



NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

“Rules Pertaining to the Administration and Enforcement of the Colorado Egg Law” 8 CCR 1202-10

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE: March 22, 2021
TIME: 9:30 am
LOCATION: This hearing will be held via [Zoom](#)
CALL INFORMATION: 1-253-215-8782
MEETING ID: 816 0836 8539
PASSCODE: 350098

In order to maintain a proper hearing record you are encouraged to pre-register by completing this [Google form](#). If you do not have access to Google you may send your name and telephone number to Jenifer.Gurr@state.co.us
Pre-registration is not required to participate in the hearing.

The purpose of this rulemaking is to implement House Bill 20-1211. Amendments broaden the regulations to cover non-chicken eggs from avian species and adjusts temperature requirements to align with USDA regulations.

The statutory authority for these rules is § 35-21-106(1), C.R.S.

Any interested party may file written comment with the Commissioner's office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. Emailed comments should be sent to the hearing officer at Jenifer.Gurr@state.co.us. A copy of the proposed rule is available on the Department of Agriculture's website at www.colorado.gov/ag or may be obtained by calling 303-869-9004. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



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DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

RULES PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE COLORADO EGG LAW

8 CCR 1202-10

1.0 TEMPERATURE REQUIREMENTS

~~1.1~~ **TEMPERATURE REQUIREMENTS**

~~1.1~~ ~~1.1.1~~ Every dealer shall store, display, ~~transport~~ or otherwise maintain ~~shell~~ eggs at an ambient temperature of no more than forty-one degrees Fahrenheit (41° F), and no less than thirty-three degrees Fahrenheit (33° F).

~~1.2~~ ~~1.1.2~~ A dealer who is registered with the USDA as a ~~shell~~ egg handler and is in compliance with USDA temperature requirements is exempt from Rule 1.1.~~4~~.

~~1.3~~ ~~1.2~~ **TEMPERATURE REQUIREMENTS FOR DELIVERY TRUCKS**

~~1.3.1~~ ~~1.2.1~~ Except as provided in ~~1.2.2~~ ~~1.3.2~~ below, delivery trucks used for the transportation of ~~shell~~ eggs shall be equipped with a refrigeration unit capable of delivering refrigerated air to the cargo area to maintain the eggs at an ambient temperature of no more than ~~forty-one~~ ~~forty-five~~ degrees Fahrenheit (~~41~~~~45~~° F), and no less than thirty-three degrees Fahrenheit (33° F).

~~1.3.2~~ ~~1.2.2~~ Any person transporting for resale not more than two (2) cases of ~~shell~~ eggs (totaling not more than sixty dozen eggs) ~~shall~~ ~~may~~ transport such eggs using equipment ~~other than a refrigeration unit~~ in the cargo space of the delivery vehicle that will maintain the eggs at an ambient temperature of no more than ~~forty-one~~ ~~forty-five~~ degrees Fahrenheit (~~41~~~~45~~°), and no less than thirty-three degrees Fahrenheit (33° F).

2.0 SANITATION REQUIREMENTS

2.1 DEALER REQUIREMENTS

Every dealer shall store, display, transport or otherwise maintain ~~shell~~ eggs in a clean and sanitary environment, free from any substance or condition that could adulterate or otherwise adversely affect the wholesomeness, quality, or taste of the eggs by absorption of bacteria or odors, or render them inedible by any other means.

2.2 EGG WASHING REQUIREMENTS

All Class I Dealers and persons who produce and sell eggs at a farmers market or community supported agricultural organization must comply with the following requirements.

2.2.1 Must use potable water to wash and sanitize eggs.

2.2.2 Cleaning agents appropriate to clean ~~shell~~ eggs must be used. The wash water must be at a minimum temperature of 110° F. Eggs shall not be allowed to stand or soak in the wash water.

