

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 840

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 8-12-82
DATE FOR REVIEW 8-20-82
DATE DUE 8-26-82

Adopted w/a hearing ____
Adopted w/o hearing ✓
Temporary rule ____

Approved 8/26/82 (COS) Disapproved ____ Returned to Agency 8-31-82

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State 8-30-82 Revisor approved ____ disapproved ____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 8.11.82 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 8.11.80

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
6.30.82 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
7.5.82 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
____ Approving H.E.'s Report
____ Approving agency action

Agency's Findings of Fact

LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

N/A Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA
Office Memorandum

TO : MARK W. SEETIN
Commissioner of Agriculture

DATE: 8/26/82

ATTN: JON MURPHY, Spec. Ass't. Atty. Gen.

FROM : LARRY D. STARNS
Special Assistant
Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Amendments to the Rules of the Department of Agriculture Governing the Candling and Grading of Eggs (Chapter 18: Agr 388-417)

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

LDS:drw

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT OF AGRICULTURE

TO : Ted Martinez, Special Assistant Attorney General
Administration - Finance Division
Office of the Attorney General

DATE: 08/11/82

FROM : Gerald Heil, Director
Planning Division

PHONE: 296-1486

SUBJECT: Review of Rules Adopted Without A Public Hearing

The Department of Agriculture has adopted Rules Governing the Candling and Grading of Eggs (Chapter 18: Agr 388-417) without a public hearing pursuant to Minnesota Statutes section 15.0412, subd. 4h.

Accompanying this memorandum you will find the documents which are required to be submitted for your review. A list of these documents is attached.

Since no person requested to be notified when these documents were submitted to the Office of the Attorney General, no Notice of Submission nor Affidavit of Mailing such Notice are part of this record. Furthermore, no written comments on these proposed rules were received at any time--neither during the solicitation of outside opinion, nor during the 30 day comment period following the publication of the Rules as Proposed in the State Register. Thus, no written comments from the public are included in this record. Also, no requests for a public hearing were received during the 30 day comment period.

No changes were made between the Rules as Proposed and the Rules as Adopted, although two typographical errors which appeared in the State Register should be noted. At 7 S.R. 7 in rule 3 MCAR § 1.0392 D. 4., the word "thermostatically" is misspelled; and at 7 S.R. 8 in the headnote to rule 3 MCAR § 1.0396, the word "the" appears and should not. The Rules as Proposed initially approved by the Revisor's Office are included in this set of documents for your reference on these points.

A copy of the Rules as Adopted is also being submitted to the Revisor of Statutes in order to obtain approval as to form as required by Minnesota Statutes section 15.0412, subd. 10.

If you have any questions, please call me.

GH:cs

Enclosures

cc: Office of Revisor of Statutes
Darryl L. Anderson
Thomas Masso
Robert Moehrle

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

ATTACHMENT A

LIST OF ATTACHED DOCUMENTS

A. Rule as Adopted (original and three copies).

B. Order Adopting the Rule (two copies).

C. Notice of Intent to Solicit Outside Opinion (one copy).

D. Order for Notice of Intent to Adopt Rule Without Public Hearing (one copy).

E. Notice of Intent to Adopt a Rule Without Public Hearing (one copy).

F. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing (one copy).

G. Mailing List Certificate (one copy).

H. Rule as Proposed (one copy).

I. Statement of Need and Reasonableness (one copy).

J. Certificate of Compliance with Rulemaking Procedures (one copy).

AG. copy

Department of Agriculture
Food Inspection Division

Adopted Amendments to Rules Governing the Candling and Grading of Eggs (Chapter 18: Agr 388-417)

Rules as Adopted

3 MCAR S 1.0388 Authority; purpose. Rules 3 MCAR SS 1.0388-1.0404 are adopted by the commissioner pursuant to Minn. Stat. SS 29.23 and 29.27 to preserve and protect the public health by regulating the grading, candling, cleaning, breaking, buying and selling of eggs and egg products.

3 MCAR S 1.0389 Definitions.

A. Applicability. For the purposes of 3 MCAR SS 1.0388-1.0404, the terms defined in this rule have the meanings given them.

B. Adulterated eggs. "Adulterated eggs" has the meaning given in Minn. Stat. S 29.24.

C. Checks. "Checks" means eggs that have cracks or breaks in the shell but have intact shell membranes which do not leak.

D. Commissioner. "Commissioner" means the Commissioner of Agriculture or the commissioner's authorized representative.

E. Dealer. "Dealer" means a person, firm or corporation licensed by the department under Minn. Stat. S 28A.04, and subject to Minn. Stat. S 29.22, or a producer who offers or sells eggs directly to the consumer off the producer's premises.

F. Department. "Department" means the Department of Agriculture.

G. Dirties. "Dirties" means eggs with adhering dirt or foreign material or prominent or moderate stains covering more than one-fourth of the shell surface.

H. Grading. An "at destination" grade means the grading is done where the eggs are sold at retail or consumed. An "at origin" grade means the grading is done somewhere other than the destination.

I. Incubator rejects. "Incubator rejects" means eggs that have been subjected to incubation and have been removed during the hatching operation as infertile or otherwise unhatchable.

J. Inedible eggs. "Inedible eggs" has the meaning given in Minn. Stat. S 29.24.

K. Leakers. "Leakers" means eggs that have a crack or break in the shell and shell membrane to the extent that the contents are exuding or are free to exude through the shell.

L. Loss. "Loss" means eggs that are unfit for human food because they are smashed or broken so that their contents are leaking, because they are overheated, frozen, or contaminated, because they are incubator rejects, or because they contain bloody whites, large meat spots, a large quantity of blood or other foreign material.

M. Restricted eggs. "Restricted eggs" means eggs that contain dirties, checks, leakers, inedibles, loss and incubator rejects.

3 MCAR S 1.0390 Candling. Dealers must have adequate equipment and space and a room darkened sufficiently to make possible accurate quality determinations of the candled appearance of the eggs. The room shall be free from dirt, mustiness, foreign odors, and debris. Operations using mechanical equipment must have adequate light for all necessary procedures, including the detection of dirties, the detection of staining, and the determination of the condition of the packing material.

3 MCAR S 1.0391 Storage and refrigeration. Dealers must have adequate space and proper storage facilities with temperatures of 60 degrees Fahrenheit or less as required by law. All storage and transportation facilities must be maintained in a sanitary condition. Dealers must transport eggs in enclosed trucks that are sanitary and provide insulation or refrigeration necessary to maintain the quality and temperature of the eggs. Trucks with canvas tarpaulins, blankets or similar covers are not "enclosed" unless special permission is given when roads are officially posted for weight limits.

3 MCAR S 1.0392 Egg cleaning.

A. Protection from soil. Eggs must, so far as reasonably possible, be protected from being soiled or dirtied by foreign matter in all stages of production, transportation and processing.

B. Wet cleaning. Wet cleaning of eggs using rags, sponges or other devices to scrub or wipe the eggs by hand is prohibited.

C. Dry cleaning. Dry cleaning with abrasive material reasonably free of bacterial contamination is permitted.

D. Washing equipment and procedures. Eggs may be washed subject to the following requirements:

1. Egg washing equipment and the surrounding area must be of such construction as to permit thorough cleaning.

2. Egg washing equipment and the surrounding area must be kept in a sanitary condition.

3. The water used in washing eggs must be potable and contain less than five parts of iron per million.

4. The water temperature for both washing and rinsing must be thermostatically controlled.

5. The temperature of the wash water must be maintained at a minimum of 90 degrees Fahrenheit and must be at least 20 degrees Fahrenheit warmer than the temperature of the eggs. The rinse water temperature must exceed the wash water temperature by at least 10 degrees Fahrenheit. Prewetting must be accomplished by spraying a continuous flow of water over the eggs in a manner that permits the water to drain away.

6. Only approved cleaning and sanitizing compounds may be used. Refer to the United States Department of Agriculture list of compounds authorized for use under the meat, rabbit and egg products inspection programs.

7. Washed eggs must be spray rinsed with an approved sanitizing agent. The rinse must contain at least 50 parts per million and may contain no more than 200 parts per million of available chlorine or its equivalent.

8. Washed eggs must be reasonably dry prior to cartoning or casing.

9. Washers must be operated in accordance with the manufacturer's instructions in all instances which are not in conflict with 3 MCAR SS 1.0388-1.0404.

10. Immersion type washers may not be used.

11. All eggs must be removed from the washing and rinsing area of the egg washer and the scanning area where there may be a build up of heat when those areas are not in use.

3 MCAR S 1.0393 Candling and grading records.

A. A dealer must keep an accurate candling and grading record, known as a "bench record," for each patron from whom eggs are purchased on a graded basis. Candling and grading bench records must be kept in a manner sufficient to indicate that the eggs purchased by the first dealer have been candled and graded and all inedible eggs removed. Bench records, consecutively numbered, must be written in ink or other nonerasable writing and must include the following data:

1. name and address of the dealer;

2. name or number and address of the producer or person selling eggs;

3. date received;

4. number of dozen eggs received;

5. exact number of eggs in each Minnesota purchase grade;

6. deductions for inedible or adulterated eggs;

7. name or initial of candler and date candled; and

8. dirties and checks may be identified as such or may be grouped together in one column in order to simplify record keeping.

B. Permanent office records. Records must be kept in a neat and orderly manner, must be available to the commissioner at all reasonable times, and must be retained by the dealer for a period of at least 90 days after the date of purchase.

3 MCAR S 1.0394 Minnesota purchase grades required. A person buying eggs from a producer on a graded basis must do so on the basis of the purchase grades set in 3 MCAR S 1.0398.

3 MCAR S 1.0395 Minnesota consumer grades required. All candled

and graded eggs which are purchased for resale, sold, transferred or consigned to consumers, dealers, brokers, retailers or wholesalers within the state, must be sold, transferred or consigned on the basis of the consumer grades set in 3 MCAR S 1.0398. All eggs sold, consigned or transferred, except eggs sold at retail, must be accompanied by an invoice to the receiver showing the number of cases of eggs of each consumer grade in each shipment.

3 MCAR S 1.0396 Containers and packaging material used in marketing eggs. Any container, including the packaging material inside the container, which is unfit for the marketing of eggs due to condition or contamination must, at the discretion of the inspector and under his supervision, be rendered unusable.

3 MCAR S 1.0397 Identification of eggs in the possession of dealers. Each case of eggs held by a dealer must be identified as to grade and size in a manner acceptable to the commissioner. Grade designation may not be abbreviated. Acceptable methods of identifying cases include stamping, marking with chalk or other legible marking, or a grade slip or label in or attached to each case. Each case or part of a case of eggs which has not been candled and graded must be identified with the producer's name and address in a manner satisfactory to the commissioner.

3 MCAR S 1.0398 Minnesota purchase and consumer grades.

A. Purchase grades.

1. Eggs may be purchased only on the basis of the standards of grades and weight classes established for consumer grades.

2. Eggs may be purchased as "nest run" or "current receipts."

3. All restricted eggs, must be handled in a manner conforming to the requirements of the Federal Egg Products Inspection Act of 1970, regulations promulgated under that act, and Minn. Stat. S 29.235.

4. All eggs used in the manufacture of food products or by a restaurant, caterer, nursing home, school, charitable

organization or similar establishment which prepares or serves food for human consumption must be of Grade B or better, except for checks and dirties which may be processed for human consumption by an official egg processing plant licensed by the department.

B. Consumer grades.

1. "Grade AA (at origin)" consists of eggs which are at least 87 percent AA quality. The maximum tolerance of 13 percent which may be below AA quality may consist of A or B quality in any combination, except that within the tolerance for B quality not more than one percent may be B quality due to air cells over 3/8 inch, blood spots aggregating not more than 1/8 inch in diameter, or serious yolk defects. Not more than five percent checks are permitted and not more than 0.50 percent leakers, dirties or loss due to meat or blood spots are permitted in any combination except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

2. "Grade AA (at destination)" consists of eggs which are at least 72 percent AA quality. The remaining tolerance of 28 percent shall consist of at least ten percent A quality and the remainder shall be B quality, except that within the tolerance for B quality not more than one percent may be B quality due to air cells over 3/8 inch, blood spots aggregating not more than 1/8 inch in diameter, or serious yolk defects. Not more than seven percent checks are permitted and not more than one percent leakers, dirties, or loss due to meat or blood spots are permitted in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

3. "Grade A (at origin)" consists of eggs which are at least 87 percent A quality or better. Within the maximum tolerance of 13 percent which may be below A quality, not more than one percent may be B quality due to air cells over 3/8 inch, blood spots aggregating not more than 1/8 inch in diameter, or serious yolk defects. Not more than five percent, or seven percent for jumbo size, checks are permitted and not more than 0.50 percent leakers, dirties or loss due to meat or

blood spots are permitted in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

4. "Grade A (at destination)" consists of eggs which are at least 82 percent A quality or better. Within the maximum tolerance of 18 percent which may be below A quality, not more than one percent may be B quality due to air cells over 3/8 inch, blood spots aggregating not more than 1/8 inch in diameter, or serious yolk defects. Not more than seven percent, or nine percent for jumbo size, checks are permitted and not more than one percent leakers, dirties, or loss due to meat or blood spots are permitted in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

5. "Grade B (at origin)" consists of eggs which are at least 90 percent B quality or better. Not more than ten percent may be checks and not more than 0.50 percent may be leakers, dirties, or loss due to meat or blood spots in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

6. "Grade B (at destination)" consists of eggs which are at least 90 percent B quality or better. Not more than ten percent may be checks and not more than one percent may be leakers, dirties, or loss due to meat or blood spots in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

C. Quality standards specifications. Specifications for standards for quality of individual shell eggs must be in accordance with the United States Standards for Quality of Individual Shell Eggs and Weight Classes for Shell Eggs, 7 Code of Federal Regulations Part 2856, effective December 26, 1978, as amended October 1, 1981.

D. Weight classes for shell egg grades. Weight classes for shell egg grades are established in Exhibit 3 MCAR S 1.0398 E.-1.

Exhibit 3 MCAR S 1.0398 E.-1.

Weight Classes for Shell Egg Grades

Size or Weight Class	Minimum Net Weight per dozen, in ounces	Minimum Net Weight per 30 dozen, in pounds	Minimum Weight for Individual Eggs at Rate per dozen, in ounces
Jumbo	30	56	29
Extra Large	27	50 1/2	26
Large	24	45	23
Medium	21	39 1/2	20
Small	18	34	17

A lot average tolerance of 3.3 percent for individual eggs in the next lower weight class is permitted as long as no individual case within the lot exceeds five percent.

3 MCAR S 1.0399 Invoices. Every dealer selling eggs to a retailer must give the retailer an invoice showing the grade of the eggs under 3 MCAR S 1.0398 B. A copy of each invoice must be kept on file by the seller and the retailer at their respective places of business for 30 days and must be available to and open for inspection at all reasonable times by the commissioner.

3 MCAR S 1.0400 Labeling. Any dealer exposing or offering eggs for sale to a consumer must give notice of the grade of eggs in the manner set out in this rule.

If eggs are exposed or offered for sale in cartons, bags or other containers, the cartons, bags or containers must be plainly and conspicuously printed in letters not smaller than one-quarter inch in height, or plainly and conspicuously stamped or marked in letters not smaller than one-half inch in height with the exact grade and size. If eggs are offered or exposed for sale in bulk, there must be a placard among or adjacent to the eggs which states the grade and size of the eggs and is in

letters not smaller than one-half inch in height. Grade designations may not be abbreviated. All containers must also include the name and address of the producer, processor, or distributor. In the case of the processor or distributor, the words "packed for" or "distributed by" or some equivalent phrasing should be used.

? "should" is permissive. Is this agency intent?

3 MCAR S 1.0401 Advertising. Any advertisement of eggs at a given price must plainly and conspicuously indicate the grade and size. Grade designations may not be abbreviated.

All reference to grades of eggs in advertising or in any other manner, either for procurement or sale of eggs, must conform to the grade and size terminology for purchase and consumer grades promulgated by the commissioner.

3 MCAR S 1.0402 Misleading statements. No dealer may sell, offer for sale, or advertise for sale, eggs for human consumption if the package containing them, a label on the package, or any advertising accompanying them bears any statement or device which is in any way false or misleading.

3 MCAR S 1.0403 Coding and open dating.

A. Coding. Consumer grades of eggs must be code dated in type not smaller than eight-point capitals to indicate the date of delivery, which must not be more than three days from the date of candling and grading. All cartons must bear a code date and cases of eggs for bulk sales shall be plainly coded. If retailers carton eggs which have been delivered in bulk cases, the code date on the carton must be the same as on the cases.

B. Open dating. All consumer grade eggs must carry an "open date" in addition to the code date. The code date is the day of delivery and must be a Julian date so it is not confused with the open date by consumers. The open date or freshness date must be spelled out as the month or number of the month and day, for example: 2-1 or Feb. 1. The open date must have an explanatory clause, such as "Sell by" or "Use by," the word "Expires" or the abbreviation "Exp."

3 MCAR S 1.0404 Use of word "Fresh." The use of the word "Fresh" is limited to eggs of Grades AA, A and B quality which are less than 31 days old. The term "Fresh" or a similar term is not a substitute for grade designation.

Repealer. Rules Agr 402 and 404 are repealed.

APPROVED AS TO LEGALITY

August 26, 1982

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry D. Adams

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 30 1982
Secretary of State 2:03 P.M.

Rules as Proposed

3 MCAR S 1.0388 Authority; purpose. Rules 3 MCAR SS 1.0388-1.0404 are adopted by the commissioner pursuant to Minn. Stat. SS 29.23 and 29.27 to preserve and protect the public health by regulating the grading, candling, cleaning, breaking, buying and selling of eggs and egg products.

3 MCAR S 1.0389 Definitions.

A. Applicability. For the purposes of 3 MCAR SS 1.0388-1.0404, the terms defined in this rule have the meanings given them.

B. Adulterated eggs. "Adulterated eggs" has the meaning given in Minn. Stat. S 29.24.

C. Checks. "Checks" means eggs that have cracks or breaks in the shell but have intact shell membranes which do not leak.

D. Commissioner. "Commissioner" means the Commissioner of Agriculture or the commissioner's authorized representative.

E. Dealer. "Dealer" means a person, firm or corporation licensed by the department under Minn. Stat. S 28A.04, and subject to Minn. Stat. S 29.22, or a producer who offers or sells eggs directly to the consumer off the producer's premises.

F. Department. "Department" means the Department of Agriculture.

G. Dirties. "Dirties" means eggs with adhering dirt or foreign material or prominent or moderate stains covering more than one-fourth of the shell surface.

H. Grading. An "at destination" grade means the grading is done where the eggs are sold at retail or consumed. An "at origin" grade means the grading is done somewhere other than the destination.

I. Incubator rejects. "Incubator rejects" means eggs that have been subjected to incubation and have been removed during the hatching operation as infertile or otherwise unhatchable.

J. Inedible eggs. "Inedible eggs" has the meaning given in Minn. Stat. S 29.24.

K. Leakers. "Leakers" means eggs that have a crack or break

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in the shell and shell membrane to the extent that the contents are exuding or are free to exude through the shell.

L. Loss. "Loss" means eggs that are unfit for human food because they are smashed or broken so that their contents are leaking, because they are overheated, frozen, or contaminated, because they are incubator rejects, or because they contain bloody whites, large meat spots, a large quantity of blood or other foreign material.

M. Restricted eggs. "Restricted eggs" means eggs that contain dirties, checks, leakers, inedibles, loss and incubator rejects.

~~Agr 388~~ 3 MCAR S 1.0390 Candling ~~defined. Persons dealing in eggs, pursuant to provisions of Chapter 29, Statutes of 1971 as amended by Laws of Minnesota 1973 shall~~ Dealers must have adequate equipment and space and a room darkened sufficiently to make possible accurate quality determinations of the candled appearance of the eggs. The room shall be free from dirt, mustiness, ~~and~~ foreign odors, and debris. ~~In~~ Operations ~~utilizing~~ using mechanical equipment ~~adequate light shall be provided to facilitate~~ must have adequate light for all necessary ~~determination~~ procedures, including the detection ~~and removal of dirts and stains~~ dirties, the detection of staining, and the determination of the condition of the packing material.

~~Agr 389~~ 3 MCAR S 1.0391 Storage and refrigeration ~~provisions. Persons dealing in eggs shall~~ Dealers must have adequate space and proper storage facilities where with temperatures ~~not to exceed~~ of 60 ~~F.~~ ~~shall be~~ degrees Fahrenheit or less as required by law. All storage and transportation facilities must be maintained in a sanitary condition. ~~All licensed buyers of eggs shall~~ Dealers must transport ~~all~~ eggs in enclosed trucks that are sanitary and provide ~~such~~ insulation or refrigeration ~~as may be~~ necessary to maintain the quality and temperature of the eggs. ~~Coverings such as~~ Trucks with canvas tarpaulins, blankets ~~and~~ or similar covers ~~of a similar nature will not be acceptable within the meaning of the word~~ are not "

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enclosed" ~~except by~~ unless special permission ~~which may be~~ is given when roads are officially posted for weight limits.

~~Agr 390~~ 3 MCAR S 1.0392 Egg cleaning ~~provisions~~.

~~In all instances~~ A. Protection from soil. Eggs ~~shall~~ must, so far as reasonably possible ~~and by use of all reasonable~~ means, be protected from being soiled or dirtied by foreign matter in all stages of production, transportation and processing.

~~(a)~~ B. Wet cleaning. Wet cleaning of eggs using rags, sponges or other devices to scrub or wipe the eggs by hand is ~~strictly~~ prohibited.

~~(b)~~ C. Dry cleaning. Dry cleaning with abrasive material reasonably free of bacterial contamination is permitted.

~~(c) Wet cleaning is permitted provided the following minimum~~

D. Washing equipment and procedures. Eggs may be washed subject to the following requirements ~~are employed~~:

~~(1)~~ 1. Egg washing equipment and the surrounding area ~~in which it is operated shall~~ must be of such construction as to permit thorough cleaning.

~~(2)~~ 2. Egg washing equipment and the surrounding area ~~shall~~ must be kept in a sanitary condition.

~~(3)~~ 3. The water used in washing eggs ~~shall~~ must be potable and contain less than ~~two~~ five parts of iron per million.

~~(4)~~ 4. The water temperature for both washing and rinsing ~~shall~~ must be thermostatically controlled.

~~(5)~~ 5. The temperature of the wash water ~~shall~~ must be maintained at a minimum of 90 ~~F.~~ degrees Fahrenheit and ~~shall~~ must be at least 20 ~~F.~~ degrees Fahrenheit warmer than the temperature of the eggs ~~and~~ . The rinse water temperature ~~shall~~ must exceed the wash water temperature by at least 10 ~~F~~ degrees Fahrenheit. Prewetting ~~by submersion shall not exceed five (5) minutes~~ must be accomplished by spraying a continuous flow of water over the eggs in a manner that permits the water to drain away.

~~(6)~~ 6. Only approved cleaning and sanitizing compounds ~~shall~~ may be used. ~~(~~Refer to the ~~USDA~~ United States

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Department of Agriculture list of ~~chemical~~ compounds authorized for use under the ~~USDA poultry,~~ meat, rabbit and egg products inspection programs~~)~~.

~~(7)~~ 7. Washed eggs ~~shall~~ must be spray rinsed with an approved sanitizing agent. The rinse ~~shall~~ must contain ~~not less than 100 PPM nor~~ at least 50 parts per million and may contain no more than 200 PPM parts per million of available chlorine or its equivalent.

~~(8)~~ 8. Washed eggs must be reasonably dry prior to cartoning or casing.

~~(9)~~ 9. Washers ~~shall~~ must be operated in accordance with the manufacturer's instructions in all instances which are not in conflict with ~~these regulations~~ 3 MCAR SS 1.0388-1.0404.

~~(10)~~ 10. ~~No~~ Immersion type washers ~~shall~~ may not be used.

~~(11)~~ 11. ~~Whenever~~ All eggs must be removed from the washing and rinsing area of the egg washer and the scanning area where there may be a build up of heat when those areas are not in use~~, all eggs shall be removed from those surfaces~~.

~~Agr 391~~ 3 MCAR S 1.0393 Candling and grading records.

~~(a)~~ A. ~~Each person dealing in eggs shall~~ A dealer must keep an accurate candling and grading record, known as a "bench record," for each patron from whom eggs are purchased on a graded basis~~, which records shall be designated as the "Bench Record"~~. Candling and grading bench records ~~shall~~ must be kept in a manner sufficient to indicate that the eggs purchased by the first ~~licensed buyer~~ dealer have been candled and graded and all inedible eggs removed. Bench records, consecutively numbered, ~~shall~~ must be written in ink or other nonerasable writing and ~~shall~~ must include the following data:

~~(1)~~ 1. name and address of ~~licensed egg~~ the dealer;

~~(2)~~ 2. name or number and address of the producer or person selling eggs;

~~(3)~~ 3. date received;

~~(4)~~ 4. number of dozen eggs received;

~~(5)~~ 5. exact number of eggs in each Minnesota purchase

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grade;

~~(6)~~ 6. deductions for inedible ~~and~~ or adulterated eggs;

~~(7)~~ 7. name or initial of candler and date candled; and

8. dirties and checks may be identified as such or may be grouped together in one column in order to simplify record keeping.

~~(b) The permanent office record shall include the original bench record or a carbon copy thereof and the remittance ticket on which the producer was paid. The bench record or remittance ticket shall show the amount of advance payment, the price and the total amounts paid for each grade and balance paid the producer. Such~~ B. Permanent office records. Records ~~shall~~ must be kept in a neat and orderly manner ~~and shall~~, must be available to the commissioner ~~of agriculture, or his representative~~ at all reasonable times, and ~~shall~~ must be retained by the ~~licensee~~ dealer for a period of at least 90 days after the date of purchase.

~~Agr 392~~ 3 MCAR S 1.0394 Minnesota purchase grades required. ~~Persons~~ A person buying eggs from ~~the~~ a producer on a graded basis ~~shall~~ must do so on the basis of the purchase grades ~~promulgated by the commissioner of agriculture~~ set in 3 MCAR S 1.0398.

~~Agr 393~~ 3 MCAR S 1.0395 Minnesota consumer grades required. All candled and graded eggs which are purchased for resale, sold, transferred or consigned to consumers, dealers, brokers, retailers or wholesalers within the state, ~~shall~~ must be sold, transferred or consigned on the basis of the consumer grades ~~promulgated by the commissioner of agriculture~~ set in 3 MCAR S 1.0398. All eggs sold, consigned or transferred, except eggs sold at retail, ~~shall~~ must be accompanied by an invoice to the receiver showing the number of cases of eggs of each consumer grade in each shipment.

~~Agr 394~~ 3 MCAR S 1.0396 Containers and packaging material used in marketing eggs. Any container, including the packaging material ~~therein~~ inside the container, which is unfit for the

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marketing of eggs due to condition or contamination ~~shall~~ must, at the discretion of the inspector and under his supervision, be rendered ~~unfit for further use~~ unusable.

~~Agr 395~~ 3 MCAR S 1.0397 Identification of eggs in the possession of ~~licensed~~ dealers. Each case of eggs held by a ~~licensed~~ dealer ~~shall~~ must be identified as to grade and size in a manner acceptable to the commissioner ~~or his representative~~. Grade designation ~~shall~~ may not be abbreviated. Acceptable methods of identifying cases ~~shall~~ include stamping, marking with chalk or other legible marking, or a grade slip or label in or attached to each case. Each case or part of a case of eggs ~~or portion thereof~~ which has not been candled and graded ~~shall~~ must be identified with the producer's name and address in a manner satisfactory to the commissioner ~~or his representatives~~.

~~Agr 396~~ 3 MCAR S 1.0398 Minnesota purchase and consumer grades.

A. Purchase grades.

~~(1)~~ 1. Eggs ~~shall~~ may be purchased only on the basis of the standards ~~for~~ of grades and weight classes established for consumer grades ~~except that Grade AA, Grade A Jumbo and Grade A Extra Large are optional purchase grades.~~

~~(2) "Grade C" shall consist of all edible eggs which do not meet specifications for Grade AA, Grade A, Grade B, dirties and checks. In the preparation of bench records, Grade C, dirties and checks may be grouped together in one column in order to simplify record keeping.~~

~~(3) Dirties and checks shall be identified as such but record keeping may be done as specified under Agr 396 (a) (2).~~

~~(4)~~ 2. Eggs may be purchased as "nest run" or "current receipts~~".~~."

~~(5)~~ 3. All restricted eggs ~~(dirties, checks, leakers, inedibles, loss and incubator rejects)~~ ~~shall~~, must be handled in a manner conforming to the requirements of the Federal Egg Products Inspection Act of 1970 and, regulations ~~relating thereto~~ promulgated under that act, and ~~the Minnesota Egg Law,~~

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~~Section 29.235, MS 1971~~ Minn. Stat. S 29.235.

4. All eggs used in the manufacture of food products or by a restaurant, caterer, nursing home, school, charitable organization or similar establishment which prepares or serves food for human consumption must be of Grade B or better, except for checks and dirties which may be processed for human consumption by an official egg processing plant licensed by the department.

~~(b)~~ B. Consumer grades.

