

## TITLE 3. FOOD AND AGRICULTURE

### PROPOSED REGULATIONS – SHELL EGG FOOD SAFETY

**NOTICE IS HEREBY GIVEN** that the Department of Food and Agriculture (herein after referred to as “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 January 10, 2020 and ending at 5:00 p.m. on February 25, 2020**. 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, 27531 and 27533 of the Food and Agricultural Code and section 25993 of the Health and Safety Code, the Department is proposing to implement, interpret or make specific the requirements for marketing shell eggs in California in accordance with sections 27510, 27510.1, 27518, 27521, 27541 and 27573 of the Food and Agricultural Code, and sections 25990 and 25991 of the Health and Safety Code, as described in the Informative Digest.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW/BENEFITS**

Existing law, Proposition 12 (2018) amended the requirements of Health and Safety Code sections 25990 – 25993.

Existing law, section 25990(b)(3) of the Health and Safety Code specifies that a business owner or operator shall not knowingly engage in the sale within the state of a shell egg that the business owner or operator knows or should know is the product of a covered animal who was confined in a cruel manner.

Existing law, section 25991(b) of the Health and Safety Code defines a business owner or operator to mean any person who owns or controls the operations of a business.

Existing law, section 25991(e) of the Health and Safety Code defines acts that mean an animal was confined in a cruel manner.

Existing law, section 25991 (e)(4) specifies that confining in a cruel manner would mean confining an egg-laying hen with less than 144 square inches of usable floorspace per hen.

Existing law, section 25991(f) of the Health and Safety Code defines a “covered animal” as meaning any calf raised for veal, breeding pig, or egg-laying hen who is kept on a farm.

Existing law, section 25991(g) of the Health and Safety Code defines an “egg-laying hen” as meaning any female domesticated chicken, turkey, duck, goose, or guineafowl kept for the purpose of egg production.

Existing law, section 25991(h) of the Health and Safety Code defines “enclosure” as meaning a structure used to confine a covered animal or animals.

Existing law, section 25991(p) of the Health and Safety Code defines a “shell egg” as meaning a whole egg of an egg-laying hen in its shell form, intended for use as human food.

Existing law, section 25991(s) of the Health and Safety Code defines “usable floorspace” as meaning the total square footage of floorspace provided to each covered animal, as calculated by dividing the total square footage of floorspace provided to the animals in an enclosure by the number of animals in that enclosure. In the case of egg-laying hens, usable floorspace shall include both groundspace and elevated level flat platforms upon which hens can roost, but shall not include perches or ramps.

Existing regulations under Subchapter 3 (commencing with section 1350), Chapter 1, Division 3, of Title 3 of the California Code of Regulations, specify the requirements for egg registrants marketing eggs in California.

The Department is proposing amendments to the requirements for the marketing of eggs in California in section 1350 (shell egg food safety) of Title 3 of the California Code of Regulations to conform the Department’s enclosure requirements for egg-laying hens to existing law, section 25991 of the Health and Safety Code.

This proposal would require any person registered with the Department to engage in business in California as an egg producer or egg handler, and any out-of-state egg handler or egg producer selling eggs in California, to comply with the minimum numeric enclosure requirement for egg-laying hens as required by Health and Safety Code section 25990 if the eggs produced from those hens are sold in California.

Anticipated Benefits of the Proposal: Registered egg producers would benefit from this proposal because the Department is making existing enclosure requirements for egg-laying hens consistent with current law, Health and Safety Code sections 25990(b)(3) and 25991(e)(4).

Consistency and Compatibility with Existing State Regulations: The Department has evaluated this proposal and believes that it is not inconsistent or incompatible with existing State regulations. The intent is to conform existing section 1350 of Title 3 of the California Code of Regulations to Health and Safety Code sections 25990(b)(3) and 25991(e)(4) regarding enclosure requirements for egg-laying hens.

Documents Incorporated by Reference: None.

Technical, Theoretical, and Empirical Study, Report, or Similar Documents: Informational document titled: “California Legislative Analyst’s Office: Proposition 12 Establishes New Standards for Confinement of Certain Farm Animals; Bans Sale of Certain Non-Complying Products. Initiative Statute.”

