

COLORADO DEPARTMENT OF AGRICULTURE

Inspection and Consumer Services Division

RULES PERTAINING TO THE CONFINEMENT OF EGG-LAYING HENS

8 CCR 1202-19

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

PART 1. DEFINITIONS

Unless the context otherwise requires, the following definitions apply to these rules and words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand:

- 1.1. "Accreditation" or "accredit" means a determination made by the commissioner that authorizes a private entity to conduct certification activities as a certifying agent under this Act.
- 1.2. "Act" means House Bill 20-1343, codified at section 35-21-201, et seq., of the Colorado Revised Statutes.
- 1.3. "Business owner or operator" means any person who owns or controls the operations of a business. Business owner or operator does not include a business owner or operator who engages in the sale or transport of shell eggs in the state at one or more business locations in the state if each business location owned or operated by the business owner or operator sells fewer than twenty-five cases of thirty dozen eggs per week, all business locations owned by or operated by the business owner or operator collectively sell fewer than one hundred cases of thirty dozen eggs per week, and the business owner or operator is not a farm owner or operator.
- 1.4. "Cage-free housing system" means an indoor or outdoor controlled environment for egg-laying hens to which all of the following apply: (I) For an indoor environment, the egg-laying hens are free to roam unrestricted except by the following: (A) Exterior walls; and (B) Interior fencing used to contain the entire egg-laying hen flock within the building or subdivide flocks into smaller groups if farm employees can walk through each contained or subdivided area to provide care to egg-laying hens and if each egg-laying hen has the minimum amount of usable floor space described in section 35-21-203(1)(b)(II), Colorado Revised Statutes; (II) Egg-laying hens are provided enrichments that allow them to exhibit natural behaviors, including, at a minimum, scratch areas, perches, nest boxes, and dust bathing areas; and (III) Farm employees can provide care while standing within the egg-laying hens' usable floor space. "Cage-free housing system" includes multi-tiered aviaries, partially slatted systems, and single-level all-litter floor systems. "Cage-free housing system" does not include systems commonly described as battery cages, colony cages, enriched cages, enriched colony cages, modified cages, convertible cages, furnished cages, or similar cage systems.
- 1.5. "Certification applicant" means a farm owner or operator who applies with the Department to have their egg production operation(s) certified.
- 1.6. "Certificate of compliance" means written or electronic document issued by the commissioner to a farm owner or operator indicating that the shell eggs or egg products produced by that farm owner or operator were produced in compliance with the Act and which must be provided to a business owner or operator during the transfer of any shell egg and egg products.

- 1.7. "Certified operation" means the egg production operation by farm owner or operator, or portion of such operation, that is certified by a certifying agent as utilizing a system of egg-laying hen confinement as required by the Act.
- 1.8. "Certifying agent" means any private entity accredited by the Department as a third-party certifying agent for the purpose of certifying a production operation as a certified operation.
- 1.9. "Egg product" means an egg of an egg-laying hen that is separated from the shell and intended for human food, whether in liquid, solid, dried, or frozen form, whether raw or cooked, and with (I) the egg yolk and egg white in their natural proportions; or (II) the egg yolk and egg white separated, mixed, or mixed and strained. "Egg product" does not include combination food products, including pancake mixes, cake mixes, cookies, pizzas, cookie dough, or ice cream, that include egg as one of multiple ingredients in the product; except that merely adding sugar, salt, water, seasoning, coloring, flavoring, preservatives, stabilizers, or similar food additives does not make an egg product a combination food product.
- 1.10. "Farm" means the land, building, support facilities, and other equipment that are wholly or partially used for the commercial production of animals or animal products used for food. "Farm" does not include live animal markets or official plants where mandatory inspection is maintained under the federal "Egg Products Inspection Act", 21 U.S.C. sec. 1031 et seq., as amended.
- 1.11. "Farm owner or operator" means a person that owns a farm or controls the operations of a farm. Farm owner or operator does not include a farm owner or operator with an annual shell egg production from three thousand or fewer egg-laying hens if all shell eggs sold in the state or transported in the state by the farm owner or operator are derived from three thousand or fewer egg-laying hens.
- 1.12. "Inspection" means the act of examining and evaluating the production, distribution, or retail operation of a farm owner or operator or a business owner or operator to determine compliance with the Act and the rules.
- 1.13. "Inspector" means any person retained or used by a certifying agent to conduct inspections of a farm owner or operator or a business owner or operator, or an authorized representative of the Department. Inspector includes process verification provider.
- 1.14. "Label" means a display of written, printed, or graphic material on the immediate container of a shell egg or egg product or any such material affixed to any covered product or affixed to a bulk container containing a shell egg or egg product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.
- 1.15. "Labeling" means all written, printed, or graphic material accompanying a shell egg or egg product at any time or written, printed, or graphic material about the shell egg or egg product displayed at retail stores about the product.
- 1.16. "Person" means any individual, firm, partnership, joint venture, association, limited liability corporation, corporation, estate, trust, receiver, or syndicate.
- 1.17. "Process verification" means the act of confirming that the production, processing, handling, packaging, storing, transporting, and selling of shell eggs or egg products complies with the Act and the rules.
- 1.18. "Records" means any information in written, visual, or electronic form that documents the activities undertaken by a farm owner or operator, business owner or operator, or certifying agent to comply with the Act.

