



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Doc. No. AMS-LPS-15-0044]

Amendment to the definition of “condition” and prerequisite requirement for shell eggs eligible for grading and certification stated in the Regulations Governing the Voluntary Grading of Shell Eggs.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend the Regulations Governing the Voluntary Grading of Shell Eggs to clarify the definition of “condition” and revise the prerequisite requirement for shell eggs eligible for voluntary USDA grading and certification. The proposed revision to the prerequisite requirement will prohibit the use of Salmonella Enteritidis-adulterated or recalled shell eggs from being presented to USDA for grading and certification. AMS is proposing to revise the definition of “condition” to remove any food safety implications resulting from the use of the term “wholesomeness” and clarify that AMS’ role in grading and certification of shell eggs is solely for a quality determination.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit comments concerning this proposed rule electronically at <http://www.regulations.gov>. Written comments may also be submitted to Mark Perigen, National Shell Egg Supervisor, Quality Assessment

Division (QAD), Livestock, Poultry, and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0258, Room 3932S, 1400 Independence Avenue, SW., Washington, DC 20250; or by facsimile to (202) 690-2746. All comments should reference the docket number (AMS-LPS-15-0044), the date, and the page number of this issue of the Federal Register. Submitted comments will be available for public inspection at <http://www.regulations.gov>, or during regular business hours at the above address.

Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: David Bowden, Chief, Standardization Branch, Quality Assessment Division, Livestock, Poultry, and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0258, Room 3932S, 1400 Independence Avenue, SW., Washington, DC 20250; by facsimile to (202) 690-2746; or via email David.Bowden@ams.usda.gov.

SUPPLEMENTARY INFORMATION

Background and Proposed Changes

Section 203(c) of the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621-1627) directs and authorizes the Secretary of Agriculture “to develop and improve standards of quality, condition, quantity, grade and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.” The U.S. Department of Agriculture (USDA) is committed to carrying out this authority in a manner that facilitates the marketing of agricultural products while maintaining the integrity of the USDA grademark. Shell egg grading is a voluntary program provided under the AMA and offered on a fee-for-service basis. It is

designed to assist in the orderly marketing of shell eggs by providing the official certification of egg quality, size, condition, and other factors.

This proposed amendment is in accordance with recommendations stated in the 2012 Audit Report, USDA Controls Over Shell Egg Inspection, issued by the USDA Office of Inspector General (OIG). In that report, OIG stated the regulatory definition of “condition” for shell eggs was confusing as it relates to quality and food safety. OIG also stated the integrity of the USDA grademark for quality was not adequately protected from adulterated shell eggs.

AMS is proposing to revise the definition of “condition” to remove any food safety implications resulting from the use of the term “wholesomeness” and clarify that AMS’ role in grading and certification of shell eggs is solely for a quality determination. The revised definition will remove the term “wholesomeness” and state that “condition” is a characteristic detected by sensory examination. The presence of microorganisms, specifically Salmonella Enteritidis (SE) or other pathogens, in the content of an egg cannot be detected during such an examination. The Food and Drug Administration (FDA) and the USDA Food Safety and Inspection Service, not AMS, maintain jurisdiction for food safety related issues associated with shell eggs.

AMS is also proposing to revise the prerequisite requirement of shell eggs eligible for USDA grading and certification. The revision will prohibit the use of SE-adulterated or recalled shell eggs from being presented to USDA for grading and certification. This action protects the integrity of the USDA grademark for quality and is consistent with the current AMS policy implemented subsequent to the referenced 2012 OIG audit.

Executive Order 12866, 13175, and 13563

USDA is issuing this proposed rule in conformance with Executive Orders 12866, 13175, and 13563.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601-602, AMS has performed an initial regulatory flexibility analysis regarding economic effects of this proposed rule on small entities.

AMS is proposing to amend the Regulations Governing the Voluntary Grading of Shell Eggs, 7 CFR Part 56 to revise the definition of the term “condition” to clarify that it relates solely to a quality determination and not food safety. The current regulation definition for “condition” includes the term “wholesomeness” which denotes a food safety connotation. AMS’ role in grading and certification of shell eggs is for a quality determination only. By removing any food safety related terms from the current definition of “condition,” AMS will remove confusion or misunderstanding over use of the term.

Since this change is a technical correction and editorial in nature, and will not result in a change to the way service is provided to our customers, AMS has determined it will not have a financial impact on small entities that utilize their services.

AMS also proposes to revise the prerequisite requirement of shell eggs eligible for USDA grading and certification. The revision will prohibit the use of SE-adulterated shell eggs or recalled shell eggs from being presented to USDA for grading and certification.

The FDA prohibits the use of SE-adulterated shell eggs from being sold to consumers. When shell eggs are suspected of being adulterated with SE, the packing facility is obligated to test the shell eggs to assure only safe product is distributed to consumers. If shell eggs are found to be adulterated with SE, the FDA will issue a request to the packing facility to voluntarily recall the product, or will exercise its mandatory recall authority to return the product to the origin facility. The product must either be destroyed or reconditioned under FDA supervision.

Since SE-adulterated shell eggs or shell eggs that have been recalled are no longer eligible for distribution to consumers, but are either destroyed or reconditioned under the direction of the FDA, changing the AMS regulation will not have an impact on small entities since those shell eggs are deemed unfit for human consumption.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection and recordkeeping requirements included in this proposed rule, and there are no new requirements. Should any changes become necessary they would be submitted to OMB for approval. The assigned OMB control number is 0581-0128, as approved on July 8, 2014.

AMS is committed to compliance with the Government Paperwork Elimination Act, which requires government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

E-Government Act

AMS is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

List of Subjects in 7 CFR Part 56

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

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

PART 56 – REGULATIONS GOVERNING THE VOLUNTARY GRADING OF SHELL EGGS

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

Authority: 7 U.S.C. 1621 et seq.

- 2. Amend § 56.1 by revising the definition of Condition to read as follows:

§ 56.1 Meaning of words and terms defined.

* * * * *

Condition means any characteristic detected by sensory examination (visual, touch, or odor), including the state of preservation, cleanliness, soundness, or fitness for human food that affects the marketing of the product.

* * * * *

3. Amend § 56.40 by revising paragraphs (c)(2) and (3) and adding paragraphs (c)(4) and (5) to read as follows:

§ 56.40 Grading requirements of shell eggs identified with grademarks.

* * * * *

(c) * * *

(2) Not possess any undesirable odors or flavors;

(3) Not have previously been shipped for retail sale;

(4) Not originate from a layer house environment determined positive for the presence of Salmonella Enteritidis (SE) unless the eggs from the layer house have been sampled and have tested negative for the presence of SE in the eggs; and

(5) Not originate from eggs testing positive for SE, or not have been subject to a product recall.

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Dated: April 14, 2016

Elanor Starmer
Administrator
Agricultural Marketing Service

BILLING CODE 3410-02 P
[FR Doc. 2016-09139 Filed: 4/19/2016 8:45 am; Publication Date: 4/20/2016]