FILED
SEP 1 1 2017
By Bess Bressign SECRETARY OF STATE

NOTICE OF RULEMAKING HEARING
STATE OF NEBRASKA
DEPARTMENT OF AGRICULTURE

NOTICE IS HEREBY GIVEN that the Nebraska Department of Agriculture (NDA) will hold a rulemaking hearing on October 18, 2017, at 10:00 a.m. CT at NDA, Fourth Floor, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509, for the proposed repeal of Nebraska Administrative Code, Title 21, Chapter 1 entitled Graded Egg Regulations. The regulations are being repealed because the Nebraska Graded Egg Act was repealed by LB 134 of 2017.

The hearing will be conducted under Neb. Rev. Stat. §84-907. COPIES OF THE PROPOSED REPEAL, AND INFORMATION PROVIDED TO THE GOVERNOR INCLUDING THE FISCAL IMPACT STATEMENT ARE AVAILABLE FOR PUBLIC EXAMINATION at NDA and at the Offices of the Secretary of State, State Capitol, Room 1305, Lincoln, Nebraska 68508 or website (www.sos.ne.gov/rules-and-regs/regtrack/index.cgi).

ALL INTERESTED PERSONS are invited to attend and testify at the hearing. Reasonable accommodations including the appointment of a licensed interpreter will be provided if requested with seven days notice to NDA at (402) 471-2341 (Voice) or the Nebraska Relay System at 711 or 800-833-7352 (TTY) to ask the operator to call NDA or email patricia.moock@nebraska.gov. Interested persons may submit written comments to NDA or e-mail comments to the Secretary of State's website. Comments will be made a part of the hearing record if received by October 17, 2017.

DATED at Lincoln, Nebraska, this 10th day of September, 2017.

NEBRASKA DEPARTMENT OF AGRICULTURE
Greg Ibach, Director

SEP 1 1 2017

SUBMIT TO GOVERNOR BEFORE SUBMITTING TO EXECUTIVE BOARD AND BEFORE PUBLIC HEARING DATE IS SET

RECEIVED
AUG 16 2017
Gov's Policy Research

PROPOSED REGULATION
GPRO COVERPAGE
(ATTACH TO PRE-REVIEW CHECKLIST)

Agency: Nebraska Department of Agriculture
Title, Chapter of Rules submitted: Title 21, Chapter 1
Subject: Graded Egg Regulations
Prepared by: Melva Ball
Telephone: (402) 471-3422
Date submitted to Governor: August 15, 2017

Projected dates for public hearings September, 2017

Projected deadline for final approval November, 2017

X A copy of the section of laws or federal regulations that triggered these changes is attached.

FOR GOVERNOR OFFICE RECORDS

Advisor Assigned: Lauren Kintner
Date approved to proceed: 08-22-2017
Options for proceeding:

X a) No further contact with GPRO is necessary until final rules have been approved by the Attorney General.

____ b) Contact Governor through GPRO concerning issues raised in Negotiated Rulemaking procedures.

____ c) Submit Rules and Regulations Policy Review Checklist to Governor if rules are changed hereafter and a new public hearing is scheduled.

____ d) Keep the Governor informed through GPRO as issues arise in negotiations, drafting sessions, advisory board meetings, and public hearings.

____ e) Specific policy comments per Governor's instructions is attached.

SEP 11 2017

PROPOSED REGULATION
POLICY PRE-REVIEW CHECKLIST

Agency: Nebraska Department of Agriculture
Title, Chapter of Regulation: Title 21, Chapter 1
Subject: Graded Egg Regulations
Prepared by: Melva Ball
Contact Info: melva.ball@nebraska.gov, 402-471-3422

A. Policy Changes and Impacts

1. What does the regulation do, and whom does it impact? Provide a brief description of the proposed rule or regulation and its impacts on state agencies, political subdivisions, and regulated persons or entities.

