

Rules and Regulations

Federal Register

Vol. 69, No. 185

Friday, September 24, 2004

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 57

[Docket No. PY-04-002]

RIN 0581-AB74

Regulations Governing the Inspection of Eggs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the regulations governing the inspection of eggs. The rule revises the regulations to clarify and simplify the regulations. This follows the earlier duplication and redesignation of the regulations.

DATES: Effective November 23, 2004.

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

SUPPLEMENTARY INFORMATION:

Background

The Egg Products Inspection Act (EPIA) authorizes the mandatory inspection of egg products operations and the mandatory surveillance of the disposition of shell eggs that are undesirable for human consumption. From its enactment in 1970, AMS administered the EPIA and its regulations in 7 CFR part 59.

Congress amended the EPIA as part of the Food, Agriculture, Conservation and Trade Act Amendments of 1991 (Pub. L. 102-237) (hereafter referred to as "the 1991 amendments"). To implement the 1991 EPIA amendments, AMS proposed changes to 7 CFR parts 56 and 59 (57 FR 48569, October 27, 1992) so that both regulations would contain the changes authorized by the 1991 amendments. Before AMS published a final rule, however, the Department consolidated

food safety issues into the Food Safety and Inspection Service (FSIS) following enactment of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354). This included delegating responsibility to administer the EPIA egg products inspection functions to FSIS, while the shell egg surveillance functions remained with AMS. FSIS promulgated a final rule that implemented the 1991 amendments by revising 7 CFR part 59 (63 FR 45663, August 27, 1998).

AMS then promulgated a final rule to duplicate and redesignate those portions of 7 CFR part 59 pertinent to shell egg surveillance as a new 7 CFR part 57 (63 FR 69968, December 17, 1998). FSIS promulgated a final rule to redesignate the remaining portions of 7 CFR part 59 and transfer them to 9 CFR part 590 (63 FR 72351, December 31, 1998). AMS is now revising the regulations in 7 CFR part 57 to clarify and simplify them following the duplication and redesignation of the regulations from 7 CFR part 59 to 7 CFR part 57.

To facilitate and simplify the duplication and re-designation effort, the regulations were promulgated with as few editorial changes as possible. However, that action subsequently required AMS to review the regulations that were duplicated and redesignated as 7 CFR part 57 and revise them to clarify the shell egg surveillance functions of the EPIA administered by AMS.

This action will complete that requirement. In addition, AMS is including in this rulemaking effort other non-substantive editorial revisions that were identified during the review. The amendments will update the regulations to comply with the current department organizational structure and add non-technical, grammatical, non-substantive revisions.

The amendments would not change how the requirements are administered, how specific requirements are implemented, or the responsibilities of program users. The amendments would make the requirements more accurate and simplify interpretation and implementation.

For example:

—Punctuation, grammar, capitalization, abbreviations, legal phrases, terms, format, and style would be updated for consistency with current

regulatory documents, the U.S. Government Printing Office Style Manual, and the Federal Register Document Drafting Handbook. Also, gender-specific pronouns would be changed to gender-neutral pronouns consistent with current writing style

- Sections would be redesignated to make requirements easier to locate in the regulations
- Sections about nondiscrimination and political activity for Federal employees would be updated to reflect current requirements
- "Poultry Division" would be changed to "Poultry Programs" to conform to organizational changes
- A definition for the term "Agricultural Marketing Service or AMS" would be added for consistency with other Agency regulations
- Duplicate and obsolete sections would be removed
- Inconsistencies in the wording of headings and sections would be clarified to assist program staff at all levels
- Administrative requirements that have been implemented in the program would be updated

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities as defined in the RFA (5 U.S.C. 601). This rule is non-technical in nature. It does not change regulatory requirements or the responsibilities of any party. Accordingly, AMS has determined that provisions of this rule would not have any economic impact on small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted

prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

The information collection requirements in §§ 57.13, 57.28(a), 57.110(a), 57.112, 57.200(a), 57.200(b), 57.320, 57.690, 57.720(a)(2), 57.720(a)(3), 57.720(a)(4), 57.800, 57.905(a), 57.915(b), 57.920, 57.930(f), 57.960, and 57.965 amended by this rule have been previously approved by OMB and assigned OMB control number 0581-0128 under the Paperwork Reduction Act of 1995.

