

(c) The AMS Administrator or designee will review the findings of the audit or examination of records or similar activity, the response, and any supporting documents, and may allow the entity that was the subject of the investigation to make an oral presentation.

(d) At the conclusion of the hearing, the AMS Administrator or designee may revise the findings of the audit or examination of records or similar activity.

**§ 66.406 Summary of results.**

(a) If the entity that was the subject of the audit or examination of records or similar activity does not request a hearing in accordance with §66.404, or at the conclusion of a hearing, AMS will make public the summary of the final results of the investigation.

(b) AMS's decision to make public the summary of the final results constitutes final agency action for purposes of judicial review.

**PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS**

**Subpart A—Grading of Poultry Products and Rabbit Products**

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AUTHORITY: 7 U.S.C. 1621-1627.

SOURCE: 41 FR 23681, June 11, 1976, unless otherwise noted. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981.

## Subpart A—Grading of Poultry Products and Rabbit Products

### DEFINITIONS

#### § 70.1 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 terms shall have the following meaning:

*Acceptable* means suitable for the purpose intended by the AMS.

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

*Administrator* means the Administrator of the AMS 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.

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

*Applicant* means any interested person who requests any grading service.

*Carcass* means any poultry or rabbit carcass.

*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 or species.

*Condition* means any condition, including but not being limited to, the state of preservation, cleanliness, or soundness of any product; or any condition, including but not limited to the processing, handling, or packaging which affects such product.

*Condition and wholesomeness* means the condition of any product and its healthfulness and fitness for human food.

*Department* means the United States Department of Agriculture (USDA).

*Free from protruding feathers or hairs* means that a poultry carcass, part, or poultry product with the skin on is free from protruding feathers or hairs which are visible to a grader during an examination at normal operating speeds. However, a poultry carcass, part, or poultry product may be considered as being free from protruding feathers or hairs if it has a generally clean appearance and if not more than an occasional protruding feather or hair is evidenced during a more careful examination.

*Giblets* means the following poultry organs when properly trimmed and washed: The liver from which the bile sac has been removed, the heart from which the pericardial sac has been removed, and the gizzard from which the lining and contents have been removed. With respect to rabbits "giblets" means the liver from which the bile sac has been removed and the heart from which the pericardial sac has been removed.

*Grader* means any Federal or State employee or the employee of a local jurisdiction or cooperating agency to

whom a license has been issued by the Secretary to investigate and certify in accordance with the regulations in this part the class, quality, quantity, or condition of products.

*Grading or grading service* means: (a) The act whereby a grader determines, according to the regulations in this part the class, quality, quantity, or condition of any product by examining each unit thereof or each unit of the representative sample thereof drawn by a grader, and issues a grading certificate with respect thereto, except that with respect to grading service performed on a resident basis, the issuance of a grading certificate shall be pursuant to a request therefor by the applicant or the Service; (b) the act whereby the grader identifies, according to the regulations in this part, the graded product; (c) with respect to any official plant, the act whereby a grader determines that the product in such plant was processed, handled, and packaged in accordance with § 70.110, or (d) any regrading or any appeal grading of a previously graded product.

*Grading certificate* means a statement, either written or printed, issued by a grader, pursuant to the Act and the regulations in this part, relative to the class, quality, quantity, or condition of a product.

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

*Identify* means to apply official identification to products or the containers thereof.

*Interested party* means any person financially interested in a transaction involving any grading service.

*Lightly shaded discolorations* on poultry are generally reddish in color and are usually confined to areas of the skin or the surface of the flesh.

*Moderately shaded discolorations* on poultry skin or flesh are areas that are generally dark red or bluish, or are areas of flesh bruising. Moderately shaded discolorations are free from blood clots that are visible to a grader during an examination of the carcass, part, or poultry product at normal grading speeds.

*National supervisor* means the officer in charge of the poultry grading service

of the AMS, and other employees of the Department as may be designated by the national supervisor.

*Observed legal holiday.* When a holiday falls on a weekend—Saturday or Sunday—the holiday usually is observed on Monday (if the holiday falls on Sunday) or Friday (if the holiday falls on Saturday).

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

*Official plant or official establishment* means one or more buildings or parts thereof comprising a single plant in which the facilities and methods of operation therein have been approved by the Administrator as suitable and adequate for grading service and in which grading is carried on in accordance with the regulations in this part.

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

*Poultry* means any kind of domesticated bird, including, but not being limited to, chickens, turkeys, ducks, geese, pigeons, and guineas.

*Poultry food product* means any article of human food or any article intended for or capable of being so used, which is prepared or derived in whole or in substantial part, from any edible part or parts of poultry.

*Poultry product* means any ready-to-cook poultry carcass or part therefrom or any specified poultry food product.

*Poultry grading service* means the personnel who are actively engaged in the administration, application, and direction of poultry and rabbit grading programs and services pursuant to the regulations in this part.

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

*Rabbit* means any domesticated rabbit whether live or dead.

*Rabbit product* means any ready-to-cook rabbit carcass or part therefrom.

