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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY-99-002]

Refrigeration Requirements for Shell Eggs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) is revising its regulations governing the voluntary shell egg grading program by adding a definition of the term "ambient temperature," by amending the refrigeration requirements, and by adding a labeling requirement. Amendments to the Egg Products Inspection Act (EPIA) in 1991 involved refrigeration and labeling requirements to enhance the safety of table eggs nationwide and to protect the health and welfare of the consuming public. AMS is amending 7 CFR part 56 to conform to the FSIS temperature and labeling requirements.

DATES: *Effective Date:* October 25, 1999.

Comment Date: Comments are due on or before December 21, 1999.

ADDRESSES: Send written comments to Douglas C. Bailey, Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0259, 1400 Independence Avenue, SW, Washington, DC 20250-0259. Comments may be faxed to 202/690-0941.

State that your comments refer to Docket No. PY-99-002 and note the date and page number of this issue of the **Federal Register**.

Comments may be inspected at the above location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, 202/720-3271.

SUPPLEMENTARY INFORMATION:

Background

AMS administers a voluntary grading program for shell eggs under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), with implementing regulations in 7 CFR part 56. Any interested person, commercial firm, or government agency that applies for service must comply with the terms and conditions of the regulations and must pay for the services rendered. AMS graders monitor processing operations and verify the quality, quantity, and condition of eggs packed into packages bearing official USDA identification. AMS also has facility and operating requirements for the official plants in which these services are performed. Currently, about one-third of the nation's table eggs are marketed under the voluntary grading program.

The EPIA (21 U.S.C. 1031 *et seq.*) provides for the mandatory inspection of egg products operations and the mandatory surveillance of the disposition of shell eggs that are undesirable for human consumption. From its enactment in 1970, AMS administered the EPIA and the regulations implementing it in 7 CFR part 59.

Congress amended the EPIA as part of the Food, Agriculture, Conservation and Trade Act Amendments of 1991 (Pub.L. 102-237) (hereafter referred to as "the 1991 EPIA amendments"). The 1991 EPIA amendments require that egg handlers store and transport shell eggs destined for the ultimate consumer under refrigeration at an ambient temperature of no greater than 45 °F (7.2 °C) (21 U.S.C. 1034(e)(1)(A)), see also 21 U.S.C. 1037(c)). These refrigeration requirements apply to shell eggs after they have been packed into a container destined for the ultimate consumer. Egg handlers are also required to label shell egg containers to indicate that refrigeration is required (21 U.S.C. 1034(e)(1)(B)).

The AMS proposed changes to 7 CFR parts 56 and 59 (57 FR 48569, October 27, 1992). Changes to part 59 would implement the mandatory 1991 EPIA amendments. Changes to part 56 would make conforming changes to the voluntary shell egg grading regulations.

Before AMS published the final rule, however, the Department consolidated food safety responsibilities under FSIS following enactment of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub.L. 103-354; 7 U.S.C. 2204e). Responsibility for egg products inspection functions under the EPIA was delegated to FSIS, while shell egg surveillance and grading functions continued to be administered by AMS.

FSIS promulgated a final rule with request for comments to implement the 1991 EPIA amendments in 7 CFR part 59 (63 FR 45663, August 27, 1998; effective August 27, 1999). AMS duplicated those portions of 7 CFR part 59 pertinent to shell egg surveillance and redesignated them as a new 7 CFR part 57 (63 FR 69968, December 17, 1998; effective December 18, 1998). FSIS redesignated and transferred the remaining portions of 7 CFR part 59 to 9 CFR part 590 (63 FR 72351, December 31, 1998; effective December 31, 1998).

The new FSIS temperature and labeling requirements in 9 CFR part 590 became effective August 27, 1999. The proposed changes to 7 CFR part 56 (shell egg grading) were not finalized when FSIS published its final rule amending 7 CFR part 59. Therefore, since the proposed rule was published some years ago, AMS is publishing this rule as an interim final rule with request for comment, and is only making changes deemed necessary to avoid a conflict between the requirements of the final rule published by FSIS and the AMS shell egg grading program.

Comments

One hundred and fifty-nine comments were submitted in response to the proposed rule amending 7 CFR parts 56 and 59 (57 FR 48569, October 27, 1992). Thirty-one commenters, including private citizens, State departments of agriculture, several trade associations, and several members of the egg industry, supported the proposal. The remaining commenters opposed the proposed rule or suggested alternatives to it.

There were no comments related to the grading of eggs or the official identification of graded eggs. Rather, most of the opposing comments covered three primary issues: Labeling, exemption of small producers, and cost to comply with the regulations. A full discussion and analysis of these

comments is found in FSIS' final rule (63 FR 45663, August 27, 1998) amending 7 CFR part 59 (now 9 CFR part 590).

Summary of Revisions

AMS is revising the regulations in 7 CFR part 56 to conform to the FSIS temperature and labeling requirements, and is making several minor technical and editorial changes.

