

requirements by removing the reference to continuous supervision. This action is to ensure the integrity of the USDA quality consumer grademark.

EFFECTIVE DATE: June 12, 2003.

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. One requirement is that only eggs produced under the continuous supervision of a grader may be identified as U.S. Consumer Grade AA or A.

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. However, the regulations could also be interpreted to mean that the products produced from the U.S. Consumer Grade AA or A shell eggs must be produced under continuous supervision. However, this was not the Department's intent nor is it a requirement.

The Agency determined that the reference to both U.S. Consumer AA and A and to continuous supervision was redundant and confusing. Therefore, to clarify the regulatory language, the reference to continuous supervision is removed.

Proposed Rule and Comments

The proposed rule was published in the **Federal Register** January 9, 2003 (68 FR 1169). The comment period ended March 10.

Two comments were received, each from a group of students taking the same course in an accelerated university business curriculum. Both groups discussed research they conducted among vendors, consumers, and local agricultural interests about shell egg grading. Both groups supported the proposed amendment.

Executive Order 12866

This final 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 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 rule will benefit large and small processors in the industry. It is intended

to clarify a regulatory provision which has caused some confusion and involves no additional costs.

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.*), OMB has approved the information collection and recordkeeping requirements included in this rule, and there are no new requirements. The assigned OMB control number is 0581-0128.

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. In § 56.36, paragraph (a)(3) is amended by adding a period after the word "eggs" the second time it appears in the paragraph and by removing the words "under the continuous supervision of a grader."

Dated: May 7, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

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