*Ready-to-cook poultry* means any slaughtered poultry free from protruding feathers, vestigial feathers (hair or down as the case may be) and from which the head, feet, crop, oil gland, trachea, esophagus, entrails, mature reproductive organs, and lungs have been removed, and the kidneys

have been removed from certain mature poultry as defined in 9 CFR part 381, and with or without the giblets, and which is suitable for cooking without need of further processing. Ready-to-cook poultry also means any cut-up or disjointed portion of poultry or other parts of poultry as defined in 9 CFR part 381 that are suitable for cooking without need of further processing.

*Ready-to-cook rabbit* means any rabbit which has been slaughtered for human food, from which the head, blood, skin, feet, and inedible viscera have been removed, that is ready to cook without need of further processing. Ready-to-cook rabbit also means any cut-up or disjointed portion of rabbit or any edible part thereof.

*Regional director* means any employee of the Department in charge of poultry grading service in a designated geographical area.

*Regulations* means the provisions of this entire part and such United States classes, standards, and grades for products as may be in effect at the time grading is performed.

*Sampling* means the act of taking samples of any product for grading or certification.

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

*Slight discolorations* on poultry skin or flesh are areas of discoloration that are generally pinkish in color and do not detract from the appearance of the carcass, part, or poultry product.

*Soundness* means freedom from external evidence of any disease or condition which may render a carcass or product unfit for food.

*State supervisor* or *Federal-State supervisor* means any authorized and designated individual who is in charge of the poultry grading service in a State.

*United States Classes, Standards, and Grades for Poultry* means the official U.S. Classes, Standards, and Grades for Poultry (AMS 70.200 *et seq.*) that are maintained by and available from Poultry Programs, AMS.

*United States Classes, Standards, and Grades for Rabbits* means the official U.S. Classes, Standards, and Grades for Rabbits (AMS 70.300 *et seq.*) that are maintained by and available from Poultry Programs, AMS.

[41 FR 23681, June 11, 1976; 41 FR 24693, June 18, 1976. Redesignated at 42 FR 32514, June 27, 1977, as amended at 43 FR 60138, Dec. 26, 1978. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 47 FR 46071, Oct. 15, 1982; 47 FR 54421, Dec. 3, 1982; 51 FR 17280, May 9, 1986; 60 FR 6639, Feb. 2, 1995; 63 FR 40628, July 30, 1998; 71 FR 42011, July 24, 2006; 72 FR 11775, Mar. 14, 2007; 84 FR 49643, Sept. 23, 2019; 85 FR 62941, Oct. 6, 2020]

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

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

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

(b) *Official memorandum* means any initial record of findings made by an authorized person in the process of grading or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

(c) *Official mark* means the grade-mark and any other mark, or any variations in such marks, approved by the

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Administrator and authorized to be affixed to any product or affixed to or printed on the packaging material of any product, stating that the product was graded or indicating the appropriate U.S. grade or condition of the product, or for maintaining the identity of products graded under this part, including but not limited to, those marks set forth in § 70.51.

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

(e) *Official device* means a stamping 0, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Administrator for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42011, July 24, 2006]

### GENERAL

#### § 70.3 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, 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.

[71 FR 42011, July 24, 2006]

#### § 70.4 Services available.

The regulations in this part provide for the following kinds of service; and any one or more of the different services applicable to official plants may be rendered in an official plant:

(a) Grading of ready-to-cook poultry and rabbits in an official plant or at other locations with adequate facilities.

(b) Grading of specified poultry food products in official plants.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 72 FR 11775, Mar. 14, 2007; 85 FR 62941, Oct. 6, 2020]

#### § 70.5 Nondiscrimination.

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

[71 FR 42012, July 24, 2006]

#### § 70.6 OMB control number.

(a) *Purpose.* The collecting of information requirements in this part has been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581-0127.

(b) *Display.*

#### SECTIONS WHERE INFORMATION COLLECTION REQUIREMENTS ARE IDENTIFIED AND DESCRIBED

70.3	70.36	70.76(b)(3)(ii)
70.4(a)	70.38(c)	70.77(a)(1)
70.5	70.38(d)	70.77(a)(4)
70.18	70.39	70.77(b)(1)
70.20(a)	70.40	70.77(b)(3)(ii)
70.22	70.50	70.91(a)
70.31(a)	70.61	70.91(c)
70.31(b)	70.62	70.92
70.34	70.73	70.101
70.35	70.76(b)(1)	70.102

[71 FR 42012, July 24, 2006]

#### § 70.8 Other applicable regulations.

Compliance with the regulations in this part shall not excuse failure to comply with any other Federal, or any

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State, or municipal applicable laws or regulations.

[71 FR 42012, July 24, 2006]

**§ 70.10 Basis of grading service.**

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

(b) Whenever grading service is provided for examination of quality, condition, or for test weighing on a representative sample basis, such sample shall be drawn and consist of not less than the minimum number of containers indicated in the following table. The number of representative samples for large bulk containers (combo bins, tanks, etc.) may be reduced by one-half. For quality or condition, all of the poultry and rabbits in each representative sample shall be examined except for individual ready-to-cook carcasses weighing under 6 pounds in large bulk containers. For individual carcasses weighing under 6 pounds in large bulk containers, 100 carcasses shall be examined for quality or condition. Procedures for test weighing shall be in accordance with those prescribed by the Administrator.