AMS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 7 CFR Part 57

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

■ For reasons set forth above, 7 CFR part 57 is amended as follows:

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

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

Authority: 21 U.S.C. 1031–1056.

■ 2. The undesignated center heading that precedes § 57.1 is revised to read as follows:

General

■ 3. Section 57.1 is revised to read as follows:

§ 57.1 Definitions.

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. Unless the context otherwise requires, the following terms shall have the following meaning:

Acceptable means suitable for the purpose intended by the Agricultural Marketing Service.

Act means the applicable provisions of the Egg Products Inspection Act, as amended, (Pub. L. 91–597, 84 Stat. 1620 *et seq.*).

Administrator means the Administrator of AMS 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 the Administrator's stead.

Adulterated means any egg under one or more of the following circumstances:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(b)(1) If it bears or contains any added poisonous or added deleterious substance (other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive) which may in the judgment of the Secretary, make such article unfit for human food;

(2) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;

(3) If it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

(4) If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: Provided, that an article which is not otherwise deemed adulterated under paragraph (b)(2), (3), or (4) of this definition shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the Secretary in official plants;

(c) If it consists, in whole or in part, of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(d) If it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(e) If it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(f) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(g) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act; or

(h) If any valuable constituent has been, in whole or in part, omitted or abstracted therefrom; or if any substance

has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

Agricultural Marketing Service or *AMS* mean the Agricultural Marketing Service of the Department.

Applicant means any interested party who requests any inspection service.

Capable of use as human food means any egg, unless it is denatured, or otherwise identified, as required by these regulations to deter its use as human food.

Chief of the Grading Branch means Chief of the Grading Branch, Poultry Programs, AMS.

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.

Commerce means interstate, foreign, or intrastate commerce.

Condition means any characteristic affecting a products merchantability including, but not being limited to, the following: The state of preservation, cleanliness, soundness, wholesomeness, or fitness for human food of any product; or the processing, handling, or packaging which affects such product.

Container or *Package* mean for shell eggs, any carton, basket, case, cart, pallet, or other receptacle.

(a) *Immediate container* means any package or other container in which shell eggs are packed for household or other ultimate consumers.

(b) *Shipping container* means any container used in packing an immediate container.

Department means the United States Department of Agriculture.

Egg means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea. Some of the terms applicable to shell eggs are as follows:

(a) *Check* means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(b) *Clean and sound shell egg* means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(c) *Dirty egg* or *Dirties* means an egg(s) that has an unbroken shell with adhering dirt, or foreign material.

(d) *Incubator reject* means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(e) *Inedible* means eggs of the following descriptions: Black rots,

yellow rots, white rots, mixed rots, sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(f) *Leaker* means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(g) *Loss* means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat or blood spot, a large quantity of blood, or other foreign material.

(h) *Restricted egg* means any check, dirty egg, incubator reject, inedible, leaker, or loss.

Egg handler means any person, excluding the household consumer, who engages in any business in commerce that involves buying or selling any eggs or processing any egg products, or otherwise using any eggs in the preparation of human food.

Federal Food, Drug, and Cosmetic Act means the Act so entitled, approved June 25, 1938 (52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.

Inedible egg products means dried, frozen, or liquid inedible egg products that are unfit for human consumption.

Inspection means the application of such inspection methods and techniques as are deemed necessary by the responsible Secretary to carry out the provisions of the Egg Products Inspection Act and the regulations under this part.

Interested party means any person financially interested in a transaction involving any surveillance inspection service.

Label means a display of any printed, graphic, or other method of identification upon the shipping container, if any, or upon the immediate container, including but not limited to, an individual consumer package of eggs, or accompanying such product.

National supervisor means:

(a) The officer-in-charge of the surveillance inspection service; and
(b) Other employee of the Department designated by the national supervisor.

Nest-run eggs means eggs that have been 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 inspection means the office of any inspector.

Official certificate means any certificate prescribed by regulations of the Administrator for issuance by an inspector or other person performing official functions under this part.

Official device means any device prescribed or authorized by the Secretary for use in applying any official mark.