   The Graded Egg Regulations implemented the Nebraska Graded Egg Act Neb. Rev. Stat. §§2-3501 to 2-3525. The Nebraska Graded Egg Act was repealed in LB 134 of 2017, therefore, these regulations are obsolete. The repeal of the regulations has no known impact on any agencies or other entities.

2. Describe changes being proposed to current policy and briefly provide rationale.

   The regulations are being repealed to be consistent with the Legislature's repeal of the Nebraska Graded Egg Act.

B. Why is the rule necessary? Explain and provide an identification of authorizing statute(s) or legislative bill(s).

1. Update of regulation (e.g., repeal of obsolete statutes, reflect current policy, editing or technical language changes, etc.)

   The regulations are being repealed because the Graded Egg Act was repealed..

2. Annual changes – (e.g., provider rate changes, hunting season schedules, etc.)

3. Law was changed: federal ___ or state _X_ [Cite authorizing statute(s) or legislative bill(s) and year of enactment

   LB 134 of 2017 repealed the Nebraska Graded Egg Act.

4. Extension of established policy or program, new initiatives or changes in policy (within existing statutory authority)

5. Constituent initiated changes

6. Litigation requires change in regulation

7. Regulation changed to address legal or constitutional concerns of Attorney General's Office

8. Implements federal or legislative or judicial mandate

SEP 1 1 2017

9. Other reasons (explain)

C. <u>What happens if these rules are not adopted?</u>

If the regulations are not repealed, the Department will have obsolete regulations.

D. <u>Policy Checklist</u>

1. Is this an update or editorial change reflecting essentially no change in policy?

   Yes. The regulations have not been utilized in many years.

2. Does the policy in **the proposed regulation reflect legislative intent**?

   Yes

3. Is the policy proposed in the regulation **a state mandate on local government**? Is it funded?

   No

4. Is the policy proposed in the regulation **a federal mandate** on local government? Is it funded?

   No

E. <u>Fiscal Impact. In addition to completing the required Fiscal Impact Statement (a copy must be attached to this document), the agency must address the following:</u>

1. Will the proposed regulation reduce, increase, or have no change in resources – funds, personnel, or FTE?

   The repeal will have no fiscal impact.

2. Have initial contacts been made with citizens or organizations that may be impacted by the proposed regulation?

   Before the seeking the repeal of the Nebraska Graded Egg Act, the Department sought the input of the egg industry of the state, as represented by Nebraska Poultry Industries and the Food Industry Review Board. Both groups have reviewed these changes and were in agreement with the repeal.

3. Does the proposed regulation impact another agency? Explain the impact.

   There is no impact on another agency.

4. Will the proposed regulation reduce, increase, or have no change on reporting requirements of businesses?

   The repeal of these regulations would have no change on reporting requirements.

SEP 1 1 2017

5. What is the agency's best estimate of the additional or reduced spending? If there is none, please note. If receipt of federal funds is contingent upon approval of the proposed regulation, then indicate the amount and nature of the federal funds affected, and enclose laws or correspondence from federal officials substantiating the information.

   No change in spending.

F. Unique problems or issues and recommendations.

None.

G. Who is expected to be affected, or to oppose or support the proposed regulation? Explain what initial informal contacts have been made with organizations or citizens who may be affected by the regulation prior to the public hearing.

No opposition is expected.

The Department will also solicit public comment on the proposed regulation, before the public hearing, by stating in the published notice, that written or e-mail comments are invited. The notice will also include the Secretary of State's web site address for submitting e-mail comments.

H. Are these proposed rules a likely candidate for negotiated rulemaking? Explain. Has the process been completed? If so, explain how the issues were addressed.

No. The amendment to these regulations is not controversial.

Director's Verification of Review

I have reviewed these proposals and verify that, at this stage of the regulation's development, these questions have been accurately addressed.

Director's Signature _____ **Date** 8-15-17

SEP 11 2017

LB134
2017

LEGISLATIVE BILL 134

Approved by the Governor March 07, 2017

Introduced by Brasch, 16.

