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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 29

[Doc. No. TB-02-14]

RIN 0581-AC11

#### Flue-Cured Tobacco Advisory Committee; Amendment to Regulations

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that amended the regulations for the Flue-Cured Tobacco Advisory Committee (FCTAC) by removing the sections which specify composition of the committee. The interim final rule allowed greater flexibility in responding to changing marketing conditions.

**EFFECTIVE DATE:** June 12, 2003.

**FOR FURTHER INFORMATION CONTACT:** John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250-0280; telephone number (202) 205-0567.

**SUPPLEMENTARY INFORMATION:** Since 1935, upon enactment of the Tobacco Inspection Act, the USDA has provided mandatory inspection services at designated tobacco auction markets. In 2002, based on results of referenda conducted among producers eligible for price support, regulations were amended to provide mandatory inspection at places other than designated tobacco auction markets. The USDA has always sought the input of the industry in implementing legislative authority concerning marketing due to the large geographic areas involved and the different procedure in individual types of tobacco such as size and weight of packages used to display the product, the number of designated markets, the number of sets of buyers present, the number of sales days, and other matters that directly impact on the operation of the auction markets and, therefore, the Federal presence necessary to provide the level of service desired by producers and industry.

In 1974, at the request of the industry, the USDA established the Flue-Cured Tobacco Advisory Committee (FCTAC) to provide a mechanism for consultation with flue-cured producers, warehouse

representatives, and buying interests on the problems peculiar to that type of tobacco with particular emphasis on the grower designation program. The composition of the committee was specified in regulations although it was not necessary and is not customary. The FCTAC recommended that the regulations referencing its composition and representation be removed. Removal of these regulations will not alter the FCTAC's purpose nor direction for an orderly marketing of tobacco but will allow the USDA more flexibility in making structural changes in its composition as a result of new marketing changes. Historically, almost all flue-cured tobacco was sold at auction. In recent years, most flue-cured tobacco has been sold under contract.

The USDA published in the **Federal Register** on October 1, 2002 (67 FR 61467), an interim final rule amending the regulations for the FCTAC by removing the sections which specify composition of the committee. In that action, paragraphs (b), (c), (d), and (e), of § 29.9403, were removed. The USDA requested comments on the interim final rule and the comment period expired on October 31, 2002. No comments were received.

#### Executive Order 12866 and 12988

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.

This rule has been reviewed under Executive order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The rule will not exempt any State of 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.

#### Regulatory Flexibility Act

In conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. There are approximately 190 tobacco warehouses and approximately 450,000 tobacco producers and most warehouses and producers may be classified as

small entities. The AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not substantially affect the normal movement of the commodity into the marketplace. Compliance with this final rule will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share of competitive positions of small entities relative to the large entities and will in no way affect normal competition in the marketplace. This rule merely removes section of the regulations that specify composition of the FCTAC.

#### List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping procedures, Tobacco.

■ For the reasons set forth in the preamble, 7 CFR part 29 is amended as follows:

#### PART 29—TOBACCO INSPECTION

■ Accordingly, the interim final rule amending 7 CFR part 29 which was published at 67 FR 61467 on October 1, 2002, is adopted as a final rule without change.

Dated: May 7, 2003.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 56

[Docket No. PY-02-007]

RIN 0581-AC24

#### Requirements for the USDA "Produced From" Grademark for Shell Eggs

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

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is clarifying the requirements for using the "Produced From" grademark for shell eggs. Use of this grademark began in April 1998. Since then, questions have arisen regarding the regulatory language. This amendment clarifies the language of the "Produced From" grademark

requirements by removing the reference to continuous supervision. This action is to ensure the integrity of the USDA quality consumer grademark.

**EFFECTIVE DATE:** June 12, 2003.

**FOR FURTHER INFORMATION CONTACT:** Rex A. Barnes, Chief, Grading Branch, (202) 720-3271.

**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 packed into packages bearing the USDA grademark.

Current regulations allow for the use of several different grademarks to identify consumer-pack USDA graded shell eggs or products prepared from them. The regulations also include the eligibility requirements for eggs to be identified with an official grademark. One requirement is that only eggs produced under the continuous supervision of a grader may be identified as U.S. Consumer Grade AA or A.

A "Produced From" grademark was added to the regulations, effective April 20, 1998 (63 FR 13329, March 19, 1998). As currently written, the regulations state that "the "Produced From" grademark "may be used to identify products for which there are no official U.S. grade standards (*e.g.*, pasteurized shell eggs), provided that these products are approved by the Agency and are prepared from U.S. Consumer Grade AA or A shell eggs under the continuous supervision of a grader."

The intent of the regulations was to ensure that the eggs used to produce the products were U.S. Consumer Grade AA or A. However, the regulations could also be interpreted to mean that the products produced from the U.S. Consumer Grade AA or A shell eggs must be produced under continuous supervision. However, this was not the Department's intent nor is it a requirement.

The Agency determined that the reference to both U.S. Consumer AA and A and to continuous supervision was redundant and confusing. Therefore, to clarify the regulatory language, the reference to continuous supervision is removed.

**Proposed Rule and Comments**

The proposed rule was published in the **Federal Register** January 9, 2003 (68 FR 1169). The comment period ended March 10.

Two comments were received, each from a group of students taking the same course in an accelerated university business curriculum. Both groups discussed research they conducted among vendors, consumers, and local agricultural interests about shell egg grading. Both groups supported the proposed amendment.

**Executive Order 12866**

This final 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).

**Regulatory Flexibility**

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 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 625,000 egg laying hens are needed to produce enough eggs to gross \$9,000,000.

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. 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. There are about 625 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these, 175 are official plants that use USDA's grading service and would be subject to this proposed rule. Of these 175 official plants, 57 meet the small business definition.

This rule will benefit large and small processors in the industry. It is intended

to clarify a regulatory provision which has caused some confusion and involves no additional costs.

**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.*), 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.

**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, 7 CFR 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. In § 56.36, paragraph (a)(3) is amended by adding a period after the word "eggs" the second time it appears in the paragraph and by removing the words "under the continuous supervision of a grader."

Dated: May 7, 2003.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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