

To: Chair Dembrow and members of the Senate Committee on Environment & Nat. Res.
From: Rebecca Landis on behalf of the Oregon Farmers' Markets Association
and Corvallis-Albany Farmers' Markets
Subject: HB 3116-A
Date: April 24, 2017

Chair Dembrow and members of the committee:

Thank you for the opportunity to testify in support of HB 3116-A. As amended the bill would:

- Create a clear exemption for ungraded eggs in farm direct and consignment settings for farm direct marketers.
- Allow use of ungraded labeling for farm direct marketers even if they also sell graded eggs to stores under an egg handler license.
- Clarify the circumstances for selling any eggs (not just ungraded) in consignment situations under the Farm Direct Law. Either the producer or the farmer who sells the eggs on behalf of the producer would have to maintain an egg handler license.

Background

While working with Extension and ODA partners on an educational paper for farm direct producers, ODA food safety staff indicated that ungraded eggs are not legal in Oregon.

This was a surprise. Ungraded eggs are widely sold at farmers' markets, farm stands and other farm direct venues. It never came up during a year of work group meetings leading up the Farm Direct Law. I may have even realized I'd be sitting at a witness table with figurative if not actual egg on my face. But we now have good lines of communication to fix issues when they arise.

I did some legal research, and ODA checked in with its DOJ counsel. We determined, among things, that there are Oregon Administrative Rules mentioning ungraded eggs that are at odds with DOJ counsel interpretation of Oregon egg statutes.

ODA is not opposed to legalizing ungraded eggs if candling is required. If you pass this bill, we can go back to working together on farmer education.

Federal and state law

According to ATTRA, a USDA contractor, egg grading is not required by federal law, and most states allow ungraded eggs.

Grading and quality assessment laws date from the 20th century, and one history (Patricia Curtis' *Guide to US Food Laws and Regulations*, 2nd ed.) suggests New York producers hoped to generate consumer demand for better quality at a higher price. While these laws no doubt retain some relevance in the larger US food system, 21st century federal regulators found it necessary to add temperature controls from washing to the point of sale. These newer regulations have at least as much role in maintaining quality and safety as the grading system, and proper washing methodology is critical as well.

Grading is a process designed for lots (which sounds like large shipments) of eggs. Individual eggs are assessed on quality standards. These standards (both federal and Oregon) for Grade AA, for example, allow 13 percent below standard at the place of origin and 28 percent below standard at destination. Allowed defects include air cells that are too large, yolk defects and blood and meat spots. In both cases a percentage eggs with little cracks (“checks”) are allowed, and even small amounts of “Leakers, Dirty, or Loss” are allowed.

Ungraded eggs would remain subject to a number of federal and state safety and consumer laws, including federal temperature regulations, the federal consumer safety warnings, and the Farm Direct disclaimer. And eggs would still be dated.

According to University of Minnesota Extension, nearly all clean and sound eggs at 15 or fewer days old are AA or A quality, which is equated with the word “fresh.” Without proper handling, including temperature and humidity controls, an AA quality egg becomes an A quality egg over 15 days, and in another 15 days, it’s B quality. Since eggs can be sold only 30 days after packaging, that is the end of saleable life.

A 2012 USDA blog notes that grade B eggs are “ideal for cake mixes and omelets” because of thinner whites. Clearly USDA does not view such eggs as a safety issue. In another piece, USDA notes that the enlarged air cells of older eggs make them better candidates for hard boiling.

On the ground with farmers and customers

Ungraded eggs have a good track record in Oregon. There is no body of complaints or customer returns.

Farm direct eggs sell well, and in my experience eggs seldom come to more than one market week. Most market farmers show each individual dozen to their customers during the sale.

If ungraded egg producers were selling ancient eggs or eggs with critical defects, I would be aware of complaints and returns. I have personally bought them for about 25 years and have never received a spoiled egg.

Although there are culinary uses where precise size is critical, many customers are happy to buy eggs of varied size and some even prefer ungraded for cost reasons.

Oregon egg statutes apply not just to chicken eggs, but to duck, goose, turkey, quail and other fowl eggs. Unfortunately, the quality standards in administrative rules do not work properly for anything but chicken eggs.

Ungraded eggs serve a function for small farms – even those that produce enough eggs to grade most of their eggs. Farms may find it convenient to sell some remaining eggs as ungraded since they may not have enough of each size to sell in uniform dozens. A mixed dozen is marketable.