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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 70

[Docket No. PY-97-004]

Voluntary Poultry and Rabbit Grading Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the regulations governing the voluntary poultry and rabbit grading programs. The revisions simplify the definition about feathers on poultry, provide an alternative grademark for poultry and rabbit products, provide for the use of a "Prepared From" grademark to officially identify specialized products that originate from officially graded poultry, change the sample plan used by graders, and increase the lighting intensity required at grading stations. From time to time, sections in the regulations are affected by changes in processing technology and marketing. This rule updates the regulations to reflect these changes.

DATES: This rule is effective August 31, 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 some 200 plants using the Agency's voluntary poultry grading services and many of them are small entities.

The definition *Free from protruding pinfeathers, diminutive feathers, or hairs* is simplified by removing the words "pinfeathers" and "diminutive," words no longer commonly used when discussing feathers and poultry quality. Additionally, in the definition for *Ready-to-cook poultry*, the word "pinfeathers" is changed to "feathers." These changes merely reflect current practices and should not have any additional economic impact on entities using voluntary poultry grading services.

Poultry and rabbit processors will be allowed to use a shield displayed in three colors on packaging materials to officially identify USDA graded poultry and rabbits. Similarly, producers of products originating from A quality poultry, for which there are no U.S. grade standards, will be allowed to use a "Prepared 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.

Changing the sampling plan will enable graders to select a more representative sample upon which to base grading decisions. The economic impact should be no greater than under the current sampling plan. Increasing the lighting intensity required at grading stations will enhance the grader's ability to visually evaluate products. Both changes will provide processors with fairer, more accurate evaluations. Better lighting could also help avoid the economic burden of reprocessing product or diverting product unnecessarily downgraded because of inadequate lighting. The costs, if any,

for increasing the lighting intensity should be minor.

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

Background and Comments

Poultry and rabbit grading are voluntary programs provided under the Agricultural Marketing Act of 1946, as amended, and are offered on a fee-for-service basis. They are designed to assist the orderly marketing of poultry and rabbits by providing for the official certification of quality, quantity, class, temperature, packaging, and other factors. Changes in processing technology and marketing require that the regulations governing poultry and rabbit grading be updated from time to time.

A proposed rule to amend the voluntary poultry and rabbit grading regulations was published in the **Federal Register** (62 FR 63471) on December 1, 1997. Comments on the proposed rule were solicited from interested parties until January 30, 1998. During the 60-day comment period, the Agency received one comment. It was from a State department of agriculture in support of the proposed changes.

Freedom from feathers is one of the factors considered in poultry grading. In the definition *Free from protruding pinfeathers, diminutive feathers, or hairs* (§ 70.1), the words "pinfeathers" and "diminutive" are removed. These words are no longer commonly used when discussing feathers and poultry quality. Nor are they needed to achieve the quality standards set by the regulations. To be consistent, in the definition *Ready-to-cook poultry*, the word "*pinfeathers*" is changed to "*feathers*."

The Agency will permit the use of alternative grademarks (§ 70.51) so that processors wanting to use them can have additional flexibility in packaging and marketing their products. Processors wanting to use a USDA grademark to identify their consumer-pack USDA graded poultry and rabbit products could use a new grademark that contains horizontal bands of three colors. Processors who use USDA Grade A poultry to produce specialized poultry products, for which there are no U.S. grade standards, could use a "Prepared From" grademark on the

specialized poultry products. The section is also reorganized for clarity.

The regulations contain a sampling plan to guide graders when they select samples upon which to base grading decisions (§ 70.80(b)). The sampling plan is changed so that the sample size more closely reflects the size of the lot being sampled, thereby fostering a more representative sample of each lot.

The regulations also specify the lighting intensity required at grading stations in the processing plants (§ 70.110). The lighting intensity is increased from 50-foot candles to 100-foot candles to improve the graders ability to visually evaluate the products being graded. This is the same intensity as that required by USDA's Food Safety and Inspection Service at all of their inspection stations.

List of Subjects in 7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, Title 7, Code of Federal Regulations part 70 is amended as follows:

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

1. The heading for part 70 is revised to read as set forth above:

2. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

3. In § 70.1, the definition for *Ready-to-cook poultry* is amended by removing the word “pinfeathers” and adding in its place the word “feathers” and the definition for *Free from protruding pinfeathers, diminutive feathers, or hairs* is revised to read as follows:

§ 70.1 Definitions.

* * * * *

Free from protruding feathers or hairs means that a poultry carcass, part, or poultry product with the skin on is free from protruding feathers or hairs which are visible to a grader during an examination at normal operating speeds. However, a poultry carcass, part, or poultry product may be considered as being free from protruding feathers or hairs if it has a generally clean appearance and if not more than an occasional protruding feather or hair is evidenced during a more careful examination.