~~(1) Grade AA (Quality Controlled) shall consist of eggs produced and marketed under the Minnesota Certified Quality Egg Program (Agr 434-457) or the Federal-State Quality Egg Program (7 CFR Part 56, Section 56.216) for Fresh Fancy Quality labeling. Eggs from flocks that meet the provisions of these programs may be packaged and officially labeled after eggs with blood spots, or meat spots, check, loss eggs and eggs with shells failing to meet the requirements for AA quality have been removed.~~

~~(2) Grade AA (Candled Quality) shall consist of eggs which are 80 percent AA quality. The minimum tolerance of 20 percent which may be below AA quality may consist of A or B quality in any combination with not more than 5 percent C quality or checks in any combination and not more than 0.5 percent leakers or dirties in any combination.~~

~~(3) Grade A shall consist of eggs which are 80 percent A quality or better. Within the maximum tolerance of 20 percent which may be below A quality, not more than 5 percent may be C quality or checks in any combination, and not more than 0.5 percent leakers or dirties in any combination.~~

~~(4) Grade B shall consist of eggs which are 80 percent B quality or better. Within the maximum tolerance of 20 percent which may be below B quality, not more than 10 percent may be checks and not more than 0.5% leakers or dirties in any combination.~~

1. "Grade AA (at origin)" consists of eggs which are at least 87 percent AA quality. The maximum tolerance of 13

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percent which may be below AA quality may consist of A or B quality in any combination, except that within the tolerance for B quality not more than one percent may be B quality due to air cells over 3/8 inch, blood spots aggregating not more than 1/8 inch in diameter, or serious yolk defects. Not more than five percent checks are permitted and not more than 0.50 percent leakers, dirties or loss due to meat or blood spots are permitted in any combination except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

2. "Grade AA (at destination)" consists of eggs which are at least 72 percent AA quality. The remaining tolerance of 28 percent shall consist of at least ten percent A quality and the remainder shall be B quality, except that within the tolerance for B quality not more than one percent may be B quality due to air cells over 3/8 inch, blood spots aggregating not more than 1/8 inch in diameter, or serious yolk defects. Not more than seven percent checks are permitted and not more than one percent leakers, dirties, or loss due to meat or blood spots are permitted in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

3. "Grade A (at origin)" consists of eggs which are at least 87 percent A quality or better. Within the maximum tolerance of 13 percent which may be below A quality, not more than one percent may be B quality due to air cells over 3/8 inch, blood spots aggregating not more than 1/8 inch in diameter, or serious yolk defects. Not more than five percent, or seven percent for jumbo size, checks are permitted and not more than 0.50 percent leakers, dirties or loss due to meat or blood spots are permitted in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

4. "Grade A (at destination)" consists of eggs which are at least 82 percent A quality or better. Within the maximum tolerance of 18 percent which may be below A quality, not more than one percent may be B quality due to air cells over 3/8 inch, blood spots aggregating not more than 1/8 inch in

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diameter, or serious yolk defects. Not more than seven percent, or nine percent for jumbo size, checks are permitted and not more than one percent leakers, dirties, or loss due to meat or blood spots are permitted in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

5. "Grade B (at origin)" consists of eggs which are at least 90 percent B quality or better. Not more than ten percent may be checks and not more than 0.50 percent may be leakers, dirties, or loss due to meat or blood spots in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

6. "Grade B (at destination)" consists of eggs which are at least 90 percent B quality or better. Not more than ten percent may be checks and not more than one percent may be leakers, dirties, or loss due to meat or blood spots in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

~~(e)~~ C. Quality standards specifications. Specifications for standards for quality of individual shell eggs ~~shall~~ must be ~~regulated~~ in accordance with the United States Standards for Quality of Individual Shell Eggs and Weight Classes for Shell Eggs, ~~(7 CFR Part 56 Subpart C Sections 56.201 through 56.212 effective July 1, 1971) which regulations are hereby adopted by reference~~ 7 Code of Federal Regulations Part 2856, effective December 26, 1978, as amended October 1, 1981.

~~(d) Summary of grades for shell eggs~~

	~~Quality~~	~~Tolerance Permitted~~	
~~Consumer Grade~~	~~Required~~	~~Percent~~	~~Quality~~
~~Candled Grade~~			
~~Grade AA~~	~~80 percent AA~~	~~Up to 20~~	~~A or B~~
		~~Not over 5~~	~~C or Checks~~
		~~Not over 0.5~~	~~Leakers,~~
			~~Dirties or~~
			~~Loss*~~

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~~Grade A~~	~~80 percent A or better~~	~~Up to 20 Not over 5 Not over 0.5~~	~~B C or Checks Leakers, Dirties or Loss*~~
~~Grade B~~	~~80 percent B or better~~	~~Up to 20 Not over 10 Not over 0.5~~	~~C Checks Leakers, Dirties or Loss*~~

~~*Loss refers to meat or blood spots only--Such loss may not exceed 0.30 percent.~~

~~(e)~~ D. Weight classes ~~for Grades~~ for shell Eggs egg grades. Weight classes for shell egg grades are established in Exhibit 3 MCAR S 1.0398 E.-1.

Exhibit 3 MCAR S 1.0398 E.-1.

Weight Classes for Shell Egg Grades

Size or Weight Class	Minimum Net Weight per ~~doz./~~ dozen, in ounces	Minimum Net Weight per 30 ~~doz./lbs.~~ dozen, in pounds	Minimum Weight for Individual Eggs at Rate per dozen~~/~~, in ounces
Jumbo	30	56	29
Extra Large	27	50 1/2	26
Large	24	45	23
Medium	21	39 1/2	20
Small	18	34	17

A lot average tolerance of 3.3% percent for individual eggs in the next lower weight class is permitted as long as no individual case within the lot exceeds 5 five percent.

~~Agr 397~~ 3 MCAR S 1.0399 Invoices. Every ~~person~~ dealer selling eggs to ~~retailers shall furnish to such retailers~~ a

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retailer must give the retailer an invoice showing the grade of ~~such~~ the eggs~~, according to the standards prescribed by Regulation Agr 396 (b) as it relates to Consumer Grades~~ under 3 MCAR S 1.0398 B. A copy of each ~~such~~ invoice ~~shall~~ must be kept on file by the ~~person selling~~ seller and the retailer at ~~his~~ their respective ~~place~~ places of business for a ~~period of~~ 30 days and ~~shall~~ must be available to and open for inspection at all reasonable times ~~to a representative of the department of agriculture~~ by the commissioner.

~~Agr 398~~ 3 MCAR S 1.0400 Labeling. Any ~~person~~ dealer exposing or offering eggs for sale to a consumer ~~shall~~ must give notice of the grade of eggs in the ~~following~~ manner~~:~~ set out in this rule.

If eggs are exposed or offered for sale in cartons, bags or other containers, ~~such~~ the cartons, bags or ~~other~~ containers ~~shall~~ must be plainly and conspicuously printed in letters not smaller than ~~1/4~~ one-quarter inch in height, or plainly and conspicuously stamped or marked in letters not smaller than ~~1/2~~ one-half inch in height with the exact grade and size. If eggs are offered or exposed for sale in bulk, there ~~shall~~ must be ~~placed~~ a placard among or adjacent to ~~such~~ the eggs~~, a placard, and such placard shall state~~ which states the grade and size of ~~such~~ the eggs and ~~shall be~~ is in letters not smaller than ~~1/2~~ one-half inch in height. Grade designations ~~shall~~ may not be abbreviated. All containers ~~shall~~ must also include the name and address of the producer ~~or~~, processor, or distributor. In the case of the processor or distributor, the words "packed for" or "distributed by" or some equivalent phrasing ~~shall~~ should be used.

~~Agr 399~~ 3 MCAR S 1.0401 Advertising.

~~(a)~~ Any advertisement of eggs at a given price ~~shall~~ must plainly and conspicuously indicate the grade and size. Grade designations ~~shall~~ may not be abbreviated.

~~(b)~~ All reference to grades of eggs in advertising or in any other manner, either for procurement or sale of eggs, ~~shall~~

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must conform to the grade and size terminology for purchase and consumer grades promulgated by the commissioner ~~of agriculture~~.

Agr 400 3 MCAR S 1.0402 Misleading statements. No ~~person~~ ~~shall~~ dealer may sell, ~~or~~ offer for sale, or advertise for sale, eggs for human consumption if the package containing them ~~or the~~, a label ~~thereon~~ on the package, or any advertising accompanying them ~~shall bear~~ bears any statement or device which ~~may be~~ is in any way false or misleading ~~in any particular~~.

Agr 401 3 MCAR S 1.0403 Coding and open dating.

A. Coding. Consumer grades of eggs~~, except quality controlled Grade AA, shall~~ must be code dated in type not smaller than eight-point capitals to indicate the date of delivery, which ~~date shall~~ must not be more than three ~~(3)~~ days from the date of candling and grading. All cartons ~~shall~~ must bear a code date and cases of eggs for bulk sales shall be plainly coded. ~~Such code date shall guarantee to the retailer the grade indicated, for a period not to exceed seven days, when properly handled and refrigerated.~~ If retailers carton eggs which have been delivered in bulk cases, the code date on the carton ~~shall~~ must be the same as on the cases.

~~Cartons or containers for Grade AA quality controlled eggs shall bear in distinctly legible form a date stated as the "month" and "day" or the number of the "month" and "day" (e.g. 4-3) preceded by the letters "EXP" or an equivalent statement. The expiration date shall not exceed 15 days from the date the eggs are packed, excluding the day of pack. Cartons and containers shall be labeled as to grade and size in accordance with Minnesota Statutes 1974, Sections 29.021 and 29.27, and the applicable regulations adopted thereunder. The plant and/or flock certificate number shall be marked on each carton or container.~~

B. Open dating. All consumer grade eggs must carry an "open date" in addition to the code date. The code date is the day of delivery and must be a Julian date so it is not confused with the open date by consumers. The open date or freshness date

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must be spelled out as the month or number of the month and day, for example: 2-1 or Feb. 1. The open date must have an explanatory clause, such as "Sell by" or "Use by," the word "Expires" or the abbreviation "Exp."

~~Agr 403~~ 3 MCAR S 1.0404 Use of word "Fresh". The use of the word "Fresh" ~~shall~~ be is limited to eggs of ~~Grade~~ Grades AA, A and B quality which are less than 31 days old. ~~However,~~ The term "Fresh" or ~~any term of~~ a similar ~~import, shall~~ term is not ~~be deemed to be~~ a substitute for grade designation.

~~Agr 405 - 417 Reserved for future use.~~

Repealer. Rules Agr 402 and 404 are repealed.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

PROPOSED RULES

RD128

Agency Department of Agriculture

Division Planning Division

Agency Contact Gerald Heil Phone Number

Title: Proposed Rules Governing the Grading, Candling, Cleaning, Breaking, Buying and Selling of Eggs and Egg Products

Type of Rules: Permanent X Temporary_____

Incorporations by References:

Rule Number	Material Incorporated	References permitted by statute or references in existing language only.
	Author	
	Title	
	Place	
	Publisher	
	Date	
	Cost	
	Places Available	

See Additional references on back Yes____ No____

Duplication of Statutory Language

Rule Number	Statutory Section Duplicated

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: Craig E. Lindeke
Craig E. Lindeke

Title: Assistant Revisor

Phone: 296-0946

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Amendments
to the Rules of the Department of Agriculture
Governing the Candling and Grading of Eggs
(Chapter 18: Agr 388-417)

ORDER ADOPTING
RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on July 5, 1982, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 15.0412, subdivision 4, on June 30, 1982. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30 day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as the Rules Governing the Candling and Grading of Eggs are adopted this 11th day of August, 1982, pursuant to authority vested in me by Minnesota Statutes, sections 29.23 and 29.27.

STATE OF MINNESOTA



MARK W. SEETIN
COMMISSIONER OF AGRICULTURE

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, announcements of meetings, and matters of public interest.

Department of Agriculture
Food, Meat and Poultry Inspection Division

Notice of Intent to Solicit Outside Opinion Concerning Amendments to the Rules Relating to the Candling and Grading of Eggs (Chap. 18, Agr 388-417)

Notice is hereby given that the Food, Meat and Poultry Inspection Division of the Minnesota Department of Agriculture is considering amending the rules which create standards under which purchase and consumer grades are assigned to eggs produced in the state.

Consideration of the amendments to the rules is authorized by Minn. Stat. § 29.021 (1978) which allows the department to adopt the standard plan of accreditation and certification sponsored by the United States Department of Agriculture, or any other plan, and to cooperate with that department in matters of poultry improvement, egg quality and production. The amendments to the rule would cover the following areas:

(1) Elimination of Grade AA.
(2) Redefinition of Grades A and B.
(3) Coding and Dating of all eggs.

All interested or affected persons or groups may submit information on the subject. Written or oral information and comment should be addressed to:

Bernard J. Steffen, Director
Food, Meat & Poultry Inspection Division
Minnesota Department of Agriculture
90 West Plato Blvd.
St. Paul, Minnesota 55107
(612) 296-2627

All statements of information and comment must be received by September 10, 1980. Any written material received by this date will become part of the record of any rules hearing held on this subject.

August 4, 1980

Bernard J. Steffen
Director

Department of Commerce
Banking Division

Bulletin No. 2267: Maximum Lawful Rate of Interest for Mortgages and Contracts for Deed for the Month of August 1980

Notice is hereby given that pursuant to Minn. Stat. § 47.20, subd. 4a, the maximum lawful rate of interest for conventional home mortgages for the month of August, 1980, is thirteen (13.00) percentage points.

Further, pursuant to Senate File No. 273, Chapter 373, 1980 Session Laws, as it amended Minn. Stat. § 47.20 the maximum lawful rate of interest for contracts for deed for the month of August, 1980, is thirteen (13.00) percentage points.

July 23, 1980

Michael J. Pint
Commissioner of Banks

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Amendments to the Rules of the Department of Agriculture Governing the Candling and Grading of Eggs (Chapter 18: Agr 388-417)

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 21st day of June, 19 82, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Department of Agriculture for that purpose and be published in the State Register.

STATE OF MINNESOTA

Mark W. Seetin

COMMISSIONER OF AGRICULTURE

Department of Agriculture

Food Inspection Division

In the Matter of the Proposed Amendments to the Rules Governing the Candling and Grading of Eggs (Chapter 18: Agr 388-417).

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Section 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, Section 15.0412, subdivisions 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, Sections 29.23 and 29.27. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The Commissioner is authorized by Minnesota Statutes, Sections 29.23 and 29.27 (1980) to adopt federal standards for quality, grades and weight for Minnesota eggs moving in interstate commerce, as well as to establish requirements for candling, grading, cleaning, purchasing, and selling eggs for the purpose of preserving and protecting the public health. The proposed amendments to these rules adopt federal standards for Minnesota purchase and consumer egg grades AA, A and B, at both origin and destination; create a new state standard requiring that Grade B or better eggs be used by food service establishments in preparing and serving food for human consumption; clarify procedures for candling, storing, refrigerating, cleaning, labeling, advertising, coding, open dating, using the word "fresh," and keeping records. The proposed amendments also provide definitions of terms used in the rules and other clarifications of language.

Please be advised that Minnesota Statutes, Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, Section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, MN 55155, (612) 296-5615.

Copies of this Notice and proposed rules are available and may be obtained by contacting Mr. Heil.

STATE OF MINNESOTA

Dated: June 21, 1982

Mark W. Seetin

Commissioner of Agriculture

In the Matter of the Proposed Amendments to
Rules of the Minnesota Department of Agriculture
Governing the Candling and Grading of Eggs
(Agr 388-417)

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Diane Windham, being first duly sworn, deposes and says:

That on the 30th day of June, 1982, at the City of St. Paul, County of Ramsey, State of Minnesota, he/she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department.

Diane Windham

Subscribed and sworn to before me
this 30th day of June, 1982.

Christine Canaday

Christine Canaday
NOTARY PUBLIC – MINNESOTA
RAMSEY COUNTY
My commission expires June 25, 1986

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Amendments to Rules
of the Minnesota Department of Agriculture
Governing the Candling and Grading of Eggs (Agr 388-417)

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 12:00 A.m., this 30th day of June, 1982.

Gerald J Heil

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture
Food Inspection Division

Proposed Amendments to Rules Governing the Candling and Grading of Eggs (Chapter 18: Agr 388-417)

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 15.0412, subd. 4h (1980).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes § 15.0412, subds. 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes §§ 29.23 and 29.27. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The commissioner is authorized by Minnesota Statutes §§ 29.23 and 29.27 (1980) to adopt federal standards for quality, grades and weight for Minnesota eggs moving in interstate commerce, as well as to establish requirements for candling, grading,

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

cleaning, purchasing, and selling eggs for the purpose of preserving and protecting the public health. The proposed amendments to these rules adopt federal standards for Minnesota purchase and consumer egg grades AA, A and B, at both origin and destination; create a new state standard requiring that Grade B or better eggs be used by food service establishments in preparing and serving food for human consumption; clarify procedures for candling, storing, refrigerating, cleaning, labeling, advertising, coding, open dating, using the word "fresh," and keeping records. The proposed amendments also provide definitions of terms used in the rules and other clarifications of language.

Please be advised that Minnesota Statutes ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, Section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, MN 55155, (612) 296-5615.

Copies of this notice and proposed rules are available and may be obtained by contacting Mr. Heil.

June 21, 1982

Mark W. Seetin
Commissioner of Agriculture

Rules as Proposed

3 MCAR § 1.0388 Authority; purpose. Rules 3 MCAR §§ 1.0388-1.0404 are adopted by the commissioner pursuant to Minn. Stat. §§ 29.23 and 29.27 to preserve and protect the public health by regulating the grading, candling, cleaning, breaking, buying and selling of eggs and egg products.

3 MCAR § 1.0389 Definitions.

A. Applicability. For the purposes of 3 MCAR §§ 1.0388-1.0404, the terms defined in this rule have the meanings given them.

B. Adulterated eggs. "Adulterated eggs" has the meaning given in Minn. Stat. § 29.24.

C. Checks. "Checks" means eggs that have cracks or breaks in the shell but have intact shell membranes which do not leak.

D. Commissioner. "Commissioner" means the Commissioner of Agriculture or the commissioner's authorized representative.

E. Dealer. "Dealer" means a person, firm or corporation licensed by the department under Minn. Stat. § 28A.04, and subject to Minn. Stat. § 29.22, or a producer who offers or sells eggs directly to the consumer off the producer's premises.

F. Department. "Department" means the Department of Agriculture.

G. Dirties. "Dirties" means eggs with adhering dirt or foreign material or prominent or moderate stains covering more than one-fourth of the shell surface.

H. Grading. An "at destination" grade means the grading is done where the eggs are sold at retail or consumed. An "at origin" grade means the grading is done somewhere other than the destination.

I. Incubator rejects. "Incubator rejects" means eggs that have been subjected to incubation and have been removed during the hatching operation as infertile or otherwise unhatchable.

J. Inedible eggs. "Inedible eggs" has the meaning given in Minn. Stat. § 29.24.

K. Leakers. "Leakers" means eggs that have a crack or break in the shell and shell membrane to the extent that the contents are exuding or are free to exude through the shell.

L. Loss. "Loss" means eggs that are unfit for human food because they are smashed or broken so that their contents are

leaking, because they are overheated, frozen, or contaminated, because they are incubator rejects, or because they contain bloody whites, large meat spots, a large quantity of blood or other foreign material.

M. Restricted eggs. "Restricted eggs" means eggs that contain dirties, checks, leakers, inedibles, loss and incubator rejects.

~~Agr 388~~ 3 MCAR § 1.0390 Candling ~~defined~~. ~~Persons dealing in eggs, pursuant to provisions of Chapter 29, Statutes of 1971 as amended by Laws of Minnesota 1973 shall~~ Dealers must have adequate equipment and space and a room darkened sufficiently to make possible accurate quality determinations of the candled appearance of the eggs. The room shall be free from dirt, mustiness, ~~and~~ foreign odors, and debris. ~~In~~ Operations ~~utilizing~~ using mechanical equipment ~~adequate light shall be provided to facilitate~~ must have adequate light for all necessary ~~determination~~ procedures, including the detection ~~and removal~~ of ~~dirts and stains~~ dirties, the detection of staining, and the determination of the condition of the packing material.

~~Agr 389~~ 3 MCAR § 1.0391 Storage and refrigeration ~~provisions~~. ~~Persons dealing in eggs shall~~ Dealers must have adequate space and proper storage facilities ~~where~~ with temperatures ~~not to exceed~~ of 60 ~~F.~~ ~~shall be~~ degrees Fahrenheit or less as required by law. All storage and transportation facilities must be maintained in a sanitary condition. ~~All licensed buyers of eggs shall~~ Dealers must transport ~~all~~ eggs in enclosed trucks that are sanitary and provide ~~such~~ insulation or refrigeration ~~as may be~~ necessary to maintain the quality and temperature of the eggs. ~~Coverings such as~~ Trucks with canvas tarpaulins, blankets ~~and~~ or similar covers ~~of a similar nature will not be acceptable within the meaning of the word~~ are not "enclosed" ~~except by~~ unless special permission ~~which may be~~ is given when roads are officially posted for weight limits.

~~Agr 390~~ 3 MCAR § 1.0392 Egg cleaning ~~provisions~~.

~~In all instances~~ A. Protection from soil. Eggs ~~shall~~ must, so far as reasonably possible ~~and by use of all reasonable means~~, be protected from being soiled or dirtied by foreign matter in all stages of production, transportation and processing.

~~(a)~~ B. Wet cleaning. Wet cleaning of eggs using rags, sponges or other devices to scrub or wipe the eggs by hand is ~~strictly~~ prohibited.

~~(b)~~ C. Dry cleaning. Dry cleaning with abrasive material reasonably free of bacterial contamination is permitted.

~~(c) Wet cleaning is permitted provided the following minimum~~ D. Washing equipment and procedures. Eggs may be washed subject to the following requirements ~~are employed~~:

~~(1)~~ 1. Egg washing equipment and the surrounding area ~~in which it is operated shall~~ must be of such construction as to permit thorough cleaning.

~~(2)~~ 2. Egg washing equipment and the surrounding area ~~shall~~ must be kept in a sanitary condition.

~~(3)~~ 3. The water used in washing eggs ~~shall~~ must be potable and contain less than ~~two~~ five parts of iron per million.

~~(4)~~ 4. The water temperature for both washing and rinsing ~~shall~~ must be theramostatically controlled.

~~(5)~~ 5. The temperature of the wash water ~~shall~~ must be maintained at a minimum of 90 ~~F.~~ degrees Fahrenheit and ~~shall~~ must be at least 20 ~~F.~~ degrees Fahrenheit warmer than the temperature of the eggs ~~and~~. The rinse water temperature ~~shall~~ must exceed the wash water temperature by at least 10 ~~F~~ degrees Fahrenheit. Prewetting ~~by submersion shall not exceed five (5) minutes~~ must be accomplished by spraying a continuous flow of water over the eggs in a manner that permits the water to drain away.

~~(6)~~ 6. Only approved cleaning and sanitizing compounds ~~shall~~ may be used. ~~(~~Refer to the ~~USDA~~ United States Department of Agriculture list of ~~chemical~~ compounds authorized for use under the ~~USDA poultry,~~ meat, rabbit and egg products inspection programs~~)~~.

~~(7)~~ 7. Washed eggs ~~shall~~ must be spray rinsed with an approved sanitizing agent. The rinse ~~shall~~ must contain ~~not less than 100 PPM nor~~ at least 50 parts per million and may contain no more than 200 ~~PPM~~ parts per million of available chlorine or its equivalent.

~~(8)~~ 8. Washed eggs must be reasonably dry prior to cartoning or casing.

~~(9)~~ 9. Washers ~~shall~~ must be operated in accordance with the manufacturer's instructions in all instances which are not in conflict with ~~these regulations~~ 3 MCAR §§ 1.0388-1.0404.

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~~(10)~~ 10. ~~No~~ Immersion type washers ~~shall~~ may not be used.

~~(11)~~ 11. ~~Whenever~~ All eggs must be removed from the washing and rinsing area of the egg washer and the scanning area where there may be a build up of heat when those areas are not in use~~, all eggs shall be removed from those surfaces~~.

~~Agr 391~~ **3 MCAR § 1.0393 Candling and grading records.**

~~(a)~~ A. ~~Each person dealing in eggs shall~~ A dealer must keep an accurate candling and grading record, known as a "bench record," for each patron from whom eggs are purchased on a graded basis~~, which records shall be designated as the "Bench Record"~~. Candling and grading bench records ~~shall~~ must be kept in a manner sufficient to indicate that the eggs purchased by the first ~~licensed buyer~~ dealer have been candled and graded and all inedible eggs removed. Bench records, consecutively numbered, ~~shall~~ must be written in ink or other nonerasable writing and ~~shall~~ must include the following data:

~~(1)~~ 1. name and address of ~~licensed egg~~ the dealer;

~~(2)~~ 2. name or number and address of the producer or person selling eggs;

~~(3)~~ 3. date received;

~~(4)~~ 4. number of dozen eggs received;

~~(5)~~ 5. exact number of eggs in each Minnesota purchase grade;

~~(6)~~ 6. deductions for inedible ~~and~~ or adulterated eggs;

~~(7)~~ 7. name or initial of candler and date candled; and

8. dirties and checks may be identified as such or may be grouped together in one column in order to simplify record keeping.

~~(b) The permanent office record shall include the original bench record or a carbon copy thereof and the remittance ticket on which the producer was paid. The bench record or remittance ticket shall show the amount of advance payment, the price and the total amounts paid for each grade and balance paid the producer. Such~~ B. Permanent office records. Records ~~shall~~ must be kept in a neat and orderly manner ~~and shall~~, must be available to the commissioner ~~of agriculture, or his representative~~ at all reasonable times, and ~~shall~~ must be retained by the ~~licensee~~ dealer for a period of at least 90 days after the date of purchase.

~~Agr 392~~ **3 MCAR § 1.0394 Minnesota purchase grades required.** ~~Persons~~ A person buying eggs from ~~the~~ a producer on a graded basis ~~shall~~ must do so on the basis of the purchase grades ~~promulgated by the commissioner of agriculture~~ set in 3 MCAR § 1.0398.

~~Agr 393~~ **3 MCAR § 1.0395 Minnesota consumer grades required.** All candled and graded eggs which are purchased for resale, sold, transferred or consigned to consumers, dealers, brokers, retailers or wholesalers within the state, ~~shall~~ must be sold, transferred or consigned on the basis of the consumer grades ~~promulgated by the commissioner of agriculture~~ set in 3 MCAR § 1.0398. All eggs sold, consigned or transferred, except eggs sold at retail, ~~shall~~ must be accompanied by an invoice to the receiver showing the number of cases of eggs of each consumer grade in each shipment.

~~Agr 394~~ **3 MCAR § 1.0396 Containers and packaging material used in the marketing eggs.** Any container, including the packaging material ~~therein~~ inside the container, which is unfit for the marketing of eggs due to condition or contamination ~~shall~~ must, at the discretion of the inspector and under his supervision, be rendered ~~unfit for further use~~ unusable.

~~Agr 395~~ **3 MCAR § 1.0397 Identification of eggs in the possession of ~~licensed~~ dealers.** Each case of eggs held by a ~~licensed~~ dealer ~~shall~~ must be identified as to grade and size in a manner acceptable to the commissioner ~~or his representative~~. Grade designation ~~shall~~ may not be abbreviated. Acceptable methods of identifying cases ~~shall~~ include stamping, marking with chalk or other legible marking, or a grade slip or label in or attached to each case. Each case or part of a case of eggs ~~or portion thereof~~ which has not been candled and graded ~~shall~~ must be identified with the producer's name and address in a manner satisfactory to the commissioner ~~or his representatives~~.

~~Agr 396~~ **3 MCAR § 1.0398 Minnesota purchase and consumer grades.**

A. Purchase grades.

~~(1)~~ 1. Eggs ~~shall~~ may be purchased only on the basis of the standards ~~for~~ of grades and weight classes established for consumer grades ~~except that Grade AA, Grade A Jumbo and Grade A Extra Large are optional purchase grades~~.

~~(2) "Grade C" shall consist of all edible eggs which do not meet specifications for Grade AA, Grade A, Grade B,~~

~~dirties and checks. In the preparation of bench records, Grade C, dirties and checks may be grouped together in one column in order to simplify record keeping.~~

~~(3) Dirties and checks shall be identified as such but record keeping may be done as specified under Agr 396 (a) (2).~~

~~(4)~~ 2. Eggs may be purchased as "nest run" or "current receipts~~".~~."

~~(5)~~ 3. All restricted eggs ~~(dirties, checks, leakers, inedibles, loss and incubator rejects)~~ ~~shall~~, must be handled in a manner conforming to the requirements of the Federal Egg Products Inspection Act of 1970 ~~and~~, regulations ~~relating thereto~~ promulgated under that act, and ~~the Minnesota Egg Law, Section 29.235, MS 1971~~ Minn. Stat. § 29.235.

4. All eggs used in the manufacture of food products or by a restaurant, caterer, nursing home, school, charitable organization or similar establishment which prepares or serves food for human consumption must be of Grade B or better, except for checks and dirties which may be processed for human consumption by an official egg processing plant licensed by the department.

~~(b)~~ B. Consumer grades.

