

the matter and, if he deems advisable, will report it to the owner or his agent. The supervisor shall take appropriate action to correct errors found in the determination or identification of class, grade or other quality or compliance of livestock if the livestock is still owned by the person who owned them when, and are still located at the establishment where, the incorrect service was rendered and if such service was rendered by a grader under the jurisdiction of such supervisor, and the supervisor shall take adequate measures to prevent the recurrence of such errors.

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PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

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- 54.1032 Denial or withdrawal of service.
54.1033 Confidential treatment.
54.1034 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 7 U.S.C. 1621–1627.

SOURCE: 42 FR 53921, Oct. 4, 1977, unless otherwise noted. Redesignated at 46 FR 63203, Dec. 31, 1981.

Subpart A—Regulations

DEFINITIONS

§ 54.1 Meaning of words and terms defined.

Words used in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand. For the purposes of such regulations, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

Administrator. The Administrator of the Agricultural Marketing Service (AMS), or any officer or employee of the AMS to whom authority has been or may be delegated to act in the Administrator's stead.

Agricultural Marketing Service. The Agricultural Marketing Service of the Department.

Animals. Bison, cattle, goats, sheep, swine, or other species identified by the Administrator.

Appeal service. Appeal service is a re-determination of the class, grade, other quality, or compliance of product when the applicant for the appeal service formally challenges the correctness of the original determination.

Applicant. Any person who has applied for service under the regulations.

Branch. The Grading Services Branch of the Division.

Carcass. The commercially prepared or dressed body of any animal intended for human food.

Carcass Data Service. The service established and conducted under the regulations to provide producers and other interested persons with data on carcass characteristics.

Certification service. The service established and conducted under the regulations for the determination and certification or other identification of the compliance of products with specifications.

Chief. The Chief of the Grading Services Branch, or any officer or employee of the Branch to whom authority has been or may be delegated to act in the Chief's stead.

Class. A subdivision of a product based on essential physical characteristics that differentiate between major groups of the same kind of species.

Compliance. Conformity of a product to the specifications under which the product was purchased or sold, with particular reference to the quality, cleanliness, state of refrigeration, method of processing, and trim of products.

Cooperative agreement. A cooperative agreement between the Agricultural Marketing Service and another Federal agency or a State agency, or other agency, organization or person as specified in the Agricultural Marketing Act of 1946, as amended, for conducting the service.

Department. The United States Department of Agriculture.

Deputy Administrator. The Deputy Administrator of the Program, or any other officer or employee of the Program to whom authority has been or may be delegated to act in the Deputy Administrator's stead.

Director. The Director of the Division, or any officer or employee of the Division to whom authority has been or may be delegated to act in the Director's stead.

Division. The Quality Assessment Division of the Livestock and Poultry Program.

Fabricating. Cutting into wholesale or retail cuts, dicing or grinding.

Federal Meat Inspection. The meat inspection system conducted under the Federal Meat Inspection Act as amended by the Wholesome Meat Act (21 U.S.C. 601 *et seq.*) and the regulations thereunder (9 CFR chapter III, subchapter A).

Financially interested person. Any person having a financial interest in the products involved, including but not limited to the shipper, receiver, producer, seller, buyer, or carrier of the products.

Grade. (1) As a noun, this term means an important commercial subdivision of a product based on certain definite and preference determining factors,

such as, but not limited to, conformation, finish, and quality in meats.

(2) As a verb, this term means to determine the class, grade, or other quality of a product according to applicable standards for such product.

Grading Service. The service established and conducted under the regulations for the determination and certification or other identification of the class, grade, or other quality of products under standards.

Immediate container. The carton, can, pot, tin, casing, wrapper, or other receptacle or covering constituting the basic unit in which products are directly contained or wrapped when packed in the customary manner for delivery to the meat trade or to consumers.

