

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Parts 56 and 70**

[Docket No. PY-02-003]

RIN 0581-AC25

Updating Administrative Requirements for Voluntary Shell Egg, Poultry, and Rabbit Grading**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the administrative requirements in the regulations governing the voluntary shell egg, poultry, and rabbit grading programs. The amendments update the administrative requirements and make minor, nonsubstantive changes for clarity and uniformity of style. This improves operational efficiency of the grading programs by making the administrative requirements more accurate, clear, consistent, and easier to use.

DATES: *Effective Date:* August 23, 2006.

FOR FURTHER INFORMATION CONTACT: David Bowden, Jr., Chief, Standardization Branch, (202) 720-3506.

SUPPLEMENTARY INFORMATION:**Background**

Voluntary shell egg, poultry, and rabbit grading programs are provided for under the Agricultural Marketing Act of 1946, as amended, and are offered on a fee-for-service basis. The programs operate under the regulations in 7 CFR part 56 (Voluntary Grading of Shell Eggs) and 7 CFR part 70 (Voluntary Grading of Poultry Products and Rabbit Products).

Supervisory personnel at national, regional, and State levels are responsible for overall operation of these grading programs and implementation of the regulations. Historically, graders were licensed in either shell egg grading or poultry grading, some also in rabbit grading, and they would use only one of the regulations. Today, graders are increasingly cross-utilized for both shell egg and poultry grading, and use both 7 CFR parts 56 and 70.

Both regulations have been in effect since the 1950s and have been amended from time to time as requirements have changed.

While each regulation has its own commodity-specific requirements, both regulations have the same or similar

administrative requirements. A review of the administrative requirements identified general editorial or housekeeping changes that were needed. These changes enable program staff at all levels to implement the administrative requirements of both regulations consistently, uniformly, easily, and fairly. The amendments do not change how the administrative requirements are administered, how the commodity-specific requirements are implemented, or the responsibilities of program users.

The amendments make the administrative requirements more accurate, easier to implement, and easier to follow.

For example:

- References to the official U.S. Standards, Grades, and Weight Classes for Shell Eggs and the official U.S. Classes, Standards, and Grades for Poultry and Rabbits reflect that they are no longer in the Code of Federal Regulations.

- Punctuation, grammar, capitalization, abbreviations, legal phrases, terms, format, and style are consistent with current regulatory documents, the U.S. Government Printing Office Style Manual, and the Federal Register Document Drafting Handbook. Pronouns used are gender-neutral, consistent with current writing style.

- Redesignated sections make requirements easier to locate in the regulations.

- Sections about nondiscrimination and political activity for Federal employees reflect current requirements.

- Editing of Agency names and displays of control numbers assigned to information collection requirements by the Office of Management and Budget saves space and avoids the repetitive use of certain numbers and words.

- "Poultry Programs" correctly identifies the organization.

- "Electronic means" correctly reflects current technology.

- "Agricultural Marketing Service or AMS" is added for consistency with other Agency regulations.

- Duplicate sections are removed.

- Inconsistencies in the wording of headings and sections common to both regulations are harmonized, where feasible and practical, to assist program staff at all levels.

- Administrative requirements that have historically been implemented in both grading programs, but are found in only one of the regulations, are added to the regulation where they are not specified.

Proposed Rule and Comments

A proposed rule was published in the **Federal Register** (71 FR 2168, January 13, 2006). During the 30 day comment period that ended February 13, the agency received one comment. The commenter expressed concern that comments could not be accepted electronically. The agency determined that the address provided was incomplete. A correction was published in the **Federal Register** (70 FR 4056, January 25). Other concerns expressed by the commenter were not pertinent to the rule or were outside the scope of the regulations being revised.

Executive Order 12866

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

Executive Order 12988

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

Effect on Small Entities

The purpose of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) 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 poultry as those whose annual number of employees is less than 500, and defines small entities that produce and process chicken eggs as those whose annual receipts are less than \$9,000,000. Approximately 625,500 egg laying hens are needed to produce enough eggs to gross \$9,000,000.

There are about 376 users of Poultry Programs' grading services. These official plants can pack eggs, poultry, and rabbits in packages bearing the USDA grade shield when AMS graders are present to certify that the products meet the grade requirements as labeled. Many of these users are small entities under the criteria established by the SBA. These entities are under no obligation to use grading services as authorized under the Agricultural Marketing Act of 1946.

