

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 56**

[Docket No. PY-98-006]

RIN 0581-AC50

**Eligibility Requirements for USDA Graded Shell Eggs****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) amends the voluntary shell egg grading rules by providing that shell eggs must not have been previously shipped for retail sale in order to be officially identified with a USDA consumer grademark; by changing the definition of the term *eggs of current production* from 30 days to 21 days, thereby making eggs that were laid more than 21 days before the date of packing ineligible to be officially identified with a USDA-consumer grademark; and by adding a definition for the term *shipped for retail sale*. On April 27, 1998, USDA prohibited the repackaging of eggs packed under USDA's voluntary grading program until the Department could review its policies regarding the repackaging and dating of eggs. Making certain types of eggs ineligible for grading will strengthen the integrity of the USDA grade shield.

**DATES:** This rule is effective June 19, 2006.

**FOR FURTHER INFORMATION CONTACT:** David Bowden, Jr., Standardization Branch, (202) 720-3506.

**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 packaged into packages bearing the USDA-grade shield. Plants in which these grading services are performed are called official plants. Currently, about one-third of the nation's shell egg processors, that operate under the voluntary grading program, produce three-fourths of the nation's table eggs.

Shell egg producers either pack their eggs at the site where the eggs are produced (an "in-line" operation), or

ship their eggs to a processing facility or egg processor located elsewhere (an "off-line" operation). Egg processors also sell and ship eggs among themselves to accommodate imbalances in supply. Once eggs are washed, sized, and packaged for retail sale, they are shipped to retailers for distribution to the ultimate consumer.

Occasionally, a retail store may have an excess inventory of eggs. They may have overstocked for a seasonal promotion (e.g., Easter or Christmas) or the expiration date printed on the cartons may be approaching. Retailers dispose of these eggs, give the eggs to local charitable feeding operations before the expiration date, or return the eggs to the processor. The processor may, in turn, repack the eggs or process them into liquid, frozen, or dried egg products. If repackaged, the eggs are removed from their original package, such as a carton or open tray (known as a "flat"). They are usually, but not always, intermixed with other unprocessed eggs. Then they are rewashed, regraded, and placed into a new package. The option of repackaging eggs has always been available to egg processors, there are no Federal regulations addressing the practice, and Agency personnel have observed very little of it in official plants.

Four dates are associated with the marketing of shell eggs. They are, in order of occurrence, the date of lay, the date of packaging, the expiration or "Sell by" date, and the "Use by" date. Federal law does not require any of these dates to be present on shell egg packaging materials. However, if the processor uses the USDA grading program and places the USDA grade shield on packaging materials, the date of packaging is required and the expiration ("Sell by") and "Use by" dates have required time limits. If the expiration ("Sell by") date is present, denoting stock rotation, it must be calculated from the date of packaging and may not exceed 30 days including the date of pack. If the "Use by" date is present, indicating the maximum time frame for expected quality, it must also be calculated from the date of packaging and may not exceed 45 days including the date of pack. Thus, repackaged eggs could either retain the original pack date and expiration ("Use by") dates, or they could have the new date of repackaging and a new, extended expiration date. After April 27, 1998, however, repackaged eggs became ineligible for USDA-grade identification.

On April 7, 1998, a report was televised about an egg processor's practice of repackaging eggs. The report questioned the food safety and quality

implications of this practice. To address the quality aspect, USDA issued a written notice to the industry on April 17, 1998, announcing suspension of the repackaging of eggs packed under the voluntary grading program while the Department reviewed its policies on egg repackaging. The suspension, effective April 27, 1998, ensured that eggs previously shipped for retail sale and returned to the processor were specifically ineligible for USDA-grade identification. The Agency believed that this would strengthen the integrity of the USDA-grade shield by reducing unwanted variation in egg quality caused by the occasional blending of older, lower-quality eggs with more recently laid, higher-quality eggs.

While reviewing egg repackaging, the Agency also looked at its definition of *eggs of current production*. Eggs are at their peak of quality when they are laid. Over time, quality will decline. The rate of decline varies according to a variety of factors, with the most important being elapsed time since lay, storage temperature, and storage humidity. To maintain the integrity of the quality standards and the grade shield, only *eggs of current production* may be officially graded. AMS has defined those eggs to be shell eggs that have moved through usual marketing channels since the time they were laid and have not been held in refrigerated storage in excess of 30 days. In practice, AMS requires eggs being officially identified with the USDA-grade shield to be no older than 30 days on the day of packaging.

