Proposed Rules

Federal Register
Vol. 69, No. 106
Wednesday, June 2, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY–03–005]

RIN 0581–AC33

Voluntary Shell Egg Grading Regulations—Facilities and Equipment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend the regulations governing the voluntary shell egg grading program. The proposed revisions would add definitions that describe the official identification and packaging of shell eggs; provide that grading services may be requested or reported by electronic means; clarify the number of samples required for an appeal grading when the original samples are not available; require that plants provide two candling lights in an acceptable candling booth for grade determination; provide an additional method for lot identifying shell eggs; and clarify and update the facility and operating requirements of plants utilizing the voluntary grading service. The proposal would also provide that cooler rooms holding shell eggs identified with a consumer grade shall be capable of maintaining a relative humidity of 70 percent or higher. Interested parties are particularly invited to submit any data or studies regarding the relative humidity requirement. From time to time, sections in the regulations are affected by changes in egg production and processing technology. This rule updates the regulations to reflect these changes.

DATES: Comments must be received on or before August 2, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0259, room 3944–South, 1400 Independence Avenue, SW., Washington, DC 20250. Comments may be faxed to (202) 690–0941. Comments should be submitted in duplicate. Comments may also be submitted electronically to: *amspydockets@usda.gov* or *www.regulations.gov*. All comments should refer to Docket No. PY–03–005 and note the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at the above location during regular business hours. Comments received also will be made available over the Internet in the rulemaking section of the AMS Web site *www.ams.usda.gov/rulemaking*. A copy of this proposed rule may be found at: *www.ams.usda.gov/poultry/regulations/rulemakeing/index.htm*.

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

SUPPLEMENTARY INFORMATION:

Background and Proposed Changes

Shell egg grading is a voluntary program provided under the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 1621 *et seq.*) and is offered on a fee-for-service basis. It is designed to assist in the orderly marketing of shell eggs by providing for the official certification of egg quality, quantity, size, temperature, packaging, and other factors.

Changing technology in egg production and processing requires that the regulations governing shell egg grading be updated. The proposal would update the requirements to bring them in line with the requirements that applicants utilizing official grading services must meet. After a plant makes an application for grading service, an agency representative conducts a plant survey. The survey determines if the plant premises, facility, equipment, and operation procedures can satisfactorily support the official grading of shell eggs. These prerequisite requirements are based on good manufacturing practices typically associated with food processing and have specific application to shell egg processing. Proposed changes included the following:

(1) Definitions. The definitions of ''chief of the grading branch'' and ''national supervisor'' would be revised to reflect the current organizational structure in AMS. New definitions for ''Agricultural Marketing Service or AMS'', ''consumer grades,'' ''packaging,'' ''packing,'' and ''United States Standards, Grades, and Weight Classes for Shell Eggs'' would be added to establish a clear meaning for these terms. (§ 56.1)

(2) Candling Lights. As newer and faster equipment has been developed and installed in official plants, the need for additional facilities and equipment to grade official samples has increased. To provide acceptable space and equipment for two graders to perform official grading activities or have space available for a supervisor to conduct supervisory visits without disrupting the grading activities of the official grader, this rule would revise the candling light requirement from one to two and would require a candling booth of sufficient size to accommodate at least two candling lights for additional graders. (§ 56.17)

(3) Communications. The current regulations specify that service may be requested or reported by telephone or telegraph. Even though these forms of communication may still be used, the revisions would allow alternate forms of electronic communications as are currently available in the market place. (§§ 56.21, 56.58)

(4) Temporary Grading Service. Processors are now able to request temporary grading service which provides them the ability to pack grade-identified shell eggs into officially grademarked cartons without utilizing continuous resident grading service. They must still meet all facility, equipment, and operating requirements specified for plants utilizing continuous grading services. This revision would add temporary grading service as a type of grading service that could be requested by an applicant. The regulations would also be revised by providing that certificates may be issued to an applicant who utilizes temporary grading. (§§ 56.17, 56.56)

(5) Lot Numbering. The current regulations specify that product be lot numbered on either the carton or the consumer package. Processors have requested that they be allowed to lot identify shell eggs by placing the lot number on the individual egg. This revision would update the regulations to

reflect changes in the marketing of shell eggs. (§ 56.37)