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- 2.2.3 Cleaned eggs must be rinsed with water at a minimum temperature of 115° F.
- 2.2.4 Cleaned eggs must be sanitized (dipped or sprayed) with water containing a sanitizer that is labelled for use as an egg sanitizer. If a chlorine or sodium hypochlorite solution is used to clean eggs the solution must be of a concentration of not less than 100 PPM nor more than 200 PPM of available chlorine. If a hydrogen peroxide solution is used to clean eggs the solution must be a concentration of 3% hydrogen peroxide or its equivalent. Any other sanitizer must be used in accordance with the product label directions or requirements.

3.0 LABELING REQUIREMENTS

The following labeling requirements apply to all eggs offered for sale:

3.1 PRODUCER IDENTIFICATION

Every case, carton or, container of ~~shell~~ eggs at the time of packing shall have legibly printed thereon, in letters and numerals not less than one-eighth inch in height, one (1) of the following means of identification:

- 3.1.1 The name and address of the producer or person who packed the eggs; or
- 3.1.2 The United States Department of Agriculture's plant number or shell egg surveillance registration number; or
- 3.1.3 The egg license number issued to the packer by another state, preceded by the abbreviated name of such state, using the two-letter state abbreviations customarily used for sending mail through the United States Postal Service (e.g., AL-Alabama, AK-Alaska, AZ-Arizona, etc.) ; or
- 3.1.4 The business identification number issued by the Colorado Department of Agriculture.

3.2 PACK DATE REQUIREMENTS

Every case, carton, or container of ~~shell~~ eggs at the time of packing shall have legibly printed thereon, in numerals not less than one-eighth inch in height, the date the eggs are first packed, (referred to in these rules as the "pack date"). The pack date shall be stated numerically by month and day (e.g., 1/15), or by the numbered consecutive day of the year (e.g., 123, being the 123rd consecutive day of the year).

3.3 SELL-BY DATE REQUIREMENTS

Every case, carton, or container of ~~shell~~ eggs may, but need not have legibly printed thereon, in letters and numerals not less than one-eighth inch in height, a date by which the eggs must be sold, which shall be referred to in these rules as the "sell-by date." The sell-by date shall be no more than 30 days after the pack date. It shall be stated by month and day using the three-letter abbreviation of the month followed by the numerical day of the month (e.g., Jan 15), and preceded by the term SELL BY or EXP.

3.4 SIZE AND GRADE REQUIREMENTS

Every case, carton or container of ~~shell~~chicken eggs at the time of packing shall have clearly printed thereon, in letters not less than one-fourth inch in height, the grade and the weight designation as specified in section 35-21-102(2), C.R.S.; except that Class I Dealers selling fewer than 250 dozen eggs

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per month to a farmer's market, community sustained agriculture organization or directly to the household consumer are exempt from these requirements.

3.4.1. Eggs from avian species other than chickens are exempt from size and grade requirements.

4.0 SALE REQUIREMENTS

4.1 AGE OF EGGS

No ~~shell~~ eggs may be offered for sale or sold to a consumer or restaurant more than 45 days after the pack date.

4.2 CONTAINERS

It is unlawful for any person to sell or offer for sale ~~shell~~ eggs in any case, carton, or container on which there is evidence of adhering filth or contamination on the inside or outside thereof, or in any case, carton, or container on which there is printed, stamped, or affixed any trademark, design, or other identification of any person other than the person selling such eggs.

4.3 REPACKAGED EGGS

Dealers that repack eggs from damaged cartons into new cartons for sale to consumers shall comply with the following requirements:

- 4.3.1 Repacked eggs must be clean and have sound shells. There should be no evidence of yolks, whites or shell fragments from broken eggs on the eggs or carton.
- 4.3.2 Cartons used to repack eggs must be new and cannot be marked with any name other than the name of the dealer repacking the eggs.
- 4.3.3 Cartons used to repack eggs must identify the dealer location either by listing the store number or by listing the dealer address on the carton.
- 4.3.4 Cartons used to repack ~~shell~~chicken eggs must be labeled as a particular size and grade. (For example: Grade B Medium). The repackaged eggs must meet the specifications for the size and grade indicated on the repacked carton label.
- 4.3.5 Repacked egg cartons must list the oldest pack date of the eggs repacked and the date the eggs were repacked must be stated on the carton. Dealers must sell the eggs within 45 days of the oldest pack date.
- 4.3.6 The carton shall bear the statement, "The eggs in this carton were packed by this store at this location."
- 4.3.7 Any other information about the eggs may be included, as long as the information is not misleading to the consumer.