Pursuant to requirements set forth in the RFA, the AMS has considered the economic impact of this rule on small entities. This rule is editorial and housekeeping in nature. It affects administrative requirements by updating language and references that are outdated. It harmonizes the administrative content of both regulations. It does not change how the administrative requirements are administered, how commodity-specific requirements are implemented, or the responsibilities of program users. Accordingly, AMS has determined that provisions of this rule do not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has previously approved the information collection and recordkeeping requirements included in this rule, and there are no new requirements. The assigned OMB control numbers are 0581-0127 and 0581-0128.

List of Subjects

7 CFR Part 56

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

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Title 7, Code of Federal Regulations, parts 56 and 70 are 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.

§ 56.1 [Amended]

■ 2. Section § 56.1 amended as follows:

■ A. Remove the definition of *Service*.
 ■ B. Revise the introductory text and the definitions of *Act*, *Applicant*, *Department*, *Grader*, *Grading certificate*, *Official plant or official establishment*, *Origin grading*, *Regulations*, and *Sampling*, in alphabetical order, as set forth below.

■ C. Add the definitions of *Acceptable*, *Identify*, *Shell egg grading service*, *State supervisor or Federal-State supervisor*, and *United States Standards for Quality*

of Individual Shell Eggs, in alphabetical order, as set forth below.

■ D. Alphabetize the definitions of *Administrator* and *Agricultural Marketing Service*.

■ E. Amend the definition of *Administrator* by removing the words “Agricultural Marketing Service of the Department” and adding “AMS” in their place and removing the word “his” and adding “the Administrator’s” in its place.

■ F. Amend the definition of *Grading or grading service* by removing the word “Service” and adding “AMS” in its place at the end of paragraph (1).

■ G. Amend the definition of *Holiday or legal holiday* by removing the words “shall mean” and adding “means” in their place.

■ H. Amend the definition of *Secretary* by removing the word “his” and adding “the Secretary’s” in its place.

The additions and revisions, in alphabetical order, read as follows:

§ 56.1 Meaning of words and terms defined.

For the purpose of the regulations in this part, words in the singular shall be deemed to import the plural and vice versa, as the case may demand. 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.

Applicant means any interested person who requests any grading service.

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

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 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, quantity, quality, or condition of products.

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

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.

Origin grading means a grading made on a lot of eggs at a plant where the eggs are graded and packed.

Regulations means the provisions in this entire part and such United States standards, grades, and weight classes 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.

Shell egg grading service means the personnel who are actively engaged in the administration, application, and direction of shell egg grading programs and services pursuant to the regulations in this part.

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

United States Standards for Quality of Individual Shell Eggs means the official U.S. Standards, Grades, and Weight Classes for Shell Eggs (AMS 56) that are maintained by and available from Poultry Programs, AMS.

■ 3. The undesignated center heading preceding § 56.3 is revised to read as follows:

General

§ 56.3 [Amended]

■ 4. Section 56.3 is amended by:

■ A. Removing paragraph designation (a).

■ B. Removing paragraph (b).

■ C. Adding the words “the regulations in” immediately after the words “Act and” in the first sentence.

■ D. Removing the words “Agricultural Marketing Service” and adding “AMS” in their place in the last sentence.

■ 5. The undesignated center heading preceding § 56.4 is removed.

§ 56.4 [Amended]

■ 6. In § 56.4, paragraph (a) is amended in the first sentence by adding the words “for Shell Eggs” after “Classes” and removing the words “as contained in subpart C of this part.”

■ 7. The section heading for § 56.5 is revised to read as follows:

§ 56.5 Accessibility of product.

* * * * *

§ 56.6 [Amended]

■ 8. Section 56.6 is amended in the first sentence by removing the word “applicable” and adding “responsible” in its place and adding the words “in accordance with instructions issued by the Administrator” immediately following the word “rendered” in the second sentence.

■ 9. Section 56.7 is added to read as follows:

§ 56.7 Nondiscrimination.

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

■ 10. Section 56.9 is revised to read as follows:

§ 56.9 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 0581–0128.