The first definition for *eggs of current production* was added to the regulations March 1, 1955, and included a 60-day requirement. At that time, the definition allowed buyers and sellers to differentiate between relatively fresh eggs and cold storage or storage eggs. The commercial cold storage of eggs began in the U.S. around 1890, when egg production was seasonal. Cold storage could hold the spring and summer production surplus (about 50 percent of the annual production) for release during periods of relative scarcity in autumn and winter, thus avoiding drastic supply and price fluctuation. Until the 1950s, it was common for eggs to be held in refrigerated storage for up to 6 months. Modern breeding and flock management practices have virtually eliminated seasonal differences in egg production, so cold storage is no longer necessary or even practical. In addition, technological advances in the handling and marketing of shell eggs have reduced the time it takes for eggs to move through normal marketing

channels and provide optimum conditions for maintaining egg quality. The time requirement was reduced to 30 days August 1, 1963.

### Proposed Rule and Comments

Following a review of the repackaging issue and the definition for *eggs of current production*, a proposed rule was published in the **Federal Register** (64 FR 40522, July 27, 1999). It prohibited the USDA grade identification of eggs previously shipped for retail sale or eggs laid more than 15 days before date of packing. Comments were specifically requested regarding periods of time that might be more appropriate than 15 days. During the 60-day comment period that ended September 27, 1999, the Agency received three comments; one each from organizations representing egg producers, State departments of agriculture, and consumers.

All three organizations supported the decision to make retail-returned eggs ineligible for official identification. They also supported changing the definition of *eggs of current production*, but had differing recommendations.

The organization representing consumers supported the 15-day definition because it would increase the overall quality of USDA-graded eggs, would increase consumer confidence in the USDA grademark, and would be commercially feasible.

The organization representing egg producers recommended 21 days to allow for disruptions that could occur during distribution, such as the additional time required to transfer eggs between processors trying to balance overall supply and demand. Producers unable to meet the 15-day requirement would only recoup approximately 50 percent of the products' original value if the eggs were diverted to the production of egg products, a loss that could cause some official plants to drop grading service altogether.

The organization representing State departments of agriculture questioned the feasibility of the resident grader monitoring the date of lay as well as preventing the repackaging of store returns. This organization did suggest an alternative action to prevent repackaging and to control the quality of officially-identified eggs: Change the tolerance for B quality interiors allowed in eggs identified with the Grade A or AA shield. Currently processors can have 13 percent B quality in eggs identified with the Grade A or AA shield.

The Agency does not share the concerns about monitoring and verifying the age of shell eggs processed in official plants. The Agency has

procedures to ensure compliance with the current definition for *eggs of current production* with its 30-day requirement. These procedures were strengthened in December 1999 and would be applicable if that requirement was reduced. Field personnel indicate that these procedures are adequate and verifiable. In regard to changing the tolerance for B quality interiors allowed in eggs identified with the Grade A or AA shield, the Agency does not feel that this would be an appropriate method for monitoring the age of the shell eggs. While research has demonstrated that there is a decrease in quality over time, it has also shown that there is no significant corresponding increase in the amount of B quality eggs within the first 21 days after lay when the eggs are properly processed, handled, and stored. The last major change in shell egg standards and grades occurred in 1981, while the egg industry has undergone major changes in production and processing since then. AMS believes that a continuing comprehensive nationwide review of the egg standards is appropriate. AMS continues to make changes to reflect current production and marketing practices. However, AMS believes that a monitoring and verification process to ensure compliance with any current production requirement would still be needed.

AMS agrees with the egg producer organization that the proposed 15-day requirement might be a burden in certain situations. Therefore, the Agency has decided to adopt the 21 days recommended by the industry organization.

Comments received suggesting that these requirements should apply to all eggs and comments relating to food safety issues are beyond the scope of this rulemaking and/or the authority under the Act.

### Summary of Changes

The definition for *Eggs of current production* (§ 56.1) is changed. It will specify that the term denotes eggs that are no more than 21 days old on the day of packaging instead of the present 30-day limit. Additionally, the reference to "Refrigerator or storage eggs" is removed because it is obsolete.

A definition for the term *Shipped for retail sale* (§ 56.1) is added. This term would mean shell eggs that are forwarded from the processing facility for distribution to the ultimate consumer. This includes eggs forwarded for retail sale to wholesalers, brokers, retailer warehouses, retailer stores, or other distribution points in the retail marketing chain.

Another requirement for shell eggs to be identified with consumer grademarks (§ 56.40) is added. It specifies that these eggs must not have previously been shipped for retail sale.

### Executive Order 12866

Although not economically significant, this rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB). AMS has prepared a Regulatory Impact Assessment (RIA) consisting of a statement of the need for the proposed action, an examination of alternative approaches, and an analysis of the benefits and costs.