~~(1) Grade AA (Quality Controlled) shall consist of eggs produced and marketed under the Minnesota Certified Quality Egg Program (Agr 434-457) or the Federal-State Quality Egg Program (7 CFR Part 56, Section 56.216) for Fresh Fancy Quality labeling. Eggs from flocks that meet the provisions of these programs may be packaged and officially labeled after eggs with blood spots, or meat spots, chex, loss eggs and eggs with shells failing to meet the requirements for AA quality have been removed.~~

~~(2) Grade AA (Candled Quality) shall consist of eggs which are 80 percent AA quality. The minimum tolerance of 20 percent which may be below AA quality may consist of A or B quality in any combination with not more than 5 percent C quality or checks in any combination and not more than 0.5 percent leakers or dirties in any combination.~~

~~(3) Grade A shall consist of eggs which are 80 percent A quality or better. Within the maximum tolerance of 20 percent which may be below A quality, not more than 5 percent may be C quality or checks in any combination, and not more than 0.5 percent leakers or dirties in any combination.~~

~~(4) Grade b shall consist of eggs which are 80 percent B quality or better. Within the maximum tolerance of 20 percent which may be below B quality, not more than 10 percent may be checks and not more than 0.5% leakers or dirties in any combination.~~

1. "Grade AA (at origin)" consists of eggs which are at least 87 percent AA quality. The maximum tolerance of 13 percent which may be below AA quality may consist of A or B quality in any combination, except that within the tolerance for B quality not more than one percent may be B quality due to air cells over 3/8 inch, blood spots aggregating not more than 1/8 inch in diameter, or serious yolk defects. Not more than five percent checks are permitted and not more than 0.50 percent leakers, dirties or loss due to meat or blood spots are permitted in any combination except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

2. "Grade AA (at destination)" consists of eggs which are at least 72 percent AA quality. The remaining tolerance of 28 percent shall consist of at least ten percent A quality and the remainder shall be B quality, except that within the tolerance for B quality not more than one percent may be B quality due to air cells over 3/8 inch, blood spots aggregating not more than 1/8 inch in diameter, or serious yolk defects. Not more than seven percent checks are permitted and not more than one percent leakers, dirties, or loss due to meat or blood spots are permitted in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

3. "Grade A (at origin)" consists of eggs which are at least 87 percent A quality or better. Within the maximum tolerance of 13 percent which may be below A quality, not more than one percent may be B quality due to air cells over 3/8 inch, blood spots aggregating not more than 1/8 inch in diameter, or serious yolk defects. Not more than five percent, or seven percent for jumbo size, checks are permitted and not more than 0.50 percent leakers, dirties or loss due to meat or blood spots are permitted in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

4. "Grade A (at destination)" consists of eggs which are at least 82 percent A quality or better. Within the maximum tolerance of 18 percent which may be below A quality, not more than one percent may be B quality due to air cells over 3/8 inch,

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blood spots aggregating not more than 1/8 inch in diameter, or serious yolk defects. Not more than seven percent, or nine percent for jumbo size, checks are permitted and not more than one percent leakers, dirties, or loss due to meat or blood spots are permitted in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

5. "Grade B (at origin)" consists of eggs which are at least 90 percent B quality or better. Not more than ten percent may be checks and not more than 0.50 percent may be leakers, dirties, or loss due to meat or blood spots in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

6. "Grade B (at destination)" consists of eggs which are at least 90 percent B quality or better. Not more than ten percent may be checks and not more than one percent may be leakers, dirties, or loss due to meat or blood spots in any combination, except that loss may not exceed 0.30 percent. Other types of loss are not permitted.

~~(c)~~ C. Quality standards specifications. Specifications for standards for quality of individual shell eggs ~~shall~~ must be ~~regulated~~ in accordance with the United States Standards for Quality of Individual Shell Eggs and Weight Classes for Shell Eggs, ~~(7 CFR Part 56 Subpart C Sections 56.201 through 56.212 effective July 1, 1971) which regulations are hereby adopted by reference~~ 7 Code of Federal Regulations Part 2856, effective December 26, 1978, as amended October 1, 1981.

~~(d) Summary of grades for shell eggs~~

~~Consumer Guide~~ ~~Candled Grade~~	~~Quality Required~~	~~Tolerance Permitted~~ ~~Percent~~	~~Quality~~
~~Grade AA~~	~~80 percent AA~~	~~Up to 20~~	~~A or B~~
		~~Not over 5~~	~~C or Checks~~
		~~Not over 0.5~~	~~Leakers, Dirties or Loss*~~
~~Grade A~~	~~80 percent A or better~~	~~Up to 20~~	~~B~~
		~~Not over 5~~	~~C or Checks~~
		~~Not over 0.5~~	~~Leakers, Dirties or Loss*~~
~~Grade B~~	~~80 percent B or better~~	~~Up to 20~~	~~C~~
		~~Not over 10~~	~~Checks~~
		~~Not over 0.5~~	~~Leakers, Dirties or Loss*~~

~~* Loss refers to meat or blood spots only. Such loss may not exceed 0.30 percent.~~

~~(e)~~ D. Weight classes ~~for Grades~~ for shell ~~Eggs~~ egg grades. Weight classes for shell egg grades are established in Exhibit 3 MCAR § 1.0398 E.-1.

Exhibit 3 MCAR § 1.0398 E.-1.
Weight Classes for Shell Egg Grades

Size or Weight Class	Minimum Net Weight per ~~doz./~~ dozen, in ounces	Minimum Net Weight per 30 ~~doz./lbs.~~ dozen, in pounds	Minimum Weight for Individual Eggs at Rate per dozen~~/~~, in ounces
Jumbo	30	56	29
Extra Large	27	50½	26
Large	24	45	23
Medium	21	39½	20
Small	18	34	17

A lot average tolerance of 3.3~~%~~ percent for individual eggs in the next lower weight class is permitted as long as no individual case within the lot exceeds ~~5~~ five percent.

~~Agr 397~~ 3 MCAR § 1.0399 Invoices. Every ~~person~~ dealer selling eggs to ~~retailers shall furnish to such retailers~~ a retailer must give the retailer an invoice showing the grade of ~~such~~ the eggs~~, according to the standards prescribed by Regulation Agr 396 (b) as it relates to Consumer Grades~~ under 3 MCAR § 1.0398 B. A copy of each ~~such~~ invoice ~~shall~~ must be kept on file by the ~~person selling~~ seller and the retailer at ~~his~~ their respective ~~place~~ places of business for ~~a period of~~ 30 days and ~~shall~~ must be available to and open for inspection at all reasonable times ~~to a representative of the department of agriculture~~ by the commissioner.

~~Agr 398~~ 3 MCAR § 1.0400 Labeling. Any ~~person~~ dealer exposing or offering eggs for sale to a consumer ~~shall~~ must give notice of the grade of eggs in the ~~following~~ manner~~:~~ set out in this rule.

If eggs are exposed or offered for sale in cartons, bags or other containers, ~~such~~ the cartons, bags or ~~other~~ containers ~~shall~~ must be plainly and conspicuously printed in letters not smaller than ~~1/4~~ one-quarter inch in height, or plainly and conspicuously stamped or marked in letters not smaller than ~~1/2~~ one-half inch in height with the exact grade and size. If eggs are offered or exposed for sale in bulk, there ~~shall~~ must be ~~placed~~ a placard among or adjacent to ~~such~~ the eggs~~, a placard, and such placard shall state~~ which states the grade and size of ~~such~~ the eggs and ~~shall be~~ is in letters not smaller than ~~1/2~~ one-half inch in height. Grade designations ~~shall~~ may not be abbreviated. All containers ~~shall~~ must also include the name and address of the producer ~~or~~, processor, or distributor. In the case of the processor or distributor, the words "packed for" or "distributed by" or some equivalent phrasing ~~shall~~ should be used.

~~Agr 399~~ 3 MCAR § 1.0401 Advertising.

~~(a)~~ Any advertisement of eggs at a given price ~~shall~~ must plainly and conspicuously indicate the grade and size. Grade designations ~~shall~~ may not be abbreviated.

~~(b)~~ All reference to grades of eggs in advertising or in any other manner, either for procurement or sale of eggs, ~~shall~~ must conform to the grade and size terminology for purchase and consumer grades promulgated by the commissioner ~~of agriculture~~.

~~Agr 400~~ 3 MCAR § 1.0402 Misleading statements. No ~~person shall~~ dealer may sell, ~~or~~ offer for sale, or advertise for sale, eggs for human consumption if the package containing them ~~or the~~, a label ~~thereon~~ on the package, or any advertising accompanying them ~~shall bear~~ bears any statement or device which ~~may be~~ is in any way false or misleading ~~in any particular~~.

~~Agr 401~~ 3 MCAR § 1.0403 Coding and open dating.

A. Coding. Consumer grades of eggs~~, except quality controlled Grade AA, shall~~ must be code dated in type not smaller than eight-point capitals to indicate the date of delivery, which ~~date shall~~ must not be more than three ~~(3)~~ days from the date of candling and grading. All cartons ~~shall~~ must bear a code date and cases of eggs for bulk sales shall be plainly coded. ~~Such code date shall guarantee to the retailer the grade indicated, for a period not to exceed seven days, when properly handled and refrigerated.~~ If retailers carton eggs which have been delivered in bulk cases, the code date on the carton ~~shall~~ must be the same as on the cases.

~~Cartons or containers for Grade AA quality controlled eggs shall bear in distinctly legible form a date stated as the "month" and "day" or the number of the "month" and "day" (e.g. 4-3) preceded by the letters "EXP" or an equivalent statement. The expiration date shall not exceed 15 days from the date the eggs are packed, excluding the day of pack. Cartons and containers shall be labeled as to grade and size in accordance with Minnesota Statutes 1974, Sections 29.021 and 29.27, and the applicable regulations adopted thereunder. The plant and/or flock certificate number shall be marked on each carton or container.~~

B. Open dating. All consumer grade eggs must carry an "open date" in addition to the code date. The code date is the day of delivery and must be a Julian date so it is not confused with the open date by consumers. The open date or freshness date must be spelled out as the month or number of the month and day, for example: 2-1 or Feb. 1. The open date must have an explanatory clause, such as "Sell by" or "Use by," the word "Expires" or the abbreviation "Exp."

~~Agr 403~~ 3 MCAR § 1.0404 Use of word "Fresh"." The use of the word "Fresh" ~~shall be~~ is limited to eggs of ~~Grade~~ Grades AA, A and B quality which are less than 31 days old. ~~However,~~ The term "Fresh" or ~~any term of~~ a similar ~~import, shall~~ term is not ~~be deemed to be~~ a substitute for grade designation.

~~Agr 405-417 Reserved for future use.~~

Repealer. Rules Agr 402 and 404 are repealed.

Minnesota Housing Finance Agency

Proposed Temporary Rules Governing Income Limits for Limited Unit Developments

Request for Public Comment

Notice is hereby given that the Minnesota Housing Finance Agency has proposed the following temporary rules for the purpose of setting income limits for the Limited Unit Developments pursuant to Laws 1981, Chapter 306, § 3.

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STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED)
AMENDMENTS TO THE RULES OF THE)
DEPARTMENT OF AGRICULTURE)
GOVERNING THE CANDLING AND)
GRADING OF EGGS (Chapter 18:)
AGR 388-417))

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture of amendments to rules governing the candling and grading of eggs. These amendments are proposed for adoption pursuant to Minnesota Statutes sections 29.23 and 29.27 (1980), which authorize the Department to adopt standards for eggs in inter-state commerce and to establish regulations for candling, grading, cleaning, purchasing and selling eggs for the purpose of protecting the public health.

Rulemaking on the proposed amendments to the rules was authorized by the Department on June 21, 1982. Prior to the authorization of rulemaking, the Department found that the proposed amendments to the rules are noncontroversial in nature due to the prior adoption of similar federal standards and due to consultations with the industry group that would be most affected.

Because of the noncontroversial nature of these rules, the Department directed that the rulemaking proceedings be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minnesota Statutes, Section 15.0412, Subd. 4h (1981 Supp.). Accordingly, the rulemaking proceedings on the proposed amendments to the rules are governed by that statute and no hearing will be conducted on the proposed amendments unless, on or before August 4, 1982, seven or more persons submit

to the Department a written request for such hearing.

In accordance with the requirements of Minnesota Statutes, section 15.0412, Subd. 4h (1981 Supp.), this document, the Statement of Need and Reasonableness, was prepared and completed prior to the dates that the proposed amendments to the rules was noticed in the State Register.

The discussion provided in this statement is divided into the following parts:

Part II. General Overview

Part III. Need for and Reasonableness of the Proposed Amendments to the Rules

II. GENERAL OVERVIEW

A. History of Federal Revisions in Egg Grades

In order to understand the need for and reasonableness of specific portions of the proposed rules, it will be useful to have a general understanding of the importance of the egg industry in Minnesota and its dependence on the federal egg grading standards which provided the principal incentive for proposing these amendments to the rules.

Minnesota is the eleventh largest producer of eggs in the United States, ranking behind one western, one mid-Atlantic, six southern and two other mid-western states. In 1980, Minnesota hens laid an average of 187 million eggs per month, totaling 2.2 billion eggs for the year. Not all of this production can be used in Minnesota, and so inter-state commerce in Minnesota eggs is very important to the economic well-being of individual egg producers and processors as well as contributing to the overall economic well-being of the state. In order for Minnesota eggs to be able to move in inter-state commerce,

federal standards have to be met.

The federal standards upon which these rules are based were adopted on October 1, 1981. The federal changes were proposed after a USDA study of 125 retail food outlets revealed that about one-third of Grades AA and A cartoned eggs had eggs which exceeded tolerance levels set for grades at destination in 1967. The federal document argued that this tolerance level was probably in error even when instituted in 1967 due to an inaccurate assessment of what were reasonable tolerance levels under normal egg production and marketing practices. The federal standards finally adopted included lower tolerance levels for checks, leakers and loss eggs in Grades AA, A and B to reflect changes that occur in eggs during normal handling and marketing.

A survey of Minnesota retail outlets conducted by the Department in August, 1980, when the revision of the federal standards was first proposed revealed results analogous to the federal findings. In approximately 50 separate state inspections, only 35% of the eggs investigated were in compliance with the requirements set for the state's destination grading (which was itself based on the 1967 federal standards.) Based on these findings, revision of Minnesota's egg grading standards also seemed necessary so that producers and packers would not suffer undue hardship because of enforcement of stricter state standards. At the same time, the federal document argues that the difference for consumers and public health would not be discernible.

B. Format of the Proposed Amendments to the Rules

The proposed amendments to the rules are set forth in the following manner: purpose and authority; definitions; candling procedures; storage and refrigeration procedures; egg cleaning procedures; candling and grading

records requirements; requirements for Minnesota purchase and consumer grades of eggs; container and packaging requirements; manner of identifying eggs; standards for Minnesota purchase and consumer grades of eggs; requirements for invoices; labeling and advertising provisions; coding and dating eggs; and use of the word "fresh."

III. NEED FOR AND REASONABLENESS OF EACH OF THE PROPOSED AMENDMENTS TO THE RULES

The need for and reasonableness of each of the proposed amendments to the rules governing the candling and grading of eggs follows. The proposed amendments have been divided into the following five categories: general provisions, adoption of federal standards, adoption of state standards, clarification of procedures and language, and repealed rules.

Additionally, attached to this document are the following documents related to the federal standards:

Attachment A - "Regulations Governing the Grading of Shell Eggs and United States Standards, Grades and Weight Classes for Shell Eggs" (7 CFR Part 2856). Effective December 26, 1978.

Attachment B - USDA-FSQS, "Advance Notice of Proposed Rulemaking." Dated May 27, 1980.

Attachment C - USDA-AMS, "Revision of Shell Egg Standards and Grades." (Final rule), Effective October 1, 1981. (Reprinted from Federal Register, Vol. 46, No. 149, August 4, 1981, pages 39566-39573.)

A. General Provisions

3 MCAR S 1.0388

This rule sets forth the purpose of these rules governing the candling and grading of shell eggs and the authority by which the commissioner proposes the adoption of the amendments to the rules. The statement of purpose is necessary to clarify for readers and users of the rules the statutory directive to the commissioner to protect the public health and safety as found in Minn. Stat., section 29.27. That same section of the statutes grants the commissioner authority to promulgate rules for this purpose, and Minn. Stat., section 29.23 grants the commissioner power to adopt rules incorporating standards for grades, weight classes and quality fixed by the Secretary of the U.S. Department of Agriculture for the purpose of governing the inter-state trade of Minnesota eggs.

3 MCAR S 1.0389

This rule sets forth the definitions of terms used in the rules which are necessary to clarify meanings for readers and users of the rules. They are reasonable terms because they are terms familiar in the egg industry. In the current rules, only AGR 404 contains definitions, and those have been incorporated under "adulterated" or "inedible" eggs in this rule. Many of the other definitions were incorporated from Minnesota Statutes or from the federal regulations so as to be accessible as references. Two definitions are particularly necessary. The definition for "grading" at "origin" or "destination" is necessary because federal standards are different at the different locations. Previously, eggs were graded in Minnesota on a "destination" basis both at origin (the processing plant) and at destination (the retail store.) This was the practice because these were very few differences in grade requirements for inspection at the plants or at the stores. The federal regulations now include certain requirements for origin grading and more disparate requirements for destination grading. Thus, the definition clarifies the location of the grading and is a necessary cross reference for 3 MCAR S 1.0398 B.

The definition of "dealer" is necessary because it clarifies who are the individuals subject to the provisons of these rules. The current rules contain the term, but this inclusion here clarifies that dealers are either those licensed as food handlers by the Department and subject to the inspection services, training and fees of Minn. Stat. section 29.22 as well as egg producers who sell eggs off their own premises. This second definition for "dealer" is necessary because in the administrative experience of the Department it has become apparent that some producers are selling unsavory and unhealthy eggs to nursing homes in many instances, and thus, the public's health and safety are endangered. It is reasonable that such producers be included as dealers because while Minn. Stat., section 29.235 (1980) provides that a producer may sell Grade C eggs on his premises directly to a household consumer for the consumer's own personal use, and Minn. Stat.

section 29.21 exempts producers who sell eggs produced on a farm occupied and cultivated by them from the definition of "persons" covered by Minn. Stat. sections 29.21 - 29.28, it is the Department's interpretation of legislative intent that these two sections of the law together do not exempt producers who sell eggs off their premises from the requirements of the law. Thus, the Department maintains that producers who sell eggs off their premises should not be exempt from the requirements for dealers outlined in these rules, which are adopted pursuant to that law.

The definitions for "checks", "dirties", "incubator rejects", "leakers", "loss", or "restricted eggs" are necessary as references for readers and users of the rules, and are reasonable because they are the same as definitions found in the federal regulations.

B. Adoption of Federal Standards

3 MCAR S 1.0392

Several proposed amendments set forth in this rule are clarifications of language made by the Office of the Revisor of Statutes, but there are also four substantive changes. The first such change, in D.3., contains a change from two parts of iron per million (PPM) to 5 PPM of iron as an allowable tolerance for the water used in washing eggs. This is a necessary and reasonable change because this is the tolerance permitted under the federal regulations amended in 1978. The state regulation was not changed pursuant to this federal change in 1978 because there were not sufficient differences in other amended federal standards to warrant the state process. Because of more extensive amendments this time, it is necessary and reasonable that it be included. The tolerance of 5 PPM was determined by federal and state authorities to be equally effective in the egg cleaning process, thus the less strict tolerance of 5 PPM was permitted and the public health is unaffected by the change. (Attachment A)

The second substantive change appears in D.5. Submersion of eggs is no longer permitted for washing and a continuous flow of water is required because the shells of the eggs are porous and pathogens in the water may soak through the shells and contaminate the eggs. This change was also made to reflect the change in the federal regulations. The third substantive change in this rule, in D.6., was the elimination of the word "poultry" in the title of the U.S. Department of Agriculture's list of chemical compounds. This change reflects the fact that USDA took the word out of its title for the list. The fourth substantive change appears in D.7. It reduces the lower level of the tolerance for chlorine or its equivalent from 100 PPM to 50 PPM. This change is made because administrative experience revealed that the higher tolerance of chlorine and chlorine equivalents was causing skin rashes and more serious complications in employees of egg processing plants who were especially sensitive to such compounds. The lower level is equally effective against pathogens that might be found on eggs, but it is less detrimental to these handlers of eggs. This change also reflects a change in the federal regulations.

Since these last three proposed amendments reflect changes in the 1981 federal regulations, the justifying statements for them can be found in the federal statement of need and reasonableness, which is attached. (Appendix B)

3 MCAR S 1.0394
3 MCAR S 1.0395

These rules are provided to clarify and cross-reference the federal quality standards for purchase and consumer grades proposed for adoption by the commissioner and stated in 3 MCAR S 1.0398. There are only minor language changes in these two rules made by the Office of the Revisor of Statutes.

3 MCAR S 1.0398 A.1-3., B. and C.

These sections of this rule set forth the standards for quality for shell eggs adopted by the Secretary of the United States Department of Agriculture in October, 1981, for Grades AA, A and B. (Attachment C) These new quality standards include the elimination of Grade C quality eggs and several other weight, tolerance and size changes. The statement of need for these federal changes generated by the USDA Secretary is attached in Appendix A. In general, these changes reflect changes in technical capacity in the egg producing and processing industry. A major change was the distinction between "origin grading" and "destination grading", discussed at 3 MCAR S 1.0389.

It is necessary that Minnesota adopt these federal standards because the state is in the position of being a net exporter of eggs, and in order for Minnesota producers to be able to sell their eggs in other states, the eggs must be able to meet quality standards set by the federal agency which is empowered to provided egg standards for inter-state commerce. Thus, adoption of the federal standards is necessary from the standpoint of the state's inter-state trade in eggs. It is also reasonable to accept these standards in Minnesota so that egg dealers will not be subject to either more or less stringent requirements for the production or processing of eggs than their market competitors in other states. Less stringent requirements might create unfair advantage for Minnesota dealers and more stringent requirements might provide unfair disadvantage to Minnesota dealers. To eliminate the possibility of either advantage or disadvantage to Minnesota dealers, then, it is reasonable to adopt the federal standards.

Further, it is necessary and reasonable that these federal standards become the standards for Minnesota purchase and consumer grades of eggs, as indicated in 3 MCAR SS 1.0394 and 1.0395 so that the egg industry will not have to meet two sets of standards, one each for intra-state and inter-state trade. Such dual standards would provide an undue hardship for industry because of the cost factor involved in meeting different standards for different markets.

Additionally, it would place an additional and impossible administrative burden on the Department if it were required to enforce two different standards. Thus, the federal standards for inter-state trade as proposed for adoption by the commissioner pursuant to Minn. Stat., section 29.23, are also proposed as Minnesota standards for intra-state trade, pursuant to Minnesota Statutes, section 29.27.

3 MCAR S 1.0404

Some of the changes in this rule are clarifications of language made by the Office of the Revisor of Statutes, but there are two substantive changes. The first is the new language that includes Grades AA and B as eggs that can be labeled as "fresh". This addition is necessary to be consistent with the new federal regulations which state that "fresh" must apply to all consumer grades of eggs, including Grades AA, A and B, otherwise the graded eggs cannot be considered as "consumer" grades. The second substantive change is the definition of "fresh" as being "less than 31 days old." This change is also necessary to conform to new federal regulations which define the freshness time frame.

Both these amendments which adopt the federal standards are reasonable because they will facility the movement of Minnesota eggs into inter-state markets. Were different standards to exist, such trade would be hampered and industry processors and shippers would be at a disadvantage with respect to outstate competitors.

C. Adoption of State Standards

3 MCAR S 1.0398 A.4.

This section of the rule is proposed for adoption because no previous federal or state regulation covers these particular cases of egg use in manufacturing or in restaurants, nursing homes, schools or similar organizations which prepare or serve food for human consumption. This provision is necessary because in the Department's administrative experience it has been the case that in certain food preparation establishments temperatures used in food preparation have not been sufficient to eliminate pathogenic organisms which have been present on or in eggs of less than B quality. Thus, serious cases of food poisoning have resulted from meringues or hollandaise sauces prepared with eggs of insufficient quality. For those reasons, this standard is necessary.

The provision is also reasonable because it will not mean undue hardship for such food establishments. Since there is no shortage of eggs in Minnesota, procuring eggs of B quality or better will not be a hardship for food

establishments. Where cost is a factor, in most cases the cost can be absorbed or passed on to consumers who would expect safety in their prepared foods and should be willing to pay for the quality.

3 MCAR S 1.0398 B.

One further note should be added about the proposed adoption of these federal standards for origin and destination grading in Minnesota. The federal standards in previous years had different standards for origin and destination grading but those were never incorporated into Minnesota's rules because the differences were so minor. Because the disparity between the two standards has become great due to these 1981 federal changes, it is necessary to adopt the federal standards for use in Minnesota. At the same time, it is reasonable to adopt state standards similar to the federal ones so that it would not mean undue hardship for industry for the reasons outlined above in 3 MCAR S 1.0398 A. 1.-3., B. and C.

D. Clarification of Procedures and Language

3 MCAR S 1.0390

This rule clarifies the procedures to be used in candling eggs; the only changes were language changes made by the Office of the Revisor of Statutes.

3 MCAR S 1.0391

This rule clarifies the procedures to be used in storing, refrigerating and transporting shell eggs. Proposed amendments are primarily clarifications in language made by the Office of the Revisor of Statutes. One substantive change is that trucks used to transport eggs should be sanitary. This is a necessary provision because eggs are not only temperature sensitive but they are also porous and can easily absorb unclean materials if shipped under insanitary environmental conditions. This is a necessary provision proposed in order to protect the public from contaminated eggs and reasonable because it will not mean undue hardship for shippers to clean their trucks.

3 MCAR S 1.0393

Several proposed amendments set forth in this rule are clarifications of language made by the Office of the Revisor of Statutes, but there are also two substantive changes. The first such change appears in A.8. It was part of the old rule, AGR 396, and is moved to this new place in the rules because "Grade C" no longer exists in the federal or proposed new state standards but the records of dirties and checks will still be required. Thus this part of the old rule has been moved into 3 MCAR S 1.0393, the rule regarding required records.

The second substantive proposed amendment is the elimination of requirements for the content of the bench record or remittance ticket. This is a necessary change because these requirements relate to economic considerations rather than quality standards for shell eggs, and responsibility for audits of these types of records now rests with another division of the Minnesota Department of Agriculture under the Wholesale Produce Dealers Law (Minnesota Statutes, Chapter 27) and thus the provision is no longer necessary nor reasonable in these rules.

3 MCAR S 1.0396

All the proposed amendments in this rule are clarifications of language made by the Office of the Revisor of Statutes.

3 MCAR S 1.0397

All the proposed amendments in this rule are clarifications of language made by the Office of the Revisor of Statutes.

3 MCAR S 1.0399
3 MCAR S 1.0400
3 MCAR S 1.0402

Most of the proposed amendments in these rules are clarifications of language made by the Office of the Revisor of Statutes, but the same substantive change appears in each. The word "person" is changed to "dealer" to cover instances of producers selling eggs off their own premises, as described in this document at 3 MCAR S 1.0389.

3 MCAR S 1.0401

All the proposed amendments in this rule are clarifications of language made by the Office of the Revisor of Statutes.

3 MCAR S 1.0403 A.

Some of the changes in this part of the rule are clarifications of language made by the Office of the Revisor of Statutes, but there are two substantive changes. The first such change was deletion of the reference to the quality controlled Grade AA program of the Department which was repealed in 1981. It is unreasonable to retain references to obsolete programs. The second substantive change is deletion of the reference to the code date guaranteeing grade when eggs are properly handled. The statement is ambiguous and meaningless. The temperature at which eggs are handled and refrigerated and the code date do not guarantee grade. Grades are determined on the basis of quality tolerances for air cells, blood spots, checks, dirties, leakers or loss eggs at origin or destination rather than on the basis of date or temperature.

Because the statement of "guarantee" is meaningless, it is unreasonable to retain it in the rules.

3 MCAR S 1.0403 B.

This entire section of this rule is new language. It is necessary to have language clarifying the two types of dates, the open or freshness date and the Julian date, for those who process and package eggs so that they understand the requirements for properly labeling the cartons in which eggs are packaged. It is also necessary from the standpoint of consumers that the freshness date, preceded by the words "sell by" or "use by", appear on the egg carton so that the consumer can be assured that the eggs being purchased are of the desired quality, freshness and longevity.

It is reasonable that these dates be included on the egg cartons because it does not create any hardship for packers of eggs to put dates easily understood by consumers on packages, and further, it enhances their reputation for providing good products when eggs are fairly labeled. Further, it is both necessary and reasonable from the standpoint of public health that the open or freshness date of eggs appear on their cartons so that consumers or other users of eggs such as manufacturers do not use eggs that are unfit for human consumption.

E. Repealed Rules

Two rules are proposed to be repealed in this revision of the rules also: AGR 402 and AGR 404.

Repeal of AGR 402 is proposed because the statute which authorized it originally Laws of 1957, Chapter 819, was repealed in 1973. It is unreasonable to retain rules whose authorizing statutes have been repealed.

Repeal of AGR 404 is proposed because the definitions were included under 3 MCAR S 1.0389 J., "inedible eggs."

ATTACHMENT A

REGULATIONS GOVERNING THE GRADING OF SHELL EGGS AND UNITED STATES STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

(7 CFR Part 2856)

EFFECTIVE DECEMBER 26, 1978

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND QUALITY SERVICE
POULTRY AND DAIRY QUALITY DIVISION
WASHINGTON, D.C. 20250

FOREWORD

These regulations have been developed and are promulgated pursuant to the authorities contained in the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.). The voluntary USDA shell egg grading program operates under these regulations. The voluntary program provides for interested parties a national grading service based on official U.S. standards, grades, and weight classes, and minimum sanitary and operating requirements. The costs involved in furnishing this grading program are paid by the user of the service.

The grading program and the regulations establish a basis for quality and price relationship and enable more orderly marketing. Consumers can purchase officially graded product with the confidence of receiving quality in accordance with the official identification.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND QUALITY SERVICE
POULTRY AND DAIRY QUALITY DIVISION

REGULATIONS GOVERNING THE GRADING OF SHELL EGGS AND UNITED STATES STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

(7 CFR Part 2856)

Washington, D.C. 20250

Title 7 — AGRICULTURE

Chapter XXVIII — Food Safety and Quality Service, Department of Agriculture

SUBCHAPTER C — REGULATIONS AND STANDARDS UNDER THE AGRICULTURAL MARKETING ACT OF 1946

PART 2856 — GRADING OF SHELL EGGS AND UNITED STATES STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

The regulations hereinafter promulgated are issued pursuant to authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U.S.C. 1621 et seq.).

The complete regulations with all amendments to date are as follows:

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AUTHORITY: Sec. 205, 60 Stat. 1090, as amended; 7 U.S.C. 1624.

Subpart A—Grading of Shell Eggs

DEFINITIONS

§ 2856.1 Meaning of words and terms defined.

For the purpose of the regulations in this part, words in the singular shall be deemed to import the plural and vice versa, as the case may demand, and unless the context otherwise requires, the following terms shall be construed, respectively, as follows:

"Act" means the applicable provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U.S.C. 1621 et seq.), or any other act of Congress conferring like authority.

"Administrator" means the Administrator of the Food Safety and Quality Service of the Department or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated the authority to act in his stead.