Institutional Meat Purchase Specifications. Specifications describing various meat cuts, meat products, and meat food products derived from species covered in the definition of *Animals* above, commonly abbreviated "IMPS," and intended for use by any meat procuring activity. For labeling purposes, only product certified by the Grading Services Branch may contain the letters "IMPS" on the product label.

Legal Holiday. Those days designated as legal public holidays in title 5, United States Code, section 6103(a).

Meat. The edible part of the muscle of an animal, which is skeletal, or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, and which is intended for human food, with or without the accompanying and overlying fat and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. This term does not include the muscle found in the lips, snout, or ears.

Meat by-products. Any part capable of use as human food, other than meat, which has been derived from one or more cattle, sheep, swine, or goats.

Meat food products. Any articles intended for human food (other than meat, prepared meats, and meat by-products) which are derived or prepared in whole or in substantial and definite part, from any portion of any animal, except such articles as

organotherapeutic substances, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession.

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. The office of an official grader.

Official grader. An employee of the Department or other person authorized by the Department to determine and certify or otherwise identify the class, grade, other quality, or compliance of products under the regulations.

Official standards. Official standards refer to the United States Standards for Grades of Carcass Beef; the United States Standards for Grades of Veal and Calf Carcasses; the United States Standards for Grades of Lamb, Yearling Mutton, and Mutton Carcasses; and/or the United States Standards for Grades of Pork Carcasses.

Person. Any individual, partnership, corporation, or other legal entity, or Government agency.

Prepared meats. The products intended for human food which are obtained by subjecting meat to drying, curing, smoking, cooking, grinding, seasoning, or flavoring, or to any combination of such procedures, and to which no considerable quantity of any substance other than meat or meat by-products has been added.

Processing. Drying, curing, smoking, cooking, seasoning, or flavoring or any combination of such processes, with or without fabricating.

Products. Meats, prepared meats, meat by-products, or meat food products.

Program. The Livestock and Poultry Program of the Agricultural Marketing Service.

Quality. A combination of the inherent properties of a product which determines its relative degree of excellence.

Quality grade. A designation based on those characteristics of meat which predict the palatability characteristics of the lean.

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Quality Systems Certification Program. A multifaceted program allowing all aspects of the livestock industry to have quality systems, or processes within quality systems, verified by AMS agent(s) to effectuate use of such quality systems to meet contractual requirements, or as a marketing tool.

Service. Services offered by the Grading Services Branch such as Grading Service, Certification Service, and Carcass Data Service.

Shipping container. The receptacle or covering in which one or more immediate containers of products are packed for transportation.

Specifications. Descriptions with respect to the class, grade, other quality, quantity or condition of products, approved by the Administrator, and available for use by the industry regardless of the origin of the descriptions.

Supervisor of grading. An official grader or other person designated by the Director or Chief to supervise and maintain uniformity and accuracy of service under the regulations.

The Act. The Agricultural Marketing Act of 1946 (Title II of the act of Congress approved August 14, 1946, 60 Stat. 1087, as amended by Pub. L. 272, 84th Cong., 69 Stat. 553, 7 U.S.C. 1621–1627).

The regulations. The regulations in this subpart.

Yield grade. A designation which reflects the estimated yield of retail cuts that may be obtained from a beef, lamb, yearling mutton, or mutton carcass.

[42 FR 53921, Oct. 4, 1977, as amended at 45 FR 51762, Aug. 5, 1980. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 61 FR 11505, Mar. 21, 1996; 63 FR 72102, Dec. 31, 1998; 84 FR 48554, Sept. 16, 2019; 84 FR 49640, Sept. 23, 2019]

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

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended by Pub. L. 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications, and devices for making such marks or identifications, issued or

authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

(a) *Official certificate* means any form of certification, either written or printed, used under the regulations to certify with respect to the inspection, 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, determining compliance, inspecting, or sampling pursuant to the regulations, any processing or plant-operation report made by an authorized person in connection with grading, determining compliance, inspecting, or sampling under the regulations, and any report made by an authorized person of services performed pursuant to the regulations.