(b) *Display.*

SECTIONS WHERE INFORMATION COLLECTION REQUIREMENTS ARE IDENTIFIED AND DESCRIBED

| | | |
|----------|-------------|-----------------|
| 56.3(a) | 56.24 | 56.52(b)(3)(ii) |
| 56.4(a) | 56.25 | 56.54(b)(1) |
| 56.10(a) | 56.26 | 56.54(b)(3)(ii) |
| 56.11 | 56.30 | 56.56(a) |
| 56.12 | 56.31(a) | 56.57 |
| 56.17(b) | 56.35(b) | 56.58 |
| 56.18 | 56.35(c) | 56.60 |
| 56.21(a) | 56.37 | 56.62 |
| 56.21(b) | 56.52(a)(l) | 56.76(f)(7) |
| 56.21(c) | 56.52(a)(4) | 56.76(h) |
| 56.23 | 56.52(b)(1) | |

■ 11. The undesignated center heading preceding § 56.10 is revised to read as follows:

Licensed and Authorized Graders

* * * * *

■ 12. Section 56.10 is revised to read as follows:

§ 56.10 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 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 shell egg grading service of the AMS or any other designated officer.

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

■ 13. Section 56.11 is revised to read as follows:

§ 56.11 Financial interest of graders.

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

■ 14. Section 56.12 is revised to read as follows:

§ 56.12 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 service is properly performed, suspend any license to perform grading service issued pursuant to this part, by giving notice of such suspension or revocation 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 their 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.

■ 15. Section 56.13 is revised to read as follows:

§ 56.13 Cancellation of license.

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

§ 56.14 [Amended]

■ 16. Section 56.14 is amended by removing the word “he” and adding “the licensee” in its place.

■ 17. Section 56.15 is revised to read as follows:

§ 56.15 Political activity.

Federal graders may participate in certain political activities, including management of 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.

■ 18. Section 56.16 is revised to read as follows:

§ 56.16 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.

§ 56.17 Equipment and facilities for graders.

■ 19. In § 56.17, the section heading is revised as set forth above and the introductory text and paragraph (b) are revised to read as follows:

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:

* * * * *

(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.

■ 20. Section 56.19 is added immediately following § 56.18 and before the undesignated center heading to read as follows:

§ 56.19 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.

■ 21. The undesignated center heading preceding § 56.20 is revised to read as follows:

Application for Grading Service

■ 22. Section 56.20 is revised to read as follows:

§ 56.20 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, any State, county, municipality, or common carrier.

§ 56.21 [Amended]

■ 23. In § 56.21, paragraph (a) is amended by removing the words “basis may” and adding “basis shall” in their place and paragraph (b) is amended in the second sentence by adding the words “, or at the AMS Web site.” after “office.”

■ 24. Section 56.22 is revised to read as follows:

§ 56.22 Filing of application.

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

■ 25. Section 56.24 is revised to read as follows:

§ 56.24 Rejection of application

(a) An 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 services;

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

(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; or

(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 the receipt of notice of the rejection. Such petition shall state specifically the errors alleged to have been made by the Administrator in rejecting the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant by registered mail of the reasons for the rejection thereof.

■ 26. Section 56.25 is revised to read as follows:

§ 56.25 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.

§ 56.27 [Amended]

■ 27. Section 56.27 is amended by adding the words “and subject to the availability of qualified graders” immediately after “practicable.”

■ 28. Section 56.28 is printed twice in the 2006 Code of Federal Regulations. The first copy should be removed.

■ 29. Section 56.29 is added to read as follows:

§ 56.29 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 grading 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 (7 CFR part 1, subpart H), and the operator shall be afforded an opportunity for an oral hearing upon 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 section, the person concerned may thereafter apply for grading service as provided in §§ 56.20 through 56.29 of these regulations.

■ 30. The undesignated center heading preceding § 56.30 is removed.

■ 31. Section 56.30 is revised to read as follows:

§ 56.30 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: 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 facility or equipment modifications needed for the service. When the plant survey has been completed and approved in accordance with the regulations in this part, service may be installed.

■ 32. The undesignated center heading preceding § 56.31 is revised to read as follows:

Reports

■ 33. Section 56.31 is revised to read as follows:

§ 56.31 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.