"Applicant" means an interested party who requests any grading service, appeal grading, or regrading with respect to any product.

"Cage mark" means any stain-type mark caused by an egg coming in contact with a material that imparts a rusty or blackish appearance to the shell.

"Case" means, when referring to containers, an egg case, as used in commercial practice in the United States, holding 30 dozens of shell eggs.

"Chief of the Grading Branch" means the Chief of the Poultry Grading Branch of the Poultry and Dairy Quality Division, Food Safety and Quality Service."

"Class" means any subdivision of a product based on essential physical characteristics that differentiate between major groups of the same kind, species, or method of processing.

"Condition" means any condition (including, but not being limited to, the state of preservation, cleanliness, soundness, wholesomeness, or fitness for human food) of any product which affects its merchantability.

"Department" means the United States Department of Agriculture.

"Eggs of current production" means shell eggs which 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. "Refrigerator or storage eggs" means shell eggs which have been held under refrigeration for a period of more than 30 days.

"Grader" means any employee of the Department authorized by the Secretary, or any other person to whom a license has been issued by the Secretary, to investigate and certify, in accordance with the act and this part, to shippers of products and other interested parties the class, quality, quantity, and condition of such products.

"Grading" or "grading service" means: (1) The act whereby a grader determines, according to the regulations in this part, the class, quality, quantity, or condition of any product by examining each unit thereof or each unit of the representative sample thereof drawn by a grader and issues a grading certificate with respect thereto, except that with respect to grading service performed on a resident basis the issuance of a grading certificate shall be pursuant to a request therefor by the applicant or the Service; (2) the act whereby the grader identifies, according to the regulations in this part, the graded product; (3) continuous supervision, in an official plant, of the handling or packaging of any product; and (4) any regrading or any appeal grading of a previously graded product.

"Grading certificate" means a statement, either written or printed, issued by a grader pursuant to the act and this part, relative to the class, quantity, quality, or condition of products.

"Holiday" or "legal holiday" shall mean the legal public holidays specified by the Congress in paragraph (a) of section 6103, title 5, of the United States Code.

"Interested party" means any person financially interested in a transaction involving any grading, appeal grading, or regrading of any product.

"National supervisor" means (1) the officer in charge of the shell egg grading service of the Food Safety and Quality Service, and (2) such other employees of the Service as may be designated by him.

"Nest run eggs" means eggs which are packed as they come from the production facilities without having been washed, sized and/or candled for quality, with the exception that some Checks, Dirties, or other obvious undergrades may have been removed.

"Office of grading" means the office of any grader.

"Official plant" means any plant in which the facilities and methods of operation therein have been found by the Administrator to be suitable and adequate for grading service in accordance with this part and in which grading service is carried on.

"Origin grading" is a grading which is performed other than where the eggs are retailed or consumed.

"Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

"Potable water" means water that has been approved by the State health authority or agency or laboratory acceptable to the Administrator as safe for drinking and suitable for food processing.

"Product" or "products" means shell eggs of the domesticated chicken.

"Quality" means the inherent properties of any product which determine its relative degree of excellence.

"Quality assurance inspector" means any designated company employee authorized by the Secretary to supervise the labeling, dating, and lotting of officially graded shell eggs and to assure that such product is packaged under sanitary conditions, graded by authorized personnel, and maintained under proper inventory control until released by an employee of the Department.

"Regional director" means any employee of the Department in charge of the shell egg grading service in a designated geographical area.

"Regulations" means the provisions in this part.

"Sampling" means the act of taking samples of any product for grading.

"Secretary" means the Secretary of the Department or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

"Service" means the Food Safety and Quality Service of the Department.

"Shell eggs" means shell eggs of domesticated chickens.

"Shell protected" means eggs which have had a protective covering such as oil applied to the shell surface. The product used shall be acceptable to the Food and Drug Administration.

§ 2856.2 Designation of official certificates, memoranda, marks, other identifications and devices for purposes of the Agricultural Marketing Act.

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended by Pub. L. 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed in this section shall have the respective meanings specified:

(a) "Official certificate" means any form of certification, either written or printed, used under this part to certify with respect to the sampling, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

(b) "Official memorandum" means any initial record of findings made by an authorized person in the process of

grading or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

(c) "Official mark" means the grade mark and any other mark, or any variations in such marks approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded, or indicating the appropriate U.S. grade or condition of the product, or for the purpose of maintaining the identity of products graded under this part, including but not limited to, those set forth in § 2856.36.

(d) "Official identification" means any United States (U.S.) standard designation of class, grade, quality, size, quantity, or condition specified in this part or any symbol, stamp, label or seal indicating that the product has been officially graded and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

(e) "Official device" means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Administrator for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

Administration

§ 2856.3 Administration.

(a) The Administrator shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in the enforcement or administration of the provisions of the Act and this part. The Administrator is authorized to waive for limited periods any particular provisions of the regulations in this part to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements and at the same time to determine full compliance with the spirit and intent of the regulations in this part. The Food Safety and Quality Service and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this part.

(b) The conduct of all services and the licensing of graders under these regulations shall be accomplished without discrimination as to race, color, religion, sex, or national origin.

General

§ 2856.4 Basis of grading service.

(a) Any grading service in accordance with the regulations in this part shall be for class, quality, quantity, or condition or any combination thereof. Grading service with respect to the determination of the quality of products shall be on the basis of the "United States Standards, Grades, and Weight Classes" as contained in Subpart C of this part. However, grading service may be rendered with respect to products which are bought and sold on the basis of institutional contract specifications or specifications of the applicant and such service, when approved by the Administrator, shall be rendered on the basis of such specifications. The supervision of packaging shall be in accordance with such instructions as may be approved or issued by the Administrator.

(b) Whenever grading service is performed on a representative sample basis, such sample shall be drawn and consist of not less than the minimum number of cases as indicated in the following table. A minimum of one hundred eggs shall be examined per sample case. For lots which consist of less than 1 case, a minimum of 50 eggs shall be examined. If the lot consists of less than 50 eggs, all eggs will be examined.

Minimum Number of Cases Comprising a Representative Sample

Cases in lot	*Cases in sample*
1 case	1
2 to 10, inclusive	2
11 to 25, inclusive	3
26 to 50, inclusive	4
51 to 100, inclusive	5
101 to 200, inclusive	8
201 to 300, inclusive	11
301 to 400, inclusive	13
401 to 500, inclusive	14
501 to 600, inclusive	16

For each additional 50 cases, or fraction thereof, in excess of 600 cases, one additional case shall be included in the sample.

§ 2856.5 Accessibility and condition of product.

Each product for which grading service is requested shall be so conditioned and placed as to permit a proper determination of the class, quality, quantity, or condition of such product.

§ 2856.6 Supervision.

All grading service shall be subject to supervision at all times by the applicable State supervisor, regional director and national supervisor. Such service shall be rendered where the facilities and conditions are satisfactory for the conduct of the service and the requisite graders are available. Whenever the supervisor of a grader has evidence that such grader incorrectly graded a product, such supervisor shall take such action as is necessary to correct the grading and to cause any improper grade marks which appear on the product or the containers thereof to be corrected prior to shipment of the product from the place of initial grading.

§ 2856.8 Other applicable regulations.

Compliance with the regulations in this part shall not excuse failure to comply with any other Federal, or any State, or municipal applicable laws or regulations.

Licensed Graders

§ 2856.10 Who may be licensed.

(a) Except as otherwise provided in paragraph (c) of this section, any person who is a Federal or State employee, the employee of a local jurisdiction, or the employee of a cooperating agency possessing proper qualifications as determined by an examination for competency and who is to perform grading service under this part, may be licensed by the Secretary as a grader.

(b) All licenses issued by the Secretary shall be countersigned by the officer in charge of the poultry grading service of the Food Safety and Quality Service or any other designated officer of such Service.

(c) No person may be licensed to grade or sample any product in which he is financially interested.

§ 2856.11 Authorization to perform limited grading services.

Any person who is employed by any official plant and possesses proper qualifications, as determined by the Administrator, may be authorized to candle and grade eggs on the basis of the "U.S. Standards for Quality of Individual Shell Eggs," with respect to eggs purchased from producers or eggs to be packaged with official identification. In addition, such authorization may be granted to any qualified person to act as a "quality assurance inspector" in the packaging and grade labeling of products. No person to whom such authorization is granted shall have authority to issue any grading certificates, grading memoranda, or other official documents; and all eggs which are graded by any such person shall thereafter be check graded by a grader.

§ 2856.12 Suspension of license; revocation.

Pending final action by the Secretary, any person authorized to countersign a license to perform grading

service may, whenever he deems such action necessary to assure that any grading service is properly performed, suspend any license to perform grading service issued pursuant to this part, by giving notice of such suspension to the respective licensee, accompanied by a statement of the reasons therefor. Within 7 days after the receipt of the aforesaid notice and statement of reasons, the licensee may file an appeal in writing, with the Secretary, supported by any argument or evidence that he may wish to offer as to why his license should not be further suspended or revoked. After the expiration of the aforesaid 7-day period and consideration of such argument and evidence, the Secretary will take such action as he deems appropriate with respect to such suspension or revocation. When no appeal is filed within the prescribed 7 days, the license to perform grading service is revoked.

§ 2856.13 Cancellation of license.

Upon termination of his services as a grader, each licensee shall surrender his license immediately for cancellation.

§ 2856.14 Surrender of license.

Each license which is canceled, suspended, or has expired shall immediately be surrendered by the licensee to the office of grading serving the area in which he is located.

§ 2856.15 Political activity.

All graders are forbidden during the period of their respective appointments or licenses, to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including, but not being limited to, temporary and cooperative employees, and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

§ 2856.16 Identification.

All graders shall each have in possession at all times, and present upon request, while on duty, the means of identification furnished by the Department to such person.

§ 2856.17 Facilities and equipment for graders.

Facilities and equipment to be furnished by the applicant for use of graders in performing service on a resident basis shall include (when deemed necessary) the following:

(a)(1) An accurate metal stem thermometer;

(2) Scales to weigh individual eggs, cartons of eggs, and bulk eggs. Test weights for each type scale used;

(3) An acceptable candling light.

(b) Furnished office space, a desk (equipped with a satisfactory locking device), and lockers or cabinets suitable for the protection and storage of official stamps and supplies. Such space and equipment must meet the approval of the National Supervisor.

(c) For eggs packed under §§ 2856.42 and 2856.43, an approved room or separate area for the breakout, adequate lighting, facilities for washing equipment, a breakout table, and a micrometer.

§ 2856.18 Schedule of operation of official plants.

Grading operating schedules for services performed pursuant to §§ 2856.52 and 2856.54 shall be requested in writing and be approved by the Administrator. Normal operating schedules for a full week consist of a continuous 8-hour period per day (excluding not to exceed 1 hour for lunch), 5 consecutive days per week, within the period of Monday through Saturday, for each shift required. Less than 8-hour schedules may be requested and will be approved if a grader is available. Sundays may not be approved in any tour of duty. Clock hours of daily operations need not be specified in the request, although as a condition of continued approval, the hours of operation shall be reasonably uniform from day to day. Graders are to be notified by management 1 day in advance of any change in the hours grading service is requested.

Application for Grading

§ 2856.20 Who may obtain grading service.

An application for grading service may be made by any interested person, including, but not being limited to, the United States, any State, county, municipality, or common carrier, and any authorized agent of the foregoing.

§ 2856.21 How application for service may be made; conditions of service.

(a) *Noncontinuous grading service on a fee basis.* An application for any noncontinuous grading service on a fee basis may be made in any office of grading, or with any grader at or nearest the place where the service is desired. Such application may be made orally (in person or by telephone), in writing, or by telegraph. If the application for grading service is made orally, the office of grading or the grader with whom such application is made, or the Administrator, may require that the application be confirmed in writing.

(b) *Continuous grading service on a resident basis or continuous grading service on a nonresident basis.* An application for continuous grading service on a resident basis or for continuous grading service on a nonresident basis must be made in writing on forms approved by the Administrator and filed with the Administrator. Such forms may be obtained at the national, regional, or State grading office. In making application, the applicant agrees to comply with the terms and conditions of the regulations (including, but not being limited to, such instructions governing grading of products as may be issued from time to time by the Administrator). No member of or Delegate to Congress or Resident Commissioner shall be admitted to any benefit that may arise from such service unless derived through service rendered a corporation for its general benefit.

§ 2856.22 Filing of application.

An application for grading or sampling of a specified lot of any product shall be regarded as filed only when made pursuant to this part.

§ 2856.23 Form of application.

Each application for grading or sampling a specified lot of any product shall include such information as may be required by the Administrator in regard to the product and the premises where such product is to be graded or sampled.

§ 2856.24 When application may be rejected.

An application for grading service may be rejected by the Administrator (a) whenever the applicant fails to meet the requirements of the regulations prescribing the conditions under which the service is made available; (b) whenever the product is owned by or located on the premises of a person currently denied the benefits of the act; (c) where any individual holding office or a responsible position with or having a substantial financial interest or share in the applicant is currently denied the benefits of the act or was responsible in whole or in part for the current denial of the benefits of the act to any person; (d) where the Administrator determines that the application is an attempt on the part of a person currently denied the benefits of the act to obtain grading services; (e) whenever the applicant fails to bring the plant facilities, and operating procedures into compliance with the regulations within a reasonable period of time; (f) notwithstanding any prior approval whenever, before

inauguration of service, the applicant fails to fulfill commitments concerning the inauguration of the service; (g) when it appears that to perform the services specified in this part would not be to the best interests of the public welfare or of the Government; or (h) when it appears to the Administrator that prior commitments of the Department necessitate rejection of the application. Each such applicant shall be promptly notified by registered mail of the reasons for the rejection. A written petition for reconsideration of such rejection may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after the receipt of notice of the rejection. Such petition shall state specifically the errors alleged to have been made by the Administrator in rejecting the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant by registered mail of the reasons for the rejection thereof.

§ 2856.25 When application may be withdrawn.

An application for grading service may be withdrawn by the applicant at any time before the service is performed upon payment, by the applicant, of all expenses incurred by the Service in connection with such application.

§ 2856.26 Authority of applicant.

Proof of the authority of any person applying for any grading service may be required at the discretion of the Administrator.

§ 2856.27 Order of service.

Grading service shall be performed, insofar as practicable, in the order in which applications therefor are made except that precedence may be given to any application for an appeal grading.

VIOLATIONS

§ 2856.30 Report of violations.

Each grader, shall report in the manner prescribed by the Administrator, all violations and noncompliances under the Act and this part of which such grader, has knowledge.

DENIAL OF SERVICE

§ 2856.31 Debarment.

(a) The following acts or practices or the causing thereof may be deemed sufficient cause for the debarment by the Administrator, of any person, including any agents, officers, subsidiaries or affiliates of such person, from all benefits of the act for a specific period. The rules of practice governing withdrawal of grading services in formal adjudicatory proceedings instituted by the Secretary (7 CFR, Part 1, Subpart H) shall be applicable to such debarment action.

(1) *Misrepresentation, deceptive, or fraudulent act or practice.* Any wilful misrepresentation or any deceptive or fraudulent act or practice found to be made or committed by any person in connection with:

(i) The making or filing of an application for any grading service or appeal service;

(ii) The making of the product accessible for sampling or grading;

(iii) The making, issuing, or using or attempting to issue or use any grading certificate, symbol, stamp, label, seal, or identification authorized pursuant to the regulations in this part;

(iv) The use of the terms "United States" or "U.S." in conjunction with the grade of the product;

(v) The use of any of the aforesaid terms or any official stamp, symbol, label, seal, or identification in the labeling or advertising of any product; or

(vi) The use of the terms "Government Graded," "Federal-State Graded" or terms of similar import in the labeling or advertising of any product.

(2) *Use of facsimile forms.* Using or attempting to use a form which simulates in whole or in part any certificate, symbol, stamp, label, seal or identification authorized to be issued or used under the regulations in this part.

(3) *Willful violation of the regulations.* Any willful violation of the regulations in this part or the act.

(4) *Interfering with a grader or employee of the Service.* Any interference with or obstruction or any attempted interference or obstruction of or assault upon any grader, licensee, or employee of the Service in the performance of his duties. The giving or offering, directly or indirectly, of any money, loan, gift, or anything of value to an employee of the Service or the making or offering of any contribution to or in any way supplementing the salary, compensation or expenses of an employee of the Service or the offering or entering into a private contract or agreement with an employee of the Service for any services to be rendered while employed by the Service.

(5) *Misleading labeling.* The use of the terms "Government Graded", "Federal-State Graded" or terms of similar import in the labeling or advertising of any product without stating in the label or advertisement the U.S. grade of the product as determined by an authorized grader.

(6) *Miscellaneous.* The existence of any of the conditions set forth in § 2856.24 constituting the basis for the rejection of an application for grading service.

§ 2856.32 Retention authorities.

A grader may use retention tags or other devices and methods as approved by the Administrator for the identification and control of shell eggs which are not in compliance with the regulations or are held for further examination and for any equipment, utensils, rooms or compartments which are found unclean or otherwise in violation of the regulations. Any such item shall not be released until in compliance with the regulations and retention identification shall not be removed by anyone other than a grader.

IDENTIFYING AND MARKING PRODUCTS

§ 2856.35 Authority to use, and approval of official identification.

(a) *Authority to use official identification.* Authority to officially identify product graded pursuant to this part is granted only to applicants who make the services of a grader or quality assurance inspector available for use in accordance with this part. Packaging materials bearing official identification marks shall be approved pursuant to §§ 2856.35 to 2856.39, inclusive, and shall be used only for the purpose for which approved and prescribed by the Administrator. Any unauthorized use or disposition of approved labels or packaging materials which bear any official identification may result in cancellation of the approval and denial of the use of labels or packaging materials bearing official identification or denial of the benefits of the Act pursuant to the provisions of § 2856.31.

(b) *Approval of official identification.* No label, container, or packaging material which bears official identification may contain any statement that is false or misleading. No label, container, or packaging material bearing official identification may be printed or prepared for use until the printers' or other final proof has been approved by the Administrator in accordance with the regulations in this part, the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, and the regulations promulgated under these acts. The use of finished labels must be approved as prescribed by the Administrator. A grader may apply official identification stamps to shipping containers if they do not bear any statement that is false or misleading. If the label is printed or otherwise applied directly to the container, the principal display panels of such con-

tainer shall for this purpose be considered as the label. The label shall contain the name, address, and ZIP Code of the packer or distributor of the product, the name of the product, a statement of the net contents of the container, and the U.S. grademark.

(c) *Nutrition labeling.* Nutrition information may be included on the label of consumer packaged shell eggs, providing, such labeling complies with the provisions of Title 21, Chapter I, Part 1, Regulations for the Enforcement of the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act. Nutrition labeling is required when a nutritional claim or information is presented on the labeling of consumer packages. Labeling will not be approved by the Department without comments from the Food and Drug Administration regarding nutritional claims and test data.

§ 2856.36 Information required on and form of grademark.

(a) *Information required on grademark.* (1) Except as otherwise authorized, each grademark provided for in this section shall conspicuously and legibly indicate the letters "USDA," and the U.S. grade of the product it identifies, such as "A Grade" (illustrated in Figure 2). The letters "USDA" shall be printed in a light color on and surrounded by a dark field, and the U.S. grade printed in a dark color on a light field.

(2) The size or weight class of the product such as "Large" and such terms as "Federal-State Graded" or words of similar import may be shown within the grademark (illustrated in Figure 3). This information shall be printed in a dark color on a light field. However, such terms as "Federal-State Graded" need not be shown. The size or weight class of the product may be omitted from the grademark, provided, it appears prominently on the main panel of the carton.

(3) The plant number of the official plant preceded by the letter "P" must be shown on each carton or packaging material.

(b) *Form of official identification symbol and grademark.* (1) The shield set forth in Figure 1 containing the letters "USDA" shall be the official identification symbol for purposes of this part and when used, imitated, or simulated in any manner in connection with shell eggs, shall be deemed to constitute a representation that the product has been officially graded for the purpose of § 2856.2.



FIGURE 1

(2) Except as otherwise authorized, the grademark permitted to be used to officially identify cartons of shell eggs which are graded pursuant to the regulations in this part shall be contained in a shield and in the form and design indicated in Figures 2, 3, and 6 of this section. The shield shall be of sufficient size so that the print and other information contained therein is distinctly legible and in approximately the same proportion and size as shown in Figures 2 and 3. The grademark shall be printed on the carton or on a tape used to seal the carton.



FIGURE 2



FIGURE 3

(3) Fresh Fancy Quality or AA grademark. Eggs which are packaged pursuant to § 2856.42 and are to be grade marked shall be labeled with one of the following grademarks:



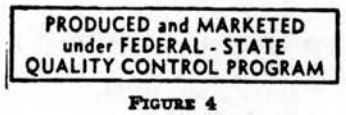

FIGURE 4





FIGURE 5



FIGURE 6

(4) Alternate Grade A mark: Eggs which are packaged pursuant to § 2856.43 and are to be grade marked shall be labeled with the grademark shown in Figures 2 and 3 of paragraph (b)(2) of this section, or with the following grademark:



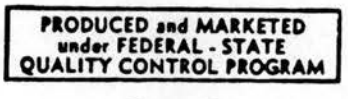

FIGURE 7

§ 2856.37 Lot marking of officially identified product.

Each carton identified with the grade marks shown in Figures 2, 3, or 6 of § 2856.36 shall be legibly lot numbered on either the carton or the tape used to seal the carton. The lot number shall be the consecutive day of the year on which the eggs were

packed (e.g., 132), except other l numbering systems may be used when submitted in writing and approved by the Administrator.

§ 2856.38 [Reserved]

PREREQUISITES TO PACKAGING SHELL EGGS IDENTIFIED WITH CONSUMER GRADEMARKS

§ 2856.39 Quality assurance inspector required.

The official identification of any graded product as provided in §§ 2856.35 to 2856.43, inclusive, shall be done only under the supervision of a grader or quality assurance inspector. The grader or quality assurance inspector shall have supervision over the use and handling of all material bearing any official identification.

§ 2856.40 Grading requirements of shell eggs identified with consumer grademarks.

(a) Shell eggs to be identified with the marks illustrated in Figures 2, 3, and 6 of § 2856.36 must be individually graded by a grader or by authorized personnel pursuant to § 2856.11 and thereafter check graded by a grader.

(b) Shell eggs not graded in accordance with paragraph (a) of this section may be officially graded on a sample basis and the shipping containers may be identified with grademarks which contain the words "Sample Graded" and which are approved by the Administrator.

(c) Shell eggs which are to bear the U.S. consumer grade mark shall be packed only from eggs of current production. They shall not possess any undesirable odors or flavors.

§ 2856.41 Check grading officially identified product.

Officially identified shell eggs packed or received in an official plant may be subject to final check grading prior to their shipment. Such product found not to be in compliance with the assigned official grade shall be placed under a retention tag until it is regraded to comply with the grade assigned or until the official identification is removed.

§ 2856.42 Requirements for eggs packaged under Fresh Fancy Quality grademark or AA grademark as shown in Figures 4 and 5 of § 2856.36.

(a) *Minimum requirements of procurement and distribution program.* Each packing station or plant must have a satisfactory procurement and distribution program including, but not being limited to, the following requirements at the farm and retail store level as applicable:

(1) Eggs from each flock shall be packed separately and the shipping cases marked so as to facilitate segregation at the packing station. A flock consists of birds not varying in age by more than 60 days. In operations with a continuous replacement procedure, such as in cage operations, birds shall be grouped together in accordance with the above requirement.

(2) Eggs should be gathered from the nest at least twice, and preferably, three times a day.

(3) Eggs which require cleaning should be cleaned in accordance with the applicable provisions of § 2856.76. Eggs may be treated by oil dipping, oil spraying, or oil-emulsion spraying: *Provided*, That methods used are such as will not cause objectionable cloudiness in the whites. Oil treating and cleaning operations must be in compliance with the sanitary requirements as provided in § 2856.76.

(4) Eggs shall be cooled promptly after gathering to 60° F. or below and held at a reasonable constant temperature not to exceed 60° F. and at a relative humidity of approximately 70 percent. Notwithstanding the foregoing, the temperature of the eggs may rise to 70° F. during washing and packaging operations provided the eggs are moved promptly to a cooler or transported at a temperature of 60° F. or below.

(5) Eggs shall be transported and handled under such conditions as will prevent sweating and at a temperature of 60° F. or below.

(6) Periodic checks to determine the adequacy of the production programs shall be made by governmentally employed graders.

(b) *Minimum requirements at packaging plant.* (1) The quality factor of albumen firmness shall be determined by the broken-out score, measured in Haugh units, and the condition of the yolk shall be observed during such testing. The breakout test shall be made every other week unless the breakout records indicate a variation in individual eggs or averages beyond that normally expected for this program, in which case the breakout shall be made weekly. The test shall be accomplished at the assembly plant or at the farm in the event the eggs go directly from the farm to the store. Eggs which do not meet the requirements of AA quality with respect to shell texture or shape shall not be selected as part of any sample that is to be broken out and scored. Sampling, breakout testing, and maintenance of records of breakout test shall be done by or under the immediate supervision of a grader.

(2) The internal temperature of the eggs shall not be lower than 45° F. or h[illegible]er than 60° F. at the time of making the breakout test. Eggs shall be placed under refrigeration at a temperature not to exceed 60° F. and a relative humidity of approximately 70 percent promptly after packaging.

(3) A flock may be eligible for entry under the program when a sample of 25 eggs drawn at random averages 76 Haugh units or higher; or when two samples of 25 eggs each drawn at random (one sample per week for two consecutive weeks) each averages 74 Haugh units or higher. Notwithstanding the foregoing, a flock shall not be eligible if any sample contains more than one egg measuring less than 60 Haugh units, and the yolk of all eggs in the sample shall have a well-rounded appearance with a reasonably uniform color.

(4) A flock may remain on the program: *Provided*, That (i) a moving average of 74 Haugh units or higher is maintained; (ii) that the yolks of all eggs have a well-rounded appearance with a reasonably uniform color; and (iii) that not more than one egg in any sample of 10 eggs or more measures less than 60 Haugh units.

(5) The biweekly or weekly average shall be computed by averaging the results obtained when testing eggs in accordance with either paragraph (b)(5)(i) or (ii) of this section. Samples shall be drawn at random from each flock, from a single shipment, every 2 weeks (or weekly when required).

(i) A sample of 10 eggs shall be tested when the moving average is below 80 Haugh units and not more than one egg in the sample shall measure less than 60 Haugh units.

(ii) A sample of 5 eggs may be tested when the moving average is 80 Haugh units or above and the sample contains no eggs which measure less than 60 Haugh units. If only one egg measures less than 60 Haugh units, an additional 5 eggs shall be tested. If this second 5-egg sample contains no eggs below 60 Haugh units, the average of the 10 eggs shall be used in determining the biweekly or weekly average.

(6) The moving average shall be computed by averaging the results of the latest 2 biweekly or 4 weekly (when required) Haugh unit entries of a flock.

(7) Any flock which has been on the program and is excluded for failure to meet the requirements may be reinstated by the same procedures used to originally enter a flock on the program.

(8) Eggs with clean, unbroken, practically normal shells from flocks which meet the provisions of this section may be packaged and officially labeled as Fresh Fancy Quality or U.S. Consumer Grade AA after the removal of eggs containing blood and meat

spots and loss eggs.

(9) Packages or sealing tapes shall bear in distinctly legible form a date, stated as the "month" and "day," or the number of the "month" and "day" (i.e., 4-3), preceded by the letters "EXP." or a statement such as "Not To Be Sold After." The expiration date shall not exceed 10 days from the date the eggs are packed, excluding the day of pack. The eggs must be packed within 6 days from the time they are received at the plant (not counting the day received), or that shipment must be tested again for Haugh units and other factors to determine their eligibility for packing. Notwithstanding the foregoing, other systems of dating may be approved which accomplish the purposes of this paragraph, providing application for such a system is made in writing by the applicant and concurred in by the Administrator.

(10) Graders shall examine samples of packaged product in accordance with the provisions of § 2856.4 or as determined by the National supervisor. A tolerance of 15 percent is permitted in eggs that are of B quality with respect to shell. Within the 15 percent tolerance, 5 percent in any combination may be C quality due to shell, or meat or blood spots and Checks. In addition, 0.30 percent may be Leakers and Loss (due to meat or blood spots) in any combination. No Dirties or Loss other than as specified are permitted.

§ 2856.43 Requirements for eggs packaged under the U.S. Grade A mark as shown in Figure 7 of § 2856.36.

Eggs packaged with the grade label designation specified in Figure 7 of § 2856.36 shall meet all of the provisions of § 2856.42 except for the following:

(a) A flock shall consist of birds located on the same farm and managed under identical supervision.

(b) A flock may be eligible for entry under the program when a sample of 25 eggs drawn at random averages 64 Haugh units or higher; or when two samples of 25 eggs each drawn at random (one sample per week for two consecutive weeks) each averages 62 Haugh units or higher. Notwithstanding the foregoing, a flock shall not be eligible if any sample contains more than four eggs measuring less than 60 Haugh units, and the yolk of all eggs in the sample shall have a well-rounded appearance with a reasonably uniform color.

(c) A flock may remain on the program: *Provided*, That (1) a moving average of 62 Haugh units or higher is maintained; (2) the yolks of all eggs have a well-rounded appearance with a reasonably uniform color; and (3) not more than two eggs in any sample of 10 eggs measure less than 60 Haugh units.

(d) The biweekly or weekly average shall be computed by averaging the results obtained by testing 10 eggs from each flock every other week (or weekly when required). Samples shall be drawn at random every other week (or weekly when required) from each flock from a single shipment. Notwithstanding the foregoing, 5 eggs may be used as the sample size when the moving average is such that the flock would qualify under the provisions of § 2856.42.

Fees and Charges

§ 2856.45 Payment for fees and charges.

(a) Fees and charges for any grading service shall be paid by the interested party making the application for such grading service, in accordance with the applicable provisions of this section and §§ 2856.46 to 2856.54, both inclusive; and, if so required by the grader, such fees and charges shall be paid in advance.