## **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 has determined that this proposed regulatory action 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 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.
- The Department has made an initial determination that this regulatory proposal will impact registered egg handlers who market their eggs in the state.

Cost Impacts on Representative Private Persons or Businesses: The Department is not aware of cost impacts that a representative private person or businesses would necessarily incur in reasonable compliance with the proposed action. This determination is based on the fact this proposal does not have economic impact over what is strictly required by the law itself, which is Health and Safety Code sections 25990(b)(3) and 25991(e)(4).

Anticipated compliance requirements as a result of this proposal:

- Egg registrants marketing their eggs in California would need to comply with the minimum enclosure requirements for egg-laying hens as specified in Health and Safety Code sections 25990(b)(3) and 25991(e)(4).
- Paperwork/Reporting: There are no new paperwork or reporting requirements under this proposal. Existing requirements may include standard business records and assessments that may be retained and otherwise required by statute or regulation and submitted to the Department as part of routine business transactions in order for producers to market their eggs in California.
- Record-keeping: There are no new record-keeping requirements under this proposal. Businesses now comply with standard record-keeping as may be required by statute or regulation, but the records are not required to be sent to the Department. The Department conducts routine audits and inspections of farms or facilities to ensure compliance with statutes and regulations.

Effect on Housing Costs: None.

Effect on Small Businesses: The Department's proposal may affect small businesses as defined in Government Code section 11342.610.

## **RESULTS OF ECONOMIC IMPACT ASSESSMENT**

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

Private Persons/Businesses affected by this proposal:

Egg Handler registrants: approximately 2,532 [In-State: 1,181; Out of State: 1,351].

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

This proposal does not directly impact human health, worker safety, or the State's environment. This regulatory proposal is necessary for the Department to conform its enclosure requirements for egg-laying hens to Health and Safety Code sections 25990(b)(3) and 25991(e)(4). The Department believes that registered egg producers would benefit from this proposal because the Department is making existing enclosure requirements for egg-laying hens consistent with current law, Health and Safety Code sections 25990(b)(3) and 25991(e)(4).

The above determinations are based on the fact that the proposed regulation itself does not have impact over what is strictly required by the law, Health and Safety Code sections 25990(b)(3) and 25991(e)(4).

Occupations/Businesses Impacted: This proposal will impact egg registrants that market their eggs in California.

Business Reporting Requirement: The regulation does not require a report, which shall apply to businesses. There are no new reporting requirements as a result of this proposal.

Comparable Federal Regulations: This proposal does not duplicate or conflict with federal regulations because there are no federal regulations governing enclosure size requirements for egg-laying hens if those eggs are marketed to California consumers.

**CONSIDERATION OF ALTERNATIVES**

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, 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 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 in this Notice or by accessing the Department of Food and Agriculture's website as indicated below in this Notice.

The rulemaking file consists, at this time, of the proposed text, Initial Statement of Reasons, and supporting information as follows: Informational document titled: "California Legislative Analyst's Office: Proposition 12 Establishes New Standards for Confinement of Certain Farm Animals; Bans Sale of Certain Non-Complying Products. Initiative Statute."

**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.

**CONTACT PERSONS**

Inquiries and any written comments concerning this proposal are to be addressed to the following:

Tony Herrera, Egg Quality Manager  
Department of Food and Agriculture  
Animal Health & Food Safety Services  
Meat, Poultry and Egg Safety Branch  
Egg Safety and Quality Management Program  
1220 N Street, Sacramento, CA 95814  
Telephone (916) 900-5004  
E-mail: [tony.herrera@cdfa.ca.gov](mailto:tony.herrera@cdfa.ca.gov)

The back-up contact person is as follows:

Nancy Grillo, Associate Analyst  
Department of Food and Agriculture  
Animal Health and Food Safety Services  
1220 N Street, Sacramento, CA 95814  
Telephone (916) 900-5033  
E-mail: [nancy.grillo@cdfa.ca.gov](mailto:nancy.grillo@cdfa.ca.gov)

**Website Access:**

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

DEPARTMENT OF FOOD AND AGRICULTURE  
ANIMAL HEALTH AND FOOD SAFETY SERVICES DIVISION  
MEAT, POULTRY AND EGG SAFETY BRANCH  
EGG SAFETY AND QUALITY MANAGEMENT PROGRAM

**PROPOSED REGULATIONS – SHELL EGG FOOD SAFETY**

The Department of Food and Agriculture, Animal Health and Food Safety Services Division, Meat, Poultry and Egg Safety Branch, Egg Safety and Quality Management Program, proposes to amend section 1350 of Subchapter 3, Chapter 1, Division 3, of Title 3 of the California Code of Regulations, to read as follows:

Section 1350. Shell Egg Food Safety.