Containers in lot	Containers in sample
1–4 .....	All.
5–50 .....	4.
51–100 .....	5.
101–200 .....	6.
201–400 .....	7.
401–600 .....	8.
For each additional 100 containers, or fraction thereof, in excess of 600 containers.	Include one additional container.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42012, 42014, July 24, 2006]

**§ 70.11 [Reserved]**

**§ 70.12 Supervision.**

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

**§ 70.13 Ready-to-cook poultry and rabbits and specified poultry food products.**

(a) Ready-to-cook poultry or rabbit carcasses or parts or specified poultry food products may be graded only if they have been inspected and certified by the poultry inspection service of the Department, or inspected and passed by any other inspection system which is acceptable to the Department.

(b) Only when ready-to-cook poultry carcasses, parts, poultry food products, including those used in preparing raw poultry food products, have been graded on an individual basis by a grader or by an authorized person pursuant to § 70.20(c) and thereafter checkgraded by a grader, and when poultry food products have been prepared under the supervision of a grader, when necessary the individual container, carcass, part, or poultry food product be identified with the appropriate official letter grademark. Checkgrading shall be accomplished in accordance with a statistical sampling plan prescribed by the Administrator. Grading with respect to quality factors for freezing defects and appearance of the finished products, when necessary, shall be done on a sample basis in accordance with a plan prescribed by the Administrator.

(c) Only when ready-to-cook rabbit carcasses or parts have been graded on an individual basis by a grader or by an

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authorized person pursuant to § 70.20(c) and thereafter checkgraded by a grader, may the container or the individual carcass or part be identified with the appropriate official letter grademark. Checkgrading shall be accomplished in accordance with a statistical sampling plan prescribed by the Administrator. Grading with respect to quality factors for freezing defects and appearance of the finished products may be done on a sample basis in accordance with a plan prescribed by the Administrator.

[71 FR 42012, July 24, 2006]

### § 70.14 Squabs and domesticated game birds; eligibility.

Squabs and domesticated game birds (including, but not being limited to, quail, pheasants, and wild species of ducks and geese raised in captivity) may be graded under the regulations in this part, only if they have been inspected and passed by the poultry inspection service of the Department or have been inspected by any other official inspection system acceptable to the Department.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42012, July 24, 2006]

### § 70.15 Equipment and facilities for graders.

Equipment and facilities to be furnished by the applicant for use of graders in performing service on a resident basis shall include, but not be limited to, the following:

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

(2) A drill with a steel bit to drill holes in frozen product for inserting the metal thermometer stem to determine temperature.

(3) Scales graduated in tenths of a pound or less for weighing carcasses, parts, or products individually in containers up to 100 pounds, and test weights for such scales.

(4) Scales graduated in one-pound graduation or less for weighing bulk containers of poultry and test weights for such scales.

(b) Furnished office space, a desk, and file or storage cabinets (equipped with a satisfactory locking device) suitable for the security and storage of

official supplies, and other facilities and equipment as may otherwise be required. Such space and equipment must meet the approval of the national supervisor.

[71 FR 42012, July 24, 2006]

### § 70.16 Prerequisites to grading.

Grading of products shall be rendered pursuant to the regulations in this part and under such conditions and in accordance with such methods as may be prescribed or approved by the Administrator.

### § 70.17 Accessibility of products.

Each product for which grading service is requested shall be so placed as to disclose fully its class, quality, quantity, and condition as the circumstances may warrant.

### § 70.18 Schedule of operation of official plants.

Grading operation schedules for services performed pursuant to §§ 70.76 and 70.77 shall be requested in writing and be approved by the Administrator. Normal operating schedules for a full week consist of a continuous 8-hour period per day (excluding not to exceed 1 hour for lunch), 5 consecutive days per week, within the administrative workweek, Sunday through Saturday, for each shift required. Less than 8-hour schedules may be requested and will be approved if a grader is available. Clock hours of daily operations need not be specified in the request, although as a condition of continued approval, the hours of operation shall be reasonably uniform from day to day. Graders are to be notified by management 1 day in advance of any change in the hours grading service is requested.

[48 FR 20683, May 9, 1983]

## LICENSED AND AUTHORIZED GRADERS

### § 70.20 Who may be licensed and authorized.

(a) Any person who is a Federal or State employee, the employee of a local jurisdiction, or the employee of a cooperating agency possessing proper qualifications as determined by an examination for competency and who is to perform grading service under this

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part may be licensed by the Secretary as a grader.

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

(c) Any person who is employed by any official plant and possesses proper qualifications as determined by the Administrator may be authorized to grade poultry and/or rabbits on the basis of the U.S. classes, standards, and grades under the supervision of a grader. No person to whom such authorization is granted shall have authority to issue any grading certificates, grading memoranda, or other official documents; and all products graded by any such person shall thereafter be check graded by a grader.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42012, July 24, 2006]

## § 70.21 Suspension of license; revocation.

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

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42012, July 24, 2006]

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## § 70.22 Surrender of license.

Each license which is suspended or revoked shall immediately be surrendered by the licensee to the office of grading servicing the area in which the license is located.

