

# 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 Parts 56 and 57

[Docket No. PY-05-003]

RIN 0581-AC47

#### Update and Clarify a Shell Egg Grading Definition

**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 and the regulations governing the inspection of eggs. The proposed revision would revise the definition of washed ungraded eggs in each of the regulations. From time to time, sections in the regulations are affected by changes in egg production and processing technology. This rule updates the regulations to reflect these changes.

**DATES:** Comments must be received on or before November 25, 2005.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule 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. Comments may be faxed to (202) 690-0941.

Comments should be submitted in duplicate. Comments may also be submitted electronically to: [AMSPYDockets@usda.gov](mailto:AMSPYDockets@usda.gov) or [www.regulations.gov](http://www.regulations.gov). All comments should refer to Docket No. PY-05-003 and note the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at the above location during regular business hours. Comments received also will be made available over the Internet in the

rulemaking section of the AMS Web site <http://www.ams.usda.gov/rulemaking>. A copy of this proposed rule may be found at: <http://www.ams.usda.gov/poultry/regulations/rulemaking/index.htm>.

#### FOR FURTHER INFORMATION CONTACT:

Charles L. Johnson, Chief, Grading Branch, (202) 720-3271.

#### SUPPLEMENTARY INFORMATION:

##### Background and Proposed Changes

AMS administers a voluntary grading program for shell eggs under the Agricultural Marketing Act of 1946, as amended (AMA) (7 U.S.C. 1621 *et seq.*). Any interested party 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. Regulations governing this program are contained in 7 CFR part 56.

AMS also administers a mandatory inspection program for shell eggs under the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). This inspection program ensures that shell eggs sold to consumers contain no more restricted eggs than are permitted in the standards for consumer grades. Regulations governing this program are contained in 7 CFR part 57.

The Agency routinely reviews its regulations to ensure that they are current and up-to-date. The latest review of 7 CFR part 56 and 7 CFR part 57 identified the following changes that are needed to bring the regulations up-to-date with current egg production and processing technology.

##### Washed Ungraded Eggs

The Agency is proposing to clarify the definition of *washed ungraded eggs* that appears in both regulations. The definitions currently state that washed ungraded eggs mean “\* \* \* eggs which have been washed but not sized or segregated for quality.” The revised definitions will state that washed ungraded eggs mean “\* \* \* eggs which have been washed and that are either sized or unsized, but not segregated for quality.”

In many in-line shell egg production facilities, shell eggs move continuously from a laying house to the processing operation. Frequently, eggs move through washing equipment and are

segregated to remove obvious defects (leakers, dirt, etc.) but are not graded or segregated for quality. The resultant shell eggs may no longer be labeled or designated as “nest-run” because they have been washed.

Similar to nest-run shell eggs, washed, ungraded, unsized product is not subject to inspection under the EPIA during a shell egg surveillance inspection unless the product is being offered for consumer sale. Washed, ungraded, unsized product, which is not intended for sale to consumers, is sold to official breaking plants or is reprocessed and graded at a shell egg grading facility for consumer sales.

In the early 1990s, Poultry Programs determined that a name designation was needed to reference and label washed, ungraded, unsized shell eggs. Since the product did not meet the criteria for nest-run eggs, Poultry Programs proposed establishing a category of shell eggs known as “washed ungraded eggs” to mean eggs that were washed, unsized, and not segregated for quality.

In 1995 through notice and comment rulemaking, Poultry Programs amended the voluntary shell egg regulations at 7 CFR part 56 and defined shell eggs that have been washed but not segregated for grade or size to mean “washed ungraded eggs”. This definition has worked well; however, as production and processing practices have changed, many in-line shell egg production facilities now segregate washed ungraded eggs by size.

Consequently, the resultant washed, ungraded, sized eggs are not clearly defined by the regulations. The current definition of washed ungraded eggs needs to be revised to include eggs that may either be sized or unsized. This revision will clarify that this product is to be reprocessed and graded and is not intended for sale to consumers.

Since washed ungraded, sized shell eggs do not meet the criteria under the definition of washed ungraded eggs, we propose to revise the definition for washed ungraded eggs to mean eggs that are washed, sized or unsized, but not segregated for quality.

The revision is necessary to facilitate the trading, certification, and identification of shell eggs from processing facilities when shell eggs move from laying houses to processing facilities without being graded.

### Executive Order 12866 and Effect on Small Entities

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). In addition, pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of the 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 (SBA) (13 CFR 121.201) defines small entities that produce and process chicken eggs as those whose annual receipts are less than \$9,000,000. Approximately 625,000 egg laying hens are needed to produce enough eggs to gross \$9,000,000.

Currently, the AMA authorizes a voluntary grading program for shell eggs. Shell egg processors that apply for service must pay for the services rendered. Shell egg processors are entitled to pack their eggs in packages bearing the USDA grade shield when AMS graders are present to certify that the eggs meet the grade requirements as labeled. 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 grademark. There are about 540 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these, 161 are official plants that use USDA's grading service and would be subject to this proposed rule. Of these 161 official plants, 38 meet the small business definition.

The EPIA 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 57. All of the approximate 540 shell egg processors registered with the Department are required to comply with the labeling provisions of the EPIA and would be subject to this proposed rule. Of these 540 shell egg processors, 313 meet the small business definition.

This proposal will not have an adverse economic impact on processors. It would revise the AMA and the EPIA regulations by up-dating the definition of washed ungraded eggs to reflect

current egg production and processing technology.

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

### Executive Orders 12988

This proposed 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.

### 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. The assigned OMB control number is 0581-0128.

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.

### List of Subjects

#### 7 CFR Part 56

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

#### 7 CFR Part 57

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

For reasons set forth in the preamble, it is proposed that 7 CFR parts 56 and 57 be 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 § 56.1, revise the term *Washed ungraded eggs* to read as follows:

#### § 56.1 Meaning of words and terms defined.

\* \* \* \* \*

*Washed ungraded eggs* means eggs which have been washed and that are

either sized or unsized, but not segregated for quality.

### PART 57—INSPECTION OF EGGS (EGGS PRODUCTS INSPECTION ACT)

3. The authority citation for part 57 continues to read as follows:

**Authority:** 21 U.S.C. 1031–1056.

4. In § 57.1, revise the term *Washed ungraded eggs* to read as follows:

#### § 57.1 Definitions.

\* \* \* \* \*

*Washed ungraded eggs* means eggs which have been washed and that are either sized or unsized, but not segregated for quality.

Dated: September 20, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 05–19087 Filed 9–23–05; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003–SW–10–AD]

RIN 2120–AA64

### Airworthiness Directives; Eurocopter France Model AS355E, F, F1, F2, and N Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise an existing airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters. That AD currently requires certain checks of the magnetic chip detector plug (chip detector) and the main gearbox (MGB) oil-sight glass, certain inspections of the lubrication pump (pump), and replacing the MGB and the pump with an airworthy MGB and pump, if necessary. Also, the AD requires that before an MGB or pump with any time-in-service (TIS) can be installed, it must meet the AD requirements. This action would retain those requirements but would limit the applicability to one part number with certain serial-numbered pumps or modified after a certain date. This proposal was prompted by an investigation by the manufacturer that revealed a malfunction occurred after modifying the pump case on certain pumps after major overhaul and repairs.