(a) In accordance with Food and Agricultural Code section 27521(a), to assure that healthful and wholesome eggs of known quality are sold in California, commencing July 1, 2013, any egg producer or egg handler as defined in sections 27510 and 27510.1 of the Food and Agricultural Code, shall ensure all flocks with a hatching date after July 1, 2013 comply with the requirements of this section.

(b) Registered egg producers or egg handlers whose shell eggs are processed with a treatment such as pasteurization to ensure safety, shall be exempt from the requirements of this section. A “treatment” or “treated” means a technology or process that achieves at least a 5-log destruction of SE for shell eggs as defined in 21 CFR section 118.3.

(c) Registered egg producers or handlers with 3,000 or more laying hens shall incorporate all of the provisions specified in subsections (c)(1), (2), and (3) in their facility operations:

(1) Implement *Salmonella enterica* serotype Enteritidis (SE) prevention measures in accordance with the Food and Drug Administration, Department of Health and Human Services' requirements for the production, storage, and transportation of shell eggs as specified in 21 CFR Part 118;

(2) Implement a SE environmental monitoring program which includes testing for SE in “chick papers,” (the papers in which chicks are delivered) and the house environment when the pullets are 14-16 weeks of age, 40-45 weeks of age, 4-6 weeks post-molt, and pre-depopulation; and

(3) Implement and maintain a vaccination program to protect against infection with SE which includes at a minimum two attenuated live vaccinations and one killed or inactivated vaccination, or a demonstrated equivalent SE vaccination program approved by the Department.

(d) ~~Commencing January 1, 2015, n~~ No egg handler or producer may sell or contract to sell a shelled egg for human consumption in California if it is the product of an egg-laying hen that was confined in an enclosure that fails to comply with the following standards. For purposes of this section, an enclosure means any cage, crate, or other structure used to confine egg-laying hens:

(1) ~~An enclosure containing nine (9) or more egg-laying hens shall provide a minimum of 116 square inches of floor space per bird. Enclosures containing eight (8) or fewer birds shall provide a minimum amount of floor space per bird as follows, using formula  $322 + [(n-1) \times 87.3]/n$ , where “n” equals the number of birds:~~

<i>Number of Birds</i>	<i>Square Inches Per Bird</i>
1	322
2	205
3	166
4	146
5	135
6	127
7	121
8	117

egg-laying hens shall provide a minimum of 144 square inches of usable floorspace per hen. Usable floorspace means the total square footage of floorspace provided to each egg-laying hen as calculated by dividing the total square footage of floorspace provided to the egg-laying hen in an enclosure by the number of egg-laying hens in that enclosure. Usable floorspace shall include both ground space and elevated level flat platforms upon which hens can roost but shall not include perches or ramps.

(2) The enclosure shall provide access to drinking water and feed trough(s) without restriction.

Note: Authority cited: Sections 407, 27531 and 27533, Food and Agricultural Code; Health and Safety Code section 25993. Reference: Sections 27510, 27510.1, 27518, 27521, 27541 and 27573, Food and Agricultural Code; Health and Safety Code sections 25990 and 25991.

DEPARTMENT OF FOOD AND AGRICULTURE  
ANIMAL HEALTH AND FOOD SAFETY SERVICES DIVISION  
MEAT, POULTRY AND EGG SAFETY BRANCH  
EGG SAFETY AND QUALITY MANAGEMENT PROGRAM

INITIAL STATEMENT OF REASONS

SUBJECT MATTER OF PROPOSED REGULATIONS

Shell Egg Food Safety.

SECTION AFFECTED

Section 1350 of Title 3 of the California Code of Regulations.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL

Existing law, Proposition 12 (2018) amended the requirements of Health and Safety Code sections 25990 – 25993.

