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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 56

[Docket No. PY-99-002]

RIN 0581-AB60

#### Refrigeration Requirements for Shell Eggs

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim final rule that amended the voluntary shell egg grading program regulations by adding a definition of the term "ambient temperature," by amending the refrigeration requirements, and by adding a labeling requirement. Mandatory amendments to the Egg Products Inspection Act (EPIA) in 1991 and USDA Food Safety and Inspection Service (FSIS) regulations in 9 CFR part 590 implementing those amendments involved refrigeration and labeling requirements. We made changes to 7 CFR part 56 to conform to the FSIS requirements.

**EFFECTIVE DATE:** June 30, 2000.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

An interim final rule effective October 25, 1999, was published in the **Federal Register** on October 22, 1999 (64 FR 56945-56947, Docket No. PY-99-002). We amended 7 CFR part 56 (the regulations) by adding a definition of the term "ambient temperature," by amending the refrigeration requirements, and by adding a labeling requirement.

#### Comments

Comments on the interim final rule were required to be received on or before December 21, 1999. We received five comments. They were from a research firm, an organization representing State department of agriculture officials, a consumer organization, and two industry associations.

In the interim final rule, we explained that new FSIS temperature and labeling requirements in 9 CFR part 590 became effective August 27, 1999. These new requirements implemented mandatory 1991 amendments to the EPIA. The interim changes made by the Agricultural Marketing Service (AMS) to 7 CFR part 56 are deemed necessary to avoid a conflict between the temperature and labeling requirements published by FSIS and regulations of the AMS voluntary shell egg grading program.

The research firm that commented agreed with the temperature requirement, added a note of caution concerning storage temperature changes that can cause eggs to sweat, and recommended that this issue be addressed in the regulations. The regulations already contain the requirement that every reasonable precaution be exercised to prevent the "sweating" of eggs (§ 56.76(f)(2)).

The organization representing State department of agriculture officials supported the temperature requirement. The amendatory language states that eggs should be placed under refrigeration "promptly after packaging." This organization suggested that the meaning of "promptly" be clarified in either the regulations or the instructions to the graders. The Agency provides detailed information and explanation concerning technical aspects of the grading program in its *Shell Egg Graders Handbook*, where this issue will be addressed.

The consumer organization, while supporting the temperature and labeling requirements, felt that they did not go far enough. In response to food safety concerns, this organization recommended that the temperature requirement should be 41 °F instead of 45 °F, that only one specific labeling statement should be allowed, and that the statement's size and placement should be mandated. As we explained in our interim final rule, FSIS has

already finalized its rule concerning refrigeration in order to comply with the legislative amendment. This amendment, dealing with voluntary grading of shell eggs, is intended to conform to the FSIS requirements of refrigeration and labeling found in 9 CFR part 590. The organization also commented that AMS should set a specific time limit for processors to move packaged eggs into coolers. AMS will address this issue in its *Shell Egg Graders Handbook*.

One industry association expressed concern about the industry's ability to comply with the temperature requirements established by FSIS regulations. Those regulations have been in effect since August 27, 1999. Any questions concerning them should be addressed to FSIS. The main purpose of this rule is to conform to those regulations.

The other industry association supported the refrigeration and labeling requirements, but wanted them to cover all shell eggs regulated under the EPIA and monitored under the shell egg surveillance program, not just those under the voluntary shell egg grading program. Shell eggs regulated under the EPIA are already covered by FSIS refrigeration and labeling requirements mandated in 9 CFR part 590, and the changes made by the interim final rule to 7 CFR part 56 does not alter that coverage.

#### 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.

In 1992, 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 published 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.

#### **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.

After consideration of all relevant material presented, including the comments received, we are finalizing the interim rule without change.

#### **List of Subjects in 7 CFR Part 56**

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

#### **PART 56—VOLUNTARY GRADING OF SHELL EGGS**

Accordingly, the interim rule amending 7 CFR part 56 which was published at 64 FR 56945 on October 22, 1999, is adopted as a final rule without change.

Dated: May 24, 2000.

**Kathleen A. Merrigan,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 00-13481 Filed 5-30-00; 8:45 am]

**BILLING CODE 3410-02-P**

#### **NORTHEAST DAIRY COMPACT COMMISSION**

##### **7 CFR Parts 1306, 1307 and 1309**

##### **Over-Order Price Regulation**

**AGENCY:** Northeast Dairy Compact Commission.

**ACTION:** Final rule.

**SUMMARY:** The Northeast Dairy Compact Commission amends the over-order price regulation to establish a milk supply management plan. This new program addresses the requirement in the Northeast Interstate Dairy Compact that the Commission take such action as necessary and feasible to ensure that the over-order price regulation does not create an incentive for milk producers to generate additional supplies of milk. This rule establishes an assessment/refund plan under which the Commission will withhold 7.5 cents from the per hundredweight producer price in each month there is a Compact payment, so long as the resultant Compact producer price is at least 25 cents per hundredweight. The Commission will, on an annual basis, return the withheld funds to only those Compact eligible producers who increased their milk production at a rate of one percent or less, as compared to the prior year's milk production. The refund will be paid to eligible producers by distributing one-half of the assessed funds on an equal payment to each eligible producer and one-half on a per hundredweight basis of the total milk production for the program year, up to a maximum per hundredweight refund of \$12,000. The program year will be from July 1 through June 30. This supply management plan is intended to ensure that the over-order price regulation does not create an incentive