§ 56.32 [Redesignated as § 56.38]

■ 34. Section 56.32 is redesignated as § 56.38 and a new § 56.32 is added to read as follows:

§ 56.32 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.

■ 35. Section 56.33 is added immediately following § 56.32 and before the undesignated center heading to read as follows:

§ 56.33 Report of Violations

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

§ 56.35 [Amended]

■ 36. In § 56.35, paragraph (c) is amended in the first sentence by removing the words "with the labeling on" and adding "on the labeling of" in their place.

■ 37. The section heading of § 56.36 is revised to read as follows:

§ 56.36 Form of grademark and information required.

* * * * *

§ 56.45 Payment of fees and charges.

■ 38. In § 56.45, the section heading is revised as set forth above and paragraph (b) is revised to read as follows:

* * * * *

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

* * * * *

§ 56.46 [Amended]

■ 39. In § 56.46, paragraph (c) is amended by removing the word "Supervisor" and adding "supervisor" in its place.

§ 56.49 [Amended]

■ 40. In § 56.49, the first sentence is amended by removing the word "service" the first time it appears and adding "AMS" in its place.

§ 56.52 Charges for continuous grading performed on a resident basis.

■ 41. In § 56.52, the heading is revised as set forth above and paragraph (a) is amended by removing the words "Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as "the AMS"))" and adding "AMS" in their place.

§ 56.54 [Amended]

■ 42. In § 56.54, paragraph (a) is amended in the first sentence by removing the words "Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as "AMS"))" and adding "AMS" in their place and paragraph (b)(5) is amended by removing the words "part 55 or."

■ 43. Section 56.55 is revised to read as follows:

§ 56.55 Forms.

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

■ 44. Section 56.56 is revised to read as follows:

§ 56.56 Issuance.

(a) *Resident grading basis.* Certificates will be issued only upon 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 the grader's 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 agent's name and the grader's name, e.g., "John Doe by Mary Roe."

§ 56.57 Disposition.

■ 45. In § 56.57, the section heading is revised as set forth above and in the first sentence the words "person designated by him" are removed and "the applicant's designee" are added in their place.

§ 56.61 [Amended]

■ 46. In § 56.61, paragraph (b) is amended by adding the words "determination of the" immediately following "with the" and adding the words "with the regional director" immediately following "request".

■ 47. In § 56.64, paragraph (a) is revised to read as follows:

§ 56.64 Who shall perform the appeal.

(a) An appeal grading or review of a decision requested under § 56.61(a) shall be made by the grader's immediate supervisor, or by one or more licensed graders assigned by the immediate supervisor.

* * * * *

■ 48. In § 56.65, paragraphs (a) and (b) are revised to read as follows:

§ 56.65 Procedures for appeal gradings.

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

(b) When the original samples are not available or have been altered, such as the removal of undergrades, the appeal sample size for the lot shall consist of double the samples required in § 56.4(b).

* * * * *

§ 56.66 [Amended]

■ 49. Section 56.66 is amended in the fourth sentence by removing the words "grade mark" and adding "grademark" in their place.

■ 50. A new undesignated center heading is added following § 56.66 to read as follows:

Denial of Service

■ 51. Sections 56.68 through 56.74 are added to read as follows:

§ 56.68 Debarment.

The acts or practices set forth in §§ 56.69 through 56.74, or the causing thereof, may be deemed sufficient cause for the debarment by the Administrator of any person, including any agents, officers, subsidiaries, or affiliates of such person, from all benefits of the act for a specified period. The Rules of Practice Governing Formal Adjudicatory Proceedings (7 CFR part 1, subpart H) shall be applicable to such debarment action.

§ 56.69 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 an 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.

§ 56.70 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.

§ 56.71 Willful violation of the regulations.

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

§ 56.72 Interfering with a grader or employee of the AMS.

Any interference with or obstruction or any attempted interference or obstruction of or assault upon any graders, licensees, or employees of the AMS in the performance of their duties. The giving or offering, directly or indirectly, of any money, loan, gift, or anything of value to an employee of the AMS or the making or offering of any contribution to or in any way supplementing the salary, compensation or expenses of an employee of the AMS or the offering or entering into a private contract or agreement with an employee

of the AMS for any services to be rendered while employed by the AMS.

