
FSIS DIRECTIVE

8840.1

6/18/1999

ENFORCEMENT OF REFRIGERATION AND LABELING REQUIREMENTS FOR SHELL EGGS PACKED FOR CONSUMER USE

I. PURPOSE

This directive provides the procedures FSIS program employees should follow when enforcing shell egg refrigeration and labeling requirements. Note: bargaining unit employees will not be involved in any of these activities.

II. REFERENCES

Egg Products Inspection Act, as amended

9 CFR 590.5, 590.28, 590.50, 590.132, 590.134, 590.410, 590.915, 590.950, and 590.955

III. BACKGROUND

On August 27, 1998, FSIS published a final rule and request for comments implementing the 1991 amendments to the Egg Products Inspection Act (21 USC 1041). The amendments require that shell eggs packed into containers destined for the ultimate consumer be stored and transported under refrigeration at an ambient temperature not to exceed 45 °F (7.2 °C). FSIS defined the “ultimate consumer” as any household consumer, restaurant, institution, or any other party who has purchased or received shell eggs or egg products for consumption. Therefore, the requirements apply to table eggs rather than hatching eggs or nest run, ungraded eggs. In addition, the amendments require that these packed shell eggs be labeled to state that refrigeration is required. Finally, the amendments require that any shell eggs imported into the United States packed into containers destined for the ultimate consumer include a certification that the eggs have been stored at an ambient temperature of no greater than 45 °F (7.2 °C) at all times after packing. U.S. Customs Agents will verify the presence of the certification. The final regulations become effective August 27, 1999.

IV. The Role of AMS

A. The Agricultural Marketing Service (AMS) or AMS representatives will check the ambient air temperature of shell egg storage facilities in accordance with paragraph VII and will check the labeling of shell egg containers to verify compliance with labeling requirements during surveillance inspection activities. Producer-packers having 3,000 or fewer hens are exempt from the refrigeration and labeling requirements and are also exempt from surveillance inspections. All producer-packers that have more than 3,000 hens and all grading stations are subject to AMS surveillance inspections. Therefore, all plants that are covered by this regulation are covered by AMS surveillance inspection.

B. When AMS finds violations of the refrigeration or labeling regulations, it documents the violations and informs the plant management. If a plant has significant or repeated violations, AMS notifies the Assistant District Manager for Enforcement (ADME) at the appropriate District Office (DO) and provides the dates and a description of these violations.

C. When AMS finds that shell egg containers destined for the ultimate consumer are not labeled to indicate that refrigeration is required, it documents the violations and informs the plant management. Also, AMS places a USDA retention tag on the containers to prevent them from being transported until they are properly labeled. AMS returns to check the containers to ensure that they are properly labeled and to remove the tag.

V. Role of FSIS at Producer-Packers and Grading Stations

After AMS notifies an ADME of significant or repeated violations of the refrigeration or labeling regulations at producer-packers or grading stations, the ADME or other appropriate FSIS program employee determines whether follow-up visits to the producer-packers or grading stations are necessary, or whether other action is appropriate.

VI. Role of FSIS in Distribution

A. If FSIS program employees are at a warehouse or other distribution location that stores shell eggs packed into containers destined for the ultimate consumer, they determine the temperature of the storage facility. If the temperature of the storage facility is higher than 45 °F, FSIS program employees document the finding and report to the appropriate ADME or appropriate FSIS program employee. The ADME or other appropriate program employee determines what further action is necessary.

B. When FSIS program employees find that shell egg containers destined for the ultimate consumer in warehouses or other in-distribution locations are not labeled to indicate that refrigeration is required, they document the finding and, when appropriate, hold or detain them from being transported until they are properly labeled.

C. If vehicles transporting shell eggs packed into containers destined for the ultimate consumer are present at warehouses when FSIS program employees are present, FSIS program employees determine the temperature of the transport vehicle. If temperature is higher than 45 °F, FSIS program employees document the finding and report to the appropriate ADME or appropriate FSIS program employee. The ADME or other appropriate program employee determines what further action is necessary.

VII. Checking Temperatures

A. FSIS program employees checking the temperatures of shell egg storage and transport facilities will be provided thermometers equipped with air probes or other devices.

B. In shell egg storage facilities containing eggs packed into containers destined for the ultimate consumer, FSIS program employees:

1. Take temperatures in one or more areas of each cooler, excluding areas within a five-foot radius of open doorways or directly in front of cooling units;

2. Take temperatures near packaged product, at a five (5) to six (6) foot height above the floor;

3. If taking more than one temperature in the cooler, average the results to determine the ambient air temperature in the cooler.

C. When checking the temperature of the transport vehicle, FSIS program employees:

1. Place the thermometer in an appropriate location(s) in the transport vehicle and close the door;

2. Leave the thermometer in the truck long enough to obtain an accurate temperature reading;

3. If taking more than one temperature in the transport vehicle, average the results to determine the ambient air temperature in the transport vehicle.

D. If shell egg handlers covered by this regulation have installed thermometers or temperature recording devices in storage facilities or transport vehicles, FSIS program employees will verify ambient temperatures with their own calibrated thermometers for comparison purposes.

VIII. Enforcement Actions

If facilities are found to be at temperatures above 45°F, they are in violation of the regulations. After finding violations of the temperature or labeling requirements, FSIS may issue letters of information, warning, present-your-views, or take other appropriate action. In addition, FSIS will determine whether to seek criminal or civil penalties in accordance with the Egg Products Inspection Act, as amended (21 U.S.C. 1041). When seeking civil penalties, FSIS will take into account the gravity of the violation, degree of culpability, and history of prior offenses.

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