- 1.19. "Sale" means a commercial sale by a business that sells any item covered by section 35-21-201, et seq., Colorado Revised Statutes. "Sale" does not include any sale undertaken at an official plant where mandatory inspection is maintained under the federal "Egg Products Inspection Act", 21 U.S.C. sec. 1031 et seq., as amended.
- 1.20. "Shell egg" means a whole egg of an egg-laying hen in its shell form, intended for use as human food.
- 1.21. "Single-level all-litter floor system" means a cage-free housing system bedded with litter where egg-laying hens have limited or no access to elevated flat platforms.
- 1.22. "Split operation" means a farm owner or operator or a business owner or operator that produces or distributes shell eggs or egg products from operations that are both in conformance and out-of-conformance with the confinement standards of the Act.
- 1.23. "Title Document" means a document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of shell eggs or egg products is entitled to receive, hold, and dispose of the document and the shell eggs or egg product it covers. Examples of such documents include bill of lading, dock warrant, dock receipt, warehouse receipt, or shipping invoices for an order for the delivery of shell eggs or egg product.
- 1.24. "Usable floor space" means (I) the total square footage of floor space provided to each egg-laying hen, as calculated by dividing the total square footage of floor space provided to egg-laying hens in an enclosure by the number of egg-laying hens in that enclosure; and (II) includes both ground space and elevated level or nearly level flat platforms upon which egg-laying hens can roost. "Usable floor space" does not include perches or ramps.

PART 2. ENCLOSURE REQUIREMENTS

- 2.1. On and after January 1, 2023, a farm owner or operator shall not knowingly confine an egg-laying hen in an enclosure with less than one square foot of usable floor space per egg-laying hen. This part is repealed, effective January 1, 2025.
- 2.2. On and after January 1, 2025, a farm owner or operator shall not knowingly confine an egg-laying hen in an enclosure:
 - 2.2.1. That is not a cage-free housing system; or
 - 2.2.2. That has less than:
 - 2.2.2.1. One square foot of usable floor space per egg-laying hen in a cage-free housing system that provides egg-laying hens with unfettered access to vertical space, such as a multi-tiered aviary or a partially slatted system; or
 - 2.2.2.2. One and one-half square feet of usable floor space per egg-laying hen in a cage-free housing system that does not provide egg-laying hens with unfettered access to vertical space, such as a single-level all-litter floor system.

PART 3. CERTIFICATION OF FARM OWNER OR OPERATOR

- 3.1. To sell shell eggs and egg products, to offer to sell shell eggs or egg products, or to transport shell eggs or egg products for sale within the state, a farm owner or operator must maintain certification by the commissioner of its operations and comply with all applicable provisions of the Act and rules.