(6) Official Identification. The current regulations specify that the official identification of any graded product shall be done only under the supervision of a grader or quality assurance inspector. The revision would clarify that only product which is identified with the grademark shall be officially identified under the supervision of a grader or quality assurance inspector. (§ 56.39)

(7) Types of Grading Services. The types of grading services available to an applicant would be added. There are often questions about each type of available grading service and this revision would provide an explanation of those services. (§ 56.28)

(8) Appeal Gradings. The sample size of an appeal grading when the original samples are not available or have undergone a material change would be double the samples required by § 56.4(b). The current regulations specify that only in the instance where the original samples are not available shall the appeal sample size be double that required by § 56.4(b). It is necessary to increase the sample size to improve the confidence level of results and properly resolve the issue prompting the applicant's appeal. (§ 56.65)

(9) Occupational Safety and Health Regulations. The shell egg industry is subject to Federal, State, and local government occupational safety and health regulations. This proposal would update the regulations to reflect that an applicant utilizing the official grading service must be in compliance with all applicable Federal, State, and local government occupational safety and health regulations. (56.76)

(10) General Premises. General premise requirements would be added. The current regulations do not specify such requirements. In order to grade and pack shell eggs in the most efficient and sanitary manner, shell egg graders and packers must maintain the premises of their facilities in a manner that is not a deterrent to the grading and packing of shell eggs. The revision would specify that the premises of the facility be maintained in an appropriate manner. (§ 56.76)

(11) Structures and Facilities. The current regulations specify that only certain facilities, such as benches, and only certain structures, such as walls, are required to be replaced with materials impervious to moisture when they become subjected to moisture or develop odors. The revision would update the regulations to reflect that all structures and facilities subject to moisture must be readily cleanable, sanitarily maintained, and impervious to moisture and that floors are constructed for proper drainage. (§ 56.76)

(12) Lavatories and Toilets. The current regulations specify that lavatory and toilet accommodations shall be provided with hot and cold running water, ventilation, and hand washing instruction signs. The revisions would also specify that the facilities be located in areas separate and away from the grading and processing rooms. (§ 56.76)

(13) Storage Areas. The current regulations do not specify requirements for storage areas for storing packing and packaging materials to be used for consumer labeled shell eggs. This revision would specify that adequate packing and packaging storage areas be provided and properly maintained in order that packing and packaging are stored in a dry, clean, and sanitary environment. (§ 56.76)

(14) Grading and Packing Rooms. The current regulations that specify grading and packing room requirements should be updated to reflect the current state of technology in egg production and processing. The revision would update the requirements of the grading and packing rooms by specifying their sanitary design and construction. Additionally, the revision would specify that during operations the sanitation of the processing areas and equipment be maintained in a satisfactory manner. (§ 56.76)

(15) Shell Egg Cooler Rooms. The current regulations provide that humidifying equipment capable of maintaining a relative humidity, which will minimize shrinkage, shall be provided. However, they do not specify a percentage of relative humidity that the equipment should provide. The revision would specify that the regulations provide that the cooler rooms which will hold consumer labeled shell eggs shall be capable of maintaining a relative humidity of 70 percent or higher and that appropriate equipment be provided to measure relative humidity. (§ 56.76)

(16) Shell Egg Protecting Operations. The current regulations that specify shell egg protecting operation requirements should be updated to reflect the current state of technology in egg production and processing. The revision would update the regulations by specifying that the requirements for shell egg protecting equipment include its sanitary design, maintenance, and operation. The revision would also eliminate the requirement that previously used contaminated oil be heat treated prior to its reuse. This is an obsolete process that is not used and should be removed from the regulations. (§ 56.76)

(17) Shell Egg Washing. The current regulations specify that shell egg cleaning equipment shall be maintained and properly cleaned. These regulations should be updated to reflect the changing technology in egg production and processing. The revision would specify that shell egg washing equipment be sanitarily designed and maintained in a clean and sanitary manner. The revision would also specify that shell egg drying equipment be sanitarily designed and maintained, that air used for drying must be filtered, and that filters are to be cleaned and maintained. (§ 56.76)

