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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY-97-003]

Voluntary Shell Egg Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the regulations governing the voluntary shell egg grading program. The revisions require that scales of stated precision be provided to the grader; provide an alternative grademark for shell eggs; provide for the use of a "Produced From" grademark to officially identify products that originate from officially graded shell eggs; and remove the requirement for continuous overflow of water during the egg washing process. From time to time, sections in the regulations are affected by changes in egg processing technology and egg marketing. This rule updates the regulations to reflect these changes.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Douglas C. Bailey, Chief, Standardization Branch, (202) 720-3506.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted

prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities as defined in the RFA (5 U.S.C. 601). There are almost 200 plants using the Agency's shell egg grading services and many of them are small entities.

Requiring electronic digital-display scales will affect some processors by requiring the purchase of one or more scales that cost from \$150 to \$1,000 each. This equipment will improve the accuracy of egg weight determinations, allowing processors to avoid the expense incurred when product is unnecessarily retained and re-processed.

Shell egg processors will be allowed to use a shield displayed in three colors on packaging materials to officially identify USDA graded eggs. Similarly, producers of products originating from officially graded shell eggs will be allowed to use a "Produced From" grademark on packaging materials. The use of these alternative forms of the USDA grademark gives processors greater flexibility in packaging and marketing their products. Since these alternative grademarks are used at the processors' discretion, any economic impact caused by their use is by the choice of the processors.

Removing the requirement for the continuous overflow of water during egg washing will conserve water and energy resources, decrease operating expenses of processors, and lessen the environmental impact of shell egg processing. This is expected to have a positive economic impact on processors.

Other editorial-type changes will clarify or update the existing regulations and will have no additional economic impact on entities using voluntary shell egg grading services.

For the above reasons, the Agency has certified that this action will not have a significant impact on a substantial number of small entities.

The information collection requirement in § 56.37 to be amended by this rule has been previously approved by OMB and assigned OMB Control Number 0581-0127 under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Background and Comments

Shell egg grading is a voluntary program provided under the Agricultural Marketing Act of 1946, as amended, and is offered on a fee-for-service basis. It is designed to assist the orderly marketing of shell eggs by providing for the official certification of egg quality, quantity, size, temperature, packaging, and other factors. Changes in egg processing technology and egg marketing require that the regulations governing shell egg grading be updated from time to time.

A proposed rule to amend the voluntary shell egg grading regulations was published in the **Federal Register** (62 FR 42944) on August 11, 1997. Comments on the proposed rule were solicited from interested parties until October 10, 1997.

During the 60-day comment period, the Agency received eight comments regarding the proposal. Comments from two State government agencies and one egg producer association expressed overall support for the proposal. The one egg producer who commented objected to the proposed requirement for precision scales. Comments from two State cooperative extension service specialists and two equipment manufacturers dealt with egg wash water overflow. The proposals and the comments are discussed below.

Scales

Grading personnel certify egg weights according to the official U.S. weight classes. Today, the highly mechanized, state-of-the-art equipment used to package shell eggs weighs individual eggs with high precision to satisfy container weight requirements. For processors to receive fair, uniform, accurate weight certification, graders need to have similarly precise scales to certify egg weights. Therefore, the Agency proposed to amend § 56.17(a). The proposal requires plants to replace balance or spring-type scales with electronic digital-display scales graduated in increments of 1/10-ounce or less and 1/4-ounce or less for weighing individual eggs and consumer packages, respectively. It also requires that scales used for weighing shipping containers be graduated in increments of 1/4-pound or less. The proposal continues to require test weights for calibrating all scales.

The one egg producer who commented felt that existing scales should only be replaced when they are clearly unreliable. One of the State government agencies commented that all plants receiving resident grading service in their State had already replaced their balance and spring-type scales with digital scales that comply with the proposed rule.

The Agency still finds the proposal to establish a minimum level of scale precision beneficial and appropriate for the conduct of a nationwide grading program and will issue it as a final rule. We continue to be of the view that for processors to receive fair, uniform, accurate weight certification, graders need to have similarly precise scales to certify egg weights and the change to the regulation made by this action will accomplish this.