- 3.2. A farm owner or operator must be inspected annually by a certifying agent approved by the commissioner and have a site inspection once in every 12-month period in accordance with part 8 of this rule.
- 3.3. A farm owner or operator seeking to receive or maintain a certificate of compliance must immediately notify the Department concerning any change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and these rules.
- 3.4. A farm owner or operator seeking to receive or maintain certification must allow access during normal business hours by the certifying agent and the commissioner's authorized representative to:
 - 3.4.1. The farm, including any facilities, structures, enclosures, and houses where egg-laying hens, shell eggs, and egg products may be kept, produced, processed, handled, stored or transported, except that a farm owner or operator may require the certifying agent and the commissioner's authorized representative to adhere to established biosecurity procedures;
 - 3.4.2. All containers, labels, labeling, invoices, documents of title, and bills of lading used in the handling, storage, packaging, sale, transportation, or distribution of shell eggs and egg products; and
 - 3.4.3. All records required to be maintained by Part 4.

PART 4. FARM OWNER OR OPERATOR RECORDKEEPING REQUIREMENTS

- 4.1. A farm owner or operator must maintain records concerning their production of shell eggs and egg products. Such records must:
 - 4.1.1. Be maintained by a farm owner or operator in sufficient detail to document that egg-laying hens were confined in compliance with the Act and the requirements of the rules;
 - 4.1.2. Be maintained for not less than two years beyond their creation;
 - 4.1.3. Include records of all shell egg and egg product transactions for the preceding two-year period and indicate the date, quantity, identity of the buyer and seller, and the address where physical possession of covered product took place for each transaction;
 - 4.1.4. Include documentation and records for the preceding two-year period pertaining to the production, processing, handling, packaging, storage, transportation, or sale of shell eggs or egg products, intended for sale in Colorado or identified or represented as compliant with the confinement requirements of the Act;
 - 4.1.5. Include documentation of the size of each facility, the quantity and type of shell eggs or egg products produced or processed from each facility or farm unit in the certified operation, the number of enclosures for each facility or farm unit, the size of each enclosure, the number of egg-laying hens housed in each enclosure, and the dates of stocking, harvest, and production; and
 - 4.1.6. If the facility is a split operation, include documentation sufficient to demonstrate the identification, segregation, distribution, and handling of shell eggs or egg products to prevent commingling with any shell eggs or egg products that do not comply with requirements of the Act.

PART 5. APPLICATION FOR CERTIFICATION OF COMPLIANCE

- 5.1. A farm owner or operator seeking certification of compliance from the commissioner must submit an application for certification to the commissioner that includes all the following information:
- 5.1.1. The name of the authorized representative completing the application; the applicant's business name, physical address, mailing address, email, and telephone number; and, if the applicant is an organization, the name, address, email, and telephone number of the person authorized to act on the applicant's behalf;
 - 5.1.2. Proof of certification by a certifying agent, which includes an on-site inspection and process verification by a certifying agent, dated within 365 days of the date the applicant submits its application for certification to the commissioner;
 - 5.1.3. A description of the type and quantity of egg-laying hens at the facility;
 - 5.1.4. A description of the enclosure system(s) to be used at the facility, including but not limited to the number of enclosures, size of enclosures and maximum number of egg-laying hens to be housed in each, and
 - 5.1.5. Additional information as deemed necessary by the commissioner to determine compliance with the Act and the rules.
- 5.2. Upon the granting of certification, the commissioner shall issue to the farm owner or operator applicant a certificate of compliance, which shall specify the name and address of the certified operation, the effective date of the certification, and a statement that confirms that the farm owner or operator is in compliance with the Act and the rules.
- 5.3. Certification shall be good for one calendar year, beginning on the date of initial issuance of the certificate of compliance, and January 1st for each year the farm owner or operator maintains certification, and ending on December 31st.
- 5.4. Certification under these rules is not transferable. No later than 60 days after obtaining ownership or control of an operation, a new farm owner or operator shall apply for certification, regardless of whether the prior farm owner or operator was certified by the commissioner.
- 5.5. If the commissioner determines that the applicant's operation does not comply with the Act and these rules, the commissioner shall deny the application and notify the applicant of its decision and describe each reason for noncompliance. The applicant may take corrective action to remedy all reasons for noncompliance and reapply for certification.
- 5.6. To renew certification, a certified farm owner or operator must submit the following recertification information, as applicable, to the commissioner:
- 5.6.1. An application for recertification;
 - 5.6.2. A summary statement, supported by documentation, detailing any deviations from, or changes to, information submitted on the previous year's application;
 - 5.6.3. Proof of compliance with the Act, issued by certifying agent, dated no earlier than one calendar year prior to submission of the application for recertification;