(c) *Official mark or other official identification* means any form of mark or other identification, including those prescribed in § 54.17; used under the regulations in marking any products, or the immediate or shipping containers thereof, to show inspection class, grade quality, size quantity, or condition of the products (including the compliance of products with applicable specifications), or to maintain the identity of products for which service is provided under the regulations.

(d) *Official device* means any roller, stamp, brand or other device used under the regulations to mark any products or the immediate or shipping containers, thereof, with any official mark or other official identification.

ADMINISTRATION

§ 54.3 Authority.

The Chief is charged with the administration, under the general supervision and direction of the Director, of the regulations and the Act insofar as they relate to products.

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SERVICE

§ 54.4 Kind of service.

(a) Grading Service consists of the determination, certification, and identification of the class, grade, or other quality attributes of products under applicable official standards.

(b) Certification Service consists of the determination, certification, and identification of products to an approved specification. Determination of product compliance with specifications for ingredient content or method of preparation may be based upon information received from the inspection system having jurisdiction over the products involved.

(c) Carcass Data Service consists of the evaluation of carcass characteristics of animals identified with an approved ear tag to applicable official standards or specifications, and the recording and transmitting of the associated data to the applicant or a party designated by the applicant.

[84 FR 48555, Sept. 16, 2019]

§ 54.5 Availability of service.

Service under these regulations may be made available to products shipped or received in interstate commerce. It also may be made available to the products not shipped or received if the Director or Chief determines that the furnishing of service for such products will facilitate the marketing, distribution, processing, or utilization of agricultural products through commercial channels. Service will be furnished for products only if they were derived from animals slaughtered in federally inspected establishments or establishments operated under state meat inspection in a state other than one designated in 9 CFR 331.2. Service may be furnished for imported carcasses only if an exemption to do so is granted by the Director as described in § 54.20.

[84 FR 48555, Sept. 16, 2019]

§ 54.6 How to obtain 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 fur-

nished at an establishment not operated by the applicant, the application must be approved by the operator of such establishment and such approval shall constitute 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 must 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.

(c) *Termination of service.* If an applicant who terminates scheduled grading service requests service again within a 2-year period from the date of the initial termination, the applicant will be

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responsible for all relocation costs associated with the grader assigned to fulfill the new service agreement. If more than one applicant is involved, expenses will be prorated according to each applicant's committed portion of the official grader's services.

[84 FR 49640, Sept. 23, 2019]

§ 54.7 Order of furnishing service.

Service shall be furnished to applicants in the order in which requests are received. Preference will be given, when necessary, to requests made by any government agency or any regular user of the service, and to requests for appeal service under § 54.19.

[84 FR 48555, Sept. 16, 2019]

§ 54.8 When request for service deemed made.

A request for service is considered made when received by the designated office as identified on the Application for Service form. Records showing the date and time of the request shall be made and maintained in the designated office.

[84 FR 48556, Sept. 16, 2019]

§ 54.9 Withdrawal of application or request for service.

An application or a request for service may be withdrawn by the applicant at any time before the application is approved or prior to performance of service. In accordance with §§ 54.27 and 54.28, any expenses already incurred by AMS in connection with the review of an application or fulfilling a request for service are the responsibility of the applicant.

[84 FR 48556, Sept. 16, 2019]

§ 54.10 Authority of agent.

Proof that any person making an application or a request for service on behalf of any other person has the authority to do so may be required at the discretion of the Director or Chief.

[84 FR 48556, Sept. 16, 2019]

§ 54.11 Denial, conditional withdrawal, or suspension of service.