Official egg products processing plant means one or more buildings or parts thereof comprising a single plant in which the plant facilities and methods of operation therein have been approved by the Administrator of the Food Safety Inspection Service as suitable and adequate for the continuous inspection of egg products and in which inspection service is carried on.

Official standards means the official U.S. standards of quality, grades, and weight classes for shell eggs maintained by and available from Poultry Programs, AMS.

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

Pesticide chemical, Food additive, Color additive, and Raw agricultural commodity mean the same for purposes of this part as under the Federal Food, Drug, and Cosmetic Act.

Plant means any place of business where eggs are processed.

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

Regional director means any employee of the Department in charge of the surveillance inspection service in a designated geographical area.

Regulations means the provisions in this entire part and such U.S. Standards, Grades, and Weight Classes for Shell Eggs as may be in effect at the time grading is performed.

Regulatory inspector or Inspector means any Federal employee or the employee of a cooperating agency to whom a license has been issued by the Secretary to make such inspections as required in § 57.28 of these regulations.

Regulatory officer or staff officer means staff assistants to regional directors who assist the regional director in administering the surveillance inspection service.

Sampling means the act of taking samples of any product for inspection.

Secretary means the Secretary of Agriculture or any other officer or employee of the Department to whom the authority to act in the Secretary's stead has been delegated.

Service means the personnel who are actively engaged in the administration, application, and direction of the

surveillance inspection service pursuant to the regulations in this part.

Shell egg packer means any person engaged in the sorting of eggs into their various qualities.

(a) *Producer-packer* means any person engaged in the sorting of eggs from their own production into their various qualities, either mechanically or by other means.

(b) *Grading station* means any person engaged in the sorting of eggs from their own production and sources other than their own production into their various qualities, either mechanically or by other means.

State means any State of the United States of America, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and the District of Columbia.

State supervisor or Federal-State supervisor means any authorized and delegated individual who is in charge of the surveillance inspection program in a state.

Surveillance inspection service means the official service within the Department having the responsibility for carrying out the provisions of the Egg Products Inspection Act under this part.

Ultimate consumer means any household consumer, restaurant, institution, or any other party who has purchased or received shell eggs for consumption.

Unclassified eggs means eggs that have been washed or are unwashed and show evidence of segregating or sizing.

United States Standards, Grades, and Weight Classes for Shell Eggs (AMS 56) means the official U.S. standards, grades, and weight classes for shell eggs that are maintained by and available from Poultry Programs, AMS.

Washed ungraded eggs means eggs that have been washed but not sized or segregated for quality.

§ 57.5 [Removed]

■ 3a. Section 57.5 is removed.

■ 4. The undesignated center heading that precedes § 57.10 is removed.

■ 5. Section 57.10 is revised to read as follows:

§ 57.10 Administration.

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 the regulations in 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, grading,

inspection, 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 AMS and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this part.

■ 6. Section 57.13 is revised to read as follows:

§ 57.13 Federal and State cooperation

The Secretary shall, whenever determined necessary to effectuate the purposes of the Act, authorize the Administrator to cooperate with appropriate State and other governmental agencies in carrying out any provisions of the Egg Products Inspection Act and this part. In carrying out the provisions of the Act and the regulations in this part, the Secretary may conduct such examinations, investigations, and inspections as the Secretary determines practicable through any officer or employee of any such agency commissioned by the Secretary for such purpose. The Secretary shall reimburse the States and other agencies for the services rendered by them stated in the cooperative agreements signed by the Administrator and the duly authorized agent of the State or other agency.

■ 7. Section 57.17 is revised to read as follows:

§ 57.17 Nondiscrimination.

The conduct of all services and the licensing of inspectors under these regulations shall be accomplished without discrimination as to race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status.

■ 8. Section 57.22 is revised to read as follows:

§ 57.22 Basis of service.

This part provides for inspection services pursuant to the Egg Products Inspection Act, as amended. Eggs shall be inspected in accordance with such standards, methods, and instructions as may be issued or approved by the Administrator. Inspection services shall be subject to supervision at all times by the applicable Federal-State supervisor, staff officer, regulatory officer, regional director, and national supervisor.

■ 9. Section 57.28 is amended by revising the section heading and paragraph (a) to read as follows:

§ 57.28 Inspections.