[71 FR 42012, July 24, 2006]

## § 70.23 Identification.

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

[71 FR 42013, July 24, 2006]

## § 70.24 Financial interest of graders.

Graders shall not render service on any product in which they are financially interested.

[71 FR 42013, July 24, 2006]

## § 70.25 Political activity.

Federal graders may participate in certain political activities, including management and participation in political campaigns in accordance with AMS policy. Graders 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 will constitute grounds for removal from the AMS.

[71 FR 42013, July 24, 2006]

## § 70.26 Cancellation of license.

Upon termination of the services of a licensed grader, the grader's license shall be immediately surrendered for cancellation.

[71 FR 42013, July 24, 2006]

## APPLICATION FOR GRADING SERVICE

## § 70.29 Who may obtain grading service.

An application for grading service may be made by any interested person, including, but not being limited to any authorized agent of the United States,



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any State, county, municipality, or common carrier.

[71 FR 42013, July 24, 2006. Redesignated at 84 FR 49643, Sept. 23, 2019]

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

(a) *Application.* (1) Any person may apply for service with respect to products in which he or she has a financial interest by completing the required application for service. In any case in which the service is intended to be furnished at an establishment not operated by the applicant, the application must be approved by the operator of such establishment and such approval constitutes an authorization for any employee of the Department to enter the establishment for the purpose of performing his or her functions under the regulations in this part. The application shall include:

(i) Name and address of the establishment at which service is desired;

(ii) Name and mailing address of the applicant;

(iii) Financial interest of the applicant in the products, except where application is made by a representative of a Government agency in the representative's official capacity;

(iv) Signature of the applicant (or the signature and title of the applicant's representative);

(v) Indication of the legal status of the applicant as an individual, partnership, corporation, or other form of legal entity; and

(vi) The legal designation of the applicant's business as a small or large business, as defined by the U.S. Small Business Administration's North American Industry Classification System (NAICS) Codes.

(2) In making application, the applicant agrees to comply with the terms and conditions of the regulations in this part (including, but not being limited to, such instructions governing grading of products as may be issued from time to time by the Administrator). No member of or Delegate to Congress or Resident Commissioner shall be admitted to any benefit that may arise from such service unless derived through service rendered a corporation for its general benefit. Any change in such status, at any time

while service is being received, shall be promptly reported by the person receiving the service to the grading office designated by the Director or Chief to process such requests.

(b) *Notice of eligibility for service.* The applicant will be notified whether the application is approved or denied.

[84 FR 49643, Sept. 23, 2019]

### § 70.31 Filing of application.

An application for grading service shall be regarded as filed only when made pursuant to the regulations in this part.

[41 FR 23681, June 11, 1976, unless otherwise noted. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, and further redesignated at 84 FR 49643, Sept. 23, 2019]

### § 70.32 Authority of applicant.

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

[41 FR 23681, June 11, 1976, unless otherwise noted. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, and further redesignated at 84 FR 49643, Sept. 23, 2019]

### § 70.33 Application for grading service in official plants; approval.

Any person desiring to process and pack products in a plant under grading service must receive approval of such plant and facilities as an official plant prior to the rendition of such service. An application for grading service to be rendered in an official plant shall be approved according to the following procedure: *Survey.* When application has been filed for grading service, as aforesaid, the State supervisor or the supervisor's assistant shall examine the grading office, facilities, and equipment and specify any additional facilities or equipment needed for the service. When the plant survey for poultry or rabbit grading has been completed and approved in accordance with the regulations in this part, service may be installed.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42013, July 24, 2006. Further redesignated at 84 FR 49643, Sept. 23, 2019]

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### § 70.34 Rejection of application.

(a) Any application for grading service may be rejected by the Administrator:

(1) Whenever the applicant fails to meet the requirements of the regulations prescribing the conditions under which the service is made available;

(2) Whenever the product is owned by or located on the premises of a person currently denied the benefits of the Act;

(3) Where any individual holding office or a responsible position with or having a substantial financial interest or share in the applicant, is currently denied the benefits of the Act, or was responsible in whole or in part for the current denial of the benefits of the Act to any person;

(4) Where the Administrator determines that the application is an attempt on the part of a person currently denied the benefits of the Act to obtain grading service;

(5) Whenever the applicant, after an initial survey has been made in accordance with § 70.34, fails to bring the grading facilities and equipment into compliance with the regulations within a reasonable period of time; or

(6) Notwithstanding any prior approval whenever, before inauguration of service, the applicant fails to fulfill commitments concerning the inauguration of the service.

(7) When it appears that to perform the services specified in this part would not be to the best interests of the public welfare or of the Government;

(8) When it appears to the Administrator that prior commitments of the Department necessitate rejection of the application.

(b) Each such applicant shall be promptly notified by registered mail of the reasons for the rejection. A written petition for reconsideration of such rejection may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after receipt of notice of the rejection. Such petition shall state specifically the errors alleged to have been made by the Administrator in rejecting the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant

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by registered mail of the reasons for the rejection thereof.