(a) *For misconduct*—(1) *Basis for denial or withdrawal.* An application or a request for service may be rejected, or

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the benefits of the service may be otherwise denied to, or withdrawn from, any person who, or whose employee or agent in the scope of the individual's employment or agency:

(i) Has willfully made any misrepresentation or has committed any other fraudulent or deceptive practice in connection with any application or request for service;

(ii) Has given or attempted to give, as a loan or for any other purpose, any money, favor, or other thing of value, to any employee of the Department authorized to perform any function;

(iii) Has interfered with or obstructed, or attempted to interfere with or to obstruct, any employee of the Department in the performance of his or her duties under the regulations by intimidation, threats, assaults, abuse, or any other improper means;

(iv) Has knowingly falsely made, issued, altered, forged, or counterfeited any official certificate, memorandum, mark, or other identification, or device for making any such mark or identification;

(v) Has knowingly uttered, published, or used as true any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark, identification, or device;

(vi) Has knowingly obtained or retained possession of any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark, identification, or device, or of any such official device, or of any product bearing any such falsely made, issued, altered, forged, or counterfeited mark or identification, or of any carcass or wholesale or retail cut bearing any designation specified in paragraph (a)(1)(vii) of this section which has not been federally graded or derived from a carcass graded as being of the indicated grade;

(vii) Has applied the designation "US" or "USDA" and "Prime," "Choice," "Select," "Good," "Standard," "Commercial," "Utility," "Cutter," "Canner," "Cull," "No. 1," "No. 2," "No. 3," "No. 4," "Yield Grade 1," "Yield Grade 2," "Yield Grade 3," "Yield Grade 4," "Yield Grade 5," and "USDA Accepted as Specified," by stamp or text enclosed within a shield, or brand directly on any carcass,

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wholesale cut, or retail cut of any carcass, or has applied the aforementioned designations including "USDA Certified," and "USDA Further Processing Certification Program" on the marketing material associated with any such product as part of a grade designation or product specification;

(viii) Has applied to immediate containers or shipping containers of carcasses, wholesale cuts, or retail cuts, grade designations specified in paragraph (a)(1)(vii) of this section, when such carcasses, wholesale cuts, or retail cuts contained therein have not been federally graded;

(ix) Has knowingly used, moved, or otherwise altered, in any manner, meat or meat products identified by an official product control device, mark, or other identification as specified in § 54.17, or has removed such official device, mark, or identification from the meat or meat products so identified without the express permission of an authorized representative of the USDA; or

(x) Has in any manner not specified in this paragraph violated subsection 203(h) of the Act: *Provided*, that paragraph (a)(1)(vi) of this section shall not be deemed to be violated if the person in possession of any item mentioned therein notifies the Director or Chief without delay that the person has possession of such item and, in the case of an official device, surrenders it to the Chief, and, in the case of any other item, surrenders it to the Director or Chief or destroys it or brings it into compliance with the regulations by obliterating or removing the violative features under supervision of the Director or Chief: *And provided further*, that paragraphs (a)(1) (ii) through (ix) of this section shall not be deemed to be violated by any act committed by any person prior to the making of an application of service under the regulations by the principal person. An application or a request for service may be rejected or the benefits of the service may be otherwise denied to, or withdrawn from, any person who operates an establishment for which that person has made application for service if, with the knowledge of such operator, any other person conducting any operations in such establishment has com-

mitted any of the offenses specified in paragraphs (a)(1)(i) through (x) of this section after such application was made. Moreover, an application or a request for service made in the name of a person otherwise eligible for service under the regulations may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, such a person: (A) In case the service is or would be performed at an establishment operated:

(1) By a corporation, partnership, or other person from whom the benefits of the service are currently being withheld under this paragraph; or

(2) By a corporation, partnership, or other person having an officer, director, partner, or substantial investor from whom the benefits of the service are currently being withheld and who has any authority with respect to the establishment where service is or would be performed; or

(B) In case the service is or would be performed with respect to any product with which any corporation, partnership, or other person within paragraph (a)(1)(x)(A)(1) of this section has a contract or other financial interest.