(a) Periodic inspections shall be made of business premises, facilities,

inventories, operations, transport vehicles, and records of egg handlers, and the records of all persons engaged in the business of transporting, shipping, or receiving any eggs. In the case of shell egg packers packing eggs for the ultimate consumer, such inspections shall be made a minimum of once each calendar quarter. Hatcheries are to be inspected a minimum of once each fiscal year.

* * * * *

■ 10. Section 57.35 is revised to read as follows:

§ 57.35 Eggs in commerce.

(a)(1) For eggs that moved or are moving in interstate or foreign commerce, no State or local jurisdiction:

(i) May require the use of standards of quality, condition, grade, or weight classes which are in addition to or different than the official standards; or

(ii) Other than states in noncontiguous areas of the United States, may require labeling to show the State or other geographical area of production or origin.

(2) This shall not preclude a State from requiring the name, address, and license number of the person processing or packaging eggs to be shown on each container.

(b) Any State or local jurisdiction may exercise jurisdiction for the purpose of preventing the distribution of eggs for human food purposes that are in violation of this part or any other Federal acts or State or local laws consistent therewith.

■ 11. The undesignated center heading that precedes § 57.45 is amended by removing the words “and Egg Products.”

■ 12. Section § 57.45 is amended by revising the section heading and paragraph (a) to read as follows:

§ 57.45 Prohibition on eggs not intended for use as human food.

(a) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation in commerce, any eggs that are not intended for use as human food, unless they are denatured or decharacterized, unless shipped under seal as authorized in § 57.720(a) and identified as required by the regulations in this part.

* * * * *

§ 57.50 [Removed]

■ 13. The undesignated center heading that precedes § 57.50 and § 57.50 are removed.

■ 14. In § 57.100, paragraph (a) is amended by removing the word “which” and adding in its place the word “that”

and paragraphs (e) and (f) are revised to read as follows:

§ 57.100 Specific exemptions.

* * * * *

(e) The processing and sale of egg products by any producer from eggs of the producer's own flock when sold directly to a household consumer exclusively for use by such consumer and members of the consumer's household and the consumer's nonpaying guests and employees;

(f) The sale of eggs by shell egg packers on the premises where the grading station is located, directly to household consumers for use by such consumer and members of the consumer's household and the consumer's nonpaying guests and employees, and the transportation, possession, and use of such eggs. Each such sale of “restricted eggs” shall be limited to no more than 30 dozen eggs;

* * * * *

§ 57.105 [Amended]

■ 15. In § 57.105, paragraph (a) is amended by removing the first sentence.

■ 16. The undesignated center heading that precedes § 57.110 is amended by revising the word “Service” to read “Services”.

■ 17. Section 57.110 is revised to read as follows:

§ 57.110 Licensed inspectors.

(a) Any person who is a Federal employee or the employee of a cooperating agency who possesses proper qualifications as determined by an examination for competency, and who is to perform surveillance inspection services, may be licensed by the Secretary as an inspector.

(b) All licenses issued by the Secretary shall be countersigned by the Administrator or by any other designated official of the service.

■ 18. Section 57.112 is revised to read as follows:

§ 57.112 Suspension of license or authority; revocation.

Pending final action by the Secretary, any person authorized to countersign a license to perform surveillance inspection services may, whenever such action is necessary to assure that any inspection service is properly performed, suspend or revoke any license to perform inspection services issued pursuant to this part by giving notice of such action to the respective licensee, accompanied by a statement of the reasons. Within 7 days after the receipt of the suspension or revocation notice and statement of reasons, the licensee may file an appeal in writing to

the Secretary, supported by any argument or evidence that the licensee may wish to offer as to why the license should not be suspended or revoked. After the expiration of the 7-day period and consideration of such argument and evidence, the Secretary will take appropriate action regarding the suspension or revocation. When no appeal is filed within the prescribed 7 days, the license is revoked or suspended.

■ 19. Section 57.114 is revised to read as follows:

§ 57.114 Surrender of license.

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

§ 57.116 [Removed]

■ 20. Section 57.116 is removed.

§ 57.118 [Removed]

■ 21. Section 57.118 is removed.

■ 22. Section 57.119 is revised to read as follows:

§ 57.119 Political activity.