[71 FR 42013, July 24, 2006. Redesignated as 84 FR 49643, Sept. 23, 2019]

### § 70.35 Withdrawal of application.

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

[71 FR 42013, July 24, 2006. Redesignated as 84 FR 49643, Sept. 23, 2019]

### § 70.36 Order of service.

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

[41 FR 23681, June 11, 1976, unless otherwise noted. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, and further redesignated at 84 FR 49643, Sept. 23, 2019]

### § 70.37 Types of Service.

(a) *Noncontinuous grading service.* Service is performed on an unscheduled basis, with no scheduled tour of duty, and when an applicant requests grading of a particular lot of poultry or rabbit product. Charges or fees are based on the time, travel, and expenses needed to perform the work. This service may be referred to as unscheduled grading service. Poultry and rabbit products graded under unscheduled grading service are not eligible to be identified with the official grademarks shown in § 70.51.

(b) *Continuous grading service on a scheduled basis.* Service on a scheduled basis has a scheduled tour of duty and is performed when an applicant requests that a USDA licensed grader be stationed in the applicant's plant or warehouse and grade poultry and rabbit products in accordance with U.S. Standards. The applicant agrees to comply with the facility, operating, and sanitary requirements of scheduled service. Minimum fees for service performed under a scheduled agreement

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shall be based on the hours of the regular tour of duty. Poultry and rabbit products graded under scheduled grading service are eligible to be identified with the official grademarks shown in § 70.51 only when processed and graded under the supervision of a grader.

(c) *Temporary grading service.* Service is performed when an applicant requests an official plant number with service provided on an unscheduled basis. The applicant must meet facility, operating, and sanitary requirements of continuous service. Charges or fees are based on the time and expenses needed to perform the work. Poultry and rabbit products graded under temporary grading service are eligible to be identified with the official grademarks only when they are processed and graded under the supervision of a grader.

[84 FR 49643, Sept. 23, 2019]

### **§ 70.38 Suspension or withdrawal of plant approval for correctable cause.**

(a) Any plant approval given pursuant to the regulations in this part may be suspended by the Administrator for (1) failure to maintain grading facilities and equipment in a satisfactory state of repair, sanitation, or cleanliness; (2) the use of operating procedures which are not in accordance with the regulations in this part; or (3) alterations of grading facilities or equipment which have not been approved in accordance with the regulations in this part.

(b) Whenever it is feasible to do so, written notice in advance of a suspension shall be given to the person concerned and shall specify a reasonable period of time in which corrective action must be taken. If advance written notice is not given, the suspension action shall be promptly confirmed in writing and the reasons therefor shall be stated, except in instances where the person has already corrected the deficiency. Such service, after appropriate corrective action is taken, will be restored immediately, or as soon thereafter as a grader can be made available. During such period of suspension, grading service shall not be rendered. However, the other provisions of the regulations pertaining to

providing service on a resident basis will remain in effect unless such service is terminated in accordance with the provisions of this part.

(c) If the grading facilities or methods of operation are not brought into compliance within a reasonable period of time as specified by the Administrator, the Administrator shall initiate withdrawal action pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings and Grading Service (7 CFR part 1, subpart H), and the operator shall be afforded an opportunity for an oral hearing upon the operator's written request in accordance with such Rules of Practice, with respect to the merits or validity of the withdrawal action, but any suspension shall continue in effect pending the outcome of such hearing unless otherwise ordered by the Administrator. Upon withdrawal of grading service in an official plant, the plant approval shall also become terminated, and all labels, seals, tags, or packaging material bearing official identification shall, under the supervision of a person designated by the AMS, either be destroyed, or the official identification completely obliterated, or sealed in a manner acceptable to the AMS.

(d) In any case where grading service is withdrawn under this § 70.38, the person concerned may thereafter apply for grading service as provided in §§ 70.30 through 70.37 of these regulations.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, as amended at 43 FR 60139, Dec. 26, 1978. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42013, July 24, 2006]

### **§ 70.39 Form of application.**

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

[71 FR 42013, July 24, 2006]

### **DENIAL OF SERVICE**

### **§ 70.40 Debarment.**

The acts or practices set forth in §§ 70.41 through 70.46, or the causing thereof, may be deemed sufficient

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cause for the debarment by the Administrator of any person, including any agents, officers, subsidiaries, or affiliates of such person, from all benefits of the act for a specified period. The Rules of Practice Governing Formal Adjudicatory Proceedings (7 CFR part 1, subpart H) shall be applicable to such debarment action.

[71 FR 42013, July 24, 2006]

### **§ 70.41 Misrepresentation, deceptive, or fraudulent act or practice.**

Any willful misrepresentation or any deceptive or fraudulent act or practice found to be made or committed by any person in connection with:

(a) The making or filing of any application for any grading service, appeal or regrading service;

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

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

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

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

[41 FR 23681, June 11, 1976; 41 FR 24693, June 18, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42014, July 24, 2006]

### **§ 70.42 Use of facsimile forms.**

Using or attempting to use a form which simulates in whole or in part any certificate, symbol, stamp, label, seal, or identification authorized to be issued or used under the regulations in this part.

### **§ 70.43 Willful violation of the regulations.**

Any willful violation of the regulations in this part or the Act.