(b) Fees and charges for any grading service shall, unless otherwise required pursuant to paragraph (c) of this section, be paid by check, draft, or money order payable to the Food Safety and Quality Service and remitted promptly to the Service.

(c) Fees and charges for any grading service under a cooperative agreement with any State or person shall be paid in accordance with the terms of such cooperative agreement.

§ 2856.46 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service (other than for an appeal grading) performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $14.72 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sunday, or legal holidays shall be charged for at the rate of $19.44 per hour. Information on legal holidays is available from the Supervisor.

§ 2856.47 Fees for appeal grading or review of a grader's decision.

(a) The fee to be charged for any appeal grading shall be based on the hourly rates as specified in § 2856.46(b) or (c). If the result of the appeal grading discloses that a material error was made in the original grading, no fee will be charged.

(b) No fee shall be charged for the appeal under § 2856.61(a) of a grader's decision unless special travel was necessary to perform the appeal review and the grader's decision was upheld on the appeal. In such cases, the fee shall be based on the hourly rates as specified in § 2856.46 (b) or (c).

§ 2856.48 Fees for additional copies of grading certificates.

Additional copies of any grading certificates, other than those provided for in § 2856.57, may be supplied to any interested party upon payment of a fee of $2.00 for each set of five or fewer copies.

§ 2856.49 Travel expenses and other charges.

Charges are to be made to cover the cost of travel and other expenses incurred by the service in connection with rendering grading service. Such charges shall include the cost of transportation, per diem, and any other expenses. Expenses are to be charged on an appeal certificate regardless of the grading results. The minimum expense charge shall be $.50 per certificate.

§ 2856.52 Continuous grading performed on a resident basis.

Fees to be charged and collected for any grading service, other than for an appeal grading, on a resident grading basis, shall be those provided in this section. The fees to be charged for any appeal grading shall be as provided in § 2856.47.

(a) *Charges.* The charges for the grading of shell eggs shall be paid by the applicant for the service and shall include items listed in this section as are applicable. Payment for the full cost of the grading service rendered to the applicant shall be made by the applicant to Food Safety and Quality Service, U.S. Department of Agriculture (hereinafter referred to as "FSQS"). Such full costs shall comprise such of the items listed in this section as are due and included in the bill or bills covering the period or periods during which the grading service was rendered. Bills will be rendered by the 10th day following the end of the period in which the service was rendered and are payable upon receipt.

(1) An inauguration charge of $200 will be made at the time an application for service is signed except when the application is required because of a change in name or ownership. If service is not installed within 6 months from the date the application is filed, or if service is inactive due to an approved request for removal of a grader(s) for a period of 6 months, the

application will be considered terminated but a new application may be filed at any time. In addition there will be a charge of $300 if the application is terminated at the request of the applicant for reasons other than for a change in location, within 12 months from the date of the inauguration of service.

(2) A charge for the salary and other costs, as specified in this subparagraph, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by FSQS to perform grading service for other than the applicant. Base salary rates will be determined on a national average for all official plants operating in States under a Federal Trust Fund Agreement where Federal graders or a combination of Federal and State graders are used, by averaging the salary rates paid to each full-time Federal or State grader assigned to such plants. There will be two base salary rates—one for grading service performed at the GS-7 level, and one for grading service performed at the GS-9 level. Charges to plants are as follows:

(i) For all regular hours of work scheduled and approved as an established tour of duty for a plant, the regular rate charge will be made. The regular rate charge will be determined by adding an amount to the base salary rate to cover the costs to FSQS for such items as the Employer's Tax imposed under the U.S. Internal Revenue Code (26 U.S.C.) for Old Age and Survivor's Benefits under the Social Security System, retirement benefits, group life insurance, severance pay, sick leave, annual leave, additional salary and travel costs for relief grading service, accident payments, certain moving costs, and related servicing costs.

(ii) All hours worked by an assigned grader or another grader in excess of the approved tour of duty, or worked on a nonscheduled workday, or actually worked on a holiday in excess of the tour of duty, will be considered as overtime. The charge for such overtime will be 150 percent of the grader's base salary rate.

(iii) For work performed on a holiday which is within the established tour of duty approved for a plant, the added charge will be the same as the grader's base rate.

(iv) For work performed between 6 p.m. and 6 a.m., night differential charges (for regular, overtime, or holiday hours worked during this period) will be at the applicable rates established plus 10 percent of the base rate.

(v) For all hours of work performed in a plant without an approved tour of duty, the charge will be one of the applicable hourly rates in § 2856.46.

(vi) For work performed by an employee of another Federal agency on a part-time basis for the Poultry and Dairy Quality Division, FSQS, the charge will be the established hourly rate agreed to between the two agencies for cross-utilized employees.

(3) A charge at the hourly rates specified in § 2856.46, plus actual travel expenses incurred by FSQS for intermediate surveys to firms without grading service in effect.

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $.015, except that the minimum charge per billing period shall be $85 and the maximum charge shall be $675. The minimum charge also applies where an approved application is in effect and no product is handled.

(b) *Other provisions.* (1) The applicant shall designate in writing the employees of the applicant who will be required and authorized to furnish each grader with such information as may be necessary for the performance of the grading service.

(2) FSQS will provide, as available, an adequate number of graders to perform the grading service. The number of graders required will be determined by FSQS based on the expected demand for service.

(3) The grading service shall be provided at the designated plant and shall be continued until the service is suspended, withdrawn, or terminated by:

(i) Mutual consent;

(ii) Thirty (30) days' written notice, by either the applicant or FSQS specifying the date of suspension, withdrawal, or termination;

(iii) One (1) day's written notice by FSQS to the applicant if the applicant fails to honor any invoice within thirty (30) days after date of invoice covering the cost of the grading service; or

(iv) Action taken by FSQS pursuant to the provisions of § 2856.31.

(4) Graders will be required to confine their activities to those duties necessary in the rendering of grading service and such closely related activities as may be approved by FSQS: *Provided,* That in no instance may the graders assume the duties of management.

§ 2856.53 Fees or charges for grading service performed under cooperative agreement.

Fees or charges to be made to an applicant for grading service which differ from those listed in §§ 2856.45 through 2856.54 shall be provided for by a cooperative agreement.

§ 2856.54 Charges for continuous grading performed on a nonresident basis.

Fees to be charged and collected for grading service on a nonresident grading basis, shall be those provided in this section. The fees to be charged for any appeal grading shall be as provided in § 2856.47.

(a) *Charges.* The charges for the grading of shell eggs shall be paid by the applicant for the service and shall include items listed in this section as are applicable. Payment for the full cost of the grading service rendered to the applicant shall be made by the applicant to the Food Safety and Quality Service, U.S. Department of Agriculture (hereinafter referred to as "FSQS"). Such full costs shall comprise such of the items listed in this section as are due and included in the bill or bills covering the period or periods during which the grading service was rendered. Bills will be rendered by the 10th day following the end of the billing period in which the service was rendered and are payable upon receipt.

(1) A charge for the salary and other costs, as specified in this paragraph, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by FSQS to perform grading service for other than the applicant. Base salary rates will be determined on a national average for all official plants operating in States under a Federal Trust Fund Agreement where Federal graders or a combination of Federal and State graders are used, by averaging the salary rates paid to each full-time Federal or State grader assigned to such plants. There will be two base salary rates—one for grading service performed at the GS-7 level, and one for grading service performed at the GS-9 level. Charges to plants are as follows:

(i) For all regular hours of work scheduled and approved as an established tour of duty for a plant, the regular rate charge will be made. The regular rate charge will be determined by adding an amount to the base salary rate to cover the costs to FSQS for such items as the Employer's Tax imposed under the U.S. Internal Revenue Code (26 U.S.C.) for Old Age and Survivor's Benefits under the Social Security System, retirement benefits, group life insurance, severance pay, sick leave, annual leave, additional salary and travel costs for relief grading service, accident payments, certain moving costs, and related servicing costs.

(ii) All hours worked by an assigned grader or another grader in excess of the approved tour of duty, or worked

on a nonscheduled workday, or actually worked on a holiday in excess of the tour of duty, will be considered as overtime. The charge for such overtime will be 150 percent of the grader's base salary rate.

(iii) For work performed on a holiday which is within the established tour of duty approved for a plant, the added charge will be the same as the grader's base rate.

(iv) For work performed between 6 p.m. and 6 a.m., night differential charges (for regular, overtime, or holiday hours worked during this period) will be at the applicable rates established plus 10 percent of the base rate.

(v) For all hours of work performed in a plant without an approved tour of duty, the charge will be one of the applicable hourly rates in § 2856.46.

(vi) For work performed by an employee of another Federal agency on a part-time basis for the Poultry and Dairy Quality Division, FSQS, the charge will be the established hourly rate agreed to between the two agencies for cross-utilized employees.

(2) An administrative service charge equal to 25 percent of the first grader's salary costs and 15 percent of each additional assigned grader's salary costs.

(b) *Other provisions.* (1) The applicant shall designate in writing the employees of the applicant who will be required and authorized to furnish each grader with such information as may be necessary for the performance of the grading service.

(2) FSQS will provide, as available, an adequate number of graders to perform the grading service. The number of graders required will be determined by FSQS based on the expected demand for service.

(3) The grading service shall be provided at designated locations and shall be continued until the service is suspended, withdrawn, or terminated by:

(i) Mutual consent;

(ii) Thirty (30) days' written notice, by either the applicant or FSQS specifying the date of suspension, withdrawal, or termination;

(iii) One (1) day's written notice by FSQS to the applicant if the applicant fails to honor any invoice within thirty (30) days after date of invoice covering the cost of the grading service; or

(iv) Action taken by FSQS pursuant to the provisions of § 2856.31.

(4) Graders will be required to confine their activities to those duties necessary in the rendering of grading service and such closely related activities as may be approved by FSQS: *Provided,* That in no instance may the graders assume the duties of management.

(5) When similar nonresident grading services are furnished to the same applicant under Part 2855 or Part 2870 of this chapter, the charges listed in this section shall not be repeated.

Grading Certificates

§ 2856.55 Grading certificates and sampling report forms.

Grading certificates and sampling report forms shall be issued on forms approved by the Administrator.

§ 2856.56 Grading certificate issuance.

(a) *Resident grading basis.* Certificates will be issued only upon request therefor by the applicant or the Service. When requested, a grader shall issue a certificate covering product graded by him. In addition, a grader may issue a grading certificate covering product graded in whole or in part by another grader when the grader has knowledge that the product is eligible for certification based on personal examination of the product or official grading records.

(b) *Other than resident grading.* Each grader shall, in person or by his authorized agent, issue a grading certificate covering each product graded by him. A grader's name may be signed on a grading certificate by a person other than the grader, if such person has been designated as the authorized agent of such grader by the National Supervisor: *Provided,* That the certificate is prepared from an official memorandum of grading signed by the grader: *And provided further,* That a notarized power of attorney authorizing such signature has been issued to such person by the grader and is on file in the office of grading. In such case, the authorized agent shall sign both his own and the grader's name, e.g., "John Doe by Richard Roe."

§ 2856.57 Disposition of grading certificates.

The original and a copy of each grading certificate, issued pursuant to § 2856.56, and not to exceed two additional copies thereof if requested by the applicant prior to issuance, shall, immediately upon issuance, be delivered or mailed to the applicant or person designated by him. Other copies shall be filed and retained in accordance with the disposition schedule for grading program records. Additional copies of any such certificate may be supplied to any interested party, as provided in § 2856.48.

§ 2856.58 Advance information.

Upon request of an applicant, all or part of the contents of any grading certificate issued to such applicant may be telephoned or telegraphed to him, or to any person designated by him, at his expense.

Appeal of a Grading or Decision

§ 2856.60 Who may request an appeal grading or review of a grader's decision.

An appeal grading may be requested by any interested party who is dissatisfied with the determination by a grader of the class, quality, quantity, or condition of any product as evidenced by the USDA grade mark and accompanying label, or as stated on a grading certificate and a review may be requested by the operator of an official plant with respect to a grader's decision or on any other matter related to grading in the official plant.

§ 2856.61 Where to file an appeal.

(a) *Appeal from resident grader's grading or decision in an official plant.* Any interested party who is not satisfied with the determination of the class, quality, quantity, or condition of product which was graded by a grader in an official plant and has not left such plant, and the operator of any official plant who is not satisfied with a decision by a grader on any other matter related to grading in such plant may request an appeal grading or review of the decision by the grader by filing such request with the grader's immediate supervisor.

(b) *All other appeal requests.* Any interested party who is not satisfied with the class, quality, quantity, or condition of product which has left the official plant where it was graded or which was graded other than in an official plant may request an appeal grading by filing such request in the area where the product is located or with the Chief of the Grading Branch.

§ 2856.62 How to file an appeal.

Any request for an appeal grading or review of a grader's decision may be made orally or in writing. If made orally, written confirmation may be required. The applicant shall clearly state the reasons for requesting the appeal service and a description of the product, or the decision which is questioned. If such appeal request is based on the results stated on an official certificate, the original and all available copies of the certificate shall be returned to the appeal grader assigned to make the appeal grading.

§ 2856.63 When an application for an appeal grading may be refused.

When it appears to the official with whom an appeal request is filed that the reasons given in the request are frivolous or not substantial, or that the quality or condition of the product has undergone a material change since the original grading, or that the original lot has changed in some manner, or the Act or the regulations in this part have not been complied with, the applicant's request for the appeal grading may be refused. In such case, the applicant shall be promptly notified of the reason(s) for such refusal.

§ 2856.64 Who shall perform the appeal.

(a) An appeal grading or review of a decision requested under § 2856.61(a) shall be made by the grader's immediate supervisor, or by a licensed grader assigned by the immediate supervisor other than the grader whose grading or decision is being appealed.

(b) Appeal gradings requested under § 2856.61(b) shall be performed by a grader other than the grader who originally graded the product.

(c) Whenever practical, an appeal grading shall be conducted jointly by two graders. The assignment of the grader(s) who will make the appeal grading requested under § 2856.61(b) shall be made by the regional director or the Chief of the Grading Branch.

§ 2856.65 Procedures for appeal gradings.

(a) When all of the originally graded and identified samples are available, the appeal sample shall consist of such samples plus an equal number of samples.

(b) When the original samples are not available, the appeal sample size for the lot shall consist of double the samples required in § 2856.4(c).

(c) Shell eggs shall not have been moved from the original place of grading and must have been maintained under adequate refrigeration and humidity conditions.

§ 2856.66 Appeal grading certificates.

Immediately after an appeal grading is completed, an appeal certificate shall be issued to show that the original grading was sustained or was not sustained. Such certificate shall supersede any previously issued certificate for the product involved and shall clearly identify the number and date of the superseded certificate. The issuance of the appeal certificate may be withheld until any previously issued certificate and all copies have been returned when such action is deemed necessary to protect the interest of the Government. When the appeal grader assigns a different grade to the lot, the existing grade mark shall be changed or obliterated as necessary. When the appeal grader assigns a different class or quantity designation to the lot, the labeling shall be corrected.

Facility Requirements

§ 2856.75 Applicability of facility and operating requirements.

The provisions of § 2856.76 shall be applicable to any grading service that is provided on a resident basis.

§ 2856.76 Minimum facility and operating requirements for shell egg grading and packing plants.

(a) *General requirements for buildings and plant facilities.* (1) Buildings shall be of sound construction so as to prevent, insofar as practicable, the entrance or harboring of vermin.

(2) Grading and packing rooms shall be of sufficient size to permit installation of necessary equipment and the conduct of grading and packing in a sanitary manner. These rooms shall be kept reasonably clean during grading and packing operations and shall be thoroughly cleaned at the end of each operating day.

(3) Adequate lavatory and toilet accommodations shall be provided. Toilet and locker rooms shall be maintained in a clean and sanitary condition. Hot and cold running water shall be provided. Rooms shall be ventilated to the outside of the building. Signs shall be posted in the rest rooms instructing employees to wash their hands before returning to work.

(4) A separate refuse room or a designated area for the accumulation of trash must be provided in plants which do not have a system for the daily removal or destruction of such trash.

(5) Wood benches, platforms, etc., in areas which are subjected to moisture and which develop odors shall be replaced with equipment of metal construction. Wood walls or partitions which develop odors shall be replaced with materials impervious to moisture. Newly constructed plants should be equipped with metal benches, platforms, etc., in areas which are subjected to moisture.

(b) *Grading room requirements.* The grading room shall be adequately darkened to make possible accurate quality determination of the candled appearance of eggs.

(1) There shall be no crossbeams of light, and light reflection from candling lights shall be kept at a minimum.

(2) Candling benches shall be constructed so as to permit cleaning and provide ample shelf space for convenient placement of the different grades to be packed.

(3) The candling lights shall be capable of delivering reasonably uniform intensity of light at the candling aperture to facilitate accurate quality determinations; and the light shall provide ample case light for detection of stained and dirty shells and the condition of the packing materials. In operations utilizing mechanical grading equipment, adequate light shall be provided to facilitate necessary quality determinations, including the detection and removal of stained and dirty shells and the condition of the packing material.

(4) Individual egg scales shall be provided to check accuracy of weight classing.

(5) Weighing equipment, whether manual or automatic, shall be kept reasonably clean and shall be capable of ready adjustment.

(6) Adequate ventilation shall be provided.

(c) *Cooler room requirements.* (1) Cooler rooms shall have refrigeration facilities capable of reducing within 24 hours and holding the maximum volume of eggs handled to 60° F. or below. Accurate thermometers shall be provided.

(2) Cooler rooms shall be free from objectionable odors and from mold, and shall be maintained in a sanitary condition.

(3) All shell egg coolers shall be equipped with a hygrometer or portable equipment such as a psychrometer shall be available to determine the relative humidity. Humidifying equipment capable of maintaining a relative humidity which will minimize shrinkage shall be provided.

(d) *Shell egg protecting operations.* Shell egg protecting (oil processing) operations shall be conducted in a manner to avoid contamination of the product and maximize conservation of its quality.

(1) Eggs with excess moisture on the shell shall not be shell protected.

(2) Oil having any off odor, or that is obviously contaminated, shall not be used in shell egg protection.

(3) Processing oil that has been previously used and which has become contaminated shall be filtered and heat treated at 180° F. for 3 minutes prior to use.

(4) Shell egg processing equipment shall be washed, rinsed, and treated with a bactericidal agent each time the oil is removed. It is preferable to filter and heat treat processing oil and clean processing equipment daily when in use.

(5) Adequate coverage and protection against dust and dirt shall be provided when the equipment is not in use.

(e) *Shell egg cleaning operation.* (1) Shell egg cleaning equipment shall be kept in good repair and shall be cleaned after each day's use or more frequently, if necessary.

(2) The temperature of the wash water shall be maintained at 90° F. or higher, and shall be at least 20° F. warmer than the temperature of the eggs to be washed. These temperatures shall be maintained throughout the cleaning cycle.

(3) An approved cleaning compound shall be used in the wash water. (The use of metered equipment for dispensing the compound into solution is recommended.)

(4) Wash water shall be changed approximately every 4 hours or more often if needed to maintain sanitary conditions, and at the end of each shift. Remedial measures shall be taken to prevent excess foaming during the egg washing operation.

(5) Replacement water shall be added continuously to the wash water of washers to maintain a continuous overflow. Rinse water, chlorine, or quaternary sanitizing rinse may be used as part of the replacement water, provided, they are compatible with the washing compound. Iodine sanitizing rinse may not be used as part of the replacement water.

(6) Only potable water may be used to wash eggs. Each official plant shall submit certification to the national office stating that their water supply is potable. An analysis of the iron content of the water supply, stated in parts per million, is also required. When the iron content exceeds 2 parts per million, equipment shall be provided to correct the excess iron content. Frequency of testing shall be determined by the Administrator. When the water source is changed, new tests are required.

(7) Waste water from the egg washing operation shall be piped directly to drains.

(8) The washing and drying operation shall be continuous and shall be completed as rapidly as possible. Eggs shall not be allowed to stand or soak in water. Immersion-type washers shall not be used.

(9) Prewetting shell eggs prior to washing may be accomplished by spraying a continuous flow of water over the eggs in a manner which permits the water to drain away or other methods which may be approved by the Administrator. The temperature of the water shall be the same as prescribed in this section.

(10) Washed eggs shall be sprayrinsed with warm water containing an approved sanitizer of not less than 50 p/m nor more than 200 p/m of available chlorine or its equivalent.

(11) Test kits shall be provided and used to determine the strength of the sanitizing solution.

(12) During any rest period, eggs shall be removed from the washing and rinsing area of the egg washer and from the scanning area whenever there is a buildup of heat.

(13) Washed eggs shall be reasonably dry before cartoning or casing.

(14) When steam or vapors originate from the washing operation, they shall be continuously and directly removed to the outside of the building.

(f) *Requirements for eggs which are to be marked with official U.S. identification mark.* (1) Shell eggs, except as otherwise provided for in §§ 2856.42 and 2856.43, shall not exceed an internal temperature of 80° F. at the time of official grading. Shell eggs held in the official plant shall be placed under refrigeration of 60° F. or lower promptly after packaging. Officially identified shell eggs with an internal temperature of 70° F. or higher when shipped from the official plant should be transported at a temperature of 60° F. or less.

(2) Every reasonable precaution shall be exercised to prevent "sweating" of eggs.

(3) Eggs which are to be officially identified with consumer or procurement grademarks shall be packaged only in new or good used cases and packing materials. Cases and packing materials must be reasonably clean, free of mold, mustiness and off odors and must be of sufficient strength and durability to adequately protect the eggs during normal distribution.

(g) Pesticides, insecticides, and rodenticides used in the plant shall be approved and shall be handled in accordance with the manufacturers' instructions.

§ 2856.77 Health and hygiene of personnel.

(a) No person known to be affected by a communicable or infectious disease shall be permitted to come in contact with the product.

(b) Plant personnel coming into contact with the product shall wear clean clothing.

Subpart B—[Reserved]

Subpart C—United States Standards, Grades, and Weight Classes for Shell Eggs

United States Standards for Quality of Individual Shell Eggs

§ 2856.200 Application.

(a) The United States standards for quality of individual shell eggs contained in this subpart are applicable only to eggs that are the product of the domesticated chicken hen and are in the shell.

(b) Interior egg quality specifications for these standards are based on the apparent condition of the interior contents of the egg as it is twirled before the candling light, except as otherwise provided in § 2856.42 or § 2856.43. Any type or make of candling light may be used that will enable the particular grader to make consistently accurate determination of the interior quality of shell eggs. It is desirable to break out an occasional egg and by determining the Haugh unit value of the broken-out egg, compare the broken-out and candled appearance, thereby aiding in correlating candled and broken-out appearance.

§ 2856.201 AA Quality.

The shell must be clean, unbroken, and practically normal. The air cell must not exceed ⅛ inch in depth, may show unlimited movement, and may be free or bubbly. The white must be clear and firm so that the yolk is only slightly defined when the egg is twirled before the candling light. The yolk must be practically free from apparent defects.

§ 2856.202 A Quality.

The shell must be clean, unbroken, and practically normal. The air cell must not exceed 3/16 inch in depth, may show unlimited movement, and may be free or bubbly. The white must be clear and at least reasonably firm so that the yolk outline is only fairly well defined when the egg is twirled before the candling light. The yolk must be practically free from apparent defects.

§ 2856.203 B Quality.

The shell must be unbroken and may be slightly abnormal and may show slight stains but no adhering dirt: *Provided,* That they do not appreciably detract from the appearance of the egg. When the stain is localized,

approximately 1/32 of the shell surface may be slightly stained, and when the slightly stained areas are scattered, approximately 1/16 of the shell surface may be slightly stained. The air cell must not exceed 3/8 inch in depth, may show unlimited movement, and may be free or bubbly. The white must be clear and may be slightly weak so that the yolk outline is well defined when the egg is twirled before the candling light. The yolk may appear slightly enlarged and slightly flattened and may show other definite, but not serious, defects.

§ 2856.204 C Quality.

The shell must be unbroken, may be abnormal and may have slightly stained areas. Moderately stained areas are permitted if they do not cover more than 1/4 of the shell surface. Eggs having shells with prominent stains or adhering dirt are not permitted. The air cell may be over 3/8 inch in depth, may show unlimited movement and may be free or bubbly. The white may be weak and watery so that the yolk outline is plainly visible when the egg is twirled before the candling light. The yolk may appear dark, enlarged, and flattened, and may show clearly visible germ development but no blood due to such development. It may show other serious defects that do not render the egg inedible. Small blood clots or spots (aggregating not more than 1/8 inch in diameter) may be present.

§ 2856.205 Dirty.

The shell must be unbroken and it has adhering dirt or foreign material, prominent stains, or moderate stains covering more than one-fourth of the shell surface.

§ 2856.206 Check.

An individual egg that has a broken shell or crack in the shell but with its shell membranes intact and its contents do not leak. A "check" is considered to be lower in quality than a "dirty."

§ 2856.208 Terms descriptive of the shell.

(a) *Clean.* A shell that is free from foreign material and from stains or discolorations that are readily visible. An egg may be considered clean if it has only very small specks or stains, if such specks or stains are not of sufficient number or intensity to detract from the generally clean appearance of the egg. Eggs that show traces of processing oil on the shell are considered clean unless otherwise soiled.

(b) *Dirty.* A shell which has dirt or foreign material adhering to its surface, which has prominent stains, or has moderate stains covering more than one-fourth of the shell surface.

(c) *Practically normal (AA or A quality).* A shell that approximates the usual shape and that is of good even texture and strength and is free from rough areas or thin spots. Slight ridges and rough areas that do not materially affect the shape, texture, and strength of the shell are permitted.

(d) *Slightly abnormal (B quality).* A shell that may be somewhat unusual in shape or that may be slightly faulty in texture or strength. It may show definite ridges but no pronounced thin spots or rough areas.

(e) *Abnormal (C quality).* A shell that may be decidedly misshapen or faulty in texture or strength or that may show pronounced ridges, thin spots, or rough areas.

§ 2856.209 Terms descriptive of the air cell.

(a) *Depth of air cell (air space between shell membranes, normally in the large end of the egg).* The depth of the air cell is the distance from its top to its bottom when the egg is held air cell upward.

(b) *Free air cell.* An air cell that moves freely toward the uppermost point in the egg as the egg is rotated slowly.

(c) *Bubbly air cell.* A ruptured air cell resulting in one or more small separate air bubbles usually floating beneath the main air cell.

§ 2856.210 Terms descriptive of the white.

(a) *Clear.* A white that is free from discolorations or from any foreign bodies floating in it. (Prominent chalazas should not be confused with foreign bodies such as spots or blood clots.)

(b) *Firm (AA quality).* A white that is sufficiently thick or viscous to prevent the yolk outline from being more than slightly defined or indistinctly indicated when the egg is twirled. With respect to a broken-out egg, a firm white has a Haugh unit value of 72 or higher when measured at a temperature between 45° and 60° F.

(c) *Reasonably firm (A quality).* A white that is somewhat less thick or viscous than a firm white. A reasonably firm white permits the yolk to approach the shell more closely which results in a fairly well defined yolk outline when the egg is twirled. With respect to a broken-out egg, a reasonably firm white has a Haugh unit value of 60 to 72 when measured at a temperature between 45° and 60° F.

(d) *Slightly weak (B quality).* A white that is lacking in thickness or viscosity to an extent that causes the yolk outline to appear well defined when the egg is twirled. With respect to a broken-out egg, a slightly weak white has a Haugh unit value of 31 to 60 when measured at a temperature between 45° and 60° F.

(e) *Weak and watery (C quality).* A white that is thin and generally lacking in viscosity. A weak and watery white permits the yolk to approach the shell closely, thus causing the yolk outline to appear plainly visible and dark when the egg is twirled. With respect to a broken-out egg, a weak and watery white has a Haugh unit value lower than 31 when measured at a temperature between 45° and 60° F.

(f) *Blood clots and spots (not due to germ development).* Blood clots or spots on the surface of the yolk or floating in the white. These blood clots may have lost their characteristic red color and appear as small spots or foreign material commonly referred to as meat spots. If they are small (aggregating not more than 1/8 inch in diameter), the egg may be classed as "C Quality." If larger, or showing diffusion of blood in the white surrounding them, the egg shall be classified as loss.

(g) *Bloody white.* An egg which has blood diffused through the white. Eggs with bloody whites are classed as loss. Eggs with blood spots which show a slight diffusion into the white around the localized spot are not to be classed as bloody whites.

§ 2856.211 Terms descriptive of the yolk.

(a) *Outline slightly defined (AA quality).* A yolk outline that is indistinctly indicated and appears to blend into the surrounding white as the egg is twirled.

(b) *Outline fairly well defined (A quality).* A yolk outline that is discernible but not clearly outlined as the egg is twirled.

(c) *Outline well defined (B quality).* A yolk outline that is quite definite and distinct as the egg is twirled.

(d) *Outline plainly visible (C quality).* A yolk outline that is clearly visible as a dark shadow when the egg is twirled.

(e) *Slightly enlarged and slightly flattened (B quality).* A yolk in which the yolk membranes and tissues have weakened somewhat causing it to appear slightly enlarged and slightly flattened.

(f) *Enlarged and flattened (C quality).* A yolk in which the yolk membranes and tissues have weakened and moisture has been absorbed from the white to such an extent that it appears definitely enlarged and flat.

(g) *Practically free from defects (AA or A quality).* A yolk that shows no germ development but may show other very slight defects on its surface.

(h) *Definite but not serious defects (B quality).* A yolk that may show definite spots or areas on its surface but with only slight indication of germ development or other pronounced or serious defects.

(i) *Other serious defects (C quality).* A yolk that shows well developed spots or areas and other serious defects, such as olive yolks, which do not render the egg inedible.

(j) *Clearly visible germ development (C quality).* A development of the germ spot on the yolk of a fertile egg that has progressed to a point where it is plainly visible as a definite circular area or spot with no blood in evidence.

