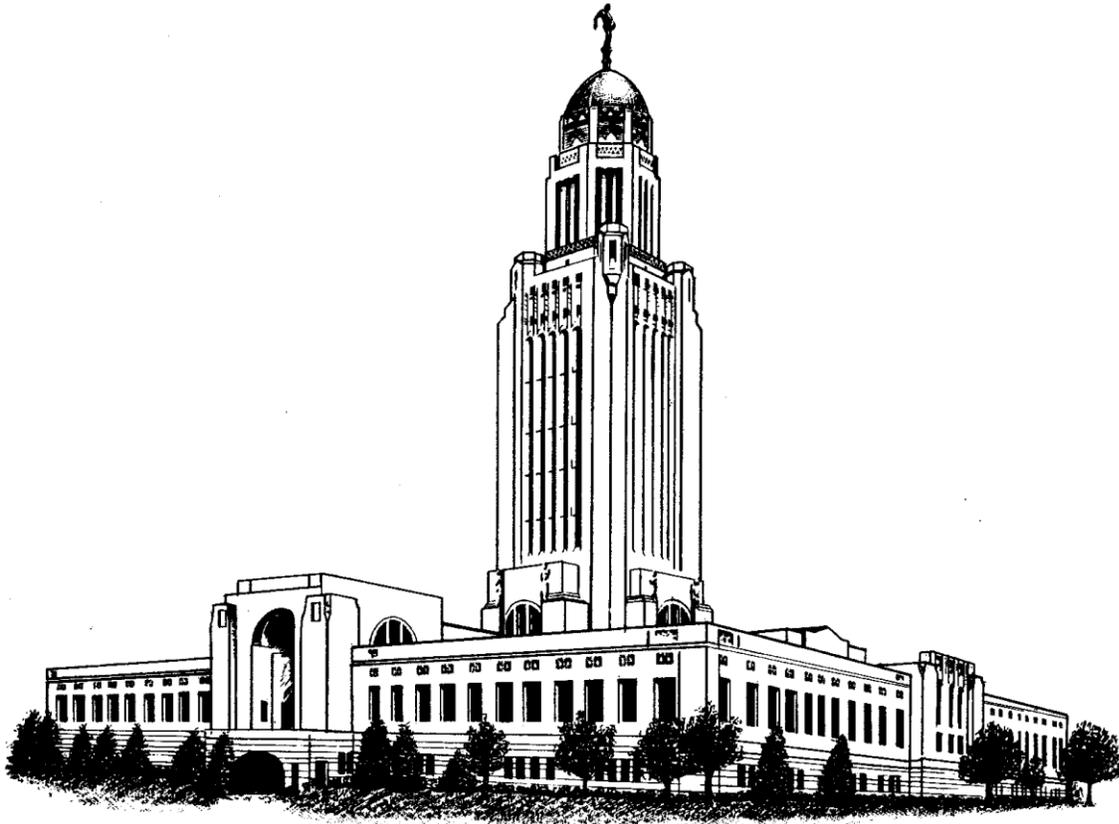


NEBRASKA GRADED EGG ACT



Nebraska Department of Agriculture
Food Safety and Consumer Protection
State Office Building
P.O. Box 95064
Lincoln, Nebraska 68509
(402) 471-3422
www.agr.ne.gov

NEBRASKA GRADED EGG ACT

- Administration: This Act is administered by the Nebraska Department of Agriculture, Bureau of Dairies and Foods, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402) 471-2536.
- Revisions: The provisions of this Act were last revised during the 2003 session of the Nebraska Legislature. This reproduction was prepared following that session.
- Rules: A regulation has been promulgated under this Act, known as Title 21, Chapter 1, Nebraska Administrative Code - Graded Egg Regulations.

Index

<u>Section</u>	<u>Subject</u>
2-3501	Legislative intent; public policy.
2-3502	Terms, defined.
2-3503	Shell eggs; quality grades; rules and regulations.
2-3504	Shell eggs; weight classifications; minimum weights; rules and regulations.
2-3505	Shell eggs; maximum temperature permitted; humidity.
2-3506	Graded eggs; designation of size and quality; unlawful acts.
2-3507	Shell eggs; sale without designation of quality grade and weight classification; unlawful.
2-3508	Shell eggs; labeling requirements.
2-3509	Shell eggs; sale without designation of date packed; unlawful.
2-3510	Shell eggs; sale without invoice; unlawful.
2-3511	Graded eggs; advertising; unlawful acts.
2-3512	Shell eggs; sale below quality Grade B; unlawful; exception; applicability of section.
2-3513	Shell eggs; sale below quality Grade A; unlawful; when.