### **§ 70.44 Interfering with a grader or employee of Service.**

Any interference with or obstruction or any attempted interference or obstruction of, or assault upon any grader, licensee, or employee of the Service

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in the performance of such employee's duties. The giving or offering, directly or indirectly, of any money, loan, gift, or anything of value to an employee of the Service, or the making or offering of any contribution to or in any way supplementing the salary, compensation, or expenses of an employee of the Service, or the offering or entering into a private contract or agreement with an employee of the Service for any services to be rendered while employed by the Service.

[41 FR 23681, June 11, 1976; 41 FR 24693, June 18, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42014, July 24, 2006]

### **§ 70.45 Misleading labeling.**

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

### **§ 70.46 Miscellaneous.**

The existence of any of the conditions set forth in § 70.35 constituting a basis for the rejection of an application for grading service.

## IDENTIFYING AND MARKING PRODUCTS

### **§ 70.50 Approval of official identification and wording on labels.**

Any label or packaging material which bears any official grade identification shall be used only in such a manner as the Administrator may prescribe, and such labeling or packaging materials, including the wording used on such materials, shall be approved in accordance with and conform with the provisions of this part 70 and the applicable provisions of §§ 381.115 through 381.141 of 9 CFR part 381. Poultry Products Inspection Regulations. Labeling requirements for ready-to-cook rabbits, except for the product name, shall be the same as for ready-to-cook poultry. For ready-to-cook rabbits the class name shall be shown on the label. The appropriate designation, "young," "mature," or "old," may be used as a

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prefix to the word “rabbit” in lieu of the class name.

[41 FR 23681, June 11, 1976; 41 FR 24694, June 18, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981]

### § 70.51 Form of grademark and information required.

(a) *Form of official identification symbol and grademark.* (1) The shield set forth in Figure 1 of this section shall be the official identification symbol for purposes of this part and when used, imitated, or simulated in any manner in connection with poultry or rabbits, shall be deemed prima facie to constitute a representation that the product has been officially graded for the purposes of § 70.2.

(2) Except as otherwise authorized, the grademark permitted to be used to officially identify USDA consumer-graded poultry and rabbit products shall be of the form and design indicated in Figures 2 through 4 of this section. The shield shall be of sufficient size so that the printing and other information contained therein is legible and in approximately the same proportion as shown in these figures.

(3) The “Prepared From” grademark in Figure 5 of this section may be used to identify specialized poultry products for which there are no official U.S. grade standards, provided that these products are approved by the Agency and are prepared from U.S. Consumer Grade A poultry carcasses, parts, or other products that comply with the requirements of AMS § 70.220. All poultry products shall be processed and labeled in accordance with 9 CFR part 381.

(b) *Information required on grademark.*

(1) Except as otherwise authorized by the Administrator, each grademark used shall include the letters “USDA” and the U.S. grade of the product it identifies, such as “A Grade,” as shown in Figure 2 of this section. Such information shall be printed with the shield and the wording within the shield in contrasting colors in a manner such that the design is legible and conspicuous on the material upon which it is printed.

(2) Except as otherwise authorized, the bands of the shield in Figure 4 of this section shall be displayed in three colors, with the color of the top, middle, and bottom bands being blue, white, and red, respectively.

(3) The “Prepared From” grademark in Figure 5 of this section may be any one of the designs shown in Figures 2 through 4 of this section. The text outside the shield shall be conspicuous, legible, and in approximately the same proportion and close proximity to the shield as shown in Figure 5 of this section.

(c) *Products that may be individually grademarked.* The grademarks set forth in Figures 2 through 4 of this section may be applied individually to ready-to-cook poultry, rabbits, and specified poultry food products for which consumer grades are provided in the U.S. Classes, Standards, and Grades for Poultry and Rabbits, AMS 70.200 and 70.300 *et seq.*, respectively, or to the containers in which such products are enclosed for the purpose of display and sale to household consumers, only when such products qualify for the particular grade indicated in accordance with the consumer grades.

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Figure 1

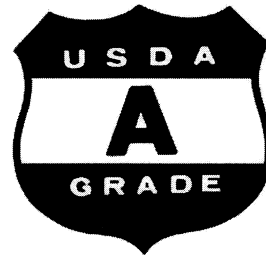


Figure 4



Figure 2

Prepared From



Poultry

Figure 5



Figure 3

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[63 FR 40628, July 30, 1998]

### REPORTS

#### **§ 70.52 Prerequisites to packaging ready-to-cook poultry or rabbits identified with consumer grademarks.**

The official identification of any graded product as provided in §§ 70.50 and 70.51 shall be done only under the supervision of a grader. The grader shall have supervision over the use and handling of all material bearing any official identification.

#### **§ 70.54 Retention authorities.**

A grader may use retention tags or other devices and methods as approved by the Administrator for the identification and control of poultry or rabbit products which are not in compliance with the regulations or are held for further examination. Any such item shall not be released until in compliance with the regulations and retention identification shall not be removed by anyone other than a grader.

#### **§ 70.55 Check grading officially identified product.**

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

#### **§ 70.56 Grading requirements of poultry and rabbits identified with official identification.**

(a) Poultry and rabbit products to be identified with the grademarks illustrated in § 70.51 must be individually graded by a grader or by authorized personnel pursuant to § 70.20 and thereafter checkgraded by a grader.