*Need for Proposed Action.* As stated in the background section, on April 7, 1998, a report was televised about an egg processor's practice of repackaging eggs. The report questioned the food safety and quality implications of this practice. However, there was no evidence that repackaged eggs posed a food safety risk.

To address the quality aspect, and to ensure the strong brand image of graded eggs, USDA issued a written notice to the industry on April 17, 1998, announcing suspension of the repackaging of eggs packed under the voluntary grading program while the Department reviewed its policies on egg repackaging. The suspension, effective April 27, 1998, ensured that eggs previously shipped for retail sale and returned to the processor were specifically ineligible for USDA-grade identification. AMS believes that the occasional blending of older, lower-quality eggs with more recently laid, higher-quality eggs could result in unwanted variation in egg quality. Prohibiting the repackaging of eggs packed under USDA's voluntary grading program would reduce this possibility and would strengthen the integrity of the USDA-grade shield.

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. 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-grade shield.

Shell egg processors with 3,000 or more laying hens are required by the Egg Products Inspection Act (EPIA) to register with the Department. Currently, there are about 533 such processors, of which 185 (34.7 percent) are official plants that are responsible for 74 percent of total shell egg production. Most official plants have resident service, where graders work a regular tour of duty. In the remaining plants, graders work on an intermittent, as needed, basis. Official plants that use USDA's grading service and identify their egg cartons with the official USDA-grade shield are affected by this rule. Plants that do not use USDA's grading service or identify their egg cartons with the USDA-grade shield are not affected by this rule.

*Alternatives.* The repackaging of eggs packed under USDA's voluntary grading program was suspended by the Department. The only alternative would be to rescind the suspension. The

Department continues to support the suspension. All commenters supported the suspension. AMS agrees.

The proposed rule called for changing the definition of *eggs of current production* from 30 days to 15 days. Comments were specifically requested regarding other periods of time that might be more appropriate. A comment received from an organization representing egg producers supported 21 days to allow for occasional disruptions that occur during distribution, such as the additional time required to transfer eggs between processors trying to balance their supply with demand. AMS agrees that this alternative has merit and would change the definition from 30 days to 21 days.

*Summary of Benefits.* This rule would potentially enhance the quality and marketability of USDA graded eggs by strengthening the integrity of the USDA grade shield. It would provide consumers with even greater assurance of receiving high quality shell eggs

reliably and consistently, regardless of supplier.

*Summary of Costs.* It should be noted that there are negligible, if any, additional costs associated with this final rule since USDA suspended repackaging in April 1998, and this rule only codifies that decision. The costs associated with changing repackaging policies have already been borne by the industry and are now common industry practice. Table 1 shows the current estimated production of the 533 registered plants, both official and non-official, and the estimated value of eggs produced by these plants. Prices are the average annual daily New York wholesale price of Grade A, large eggs for 2004 as reported by the World Agricultural Outlook Board (WAOB). There is also a one cent differential between the price of eggs at official plants which use the shield versus non-official plants which do not use the shield. The difference covers the cost of grading.

TABLE I.—CURRENT ESTIMATED ANNUAL PRODUCTION OF PLANTS REGISTERED UNDER THE EPIA

	Plants registered		Estimated annual production		Estimated value	
	Number of plants	Percentage of total plants	Dozen eggs (billion)	Percentage of total dozen	Value per dozen	Total value
Total plants .....	533	.....	4.27	.....	.....	<sup>2</sup> \$3.49
Official plants with shield .....	185	35	3.16	74	<sup>1</sup> 82	<sup>2</sup> 2.59
Non-official plants without shield .....	348	65	1.11	26	<sup>1</sup> 81	899,10

<sup>1</sup> Cents.  
<sup>2</sup> In billions.

The egg market changes daily due to changes in the supply, demand, and other factors. Egg markets are also cyclical with increases in demand occurring during some holiday periods. As long as these cycles continue, retailers will continue to return eggs to processors. In turn, processors will continue to repackage eggs into cartons without the official-grade shield, divert them to egg breakers, or use them in products other than human food. When there is a favorable market for table eggs, most will be repackaged into cartons

without the official grade shield. Processors usually receive a greater return for cartoned eggs than eggs sent to breakers.

When this rule was originally proposed, there were 169 official plants with resident grading service. The estimated number of eggs returned to them annually was 6.2 million dozen with an estimated value of \$4.712 million. AMS surveyed those 169 plants to determine the extent to which they had previously repackaged eggs into USDA-grade-shielded cartons.