Grademarks

Many processors want to identify their consumer-pack USDA graded shell eggs, or products prepared from those eggs, with a USDA grademark. The Agency proposed amending § 56.36 to allow processors additional flexibility in packaging and marketing their products. The proposal permits the use of a new grademark that contains horizontal bands of three colors. It also provides for the use of a new "Produced From" grademark to officially identify products produced from U.S. Grade AA or Grade A shell eggs for which there are no U.S. grade standards (e.g., pasteurized shell eggs). It also removes the option of using terms such as "Federal-State Graded" within the grademark because this option is no longer used. Finally, the proposal clarifies the organization and wording of § 56.36 and corrects references to § 56.36 that are in § 56.37 and § 56.40.

There were no comments about this proposal and the Agency will issue the final rule as it was proposed.

Overflow of Wash Water

Basically, the egg washing process involves moving eggs through brushes under a spray of wash water delivered through a system of pipes. The wash water, a mixture of water and an approved cleaning compound, is filtered and recirculated through the system of pipes from a holding tank. The tank is designed to permit both the inflow and overflow of wash water. Overflow occurs when the volume of wash water exceeds the holding capacity of the tank. When the tank is filled with water and the washer is turned on, the water is pumped from the tank into the system of pipes and the water level in the tank lowers. Also, some water is lost due to

evaporation and other causes. Replacement water is added continuously and cleaning compound is added as necessary to maintain the cleaning efficacy of the wash water. Approximately every 4 hours and between shifts, wash water tanks are emptied and refilled with clean, potable water.

The Agency currently requires that replacement water be added continuously to the wash water in order to maintain a continuous overflow of water. However, the rate at which replacement water is added to today's egg washing equipment is not always of sufficient volume to provide for continuous overflow, particularly at the beginning of shifts or when the washing equipment is stopped and restarted during the day. Accordingly, the Agency proposed to amend § 56.76(e)(5) by omitting the requirement for maintaining a continuous overflow of water in shell egg washers.

One equipment manufacturer expressed support for the proposal as written. Another equipment manufacturer recommended that the regulation be reworded to suggest that the overflow of water be expected 10 to 15 minutes after start-up, and recommended that egg washers be equipped with a double rinse and traveling filter system. The two State cooperative extension specialists raised the concern that by not requiring continuous overflow of water, waste could build up in the wash water and overwhelm the detergents and sanitizers.

The Agency recognizes that rate of replacement water inflow, concentration of cleaning compound in the wash water, and rate of overflow all affect wash water quality. The proposal was published in recognition that the continuous overflow of wash water is not necessary to maintain the cleaning efficacy of the wash water. The Agency's existing requirement that replacement water be continuously added to the washing system will likely result in a periodic overflow of wash water during the washing process, with the frequency and rate of overflow dependent on factors such as the rate of replacement water inflow, tank size, rate of evaporation, and the number of eggs cleaned. While the proposal would eliminate the requirement for continuous overflow of wash water, it would not eliminate the periodic overflow of wash water.

The Agency continues to find no evidence that continuous wash water overflow is necessary to maintain the cleaning efficacy of wash water, and no comments provided evidence to the

contrary. Moreover, the Agency believes the proposal to eliminate continuous overflow of wash water provides egg packers the flexibility they need to responsibly use today's egg cleaning equipment and technologies and to provide their customers with the cleanest eggs possible. Therefore, it will issue the final rule as proposed.

List of Subjects in 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and record keeping requirements.

For reasons set forth in the preamble, Title 7, Code of Federal Regulations Part 56 is amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

1. The heading for part 56 is revised to read as set forth above.

1a. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In § 56.17, paragraphs (a)(2) and (a)(3) are removed and new paragraphs (a)(2) through (5) are added to read as follows:

§ 56.17 Facilities and equipment for graders.