Existing law, section 25990(b)(3) of the Health and Safety Code specifies that a business owner or operator shall not knowingly engage in the sale within the state of a shell egg that the business owner or operator knows or should know is the product of a covered animal who was confined in a cruel manner.

Existing law, section 25991(b) of the Health and Safety Code defines a business owner or operator to mean any person who owns or controls the operations of a business.

Existing law, section 25991(e) of the Health and Safety Code defines acts that mean an animal was confined in a cruel manner.

Existing law, section 25991 (e)(4) specifies that confining in a cruel manner would mean confining an egg-laying hen with less than 144 square inches of usable floorspace per hen.

Existing law, section 25991(f) of the Health and Safety Code defines a “covered animal” as meaning any calf raised for veal, breeding pig, or egg-laying hen who is kept on a farm.

Existing law, section 25991(g) of the Health and Safety Code defines an “egg-laying hen” as meaning any female domesticated chicken, turkey, duck, goose, or guineafowl kept for the purpose of egg production.

Existing law, section 25991(h) of the Health and Safety Code defines “enclosure” as meaning a structure used to confine a covered animal or animals.

Existing law, section 25991(p) of the Health and Safety Code defines a “shell egg” as meaning a whole egg of an egg-laying hen in its shell form, intended for use as human food.

Existing law, section 25991(s) of the Health and Safety Code defines “usable floorspace” as meaning the total square footage of floorspace provided to each covered animal, as calculated by dividing the total square footage of floorspace provided to the animals in an enclosure by the number of animals in that enclosure. In the case of egg-laying hens, usable floorspace shall include both groundspace and elevated level flat platforms upon which hens can roost, but shall not include perches or ramps.



Existing regulations under Subchapter 3 (commencing with section 1350), Chapter 1, Division 3, of Title 3 of the California Code of Regulations, specify the requirements for egg registrants marketing eggs in California.

The Department is proposing amendments to the requirements for the marketing of eggs in California in section 1350 (shell egg food safety) of Title 3 of the California Code of Regulations to conform the Department's enclosure requirements for egg-laying hens to existing law, section 25991 of the Health and Safety Code.

This proposal would require any person registered with the Department to engage in business in California as an egg producer or egg handler, and any out-of-state egg handler or egg producer selling eggs in California, to comply with the minimum numeric enclosure requirement for egg-laying hens as required by Health and Safety Code section 25990 if the eggs produced from those hens are sold in California.

### PROBLEM(S) INTENDED TO ADDRESS

Proposition 12 (2018) amended the requirements of Health and Safety Code sections 25990 – 25993. Sections 25990 and 25991 of the Health and Safety Code specify farm animal confinement requirements and definitions that affects egg-laying hens if the eggs from those hens are marketed in California. The Department's enclosure size requirements for egg-laying hens are contained in regulation under section 1350 of Title 3 of the California Code of Regulations which specifies a range of sizes depending on the number of birds in each enclosure. However, Health and Safety Code section 25991(e)(4) specifies a minimum confinement area for egg-laying hens of 144 square inches of usable floorspace per hen. Therefore, this proposal will make the Department's enclosure space requirements for egg-laying hens consistent with Health and Safety Code sections 25990 and 25991.

### STATEMENT OF FACTUAL BASIS AND RATIONALE

The intent of existing regulation section 1350 is to prevent the occurrence of *Salmonella enterica* serotype Enteritidis (SE) contamination of shell eggs at production and to prevent SE contaminated shell eggs from being marketed to California consumers. Proposition 12 (2018) amended farm animal confinement requirements which includes egg-laying hens. The Department's enclosure size requirements for egg-laying hens are contained in regulation section 1350 which specifies a range of sizes depending on the number of birds in each enclosure. However, because Health and Safety Code section 25991 specifies a different minimum confinement area for specified animals, including egg-laying hens, the Department's regulation section 1350 is inconsistent with Health and Safety Code section 25991. Therefore, the Department needs to make its enclosure space requirements for egg-laying hens consistent with the Health and Safety Code.