Only eight of the 169 official plants reported having repackaged small quantities of eggs in USDA-shielded cartons at least weekly. Table II shows the estimated value of eggs returned to those eight surveyed plants before 1998 (when repackaging in USDA-shielded cartons was suspended) and 2004. At that time, the projected value of the eggs returned following suspension of repackaging was less than the projected value before suspension. This was due in part because of the increased value of eggs marketed with the USDA shield.

TABLE II.—ANNUAL ESTIMATED NUMBER AND VALUE OF EGGS RETURNED TO EIGHT OFFICIAL SURVEYED PLANTS BEFORE 1998 (WHEN REPACKAGING IN USDA-GRADE-SHIELDED CARTONS WAS SUSPENDED) AND 2004

	Value per dozen	Before repackaging was suspended			After repackaging was suspended		
		Percent of total	Dozen eggs	Total value	Percent-age of total	Dozen eggs	Total value
Eggs returned to 8 surveyed plants that re-packaged .....	Yr 98	.....	669,300	483,034	.....	669,300	\$477,680
	Yr 04	.....	669,300	522,790	.....	669,300	517,436

TABLE II.—ANNUAL ESTIMATED NUMBER AND VALUE OF EGGS RETURNED TO EIGHT OFFICIAL SURVEYED PLANTS BEFORE 1998 (WHEN REPACKAGING IN USDA-GRADE-SHIELDED CARTONS WAS SUSPENDED) AND 2004—Continued

	Value per dozen	Before repackaging was suspended			After repackaging was suspended		
		Percent of total	Dozen eggs	Total value	Percentage of total	Dozen eggs	Total value
Repackaged in USDA shielded carton .....	76¢	80	535,440	406,934	.....	.....	.....
	82¢	80	535,440	439,061	.....	.....	.....
Repackaged in non-shielded carton .....	75¢	10	66,930	50,198	90	602,370	451,778
	81¢	10	66,930	54,213	90	602,370	487,920
Diverted to egg breaker <sup>1</sup> .....	43¢	9	60,237	25,902	9	60,237	25,902
	49¢	9	60,237	29,516	9	60,237	29,516
Other <sup>2</sup> .....	.....	1	6,693	.....	1	6,693	.....

<sup>1</sup> Value per dozen may be less to reflect additional handling cost.

<sup>2</sup> Diverted to use other than human food.

Table II uses two sets of carton egg prices—the annual average Daily New York Wholesale Price of Grade A, Large Eggs for 1998 and 2004 as reported by USDA's World Agricultural Outlook Board. At both price levels, the total economic impact (revenue loss) on the eight processors was approximately \$5,354 (\$483,034–\$477,680 or \$522,790–\$517,436) or approximately \$670 per processor who repackaged eggs using a USDA shielded carton.

The following assumptions were used to calculate this impact. First, there is a one cent value differential between the value of a dozen eggs packed in a USDA shielded carton versus an unshielded carton which reflects the cost of grading eggs. This is based on a report, the "Estimated Cost to Produce, Process, and Market One Dozen Grade A Large White Eggs," developed by AMS Poultry Market News. Second, all the returned eggs that had been packed in USDA shielded cartons were above the minimum quality standards for the carton egg market, thus all are repacked in non-shielded cartons. Third, no total value for the "Other" category was calculated because prices and quantities did not change after repackaging was suspended.

As noted above, there is very little economic impact as a result of the repackaging suspension given these assumptions. Relaxing these assumptions increases the impact at various levels of significance. Increasing the one cent differential between a shielded and non-shielded carton (cost of the grading function) will result in a proportional increase in the economic impact. For example, if the differential is doubled to two cents, the economic impact will double from \$5,354 to \$10,708. If the differential is tripled to three cents, the economic impact triples to \$16,062. (Note: These results are the same using either the 1998 price data or the 2004 price data.)

A slightly larger impact results when the second assumption is relaxed. If 10 percent of the eggs that were being repacked in USDA shielded cartons before suspension were diverted to the breaker market after suspension, rather than to the fresh market in non-shielded cartons, the revenue loss to the eight egg processors would increase to \$24,630 (using the 1998 carton price). (The change in the second assumption is that after repackaging was suspended, 81 percent (instead of 90 percent) is repacked in non-shielded cartons and 18 percent (instead of 9 percent) is diverted to the breaker market.) A yet larger impact would be expected to occur if the third assumption is relaxed and additional eggs were to move into the "Other" market which has much lower prices.

However, it is most reasonable to expect that the eight processors will continue to move table quality returned eggs in non-shielded cartons after the suspension if they were moving returned eggs in shielded cartons before the suspension.