A new term is added to § 56.1 to define "ambient temperature." This term means the air temperature maintained in an egg storage facility or transport vehicle. This term is revised from that proposed to conform to regulations promulgated by FSIS to implement the EPIA amendments.

A new labeling requirement is added to the authority to use official identification in § 56.35. It requires that consumer packages bearing official U.S. Grade AA, A, or B identification be labeled with the words "Keep Refrigerated" or words of similar meaning. This requirement is added to provide graders the authority to ensure that officially graded eggs are packed into containers that are properly labeled. AMS' description of containers holding shell eggs that must bear the refrigeration label (those bearing official grade marks) is consistent with the type of containers covered by FSIS regulation. The FSIS regulation pertains to containers destined for the ultimate consumer.

The temperature requirements specified in § 56.76 (c)(1) and (f)(1) are changed to conform to the FSIS requirements.

The revision to § 56.76 (c)(1) specifically requires cooler rooms to be refrigerated and capable of maintaining an ambient temperature no greater than 45 °F (7.2 °C). Currently, this section requires cooler rooms to be capable of reducing within 24 hours and holding the maximum volume of eggs handled to 60 °F (15.6 °C) or lower. Text regarding the provision of thermometers is also revised to clarify that the thermometers would be used to monitor cooler room temperatures.

The revision to § 56.76 (f)(1) specifically requires that shell eggs to be officially identified as U.S. Grade AA, A, or B shall be refrigerated at an ambient temperature no greater than 45 °F (7.2 °C) promptly after packaging. These eggs, when shipped between official plants, are also to be transported at an ambient temperature no greater than 45 °F (7.2 °C). This, again, is to be consistent with the FSIS regulation in that shell eggs subject to the new FSIS temperature requirement are also subject to the revised temperature

requirement under the grading program. Currently, this section requires that eggs held in the official plant be placed under refrigeration of 60 °F (15.6 °C) or lower promptly after packaging. It also requires officially identified eggs with an internal temperature of 70 °F (21.1 °C) or higher to be transported at a temperature of 60 °F (15.6 °C) or less when shipped from an official plant.

AMS is responsible for the voluntary grading of shell eggs for quality and the official identification of eggs as U.S. Consumer Grades AA, A, or B. The grades are defined in the official U.S. Standards, Grades, and Weight Classes for Shell Eggs (AMS-56) that are maintained by AMS. Once eggs have been officially graded, and are packed into containers that are officially identified and destined for the ultimate consumer, they are subject to FSIS' refrigeration requirements. Occasions can arise, however, where eggs have been officially graded, but are not yet packed into containers for the ultimate consumer. For example, during wholesale trading one official plant could grade eggs and pack them into cases using open trays called flats for shipping to a second official plant. In AMS' view, these eggs should also be subject to refrigeration. Therefore, all eggs that are officially identified as U.S. Consumer Grade AA, A, or B, regardless of the container type in which they are placed, are covered by this rule.

Finally, the heading for § 56.76 (f) and the text of paragraph (f)(1) are revised for clarity.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration defines small entities that produce and process chicken eggs as those whose annual receipts are less than \$9,000,000 (13 CFR 121.201). Approximately 550,000 egg laying hens are needed to produce enough eggs to gross \$9,000,000. Thus, entities with less than 550,000 laying hens would meet the small business definition.

The Agricultural Marketing Act of 1946, as amended, authorizes a voluntary grading program for shell eggs, with implementing regulations in 7 CFR part 56. Shell egg processors that apply for service must pay for the services rendered. These user fees are proportional to the volume of shell eggs

graded, so that costs are shared by all users. Shell egg processors who meet the facility and operating requirements are entitled to pack their eggs in packages bearing official USDA grade identification when AMS graders are present to certify that the eggs meet the requirements as labeled. Plants in which these grading services are performed are called official plants. There are about 700 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these, 159 are official plants that use USDA's grading service and would be subject to this rule. Of these 159 official plants, the AMS believes approximately 25 would meet the small business definition.

The EPIA, enacted in 1970, authorizes the mandatory inspection of egg products operations and the mandatory surveillance of the disposition of shell eggs that are undesirable for human consumption, with implementing regulations in 7 CFR part 59. Congress amended the refrigeration and labeling requirements of the EPIA as part of the Food, Agriculture, Conservation and Trade Act Amendments of 1991.

The AMS proposed changes to 7 CFR part 59 to implement the 1991 EPIA amendments and to 7 CFR part 56 to make its temperature and labeling requirements consistent with part 59. Before AMS published the final rule, however, the Department consolidated food safety responsibilities under FSIS. Egg products inspection functions under the EPIA were delegated to FSIS, while shell egg surveillance and grading functions continued to be administered by AMS. FSIS promulgated a final rule with request for comments to implement the 1991 EPIA amendments in 7 CFR part 59, later redesignated as 9 CFR part 590, which became effective August 27, 1999. Among other changes, the amendments require a storage temperature at no greater than 45 °F (7.2 °C) for eggs after they have been packed into containers destined for the ultimate consumer.