5.0 STOP SALE NOTICES

5.1 DISPOSITION OF ~~SHELL~~ EGGS MORE THAN 45 DAYS AFTER PACK DATE

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Eggs withdrawn from being offered for sale after the expiration of 45 days after the pack date may be returned to a packer for shipment to an egg breaking plant.

5.2 DISPOSITION OF BELOW-STANDARD SHELL EGGS

~~Shell-Chicken~~ eggs offered for sale by any dealer found to be below the minimum standards and requirements of quality and/or weight for the grade and size labeled, shall be withdrawn from being offered for sale at the time of inspection, pursuant to section 35-21-106(2), C.R.S.

5.3 UNLICENSED DEALERS

~~Shell-eggs-Eggs~~ offered for sale by any dealer who is not licensed under the Colorado Egg Law, sections 35-21-101 through 35-21-108, inclusive, C.R.S., may be withdrawn by such person from being offered for sale until such person obtains a validly issued license under said law, and is otherwise in compliance with all of the provisions of the Egg Law and these rules.

6.0 DEALER LICENSE EXPIRATION DATE

The expiration date for all egg dealer licenses shall be December 31.

7.0 DEALER LICENSE CATEGORIES

7.1 The license categories for dealers are based on the average number of cases of eggs (30 dozen per case) sold per week during the previous 12 months.

Dealer categories are as follows:

1. Class I – produces and sells fewer than 40 cases per;
2. Class II – sells up to and including 0.5 cases per week;
3. Class III – sells over 0.5 and up to and including 2 cases per week;
4. Class IV – sells over 2 cases and up to and including 25 cases per week;
5. Class V – sells over 25 cases and up to and including 100 cases per week;
6. Class VI – sells over 100 cases and up to and including 500 cases per week;
7. Class VII – sells over 500 cases per week.

The average number of cases of eggs sold per week shall be calculated by dividing the total number of cases of eggs sold during the previous 12 months by the number of weeks the dealer sold eggs during that same period. If an applicant for a dealer license has not sold eggs during the previous 12 months, a class II license shall be required.

~~8.0 – 9.0~~ **RESERVED**

8.0 **RESERVED**

9.0 **RESERVED**

10.0 STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

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The Statements of Basis, Specific Statutory Authority and Purpose for rulemaking activity from 1996 to 1997 are no longer in the Department's files.

10.1 Emergency Rule Adopted July 1, 2009 – Effective July 1, 2009

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these Emergency Rule Amendments is set forth in § 35-21-106(1), C.R.S. (2008), § 24-4-103(6), C.R.S. (2008), and §§ 35-21-104(1), and 104(4)(b)(I), C.R.S., as enacted in SB 09-127.

PURPOSE:

The purpose of these Emergency Rule Amendments is to update the rules pertaining to the Colorado Egg Act to comply with the amendments to the Act set forth in SB 09-127.

These Amendments:

- a. Replace the terms “retailer” and “wholesaler” with “dealer.”
- b. Remove recordkeeping requirements for wholesalers.
- c. Establish a license expiration date of June 30.
- d. Establish egg dealer license categories based upon the average number of cases of eggs sold per week.
- e. Add a section to contain the statements of basis, specific statutory authority and purpose.

