



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

January 30, 2002 (Revised: May 19, 2017)

PSRFSGRC - No. 9

SUBJECT: SELLING YARD EGGS AT A FARMERS MARKET

Applicable Texas Food Establishment Rules (TFER) Sections:

§228.2 (57) Food Establishment
§228.62 (a) Approved Source, compliance with food law
§228.63 (a) Specifications for receiving, Temperature
§228.75 (f) Time and Temperature Control, hot and cold holding
§228.247 Permit requirement, prerequisite for operation
§228.2 (136) Definition of Single Use Article
§228.78 (b)(1) Honestly presented

Question:

What are the requirements for selling yard eggs at a farmers market or other temporary event?

Response:

A vendor must obtain a permit issued by the regulatory authority to sell yard eggs at a farmers market. The eggs must be stored at a temperature of 45° Fahrenheit or less. The egg cartons or other containers must be labeled as “ungraded” and provide the producer’s (vendor’s) name and address. Reuse of egg cartons is prohibited.

Support:

The TFER, §228.2 (57), defines a food establishment as “an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption...” and includes markets in the listing of operation types. A vendor that sells yard eggs at a farmers market would be

operating a food establishment and would need to obtain a permit, according to TFER, §228.247.

§228.63 (a)(3) of the TFER require that shell eggs “may be received at the temperature specified in laws governing their distribution.” Texas’s Good Manufacturing Practices, adopted by the Health and Human Services Commission, and the Texas Department of Agriculture’s Egg

Law requires that eggs be shipped and received at an ambient temperature of 45° Fahrenheit or less.

Eggs are a time/temperature control for safety food and must be held at a temperature of 45° Fahrenheit or less, according to TFER, §228.75 (f)(2). The eggs, therefore, must be transported at an ambient temperature of 45° Fahrenheit or less and then be stored before sale at sufficiently cold temperatures so that the temperature of the eggs is 45° Fahrenheit or less.

§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 eggs, to persons or facilities that grade, size and class eggs, to egg brokers and to facilities that store, pack or process eggs. The licensing requirements are part of the Egg Law, TAC Title 4, Part 1, Chapter 15.


An exemption to the licensing requirements of the Egg Law, Section 15.2, is provided for producers of eggs that only sell the production of their own flock directly to the consumer. A stipulation of the exemption is that the eggs be labeled with the producer’s name and address. The labeling requirements of the Egg Law, Section 15.8, state that a producer must also label the stock cartons with the word “ungraded”, in addition to the producer’s name and address. Temperature storage requirements in The Egg Law, Section 15.7, are consistent with the storage requirements of TFER and the federal egg regulations, and require that eggs be stored at 45° Fahrenheit or less.


§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.

In summary, an egg producer that sells only ungraded eggs from their own flock to consumers at a farmers market may be exempt from licensing by the TDA, but must be permitted by DSHS or the local retail food authority. The eggs must be stored at a temperature of 45° Fahrenheit or less and meet specific labeling requirements.

Agree to form and substance:


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