- 2-3514 Shell eggs; place in unsanitary container; unlawful.
- 2-3515 Shell eggs; sale without license; unlawful.
- 2-3516 Failure to pay inspection fee; unlawful.
- 2-3518 Shell eggs; possession; presumption.
- 2-3519 Shell eggs; sampling; procedures; seizure; ordered off sale; when; hearing.
- 2-3520 Annual license fee; inspection fee, amount; how determined; license renewal; applicability of section.
- 2-3521 Graded Egg Fund; created; use; investment.
- 2-3522 Rules and regulations.
- 2-3523 Licenses; disciplinary action; hearing.
- 2-3524 Violation; penalty; enforcement.
- 2-3525 Act, how cited.

2-3501. Legislative intent; public policy. It is hereby declared to be the public policy of the State of Nebraska that consumers of shell eggs in this state be assured of the quality and quantity of shell eggs purchased. In furtherance of this policy, the Legislature hereby declares it to be its intent that shell eggs purchased by consumers in this state shall be quality graded and weight classified in accordance with procedures established under the Nebraska Graded Egg Act, which procedures shall, insofar as practicable, be consistent with those adopted by the United States Department of Agriculture under the Egg Products Inspection Act, 21 U.S.C. 1301 et seq., and the Agricultural Marketing Act of 1946, 7 U.S.C. 1621 et seq.

2-3502. Terms, defined. As used in the Nebraska Graded Egg Act, unless the context otherwise requires:

- (1) Consumer shall mean any person who buys shell eggs for his or her own consumption and not for resale;
- (2) Department shall mean the Department of Agriculture;
- (3) Director shall mean the Director of Agriculture;
- (4) Egg handler shall mean any person who engages in any business in commerce which involves buying or selling any shell eggs or processing any shell egg products. Egg handler shall include, but not be limited to, persons who assemble, collect, break, process, grade, package, or wholesale shell eggs;
- (5) Exterior condition of a shell egg shall mean the cleanliness and shape of the shell of the egg and whether the shell is whole or is broken or cracked;
- (6) Food purveyors shall mean all restaurants, cafeterias, institutions, hotels, and other establishments where shell eggs are offered for sale to consumers for immediate consumption, either in the shell or in processed form;
- (7) Graded eggs shall mean shell eggs which have been graded as to quality and classified as to weight according to the

Nebraska Graded Egg Act and the rules and regulations adopted and promulgated under such act;

(8) Interior condition of a shell egg shall mean the condition of the yolk, the white, and the air cell of the shell egg;

(9) Producer shall mean any person engaged in the production of shell eggs in the State of Nebraska;

(10) Retailer shall mean any person who sells shell eggs to the consumer;

(11) Sell shall include offer, expose, or have in possession for sale, exchange, barter, or trade;

(12) Shell eggs shall mean eggs of the domesticated chicken; and

(13) Shell egg packer shall mean any person engaged in the sorting of eggs from sources other than or in addition to his or her own production, into their various qualities, either mechanically or by other means.

2-3503. Shell eggs; quality grades; rules and regulations.

(1) Quality grades of shell eggs shall be designated as follows:

- (a) Fresh Fancy Quality or Grade AA;
- (b) Grade A;
- (c) Grade B;
- (d) Grade C;
- (e) Dirty;
- (f) Check;
- (g) Loss;
- (h) Inedible; and

(i) Such other quality grades as the department shall adopt and promulgate by rule or regulation. Additional quality grades may be adopted only if such grades are adopted in the regulations promulgated by the United States Department of Agriculture under the Egg Products Inspection Act.

(2) The quality grade of shell eggs shall be determined by examination of the interior and exterior condition of each individual shell egg.

(3) The department shall have the authority to adopt and promulgate rules and regulations establishing the following:

- (a) Interior and exterior quality standards for each quality grade of shell eggs;
- (b) Acceptable procedures and conditions for grading shell eggs; and
- (c) Packing tolerances for each quality grade of shell eggs.

2-3504. Shell eggs; weight classifications; minimum weights; rules and regulations. (1) Weight classifications of shell eggs shall be designated as follows:

- (a) Jumbo;
- (b) Extra Large;
- (c) Large;

- (d) Medium;
- (e) Small;
- (f) Pee Wee; and

(g) Such other weight classifications as the department shall adopt and promulgate by rule or regulation. Additional weight classifications may be adopted only if such weights are adopted in the regulations promulgated by the United States Department of Agriculture under the Egg Products Inspection Act.