A BILL FOR AN ACT relating to agriculture; to amend sections 81-2,262, 81-2,263, 81-2,270, 81-2,271, 81-2,272.31, 81-2,281, and 81-2,288, Reissue Revised Statutes of Nebraska, and sections 81-2,239 and 81-2,240, Revised Statutes Cumulative Supplement, 2016; to define terms; to change provisions of the Nebraska Pure Food Act; to provide for the regulation of eggs for human consumption as prescribed; to provide requirements and an exception for a food delivery service; to authorize facility, food, and records inspections and fees by the Department of Agriculture as prescribed; to transfer funds to the Pure Food Cash Fund; to repeal the Nebraska Graded Egg Act and the Graded Egg Fund; to eliminate penalties; to harmonize provisions; to repeal the original sections; and to outright repeal sections 2-3501, 2-3502, 2-3503, 2-3504, 2-3505, 2-3506, 2-3507, 2-3508, 2-3509, 2-3510, 2-3511, 2-3512, 2-3513, 2-3514, 2-3515, 2-3516, 2-3518, 2-3519, 2-3520, 2-3521, 2-3522, 2-3523, 2-3524, and 2-3525, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-2,239, Revised Statutes Cumulative Supplement, 2016, is amended to read:

81-2,239 Sections 81-2,239 to 81-2,292 and sections 3, 4, and 8 of this act and the provisions of the Food Code and the Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food adopted by reference in sections 81-2,257.01 and ~~to~~ 81-2,259, shall be known and may be cited as the Nebraska Pure Food Act.

Sec. 2. Section 81-2,240, Revised Statutes Cumulative Supplement, 2016, is amended to read:

81-2,240 For purposes of the Nebraska Pure Food Act, unless the context otherwise requires, the definitions found in sections 81-2,241 to 81-2,254 and sections 3 and 4 of this act shall be used. In addition, the definitions found in the code ~~codes~~ and practice adopted by reference in sections 81-2,257.01 and ~~to~~ 81-2,259 shall be used.

Sec. 3. 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 and who is not a producer with production from a flock of three thousand hens or less. Egg handler shall include persons who assemble, collect, break, process, grade, package, or wholesale shell eggs. The term does not include a person whose primary food-related business activity is not egg handling.

Sec. 4. Food delivery service shall mean an operation that only meets the definition of food establishment by relinquishing possession of food to a consumer through a delivery service including home delivery of grocery orders, restaurant takeout orders, or other delivery services provided by a common or contract carrier.

Sec. 5. Section 81-2,262, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,262 Copies ~~Certified copies~~ of the code ~~codes~~ and practice adopted by reference pursuant to sections 81-2,257.01 and ~~to~~ 81-2,259~~,~~ shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and department.

Sec. 6. Section 81-2,263, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,263 If there is an inconsistency between sections 81-2,239 to 81-2,292 and sections 3, 4, and 8 of this act and any code ~~of the codes~~ adopted by reference, the requirements of the sections shall control.

Sec. 7. Section 81-2,270, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,270 (1) No person shall operate: (a) A food establishment; (b) a food processing plant; or (c) a salvage operation, without a valid permit which sets forth the types of operation occurring within the establishment.

(2) Application for a permit shall be made to the director on forms prescribed and furnished by the department. Such application shall include the applicant's full name and mailing address, the names and addresses of any partners, members, or corporate officers, the name and address of the person authorized by the applicant to receive the notices and orders of the department as provided in the Nebraska Pure Food Act, whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity, the location and type of proposed establishment or operation, and the signature of the applicant. Application for a permit shall be made prior to the operation of a food establishment, food processing plant, or salvage operation. The application shall be accompanied by an initial permit fee and an initial inspection fee in the same amount as the annual inspection fee if inspections are required to be done by the department. If the food establishment, food processing plant, or salvage operation has been in operation prior to applying

SEP 11 2017

LB134
2017

for a permit or notifying the regulatory authority, the applicant shall pay an additional fee of sixty dollars.

