve the decision on the respondent.
- Subsection (g)(9) is needed so the respondent is aware they may appeal the hearing officer's decision by filing a petition for a writ of administrative mandamus in accordance with the provisions of the Code of Civil Procedure section 1094.5.
- Subsection (g)(10) is added to ensure the affected parties are aware that any interested party, upon written request, may receive a copy of the Department's decision in each enforcement case that is handled through the informal hearing process.

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.