While the benefits of prohibiting the repackaging of eggs in shielded cartons are difficult to quantify, this action will better facilitate the marketing of eggs under the voluntary grading program. Consumers will benefit with even greater assurance of receiving high quality shell eggs reliably and consistently, regardless of supplier. More generally, this action will enhance the consistent quality and marketability of USDA graded eggs and strengthen the integrity of the USDA grade shield.

An April 7, 1998, televised report also raised questions about the related issue of egg dating. Processors using the USDA grading service must put the date of packaging on the carton. Eggs laid more than 30 days before the date of packaging are currently ineligible to be officially identified with a USDA grade shield. This is the definition of *eggs of*

*current production* that has been in effect since August 1963.

Technological advances in the handling and marketing of shell eggs have reduced the time it takes for eggs to move through normal marketing channels and provide optimum conditions for maintaining egg quality. The 21-day period implemented by this rule would still allow for normal disruptions in the marketplace, such as transfers to balance supplies, without a significant impact on quality. Reducing the time between date of lay and date of packaging from 30 days to 21 days would also enhance quality consistency of USDA-consumer-graded eggs and would strengthen the integrity of the USDA-grade shield.

AMS expects the 21-day limit to have little or no economic impact on shell egg producers or processors. Processors supported, through a comment on the proposed rule, a 21-day after-lay period. Most of the shell egg processors that participate in the grade labeling program operate in-line facilities with eggs moving directly from laying houses to packaging. Shell egg processors can also market eggs that are not of current production by packaging them without USDA-grade identification. Because the difference in economic return to processors between USDA graded versus non-USDA graded eggs is about one cent per dozen, the economic impact is minimal, as discussed above.

If as many as 5 percent of the 3.16 billion shell eggs processed in official plants (see Table I) had to be diverted to non-shield cartons because of handling problems, the loss in revenue would only be \$1,580,000. ( $0.05 * 3,160,000,000 \text{ dozen} = 158,000,000 \text{ dozen} * \$0.01 = \$1,580,000$ .) This is approximately 0.06 percent of the total value of eggs (\$2.59 billion) handled by official plants. (See table 1.) If there was a two cent differential between the values of a shielded carton versus a non-

shielded carton, the impact would be \$3,160,000.

**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 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 550,000 egg laying hens are needed to produce enough eggs to gross \$9,000,000.

Of the 185 official plants that would be subject to the rule, only 14 meet the small business definition.

Two of the 14 official plants that meet the definition for small businesses repackaged retail-retained eggs into USDA-grade-shielded cartons. The impact of making the repackaging suspension permanent will be the same as described above in the Regulatory Impact Assessment. Thus, average revenue loss of \$670 calculated for the eight processors involved in repackaging would apply to the small businesses. This would not impose an undue or disproportionate burden on the two small businesses that had engaged in repackaging.

Changing the definition of *eggs of current production* to eggs that were laid 21 or less days prior to packing is also not estimated to have a significant impact on the 14 official plants currently classified as small businesses. As noted above, even if 5 percent of shell eggs had to be diverted to non-shielded cartons, it would result in a relatively small loss in revenue on a percentage basis. Again, this would not be an undue or disproportionate burden on the two small businesses.

**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.

**Executive Order 12898**

Pursuant to Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations," AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or familial status. This includes those persons who are employees, program beneficiaries, or applicants for employment or program benefits in the voluntary shell egg grading program. Adoption of the rule would not require official plants to relocate or alter their operations in ways that could adversely affect such persons or groups. Nor would it exclude any persons or groups from participation in the voluntary shell egg grading program, deny any persons or groups the benefits of the grading program, or subject any persons or groups to discrimination.

**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 rule, and there are no new requirements. The assigned OMB control number is 0581-0128.

AMS is committed to compliance with the GPEA, which require 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 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, Title 7, Code of Federal Regulations, 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. Amend § 56.1 by revising the term *Eggs of current production* and adding a definition for the term *Shipped for retail sale* to read as follows:

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

\* \* \* \* \*

*Eggs of current production* means shell eggs that are no more than 21 days old.

\* \* \* \* \*

*Shipped for retail sale* means shell eggs that are forwarded from the processing facility for distribution to the ultimate consumer.

\* \* \* \* \*

■ 3. Amend § 56.40 by revising paragraph (c) to read as follows:

**§ 56.40 Grading requirements of shell eggs identified with consumer grademarks.**

\* \* \* \* \*

(c) In order to be officially identified with a USDA consumer grademark, shell eggs shall:

- (1) Be eggs of current production;
- (2) Not possess any undesirable odors or flavors; and
- (3) Not have previously been shipped for retail sale.

Dated: April 13, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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