

## 940 CMR: OFFICE OF THE ATTORNEY GENERAL

### 940 CMR 36.00: REGULATIONS IMPLEMENTING THE ACT TO PREVENT CRUELTY TO FARM ANIMALS

#### Section

- 36.01: Purpose
- 36.02: Scope
- 36.03: Definitions
- 36.04: Prohibition on the Confinement of Covered Animals
- 36.05: Prohibition on the Sale of Products
- 36.06: Certifications
- 36.07: Violations and Applicability
- 36.08: Referrals by the Department
- 36.09: Referrals by Local Boards of Health
- 36.10: Severability

#### 36.01: Purpose

940 CMR 36.00 is intended to prevent animal cruelty by phasing out extreme methods of farm animal confinement, which also threaten the health and safety of Massachusetts consumers, increase the risk of food borne illness, and have negative fiscal impacts on the Commonwealth of Massachusetts. 940 CMR 36.00 is intended to facilitate the implementation of the law as set out in the Act.

#### 36.02: Scope

940 CMR 36.00 applies only to the production and sale of veal meat, pork meat, and shell eggs in Massachusetts defined in the Act.

#### 36.03: Definitions

Act means An Act to Prevent Cruelty to Farm Animals as enacted in Chapter 333 of the Acts of 2016.

Breeding pig means any female pig of the porcine species kept for the purpose of commercial breeding.

Business owner or operator means any person who owns or controls the operations of a business.

Calf raised for veal means any calf of the bovine species kept for the purpose of commercial production of veal meat.

Certify means to make the sworn representations specified in 940 CMR 36.06.

Confined in a cruel manner means confined so as to prevent a covered animal from lying down, standing up, fully extending the animal's limbs, or turning around freely.

Covered animal means any breeding pig, calf raised for veal, or egg-laying hen that is kept on a farm.

Department means the Massachusetts Department of Agricultural Resources.

Egg-laying hen means any female domesticated chicken, turkey, duck, goose, or guinea fowl kept for the purpose of commercial egg production.

Enclosure means any cage, crate, or other structure used to confine a covered animal or animals. Enclosure includes what is commonly described as a "gestation crate" or "stall" for pigs during pregnancy, a "veal crate" for calves raised for veal, and a "battery cage, enriched cage, or colony cage" for egg-laying hens.

Farm means the land, building, support facilities, and other equipment that are wholly or partially used for the commercial production of animals or animal products used for food; and does not include live animal markets or establishments at which inspection is provided under the Federal Meat Inspection Act.

Farm owner or operator means any person who owns or controls the operations of a farm.

Fully extending the animal's limbs means fully extending all limbs without touching the side of an enclosure. In the case of egg-laying hens, fully extending the animal's limbs means fully spreading both wings without touching the side of an enclosure or other egg-laying hens and having access to at least 1.5 square feet of usable floor space per hen.

Guarantee means a contractual promise, in writing, by a seller of shell egg, whole pork meat, or whole veal meat to indemnify the purchaser of such products for any fine or monetary penalties relating to the purchased products that is imposed on the purchaser as a result of any non-compliance with the Act or 940 CMR 36.00 by the seller.

Person means any individual, firm, partnership, joint venture, limited liability corporation, estate, trust, receiver, syndicate, association, or other legal entity.

Pork meat means meat, as defined in 105 CMR 500.003, of a pig of the porcine species, intended for use as human food.

Sale means a commercial sale by a business that sells any item covered by the Act, but does not include any sale undertaken at an establishment at which inspection is provided under the Federal Meat Inspection Act. A sale occurs at the location where the buyer takes physical possession of an item covered by the Act.

Shell egg means a whole egg of an egg-laying hen in its shell form, intended for use as human food.

Turning around freely means turning in a complete circle without any impediment, including a tether, and without touching the side of an enclosure or another animal.

Uncooked means requiring cooking prior to human consumption.