§ 56.73 Misleading labeling.

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

§ 56.74 Miscellaneous.

The existence of any of the conditions set forth in § 56.24 constituting the basis for the rejection of an application for grading service.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

■ 52. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 53. The undesignated center heading preceding § 70.1 is revised to read as follows:

Definitions

§ 70.1 [Amended]

■ 54. Section 70.1 is amended as follows:

- A. Remove the definition of *Service*.
- B. Revise the section heading, the introductory text, and the definitions of *Chief of the Grading Branch* and *National supervisor*.
- C. Add the definitions of *Agricultural Marketing Service*, *Interested party*, *Sampling*, *United States Classes, Standards, and Grades for Poultry*, and *United States Classes, Standards, and Grades for Rabbits*, in alphabetical order, as set forth below.
- D. Amend the definition of *Acceptable* by removing the words "and acceptable to the Service" and adding "by the AMS" in their place.
- E. Amend the definition of *Administrator* by removing the words "Agricultural Marketing Service of the Department" and adding "AMS" in their place and removing the word "his" and adding "the Administrator's" in its place.
- F. Amend the definition of *Class* by adding the words "or species" after "kind".
- G. Amend the definition of *Department* by adding the word "(USDA)" after "Agriculture."
- H. Amend the definition of *Grading certificate* by adding the words "Act and the" after "pursuant to the."
- I. Amend the definition *Holiday* or *Legal Holiday* by removing the words "Legal Holiday shall mean" and adding "legal holiday means" in their place.

■ J. Amend the definition of *Secretary* by removing the word "his" and adding "the Secretary's" in its place.

■ The additions and revisions, in alphabetical order, read as follows:

§ 70.1 Meaning of words and terms defined.

For the purpose of the regulations in this part, words in the singular shall be deemed to import the plural and vice versa, as the case may demand. Unless the context otherwise requires, the terms shall have the following meaning:

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

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.

* * * * *

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

* * * * *

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.

§ 70.2 [Amended]

■ 55. In § 70.2, paragraph (c) is amended by removing the word "Grade" and adding "grade" in its place.

■ 56. An undesignated center heading is added preceding § 70.3 to read as follows:

General

■ 57. Section 70.3 is revised to read as follows:

§ 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.

■ 58. Section 70.5 is revised to read as follows:

§ 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.

■ 59. Section 70.6 is revised to read as follows:

§ 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 |

■ 60. Section § 70.8 is added to read as follows:

§ 70.8 Other applicable regulations.

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

■ 61. The undesignated center heading preceding § 70.10 is removed.

■ 62. The section heading for § 70.10 is revised to read as follows:

§ 70.10 Basis of grading service.

* * * * *

§ 70.10 [Amended]

■ 63. Section 70.10 is amended by:

■ A. Designating the undesignated text as paragraph (a).

■ B. Revising the words “classes,” “standards” and “grades” in the second sentence to read as “Classes,” “Standards” and “Grades,” respectfully.

■ C. Removing the words “as contained in subparts B and C of this part” in the second sentence and adding the words “for Poultry and Rabbits” in their place.

■ 64. Section 70.13 is revised to read as follows:

§ 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 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.

§ 70.14 [Amended]

■ 65. In § 70.14, the words “U.S. Department of Agriculture” are removed and “Department” is added in their place.

■ 66. Section 70.15 is revised to read as follows:

§ 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.

■ 67. The undesignated center heading preceding § 70.20 is revised to read as follows:

Licensed and Authorized Graders

§ 70.20 Who may be licensed and authorized.

■ 68. In § 70.20, the section heading is revised as set forth above and paragraph (b) is amended by removing the words “Agricultural Marketing Service” and adding “AMS” in their place.

§ 70.21 [Amended]

■ 69. Section 70.21 is amended by:

■ A. Removing the words “he deems such action” in the first sentence and adding “such action is deemed” in their place.

■ B. Removing the words “he may wish to offer as to why his” in the second sentence and adding “the licensee may wish to offer as to why the” in their place.

■ C. Removing the words “he deems” in the third sentence and adding “deemed” in their place.

■ 70. Section 70.22 is revised to read as follows:

§ 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. Section 70.23 is revised to read as follows:

§ 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.