Federal inspectors may participate in certain political activities, including management and participation in political campaigns as allowed by Federal regulation and AMS directives. Inspectors are subject to these rules while they are on leave with or without pay, including furlough; however the rules do not apply to cooperative employees not under Federal supervision and intermittent employees on the days they perform no service. Willful violations of the political activity rules constitute grounds for removal from the service.

■ 23. Section 57.120 is revised to read as follows:

§ 57.120 Financial interest of inspectors.

An inspector shall not inspect any product in which the inspector is financially interested.

■ 24. A new § 57.130 is added to read as follows:

§ 57.130 Identification.

Each inspector shall have in their possession at all times, and present while on duty upon request, the means of identification furnished by the Department.

§ 57.132 [Amended]

■ 25. Section 57.132 is amended by removing the words “proper credentials” and adding in their place

the words “identification furnished by the Department.”

§ 57.134 [Amended]

■ 26. In § 57.134, the paragraph (a) designation is removed and paragraph (b) is removed.

■ 27. Section 57.200 is revised to read as follows:

§ 57.200 Records and related requirements.

(a) Persons engaged in the business of transporting, shipping, or receiving any eggs in commerce, or holding such articles so received, and all egg handlers, including hatcheries, shall maintain for 2 years records showing the receipt, delivery, sale, movement, and disposition of all eggs handled by them, and upon the request of an authorized representative of the Secretary, shall permit the representative, at reasonable times, to have access to and to copy all such records.

(b) All egg handlers shall maintain production records as approved by the Administrator. The records (bills of sale, inventories, receipts) shall show the name and address of the shipper and receiver, the date of the transaction, the quality of the eggs (graded eggs, nest-run eggs, dirties, checks, leakers, loss, inedible eggs), and the quantity of the eggs (amount). Producers who ship all of their production as nest-run eggs without segregation need only to maintain records indicating the amount of shell eggs shipped, date of shipment, and the receivers' name and address.

§ 57.220 [Amended]

■ 28. In § 57.220, between the words “when” and “inspection” add the word “surveillance.”

■ 29. The undesignated center heading that precedes § 57.300 is amended by removing the words “or Decision.”

■ 30. Section 57.300 is revised to read as follows:

§ 57.300 Who may request an appeal inspection.

An appeal inspection may be requested by any interested party who is dissatisfied with the determination by an inspector of the class, quality, quantity, or condition of any product.

§ 57.310 [Amended]

■ 31. Section § 57.310 is amended by removing the word “who” and adding in its place the word “that;” by adding the word “quality” between the words “class” and “quantities;” and by removing the words “other than in an official place.”

■ 32. Section 57.320 is revised to read as follows:

§ 57.320 How to file an appeal.

The request for an appeal inspection may be made orally or in writing. If made orally, written confirmation may be required. The applicant shall clearly state the identity of the product, the decision that is questioned, and the reason(s) for requesting the appeal service.

§ 57.330 [Amended]

■ 33. In § 57.330, the section heading and the text are amended by removing the words “grading or” both times they appear.

§ 57.340 [Amended]

■ 34. Section 57.340 is amended by removing the words “Poultry Division, Agricultural Marketing Service.”

■ 35. In § 57.350, paragraph (a) is amended by removing the paragraph heading; paragraph (b) is revised to read as follows; and paragraph (c) is removed.

§ 57.350 Procedures for selecting appeal samples.

* * * * *

(b) The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. When the original samples are not available or have been altered, such as removing the undergrades, the sample size shall be double the number of samples required in 7 CFR 56.4.

§ 57.360 [Amended]

■ 36. Section 57.360, is amended by removing the second, third, and fourth sentences.

■ 37. Section 57.370 is revised to read as follows:

§ 57.370 Cost of appeals.

The costs of an appeal inspection shall be borne by the appellant on a fee basis at rates set forth in 7 CFR 56.46, plus any travel and additional expenses. If the appeal inspection or review of an inspector's decision discloses that a material error was made in the original determination, no fee or expense will be charged.

§ 57.410 [Removed]

■ 38. The undesignated center heading that precedes § 57.410 and § 57.410 are removed.

§ 57.426 [Amended]

■ 39. In § 57.426, the first sentence is amended by removing all words after the word “examination”, and the second sentence is amended by removing the

words “equipment, utensil, room, or compartment”.