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

[71 FR 42014, July 24, 2006]

#### **§ 70.60 Report of grading work.**

Reports of grading work performed within official plants shall be forwarded to the Administrator by the grader in a manner as may be specified by the Administrator.

[71 FR 42014, July 24, 2006]

#### **§ 70.61 Information to be furnished to graders.**

The applicant for grading service shall furnish to the grader rendering such service such information as may be required for the purposes of this part.

[47 FR 46071, Oct. 15, 1982; 47 FR 54421, Dec. 3, 1982]

#### **§ 70.62 Report of violations.**

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

[71 FR 42014, July 24, 2006]

### FEEES AND CHARGES

#### **§ 70.70 Payment of fees and charges.**

(a) Fees and charges for any grading service shall be paid by the interested party making the application for such grading service, in accordance with the applicable provisions of this section and §§ 70.71 through 70.78, inclusive.

(b) Fees and charges for any grading service shall, unless otherwise required pursuant to paragraph (c) of this section, be paid by check, electronic funds transfer, draft, or money order made payable to the National Finance Center. Payment for the service must be made in accordance with directions on the billing statement, and such fees and charges must be paid in advance if required by the official grader or other authorized official.

(c) Fees and charges for any grading under a cooperative agreement with

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any State or person shall be paid in accordance with the terms of such cooperative agreement.

[41 FR 23681, June 11, 1976; 41 FR 24693, June 18, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42014, July 24, 2006; 84 FR 49644, Sept. 23, 2019]

### § 70.71 Charges for services on an unscheduled basis.

Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on an unscheduled basis shall be based on the applicable formulas specified in this section.

(a) For each calendar year, AMS will calculate the rate for grading services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS grading program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS grading program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5, plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS grading program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b)(1) For each calendar year, based on previous fiscal year/historical actual costs, AMS will calculate the benefits rate, operating rate, and allowance for bad debt rate components of the regular, overtime and holiday rates as follows:

(i) *Benefits rate.* The total AMS grading program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) *Operating rate.* AMS' grading program total operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate.* Total AMS grading program allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(2) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on OMB's most recent Presidential Economic Assumptions.

(c) Fees for unscheduled grading services will be based on the time required to perform the services. The hourly charges will include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate. Charges to plants are as follows:

(1) The regular hourly rate will be charged for the first 8 hours worked per grader per day for all days except observed legal holidays.

(2) The overtime rate will be charged for hours worked in excess of 8 hours per grader per day for all days except observed legal holidays.

(3) The holiday hourly rate will be charged for hours worked on observed legal holidays.

[85 FR 62941, Oct. 6, 2020]

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

The costs of an appeal grading or review of a grader's decision, shall be borne by the appellant on an unscheduled basis at rates set forth in § 70.71, plus any travel and additional expenses. If the appeal grading or review of a grader's decision discloses that a material error was made in the original



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determination, no fee or expenses will be charged.

[84 FR 49644, Sept. 23, 2019]

### § 70.75 Travel expenses and other charges.

Charges are to be made to cover the cost of travel and other expenses incurred by the AMS in connection with rendering grading service. Such charges shall include the cost of transportation, per diem, and any other expenses.

[42 FR 2971, Jan. 14, 1977. Redesignated at 42 FR 32514, June 27, 1977, as amended at 46 FR 9, Jan. 2, 1981. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42014, July 24, 2006]

### § 70.76 [Reserved]

### § 70.77 Charges for services on a scheduled basis.

Fees to be charged and collected for any grading service, other than for an appeal grading, on a scheduled grading basis, will be determined based on the formulas in this part. The fees to be charged for any appeal grading will be as provided in § 70.71.

(a) *Charges.* The charges for the grading of poultry and rabbits and edible products thereof must be paid by the applicant for the service and will include items listed in this section as are applicable. Payment for the full cost of the grading service rendered to the applicant shall be made by the applicant to the National Finance Center. Such full costs shall comprise such of the items listed in this section as are due and included in the bill or bills covering the period or periods during which the grading service was rendered. Bills are payable upon receipt.

(1) When a signed application for service has been received, the State supervisor or his designee will complete a plant survey pursuant to § 70.34. The costs for completing the plant survey will be borne by the applicant on an unscheduled basis as described in § 70.71. No charges will be assessed when the application is required because of a change in name or ownership. If service is not installed within 6 months from the date the application is filed, or if service is inactive due to an approved request for removal of a

grader or graders for a period of 6 months, the application will be considered terminated. A new application may be filed at any time. In addition, there will be a charge of \$300 if the application is terminated at the request of the applicant for reasons other than for a change in location within 12 months from the date of the inauguration of service.

(2) Charges for the cost of each grader assigned to a plant will be calculated as described in § 70.71. Minimum fees for service performed under a scheduled agreement will be based on the hours of the regular tour of duty. The Agency reserves the right to use any grader assigned to the plant under a scheduled agreement to perform service for other applicants and no charge will be assessed to the scheduled applicant for the number of hours charged to the other applicant. Charges to plants are as follows:

(i) The regular hourly rate will be charged for hours worked in accordance with the approved tour of duty on the application for service between the hours of 6 a.m. and 6 p.m.