(18) Shell Egg Wash Water. The current regulations specify the temperatures of shell egg wash water, but do not specify that an accurate thermometer is to be provided to monitor the required wash water temperature. The revision would clarify that the plant would be responsible for providing an accurate thermometer to measure the temperature of the wash water. (§ 56.76)

(19) Spray Rinse Sanitizer. The current regulations specify that shell eggs be spray rinsed with water containing an approved sanitizer of not less than 50 p/m nor more than 200 p/m of available chlorine. The revision would revise the regulations to reflect that the spray rinse contains a sanitizer approved by the national supervisor of not less than 100 p/m nor more than 200 p/m of available chlorine or its equivalent. With the development of newer and faster processing equipment, the speed at which shell eggs are processed has increased. Correspondingly, this increase in speed has resulted in shell eggs being spray rinsed with an approved sanitizer for a shorter period of time, reducing the overall effectiveness of the sanitizing spray rinse. However, when the minimum amount of sanitizer used to spray rinse shell eggs is increased, the loss in effectiveness caused by the increased speed of the processing equipment is reduced. The revision would update the regulations to reflect that shell eggs receive an increased exposure to an approved sanitizer. (§ 56.76)

(20) Shell Egg Washing. The current regulations specify that shell eggs be removed from washing equipment during any rest period. The revision would reflect that shell eggs be removed from the processing equipment during any non-processing periods to prevent loss of egg quality from extended exposure to elevated temperatures. (§ 56.76)

(21) Removal of Washing Operation Steam and Vapors. The current regulations specify that steam and vapors from the washing operation be continuously and directly removed from the building. The revision would specify that steam, vapors, or odors originating from washing and rinsing operations shall be exhausted to the outside of the building to prevent the development of an undesirable environment in the shell egg processing room. (§ 56.76)

(22) Shell Egg Packing. The current regulations that specify the packing requirements for eggs that are to be identified with a grademark should be updated to reflect the type of packing and packaging materials used by shell egg processors. When the regulations were promulgated most all packing materials were constructed of fiber materials. Today many other materials, such as plastic and metal, are used in the construction of packing materials. The revision would add that eggs that are to be identified with a grademark may be packed in other than fiber packing materials. (§ 56.76)

(23) Approval of Chemicals and Compounds. The current regulations specifying the requirements for the use of approved chemicals and compounds should be updated. The regulations would be updated to reflect that the national supervisor, Poultry Programs is responsible for determining acceptance of the intended use of chemicals and compounds for their specified use. Shell egg processing facilities will still be responsible for using chemicals and compounds in accordance with the manufacturer's instructions. (§ 56.76)

Executive Order 12866 and Effect on Small Entities

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB). In addition, pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of the rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA)(13 CFR 121.201) defines small entities that produce and process chicken eggs as those whose annual receipts are less than $9,000,000. Approximately 625,000 egg laying hens are needed to produce enough eggs to gross $9,000,000.

Currently, the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 1621 *et seq.*) authorizes a voluntary grading program for shell eggs. Shell egg processors that apply for service must pay for the services rendered. So that costs are shared by all users, these user fees are proportional to the volume of shell eggs graded. Shell egg processors are entitled to pack their eggs in packages bearing the USDA grade shield when AMS graders are present to certify that the eggs meet the grade requirements as labeled. Plants in which these grading services are performed are called official plants. Shell egg processors who do not use USDA's grading service may not use the USDA grademark. There are about 558 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these, 161 are official plants that use USDA's grading service and would be subject to this proposed rule. Of these 161 official plants, 38 meet the small business definition.

One proposal would require that plants provide two candling lights in an acceptable candling booth. This change is necessary to provide requested grading service in an acceptable manner with the new equipment and facilities that have been developed and installed in official plants. As new facilities have been built and existing facilities renovated, they have been equipped with at least two candling lights in acceptable candling booths. Currently, all of the plants that utilize the voluntary grading program for shell eggs have at least two acceptable candling lights. Therefore, this proposal would have no adverse economic impact on processors.