§ 57.504 [Removed]

■ 40. Section 57.504 is removed.

■ 41. Section 57.690 is revised to read as follows:

§ 57.690 Person required to register.

Egg handlers, except for producer-packers with an annual egg production from a flock of 3,000 hens or less, who grade and pack eggs for the ultimate consumer, and hatcheries, are required to register with the Department by furnishing their name, place of business, and such other information requested on the registration form available from the Department. Completed forms shall be sent to the addressee indicated on the form. Persons above who are establishing a business will be required to register before they start operations.

■ 42. Section 57.720 is amended by:

■ a. Amending paragraphs (a)(1) and (2);

■ b. Amending paragraph (a)(3) by adding the word “By” at the beginning of the paragraph and by removing the section number “57.504(c)” and adding in its place the section number “57.720(a)(2);”

■ c. Amending paragraph (a)(4) by adding the word “processing” after the word “products” both times it appears;

■ d. Removing paragraph (a)(5); and

■ e. Amending paragraph (b)(1) by adding the word “processing” after the word “products.”

The revision reads as follows:

§ 57.720 Disposition of restricted eggs.

(a) * * *

(1) By shipping directly or indirectly to an official egg products processing plant for segregation and processing, if a check or dirty and if labeled in accordance with § 57.800. Inedible and loss eggs shall not be intermingled in the same container with checks and dirties.

(2) By destruction and identification in a manner approved by the Administrator.

(i) Loss and inedible eggs shall be crushed and shall be placed in a container containing a sufficient amount of approved denaturant or decharacterant, such as FD&C brown, blue, black, or green colors, meat and fish by-products, grain and milling by-products, or any other substance, as approved by the Administrator, that will accomplish the purposes of this section. The approved denaturant or decharacterant substance shall be dispersed through the product in amounts sufficient to give the product a distinctive appearance or odor.

(ii) The denatured and decharacterized product shall be labeled as required in §§ 57.840 and 57.860.

* * * * *

§ 57.760 [Removed]

■ 43. Section 57.760 is removed.

§ 57.800 [Amended]

■ 44. Section 57.800 is amended by adding the word “Processing” after the words “USDA Egg Products”, and by removing the word “Restricted” after the words “incubator rejects, or” and adding in its place the word “Unclassified.”

§ 57.900 [Amended]

■ 45. In § 57.900, paragraph (a) is amended by removing the second sentence.

§ 57.905 [Amended]

■ 46. In § 57.905, paragraph (a) is amended by adding the word “Processing” between the words “USDA” and “Plant” and also between the words “products” and “plant.”

§ 57.915 [Amended]

■ 47. Section 57.915 is amended in paragraph (b) introductory text by removing the word “which” in the first sentence and adding in its place the word “that”, and in paragraph (b)(1) by removing the word “Country” and adding in its place the words “Name of Country”.

■ 48. Section 57.920 is revised to read as follows.

§ 57.920 Importer to make application for inspection of imported eggs.

Each person importing any eggs shall make application for inspection upon PY Form 222—Import Request, to the Chief, Grading Branch, Poultry Programs, AMS, U.S. Department of Agriculture, Washington, DC 20250, or to the Poultry Programs, Grading Branch office nearest the port where the product is to be offered for importation. Application shall be made as far in advance as possible prior to the arrival of the product, except in the case of product exempted from inspection by § 57.960. Each application shall state the approximate date of product arrival in the United States, the name of the ship or other carrier, the country from which the product was shipped, the destination, the quantity and class of product, and the point of first arrival in the United States.

§ 57.925 [Amended]

■ 49. In § 57.925, paragraph (b) is amended by removing the word “which” and adding in its place the word “that” and removing the words “analysis or”.

§ 57.930 [Amended]

■ 50. Section 57.930 is amended by:

■ a. Amending paragraph (c) by removing the words “U.S. Department of Agriculture” and adding in their place the word “Department” in the first sentence, and in the text of the notice, by removing the word “Division” and adding in its place the word “Programs”;

■ b. Removing the words “U.S. Department of Agriculture” and adding in their place the word “Department” in paragraphs (d), (e), and (f); and

■ c. Amending paragraph (f) by removing the words “by telegraph”.