(2) The department shall have the authority to adopt and promulgate rules and regulations to establish minimum weights for each weight classification with respect to:

- (a) Individual shell eggs;
- (b) Lots of one dozen shell eggs;
- (c) Lots of thirty dozen shell eggs; and
- (d) Lots of shell eggs greater than thirty dozen.

2-3505. Shell eggs; maximum temperature permitted; humidity. After being received at the point of first purchase, all shell eggs for human consumption shall be held at a temperature not higher than forty-five degrees Fahrenheit (seven degrees Celsius), with a relative humidity of approximately seventy percent.

2-3506. Graded eggs; designation of size and quality; unlawful acts. It shall be unlawful to prepare, pack, place, deliver for shipment, deliver for sale, load, ship, transport, or sell graded eggs in bulk or in containers and subcontainers unless each container or subcontainer of such eggs is marked with the full, correct, and unabbreviated designation of size and quality of the eggs therein in accordance with the standards prescribed in the Nebraska Graded Egg Act and the rules and regulations adopted and promulgated under the act.

2-3507. Shell eggs; sale without designation of quality grade and weight classification; unlawful. It shall be unlawful to sell any carton or container of shell eggs to the consumer that does not have imprinted on each carton or container in letters not less than three-eighths inch in height the quality grade and weight classification designations established pursuant to the Nebraska Graded Egg Act.

2-3508. Shell eggs; labeling requirements. It shall be unlawful to sell any carton or container of shell eggs to the consumer that does not have imprinted on each carton or container, in a conspicuous manner, (1) the name of the distributor or packer and (2) the official code number identifying the packer of the eggs used by plants under federal supervision, the state identification number assigned under the federal Egg Products Inspection Act, 21 U.S.C. 1031 et seq., or a code number assigned by the director under the Nebraska Graded Egg Act. Applications for code numbers to be assigned by the director may be made to the department upon forms provided for that purpose.

2-3509. Shell eggs; sale without designation of date packed; unlawful. It shall be unlawful to sell shell eggs in any carton or container which fails to show the date of the year on which the eggs were packed.

2-3510. Shell eggs; sale without invoice; unlawful. It shall be unlawful to sell shell eggs to a retailer or food purveyor without furnishing an invoice showing the quality grade and weight classification designations established pursuant to the Nebraska Graded Egg Act.

2-3511. Graded eggs; advertising; unlawful acts. It shall be unlawful to advertise by sign, placard, or otherwise, the price at which graded eggs are offered for sale without denoting the quality grade and weight classification designations established pursuant to the Nebraska Graded Egg Act.

2-3512. Shell eggs; sale below quality Grade B; unlawful; exception; applicability of section. (1) It shall be unlawful to sell shell eggs below the quality grade of Grade B at retail or to food purveyors except as provided in the packing tolerances for Grade B eggs established under the rules and regulations of the department.

(2) This section does not apply to any person exempt from comparable provisions of the federal Egg Products Inspection Act and 7 C.F.R. 57.100.

2-3513. Shell eggs; sale below quality Grade A; unlawful; when. It shall be unlawful to sell shell eggs below the quality grade of Grade A advertised as fresh eggs, ranch eggs, or farm eggs, or to represent the same to be fresh.

2-3514. Shell eggs; place in unsanitary container; unlawful. It shall be unlawful to place shell eggs in unsanitary containers. Containers shall be considered sanitary if they are structurally sound and free of putrid odors, visible mold, evidence of insect and rodent infestation, and adhering egg and fecal matter.

2-3515. Shell eggs; sale without license; unlawful. It shall be unlawful to sell shell eggs without the license required by the Nebraska Graded Egg Act.

2-3516. Failure to pay inspection fee; unlawful. It shall be unlawful to fail to pay the inspection fees established by the Nebraska Graded Egg Act.

2-3518. Shell eggs; possession; presumption. It shall be presumed from the fact of possession by any person engaged in the sale of shell eggs that such eggs are for sale for consumption by humans as food.

2-3519. Shell eggs; sampling; procedures; seizure; ordered off sale; when; hearing. (1) The department shall adopt and promulgate rules and regulations to prescribe methods of selecting samples of lots or containers of shell eggs which shall be reasonably calculated to produce by such sampling fair representations of the entire lots or containers sampled. Any sample so taken shall be prima facie evidence, in any court in this state, of the true condition of the entire lot in the examination of which such sample was taken. Insofar as practicable, the methods of sampling prescribed in the rules and regulations shall be the same as those prescribed by the United States Department of Agriculture under the Egg Products Inspection Act.