Usable floor space means the total square footage of floor space provided to each hen, as calculated by dividing the total square footage of floor space provided to hens in an enclosure (including both ground space and elevated flat platforms) by the number of hens in that enclosure.

Veal meat means meat, as defined in 105 CMR 500.003, of a calf raised for veal, intended for use as human food.

Whole pork meat means any uncooked cut of pork (including bacon, ham, chop, ribs, riblet, loin, shank, leg, roast, brisket, steak, sirloin or cutlet) that is comprised entirely of pork meat, except for seasoning, curing agents, coloring, flavoring, preservatives and similar meat additives. Whole pork meat does not include combination food products (including soups, sandwiches, pizzas, hot dogs, or similar processed or prepared food products) that are comprised of more than pork meat, seasoning, curing agents, coloring, flavoring, preservatives and similar meat additives.

Whole veal meat means any uncooked cut of veal (including chop, ribs, riblet, loin, shank, leg, roast, brisket, steak, sirloin or cutlet) that is comprised entirely of veal meat, except for seasoning, curing agents, coloring, flavoring, preservatives and similar meat additives. Whole veal meat does not include combination food products (including soups, sandwiches, pizzas, hot dogs, or similar processed or prepared food products) that are comprised of more than veal meat, seasoning, curing agents, coloring, flavoring, preservatives and similar meat additives.

#### 36.04: Prohibition on the Confinement of Covered Animals

- (1) It is a violation of the Act or this Subsection for a farm owner or operator within Massachusetts to knowingly cause any covered animal to be confined in a cruel manner.
- (2) The prohibition set forth in Subsection (1) does not apply to covered animals during the following six activities:
  - (a) Transportation;
  - (b) State or county fair exhibitions, 4-H programs, and similar exhibitions;
  - (c) Slaughter in accordance with any applicable laws, rules, and regulations;
  - (d) Medical research;

- (e) Examination, testing, individual treatment, or operation for veterinary purposes, but only if performed by or under the direct supervision of a licensed veterinarian; or
- (f) The five (5) day period prior to a breeding pig's expected date of giving birth, and any day that the breeding pig is nursing piglets.

#### 36.05: Prohibition on the Sale of Products

- (1) It is a violation of the Act or this Subsection for a business owner or operator to knowingly engage in the sale within Massachusetts of any:
  - (a) Shell egg that the business owner or operator knows or should know is the product of a covered animal that was confined in a cruel manner;
  - (b) Whole veal meat that the business owner or operator knows or should know is the meat of a covered animal that was confined in a cruel manner; or
  - (c) Whole pork meat that the business owner or operator knows or should know is the meat of a covered animal that was confined in a cruel manner, or is the meat of the immediate offspring of a covered animal that was confined in a cruel manner.
- (2) It is a defense to any action to enforce 940 CMR 36.00 or to any action to enforce the Act that a seller of shell eggs, whole pork meat, or whole veal meat in Massachusetts relied in good faith upon either:
  - (a) a Guarantee, or (b) a certification made pursuant to Subsection (1) of 940 CMR 36.06, or (c) a certification made pursuant to Subsection (2) of 940 CMR 36.06.

#### 36.06: Certifications

- (1) Any farm or farm owner or operator that raises a covered animal and engages in one or more commercial transactions within Massachusetts involving any shell egg, whole veal meat, or whole pork meat derived from a covered animal raised on said farm may certify in writing under pains and penalties of perjury that such farm does not knowingly cause any covered animal to be confined in a cruel manner.
- (2) Any person who engages in any commercial transaction within Massachusetts involving any shell egg, whole veal meat, or whole pork meat, including, but not limited to, a farm, farm owner or operator, business owner or operator, or supplier, residing or operating within or outside of the Commonwealth, may certify in writing that shell eggs, whole pork meat, or whole veal meat sold within a year of the execution of a certification will not be derived from a covered animal that was confined in a cruel manner, or from the immediate offspring of a female pig that was confined in a cruel manner.
- (3) A certification made pursuant to Subsection (1) will be effective for one (1) calendar year from the date it is executed and shall be renewed annually.