(k) *Blood due to germ development.* Blood caused by development of the germ in a fertile egg to the point where it is visible as definite lines or as a blood ring. Such an egg is classified as inedible.

§ 2856.212 General terms.

(a) *Loss.* An egg that is inedible, smashed, or broken so that contents are leaking, cooked, frozen, contaminated, or containing bloody whites, large blood spots, large unsightly meat spots, or other foreign material.

(b) *Inedible eggs.* Eggs of the following descriptions are classed as inedible: black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, eggs containing embryo chicks (at or beyond the blood ring state), and any eggs that are adulterated as such term is defined pursuant to the Federal Food, Drug, and Cosmetic Act.

(c) *Leaker.* An individual egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell.

United States Grades and Weight Classes for Shell Eggs

§ 2856.215 General.

(a) These grades are applicable to edible shell eggs in "lot" quantities rather than on an "individual" egg basis. A lot may contain any quantity of two or more eggs. Reference in these standards to the term "case" means 30-dozen egg cases as used in commercial practices in the United States. The size of the sample used to determine grade shall be on the basis of the requirements of § 2856.4 or as determined by the National Supervisor.

(b) Terms used in this part that are defined in the United States standards for quality of individual shell eggs (§ 2856.200 et seq.) have the same meaning in this part as in those standards.

(c) Aggregate tolerances are permitted within each grade only as an allowance for variable efficiency and interpretation of graders, normal changes under favorable conditions during reasonable periods between grading, and reasonable variation of graders' interpretation.

(d) Substitution of higher qualitites for the lower qualities specified is permitted.

(e) The percentage requirements for grades as set forth in §§ 2856.216 and 2856.217 are applicable except that interior quality factors shall be determined in accordance with the requirements of § 2856.42 or § 2856.43 when the lot is labeled "Produced and Marketed under Federal-State Quality Control Program."

(f) "No grade" means eggs of possible edible quality that fail to meet the requirements of an official U.S. Grade or that have been contaminated by smoke, chemicals, or other foreign material which has seriously affected the character, appearance, or flavor of the eggs.

United States Consumer Grades and Weight Classes for Shell Eggs

§ 2856.216 Grades.

(a) Fresh Fancy Quality shall consist of eggs meeting the requirements as set forth in § 2856.42.

(b) *U.S. Grade AA.* (1) U.S. Consumer Grade AA (at origin) shall consist of eggs which are 85 percent AA quality. The maximum tolerance of 15 percent which may be below AA quality may consist of A or B quality in any combination, with not more than 5 percent C quality or Checks in any combination and not more than 0.30 percent Leakers or Loss (due to meat or blood spots) in any combination. No Dirties or Loss other than as specified are permitted. This grade is also applicable when the lot consists of eggs meeting the requirements set forth in § 2856.42.

(2) U.S. Consumer Grade AA (destination) shall consist of eggs which are 80 percent AA quality. The maximum tolerance of 20 percent which may be below AA quality may consist of A or B quality in any combination with not more than 5 percent C quality or Checks in any combination and not more than 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted. This grade is also applicable when the lot consists of eggs meeting the requirements set forth in § 2856.42.

(c) *U.S. Grade A.* (1) U.S. Consumer Grade A (at origin) shall consist of eggs which are 85 percent A quality or better. Within the maximum tolerance of 15 percent which may be below A quality, not more than 5 percent may be C quality or Checks in any combination, and not more than 0.30 percent Leakers or Loss (due to meat or blood spots) in any combination. No Dirties or Loss other than as specified are permitted. This grade is also applicable when the lot consists of eggs meeting the requirements set forth in § 2856.43.

(2) U.S. Consumer Grade A (destination) shall consist of eggs which are 80 percent A quality or better. Within the maximum tolerance of 20 percent which may be below A quality, not more than 5 percent may be C quality or Checks in any combination, and not more than 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted. This grade is also applicable when the lot consists of eggs meeting the requirements set forth in § 2856.43.

(d) *U.S. Grade B.* (1) U.S. Consumer Grade B (at origin) shall consist of eggs which are 85 percent B quality or better. Within the maximum tolerance of 15 percent which may be below B quality, not more than 10 percent may be Checks and not more than 0.30 percent Leakers or Loss (due to meat or blood spots) in any combination. No Dirties or Loss other than as specified are permitted.

(2) U.S. Consumer Grade B (destination) shall consist of eggs which are 80 percent B quality or better. Within the maximum tolerance of 20 percent which may be below B quality, not more than 10 percent may be Checks and not more than 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(e) Additional tolerances:

(1) In lots of two or more cases:

(i) For Grade AA—no individual case may exceed 10 percent less AA quality eggs than the minimum permitted for the lot average.

(ii) For Grade A—no individual case may exceed 10 percent less A quality eggs than the minimum permitted for the lot average.

(iii) For Grade B—no individual case may exceed 10 percent less B quality eggs than the minimum permitted for the lot average.

(2) In lots of two or more cartons, no individual carton may contain less than eight eggs of the specified quality and no individual carton may contain less than 10 eggs of the specified quality and the next lower quality. The remaining two eggs may consist of a combination of qualities below the next lower quality (i.e., in lots of Grade A, not more than two eggs of the qualities in individual cartons within the sample may be C or Checks).

§ 2856.217 Summary of grades.

The summary of U.S. Consumer Grades for Shell Eggs follows as Table I and Table II of this section:

TABLE I—SUMMARY OF U.S. CONSUMER GRADES FOR SHELL EGGS

U.S. Consumer grade (origin)	Quality required [1]	Tolerance permitted [2]	
		Percent	Quality
Grade AA or Fresh Fancy Quality	85 percent AA	Up to 15	A or B.
		Not over 5	C or check.
Grade A	85 percent A or better	Up to 15	B.
		Not over 5	C or Check.
Grade B	85 percent B or better	Up to 15	C.
		Not over 10	Checks.

U.S. Consumer grade (destination)	Quality required [1]	Tolerance permitted [3]	
		Percent	Quality
Grade AA or Fresh Fancy Quality	80 percent AA	Up to 20	A or B.
		Not over 5	C or Check.
Grade A	80 percent A or better	Up to 20	B.
		Not over 5	C or Check.
Grade B	80 percent B or better	Up to 20	C.
		Not over 10	Checks.

TABLE I—SUMMARY OF U.S. CONSUMER GRADES FOR SHELL EGGS—Continued

[1] In lots of two or more cases or cartons, see Table II of this section for tolerances for an individual case or carton within a lot.

[2] For the U.S. Consumer grades (at origin), a tolerance of 0.30 percent Leakers or Loss (due to meat or blood spots) in any combination is permitted. No Dirties or other type Loss are permitted.

[3] For the U.S. Consumer grades (destination), a tolerance of 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination is permitted, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

TABLE II—TOLERANCE FOR INDIVIDUAL CASE OR CARTON WITHIN A LOT

U.S. Consumer grade	Case—minimum quality	Origin	Destination	Carton—minimum quality—number of eggs (origin and destination)
		Percent	*Percent*	
Grade AA or Fresh Fancy Quality	AA	75	70	8 eggs AA.
	A or B	15	20	2 eggs A or B.
	C or Check.	10	10	2 eggs C or Check.
Grade A	A	75	70	8 eggs A.
	B	15	20	2 eggs B.
	C or Check.	10	10	2 eggs C or Check.
Grade B	B	75	70	8 eggs B.
	C	5	10	2 eggs C.
	Check	20	20	2 eggs Check.

§ 2856.218 Weight classes.

(a) The weight classes for U.S. Consumer Grades for Shell Eggs shall be as indicated in Table I of this section and shall apply to all consumer grades.

TABLE I—U.S. WEIGHT CLASSES FOR CONSUMER GRADES FOR SHELL EGGS

Size or weight class	Minimum net weight per dozen	Minimum net weight per 30 dozen	Minimum weight for individual eggs at rate per dozen
	Ounces	*Pounds*	*Ounces*
Jumbo	30	56	29
Extra large	27	50½	26
Large	24	45	23
Medium	21	39½	20
Small	18	34	17
Peewee	15	28	

(b) A lot average tolerance of 3.3 percent for individual eggs in the next lower weight class is permitted as long as no individual case within the lot exceeds 5 percent.

UNITED STATES PROCUREMENT GRADES AND WEIGHT CLASSES FOR SHELL EGGS

§ 2856.221 Grades.

(a) *U.S. Procurement Grade I.* (1) U.S. Procurement Grade I (at origin) shall consist of eggs which are 85 percent A quality or better. Within the maximum tolerance of 15 percent which may be below A quality, not more than 5 percent may be C quality or Checks in any combination and not more than 0.30 percent may be Dirties, Leakers, and Loss combined. Loss, other than meat or blood spots, shall not exceed 0.15 percent

(2) U.S. Procurement Grade I (destination) shall consist of eggs which are 80 percent A quality or better. Within the maximum of 20 percent which may be below A quality not more than 5 percent may be C quality or Checks, in any combination and not more than 0.50 percent may be Dirties, Leakers, and Loss combined. Loss, other than meat and blood spots shall not exceed 0.20 percent.

(b) *U.S. Procurement Grade II.* (1) U.S. Procurement Grade II (at origin) shall consist of eggs which are 65 percent A quality or better. Within the maximum tolerance of 35 percent which may be below A quality, not more than 10 percent may be C quality or Checks in any combination, except that Checks may not exceed 5 percent and not more than 0.30 percent may be Dirties, Leakers, and Loss combined. Loss, other than meat and blood spots shall not exceed 0.15 percent.

(2) U.S. Procurement Grade II (destination) shall consist of eggs which are 60 percent A quality or better. Within the maximum tolerance of 40 percent which may be below A quality, not more than 10 percent may be C quality or Checks, in any combination, except that Checks may not exceed 5 percent and not more than 0.50 percent may be Dirties, Leakers, and Loss combined. Loss, other than meat and blood spots, shall not exceed 0.20 percent.

(c) Individual cases may contain not over 10 percent less A quality eggs than specified for the procurement grade.

§ 2856.222 Summary of grades.

The summary of the U.S. Procurement Grades for Shell Eggs follows as Table I of this section:

TABLE I—SUMMARY OF U.S. PROCUREMENT GRADES FOR SHELL EGGS

U.S. procurement grade (origin)	A quality or better (lot average) at least [1] (percent)	Maximum tolerance permitted (lot average) [2]	
		Percent	Quality
I	85	Up to 15	B.
		Not over 5	C, Check.
II	65	Up to 35	B.
		Not over 10	C, Check.

TABLE I—SUMMARY OF U.S. PROCUREMENT GRADES FOR SHELL EGGS—Continued

U.S. Procurement grade (destination)	A quality or better (lot average) at least [1] (percent)	Maximum tolerance permitted (lot average) [3]	
		Percent	Quality
I	80	Up to 20	B.
		Not over 5	C, Check.
II	60	Up to 40	B.
		Not over 10	C, Check.

[1] Individual cases may not exceed 10 percent less A quality eggs than permitted for the lot average.

[2] For U.S. Procurement Grades (at origin), a maximum of 5 percent Checks is permitted and not more than 0.30 percent may be Dirties, Leakers, and Loss combined. Loss other than meat and blood spots shall not exceed 0.15 percent.

[3] For U.S. Procurement Grades (destination), a maximum of 5 percent Checks is permitted and not more than 0.50 percent may be Dirties, Leakers, and Loss combined. Loss, other than meat and blood spots, shall not exceed 0.20 percent.

§ 2856.223 Weight classes.

(a) The weight classes for United States Procurement Grades for Shell Eggs shall be as indicated in Table I of this section and shall apply to all procurement grades.

TABLE I—WEIGHT CLASSES FOR UNITED STATES PROCUREMENT GRADES

Weight classes	Average net weight on lot basis 30-dozen case	Minimum net weight individual 30-dozen case	Minimum net weight of individual eggs at rate per dozen	Maximum average percent of individual eggs below minimum weight lot average [1]
	Pounds	*Pounds*	*Ounces*	*Percent*
Extra large	50.5	50	26	3.33
Large	45	44.5	23	3.33
Medium	39.5	39	20	3.33
Small	34	33.5	17	3.33

[1] Individual cases may contain not over 10 percent of individual eggs below minimum weights specified in any weight class but such eggs shall weigh not less than the minimum specified for the next lower weight class.

UNITED STATES WHOLESALE GRADES AND WEIGHT CLASSES FOR SHELL EGGS

§ 2856.226 Grades.

(a) "U.S. Specials—% AA Quality" shall consist of eggs of which at least 20 percent are AA Quality; and the actual percentage of AA Quality eggs shall be stated in the grade name. Within the maximum of 80 percent which may be below AA Quality, not more than 7.5 percent may be B Quality, C Quality, Dirties or Checks in any combination and not more than 2.0 percent may be Loss.

(b) "U.S. Extras—% A Quality" shall consist of eggs of which at least 20 percent are not less than A Quality; and the actual total percentage of A Quality and better quality eggs shall be stated in the grade name. Within the maximum of 80 percent which may be below A Quality, not more than 11.7 percent may be C Quality, Dirties, or Checks in any combination, and not more than 3.0 percent may be Loss.

(c) "U.S. Standards—% B Quality" shall consist of eggs of which at least 20 percent are not less than B Quality; and the actual total percentage of B Quality and better quality eggs shall be stated in the grade name. Within the maximum of 80 percent which may be below B Quality not more than 11.7 percent may be Dirties or Checks in any combination, and not more than 4 percent may be Loss.

(d) "U.S. Trades—% C Quality" shall consist of eggs of which at least 83.3 percent are not less than C Quality; and the actual total percentage of C Quality and better quality eggs shall be stated in the grade name. Within the maximum of 16.7 percent which may be below C Quality not more than 11.7 percent may be Dirties or Checks in any combination and not more than 5 percent may be Loss.

(e) "U.S. Dirties" shall consist of eggs that are Dirty and shall contain not more than 11.7 percent Checks and not more than 5 percent Loss.

(f) "U.S. Checks" shall consist of eggs that are Checks and shall contain not more than 5 percent Loss.

§ 2856.227 Summary of grades.

A summary of the United States Wholesale Grades for Shell Eggs follows as Table I of this section:

§ 2856.228 Weight classes.

(a) The weight classes for the United States Wholesale Grades for Shell Eggs shall be as indicated in Table I of this section and, subject to the stated tolerance of 10 percent, shall apply to all wholesale grades except U.S. Dirties and U.S. Checks. There are no weight classes for U.S. Dirties or U.S. Checks.

TABLE I—SUMMARY OF UNITED STATES WHOLESALE GRADES FOR SHELL EGGS

Wholesale grade designation	Minimum percentage of eggs of specific qualities required [1]				Maximum tolerance permitted (lot average)				
	AA Quality	A Quality or better	B Quality or better	C Quality or better	B Quality, C Quality, Dirties, and Checks	C Quality, Dirties, and Checks	Dirties and Checks	Checks	Loss
					Percent	*Percent*	*Percent*	*Percent*	*Percent*
U.S. Specials—% AA Quality. [2]	20	Balance	None permitted except for tolerances.		7.5				2
U.S. Extras—% A Quality. [2]		20	Balance	do		11.7			3
U.S. Standards—% B Quality. [2]			20	Balance					
							11.7		4
U.S. Trades—% C Quality. [2]				83.3			11.7		5
U.S. Dirties—%								11.7	5
U.S. Checks—%									5

[1] Substitution of eggs possessing higher qualities for those possessing lower specified qualities is permitted.

[2] The actual total percentage must be stated in the grade name.

TABLE I—WEIGHT CLASSES FOR UNITED STATES WHOLESALE GRADES FOR SHELL EGGS

Weight classes	Per 30 dozen eggs		Weights for individual eggs at rate per dozen	
	Average net weight on a lot [1] basis	Minimum net weight individual case [2] basis	Minimum weight	Weight variation tolerance for not more than 10 percent, by count, of individual eggs
	At least—			
Extra large	50½ pounds	50 pounds	26 ounces	Under 26 but not under 24 ounces.
Large	45 pounds	44 pounds	23 ounces	Under 23 but not under 21 ounces.
Medium	39½ pounds	39 pounds	20 ounces	Under 20 but not under 18 ounces.
Small	34 pounds	None	None	None.

[1] Lot means any quantity of 30 dozen or more eggs.

[2] Case means standard 30 dozen egg case as used in commercial practice in the United States.

U.S. Nest-Run Grade and Weight Classes for Shell Eggs

§ 2856.230 Grade.

"U.S. Nest Run" • • • percent AA Quality" shall consist of eggs of current production of which at least 20 percent are AA quality; and the actual percentage of AA quality eggs shall be stated in the grade name. Within the maximum of 15 percent which may be below A quality, not more than 10 percent may be B quality and C quality combined for shell texture, shape, interior quality (including blood and meat spots), or due to rusty or blackish appearing cage marks or bloodstains, not more than 2 percent may have adhering dirt or foreign material on the shell ½ inch or larger in diameter, not more than 6 percent may be checks and not more than 3 percent may be loss. Marks which are slightly gray in appearance and adhering dirt or foreign material on the shell less than ½ inch in diameter are not considered quality factors. The eggs shall be officially graded for all other quality factors. No case may contain less than 75 percent A quality and AA quality eggs in any combination.

§ 2856.231 Summary of grade.

A summary of the U.S. Nest-Run Grade for Shell Eggs follows in Table I of this section:

§ 2856.232 Weight classes.

The weight classes for the U.S. Nest-Run Grade for Shell Eggs shall be as indicated in Table I of this section and shall apply to Nest-Run Grade.

Table I.—Weight Classes for U.S. Nest Run Grade for Shell Eggs

Weight classes	*Minimum average net weight on lot basis 30-dozen cases (Pounds)*
Class XL	51
Class 1	48
Class 2	45
Class 3	42
Class 4	39

No individual sample case may vary more than 2 pounds (plus or minus) from the lot average.

§ 2856.234 Packaging material.

(a) The following are suggested types for new standard fiber cases:

Type C Case

(1) Solid or double-faced corrugated fiber.

(2) 65-pound box with 220 pounds per square inch bursting strength.

(3) The fiberboard of which the box is made must be scored and folded so as to provide double thickness over entire area of ends and sides. Also, the bottoms and center partitions must consist of at least 2 thicknesses of such fiberboard.

(4) The center partitions must be held firmly in position in center of case.

Type D Case

(1) Cases made of double-faced corrugated fiberboard with not less than 200 pounds bursting strength *and* must have, in addition, an asphalted corrugating sheet not less than 0.013 inch thick.

(2) The fiberboard of which the box is made must be scored and folded so as to provide double thickness over entire area of bottom and ends. Center partition must consist of at least 2 thicknesses of such fiberboard and must be held firmly in position in center of case.

Type E Case

(1) Double-faced corrugated fiberboard of at least 4-ply solid fiberboard.

(2) 90-pound box.

(3) The fiberboard of which the box is made must be scored and folded so as to provide double thickness over entire areas of at least 2 of the 4 following parts: bottoms, ends, sides and center partition.

(4) Center partition must be held in position in center of case.

Type F Case

(1) Double-faced corrugated fiberboard.

(2) 65-pound box with 220 pounds per square inch of bursting strength.

(3) Center partition must be of double thickness and not less than 200 pounds per square inch bursting strength. Also, a flange on each side not less than ⅞ of an inch wide which must be fastened to sidewalls with at least 5 staples equally spaced between top and bottom.

(4) The two thicknesses forming center partition must be stapled together.

(5) Fiberboard forming center partition must extend over entire area of bottom providing double thickness.

(6) Ends must be double wall corrugated fiberboard, testing not less than 350 pounds with flanges not less than ⅞ of an inch forming recessed ends. End must be stapled to sidewalls and bottom with not less than 6 staples.

(b) Each case must bear the certificate of the box maker that the box conforms to all construction requirements of the Uniform or Consolidated Freight Classification; also, this mark should show the bursting test (200 to 220 pounds per square inch) and the gross weight (65 or 90 pounds) of box.

(c) Sealing: The tops of all cases must be closed securely so they will not open during transportation, by applying a 3-inch gummed tape over all seams (made by the closing of the case). The tape shall extend down the sides and ends of the cases not less than 3 inches.

Table I—Summary of U.S. Nest-Run Grade for Shell Eggs

Nest-run grade, description [2]	Minimum percentage of quality required (lot average) [1]		Maximum percentage tolerance permitted (15 percent lot average) [1]			
	AA quality [3]	A quality or better [4]	B and C quality for shell texture or shape, interior quality (including blood and meat spots), or cage marks [5] and blood stains	Checks	Loss	Adhering dirt or foreign material ⅛ inch or larger in diameter
U.S. nest-run—percent AA quality [6]	20	85	10	6	3	2

[1] Substitution of eggs of higher qualities for lower specified qualities is permitted.

[2] Stains (other than rusty or blackish appearing cage marks or blood stains), and adhering dirt and foreign material on the shell less than ⅛ inch in diameter shall not be considered as quality factors in determining the grade designation.

[3] No case may contain less than 10 percent AA quality.

[4] No case may contain less than 75 percent A quality and AA quality eggs in any combination.

[5] Cage marks which are rusty or blackish in appearance shall be considered as quality factors. Marks which are slightly gray in appearance are not considered as quality factors.

[6] The actual total percentage must be stated in the grade name.

Note: The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND QUALITY SERVICE
POULTRY AND DAIRY QUALITY DIVISION

December 26, 1978

SUMMARY OF UNITED STATES STANDARDS FOR QUALITY OF INDIVIDUAL SHELL EGGS

Specifications for Each Quality Factor

Quality Factor	AA Quality	A Quality	B Quality	C Quality
Shell	Clean Unbroken. Practically normal.	Clean Unbroken Practically normal.	Clean; to slightly stained. Unbroken. May be slightly abnormal.	Clean; to moderately stained. Unbroken. May be abnormal.
Air Cell	1/8 inch or less in depth. May show unlimited movement and may be free or bubbly.	3/16 inch or less in depth. May show unlimited movement and may be free or bubbly.	3/8 inch or less in depth. May show unlimited movement and may be free or bubbly.	May be over 3/8 inch in depth. May show unlimited movement and may be free or bubbly.
White	Clear. Firm.	Clear. May be reasonably firm.	Clear. May be slightly weak.	Small blood clots or spots may be present.* May be weak and watery
Yolk	Outline slightly defined. Practically free from defects.	Outline may be fairly well defined. Practically free from defects.	Outline may be well defined. May be slightly enlarged and flattened. May show definite but not serious defects.	Outline may be plainly visible. May be enlarged and flattened. May show clearly visible germ development but no blood. May show other serious defects.

* If they are small (aggregating not more than 1/8 inch in diameter)

For eggs with dirty or broken shells, the standards of quality provide three additional qualities. These are:

Dirty	Check	Leaker
Unbroken. May be dirty.	Checked or cracked but not leaking.	Broken so contents are leaking.

ATTACHMENT B

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND QUALITY SERVICE
WASHINGTON, D.C. 20250

May 27, 1980

Regulations Governing the Grading of Shell Eggs and United States Standards, Grades, and Weight Classes for Shell Eggs (7 CFR Part 2856):

Advance Notice of Proposed Rulemaking

Background

The history of standards for shell eggs dates back to 1925 when the first quality standards for individual eggs were developed. In 1948, consumer grades were issued, and in 1967 separate standards for consumer grades at origin and destination were promulgated. The basic tolerances for undergrade eggs which are allowed within each grade have undergone slight but not significant changes over the years. These tolerances are not designed to permit inferior products but rather to compensate for human error and unavoidable quality loss during handling and marketing. Without tolerances, it would be impossible to produce packs of eggs acceptable to consumers at prices they are willing to pay. Tolerances are also somewhat dependent upon the industry's capability to produce an acceptable product at reasonable prices.

The shell egg industry has undergone drastic changes since the standards were issued. From a manual hand-candling operation of sorting eggs into grades and weight classes by graders at a rate of six to eight 30-dozen cases per hour to a highly mechanized operation with mass scanning equipment capable of sorting 140 cases per hour per unit, the industry bears little resemblance to former days. The flock size has greatly increased and now units of a million or more hens producing uniform, high quality eggs are not uncommon. Frequent gathering of eggs of uniform quality in large quantities, rather than assembling lots from small units over a period of time, makes an ideal situation to process eggs over mechanized equipment. With the uniform quality that generally exists in these situations, the scanning procedure becomes merely a sorting operation where the undergrades are removed and the other eggs move rapidly into the packing area.

While the Department periodically inspects eggs at retail outlets for grade and weight compliance, this is basically the responsibility of State regulatory agencies under State egg laws. From reports of State regulatory gradings at retail, as well as scattered retail gradings the Department had made, the question arose as to whether the destination grades are realistic and reasonable, and truly reflective of today's production and marketing practices. At this point, there were no studies to evaluate this situation. Accordingly, the Department made a comprehensive study of retail packs to determine how the actual grade and size compared with the marked grade and size. A randomly selected group of retail outlets comprised of various sizes and types was used in the study. There were 125 chains selected for the study with stores from nationwide chains being visited in many States. Gradings were made at retail outlets in 31 different States by supervisory U.S. Department of Agriculture personnel. The gradings were performed in April and May 1978 and duplicated in the same outlets again in July and August 1978. During the two periods, a total

of 12,312 100-egg samples were graded from the various sizes and grades available. The sample distribution was composed of 52.16 percent of product graded under USDA's voluntary grading program and identified with official USDA grademarks and 47.84 percent packed without USDA identification from other sources. However, since the various States regulate the labeling, grading, and marketing of eggs by their State egg laws and these laws reference the official U.S. standards, grades, and weight classes, it can be assumed that the U.S. standards were used as a basis in grading and sizing the eggs. Based on the study, the Department is considering various revisions of the official U.S. standards and grades for shell eggs and a change in the number of cases to be sampled for gradings made on a representative sample basis.

Revisions to Be Considered

The portion of the standards which is of greatest concern involves the tolerance for checked eggs at destination. A "Check" is defined as "an individual egg that has a broken shell or crack in the shell but with its shell membranes intact and its contents do not leak." "Checks" are an unavoidable problem in the marketing of eggs because eggs cannot be assembled, graded, packed, transported, and merchandized without some breakage. Most obvious Checks are removed during the grading process, but "hairline" Checks defy all attempts to remove during grading because they cannot be seen. As time passes, many of these Checks become detectable (due primarily to contraction caused by cooling) but the eggs are often in marketing channels by then. Handling of eggs during the marketing process also causes Checks.

The present standards provide that AA and A grade eggs may contain up to 5 percent Checks at both origin and destination. In 1967, the tolerance at packing plant (origin) was 5 percent, and no change was made in the origin grades when the destination tolerances were promulgated. When destination grades were originally established in 1967, data were collected from State regulatory agency records which represented the quality of eggs at retail stores. These data indicated that a 5-percent tolerance for Checks at destination would be practical. Hence, the same 5-percent tolerance was applied at origin and destination. However, the study recently conducted by the Department indicated that slightly over 30 percent of AA and A grade cartoned eggs at retail stores exceed the 5-percent Check tolerance. Yet, the "average percent" of Checks at retail was 4.53, well under the 5 percent allowed. When the 5-percent tolerance was adopted in 1967, it was based on the layman's approach of "averages" rather than "frequency tables" which are used by statistical experts. Apparently, the present destination standards are and have been in error and do not accurately reflect what is reasonable under normal egg production and marketing practices.

The Department recommends the tolerance for Checks at destination be changed from 5 percent to 7 percent for all weight classes except Jumbos. A 7-percent tolerance would result in a compliance level of about 85 percent. On the surface, the change appears to be a relaxation or lowering of the standards. In actuality, the recommended change simply brings the standards in line with what is practical and reasonable and with what is actually happening in the marketplace. It will help eliminate the "hard-to-defend" controversies that arise between buyers, sellers, and regulatory officials. The actual quality of eggs reaching consumers should remain unchanged.

Jumbo size eggs present a special problem with respect to Checks, and the unavoidable incidence of Checks in this size exceeds that in the other weight classes. Part of the problem is due to the difficulty of packaging these oversize eggs in material that will accommodate them since all eggs above the 30-ounce-to-the-dozen size go into this pack. The extensive shell area subject to damage is also a factor. As indicated previously, the average incidence of Checks for all weight classes at retail in the study was 4.53 percent; but specifically for Jumbo size, the average was about 7 percent. The Department recommends that for U.S. Grade A Jumbo eggs the origin and destination tolerances for Checks be 7 percent and 9 percent, respectively. This would result in a compliance level of about 75 percent at both origin and destination.

The Department also recommends eliminating "AA grade" as an official USDA grade. It is estimated that about 20 percent (mostly on the west coast) of the eggs are marketed as AA grade. The destination review of retail stores indicated that about 50 percent of the samples of these eggs were not in compliance with the standards. This change would simplify the grade standards by reducing the number of official consumer grades to only two--A and B. The AA quality level for individual eggs would be retained. This would allow buyers who desire to do so to specify a certain percentage of AA quality eggs in the A grade eggs they buy. For example, they may wish to specify that a lot of A grade eggs which they buy must contain at least 20 percent AA quality eggs.

Elimination of the U.S. Grade AA category would also result in the elimination of the U.S. Fresh Fancy quality program. Use of this program has been very limited. The U.S. Grade A quality control program would remain.

The quality control programs use a more objective method of determining quality than by the candling method. Flocks under the programs are qualified by breaking out a small sample of eggs randomly selected from the flocks and measuring the height of the thick albumen with a specially designed micrometer. This measurement is calculated into units that determine the interior quality of the eggs. Other requirements to be met concern management practices on the farm, temperature controls, and uniformity of age of the flocks.

Some other rather minor changes in tolerances are also under consideration, as follows:

The Department is considering eliminating the C quality classification for individual eggs and placing the present C quality eggs in either the Dirty or B quality classification depending upon the degree of the defect. The overall percentage of C quality eggs in the production moving to shell egg plants has steadily decreased over the past several years. To obtain specific information concerning the actual percentage of C quality eggs in this regard, the USDA undertook a study in February 1979 involving approximately 2,500 100-egg samples in 20 shell egg plants nationwide. The results of this study showed that approximately 1 percent of the eggs from laying houses (nest-run eggs) were of C quality--.7 percent due to shell shape and texture, .2 percent because of stains, and .1 percent as a result of various other factors such as air cell development and small meat spots.