* * * * *

4. Section 70.51 is revised to read as follows:

§ 70.51 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 poultry or rabbits, shall be deemed prima facie to constitute a representation that the product has been officially graded for the purposes of § 70.2.

(2) Except as otherwise authorized, the grademark permitted to be used to officially identify USDA consumer-graded poultry and rabbit products 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 “Prepared From” grademark in Figure 5 of this section may be used to identify specialized poultry products for which there are no official U.S. grade standards, provided that these products are approved by the Agency and are prepared from U.S. Consumer Grade A poultry carcasses, parts, or other products that comply with the

requirements of AMS § 70.220. All poultry products shall be processed and labeled in accordance with 9 CFR part 381.

(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) 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.

(3) The “Prepared 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.

(c) *Products that may be individually grademarked.* The grademarks set forth in Figures 2 through 4 of this section may be applied individually to ready-to-cook poultry, rabbits, and specified poultry food products for which consumer grades are provided in the U.S. Classes, Standards, and Grades for Poultry and Rabbits, AMS 70.200 and 70.300 *et seq.*, respectively, or to the containers in which such products are enclosed for the purpose of display and sale to household consumers, only when such products qualify for the particular grade indicated in accordance with the consumer grades.



Figure 1



Figure 4



Figure 2

Prepared From



Poultry

Figure 5



Figure 3

5. In § 70.80, the chart is revised to read as follows:

§ 70.80 General.

* * * * *

Containers in lot	Containers in sample
1-4	All.
5-50	4.
51-100	5.
101-200	6.
201-400	7.
401-600	8.
For each additional 100 containers, or fraction thereof, in excess of 600 containers.	Include one additional container.

6. In § 70.110, paragraph (b) is revised to read as follows:

§ 70.110 Requirements for sanitation, facilities, and operating procedures in official plants.

* * * * *

(b) With respect to grading services, there shall be a minimum of 100-foot candles of light intensity at grading stations; and acceptable means, when necessary, of maintaining control and identity of products segregated for quality, class, condition, weight, lot, or any other factor which may be used to distinguish one type of product from another.

Dated: July 23, 1998.

Enrique E. Figueroa,
Administrator, Agricultural Marketing Service.

[FR Doc. 98-20321 Filed 7-29-98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400 and 402

RIN 0563-AB68

General Administrative Regulations, Subpart U; and Catastrophic Risk Protection Endorsement; Regulations for the 1999 and Subsequent Reinsurance Years

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Administrative Regulations, Subpart U—Ineligibility for Programs Under the Federal Crop Insurance Act and the Catastrophic Risk Protection Endorsement to conform with the statutory mandates of the Agricultural

Research, Extension, and Education Reform Act of 1998 (1998 Research Act).

EFFECTIVE DATE: This rule is effective July 1, 1998. Written comments and opinions on this rule will be accepted until the close of business September 28, 1998, and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m., CDT, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

This action amends FCIC's regulations in accordance with the 1998 Research Act. This rule is being published on an emergency basis so that affected producers have the opportunity to make timely decisions regarding their insurance plans for the 1999 crop year for crops with sales closing dates subsequent to the enactment of the 1998 Research Act. The 1998 Research Act was signed by the President on June 23, 1998. The first sales closing date subsequent to the date of signing is July 31, 1998, for raisins in California. This emergency situation makes timely compliance with sections 6 (3)(B)(ii) and (3)(C) of Executive Order 12866 impractical due to the short time to make this rule effective prior to that sales closing date. FCIC will complete the required cost-benefit analysis within 90 days of the publication of this rule in the **Federal Register** and will make such analysis available to the public.

Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121, 5 U.S.C. Secs. 801-808)

This rule has been designated by the Office of Information and Regulatory Affairs, OMB, as a major rule under the

Small Business Regulatory Enforcement Fairness Act of 1996 (Small Business Act). However, section 808 of the Small Business Act exempts a rule from the 60 day delay in effectiveness of a rule where an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The Administrator of the Risk Management Agency (RMA) has determined that there is good cause for making this rule effective less than 60 days after submission of the rule to each House of Congress and to the Comptroller General because a delay would be contrary to the public interest.

There are producers affected by this rule that must make critical risk management decisions and the deadline for the first 1999 crop year decisions is less than 60 days from the July 1, 1998, effective date of the 1998 Research Act. A delay in the effective date of this rule will create instability and inequity within the program as producers attempt to determine whether they are affected and it will create separate classes of producers who are subjected to the increased administrative fees and those who are not.

Further, RMA was required to revise the Standard Reinsurance Agreement before the July 1, 1998, start of the 1999 reinsurance year to implement the provisions of the 1998 Research Act. If this rule is delayed, it will create administrative problems for the 1999 reinsurance year because the reinsured companies will be subject to the provisions of the 1998 Research Act but some of their insureds will not.

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by the Office of Management and Budget (OMB) under control number 0563-0053 through October 31, 2000. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above-referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the