- (4) Any certification made pursuant to Subsection (1) or Subsection (2) shall be produced upon demand to (a) the Office of the Attorney General; (b) the Department; and (c) any person who will rely on or has relied on such certification.
- (5) Any person, farm, farm owner or operator, business owner or operator, or supplier who includes all of the following information in a certification is in compliance with the requirements of 940 CMR 36.06 (1) or (2), whichever is applicable: (a) the name and address of the entity or operation; (b) the type of covered animal raised, covered animal product produced, or covered animal product sold or supplied by the entity or operation; (c) the date; (d) a written statement, that is signed under pains and penalties of perjury, that the entity or operation does not knowingly cause any covered animal to be confined in a cruel manner or that the covered animal product(s) sold or supplied by the entity or operation were not derived from a covered animal that was confined in a cruel manner as prohibited by the Act; and (e) if applicable, the name of the entity or operation to which the covered animal product(s) were sold or supplied and the date of such sale or transaction.

A sample form which contains all of the necessary information and can be filled out and downloaded at <https://www.mass.gov/info-details/regulations-implementing-the-act-to-prevent-cruelty-to-farm-animals-940-cmr-3600>.

- (6) Certifications containing the required information contained in 940 CMR 36.06 (5) can be made by accredited, third party certifiers.
- (7) It is an unfair and deceptive act or practice in violation of M.G.L. c. 93A, § 2(a), for a person, farm, farm owner or operator, business owner or operator, or supplier to make or produce a false certification or Guarantee.
- (8) A person, farm, farm owner or operator, business owner or operator, or supplier shall retain certification records for a period of two years from their execution.

#### 36.07: Violations and Applicability

- (1) The confinement of any covered animal in violation of the Act or 940 CMR 36.04 will be subject to a civil fine of up to \$1,000 per violation.
- (2) The sale of any shell egg, whole veal meat, or whole pork meat in violation of the Act or 940 CMR 36.05 will be subject to a civil fine of up to \$1,000 per transaction.

The requirements of 940 CMR36.00 do not apply to shell eggs, whole veal meat, or whole pork meat already in the supply chain before January 1, 2022. It is not a violation of 940 CMR 36.00 to sell any shell eggs, whole veal meat, or whole pork meat derived

from a covered animal that was confined in a manner that does not comply with the requirements of 940 CMR 36.00 before January 1, 2022, provided that confinement of the covered animal complies with the requirements of 940 CMR 36.00 on and after January 1, 2022.

#### 36.08: Referrals by the Department

Whenever the Department inspects a farm pursuant to any applicable authority, the Department may inspect farms for compliance with the enclosure and useable floor space for covered animals under the Act and 940 CMR 36.00 to ensure that these animals are not being confined in a cruel manner.

If the Department observes violations of the Act or 940 CMR 36.00 during its inspections of farms within Massachusetts, the Department may refer those violations to the Attorney General's Office.

#### 36.09 Referrals by Local Boards of Health

A farm owner or operator located in Massachusetts, who is making a new certification or Guarantee or renewing a certification or Guarantee, shall annually submit to the local Board of Health a copy of any certification or Guarantee currently in effect at the farm owner or operator's farm.

If a local Board of Health observes violations of the Act or 940 CMR 36.00, the local Board of Health may refer those violations to the Attorney General's Office.

#### 36.10 Severability

If any provision of 940 CMR 36.00 or the application of any provision of a regulation to any person or circumstance is held to be invalid, the validity of the remainder of 940 CMR 36.00 and the applicability of such provision to other persons or circumstances will not be affected.

#### REGULATORY AUTHORITY

940 CMR 36.00: Chapter 333 of the Acts 2016.