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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: Final rule.

SUMMARY: The Agricultural Marketing Service is amending the regulations governing the voluntary shell egg grading program and the regulations governing the inspection of eggs. The revision will 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: *Effective Date:* April 12, 2006.

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 will 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.”

Proposed Rule and Comments

The proposed rule was published in **Federal Register** on September 26, 2005 (70 FR 56139). The comment period ended November 25, 2005.

We received two comments: one from a shell egg producer and one from an unidentified commenter. The shell egg producer supported the proposed amendment. The Agency did not address the second comment because it was outside the scope of this rulemaking.

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 amendment will not have an adverse economic impact on processors. It will 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 Order 12988

This 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, 7 CFR parts 56 and 57 are 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: March 8, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06-2366 Filed 3-10-06; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV06-932-1 IFR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Olive Committee (committee) for the 2006 and subsequent fiscal years from \$15.68 to \$11.03 per assessable ton of olives handled. The committee locally administers the marketing order which regulates the handling of olives grown in California. Assessments upon olive handlers are used by the committee to fund reasonable and necessary expenses of the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective March 14, 2006. Comments received by May 12, 2006, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT: Laurel May, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs,

AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, CA 93721; Telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be effective beginning on January 1, 2006, apply to all assessable olives from the current crop year, and will continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an