(ii) The overtime rate will be charged for hours worked in excess of the approved tour of duty on the application for service.

(iii) The holiday hourly rate will be charged for hours worked on observed legal holidays.

(iv) The night differential rate (for regular or overtime hours) will be charged for hours worked between 6 p.m. and 6 a.m.

(v) The Sunday differential rate (for regular or overtime hours) will be charged for hours worked on a Sunday.

(vi) For all hours of work performed in a plant without an approved tour of duty, the charge will be one of the applicable hourly rates in § 70.71 plus actual travel expenses incurred by AMS.

(3) A charge at the hourly rates specified in § 70.71, plus actual travel expenses incurred by AMS for intermediate surveys to firms without grading service in effect.

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

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be necessary for the performance of the grading service.

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

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

(i) Mutual consent;

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

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

(iv) Action taken by AMS pursuant to the provisions of § 70.38 through § 70.40.

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

[41 FR 23681, June 11, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 70.77, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### **§ 70.78 Fees or charges for grading service performed under cooperative agreement.**

Fees or charges to be made to an applicant for any grading service which differ from those listed in §§ 70.70 through 70.77, shall be provided for by a cooperative agreement.

#### GRADING CERTIFICATES

### **§ 70.90 Forms.**

Grading certificates and sampling report forms (including appeal grading certificates and regrading certificates) shall be issued on forms approved by the Administrator.

[71 FR 42014, July 24, 2006]

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### **§ 70.91 Issuance.**

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

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

[71 FR 42014, July 24, 2006]

### **§ 70.92 Disposition.**

The original and a copy of each grading certificate, issued pursuant to §§ 70.90 through 70.93, and not to exceed two additional copies thereof if requested by the applicant prior to issuance shall, immediately upon issuance, be delivered or mailed to the applicant or the applicant's designee. Other copies shall be filed and retained in accordance with the disposition schedule for grading program records.

[71 FR 42014, July 24, 2006]

### **§ 70.93 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 transmitted by any electronic means to the applicant, or

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to the applicant's designee, at the applicant's expense.

[71 FR 42014, July 24, 2006]

### APPEAL OF A GRADING OR DECISION

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

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

#### **§ 70.101 Where to file an appeal.**

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

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

#### **§ 70.102 How to file an appeal.**

Any request for an appeal grading or review of a grader's decision may be made orally or in writing. If made orally, written confirmation may be required. The applicant shall clearly state the reasons for requesting the appeal service, and a description of the product or the decision which is ques-

tioned. If such appeal request is based on the results stated on an official certificate, the original and all available copies of the certificate shall be returned to the appeal grader assigned to make the appeal grading.

#### **§ 70.103 When an application for an appeal grading may be refused.**

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

#### **§ 70.104 Who shall perform the appeal.**

(a) An appeal grading or review of a decision requested under § 70.101(a) shall be made by the grader's immediate supervisor or by one or more licensed graders assigned by the immediate supervisor.

(b) Appeal gradings requested under § 70.101(b) shall be performed by a grader other than the grader who originally graded the product.

(c) Whenever practical, an appeal grading shall be conducted jointly by two graders. The assignment of the grader(s) who will make the appeal grading requested under § 70.101(b) shall be made by the regional director or the Chief of the Grading Branch.

[41 FR 23681, June 11, 1976; 41 FR 24693, June 18, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42014, July 24, 2006]

#### **§ 70.105 Procedures for appeal gradings.**

(a) The appeal sample shall consist of product taken from the original sample container plus an equal number of containers selected at random.

(b) When the original samples are not available or have been altered, such as the removal of undergrades, the appeal

§ 70.106

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sample size for the lot shall consist of double the samples required in § 70.80.

(c) Poultry or rabbits in an unfrozen state must be adequately protected and kept in good condition until the appeal grading is performed.

(d) Overwraps on frozen poultry or rabbits shall be removed from all birds or rabbits in the sample prior to appeal grading for quality or to determine the class.

(e) When the appeal is based on grading or class determination factors, each frozen carcass shall be defrosted prior to conducting the appeal grading. Whether defrosting poultry or rabbit carcasses for other types of appeals will be required by the appeal grader, will depend upon the reason for the appeal.

[41 FR 23681, June 11, 1976; 41 FR 24693, June 18, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42014, July 24, 2006]

§ 70.106 Appeal grading certificates.

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

SANITARY REQUIREMENTS, FACILITIES, AND OPERATING PROCEDURES

§ 70.110 Requirements for sanitation, facilities, and operating procedures in official plants.

(a) The requirements for sanitation, facilities, and operating procedures in official plants shall be the applicable provisions stated in 9 CFR part 381 for

poultry, and for rabbits the requirements shall be the applicable provisions stated in 9 CFR part 354.

(b) With respect to grading services, there shall be a minimum of 100-foot candles of light intensity at grading stations; and acceptable means, when necessary, of maintaining control and identity of products segregated for quality, class, condition, weight, lot, or any other factor which may be used to distinguish one type of product from another.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 51 FR 17281, May 9, 1986; 63 FR 40630, July 30, 1998]

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