One proposal would allow producers to request service by electronic communications. Similarly, another proposal would allow the results of grading to be disseminated by any acceptable means of communications. These proposals provide that processors are able to receive or send communications by the most acceptable and efficient means of communication that the current state of technology allows. These proposals expand the way that producers may communicate. Therefore, these proposals would also have no adverse economic impact on producers.

One proposal would include temporary grading service as a type of grading service that shell egg processors may request. Another proposal would provide that certificates may be issued under temporary grading service. This service is currently being offered to the industry as a method by which shell egg processors can pack eggs into shielded cartons without utilizing official continuous grading service. These proposals would only formalize this type of service. Because the service is already available and being used, they would have no economic impact on processors.

One proposal to establish an alternate method of lot numbering eggs would allow shell egg processors to place a code date on an individual egg. This action will bring the regulations in line with a procedure that is currently approved by the Agency and in use in the market place. This proposal would have no adverse economic impact on processors.

One proposal would clarify and update facility requirements. This proposal would update the regulations by incorporating requirements that a plant must currently meet prior to the start of grading service at a facility. After a plant makes an application for grading service, an Agency representative conducts a plant survey to determine if the plant premises, facility, and equipment can satisfactorily support the official grading of shell eggs. These pre-requisite requirements are based on good manufacturing practices typically associated with food processing and have specific application to shell egg processing. Plants currently utilizing the grading service must maintain their premises, facility, equipment, and operating procedures at a minimum acceptance level. This proposal would only reflect the requirements which facilities are presently meeting and would have no economic impact on processors.

One proposal that updates the facility requirements would require that cooler rooms that hold shell eggs identified with a consumer grademark be capable of maintaining a relative humidity of 70 percent or higher. The regulations currently provide that humidifying equipment capable of maintaining a relative humidity, which will minimize shrinkage, shall be provided. However, the regulations do not specify a percentage of relative humidity that the equipment should provide. A relative humidity of 70% or higher is considered sound and conforms with processing operations presently in use by the shell egg industry.[1] This provides a level of

[1] Stadelman and Cotterill in *Egg Science and Technology,* 4th Edition, 1995, recommend that the relative humidity of egg holding rooms should not drop below 60 percent relative humidity to retard evaporation and prevent a loss in shell egg quality.

Continued

humidity that will maintain the quality of shell eggs. This proposal would have no adverse economic impact on processors.

Other changes to the definitions and editorial-type changes would clarify and update the existing regulations and would have no economic impact on entities using voluntary shell egg grading service.

For the above reasons, the Agency has certified that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed 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

The information collection requirements in §§ 56.21(a), 56.21(c), 56.37, 56.56(a), 56.58, 56.76(f)(7), and 56.76(h) to be amended by this rule have been previously approved by OMB and assigned OMB control number 0581–0128 under the Paper 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 56

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

For reasons set forth in the preamble, it is proposed that 7 CFR part 56 be amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In § 56.1, revise the terms *chief of the grading branch* and *national supervisor* and add, alphabetically, the new terms *Agricultural Marketing Service or AMS, consumer grades, grademark, official standards, officially identified, packaging, packing,* and *United States Standards, Grades, and Weight Classes for Shell Eggs* to read as follows:

§ 56.1 Meaning of words and terms defined.

* * * * *

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

* * * * *

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

* * * * *

Consumer grades means U.S. Grade AA, A, and B.

* * * * *

Grademark means the official identification symbol (shield) used to identify eggs officially graded according to U.S. consumer grade standards.

* * * * *

National supervisor means (a) the officer in charge of the shell egg grading service of the AMS, and (b) other employees of the Department designated by the national supervisor.

* * * * *

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

Officially identified means eggs that have official marks applied to the product under the authority of the AMS in accordance with the act and its regulations.

* * * * *

Packaging means the primary or immediate container in which eggs are packaged and which serves to protect, preserve, and maintain the condition of the eggs.

Packing means the secondary container in which the primary or immediate container is placed to protect, preserve, and maintain the condition of the eggs during transit or storage.

* * * * *

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.