The Department believes that the percentage of C quality eggs found in the total egg production has decreased to a point where it is now insignificant and thus finds it difficult to justify continuing the C quality category in the standards. The Department would propose to place the present C quality eggs due to shell deformities in the B quality classification and moderately stained eggs now classified as C quality in the "Dirty" category except for moderate stains covering up to 1/32 of the shell surface when localized or up to 1/16 of the shell surface when scattered. These would be classified as B quality. U.S. Consumer Grade C was dropped from the standards in 1963.

Realignment of the present C quality standards into B quality and Dirty categories would result in adjustments in the percentages of various qualities permitted and/or required within a grade. Both the grade for a lot and the tolerance for individual cases or cartons within a lot would be affected in this regard.

Elimination of the C quality category for individual eggs would make it possible to upgrade the minimum percent of eggs of the specified quality in the consumer grades. Accordingly, the minimum percent of A quality or better eggs required in U.S. Grade A would be increased from 85 to 87 at origin and 80 to 82 at destination. For U.S. Grade B, the minimum percent of B quality or better eggs would be increased from 85 to 90 at origin and 80 to 90 at destination.

An adjustment would be made in the description of clean shells to permit slight cage marks that do not appreciably detract from the generally clean appearance of the egg. In addition, slight ridges or rough areas not materially affecting the shape and strength of the shell would be permitted in AA and A quality eggs.

There are now small tolerances in U.S. Consumer grades for Leakers, Dirties, and Loss eggs due to meat or blood spots. Even under the best quality control programs, occasional eggs of these qualities will unavoidably get into the pack. The present U.S. Grade A destination tolerance for "Leakers," "Dirties," or "Loss" due to meat or blood spots in any combination is 0.5 percent, except that "Loss" may not exceed 0.3 percent. The retail study indicated that this tolerance is unrealistic since the average incidence of eggs in those categories was 0.81 percent. The Department would propose to increase this tolerance from 0.5 to 1.0 percent. Loss permitted would remain at 0.3 percent. There would be a compliance level of about 92 percent at the 1-percent tolerance. The small increase in tolerances would have practically no effect on the overall quality of the eggs in U.S. Grade A packs at destination.

In U.S. Grade A at origin, a tolerance of 0.3 percent Leakers and Loss due to meat and blood spots is now permitted. There is no tolerance for Dirties. The study on origin gradings showed that there was a small incidence of Dirties. It is unrealistic to have a zero tolerance for Dirties at origin; thus, the Department would propose to increase the present tolerance of 0.3 to 0.5 percent and include Dirties in this tolerance. Loss permitted could not exceed 0.3 percent. The present tolerance for Leakers, Loss, and Dirties applies equally to U.S. Grade A and U.S. Grade B product and to both origin and destination grades so the U.S. Grade B product tolerance would be adjusted accordingly.

Another item under consideration is the elimination of three U.S. Wholesale grades--"U.S. Trades," "U.S. Dirties," and "U.S. Checks" since these grades have not been used for years. Wholesale grades "U.S. Specials," "U.S. Extras," and "U.S. Standards" would remain, except that reference to tolerances for "C quality" eggs would be deleted since it would be proposed, as indicated earlier in this advance notice, to eliminate "C quality." Reference to tolerances for "C quality" eggs in "U.S. Nest-Run Grade" for shell eggs would also be deleted.

The U.S. Procurement Grades I and II would also be eliminated since they are now obsolete. Procurement Grade II has not been used for a number of years. Procurement Grade I is practically identical to U.S. Consumer Grade A; thus, the consumer grade standard can readily be used in place of the procurement standard. The Department of Defense is the principal user of Procurement Grade I.

The term "Origin grading" would be clarified and defined as a grading made at a plant where the eggs are graded and packed.

A study by statisticians in the Department indicates that the minimum number of cases comprising a representative sample for grading a lot of shell eggs could be reduced relative to lot size from the number now required without materially affecting the accuracy of the grading results. The Department would propose to use the reduced number of samples.

The proposed amendments to the voluntary shell egg grading regulations (7 CFR Part 2856) would be as follows:

1. In § 2856.1, the definition for "Origin grading" would be amended to read as follows:

> "Origin grading" is a grading made on a lot of eggs at a plant where the eggs are graded and packed.

2. In § 2856.4(b), the figures and wording under "MINIMUM NUMBER OF CASES COMPRISING A REPRESENTATIVE SAMPLE" would be amended to read as follows:

§ 2856.4 Basis of grading service.

* * *

(b) * * *

MINIMUM NUMBER OF CASES COMPRISING A REPRESENTATIVE SAMPLE

Cases in Lot	Cases in Sample
1 case	1
2 to 50	2
51 to 100	3
101 to 200	5
201 to 300	7
301 to 400	9
401 to 500	11
501 to 600	13
601 to 700	15
701 to 800	17
Over 800	19

3. In § 2856.17, paragraph (c) would be amended by changing "§§ 2856.42 and 2856.43" to read "§ 2856.43".

4. In § 2856.36, paragraph (b)(2) would be amended by changing the wording "Figures 2, 3, and 6" to read "Figures 2 and 3". Paragraph (b)(3) would be deleted, paragraph (b)(4) would be redesignated (b)(3), and "Figure 7" would be redesignated "Figure 4".

5. In § 2856.37, the first sentence would be amended to read "Each carton identified with the grademarks shown in Figures 2 and 3 of § 2856.36 shall be legibly lot numbered on either the carton or the tape used to seal the carton."

6. In § 2856.40, paragraph (a) would be amended by changing the wording "Figures 2, 3, and 6" to read "Figures 2 and 3".

7. Section 2856.42 would be deleted.

8. Section 2856.43 would be amended to read as follows:

§ 2856.43 Requirements for eggs packaged under the U.S. Grade A mark as shown in Figure 4 of § 2856.36.

(a) *Minimum requirements of procurement and distribution program.* Each packing station or plant must have a satisfactory procurement and distribution program including, but not being limited to, the following requirements at the farm and retail store level as applicable:

(1) Eggs from each flock shall be packed separately and the shipping cases marked so as to facilitate segregation at the packing station. A flock shall consist of birds located on the same farm and managed under identical supervision.

(2) Eggs should be gathered from the nest at least twice, and preferably three times a day.

(3) Eggs which require cleaning should be cleaned in accordance with the applicable provisions of § 2856.76. Eggs may be treated by oil dipping, oil spraying, or oil-emulsion spraying: *Provided*, That methods used are such as will not cause objectionable cloudiness in the whites. Oil treating and cleaning operations must be in compliance with the sanitary requirements as provided in § 2856.76.

(4) Eggs shall be cooled promptly after gathering to 60° F. or below and held at a reasonable constant temperature not to exceed 60° F. and at a relative humidity of approximately 70 percent. Notwithstanding the foregoing, the temperature of the eggs may rise to 70° F. during washing and packaging operations provided the eggs are moved promptly to a cooler or transported at a temperature of 60° F. or below.

(5) Eggs shall be transported and handled under such conditions as will prevent sweating and at a temperature of 60° F. or below.

(6) Periodic checks to determine the adequacy of the production programs shall be made by governmentally employed graders.

(b) *Minimum requirements at packaging plant.* (1) The quality factor of albumen firmness shall be determined by the broken-out score, measured in Haugh units, and the condition of the yolk shall be observed during such testing. The breakout test shall be made every other week unless the breakout records indicate a variation in individual eggs or averages beyond that normally expected for this program, in which case the breakout shall be made weekly. The test shall be accomplished at the assembly plant or at the farm in the event the eggs go directly from the farm to the store. Eggs which do not meet the requirements of AA quality with respect to shell shape shall not be selected as part of any sample that is to be broken out and scored. Sampling, breakout testing, and maintenance of records of breakout test shall be done by or under the immediate supervision of a grader.

(2) The internal temperature of the eggs shall not be lower than 45° F. or higher than 60° F. at the time of making the breakout test. Eggs shall be placed under refrigeration at a temperature not to exceed 60° F. and a relative humidity of approximately 70 percent promptly after packaging.

(3) A flock may be eligible for entry under the program when a sample of 25 eggs drawn at random averages 64 Haugh units or higher; or when 2 samples of 25 eggs each drawn at random (1 sample per week for 2 consecutive weeks) each averages 62 Haugh units or higher. Notwithstanding the foregoing, a flock shall not be eligible if any sample contains more than four eggs measuring less than 60 Haugh units, and the yolk of all eggs in the sample shall have a well-rounded appearance with a reasonably uniform color.

(4) A flock may remain on the program: *Provided*, That (i) a moving average of 62 Haugh units or higher is maintained; (ii) the yolks of all eggs have a well-rounded appearance with a reasonably uniform color; and (iii) not more than 2 eggs in any sample of 10 eggs measure less than 60 Haugh units.

(5) The biweekly or weekly average shall be computed by averaging the results obtained by testing 10 eggs from each flock every other week (or weekly when required). Samples shall be drawn at random every other week (or weekly when required) from each flock from a single shipment. Notwithstanding the foregoing, 5 eggs may be used as the sample size when a moving average of 74 Haugh units or higher is maintained.

(6) The moving average shall be computed by averaging the results of the latest two biweekly or four weekly (when required) Haugh unit entries of a flock.

(7) Any flock which has been on the program and is excluded for failure to meet the requirements may be reinstated by the same procedures used to originally enter a flock on the program.

(8) Eggs with clean, unbroken, practically normal shells from flocks which meet the provisions of this section may be packaged and officially labeled as indicated in Figure 4 of § 2856.36(b)(3) after the removal of eggs containing blood and meat spots and loss eggs.

(9) Packages or sealing tapes shall bear in distinctly legible form a date, stated as the "month" and "day," or the number of the "month" and "day" (i.e., 4-3), preceded by the letters "EXP." or a statement such as "Not to Be Sold After." The expiration date shall not exceed 10 days from the date the eggs are packed, excluding the day of pack. The eggs must be packed within 6 days from the time they are received at the plant (not counting the day received), or that shipment must be tested again for Haugh units and other factors to determine their eligibility for packing. Notwithstanding the foregoing, other systems of dating may be approved which accomplish the purposes of this paragraph, providing application for such a system is made in writing by the applicant and concurred in by the Administrator.

(10) Graders shall examine samples of packaged product in accordance with the provisions of § 2856.4 or as determined by the National supervisor. A tolerance of 13 percent is permitted in eggs that are of B quality with respect to shell. Within the 13-percent tolerance, 5 percent may be Checks. In addition, 0.50 percent may be Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

9. In § 2856.76, the first sentence of paragraph (f)(1) would be amended to read "Shell eggs, except as otherwise provided for in § 2856.43, shall not exceed an internal temperature of 80° F. at the time of official grading."

10. In § 2856.200, the first sentence of paragraph (b) would be amended by deleting the wording "§ 2856.42 or".

11. Section 2856.203 would be amended to read as follows:

§ 2856.203 B Quality.

The shell must be unbroken, may be abnormal, and may have slightly stained areas. Moderately stained areas are permitted if they do not cover more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered. Eggs having shells with prominent stains or adhering dirt are not permitted. The air cell may be over 3/8 inch in depth, may show unlimited movement, and may be free or bubbly. The white may be weak and watery so that the yolk outline is plainly visible when the egg is twirled before the candling light. The yolk may appear dark, enlarged, and flattened, and may show clearly visible germ development but no blood due to such development. It may show other serious defects that do not render the egg inedible. Small blood clots or spots (aggregating not more than 1/8 inch in diameter) may be present.

12. Section 2856.204 would be deleted.

13. Section 2856.205 would be deleted.

14. In § 2856.208, paragraph (e) would be deleted and paragraphs (a), (b), (c), and (d) would be amended to read as follows:

§ 2856.208 Terms descriptive of the shell.

(a) Clean. A shell that is free from foreign material and from stains or discolorations that are readily visible. An egg may be considered clean if it has only very small specks, stains, or cage marks, if such specks, stains, or cage marks are not of sufficient number or intensity to detract from the generally clean appearance of the egg. Eggs that show traces of processing oil on the shell are considered clean unless otherwise soiled.

(b) Dirty. A shell that is unbroken and that has dirt or foreign material adhering to its surface, which has prominent stains, or moderate stains in excess of those permitted in B quality.

(c) Practically normal (AA or A quality). A shell that approximates the usual shape and that is sound and is free from thin spots. Slight ridges and rough areas that do not materially affect the shape and strength of the shell are permitted.

(d) Abnormal (B quality). A shell that may be decidedly misshapen or faulty in soundness or strength or that may show pronounced ridges, thin spots, or rough areas.

15. In § 2856.210, paragraph (d) would be deleted, paragraphs (e), (f), and (g) would be redesignated (d), (e), and (f), respectively, and redesignated paragraphs (d) and (e) would be amended to read as follows:

§ 2856.210 Terms descriptive of the white.

* * *

(d) Weak and watery (B quality). A white that is thin and generally lacking in viscosity. A weak and watery white permits the yolk to approach the shell closely, thus causing the yolk outline to appear plainly visible and dark when the egg is twirled. With respect to a broken-out egg, a weak and watery white has a Haugh unit value lower than 31 when measured at a temperature between 45° and 60° F.

(e) Blood clots and spots (not due to germ development). Blood clots or spots on the surface of the yolk or floating in the white. These blood clots may have lost their characteristic red color and appear as small spots or foreign material commonly referred to as meat spots. If they are small (aggregating not more than 1/8 inch in diameter), the egg may be classed as "B quality." If larger, or showing diffusion of blood in the white surrounding them, the egg shall be classified as Loss.

16. Section 2856.211 would be amended to read as follows:

§ 2856.211 Terms descriptive of the yolk.

(a) Outline slightly defined (AA quality). A yolk outline that is indistinctly indicated and appears to blend into the surrounding white as the egg is twirled.

(b) Outline fairly well defined (A quality). A yolk outline that is discernible but not clearly outlined as the egg is twirled.

(c) Outline plainly visible (B quality). A yolk outline that is clearly visible as a dark shadow when the egg is twirled.

(d) Enlarged and flattened (B quality). A yolk in which the yolk membranes and tissues have weakened and moisture has been absorbed from the white to such an extent that it appears definitely enlarged and flat.

(e) Practically free from defects (AA or A quality). A yolk that shows no germ development but may show other very slight defects on its surface.

(f) Serious defects (B quality). A yolk that shows well developed spots or areas and other serious defects, such as olive yolks, which do not render the egg inedible.

(g) Clearly visible germ development (B quality). A development of the germ spot on the yolk of a fertile egg that has progressed to a point where it is plainly visible as a definite circular area or spot with no blood in evidence.

(h) Blood due to germ development. Blood caused by development of the germ in a fertile egg to the point where it is visible as definite lines or as a blood ring. Such an egg is classified as inedible.

17. In § 2856.215, paragraph (e) would be deleted and paragraph (f) would be redesignated (e).

18. Section 2856.216 would be amended to read as follows:

§ 2856.216 Grades.

(a) U.S. Grade A. (1) U.S. Consumer Grade A (at origin) shall consist of eggs which are 87 percent A quality or better. Within the maximum tolerance of 13 percent which may be below A quality, not more than 5 percent may be Checks, and not more than 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(2) U.S. Consumer Grade A (destination) shall consist of eggs which are 82 percent A quality or better. Within the maximum tolerance of 18 percent which may be below A quality, not more than 7 percent may be Checks and not more than 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(b) U.S. Grade B. (1) U.S. Consumer Grade B (at origin) shall consist of eggs which are 90 percent B quality or better, not more than 10 percent may be Checks and not more than 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(2) U.S. Consumer Grade B (destination) shall consist of eggs which are 90 percent B quality or better, not more than 10 percent may be Checks and not more than 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(c) Additional tolerances:

(1) In lots of two or more cases:

(i) For Grade A--no individual case may exceed 10 percent less A quality eggs than the minimum permitted for the lot average.

(ii) For Grade B--no individual case may exceed 10 percent less B quality eggs than the minimum permitted for the lot average.

(2) In lots of two or more cartons:

(i) For Grade A--no individual carton may contain less than eight eggs of the specified quality. The remaining four eggs may be B quality or Checks.

(ii) For Grade B--no individual carton may contain less than eight eggs of the specified quality. The remaining four eggs may be Checks.

(3) For Grade A and Grade B, no lot shall be rejected or downgraded due to the quality of a single egg.

19. Section 2856.217 would be amended to read as follows:

§ 2856.217 Summary of grades.

The summary of U.S. Consumer Grades for Shell Eggs follows as Table I and Table II of this section:

Table I--Summary of U.S. Consumer Grades for Shell Eggs

U.S. Consumer grade (origin)	Quality required [1]	Tolerance permitted [2]	
		Percent	Quality
Grade A	87 percent A or better	Up to 13	B
		Not over 5	Checks [3]
Grade B	90 percent B or better	Not over 10	Checks
U.S. Consumer grade (destination)	**Quality required [1]**	**Tolerance permitted [4]**	
		Percent	Quality
Grade A	82 percent A or better	Up to 18	B
		Not over 7	Checks [3]
Grade B	90 percent B or better	Not over 10	Checks

[1] In lots of two or more cases or cartons, see Table II of this section for tolerances for an individual case or carton within a lot.

[2] For the U.S. Consumer grades (at origin), a tolerance of 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination is permitted, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

[3] For U.S. Grade A Jumbo size eggs, the tolerance for Checks at origin and destination is 7 percent and 9 percent, respectively.

[4] For the U.S. Consumer grades (destination), a tolerance of 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination is permitted, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

Table II--Tolerance for Individual Case or Carton within a Lot

U.S. Consumer Grade	Case Quality	Origin	Destination	Carton Quality number of eggs (origin and destination)
		Percent	Percent	
Grade A.....	A (min.)....	77	72	8 eggs A (min.)
	B (max.)....	13	18	4 eggs B or Check (max.)
	Check (max.)	10	10	
Grade B.....	B (min.)....	80	80	8 eggs B (min.)
	Check (max.)	20	20	4 eggs Check (max.)

20. Sections 2856.221, 2856.222, and 2856.223 would be deleted.

21. Section 2856.226 would be amended to read as follows:

§ 2856.226 Grades.

(a) "U.S. Specials--% AA Quality" shall consist of eggs of which at least 20 percent are AA quality; and the actual percentage of AA quality eggs shall be stated in the grade name. Within the maximum of 80 percent which may be below AA quality, not more than 7.5 percent may be B quality, Dirties, or Checks in any combination and not more than 2.0 percent may be Loss.

(b) "U.S. Extras--% A Quality" shall consist of eggs of which at least 20 percent are not less than A quality; and the actual total percentage of A quality and better quality eggs shall be stated in the grade name. Within the maximum of 80 percent which may be below A quality, not more than 11.7 percent may be Dirties or Checks in any combination and not more than 3.0 percent may be Loss.

(c) "U.S. Standards--% B Quality" shall consist of eggs of which at least 84.3 percent are not less than B quality; and the actual total percentage of B quality and better quality eggs shall be stated in the grade name. Within the maximum of 15.7 percent which may be below B quality, not more than 11.7 percent may be Dirties or Checks in any combination and not more than 4.0 percent may be Loss.

22. Section 2856.227 would be amended to read as follows:

§ 2856.227 Summary of grades.

A summary of the United States Wholesale Grades for Shell Eggs follows as Table I of this section:

Table I--Summary of United States Wholesale Grades for Shell Eggs

Wholesale Grade Designation	Minimum Percentage of Eggs of Specific Qualities Required [1]			Maximum Tolerance Permitted (Lot Average)		
	AA Quality	A Quality or Better	B Quality or Better	B Quality Dirties and Checks	Dirties and Checks	Loss
				%	%	%
U.S. Specials--% AA Quality[2]	20	Balance	None except for tolerances	7.5	---	2
U.S. Extras--% A Quality[2]	--	20	Balance	---	11.7	3
U.S. Standards--% B Quality[2]	--	--	84.3	---	11.7	4

[1]Substitution of eggs possessing higher qualities for those possessing lower specified qualities is permitted.

[2]The actual total percentage must be stated in the grade name.

23. Section 2856.228 would be amended to read as follows:

§ 2856.228 Weight classes.

The weight classes for the United States Wholesale Grades for Shell Eggs shall be the same as indicated in Table I of this section.

24. Section 2856.230 would be amended by deleting the words "and C Quality combined" and the word "texture".

25. Table I of § 2856.231 would be amended by deleting the words "and C" and the words "texture or" from the heading reading "B and C quality for shell texture or shape, interior quality (including blood or meat spots) or cage marks[5] and blood stains".

ATTACHMENT C

Reprinted from the FEDERAL REGISTER, Vol. 46, No. 149, August 4, 1981, pages 39566-39573.

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
Washington, D.C. 20250 - Poultry Division

Agricultural Marketing Service

Food Safety and Quality Service

7 CFR Part 2856

[Docket No. 80-025F]

Revision of Shell Egg Standards and Grades

AGENCY: Agricultural Marketing Service,[1] USDA.
ACTION: Final rule.

SUMMARY: This rule revises the voluntary shell egg grading regulations. The amendments are basically the same as proposed in the **Federal Register** of April 17, 1981 (46 FR 22383). The amendments will:

a. Raise the minimum percent of eggs of a specified quality in the consumer grades at origin and destination, except for a downward adjustment in this percentage for U.S. Grade AA at destination to more accurately reflect normal quality loss during marketing.

b. Eliminate the consumer grade Fresh Fancy quality control program because it is used very little and the Grade A quality control program because it is not used.

c. Eliminate C quality classification for individual eggs because they have become an insignificant portion of production (about 1 percent of nest-run eggs).

d. Raise the tolerance for Checked eggs at destination for all egg sizes and for Jumbo size eggs at origin, slightly raise the tolerance for Leakers and Dirties at destination, and provide a small tolerance for Dirties at origin to more accurately reflect current egg production and marketing practices.

e. Eliminate the three lower U.S. Wholesale grades—Trades, Dirties, and Checks—because they are no longer used and eliminate the two U.S. Procurement grades because they are obsolete.

f. Clarify the definition of origin grading to indicate that this is a grading made at a plant where eggs are graded and packed.

[1] The Commodity Services program of the Food Safety and Quality Service, USDA was transferred to the Agricultural Marketing Service, USDA by USDA Secretary's Memorandum 1000-1, issued June 17, 1981. A notice detailing the Agency's reorganization is being drafted for later publication.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT:
D. M. Holbrook, Chief, Poultry Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 3944, South Agriculture Building, Washington, DC 20250, (202) 447-3506.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

An initial determination has been made that this final rule is not a major rule under Executive Order 12291 because it does not impose additional burdens or requirements on the affected industry. It will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation has been reviewed for cost effectiveness under USDA Secretary's Memorandum 1512-1 implementing Executive Order 12291. It revises the shell egg standards and grades to bring them in line with current egg production and marketing conditions. As such, it is anticipated that the revisions will result in no monetary costs or other adverse impacts offsetting the expected benefits. Alternatively, the Agency could have retained the existing, outdated standards and grades, but strict compliance with those standards and grades would result in substantial cost to both industry and consumers with little or no offsetting product quality benefit.

Effect on Small Entities

It has been determined that this action will not have a significant economic impact on a substantial number of small entities because it involves changes that are limited to bringing the existing regulations into conformity with current industry production and marketing practices, but does not impose additional burdens or requirements on the affected industry.

Background

The history of standards for shell eggs dates back to 1925 when the first quality standards for individual eggs were developed. In 1948, consumer grades were issued, and in 1967 separate

standards for consumer grades at origin and destination were issued. Individual shell eggs are judged for quality based on a subjective response to their exterior and candled appearance. Eggs may then be packed under various USDA grademarks provided they meet all minimum requirements as outlined in the Regulations Governing the Grading of Shell Eggs and United States Standards, Grades, and Weight Classes for Shell Eggs (7 CFR Part 2856).

Tolerances are designed to compensate for human variability and unavoidable quality loss due to handling during transport and marketing and the natural decline or change in quality during this period. Tolerances must be within the capabilities of the industry to produce an acceptable product at reasonable prices. Without tolerances, it would not be possible to produce cartoned eggs at prices acceptable to consumers.

U.S. shell egg standards and grades need to reflect and to keep current with improvements in industry technology. Also, they must be current with today's production and marketing practices. The shell egg industry has undergone drastic changes since the consumer grades were issued. Eggs move faster into the marketplace than ever before in the history of the industry.

U.S. shell egg standards and grades impact upon State egg laws. States regulate the labeling, grading, and marketing of eggs through State egg laws, and these laws reference the U.S. standards, grades, and weight classes. The inspection of eggs at retail outlets for grade and weight compliance is basically the responsibility of State regulatory agencies under State egg laws.

From reports of State regulatory gradings at retail, as well as scattered retail gradings the Agency had made, the question arose as to whether the destination grades are realistic and reasonable, and truly reflective of today's production and marketing practices. Since there were no studies to evaluate this situation, the Agency made a comprehensive study of retail packs to determine how the actual grade and size compared with the marked grade and size. A randomly selected group of retail outlets comprised of various sizes and types was used in the study. There were 125 chains selected for the study with stores from nationwide chains being visited in many States. Gradings were made at retail outlets in 31 different States by supervisory U.S. Department of Agriculture personnel. The gradings were performed in April and May 1978 and duplicated in the same outlets again in July and August 1978. During the two periods, 12,312 100-egg samples were graded from the various sizes and grades available. The sample distribution was composed of 52.16 percent of product graded under USDA's voluntary grading program and identified with official USDA grademarks and 47.84 percent packed without USDA identification.

Based on the results of the study, the Agency solicited public comments on various proposed changes in the voluntary shell egg regulations through an advanced notice of proposed rulemaking. This document was made available through a notice published in the May 27, 1980, **Federal Register** (45 FR 35345), open for comment until August 25, 1980. Fifty-five (55) comments were received; 22 from egg producers, packers, distributors, and other interested persons; 9 from trade organizations; 1 from an industry task force representing 36 other organizations; 18 from State departments of agriculture; and 5 from consumers. The majority of these comments indicated that the review of the voluntary shell egg standards was long overdue and that the proposed changes, with one exception, were both reasonable and necessary. The one exception to the changes suggested in the advanced notice was the elimination of U.S. Grade AA. Comments received indicated that elimination of U.S. Grade AA would not necessarily eliminate Grade AA regulated under State egg laws, that it would create an economic hardship on producers marketing this grade, and that there could be an economic impact on retailers in certain States. After reviewing these comments, the Agency decided not to propose the elimination of U.S. Grade AA through rulemaking procedures but to maintain this grade with modifications.

Proposal

Based on the comments received on the advanced notice of proposed rulemaking, the Agency published a proposed rule in the **Federal Register** of April 17, 1981, (46 FR 22383), to amend the voluntary shell egg regulations as set forth basically in the advanced notice. The proposed rule contained the following major revisions:

1. Raise the minimum percent of eggs of the specified quality in consumer grades—The minimum percent of AA or A quality or better eggs required in U.S. Grade AA or U.S. Grade A, respectively, would be increased from 85 to 87 at origin and 80 to 82 at destination for U.S. Grade A. An exception would be in U.S. Grade AA eggs at destination to require 72 percent AA quality eggs instead of 80 percent and to require at least 10 percent of the remaining eggs to be A quality. For U.S. Grade B, the minimum percent of B quality or better eggs would be increased from 85 to 90 at origin and 80 to 90 at destination.

2. Eliminate the consumer grade Fresh Fancy quality and Grade A quality control programs.

3. Eliminate the C quality classification for individual eggs—C quality eggs due to shell deformities would be placed in the B quality classification, and C quality eggs due to moderately stained shells in excess of that permitted in B quality would be placed in the Dirty category.

4. Raise the tolerance for checked eggs—The Check tolerance for U.S. Grade AA and U.S. Grade A at destination would be raised from 5 to 7 percent for all weight classes except Jumbo. The Check tolerance for Jumbo size eggs would be raised from 5 to 7 percent at origin and to 9 percent at destination.

5. Slightly raise the tolerances for Leakers and Dirties—The tolerance in U.S. Consumer Grades for Leakers and Loss due to meat or blood spots in any combination at origin would be increased from 0.3 to 0.5 percent and include Dirties, except that such Loss would remain at the 0.3 percent level. At destination the tolerance for Leakers, Dirties, and Loss due to meat or blood spots in any combination would be increased from 0.5 to 1.0 percent. Loss permitted would again not be allowed to exceed 0.3 percent.

6. Eliminate wholesale and procurement grades—Three of the U.S. Wholesale Grades (U.S. Trades, U.S. Dirties, and U.S. Checks) and the two U.S. Procurement Grades (I and II) would be eliminated.

7. Clarify the definition of origin grading—The definition of origin grading would be clarified to indicate a grading made at a plant where eggs are graded and packed.

Except for eliminating small meat spots from the proposed 1 percent tolerance for B quality due to small blood and meat spots, air cells over ⅜ inch, or serious yolk defects permitted in U.S. Grade AA and A and several editorial changes for clarity, the revisions to the voluntary shell egg regulations are the same as proposed.