(2) The department, through its agents, may enter any premises within the state where shell eggs are held, during ordinary business hours, and may inspect representative samples of such eggs and containers for the purpose of determining whether or not any provision of the Nebraska Graded Egg Act has been violated.

(3) Any agent of the department may, while enforcing the Nebraska Graded Egg Act, seize and hold for evidence any shell eggs held to be in violation of any provisions of the act.

(4) Any shell eggs found by agents of the department to be in violation of the Nebraska Graded Egg Act may be ordered off sale by the department. Further disposition of such eggs shall only be in accordance with the written or oral permission of the department, except that the department shall release all shell eggs ordered off sale which have been brought into conformity with the act.

(5) Any person affected by action taken by the department under subsection (3) or (4) of this section shall be advised that such person may request in writing, within ten days of such action, a hearing before the director or his or her designated representative on such action. The department shall proceed to hearing within seventy-two hours after receiving the written request. If no written request for hearing is filed within the ten days, the department's action shall be sustained.

2-3520. Annual license fee; inspection fee, amount; how determined; license renewal; applicability of section. There shall be paid to the department an annual license fee of two dollars and fifty cents and an inspection fee based on volume, as follows:

(1) Retailers:

(a) Not more than ten thirty-dozen cases annual average per week, the sum of five dollars;

(b) More than ten thirty-dozen cases but not more than twenty-five such cases annual average per week, the sum of seven dollars and fifty cents; and

(c) More than twenty-five thirty-dozen cases annual average per week, the sum of ten dollars; and

(2) Egg handlers:

(a) Not more than ten thirty-dozen cases annual average per week, the sum of five dollars;

(b) More than ten thirty-dozen cases but not more than two hundred such cases annual average per week, the sum of twenty-five dollars;

(c) More than two hundred thirty-dozen cases but not more than five hundred such cases annual average per week, the sum of fifty dollars;

(d) More than five hundred thirty-dozen cases but not more than one thousand such cases annual average per week, the sum of seventy-five dollars;

(e) More than one thousand thirty-dozen cases but not more than fifteen hundred such cases annual average per week, the sum of one hundred dollars;

(f) More than fifteen hundred thirty-dozen cases but not more than two thousand such cases annual average per week, the sum of one hundred twenty-five dollars;

(g) More than two thousand thirty-dozen cases but not more than twenty-five hundred such cases annual average per week, the sum of one hundred fifty dollars; and

(h) More than twenty-five hundred thirty-dozen cases annual average per week, the sum of two hundred dollars.

Application for a license shall be made to the department on forms prescribed and furnished by the department. Licenses shall expire on July 31 of the year following issuance and shall be renewed on or before August 1 of each year. The license fee and the inspection fee shall be paid at the time of the initial application for a license and at the time of each succeeding application for renewal.

The inspection fee shall be based upon the annual average per week volume during the preceding twelve-month period ending June 30. If no annual average per week volume is available from the preceding twelve-month period, the inspection fee shall be based upon the estimated per week volume for the upcoming year.

This section does not apply to a producer with production from a flock of three thousand hens or less or to an egg handler required to have a license under the Nebraska Graded Egg Act but whose primary food-related business activity is not egg handling.

2-3521. Graded Egg Fund; created; use; investment. The proceeds of license and inspection fees shall be remitted to the State Treasurer for credit to the Graded Egg Fund which is hereby created. Such fund shall be used by the department to aid in defraying the expenses of administering the Nebraska Graded Egg Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

2-3522. Rules and regulations. The department shall have the authority to adopt and promulgate all necessary and reasonable rules and regulations to fully carry out the intent and purposes

of the Nebraska Graded Egg Act. When applicable, and insofar as practicable, such rules and regulations shall be consistent with those adopted by the United States Department of Agriculture, Agricultural Marketing Service, under the Egg Products Inspection Act.

2-3523. Licenses; disciplinary action; hearing. Licenses issued by the department pursuant to section 2-3520 may be deferred, suspended, or revoked by the director, following public hearing pursuant to the Administrative Procedure Act, for violation of the Nebraska Graded Egg Act or the rules and regulations adopted and promulgated under such act.

2-3524. Violation; penalty; enforcement. (1) Any person violating the Nebraska Graded Egg Act shall be guilty of a Class IV misdemeanor.

(2) It shall be the duty of the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of such violation or threatened violation, to pursue appropriate proceedings pursuant to subsection (1) or (3) of this section without delay.

(3) In order to insure compliance with the Nebraska Graded Egg Act, the department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated pursuant to the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

2-3525. Act, how cited. Sections 2-3501 to 2-3525 shall be known and may be cited as the Nebraska Graded Egg Act.

ACTD.doc