FACTUAL AND POLICY BASIS:

The factual and policy issues that require the immediate adoption of these Emergency Rule Amendments are as follows:

1. The Department of Regulatory Agencies performed a Sunset Review in 2008 of the Colorado Egg Act, which resulted in several amendments to the Act enacted by the General Assembly in SB 09-127 effective July 1, 2009, that:
 - a. Eliminate the terms “wholesalers” or “retailers” from the Act. These terms have been replaced with “dealer” throughout the rules.
 - b. Established uniform recordkeeping requirements for all licensees, making the current recordkeeping requirements for egg wholesalers in the rule obsolete.
 - c. Removed the license expiration date from the Act and required the Commissioner to establish by rule. These rules establish a license expiration date of June 30.
 - d. Removed the license categories from the Act and required the Commissioner to establish them by rule, based upon the average number of cases of eggs sold per week.
2. The Commissioner hereby finds that immediate adoption of these Emergency Rule Amendments is imperatively necessary to comply with the revisions to the Colorado Egg Act, §§ 35-21-101 – 108, C.R.S. enacted by the General Assembly in its 2009 legislative session, which take effect on

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July 1, 2009. These Emergency Rule Amendments are required to permit the continuous and uninterrupted administration and enforcement of the Act, including the issuance of licenses thereunder.

10.2 Adopted July 16, 2009 – Effective August 30, 2009

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these Permanent Rule Amendments is set forth in § 35-21-106(1), C.R.S. (2008), and §§ 35-21-104(1), and 104(4)(b)(I), C.R.S., as enacted in SB 09-127.

PURPOSE:

The purpose of these Permanent Rule Amendments is to update the rules pertaining to the Colorado Egg Act to comply with the amendments to the Act set forth in SB 09-127.

These Permanent Rule Amendments:

- a. Replace the terms “retailer” and “wholesaler” with “dealer.”
- b. Remove recordkeeping requirements for wholesalers.
- c. Establish a license expiration date of June 30.
- d. Establish egg dealer license categories based upon the average number of cases of eggs sold per week.
- e. Add a section to contain the statements of basis, specific statutory authority and purpose.
- f. Remove obsolete language that is no longer needed.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of these Permanent Rule Amendments are as follows:

1. The Department of Regulatory Agencies performed a Sunset Review in 2008 of the Colorado Egg Act, which resulted in several amendments to the Act enacted by the General Assembly in SB 09-127 effective July 1, 2009, that:
 - a. Eliminate the terms “wholesalers” or “retailers” from the Act. These terms have been replaced with “dealer” throughout the rules.
 - b. Established uniform recordkeeping requirements for all licensees, making the current recordkeeping requirements for egg wholesalers in the rule obsolete.
 - c. Removed the license expiration date from the Act and required the Commissioner to establish by rule. These rules establish a license expiration date of June 30.
 - d. Removed the license categories from the Act and required the Commissioner to establish them by rule, based upon the average number of cases of eggs sold per week.

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2. The Commissioner intends to adopt Emergency Amendments to the Rules on July 1, 2009 in order to implement the changes to the Act made by the General Assembly in SB 09-127. These Permanent Rule Amendments will make permanent those Emergency Amendments

10.3 Adopted April 9, 2013 – Effective January 1, 2014

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of this permanent rule amendment is set forth in § 35-21-104(1) and § 35-1-107(5)(a), C.R.S.

PURPOSE:

The purpose of this permanent rule amendment is to amend Rule 6 to change the expiration date for an egg dealer license from June 30 to December 31.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of this permanent rule amendment are as follows:

1. This change is necessary to allow the Department to consolidate licensing functions to one time per year for all licenses issued by the ICS Division.
2. The Department of Agriculture is moving its licensing functions from a paper based system to an online system. To accommodate licensee's who hold multiple licenses with the Department of Agriculture, we are establishing a common licensing date so a licensee can obtain all their licenses in one transaction.

10.4 Adopted September 17, 2014 – Effective November 14, 2014

STATUTORY AUTHORITY:

The Commissioner's authority for the adoption of these permanent rule amendments is set forth in § 35-21-106(1), § 35-21-104(1), and § 35-21-104(4)(b)(I), C.R.S.