(2) *Procedure*. All cases arising under this paragraph shall be initially conducted in accordance with the Supplemental Rules of Practice in part 50 of this chapter. Any issue unable to be resolved under part 50 of this chapter shall be resolved or handled in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title.

(b) *For miscellaneous reasons*. An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person, without a hearing by the official in charge of the appropriate office of grading, with the concurrence of the Director or Chief (1) for administrative reasons such as the nonavailability of personnel to perform the service; (2) for the failure to pay for service; (3) in case the application or request relates to products which are not eligible for service under § 54.5 or which are unclean or are in an unclean establishment; (4) for other noncompliance with the conditions on which

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service is available as provided in the regulations, except matters covered by paragraph (a) of this section; or (5) in case the person is a partnership, corporation, or other person from whom the benefits of the service are currently being withheld under paragraph (a) of this section. Notice of such denial or withdrawal, and the reasons therefor, shall promptly be given to the person involved.

(c) *Filing of records.* The final orders in formal proceedings under paragraph (a) of this section to deny or withdraw the service under the regulations (except orders required for good cause to be held confidential and not cited as precedents) and other records in such proceedings (except those required for good cause to be held confidential) shall be filed with the Hearing Clerk and shall be available for inspection by persons having a proper interest therein.

[42 FR 53921, Oct. 4, 1977. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 50 FR 14366, Apr. 12, 1985; 52 FR 35683, Sept. 23, 1987; 60 FR 8464, Feb. 14, 1995; 84 FR 48556, Sept. 16, 2019]

§ 54.12 [Reserved]

§ 54.13 Accessibility and refrigeration of products; access to establishments; suitable work environment; and access to records.

(a) The applicant shall make products easily accessible for examination, with appropriate and adequate illuminating facilities, in order to disclose their class, grade, other quality characteristics, and compliance with official standards or other contractual requirements for which service is being provided. Supervisors of grading and other employees of the Department responsible for maintaining uniformity and accuracy of service shall have access to all parts of establishments covered by approved applications for service under the regulations, for the purpose of examining all products in the establishments that have been or are to be graded or examined for compliance with specifications or which bear any marks of grade or compliance.

(b) Grading service will be furnished only for meat that an official grader determines is chilled so that grade factors are developed to the extent that a

proper grade determination can be made in accordance with the official standards. Meat that is presented in a frozen condition is not eligible for a grade determination. Meat of all eligible species shall be graded only in the establishment where the animal was slaughtered or initially chilled (except for veal and calf carcasses, which will be graded only after the hide is removed and only in the establishment where such removal occurs).

(c) Applicants are responsible for providing a work environment where official graders are not subjected to physical and/or verbal abuse, or other elements that could have a negative effect on providing an unbiased, third-party evaluation. Applicants shall designate primary company representatives to discuss grade placements and certification determinations with official graders.

(d) Applicants will make products and related records (approved labeling, technical proposals, quality plans, specifications, end product data schedules, grade volume information, etc.) easily accessible and provide assistance and any equipment necessary to accomplish the requested services. Equipment may include storage lockers/cabinets, branding ink, certified scales, food blenders, processors, grinders, sampling containers, sanitation equipment, thermometers, adequate lighting, weight tags, display monitors, video equipment for monitoring live animal schedules, etc. When offering product for grading or certification, applicants must ensure a minimum of 90 percent acceptable product.

(e) Applicants will provide a metal cabinet(s) or locker(s) for the secure storage of official meat grading equipment and identification devices for each official meat grader assigned to their establishment. Such cabinet(s) or locker(s) must be capable of being locked with a Government-owned lock and be located in an easily accessible and secure location within the applicant's establishment.

[84 FR 48556, Sept. 16, 2019]

§ 54.14 [Reserved]

§ 54.15 Instrument grading.

(a) Applicants may use USDA-approved technologies to augment the official USDA grading process for approved species presented for official grading. This voluntary program may be utilized by a plant at its discretion but must comply with QAD procedures to be recognized and relied upon by the official grader in conducting official duties.