■ 72. Section 70.24 is revised to read as follows:

§ 70.24 Financial interest of graders.

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

■ 73. Section 70.25 is revised to read as follows:

§ 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.

■ 74. Section 70.26 is added immediately following § 70.25 and before the undesignated center heading to read as follows:

§ 70.26 Cancellation of license.

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

■ 75. Section 70.30 is revised to read as follows:

§ 70.30 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, any State, county, municipality, or common carrier.

§ 70.31 [Amended]

■ 76. In § 70.31, paragraph (a) is amended by removing the words "basis may" and adding "basis shall" in their place and removing the word "telegraph" and adding "any electronic means" in its place.

§ 70.34 [Amended]

■ 77. Section 70.34 is amended in the third sentence by removing the word

"his" and adding "the supervisor's" in its place.

■ 78. Section 70.35 is revised to read as follows:

§ 70.35 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 by registered mail of the reasons for the rejection thereof.

■ 79. Section 70.36 is revised to read as follows:

§ 70.36 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.

■ 80. In § 70.38, paragraph (c) is revised to read as follows:

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

* * * * *

(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.

* * * * *

■ 81. Section 70.39 is added immediately following § 70.38 and before the undesignated center heading to read as follows:

§ 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.

■ 82. Section 70.40 is revised to read as follows:

§ 70.40 Debarment.

The acts or practices set forth in §§ 70.41 through 70.46, or the causing thereof, may be deemed sufficient cause for the debarment by the Administrator of any person, including any agents, officers, subsidiaries, or affiliates of such person, from all benefits of the act for a specified period. The Rules of Practice Governing Formal Adjudicatory Proceedings (7 CFR part 1, subpart H)

shall be applicable to such debarment action.

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

■ 83. In § 70.41, the section heading is revised as set forth above and paragraph (b) is amended by adding the words “sampling or” after “for.”

§ 70.44 [Amended]

■ 84. Section 70.44 is amended in the first sentence by removing the word “his” and adding “such employees” in its place.

■ 85. Section 70.56 is added immediately following § 70.55 and before the undesignated center heading to read as follows:

§ 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.

■ 86. Section 70.60 is revised to read as follows:

§ 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.

■ 87. Section 70.62 is revised to read as follows:

§ 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.

§ 70.70 [Amended]

■ 88. In § 70.70, paragraph (b) is amended by removing the words “Agricultural Marketing Service” and adding “AMS” in their place and by removing the word “Service” and adding “AMS” in its place.

§ 70.71 [Amended]

■ 89. In § 70.71, paragraph (c) is amended by removing the word

“Supervisor” and adding “supervisor” in its place.

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

■ 90. Section 70.72 is amended by:

■ A. Revising the section heading as set forth above.

■ B. Removing the words “or examination” both times they appear.

■ C. Removing the words “will be borne” and adding “shall be borne” in their place.

§ 70.75 [Amended]

■ 90a. In § 70.75 in the first sentence remove the word “Service” and add “AMS” in its place.

§ 70.76 [Amended]

■ 91. In § 70.76, paragraph (a) is amended by removing the words “the Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as “AMS”))” and adding “AMS” in their place.

§ 70.77 [Amended]

■ 92. In § 70.77, paragraph (a) is amended by removing the words “Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as “AMS”))” and adding “AMS” in their place.

■ 93. The undesignated center heading preceding § 70.80 is removed.

§ 70.80 [Amended]

■ 94. The section heading for § 70.80 is removed and the undesignated text is designated as paragraph (b) of § 70.10.

§ 70.81 [Removed]

■ 95. Section 70.81 is removed.

■ 96. Section 70.90 is revised to read as follows:

§ 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.

■ 97. Section 70.91 is revised to read as follows:

§ 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.”

■ 98. Section 70.92 is revised to read as follows:

§ 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.

■ 99. Section 70.93 is added immediately following § 70.92 and before the undesignated center heading to read as follows:

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

■ 100. In § 70.104, paragraph (a) is revised to read as follows:

§ 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.

* * * * *

■ 101. In § 70.105, paragraphs (a) and (b) are revised to read as follows:

§ 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 undergrads, the appeal

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

* * * * *

Dated: June 15, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

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