- 5.6.4. If the facility is a split operation, documentation sufficient to demonstrate the identification, segregation, distribution, and handling procedures of shell eggs or egg products produced in compliance with the Act and the Rules to prevent commingling with any shell eggs or egg products that do not comply with requirements of the Act or the Rules; and
- 5.6.5. Other information as deemed necessary by the commissioner to determine compliance with the Act.
- 5.7. A certified farm owner or operator shall submit its application for recertification to the commissioner no later than January 31st of the year the farm owner or operator is seeking recertification. Failure to do so will result in immediate noncompliance with the Act.

PART 6. GENERAL REQUIREMENTS FOR BUSINESS OWNERS AND OPERATORS

- 6.1. A business owner or operator who sells or transports shell eggs or egg products for sale in Colorado shall:
 - 6.1.1. Comply with all applicable provisions of the Act and the rules;
 - 6.1.2. Retain a copy of either:
 - 6.1.2.1. The certificate of compliance issued under part 5.2 from the farm owner or operator that produced the lot of shell eggs or egg products; or
 - 6.1.2.2. Title documents received from the farm owner or operator or other business owner or operator that indicate the lot of shell eggs or egg products is compliant with the Act;
 - 6.1.3. Maintain all records described in part 6.1.2 for a period of not less than two years;
 - 6.1.4. Allow on-site inspections of the business owner or operator's retail store, distribution operation, and offices by the commissioner's authorized representative;
 - 6.1.5. Allow the commissioner's authorized representative to access and examine all shell eggs or egg products that are sold or intended, held, segregated, stored, packaged, labeled, or represented for sale or distribution;
 - 6.1.6. Allow the commissioner's authorized representative to access and examine containers, labels, labeling, invoices, title documents, and bills of lading used in the handling, storage, packaging, sale, transportation, or distribution of shell eggs or egg products;
 - 6.1.7. Allow the commissioner's authorized representative during normal business hours access to review and copy all records required to be maintained by the Act and rules; and
 - 6.1.8. If the facility is a split operation, implement procedures to prevent the commingling of any shell eggs or egg products that do not comply with requirements of the Act with shell eggs or egg products that comply with the requirements of the Act.
- 6.2. When a business owner or operator sells or transports for sale shell eggs or egg products to a government agency as part of a state or federally sponsored egg program, such business owner or operator shall not be considered to have knowingly sold or transported for sale shell eggs or egg products in the state.

PART 7. SHELL EGG AND EGG PRODUCT TRANSFER DOCUMENTATION AND ALTERNATIVE LABELING REQUIREMENTS

- 7.1. All shell eggs and egg products to be sold must be accompanied by a copy of the certificate of compliance issued by the commissioner for the year in which the egg and egg products are packed. The certificate of compliance must accompany all shell eggs and egg products during the transfer or sale to a business owner or operator.
- 7.2. In lieu of a certificate of compliance described in part 7.1, shell eggs and egg products entering the state or transported within the state for sale may be accompanied with title documents that include the statement "CO-COM".
- 7.3. Shipments of shell eggs or egg products that enter Colorado exclusively for purposes of transshipment or export for human consumption outside of the state and are not destined for commercial sale in Colorado shall not include the statement "CO-COM".
- 7.4. The side of each container of all shell eggs and egg products for sale, or destined for sale, in Colorado shall contain the statement "CO-COM". The statement shall be clearly legible, without obscuring designs, vignettes or crowding, and be plainly printed, stamped or marked in letters not less than an eighth (1/8) of an inch in height.
- 7.5. No person shall label, identify, mark, advertise, or otherwise represent shell eggs or egg products for sale in the state using the term "cage free" or other similar descriptive term unless the shell eggs or egg products were produced in compliance with the Act.