(3) Payment of the initial permit fee, the initial inspection fee, and the fee for failing to apply for a permit prior to operation shall not preclude payment of the annual inspection fees due on August 1 of each year. Except as provided in subsections (7) through (10) of this section and subsection (2) ~~(1)~~ of section 81-2,281, a permitholder shall pay annual inspection fees on or before August 1 of each year regardless of when the initial permit was obtained.

(4)(a) The director shall set the initial permit fee and the annual inspection fees on or before July 1 of each fiscal year to meet the criteria in this subsection. The director may raise or lower the fees each year, but the fees shall not exceed the maximum fees listed in subdivision (4)(b) of this section. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balance as follows:

(i) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Nebraska Pure Food Act;

(ii) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of program cash fund appropriations allocated for the act; and

(iii) All fee increases or decreases shall be equally distributed between all categories.

(b) The maximum fees are:

Food Handling Activity	Initial Permit Fee	First Food Preparation Area Annual Inspection Fee	Additional Food Preparation Area Annual Inspection Fee (per area)	No Food Preparation Area, Unit Or Units Annual Inspection Fee
Convenience Store	$86.19	$86.19	$43.09	N/A
Itinerant Food Vendor	$86.19	$86.19	$43.09	N/A
Licensed Beverage Establishment	$86.19	$86.19	$43.09	N/A
Limited Food Service Establishment	$86.19	$86.19	$43.09	N/A
Temporary Food Establishment	$86.19	$86.19	$43.09	N/A
Food Delivery Service	$86.19	N/A	N/A	$17.23
Mobile Food Unit (for each unit)	$86.19	N/A	N/A	$43.09
Pushcart (for each unit)	$86.19	N/A	N/A	$17.23
Vending Machine Operations:	$86.19			
One to ten units		N/A	N/A	$17.23
Eleven to twenty units		N/A	N/A	$34.46
Twenty-one to thirty units		N/A	N/A	$51.69
Thirty-one to forty				

SEP 11 2017

LB134
2017

units		N/A	N/A	$68.92
Over forty units		N/A	N/A	$86.15
Food Processing Plant	$86.19	$120.64	$43.09	N/A
Salvage Operation	$86.19	$120.64	$43.09	N/A
Commissary	$86.19	$120.64	$43.09	N/A
All Other Food Establishments	$86.19	$120.64	$43.09	N/A

(5) If a food establishment is engaged in more than one food handling activity listed in subsection (4) of this section, the inspection fee charged shall be based upon the primary activity conducted within the food establishment as determined by the department and any fees assessed for each additional food preparation area within the primary establishment as determined by the department.

(6) If a person fails to pay the inspection fee for more than one month after the fee is due, such person shall pay a late fee equal to fifty percent of the total fee for the first month that the fee is late and one hundred percent for the second month that the fee is late. The purpose of the late fee is to cover the administrative costs associated with collecting fees. All money collected as a late fee shall be remitted to the State Treasurer for credit to the Pure Food Cash Fund.

(7) An educational institution, health care facility, nursing home, or governmental organization operating any type of food establishment, other than a mobile food unit or pushcart, is exempt from the requirements in subsections (1) through (6) of this section.

(8) A food establishment which produces eggs and only stores, packages, sells, delivers, or otherwise provides for human consumption the eggs it produces, or only stores, packages, sells, delivers, or otherwise provides for human consumption eggs produced from no more than four producers at the same time, is exempt from the requirements of subsections (1) through (6) of this section. Any food establishment with a valid egg handler license and for which all fees have been paid prior to the effective date of this ~~person whose primary food-related business activity is determined by the department to be egg handling within the meaning of the Nebraska Graded Egg Act and who is validly licensed and paying fees pursuant to such~~ act is exempt from the permit and inspection fee requirements of the Nebraska Pure Food Act until August 1, 2018.