THE PURPOSE OF THIS RULEMAKING IS TO:

1. Adopt a new Rule 1.1.2 to exempt registered USDA egg handlers from the temperature requirements of Rule 1.1.1.
2. Adopt a new Rule 2.2 to specify egg washing requirements for Class I Dealers.
3. Adopt a new Rule 3.1.4 to allow egg producers to use their Colorado Department of Agriculture business identification number on egg cartons.
4. Adopt Rule 3.4.1 to exempt Class I Dealers selling eggs at farmer's markets and community sustainable agriculture organizations from grading requirements.
5. Remove obsolete language that is no longer needed.
6. Adopt a new Rule 4.3 to specify the egg repacking requirements for retail dealers.

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7. Amend Rule 7.1 to clarify the maximum number of egg cases that a Class I Dealer may produce and sell.

FACTUAL AND POLICY BASIS:

The factual and policy issues pertaining to the adoption of these permanent rule amendments are as follows:

1. The Department of Agriculture conducted a regulatory review of these Rules as part of the Department's Regulatory Efficiency Review Process conducted in accordance with the Governor's Executive Order D 2012-002. This review resulted in the above changes to the rules.
2. Egg production is regulated by two distinct agencies, the USDA and the Colorado Department of Agriculture. Both agencies have separate regulations. The USDA regulates chicken flocks of greater than 3,000 hens and the Colorado Department of Agriculture regulates flocks of fewer than 3,000 hens. The USDA and the Colorado egg rules have different egg storage and transportation temperature requirements. Rule 1.1.2 eliminates this temperature conflict for large flock producers.
3. Currently small flock egg producers (fewer than 3,000 hens) are not required to wash and sanitize their eggs. Washing and sanitizing eggs will promote public health by reducing the risk of disease.
4. The Colorado Department of Agriculture business identification number was not available when the current rule was adopted. Rule 3.1.4 provides an additional method to identify the egg producer on the egg carton.
5. Generally most consumers buying eggs at farmer's markets and from community sustainable agriculture organizations are not concerned about the grade of egg but like to buy from a local producer. In addition most small egg producers lack the necessary equipment and training to properly grade their eggs. Rule 3.4.1 will exempt these producers from the egg grading requirements.
6. The current Rule 4.2 was adopted many years ago when it was common to sell fertilized eggs. Fertile eggs are no longer desired and the production of fertile eggs is considered an unacceptable production practice. Therefore the egg carton labelling requirement is obsolete and is no longer needed.
7. Eggs can be damaged (broken or cracked) during shipping and handling at retail stores. Repacking eggs provides a way for retail egg dealers to sell the eggs instead of discarding the entire carton of eggs.
8. Current Class I Dealers produce and sell fewer than 2 cases of eggs per week. This amendment increases the number of cases produced and sold to 40 per week. This equates to a flock of a little fewer than 3,000 laying hens. The USDA registers and inspects producers with more than 3,000 laying hens. Amended Rule 7.1 ensures that all egg producers are inspected by the Colorado Department of Agriculture or by the USDA.

10.5 Adopted April 14, 2021 – Effective June 15, 2021

STATUTORY AUTHORITY

The Commissioner's authority for the adoption of these permanent rule amendments is set forth in § 35--21-106(1), C.R.S.

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THE PURPOSE OF THIS RULEMAKING IS TO:

Implement the recommendations from the 2019 Egg Dealers Sunset Report from the Colorado Department of Regulatory Agencies. More specifically, this rulemaking broadens the regulations to cover non-chicken eggs from avian species and adjusts temperature requirements to align with USDA regulations.

FACTUAL AND POLICY BASIS:

The 2019 Egg Dealers Sunset Report from the Colorado Department of Regulatory Agencies recommended changes that required rule changes. In addition, these rules address changes required as a result of the Egg Dealer Act found in HB20-1211. These changes included adding the regulation of non-chicken eggs from avian species and authorizing relevant rulemaking authority related to non-chicken eggs. The proposed rule changes give effect to the 2019 Sunset recommendations.