PART 8. ACCREDITED CERTIFYING AGENTS

- 8.1. The commissioner may accredit a qualified domestic or foreign applicant to certify a domestic or foreign farm owner or operator as a certified operation that conducts its business in compliance with the Act.
- 8.2. Accreditation of certifying agents shall be valid for a period of five years from the date of the commissioner's approval of accreditation.
- 8.3. In order to receive and maintain accreditation, a private entity accredited as a certifying agent under these rules must:
 - 8.3.1. Fully carry out the applicable provisions of the Act and the rules;
 - 8.3.2. Have sufficient expertise in shell egg or egg product production techniques to carry out the provisions of the Act and the rules;
 - 8.3.3. Maintain all records pursuant to part 8.9, and make all such records available for inspection and copying during normal business hours by authorized representatives of the commissioner;
 - 8.3.4. Promptly report to the commissioner complaints of noncompliance with the Act or the rules concerning operations certified as compliant with the Act and the rules by the certifying agent; and
 - 8.3.5. Not disclose any information collected pursuant to the Rules obtained while certifying production operations for compliance with the rules to any third-party without approval by the commissioner.

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- 8.4. A private entity seeking accreditation as a certifying agent under this part must submit an application for accreditation provided by the Department and include all the following supporting documentation:
- 8.4.1. The business name, primary office location, mailing address, name of the person(s) responsible for the certifying agent's day-to-day operations, contact numbers (telephone, facsimile, email and Internet address) of the applicant, and the entity's federal taxpayer identification number;
 - 8.4.2. The name, office location, mailing address, and contact numbers (telephone, facsimile, email and Internet address) for each of its organizational units, such as chapters or subsidiary offices, and the name of a contact person for each unit;
 - 8.4.3. The applicant's entity type (e.g., for-profit business, not-for-profit membership association) and documentation showing the entity's status and organizational purpose, such as articles of incorporation and bylaws or ownership or membership provisions, and its date of establishment;
 - 8.4.4. A list of each State or foreign country in which the applicant has previously conducted certification services and a list of each State or foreign country in which the applicant intends to certify production or distribution operations pursuant to the Act and the rules; and
 - 8.4.5. A name of each person or entity reasonably connected to the applicant that has or has held a commercial interest in the shell egg or egg product industry within the 12-month period prior to the application for accreditation.
- 8.5. A private entity seeking accreditation as a certifying agent must submit to the commissioner the following documents and information:
- 8.5.1. The name and position description of personnel in the certifying agent's operation performing inspections, members of any certification review and evaluation committees, and inspection contractors;
 - 8.5.2. A description of procedures, practices, and training to ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, auditing and decision-making responsibilities have sufficient expertise to successfully perform the duties assigned and to comply with and implement the requirements of the Act and the rules;
 - 8.5.3. A copy of the procedures to be used to evaluate certification applicants, make certification decisions, and issue certification certificates;
 - 8.5.4. A copy of the procedures to be used for reviewing and investigating certified operations compliance with the Act and the rules and the reporting of violations of the Act and the rules to the Department;
 - 8.5.5. A copy of the procedures to be used for complying with the recordkeeping requirements set forth in part 8.9 below; and
 - 8.5.6. Any other information the applicant believes may assist in the commissioner's evaluation of the applicant's expertise and ability.