(b) Applicants have the option to augment quality and yield grading services through the use of vision-based instrument technology. Instrument grading may be used as an option for determining degrees of marbling and yield factors for meat carcasses. AMS approves the grading instrument itself and its use within individual applicant facilities. Applicants may contact grading supervision to initiate the process for in-plant approval. The process for instrument grading approval at an applicant's facility is dictated through internal procedures. Final determination of quality and yield grades is made by the official grader.

[84 FR 48557, Sept. 16, 2019]

§ 54.16 Marking of products.

All products examined for class and grade under the official standards, or the immediate containers and the shipping containers, shall be stamped, branded, or otherwise marked with an appropriate official identification. Except as otherwise directed by the Director, such markings will not be required when an applicant desires only an official memorandum. The marking of products, or their containers, as required by this section shall be done by official graders or under their immediate supervision.

[84 FR 48557, Sept. 16, 2019]

§ 54.17 Official identifications.

(a) A shield enclosing the letters "USDA" and identification letters assigned to the grader performing the service, as shown in Figure 1 to paragraph (a) of this section, constitutes a form of official identification under the regulations for preliminary grade of carcasses. This form of official identification

may also be used to determine the final quality grade of carcasses; one stamp equates to "USDA Select" or "USDA Good"; two stamps placed together vertically equates to "USDA Choice"; and three stamps placed together vertically equates to "USDA Prime."



Figure 1 to Paragraph (a). Preliminary Grademark.

(b) A shield enclosing the letters "USDA," as shown in Figure 2 to paragraph (b) of this section, with the appropriate quality grade designation "Prime," "Choice," "Select," "Good," "Standard," "Commercial," "Utility," "Cutter," "Canner," or "Cull," as provided in the United States Standards for Grades of Carcass Beef, the United States Standards for Grades of Veal and Calf Carcasses, and the United States Standards for Grades of Lamb, Yearling Mutton, and Mutton Carcasses; and accompanied by the class designation "Bullock," "Veal," "Calf," "Lamb," "Yearling Mutton," or "Mutton," constitutes a form of official identification under the regulations to show the quality grade, and where necessary, the class, under said standards, of steer, heifer, and cow beef, veal, calf, lamb, yearling mutton, and mutton. The identification letters assigned to the grader performing the service will appear underneath and outside of the shield.



Figure 2 to paragraph (b). Official Quality Grademark and/or Official Class Designation Mark.

(c) A shield enclosing the letters "USDA" and the words "Yield Grade," as in Figure 3 to paragraph (c) of this section, with the appropriate yield grade designation "1," "2," "3," "4," or "5" as provided in the United States

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Standards for Grades of Carcass Beef and the United States Standards for Grades of Lamb, Yearling Mutton, and Mutton Carcasses, constitutes a form of official identification under the regulations to show the yield grade under said standards. When yield graded, bull and bullock carcasses will be identified with the class designation "Bull" and "Bullock," respectively. The identification letters assigned to the grader performing the service will appear underneath and outside of the shield.



Figure 3 to paragraph (c). Official Yield Grademark.

(d) For combined quality and yield grade identification purposes only, a shield enclosing the letters "US" on one side and "DA" on the other, with the appropriate yield grade designation number "1," "2," "3," "4," or "5," and with the appropriate quality grade designation of "Prime," "Choice," "Select," "Good," "Standard," "Commercial," "Utility," "Cutter," "Canner," or "Cull," as shown in Figure 4 to paragraph (d) of this section, constitutes a form of official identification under the regulations to show the quality and yield grade under said standards. The identification letters assigned to the grader performing the service will appear underneath and outside of the shield.



Figure 4 to paragraph (d). Official Combined Quality and Yield Grademark.