The Department is proposing to amend regulation section 1350 as follows:

- Subsection (d) deletes the former effective date of the enclosure size requirements for egg-laying hens of January 1, 2015 because that date is obsolete. Health and Safety Code section 25991(e)(4) already contains an effective date of after December 31, 2019 and, therefore, there is no need to repeat that in the regulation text as it may cause confusion.
- Subsection (d)(1) deletes obsolete enclosure size requirements and replaces them with the enclosure size requirements as specified in Health and Safety Code section 25991 for consistency and clarity purposes. This amendment is necessary to conform the Department's regulations to Health and Safety Code section 25991(e)(4). The proposed amendments

include specific instructions on the size of the enclosure and that it cannot include perches or ramps in calculating the space of the enclosure. This is to conform the subsection with the requirements of Health and Safety Code sections 25991(e)(1) and (4), and (s).

- The “note” portion of the text is updated to include section 25993 of the Health and Safety Code as an authority citation and include sections 25990 and 25991 of the Health and Safety Code as reference citations for consistency and clarity with the text as amended.

#### TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT

- Informational document from the California Legislative Analyst’s Office: Proposition 12 Establishes New Standards for Confinement of Certain Farm Animals; Bans Sale of Certain Non-Complying Products. Initiative Statute.

#### SPECIFIC TECHNOLOGIES OR EQUIPMENT

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

#### CONSIDERATION OF REASONABLE ALTERNATIVES

The Department has considered two alternatives to this proposal. 1) Not amend the regulations which would make the current regulations inconsistent with Proposition 12, or 2) amend the regulation to be more restrictive than Proposition 12 (i.e., require a larger cage size than Proposition 12 requires), however, this would not be in line with the Department’s intent because the Department is ensuring consistency with Proposition 12 and in doing so is adopting language verbatim from the Health and Safety Code which is the best alternative.

The Department determined 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. This proposal is necessary for the Department to conform its enclosure/confinement requirements for egg-laying hens to sections 25990(b)(3) and 25991(e)(4) of the Health and Safety Code for consistency and clarity purposes.

#### REASONABLE ALTERNATIVES THE DEPARTMENT HAS IDENTIFIED THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

The Department has not identified any reasonable alternatives to the proposed action that would lessen any adverse impact on small businesses. Sections 25990(b)(3) and 25991(e)(4) of the Health and Safety Code requires persons marketing eggs in the state to meet the minimum cage size requirements for egg-laying hens and establish a deadline for implementation. Therefore, any impacts to businesses would be as a result of the Health and Safety Code and not this proposal. The Department is aligning existing regulation section 1350 with Health and Safety Code sections 25990(b)(3) and 25991(e)(4).

#### BENEFITS OF THIS REGULATORY ACTION

Registered egg producers would benefit from this proposal because the Department is making existing enclosure requirements for egg-laying hens consistent with current law, Health and Safety Code sections 25990(b)(3) and 25991(e)(4).

## FINDINGS REGARDING EVIDENCE OF NO SIGNIFICANT ADVERSE IMPACT ON BUSINESS

This proposal is necessary to make existing regulation section 1350 consistent with Health and Safety Code section 25990(b)(3) regarding enclosures for egg-lay hens. As such, any economic impact incurred by businesses to comply with minimum enclosure size requirements for egg-laying hens resulted from Proposition 12 and not these proposed regulations which simply make regulation section 1350 consistent with current law, Health and Safety Code sections 25990(b)(3) and 25991(e)(4).

## DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

This proposal does not duplicate or conflict with federal regulations because there are no federal regulations governing enclosure size requirements for egg-laying hens if those eggs are marketed to California consumers.

## ECONOMIC IMPACT ASSESSMENT

This proposal is necessary to make existing regulation section 1350 consistent with Health and Safety Code section 25990(b)(3) regarding enclosures for egg-lay hens. As such, any economic impact incurred by businesses to comply with minimum enclosure size requirements for egg-laying hens resulted from Proposition 12 and not these proposed regulations which simply make regulation section 1350 consistent with current law, Health and Safety Code sections 25990(b)(3) and 25991(e)(4).

- The Department has determined that the proposed regulatory action 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 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 proposal does not directly impact human health, worker safety, or the State's environment. This regulatory proposal is necessary for the Department to conform its enclosure requirements for egg-laying hens to Health and Safety Code sections 25990(b)(3) and 25991(e)(4). The Department believes that registered egg producers would benefit from this proposal because the Department is making existing enclosure requirements for egg-laying hens consistent with current law, Health and Safety Code sections 25990(b)(3) and 25991(e)(4).