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- 8.6. Accreditation will be granted when the commissioner determines that the applicant for accreditation meets the requirements for accreditation as stated in part 8.3, as determined by a review of the application and supporting documentation. Upon accreditation, the commissioner shall issue to the certifying agent a notice of accreditation.
- 8.7. The accreditation of a certifying agent shall continue in effect until such time as the certifying agent fails to renew accreditation, the certifying agent voluntarily ceases its certification activities, or accreditation is suspended or revoked.
- 8.8. In order to receive and maintain accreditation, an accredited certifying agent must allow on-site evaluations for the purpose of examining the certifying agent's operations and evaluating its compliance with the Act and the rules. On-site evaluations shall include a review of the certifying agent's certification procedures, records, administrative and management systems for production operations certified by the certifying agent. On-site evaluations shall be conducted by a representative(s) of the commissioner.
- 8.9. Accredited certifying agents must maintain the following records for not less than three years beyond their creation or receipt:
- 8.9.1. Records obtained from applicants for certification and certified operations;
 - 8.9.2. Records created by the certifying agent regarding applicants for certification and certified operations; and
 - 8.9.3. Records created or received by the certifying agent pursuant to the accreditation requirements of the rules.
- 8.10. Renewal of accreditation.
- 8.10.1. To renew accreditation certification, an accredited certifying agent must submit an application for accreditation renewal to the commissioner to be received at least six months prior to the expiration date of the notification of accreditation and each subsequent renewal of accreditation.
 - 8.10.2. Following receipt of the information submitted by the certifying agent in accordance with part 8.10.1, and the results of an on-site evaluation, if applicable, the commissioner will determine whether the certifying agent remains in compliance with the Act and the rules and should have its accreditation renewed.
 - 8.10.3. Upon a determination that the certifying agent is in compliance with the Act and the rules, the commissioner will issue a notice of renewal of accreditation.
 - 8.10.4. Any change in ownership, change of business name, change in business location, closure of business, or change of name, address, phone number or email of a person authorized to act on behalf of the accredited certifier must be reported to the commissioner within 30 days of such change.
 - 8.10.5. Certifying agents with an expired accreditation shall not perform certification activities under the Act and the rules.

PART 9. INSPECTION PROCESS REQUIREMENTS

- 9.1. In order to grant certification, a certifying agent must conduct an on-site inspection and process verification of each production unit, facility, and site that produces or distributes shell eggs or egg products that is included in an operation for which certification is requested to determine whether the operation is in compliance with the applicable provisions of the Act and the rules.
- 9.2. An on-site inspection and process verification must be conducted at least once every 12 months thereafter for each certified operation that produces or distributes shell eggs or egg products for the purpose of determining whether to approve the request for certification or whether certification of the operation should continue.
- 9.3. The commissioner may require that additional inspections and process verification be performed by an accredited certifying agent or the commissioner for the purpose of determining compliance with the Act and the rules. Additional inspections and process verification may be announced or unannounced as required by the commissioner. If the commissioner or certifying agent intends to review the operation's business records, the commissioner will provide the operation with a seven-day notice of its intent to inspect.
- 9.4. All on-site inspections and process verification must be conducted when an authorized representative of the operation who is knowledgeable about the operation is present and at a time when facilities and activities that demonstrate the operation's compliance with or capability to comply with the applicable provisions of the Act and these rules can be observed, except that this requirement does not apply to unannounced on-site inspections.
- 9.5. Proper documentation must be provided to the farm owner or operator and must indicate that the operation is compliant with the enclosure requirements established in the Act and these rules.
- 9.6. All inspectors must follow the farm owner or operator's biosecurity protocol to conduct inspections.

PARTS 10 & 11. RESERVED

PART 12. STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

12.1. Adopted August 10, 2022 – Effective September 30, 2022

Statutory Authority:

The Commissioner of Agriculture adopts these rules pursuant to section 35-21-207(2) of the Colorado Revised Statutes.

Purpose:

The purpose of this rulemaking is to comply with the Act created by House Bill 20-1343 by establishing rules concerning the regulation of the production and sale of shell eggs and egg products, the inspection of farms, shell eggs, and egg products, and to ensure shell eggs and egg products sold in Colorado are produced in compliance with the Act.

Factual Policy and Issues:

The Department identified multiple terms that were not defined in the Act. To provide clarity to the regulated community as to the meaning of terms used in these rules, the Department has included definitions in Part 1. After the hearing and public comment, the Department included an additional term to address the regulated community's concern. The Department also added a provision to require any accredited certifying agent to disclose potential conflicts of interest in the shell egg or egg product industry.

The Act requires farm owners and operators document their compliance with the Act. Accordingly, the rules contain certification and recordkeeping requirements for farm owners or operators.

The Act requires business owners and operators who sell or transport for sale shell eggs or egg products in Colorado to retain a copy of the certificate of compliance issued by the commissioner. These rules contain recordkeeping requirements to ensure compliance under the Act.

The Act allows the commissioner to use a private inspection or process verification provider to ensure compliance with the Act. These rules contain requirements and procedures to accredit certifying agents to ensure compliance with the Act during both production and handling of shell eggs and egg products.

Editor's Notes

History

New rule eff. 09/30/2022.