(e) Under the regulations, for yield grade identification purposes only, a shield enclosing the letters "US" on one side and "DA" on the other, and with the appropriate yield grade designation number "1," "2," "3," "4," or

"5," as shown in Figure 5 to paragraph (e) of this section, constitutes a form of official identification under the regulations to show the yield grade under said standards. The identification letters assigned to the grader performing the service will appear underneath and outside of the shield.



Figure 5 to paragraph (e). Official Yield Grade Identification Mark.

(f) For quality grade identification only, a shield enclosing the letters "US" on one side and "DA" on the other with the appropriate quality grade designation of "Prime," "Choice," "Select," "Good," "Standard," "Commercial," "Utility," "Cutter," "Canner," or "Cull," as shown in Figure 6 to paragraph (f) of this section, constitutes a form of official identification under the regulations to show the yield grade under said standards. The identification letters assigned to the grader performing the service will appear underneath and outside of the shield.

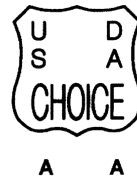


Figure 6 to paragraph (f). Official Quality Grade Identification Mark.

(g) As shown in Figure 7 to paragraph (g) of this section, a shield enclosing the letters "USDA" with the appropriate grade designation "1," "2," "3," "4," or "Utility," as provided in the Official United States Standards for Grades of Pork Carcasses, constitutes a form of official identification under the regulations to show the grade under said standards of barrow, gilt, and sow pork carcasses.



Figure 7 to paragraph (g). Official Grade Designation for Pork Carcasses

(h) The following constitute forms of official identification under the regulations to show compliance of products:



Figure 8 to paragraph (h). USDA Product Control Mark.



Figure 9 to paragraph (h). USDA Accepted As Specified Mark.

(i) Figure 10 to paragraph (i) of this section, constitutes official identification to show quality system certification.



Figure 10 to paragraph (i). USDA Process Verified Shield.

(j) Figure 11 to paragraph (j) of this section, constitutes official identification to show that products produced under USDA AMS supervision that meet specified requirements may carry the “USDA Certified” statement and/or “USDA Certified” shield, so long as each is used in direct association with a clear description of the standard or other requirement(s) to which the product claims to be certified.

(1) The “USDA Certified” shield must replicate the form and design of the example in Figure 11 and must be printed legibly and conspicuously:

(i) On a white background, with the term “USDA” in white overlaying a blue upper third of the shield and the term “Certified” in black overlaying a white middle third of the shield, with no terms in the red lower third of the shield; or

(ii) On a white or transparent background with a black trimmed shield, with the term “USDA” in white overlaying a black upper third of the shield and the term “Certified” in black overlaying the white or transparent remaining two-thirds of the shield.

(2) Use of the “USDA Certified” statement and the “USDA Certified” shield shall be approved in writing by the Director prior to use by an applicant.



Figure 11 to paragraph (j). USDA Certified Mark.

(k) Figure 12 to paragraph (k) of this section, constitutes official identification to show product or services produced under an approved USDA Further Processing Certification Program (FPCP):

(1) Products produced under an approved USDA FPCP may use the “USDA Further Processing Certification Program” statement and the “USDA Further Processing Certification Program” shield; and

(2) The USDA Further Processing Certification Program shield must replicate the form and design of the example in Figure 12 to paragraph (k) of this section and must be printed legibly and conspicuously:

(i) On a white background, with the term “USDA” in white overlaying a blue upper third of the shield and the terms “USDA Further Processing Certification Program” in black overlaying a white middle third of the shield, with no terms in the red lower third of the shield; or

(ii) On a white or transparent background with a black trimmed shield, with the term “USDA” in white overlaying a black upper third of the shield and the terms “USDA Further Processing Certification Program” in black overlaying the white or transparent remaining two-thirds of the shield.

(3) Use of the “USDA Further Processing Certification Program” statement and the “USDA Further Processing Certification Program” shield shall be approved in writing by the Director prior to use by an applicant.