§ 57.945 [Amended]

■ 51. Section 57.945 is amended by:

■ a. Amending paragraph (a) by removing the word “which” and adding in its place the word “that;”

■ b. Amending paragraph (b) by removing the words “U.S. Department of Agriculture” and adding in their place the word “Department;” and

■ c. Amending paragraph (c) by removing the word “which” and adding in its place the word “that.”

§ 57.950 [Amended]

■ 52. In § 57.950, paragraph (b) is amended by adding the word “processing” after the word “products.”

■ 53. In § 57.955, paragraph (a) introductory text is revised to read as follows:

§ 57.955 Labeling of shipping containers of eggs for importation.

(a) Shipping containers of foreign product offered for importation shall bear a label, printed in English, showing:

* * * * *

§ 57.960 [Amended]

■ 54. In § 57.960, the first sentence is amended by removing the third word “which” and adding in its place the word “that.”

§ 57.965 [Amended]

■ 55. Section 57.965 is amended by removing the second word “which” in the second place it appears and adding in its place the word “that”, and by removing the words “United States Department of Agriculture” and adding in their place the word “Department.”

§ 57.970 [Amended]

■ 56. Section 57.970 is amended by removing the word “which” and adding in its place the word “that.”

§ 57.1000 [Amended]

■ 57. Section 57.1000 is amended by:

■ a. Amending paragraph (b) introductory text by removing the words “in his discretion” and

■ b. Amending paragraph (b)(2) by adding the word “a” between the words “waives” and “hearing.”

Dated: September 20, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-21417 Filed 9-23-04; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2004-18822; Airspace Docket No. 04-ACE-48]

Modification of Class D Airspace; and Modification of Class E Airspace; Salina, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class D and Class E airspace areas at Salina, KS. A review of the controlled airspace areas at Salina, KS revealed they do not reflect the current Salina Municipal Airport airport reference point (ARP) and do not comply with criteria for diverse departures. The review also identified other discrepancies in the legal descriptions for the Salina, KS Class D and Class E airspace areas. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing Standard Instrument Approach Procedures (SIAPs) to Salina Municipal Airport. It also corrects discrepancies in the legal descriptions of Salina, KS Class D and Class E airspace areas and brings the airspace areas and legal descriptions into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules Docket must be received on or before November 1, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2004-18822/ Airspace Docket No. 04-ACE-48, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the

public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT:

Kathy Randolph, Air Traffic Division, Airspace Branch, ACE-520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329-2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class D airspace area, the Class E airspace area designated as a surface area, the Class E airspace area designated as an extension to the Class D airspace area and the Class E airspace area extending upward from 700 feet above the surface at Salina, KS. An examination of controlled airspace for Salina, KS revealed that the Salina Municipal Airport ARP used in the legal descriptions for all airspace areas is incorrect. The location of the Salina collocated very high frequency omnidirectional radio range and tactical air navigational aid (VORTAC) used in the Class E airspace area designated as an extension to the Class D airspace area legal description is incorrect. The examination also revealed that the airspace areas do not comply with airspace requirements for diverse departures as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters, and that the dimensions of extensions to the airspace areas do not comply with FAA Order 8260.19C, Flight Procedures and Airspace.

This action expands the Salina, KS Class D and Class E airspace area designated as a surface area from a 4.9-mile to a 5.4-mile radius of Salina Municipal Airport. It also expands the Class E airspace area extending upward from 700 feet above the surface from a 7.4-mile radius to an 8.4-mile radius of the airport and corrects the ARP and location of the Salina VORTAC in the legal descriptions. Additionally, this action modifies the Class E airspace area designated as an extension to the Class D airspace area reducing its width from 2 to 1.5 miles each side of centerline and decreasing its length by 2 miles. Extensions to the Class E airspace area extending upward from 700 feet above the surface are no longer required and are deleted from the legal description.

These modifications provide controlled airspace of appropriate

dimensions to protect aircraft departing from and executing SIAPs to Salina Municipal Airport and bring the legal descriptions of the Salina, KS Class D and Class E airspace areas into compliance with FAA Orders 7400.2E and 8260.19C. Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas designated as surface areas, Class E airspace areas designated as an extension to a Class D airspace area and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 6002, 6004 and 6005, respectively, of the same FAA Order. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both