* * * * *

3. In § 56.9, the table in paragraph (b) is amended by removing the entries for 56.76(e)(6) and 56.76(g) and adding in their place the entries for 56.76(f)(7), 56.76(h), and 56.21(c) to read as follows:

§ 56.9. OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

7 CFR section where identified and described	Current OMB control No.
* * * * *	
56.21(c)	0581–0128
* * * * *	
56.76(f)(7)	0581–0128
56.76(h)	0581–0128

4. Section 56.17 is amended by revising the introductory text and paragraph (a)(5), and by adding a new paragraph (a)(6) to read as follows:

§ 56.17 Facilities and equipment for graders.

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

(a) * * *

(5) Two candling lights that provide a sufficient combined illumination through both the aperture and downward through the bottom to facilitate accurate interior and exterior quality determinations; and

(6) A candling booth adequately darkened and located in close proximity to the work area that is reasonably free of excessive noise. The booth must be sufficient in size to accommodate two graders, two candling lights, and other necessary grading equipment.

5. Section 56.21 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 56.21 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 other electronic means.

* * * * *

(c) *Temporary grading service on a fee basis.* An application for grading service on a temporary 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

Moreover, Stadelman and Cotterill recommend that eggs be held under a relative humidity of 70 percent to 80 percent.

of the regulations (including, but not 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.

6. Section 56.28 is added to read as follows:

§ 56.28 Types of grading service.

(a) *Noncontinuous grading service.* This type of service is performed when an applicant requests grading of a particular lot of shell eggs. Requests are made not on a regular basis. Charges or fees are based on the time, travel, and expenses needed to perform the work. This service also may be called the fee grading service. Shell eggs graded under fee grading service are not eligible to be identified with the official grademarks shown in § 56.36.

(b) *Continuous grading service on a resident basis and continuous grading service on a nonresident basis.* Service on a resident basis has a scheduled tour of duty, while service on a nonresident basis has a nonscheduled tour of duty. Both of these services are performed when an applicant requests that a USDA licensed grader be stationed in the applicant's processing plant and grade shell eggs in accordance with U.S. Standards. The applicant agrees to comply with the facility, operating, and sanitary requirements of resident service. The charges for resident grading services are based on the hours of the regular tour of duty and the volume of shell eggs received into the plant, while nonscheduled service is based on the cumulative time required to perform the work and an administrative service charge. Shell eggs graded under resident grading service are only eligible to be identified with the official grademarks shown in § 56.36 when processed and graded under the supervision of a grader or quality assurance inspector as provided in § 56.39.

(c) *Temporary grading service.* This type of service is performed when an applicant requests resident grading on a fee basis. The applicant must meet all of the facility, operating, and sanitary requirements of resident service. Charges or fees are based on the time and expenses needed to perform the work. Shell eggs graded under temporary grading service are only eligible to be identified with the official grademarks when they are processed and graded under the supervision of a grader or quality assurance inspector as provided in § 56.39.

7. Section 56.37 is amended by revising the section heading and first sentence to read as follows:

§ 56.37 Lot marking of officially identified shell eggs.

Shell eggs identified with the grademarks shown in § 56.36 shall be legibly lot numbered on either the individual egg, the carton, or the consumer package. * * *

8. The undesignated center heading that precedes § 56.39 is revised to read as follows:

Prerequisites to Packaging Shell Eggs Identified With Grademarks

9. In § 56.39, the first sentence is revised to read as follows:

§ 56.39 Quality assurance inspector required.

The official identification with the grademark of any product as provided in §§ 56.35 through 56.41, inclusive, shall be done only under the supervision of a grader or quality assurance inspector. * * *

10. Section 56.40 is amended by revising the section heading and paragraph (c) to read as follows:

§ 56.40 Grading requirements of shell eggs identified with grademarks.

* * * * *

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

11. In § 56.56, the headings of paragraphs (a) and (b) are both amended by adding the words ''or temporary'' between the words ''resident grading.''

12. Section 56.58 is revised to read as follows:

§ 56.58 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 electronically transmitted to the applicant, or to the applicant's designee, at the applicant's expense.

13. In § 56.65, paragraph (b) is revised to read as follows:

§ 56.65 Procedures for appeal gradings

* * * * *

(b) When the original samples are not available or have undergone a material change, the appeal sample size for the lot shall consist of double the samples required in § 56.4(b).