Discussion of Comments

As a result of the proposal, 85 comments were received from 42 individuals, 24 State departments of agriculture (two commented twice), 10 egg producers, packers, or distributors, 1 associated industry, 1 university, 3 industry organizations, an industry

elected task force representing 32 other organizations, and 1 retailer. The majority of these comments generally supported the changes except for a large number of individuals who objected to the increase in tolerances for checked eggs. The principal concerns expressed through objecting statements raised the following issues:

1. The proposed change to raise the tolerance for checked eggs at destination for all egg sizes and, in addition, at origin for Jumbo size eggs generated more opposition than all the other proposed changes combined. Forty-two interested parties, most of whom were individuals, objected to this change, but fifty-seven interested parties supported the proposal, and three individuals suggested that the Government should not regulate Checks at all. Also, a few other interested parties suggested additional changes in the tolerances. Most opposing commenters believed the number of checked eggs allowed in a carton would be increased and would result in a decrease in the quality of eggs purchased by consumers. Additionally, a few commenters expressed the view that industry should improve operations to minimize this problem. Checks (an individual egg that has a broken or cracked shell but with its shell membranes intact and its contents not leaking) are an unavoidable problem in the marketing of eggs because eggs cannot be assembled, graded, packed, transported, and merchandized without some breakage. Most obvious Checks are removed during the grading process, but "hairline" Checks often escape detection because they cannot be seen. As time passes, many of these Checks become detectable (due primarily to contraction caused by cooling); however, the eggs have usually moved into marketing channels and may be at the retail level within 1–3 days after being laid. Handling of eggs during the marketing process also may cause Checks.

The current standards provide that AA and A grade eggs may contain up to 5 percent Checks at both origin and destination. The retail study recently conducted by the Agency indicates that slightly over 30 percent of AA and A grade cartoned eggs at retail stores exceed the 5-percent Check tolerance. Yet, the average percent of Checks at retail was 4.53, well under the 5 percent allowed. When the 5-percent tolerance was adopted in 1967, it was based on the layman's approach of "averages" rather than "frequency tables" which are used by statisticians. Thus, the present destination standards are and have been in error and do not accurately reflect what is reasonable under normal egg production and marketing practices and what is in the marketplace today. The changes only update the standards to reflect what is presently in the marketplace as determined by the Agency's comprehensive survey conducted in 1978. It will not reduce the quality of eggs consumers are purchasing.

Except for a comment from one State, none of those opposing this change submitted data to support their claim or refute the Agency's data.

Moreover, except for Jumbo size eggs, it appears that most commenters failed to realized that origin tolerances for other sizes are unchanged. Thus, for all sizes other than Jumbo, the Check tolerances applied at the packing and grading (origin) location remain the same.

One State department of agriculture expressed concern about the need to increase the Check tolerance and presented supporting data. The Agency reviewed its retail study data for that State. The data showed that the results in that State were approximately the same as the national figures.

A few comments proposed increasing tolerances at origin for checked eggs; namely, for the Extra Large size. No data were submitted to substantiate these suggestions. However, to the contrary, the Agency's data from shell egg plants with USDA resident grading service indicate that industry compliance with the existing tolerance for Extra Large size is attainable under present practices.

A few comments were received expressing concern about the separate tolerances for Jumbo size eggs. One State department of agriculture opposed the change because of concern for a higher incidence of Leakers at destination. Another State department of agriculture expressed concern that a separate tolerance for Jumbo size eggs was confusing and lacks uniformity. While the Agency shares the opinion that this change results in some confusion and less uniformity, the tolerances recommended are in accordance with the 1978 nationwide survey. This study suggests, due to the difficulty of packaging these oversized eggs in material which will accommodate them and the extensive shell area subject to damage, that a separate tolerance for Jumbo size eggs is needed. Accordingly, the Agency proposed separate origin and destination Check tolerances.

In regard to the view that the Government should not regulate checked eggs, the Agricultural Marketing Act of 1946 directs the Secretary of Agriculture to develop and improve grade standards for voluntary use by industry to facilitate marketing. Therefore, the Agency is required to provide voluntary grade standards.

2. In addition to opposing the increase in tolerances for checked eggs, a few statements expressed concern that slightly raising tolerances for Leakers and Dirties would reduce overall product quality. These changes were not proposed by USDA to permit inferior products but rather to compensate for human error and unavoidable quality loss during handling and marketing. Furthermore, small increases in tolerances would have practically no effect on the overall quality of the eggs in U.S. Consumer Grades AA and A packs since they merely reflect what is presently in the marketplace. Based on the plant and retail studies, slight increases align the tolerances with industry's capability to produce an acceptable product at reasonable prices. Therefore, in the absence of data to support the objections received, the Agency will make the proposed changes.

3. There were comments suggesting changes in the tolerances for Loss due to large meat or blood spots. One commenter believed the Loss tolerance should be raised from 0.3 percent to 0.5 percent at destination to be consistent with the concept of different origin and destination tolerances for other factors. Another commenter suggested that the Loss tolerance should be raised to 0.5 percent at origin and destination because the 0.3-percent tolerance is unrealistic and because a 0.5-percent tolerance results in a high level of compliance with a lack of consumer complaints.

The Agency's comprehensive nationwide study showed that at origin only 0.29 percent of the eggs from Grade A packs were downgraded for Loss due to Leakers, large meat or blood spots, and all other types of Loss combined. Furthermore, the Agency's retail study showed that eggs at retail outlets were found to contain only 0.43 percent Loss due to Leakers, large meat or blood spots, and all other types of Loss combined. The Agency has no reason to believe that the amount of Loss due to meat or blood spots at destination is greater than at origin. Moreover, the Agency has increased the destination tolerance for Leakers and Dirties to account for breakage in handling and shipment. In the absence of specific data to support these suggestions, the Agency will maintain the present tolerance for Loss due to large meat or blood spots.

4. Comments were received from three egg packers, two State departments of agriculture, and several industry organizations expressing concern about the proposed tolerance of not more than 1 percent B quality due to air cells over 5/8 inch, meat or blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects permitted in both U.S. Consumer Grades AA and A. Their foremost concern was that the standards were too restrictive and impractical with respect to small meat spots in brown shell eggs. Research reports and random sample laying tests show that the incidence of meat spots is significantly higher in brown eggs than in white eggs.

While USDA undertook a comprehensive study in February 1979 that showed only a small percentage of eggs from laying houses (nest-run eggs) were due to classification factors, such as air cell development and small meat or blood spots, very few brown eggs were examined in the study. Thus, while the study is indicative of the Nation's egg production, it does not accurately reflect the incidence of small meat spots in brown eggs.

The current standards provide for a maximum of 5 percent small meat or blood spots, air cells over 5/8 inch, serious yolk defects, weak and watery whites, shell abnormalities, and Checks individually or in combination. Thus, the current standards account for and permit the higher incidence of small meat spots. However, the Agency did not provide for this difference in the proposal due to the low overall incidence of small meat and blood spots in brown and white eggs combined. Accordingly, the Agency finds it difficult to justify the proposed tolerance when applied to meat spots in brown eggs and allows for this by eliminating eggs containing small meat spots (aggregating not more than 1/8 inch in diameter) from the 1 percent tolerance and permitting them in the maximum tolerance which may be below AA or A quality.

5. A few comments were received expressing concern that the unlimited tolerance for air cell depth and small meat or blood spots in U.S. Consumer Grade B would create problems with the public's acceptance of this grade. With the elimination of the C quality classification, the Agency decided to place eggs of the type mentioned above into the B quality classification for two reasons. First, the Agency undertook a study in February 1979 which showed that less than 0.1 percent of the eggs from laying houses were due to factors such as air cell development and small meat or blood spots. Even though the Agency did not investigate the increase in air cell depth from origin to destination specifically for U.S. Consumer Grade B packs, the retail study showed that less than 0.5 percent of eggs examined at retail outlets were downgraded due to air cells over 5/8 inch in depth, shell defects, and meat and blood spots combined. And secondly, it is highly unlikely that packers could intentionally add high percentages of small meat and blood spots to a pack without rejections due to Loss from meat or blood spots aggregating more than 1/8 inch in diameter. For the above reasons, and since the overall percentage of eggs of this type quality has steadily decreased in the marketplace over the past several years, the Agency will not maintain a separate quality tolerance for these factors in Grade B product.

6. Several comments were received concerning elimination of the "C" quality classification. Comments were mixed regarding the classification of stains and the classification of shell deformities. A few commenters requested higher classification for stains, since stains are not harmful or do not affect interior quality. Other commenters believed that classification of former C quality shells in the B quality category would cause increases in Leakers and Checks due to thin shells. To obtain specific information concerning the actual percentage of C quality eggs, USDA undertook a study in February 1979 involving approximately 2,500 100-egg samples in 20 shell egg plants nationwide with USDA resident grading service. The results of this study showed that only 1.0 percent of eggs from laying houses (nest-run eggs) were of C quality—0.7 percent due to shell shape and texture, 0.2 percent due to stains, and 0.1 percent due to various other factors. Therefore, the study indicates that the percentage of C quality eggs found in the total egg production has decreased to a point where it is insignificant and the Agency finds it difficult to justify continuing the C quality category in the standards. Since the U.S. Consumer Grade C was dropped from the standards in 1963, the Agency must place the present C quality eggs in either the Dirty or B quality classification depending on the degree of defect. Due to the small percentage of C quality in the production moving to shell egg plants, a small insignificant effect on the overall quality of U.S. Consumer Grade B occurs.

7. Several comments were received regarding U.S. Consumer Grade AA. A few commenters still wanted the grade eliminated because it would simplify the grade standards, and cause excessive noncompliance problems at the retail level. As previously noted in the proposed rule, elimination of U.S. Grade AA would not necessarily eliminate U.S. Grade AA regulated under State egg laws. Additionally, the change in the destination tolerance should result in increased compliance at the retail level.

A number of comments were received expressing concern regarding the origin and destination AA quality levels. Some commenters believed that the origin AA quality level of 85 percent was more reasonable than the proposed 87 percent for AA quality eggs due to difficulty in grader interpretation and the fact that 39.59 percent of the samples failed to meet the 87-percent AA quality level. (This percentage was misinterpreted from the comprehensive USDA study and is actually 35.51 percent.) There were also those that believed a destination AA quality level of 70 percent was more realistic than the proposed 72 percent for AA quality eggs. One commenter believed 70 percent was more realistic because of potential quality decline as product moves from origin to retail outlets. One commenter proposed to retain the present 85-percent origin and 80-percent destination egg quality tolerances for all grades in order to maintain uniformity and because of the view that adjustments in the permitted depth of the air cell to reflect quality loss between origin and destination is more equitable than adjusting the tolerance for undergrade eggs allowed in the different grades. This proposal was based on the premise that quality decline within a specific lot is fairly uniform. Another commenter expressed similar views. In contrast, one commenter pointed out that the proposed 15-percent tolerance range of AA quality eggs between origin and destination (from 87 to 72 percent) is inconsistent with the allowable quality ranges in the other grades. The commenter also believed that the AA quality range should not be 15 percent. In addition, one commenter suggested that the proposed destination quality level of 72 percent AA quality eggs was too low. However, no data were submitted to substantiate any of these claims. While the Agency appreciates these observations, they do not support a change in the proposed AA quality levels. The previous plant study indicates that at origin only 7.5-percent more of the samples examined met the 85-percent AA quality level as compared to those meeting the 87-percent AA quality level. With this difference in mind, the Agency chose the higher 87-percent AA quality level because other

changes in the standards will make it less difficult for certain eggs to meet the AA quality classification. Additionally, the retail study indicates that at destination the 72-percent AA quality level will result in increased compliance for both USDA and non-USDA graded product with about 84.5 percent of product packed under USDA's voluntary grading program meeting the 72-percent AA quality level.

The Agency has examined data comparing decline in air cell depth within specific lots. Even though the data are limited and preliminary, these results do not support the view that air cell depth changes uniformly over a given period of time. Based on these findings, further comprehensive investigation would be necessary in order to verify the claims made by proponents. But in the absence of data supporting the comments, the Agency does not plan to make changes at this time.

In the absence of data supporting each of these suggestions, the Agency will maintain U.S. Consumer Grade AA with modifications in the percentages of AA quality eggs at origin and destination. Thus, the AA quality pack is maintained with an increase in the percent of product within grade at retail.

8. One commenter expressed concern that based on permitted destination tolerances in certain situations, the Grade AA pack may be lower in quality than the Grade A pack. However, this view was due to an error in interpretation of the permitted tolerances. Furthermore, this commenter questioned whether the AA quality tolerances would be in agreement with what is obtainable in today's marketing system. While the Agency recognizes that differences exist between packers, the AA quality tolerances are based on what is reasonable on a nationwide basis. Thus, the tolerances are set at a level more reflective of the quality which can be consistently delivered under today's production and marketing system.

9. A few commenters expressed concern about definitions of terms. Two commenters suggested that the definition of "origin grading" be further defined. One comment was not specific in nature but was believed to agree with the other suggestion that the definition of "origin grading" be redefined to mean the last place eggs are warehoused prior to distribution to the retail outlet. While the Agency gave careful consideration to this opinion, it was considered unrealistic because movement of eggs from the location where eggs are graded and packed normally results in some quality decline. Therefore, it is unreasonable to apply the stricter origin tolerances at any location other than the point of initial grading and packing.

Additionally, one commenter suggested that the term "destination grading" be more clearly defined. "Destination grading" is not defined in the voluntary shell egg grading regulations. However, "origin grading" is being clarified and further defined as a grading made at a plant where eggs are graded and packed. It follows, therefore, that gradings at other locations, such as distribution points, retail outlets, etc., become "destination gradings."

10. Two State departments of agriculture expressed concern regarding the omission of the revised "Minimum Number of Cases Comprising A Representative Sample" presented in the advanced notice of proposed rulemaking published in the May 27, 1980, **Federal Register**. The Agency omitted this revision because after further evaluation, it was found that the proposed sampling plan did not give as good a degree of confidence in results as previously believed. It was concluded that too much accuracy was lost; therefore, the revision has been dropped.

11. In addition, four comments included specific suggestions for additional changes to the regulations. Two suggested changes were beyond the scope of the proposal. Also, none of the suggestions were substantiated by supporting data. However, the Agency will make use of such recommendations in considering future amendments to the regulations.

The Agency's change regarding the tolerance for B quality due to meat spots in U.S. Grade AA and A, discussed under issue number 4 above, and several editorial changes in the proposed rule for clarity, most of which were indicated in comments received, affect sections and subsections: 2856.203, 2856.208 (b) and (c), 2856.210 (d) and (e), 2856.216(a) (1) and (2), (b) (1) and (2), and (d)(2), and 2856.217. Section 2856.205 has been included and revised. Except for these changes, the Agency is adopting the proposal as published.

In consideration of the foregoing, the amendments to the voluntary shell egg grading regulations (7 CFR Part 2856) are as follows:

1. In § 2856.1, the definition for "Origin grading" is revised to read as follows:

§ 2856.1 Meaning of words and terms defined.

* * * * *

"Origin grading" is a grading made on a lot of eggs at a plant where the eggs are graded and packed.

* * * * *

§ 2856.17 [Amended]

2. In § 2856.17, paragraph (c) is removed.

3. In § 2856.36, paragraphs (b)(3) and (b)(4), including figures 4, 5, and 7, are removed. Figure 6 is moved to paragraph (b)(2) and renumbered as Figure 4, and paragraph (b)(2) is revised to read as follows:

§ 2856.36 Information required on and form of grademark.

* * * * *

(b) * * *

(2) Except as otherwise authorized, the grademark permitted to be used to officially identify cartons of shell eggs which are graded pursuant to the regulations in this part shall be contained in a shield and in the form and design indicated in Figures 2, 3, and 4 of this section. The shield shall be of sufficient size so that the print and other information contained therein is distinctly legible and in approximately the same proportion and size as shown in Figures 2 and 3. The grademark shall be printed on the carton or on a tape used to seal the carton.



Figure 2



Figure 3



Figure 4

§ 2856.37 [Amended]

4. In the first sentence of § 2856.37, the phrase "Figures 2, 3, and 6" is amended to read "Figures 2, 3, and 4."

§ 2856.39 [Amended]

5. In § 2856.39, the wording "§§ 2856.35 to 2856.43" is amended to read "§§ 2856.35 to 2856.41".

§ 2856.40 [Amended]

6. In § 2856.40, paragraph (a) is amended by changing the wording "Figures 2, 3, and 6" to read "Figures 2, 3, and 4".

§§ 2856.42 and 2856.43 [Reserved]

7. Sections 2856.42 and 2856.43 are removed and the section numbers are reserved.

8. In § 2856.76, the first sentence of paragraph (f)(1) is removed and paragraph (g) is revised to read as follows:

§ 2856.76 Minimum facility and operating requirements for shell egg grading and packing plants.

* * * * *

(g) The following substances used in the plant shall be approved and handled in accordance with the manufacturer's instructions: Pesticides, insecticides, rodenticides, cleaning compounds, destaining compounds, foam control compounds, sanitizers, and inks and oils coming into contact with the product.

9. In § 2956.200, paragraph (b) is revised to read as follows:

§ 2856.200 Application.

* * * * *

(b) Interior egg quality specifications for these standards are based on the apparent condition of the interior contents of the egg as it is twirled before the candling light. Any type or make of candling light may be used that will enable the particular grader to make consistently accurate determination of the interior quality of shell eggs. It is desirable to break out an occasional egg and by determining the Haugh unit value of the broken-out egg, compare the broken-out and candled appearance, thereby aiding in correlating candled and broken-out appearance.

10. Section 2856.203 is revised to read as follows:

§ 2856.203 B quality.

The shell must be unbroken, may be abnormal, and may have slightly stained areas. Moderately stained areas are permitted if they do not cover more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered. Eggs having shells with prominent stains or adhering dirt are not permitted. The air cell may be over 3/16 inch in depth, may show unlimited movement, and may be free or bubbly. The white may be weak and watery so that the yolk outline is plainly visible when the egg is twirled before the candling light. The yolk may appear dark, enlarged, and flattened, and may show clearly visible germ development but no blood due to such development. It may show other serious defects that do not render the egg inedible. Small blood spots or meat spots (aggregating not more than 1/8 inch in diameter) may be present.

§ 2856.204 [Reserved]

11. Section 2856.204 is removed and the section number is reserved.

12. Section 2856.205 is revised to read as follows:

§ 2856.205 Dirty.

An individual egg that has an unbroken shell with adhering dirt or foreign material, prominent stains, or moderate stains covering more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered.

13. In § 2856.208, paragraph (e) is removed and paragraphs (a), (b), (c), and (d) are revised to read as follows:

§ 2856.208 Terms descriptive of the shell.

(a) *Clean.* A shell that is free from foreign material and from stains or discolorations that are readily visible. An egg may be considered clean if it has only very small specks, stains, or cage marks, if such specks, stains, or cage marks are not of sufficient number or intensity to detract from the generally clean appearence of the egg. Eggs that show traces of processing oil on the shell are considered clean unless otherwise soiled.

(b) *Dirty.* A shell that is unbroken and that has dirt or foreign material adhering to its surface, which has prominent stains, or moderate stains covering more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered.

(c) *Practically normal (AA or A quality).* A shell that approximates the usual shape and that is sound and is free from thin spots. Ridges and rough areas that do not materially affect the shape and strength of the shell are permitted.

(d) *Abormal (B quality).* A shell that may be somewhat unusual or decidedly misshapen or faulty in soundness or strength or that may show pronounced ridges or thin spots.

14. In § 2856.210, paragraph (d) is removed, paragraphs (e), (f), and (g) are redesignated (d), (e), and (f), respectively, and redesignated paragraphs (d) and (e) are revised to read as follows:

§ 2856.210 Terms descriptive of the white.

* * * * *

(d) *Weak and watery (B quality).* A white that is weak, thin, and generally lacking in viscosity. A weak and watery white permits the yolk to approach the shell closely, thus causing the yolk outline to appear plainly visible and dark when the egg is twirled. With respect to a broken-out egg, a weak and watery white has a Haugh unit value lower than 60 when measured at a temperature between 45° and 60° F.

(e) *Blood spots or meat spots.* Small blood spots or meat spots (aggregating not more than 1/8 inch in diameter) may be classified as B quality. If larger, or showing diffusion of blood into the white surrounding a blood spot, the egg shall be classified as Loss. Blood spots shall not be due to germ development. They may be on the yolk or in the white. Meat spots may be blood spots which have lost their characteristic red color or tissue from the reproductive organs.

* * * * *

15. Section 2856.211 is revised to read as follows:

§ 2856.211 Terms descriptive of the yolk.

(a) *Outline slightly defined (AA quality).* A yolk outline that is indistinctly indicated and appears to blend into the surrounding white as the egg is twirled.

(b) *Outline fairly well defined (A quality).* A yolk outline that is discernible but not clearly outlined as the egg is twirled.

(c) *Outline plainly visible (B quality).* A yolk outline that is clearly visible as a dark shadow when the egg is twirled.

(d) *Enlarged and flattened (B quality).* A yolk in which the yolk membranes and tissues have weakened and/or moisture has been absorbed from the white to such an extent that the yolk appears definitely enlarged and flat.

(e) *Practically free from defects (AA or A quality).* A yolk that shows no germ development but may show other very slight defects on its surface.

(f) *Serious defects (B quality).* A yolk that shows well developed spots or areas and other serious defects, such as olive yolks, which do not render the egg inedible.

(g) *Clearly visible germ development (B quality).* A development of the germ spot on the yolk of a fertile egg that has progressed to a point where it is plainly visible as a definite circular area or spot with no blood in evidence.

(h) *Blood due to germ development.* Blood caused by development of the germ in a fertile egg to the point where it is visible as definite lines or as a blood ring. Such an egg is classified as inedible.

§ 2856.215 [Amended]

16. In § 2856.215, paragraph (e) is removed and paragraph (f) is redesignated (e).

17. Section 2856.216 is revised to read as follows:

§ 2856.216 Grades.

(a) *U.S. Grade AA.* (1) U.S. Consumer Grade AA (at origin) shall consist of eggs which are at least 87 percent AA quality. The maximum tolerance of 13 percent which may be below AA quality may consist of A or B quality in any combination, except that within the tolerance for B quality not more than 1 percent may be B quality due to air cells over ⅜ inch, blood spots (aggregating not more than ⅛ inch in diameter), or serious yolk defects. Not more than 5 percent (7 percent for Jumbo size) Checks are permitted and not more than 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(2) U.S. Consumer Grade AA (destination) shall consist of eggs which are at least 72 percent AA quality. The remaining tolerance of 28 percent shall consist of at least 10 percent A quality and the remainder shall be B quality, except that within the tolerance for B quality not more than 1 percent may be B quality due to air cells over ⅜ inch, blood spots (aggregating not more than ⅛ inch in diameter), or serious yolk defects. Not more than 7 percent (9 percent for Jumbo size) Checks are permitted and not more than 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(b) *U.S. Grade A.* (1) U.S. Consumer Grade A (at origin) shall consist of eggs which are at least 87 percent A quality or better. Within the maximum tolerance of 13 percent which may be below A quality, not more than 1 percent may be B quality due to air cells over ⅜ inch, blood spots (aggregating not more than ⅛ inch in diameter), or serious yolk defects. Not more than 5 percent (7 percent for Jumbo size) Checks are permitted and not more than 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(2) U.S. Consumer Grade A (destination) shall consist of eggs which are at least 82 percent A quality or better. Within the maximum tolerance of 18 percent which may be below A quality, not more than 1 percent may be B quality due to air cells over ⅜ inch, blood spots (aggregating not more than ⅛ inch in diameter), or serious yolk defects. Not more than 7 percent (9 percent for Jumbo size) Checks are permitted and not more than 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(c) *U.S. Grade B.* (1) U.S. Consumer Grade B (at origin) shall consist of eggs which are at least 90 percent B quality or better, not more than 10 percent may be Checks and not more than 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(2) U.S. Consumer Grade B (destination) shall consist of eggs which are at least 90 percent B quality or better, not more than 10 percent may be Checks and not more than 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(d) Additional tolerances:

(1) In lots of two or more cases:

(i) For Grade AA—No individual case may exceed 10 percent less AA quality eggs than the minimum permitted for the lot average.

(ii) For Grade A—No individual case may exceed 10 percent less A quality eggs than the minimum permitted for the lot average.

(iii) For Grade B—No individual case may exceed 10 percent less B quality eggs than the minimum permitted for the lot average.

(2) For Grades AA, A, and B, no lot shall be rejected or downgraded due to the quality of a single egg except for Loss other than blood or meat spots.

18. Section 2856.217 is revised to read as follows:

§ 2856.217 Summary of grades.

The summary of U.S. Consumer Grades for Shell Eggs follows as Table I and Table II of this section:

Table I—*Summary of U.S. Consumer Grades for Shell Eggs*

U.S. consumer grade (origin)	Quality required [1]	Tolerance permitted [2]	
		Percent	Quality
Grade AA	87 percent AA.	Up to 13. Not over 5 Checks [6]	A or B.[5]
Grade A	87 percent A or better.	UP to 13. Not over 5 Checks [6]	B.[5]
Grade B	90 percent B or better.	Not over 10 Checks.	

U.S. consumer grade (destination)	Quality required [1]	Tolerance permitted [3]	
		Percent	Quality
Grade AA	72 percent AA.	Up to 28 [4]. Not over 7 Checks [6]	A or B.[5]
Grade A	82 percent A or better.	Up to 18. Not over 7. Checks [6].	B.[5]
Grade B	90 percent B or better.	Not over 10. Checks.	

[1] In lots of two or more cases, see Table II of this section for tolerances for an individual case within a lot.

[2] For the U.S. Consumer grades (at origin), a tolerance of 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination is permitted except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

[3] For the U.S. Consumer grades (destination), a tolerance of 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination is permitted, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

[4] For U.S. Grade AA at destination, at least 10 percent must be A quality or better.

[5] For U.S. Grade AA and A at origin and destination within the tolerances permitted for B quality, not more than 1 percent may be B quality due to air cells over ⅜ inch, blood spots (aggregating not more than ⅛ inch in diameter), or serious yolk defects.

[6] For U.S. Grades AA and A Jumbo size eggs, the tolerance for Checks at origin and destination is 7 percent and 9 percent, respectively.

Table II.—*Tolerance for Individual Case Within a Lot*

U.S. consumer grade	Case quality	Origin (percent)	Destination (percent)
Grade AA	AA (min)	77	62
	A or B	13	28
	Check (max)	10	10
Grade A	A (min)	77	72
	B	13	18
	Check (max)	10	10
Grade B	B (min)	80	80
	Check (max)	20	20

§§ 2856.221, 2856.222, 2856.223 [Reserved]

19. Sections 2856.221, 2856.222, and 2856.223 are removed and the section numbers are reserved.

20. In § 2856.226, paragraphs (d), (e), and (f) are removed, and paragraphs (a), (b), and (c) are revised to read as follows:

§ 2856.226 Grades.

(a) "U.S. Specials—% AA Quality" shall consist of eggs of which at least 20 percent are AA quality; and the actual percentage of AA quality eggs shall be stated in the grade name. Within the maximum of 80 percent which may be below AA quality, not more than 7.5 percent may be B quality, Dirties, or Checks in any combination and not more than 2.0 percent may be Loss.

(b) "U.S. Extras—% A Quality" shall consist of eggs of which at least 20 percent are A quality; and the actual total percentage of A quality and better shall be stated in the grade name. Within the maximum of 80 percent which may be below A quality, not more than 11.7 percent may be Dirties or Checks in any combination and not more than 3.0 percent may be loss.

(c) "U.S. Standards—% B Quality" shall consist of eggs of which at least 84.3 percent are B quality; and the actual total percentage of B quality and better shall be stated in the grade name. Within the maximum of 15.7 percent which may be below B quality, not more than 11.7 percent may be Dirties or Checks in any combination and not more than 4.0 percent may be Loss.

21. Section 2856.227 is revised to read as follows:

§ 2856.227 Summary of grades.

A summary of the United States Wholesale Grades for Shell Eggs follows as Table I of this section:

Table I.—*Summary of U.S. Wholesale Grades for Shell Eggs*

Wholesale grade designation	Minimum percentage of eggs of specific qualities required [1]			Maximum tolerance permitted (lot average)		
	AA quality	A quality or better	B quality or better	B quality dirtes and checks (percent)	Dirties and checks (percent)	Loss (percent)
U.S. specials—percent AA quality [2]	20	(3)	(4)	7.5		2
U.S. extras—percent A quality [2]		20	(3)		11.7	3
U.S. standards—percent B quality [2]			84.3		11.7	4

[1] Substitution of eggs possessing higher qualities for those possessing lower specified qualities is permitted.
[2] The actual total percentage must be stated in the grade name.
[3] Balance.
[4] None except for tolerance.

22. Section 2856.228 is revised to read as follows:

§ 2856.228 Weight classes.

The weight classes for United States Wholesale Grades for Shell Eggs shall be as indicated in Table I of this section.

23. Section 2856.230 is revised to read as follows:

§ 2856.230 Grade.

"U.S. Nest Run—% AA Quality" shall consist of eggs of current production of which at least 20 percent are AA quality; and the actual percentage of AA quality eggs shall be stated in the grade name. Within the maximum of 15 percent which may be below A quality, not more than 10 percent may be B quality for shell shape, interior quality (including meat or blood spots), or due to rusty or blackish-appearing cage marks or blood stains, not more than 5 percent may have adhering dirt or foreign material on the shell ½ inch or larger in diameter, not more than 6 percent may be Checks, and not more than 3 percent may be Loss. Marks which are slightly gray in appearance and adhering dirt or foreign material on the shell less than ½ inch in diameter are not considered quality factors. The eggs shall be officially graded for all other quality factors. No case may contain less than 75 percent A quality and AA quality eggs in any combination.

§ 2856.231 . [Amended]

24. In section 2856.231, Table I is amended by removing the words "and C" and the words "texture or" from the heading reading "B and C quality for shell texture or shape, interior quality (including blood and meat spots) or cage marks [5] and blood stains" and by changing the figure "2" to "5" under the column reading "Adhering dirt or foreign material ½ inch or larger in diameter."

(Agricultural Marketing Act of 1946, Sec. 205, 60 Stat. 1090, as amended; 7 U.S.C. 1624)

Done at Washington, D.C. on: July 21, 1981.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

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BILLING CODE 3410-02-M

In the Matter of the Proposed Amendments to the Rules of the Department of Agriculture Governing the Candling and Grading of Eggs (Chapter 18: Agr 388-417)

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, [Special Assistant Attorney General] Jon Murphy, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

[Special Assistant Attorney General]

Date: 8/10/82