(9) A food establishment or food processing plant ~~person~~ holding a permit ~~or license and regulated~~ under the Nebraska Milk Act is ~~and an egg handler licensed and regulated under the Nebraska Graded Egg Act are~~ exempt from the requirements of subsections (1) through (6) of this section ~~Nebraska Pure Food Act~~.

(10) A single event food vendor or a religious, charitable, or fraternal organization operating any type of temporary food establishment, mobile food unit, or pushcart is exempt from the requirements of subsections (1) through (6) of this section. Any such organization operating any nontemporary food establishment prior to July 1, 1985, is exempt from the requirements of subsection (2) of this section.

Sec. 8. Any person who for remuneration packs and sells, offers for sale, barters, or otherwise provides eggs for human consumption shall comply with all applicable requirements set forth in rules and regulations adopted and promulgated by the department and shall establish the source of the eggs by labeling the eggs with a packer identification number assigned by the department or the United States Department of Agriculture.

Sec. 9. Section 81-2,271, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,271 (1) The permit required by section 81-2,270 shall be posted in a location in the food establishment, food processing plant, or salvage operation which is conspicuous to the public. A salvage operation shall also have a copy of the permit in each vehicle. For a food delivery service, the location shall be a permanent address where the permitholder may be contacted.

(2) The permit is not transferable to any other person or location. Any permit issued lapses automatically upon a change of ownership or location except as provided in subsection (3) of this section. The permitholder shall notify the department in writing at least thirty days prior to any change in ownership, name, or address. The permitholder shall notify the department in writing before there is a change of the name or address of the person authorized to receive the notices and orders of the department. When an establishment is to be permanently closed, the permitholder shall return the permit to the department within one week after the closing.

(3) A mobile food unit, pushcart, or vending machine may be moved if the permitholder is able to provide the location of such unit, pushcart, or machine to the regulatory authority upon request and the person authorized by the permitholder to receive notices and orders of the department maintains a permanent mailing address on file with the department. A food delivery service shall upon request provide the department with information regarding the

SEP 11 2017

LB134
2017

location of all conveyances it controls.

(4) Every mobile food unit or pushcart operator shall have a copy of their permit to operate available at the mobile food unit or pushcart when in operation.

Sec. 10. Section 81-2,272.31, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,272.31 Except in response to a temporary interruption of a water supply in the food establishment, any food establishment which is not a food delivery service, mobile food unit, or temporary food establishment shall:

(1) Have water under pressure provided to all fixtures, equipment, and nonfood equipment that are required to use water;

(2) Receive water through the use of an approved water main;

(3) Have a permanent plumbing system; and

(4) Have at least one toilet which is permanent, convenient, and accessible.

Sec. 11. Section 81-2,281, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,281 (1) The department shall enforce the Nebraska Pure Food Act and any rule or regulation adopted and promulgated pursuant to such act. The department may:

(a) Enter at reasonable times and in a reasonable manner, without being subject to any action for trespass or damages if reasonable care is exercised, any food establishment, food processing plant, or salvage operation to inspect all food, structures, vehicles, equipment, packing materials, containers, records, and labels on such property. The department may inspect and examine all records and property relating to compliance with the Nebraska Pure Food Act. Such records and property shall be made available to the department for review at all reasonable times;

(b) In a reasonable manner, hold for inspection and take samples of any food which may not be in compliance with the Nebraska Pure Food Act;

(c) Inspect at any time or place food that is being shipped into or through the state and take any enforcement action authorized under the Nebraska Pure Food Act; and

(d) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 from a court of record if any person refuses to allow the department to inspect pursuant to this subsection.

(2) In addition to its authority provided in subsection (1) of this section, the ~~The~~ department may contract with any political subdivision or state agency it deems qualified to conduct any or all regulatory functions authorized pursuant to the act except those functions relating to the issuance, suspension, or revocation of permits or any order of probation. Holders of permits issued pursuant to the act who are regularly inspected by political subdivisions under contract with the department shall be exempt from the inspection fees prescribed in section 81-2,270 if such holders pay license or inspection fees to the political subdivision performing the inspections.