* * * * *

14. Section 56.75 is revised to read as follows:

§ 56.75 Applicability of facility and operating requirements.

The provisions of § 56.76 shall be applicable to any grading service that is provided on a resident or temporary basis.

15. Section 56.76 is revised to read as follows:

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

(a) Applicants must comply with all applicable Federal, State and local government occupational safety and health regulations.

(b) *General requirements for premises, buildings and plant facilities.* (1) The outside premises shall be free from refuse, rubbish, waste, unused equipment, and other materials and conditions which constitute a source of odors or a harbor for insects, rodents, and other vermin.

(2) The outside premises adjacent to grading, packing, cooler, and storage rooms must be properly graded and well drained to prevent conditions that may constitute a source of odors or propagate insects or rodents.

(3) Buildings shall be of sound construction so as to prevent, insofar as practicable, the entrance or harboring of vermin.

(4) Grading and packing rooms shall be of sufficient size to permit installation of necessary equipment and conduct 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.

(5) The floors, walls, ceilings, partitions, and other parts of the grading and packing rooms including benches and platforms shall be constructed of materials that are readily cleanable, maintained in a sanitary condition, and impervious to moisture in areas exposed to cleaning solutions or moist conditions. The floors shall be constructed as to provide proper drainage.

(6) Adequate toilet accommodations which are conveniently located and separated from the grading and packing rooms are to be provided. Handwashing facilities shall be provided with hot and cold running water, an acceptable handwashing detergent, and a sanitary method for drying hands. Toilet rooms shall be ventilated to the outside of the building and be maintained in a clean and sanitary condition. Signs shall be posted in the toilet rooms instructing employees to wash their hands before returning to work. In new or remodeled construction, toilet rooms shall be

located in areas that do not open directly into processing rooms.

(7) 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.

(8) Adequate packing and packaging storage areas are to be provided that protect packaging materials and are dry and maintained in a clean and sanitary condition.

(c) *Grading and packing room requirements.* (1) The egg grading or candling area shall be adequately darkened to make possible the accurate quality determination of the candled appearance of eggs. There shall be no other light source or reflection of light that interfere with, or prohibit the accurate quality determination of eggs in the grading or candling areas.

(2) The grading and candling equipment shall provide adequate light to facilitate quality determinations. When needed, other light sources and equipment or facilities shall be provided to permit the detection and removal of stained and dirty eggs or other undergrade eggs.

(3) The grading and candling equipment must be sanitarily designed and constructed to facilitate cleaning. Such equipment shall be kept reasonably clean during grading and packing operations and be thoroughly cleaned at the end of each operating day.

(4) Egg weighing equipment shall be constructed of materials to permit cleaning; operated in a clean, sanitary manner; and shall be capable of ready adjustment.

(5) Adequate ventilation, heating, and cooling shall be provided where needed.

(d) *Cooler room requirements.* (1) Cooler rooms holding shell eggs that are identified with a consumer grade shall be refrigerated and capable of maintaining an ambient temperature no greater than 45 °F (7.2 °C) and a relative humidity of 70 percent or higher. Accurate thermometers and hygrometers shall be provided for monitoring cooler room temperatures and relative humidity.

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

(e) *Shell egg protecting operations.* (1) Shell egg protecting (oil application) operations shall be conducted in a manner to avoid contamination of the product and maximize conservation of its quality.

(2) Component equipment within the shell egg protecting system, including holding tanks and containers, must be sanitarily designed and maintained in a clean and sanitary manner, and the application equipment must provide an adequate amount of oil for shell coverage of the volume of eggs processed.

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

(4) Oil having any off odor, or that is obviously contaminated, shall not be used in shell egg protection operations. Oil is to be filtered prior to application.

(5) The component equipment of the application system shall be washed, rinsed, and treated with a bactericidal agent each time the oil is removed.

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

(f) *Shell egg cleaning operations.* (1) Shell egg washing equipment must be sanitarily designed, maintained in a clean and sanitary manner, and thoroughly cleaned at the end of each operating day.

