

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY-02-007]

RIN 0581-AC24

Requirements for the USDA "Produced From" Grademark for Shell Eggs

AGENCY: Agricultural Marketing Service, (USDA).

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend the regulations governing the voluntary shell egg grading program by clarifying the requirements for using the "Produced From" grademark for shell eggs. Use of this grademark began in April 1998. Since then, questions have arisen regarding the regulatory language. This proposal would clarify the language of the "Produced From" grademark requirements in the regulations by removing the reference to continuous supervision.

DATES: Comments must be received on or before March 10, 2003.

ADDRESSES: Send written comments to David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0259, Room 3944-South, 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-02-007 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays.

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.*). 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 grade and size of eggs packed into packages bearing the USDA grademark.

Current regulations allow for the use of several different grademarks to identify consumer-pack USDA graded shell eggs or products prepared from them. The regulations also include the eligibility requirements for eggs to be identified with an official grademark.

Proposed Changes

A "Produced From" grademark was added to the regulations, effective April 20, 1998 (63 FR 13329, March 19, 1998). As currently written, the regulations state that the "Produced From" grademark 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."

The intent of the regulations was to ensure that the eggs used to produce the products were U.S. Consumer Grade AA or A. One of the requirements for eggs to be identified with an official grademark is that the eggs be graded under the supervision of a grader.

The regulations could be interpreted to mean that the products that are produced from the U.S. Consumer Grade AA or A shell eggs must also be produced under continuous supervision. However, this was not the Department's intent.

The Agency has determined that in order to clarify the regulatory language, the reference to continuous supervision regarding the "Produced From" grademark should be removed.

Executive Order 12866

This proposed 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).

Regulatory Flexibility

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 proposed rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of 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 625,000 egg laying hens are needed to produce enough eggs to gross \$9,000,000.

Currently, the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) authorizes a voluntary grading program for shell eggs. 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. Plants in which these grading services are performed are called official plants. Shell egg processors who do not use USDA's grading service may not use the USDA grade shield. There are about 625 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these, 175 are official plants that use USDA's grading service and would be subject to this proposed rule. Of these 175 official plants, 57 meet the small business definition.

This proposed amendment would benefit the processors in the industry, both large and small. It is intended to clarify a regulatory provision which has caused some confusion and involves no additional costs.

Executive Orders 12988

This proposed 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