(3) ~~(2)~~ It shall be the responsibility of the regulatory authority to inspect food establishments and food processing plants as often as required by the act. An inspection of a salvage operation shall be performed at least once every three hundred sixty-five days of operation. Additional inspections shall be performed as often as is necessary for the efficient and effective enforcement of the act.

(4) ~~(3)~~ All inspections conducted pursuant to the act shall be performed by persons who are provisional environmental health specialists or registered environmental health specialists as defined in section 38-1305 or 38-1306.

(5) ~~(4)~~ Duly authorized personnel of the regulatory authority after showing proper identification shall have access at all reasonable times to food establishments, food processing plants, or salvage operations required by the act to obtain a permit to perform authorized regulatory functions. Such functions shall include, but not be limited to, inspections, checking records maintained in the establishment or other locations to obtain information pertaining to food and supplies purchased, received, used, sold, or distributed, copying and photographing violative conditions, and examining and sampling food. When samples are taken, the inspectors shall pay or offer to pay for samples taken. The authorized personnel shall also have access to the records of salvage operations pertaining to distressed salvageable and salvaged merchandise purchased, received, used, sold, or distributed.

(6) ~~(5)~~ Regulatory activities performed by a political subdivision or state agency under contract shall conform with the provisions of the act and such activities shall have the same effect as those performed by the department. Any interference with the regulatory authority's duty to inspect shall be an interference with the department's duties for the purposes of section 81-2,273.

Sec. 12. Section 81-2,288, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,288 (1) The department may adopt and promulgate rules and regulations to aid in the administration and enforcement of the Nebraska Pure Food Act.

(2) The department may adopt and promulgate rules and regulations to provide for source labeling on eggs which are packaged. The department may establish standards, grades, and weight classes for eggs.

(3) ~~(2)~~ The department may contract with agencies of the federal government for the performance by the department of inspections and other regulatory functions at food establishments, food processing plants, or salvage operations within the state which are subject to federal jurisdiction and may

SEP 11 2017

LB134
2017

receive federal funds for work performed under such contracts.

(4) ~~(3)~~ Except as provided in subsection (3) ~~(2)~~ of this section, the provisions of the act shall not apply to establishments or specific portions of establishments regularly inspected for proper sanitation by an agency of the federal government.

Sec. 13. The State Treasurer shall transfer any money in the Graded Egg Fund to the Pure Food Cash Fund on the effective date of this act.

Sec. 14. Original sections 81-2,262, 81-2,263, 81-2,270, 81-2,271, 81-2,272.31, 81-2,281, and 81-2,288, Reissue Revised Statutes of Nebraska, and sections 81-2,239 and 81-2,240, Revised Statutes Cumulative Supplement, 2016, are repealed.

Sec. 15. The following sections are outright repealed: Sections 2-3501, 2-3502, 2-3503, 2-3504, 2-3505, 2-3506, 2-3507, 2-3508, 2-3509, 2-3510, 2-3511, 2-3512, 2-3513, 2-3514, 2-3515, 2-3516, 2-3518, 2-3519, 2-3520, 2-3521, 2-3522, 2-3523, 2-3524, and 2-3525, Reissue Revised Statutes of Nebraska.

SEP 11 2017

DRAFT FISCAL IMPACT STATEMENT

Agency: Nebraska Department of Agriculture	
Title: 21	Prepared by: Christina Barber
Chapter: 1	Date prepared: June 30, 2017
Subject: Graded Egg Regulations	Telephone: 471-2341

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	X	X	X
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decrease Revenue	( )	( )	( )
Indeterminable	( )	( )	( )

Provide an Estimated Cost & a Description of Impact:

State Agency:

There would be no fiscal impact on the Department of Agriculture in the repeal of the regulations.

Political Subdivision:

No changes due to the repeal of these regulations.

Regulated Public:

No changes due to the repeal of these regulations.

If indeterminable, explain why:

SEP 11 2017