Since the proposed changes to the shell egg grading regulations were not finalized, AMS is revising 7 CFR part 56 to conform to the FSIS temperature and labeling requirements mandated by the 1991 EPIA amendments. Because the proposed rule was published some years ago, AMS is publishing this rule as an interim final rule with request for comments. We are only making changes deemed necessary to avoid conflict between the requirements of the final rule published by FSIS and the AMS shell egg grading program.

All shell egg processors that currently use or are likely to use USDA grading service typically have over 3,000 layers

and are therefore required to comply with the provisions of the EPIA. Accordingly, all eggs these processors pack into consumer containers for the ultimate consumer must comply with EPIA refrigeration and labeling requirements. Additionally, industry practice is to refrigerate all processed and graded eggs the same way, whether packed into containers destined for the ultimate consumer, or only officially identified as U.S. Grade AA, A, or B.

Therefore, AMS has determined that the provisions of this rule will not impose any additional requirements on small or large egg handlers. Accordingly, it will not have a significant economic impact on a substantial number of small entities that use USDA's voluntary shell egg grading service. In addition, FSIS discussed its RFA analysis when it published its final rule for 7 CFR part 59, and determined that it would not have a significant economic impact on a substantial number of all small entities that produce and process chicken eggs.

Alternatives to the Rule

AMS considered leaving the current temperature requirements in 7 CFR part 56 unchanged. However, those requirements would then be different from the FSIS requirements in 9 CFR part 590 mandated by the 1991 EPIA amendments. Because this would create confusion among users of the regulations by suggesting that storage and transport temperatures above 45 °F (7.2 °C) would be permissible, AMS determined this alternative to be unacceptable. Moreover, by revising grading program storage and transport temperature requirements to be consistent with FSIS, AMS can better preserve the quality of officially identified eggs and better accomplish the program's objective of providing consumers with high quality shell eggs.

AMS also considered leaving unchanged the proposed phrase "containers destined for the ultimate consumer" in §§ 56.76 (c)(1) and (f)(1). This phrase does conform to FSIS requirements in 9 CFR part 590. However, occasions can arise where eggs have been officially graded, but are not yet packed into containers for the ultimate consumer. AMS therefore chose to make all shell eggs that are to be officially identified as U.S. Grade AA, A, or B subject to these regulations.

Executive Order 12866

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It 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 that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements that appear in part 56 have been previously approved by the Office of Management and Budget (OMB) under OMB control number 0581-0128. There are no new requirements provided for in this rulemaking action.

Pursuant to 5 U.S.C. 535, it is also found and determined upon good cause that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This action is necessary to conform AMS temperature and labeling requirements in 7 CFR part 56 with recent changes to FSIS requirements in 90 CFR part 590. The FSIS changes became effective on August 27, 1999. Accordingly, the changes made in this action should be implemented as soon as possible to eliminate any confusion in the industry. Furthermore, industry use of this program is voluntary.

List of Subjects in 7 CFR Part 56

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

For reasons set forth in the preamble, 7 CFR part 56 is amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

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

Authority: 7 U.S.C. 1621-1627.

2. Section 56.1 is amended by adding alphabetically a new term *ambient temperature* to read as follows:

§ 56.1 Meaning of words and terms defined.

Ambient temperature means the air temperature maintained in an egg storage facility or transport vehicle.

3. In § 56.35, paragraph (d) is added to read as follows:

§ 56.35 Authority to use, and approval of official identification.

* * * * *

(d) *Refrigeration labeling.* All containers bearing official U.S. Grade AA, A, or B identification shall be labeled to indicate that refrigeration is required, e.g., "Keep Refrigerated," or words of similar meaning.

4. Section 56.76 is amended by revising paragraphs (c)(1), (f)(1), (f)(3) and the heading of paragraph (f), to read as follows:

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

* * * * *

(c) *Cooler room requirements.* (1) Cooler rooms shall be refrigerated and capable of maintaining an ambient temperature no greater than 45 °F (7.2 °C). Accurate thermometers shall be provided for monitoring cooler room temperatures.

* * * * *

(f) *Requirements for eggs that are to be officially identified.* (1) Shell eggs that are to be officially identified as U.S. Grade AA, A, or B shall be placed under refrigeration at an ambient temperature no greater than 45 °F (7.2 °C) promptly after packaging. Shell eggs officially identified as U.S. Grade AA, A, or B, when shipped between official plants, shall be transported at an ambient temperature no greater than 45 °F (7.2 °C).

(2) * * *

(3) Eggs that are to be officially identified as U.S. Grade AA, A, or B shall be packaged only in new or good used cases and packing materials. Cases and packing materials must be reasonably clean, free of mold, mustiness, and off odors, and must be of sufficient strength and durability to adequately protect the eggs during normal distribution.

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Dated: October 15, 1999.

Kathleen A. Merrigan,
Administrator,

Agricultural Marketing Service.

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