* * * * *

(a) * * *

(2) Electronic digital-display scales graduated in increments of 1/10-ounce or less for weighing individual eggs and test weights for calibrating such scales. Plants packing product based on metric weight must provide scales graduated in increments of 1-gram or less;

(3) Electronic digital-display scales graduated in increments of 1/4-ounce or less for weighing the lightest and heaviest consumer packages packed in the plant and test weights for calibrating such scales;

(4) Scales graduated in increments of 1/4-pound or less for weighing shipping containers and test weights for calibrating such scales;

(5) An acceptable candling light.

* * * * *

3. Section 56.36 is revised to read as follows:

§ 56.36 Form of grademark and information required.

(a) *Form of official identification symbol and grademark.* (1) The shield set forth in Figure 1 of this section shall be the official identification symbol for purposes of this part and when used, imitated, or simulated in any manner in connection with shell eggs, shall be deemed prima facie to constitute a representation that the product has been

officially graded for the purposes of § 56.2.

(2) Except as otherwise authorized, the grademark permitted to be used to officially identify USDA consumer-graded shell eggs shall be of the form and design indicated in Figures 2 through 4 of this section. The shield shall be of sufficient size so that the printing and other information contained therein is legible and in approximately the same proportion as shown in these figures.

(3) The "Produced From" grademark in Figure 5 of this section may be used to identify products for which there are no official U.S. grade standards (e.g., pasteurized shell eggs), provided that these products are approved by the Agency and are prepared from U.S. Consumer Grade AA or A shell eggs under the continuous supervision of a grader.

(b) *Information required on grademark.* (1) Except as otherwise authorized by the Administrator, each grademark used shall include the letters "USDA" and the U.S. grade of the product it identifies, such as "A Grade," as shown in Figure 2 of this section. Such information shall be printed with the shield and the wording within the shield in contrasting colors in a manner such that the design is legible and conspicuous on the material upon which it is printed.

(2) The size or weight class of the product, such as "Large," may appear within the grademark as shown in Figure 3 of this section. If the size or weight class is omitted from the grademark, it must appear prominently on the main panel of the carton.

(3) Except as otherwise authorized, the bands of the shield in Figure 4 of this section shall be displayed in three colors, with the color of the top, middle, and bottom bands being blue, white, and red, respectively.

(4) The "Produced From" grademark in Figure 5 of this section may be any one of the designs shown in Figures 2 through 4 of this section. The text outside the shield shall be conspicuous, legible, and in approximately the same proportion and close proximity to the shield as shown in Figure 5 of this section.

(5) The plant number of the official plant preceded by the letter "P" must be

shown on each carton or packaging material.

BILLING CODE 3410-02-P



Figure 1



Figure 2

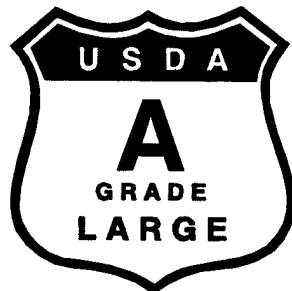


Figure 3



Figure 4

Produced From



Shell Eggs

Figure 5

BILLING CODE 3410-02-C

4. In § 56.37, the first sentence is revised to read as follows:

§ 56.37 Lot marking of officially identified product.

Each carton identified with the grademarks shown in § 56.36 shall be legibly lot numbered on either the carton or the consumer package. * * *

5. In § 56.40, paragraph (a) is revised to read as follows:

§ 56.40 Grading requirements of shell eggs identified with consumer grademarks.

(a) Shell eggs to be identified with the grademarks illustrated in § 56.36 must be individually graded by a grader or by authorized personnel pursuant to § 56.11 and thereafter check graded by a grader.

* * * * *

6. In § 56.76, the first sentence in paragraph (e)(5) is revised to read as follows:

§ 56.76 Minimum facility and operating requirements for shell egg grading and packing plants.

* * * * *

(e) * * *

(5) Replacement water shall be added continuously to the wash water of washers. * * *

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Dated: March 13, 1998.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 98-7156 Filed 3-18-98; 8:45 am]

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