



TEXAS
Health and Human
Services

Texas Department of State
Health Services

**TEXAS DEPARTMENT OF STATE HEALTH SERVICES
DIVISION FOR CONSUMER PROTECTION
ENVIRONMENTAL AND CONSUMER SAFETY SECTION
POLICY, STANDARDS, AND QUALITY ASSURANCE UNIT
PUBLIC SANITATION AND RETAIL FOOD SAFETY GROUP**

REGULATORY CLARIFICATION

DATE: July 6, 2016 (Revised: May 19, 2017)

PSRFSGRC - No. 20

SUBJECT: SELLING NON-CHICKEN EGGS (NCE) TO A RETAIL FOOD ESTABLISHMENT

Applicable Texas Food Establishment Rules (TFER) Sections:

§228.2 (42) Definition of Egg

§228.62 (a)(1) and (7) Approved Source

§228.63(a)(3); §228.63 (a)(8); §228.63 (c) Specifications for receiving

§228.2 (136) Definition of Single Use Article

§228.78 (b)(1) Honestly presented

Question: Can I sell non-chicken eggs to a retail food establishment?

Response: Yes, under the following stipulations:

- A farm may sell non-chicken eggs (NCE) without a license, provided certain labeling and packaging requirements are met and temperature controls are maintained;
- Farms selling non-chicken eggs are considered an "approved source" for purposes of the Texas Food Establishment Rules (TFER);
- If an entity meets the definition of a Food Wholesaler of food products, including non-chicken eggs, they must possess a license as a manufacturer or wholesaler issued by the Texas Department of State Health Services (DSHS); <http://www.dshs.texas.gov/foods/forms.aspx>
- All eggs must be stored at a temperature of 45° Fahrenheit or less; and;
- The egg cartons must be labeled as 'ungraded', contain safe handling instructions, and provide the farmers or manufacturer/distributor's name and address.
- Reuse of egg cartons is prohibited.

Support:

§228.2 (42) defines an Egg as a 'shell egg of an avian species such as chicken, duck, goose, guinea, quail, ratites, or turkey. The definition of an egg does not include a balut, shell egg of reptile species such as an alligator, or an egg product.'

§228.62 (a)(1) requires that all "food shall be obtained from sources that comply with applicable laws and are licensed by the state regulatory authority having jurisdiction over the processing and distribution of the food." The Texas Department of Agriculture (TDA) is the agency in Texas that issues licenses to persons that buy or sell chicken eggs, to persons or facilities that grade, size and class chicken eggs, to chicken egg brokers and to facilities that store, pack or process chicken eggs. The licensing requirements are part of the Egg Law, TAC Title 4, Part 1, Chapter 15.

A non-chicken egg wholesaler/distributor licensed as a manufacturer or wholesaler by DSHS Food Group would meet the requirement in TFER §228.62 (a)(1) relating to Approved Source.

§228.62 (a)(7) Eggs that have not been specifically treated to destroy all viable Salmonellae shall be labeled to include safe handling instructions as specified in law, including 21 CFR §101.17(h).

§228.63(a)(3) Raw shell eggs shall be received in refrigerated equipment that maintains an ambient air temperature of 7 degrees Celsius (45 degrees Fahrenheit) or less.

§228.63 (c) Eggs. Eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in 7 CFR 56, Voluntary Grading of Shell Eggs and United States Standards, Grades, and Weight Classes for Shell Eggs, and 9 CFR 590, Inspection of Eggs and Egg Products. The grading requirement is not applicable for non-chicken eggs. Non-chicken eggs shall be received clean and sound.

§228.2 (136) Single-use articles--Utensils and bulk food containers designed and constructed to be used once and discarded. Includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under Subchapter D (pertaining to Equipment, Utensils, and Linens). Egg Cartons do not meet the requirement for durability, strength and cleanability. Under 228.78(b)(1), food shall be

offered for human consumption in a way that does not mislead or misinform the consumer.

Response To:

Inquiry from a Quail Egg Farm.

Agree to form and substance:



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