

## Nancy Becker

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**From:** Guzzle, Patrick L. - CO 4th <GuzzleP@dhw.idaho.gov>  
**Sent:** Thursday, March 22, 2012 2:01 PM  
**To:** Guzzle, Patrick L. - CO 4th; District Health 1 - Peck, Dale; 'David Loper'; 'Kellye Eager'; 'Merl Egbert'; 'Paul Guenther'; 'Rob Howarth'; 'Steve Pew'  
**Cc:** Cartwright, Corey - Medicaid; 'Laura Johnson'; 'Lacey L. Menasco'; 'Carolee Cooper'; 'CJ Soltis'; 'Kristina Keating'; 'Melody Bowyer'; Nancy Becker; 'Tom Schmalz'  
**Subject:** Ungraded shell eggs UPDATED  
**Attachments:** Egg Licen Interp 2010.pdf  
**Importance:** High

All:

During the past few days, there have been more questions related to the use of ungraded shell eggs in retail food establishments. This message will hope to clarify these questions. This should be considered "official guidance" by the food program and supersedes all other prior messages related to the use of ungraded shell eggs.

The question has come up about the distinctions between a retail food establishment such as a grocery store and a restaurant. Historically, we have allowed the sale of ungraded shell eggs in retail food establishments like grocery stores but we have not allowed ungraded eggs in restaurants. This was due, primarily, to the difficulty presented to the inspector not having sufficient information to determine the origin of ungraded shell eggs and the end consumer not being made aware that ungraded eggs are in use within a restaurant setting. Due to the recent questions I have received, I've consulted with our Deputy Attorney General (DAG), Corey Cartwright. For reference, I've attached a letter that Corey wrote in 2010.

Guidance: If a producer of shell eggs is compliant with the applicable rules from the Idaho Department of Agriculture: <http://adminrules.idaho.gov/rules/2011/02/0211.pdf>, then the ungraded shell eggs may be distributed into a food establishment (including restaurants), without further regulation.

Please note that the Dep't of Ag rules exempt producers of shell eggs IF the producer has less than 300 hens, and clearly indicates that the eggs are ungraded. This means that in order to be used within a food establishment, the end consumer of the egg will need to know that the eggs are ungraded. The easiest way to do this would be to include some type of sign or posting on the menu that indicates: "We use ungraded shell eggs provided by \_\_\_\_\_" or similar language.

Other rules that apply in this case include Section 3-202.13 of the Idaho Food Code which reads: "Shell 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 Part 56....". Those restricted egg tolerances indicate that no more than 10% of the shell eggs can be checked eggs. Checked eggs include dirty eggs (presence of dirt or fecal material on the shell), cracked eggs, leaking eggs, etc. Once received, shell eggs are still required to be stored in coolers with an ambient air temperature of 41°F or less.

For field purposes, if you find ungraded eggs in a food establishment, they are considered to be from an approved source IF the producer of the eggs is in compliance with the Dep't of Ag rules, and if you are able to see that less than 10% of the eggs are checked eggs. If you find that more than 10% of the eggs are checked, or the end consumer of the eggs is not informed about the provider of the eggs and their ungraded status (requirements by the Idaho Dep't of Ag rules), then the eggs should not be used within the food establishment.

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**From:** Guzzle, Patrick L. - CO 4th

**Sent:** Thursday, March 11, 2010 8:09 AM

**To:** Dale Peck; David Loper; Kellye Eager; Merl Egbert; Paul Guenther; Rob Howarth; Steve Pew

**Cc:** 'Annette Duerock'; 'Robert Jue'; Mundt, Sarah - CO 4th; Cartwright, Corey - Medicaid; 'windrush90@gmail.com'; 'Laura Johnson'; Lacey L. Menasco; Carolee Cooper; CJ Soltis; Kristina Keating; Melody Bowyer; Nancy Becker; Tom Schmalz

**Subject:** FW: Definition of Retail in egg rules

**Importance:** High

All:

I apologize for the continuing messages about this topic. I am hopeful that this will put some finality to the issue. Below is the a message I have received from Marv Patten, Bureau Chief of the Dairy and Egg Bureau with the Idaho Department of Agriculture. This serves to clarify the status of a "retailer" vs. a restaurant or other food establishment.

In short, ungraded eggs are allowed for sale/distribution to the end user provided the egg producer meets the criteria that were outlined in a message from yesterday. However, a producer selling/distributing ungraded eggs to a restaurant is subject to securing a food establishment license from the local District Health Department.

If you have any further questions, please contact me.

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**From:** Marv Patten [<mailto:MPATTEN@agri.idaho.gov>]

**Sent:** Thursday, March 11, 2010 7:12 AM

**To:** Guzzle, Patrick L. - CO 4th

**Subject:** RE: Definition of Retail in egg rules

Patrick: That would include retail type establishments that sell to the end user.....it does not include food service or such facilities that the consumer may not be aware the eggs are ungraded. Marv

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**From:** Guzzle, Patrick L. - CO 4th [<mailto:GuzzleP@dhw.idaho.gov>]

**Sent:** Wednesday, March 10, 2010 4:04 PM

**To:** Marv Patten

**Subject:** Definition of Retail in egg rules

**Importance:** High

Marv:

Can you please confirm for me how Idaho Department of Agriculture defines "retailers" in this statement:

Idaho shell egg producers having three hundred (300) or less hens may sell ungraded shell eggs produced upon their premises to retailers, provided that each carton or other container of ungraded shell eggs sold shall be clearly marked "Ungraded" and shall bear the name and address of the Idaho producer.

This is from IDAPA 02.02.11. Thanks!

Patrick L. Guzzle

Food Protection Program Manager

Idaho Department of Health and Welfare