(2) Shell egg drying equipment must be sanitarily designed and maintained in a clean and sanitary manner. Air used for drying purposes must be filtered. These filters shall be cleaned or replaced as needed to maintain a sanitary process.

(3) The temperature of the wash water shall be maintained at 90 °F (32.2 °C) or higher, and shall be at least 20 °F (6.7 °C) warmer than the internal temperature of the eggs to be washed. These temperatures shall be maintained throughout the cleaning cycle. Accurate thermometers shall be provided for monitoring wash water temperatures.

(4) Approved cleaning compounds shall be used in the wash water.

(5) 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.

(6) Replacement water shall be added continuously to the wash water of washers. Chlorine or quaternary sanitizing rinse water may be used as part of the replacement water, provided, they are compatible with the washing compound. Iodine sanitizing rinse water may not be used as part of the replacement water.

(7) 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 reduce the iron content below the maximum allowed level. Frequency of testing for potability and iron content shall be determined by the Administrator. When the water source is changed, new tests are required.

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

(9) The washing, rinsing, and drying operations shall be continuous and shall be completed as rapidly as possible to maximize conservation of the egg's quality and to prevent sweating of eggs. Eggs shall not be allowed to stand or soak in water. Immersion-type washers shall not be used.

(10) 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.

(11) Washed eggs shall be spray-rinsed with water having a temperature equal to, or warmer than, the temperature of the wash water. The spray-rinse water shall contain a sanitizer that has been determined acceptable for the intended use by the national supervisor and of not less than 100 p/m nor more than 200 p/m of available chlorine or its equivalent. Alternate procedures, in lieu of a sanitizer rinse, may be approved by the national supervisor.

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

(13) During non-processing periods, 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 that may diminish the quality of the egg.

(14) Washed eggs shall be reasonably dry before packaging and packing.

(15) Steam, vapors, or odors originating from the washing and rinsing operation shall be continuously and directly exhausted to the outside of the building.

(g) *Requirements for eggs officially identified with a grademark.* (1) Shell eggs that are officially identified with a consumer grademark shall be placed under refrigeration at an ambient temperature no greater than 45 °F (7.2 °C) promptly after packaging.

(2) Eggs that are to be officially identified with the grademark shall be packed only in new or good used packing material and new packaging materials that are clean, free of mold, mustiness and off odors, and must be of sufficient strength and durability to adequately protect the eggs during

normal distribution. When packed in other than fiber packing material, the containers must be of sound construction and maintained in a reasonably clean manner.

(h) *Use of approved chemicals and compounds.* (1) All egg washing and equipment cleaning compounds, defoamers, destainers, sanitizers, inks, oils, lubricants, or any other compound that comes into contact with the shell eggs shall be approved by the national supervisor for their specified use and handled in accordance with the manufacturer's instructions.

(2) All pesticides, insecticides, and rodenticides shall be approved for their specified use and handled in accordance with the manufacturer's instructions.

Dated: May 25, 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–12201 Filed 6–1–04; 8:45 am]

BILLING CODE 3401–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–172–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. This proposal would require installation of a linear fluid-filled damper between each elevator surface and the airplane structure on both the left and right sides of the airplane, along with related structural and system modifications. This action is necessary to prevent pitch oscillation (vertical bouncing) of the fuselage due to excessive ice buildup on the elevator servo tab, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–172–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–172–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ series airplanes. The CAA advises that BAE Systems (Operations) Limited investigations have determined that, due to excessive ice buildup on the elevator servo tab under certain unusual atmospheric conditions, pitch oscillation (vertical bouncing) of the fuselage can occur. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Modification Service Bulletin SB.27–169–01692A, dated December 10, 2001, which describes procedures for installation of linear fluid-filled dampers between each elevator surface and the airplane structure on both the left and right sides of the airplane. SB.27–169–01692A also refers to additional BAE Systems (Operations) Limited Modification Service Bulletins as appropriate sources of information for further actions which must be accomplished prior to, or in conjunction with, SB.27–169–01692A. The additional service bulletins are:

- SB.27–168–01614EH, dated January 22, 2001, which describes procedures for modifying the tailfin top fairing by introducing access holes and reinforcement to the fairing, and