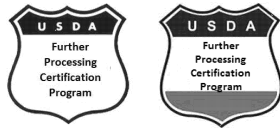


Figure 12 to paragraph (k). USDA Further Processing Certification Program Mark.

(1)(1) One device used by official graders is the LP-36 Form, a rectangular, serially numbered, red tag on which a shield encloses the words “USDA Hold.” This device constitutes a form of official identification under the regulations for meat and meat products.

(2) Official graders and supervisors of grading may use “USDA Hold” tags or other methods and devices as approved by the Administrator for the identification and control of meat and meat products that are not in compliance with the regulations or are held pending the results of an examination. Any such meat or meat product identified shall not be used, moved, or altered in any manner; nor shall official control identification be removed, without the expressed permission of an authorized representative of the USDA.

[84 FR 48557, Sept. 16, 2019]

§ 54.18 Custody of identification devices.

(a) All identification devices used in marking products or their containers, including those indicating compliance with approved specifications, shall be kept in the custody of the Branch, and accurate records shall be kept by the Branch of all such devices. Such devices shall be distributed only to persons authorized by the Department, who will keep the devices in their possession or control at all times.

(b) [Reserved]

[84 FR 48562, Sept. 16, 2019]

§ 54.19 Appeal of a grading service decision.

Appeal service is a redetermination of the class, grade, other quality, or compliance of product when the applicant for the appeal service formally challenges the correctness of the original determination.

(a) *Authority to request appeal service.* A request for appeal service with respect to any product may be made by any person who is financially inter-

ested in the product when that person disagrees with the original determination as to class, grade, other quality, or compliance of the product as shown by the markings on the product or its containers, or as stated in the applicable official memorandum.

(b) *Requesting appeal service.* A request for appeal service shall be filed with the Chief. The request shall state the reasons for appeal and may be accompanied by a copy of any previous official report, or any other information that the applicant may have received regarding the product at the time of the original service. Such request may be made orally (including by telephone) or in writing (including by email). If made orally, the person receiving the request may require that it be confirmed in writing.

(c) *Determining original service from appeal service.* Examination requested to determine the class, grade, other quality, or compliance of a product that has been altered or has undergone a material change since the original service, or examination of product requested for the purpose of obtaining an official memorandum and not involving any question as to the correctness of the original service for the product involved, shall be considered equivalent to original service and not appeal service.

(d) *Not eligible for appeal service.* Grade determinations cannot be appealed for any lot or product consisting of less than 10 similar units or carcasses. Moreover, appeal service will not be furnished with respect to product that has been altered or has undergone any material change since the original service.

(e) *Withdrawal of appeal service.* A request for appeal service may be withdrawn by the applicant at any time before the appeal service has been performed; however, the applicant is responsible for payment of any expenses incurred by the Branch towards providing the appeal service prior to withdrawal.

(f) *Denial or withdrawal of appeal service.* A request for appeal service may be rejected or such service may be otherwise denied to or withdrawn from any person, without a hearing, in accordance with the procedure set forth in

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§ 54.11(b), if it appears that the person or product involved is not eligible for appeal service under § 54.19(a) and (b), or that the identity of the product has been lost; or for any of the causes set forth in § 54.11(b). Appeal service may also be denied to, or withdrawn from, any person in any case under § 54.11(a).

(g) *Who performs appeal service.* Appeal service shall be performed by the National Meat Supervisor or his or her designee.

(h) *Appeal service report.* Immediately after appeal service has been performed for any products, a report shall be prepared and issued referring specifically to the original findings and stating the class, grade, other quality, or compliance of the products as shown by the appeal service.

[84 FR 48562, Sept. 16, 2019]

§ 54.20 Exemptions.

Any exemption to the regulations must be approved by the Director. Exemptions may include but are not limited to:

(a) Grading the meat of animals in other than carcass form if the class, grade, and other quality attributes may be determined under the applicable official standards.

(b) Grading in an establishment other than where the animal was slaughtered or initially chilled if the class, grade, and other quality attributes can be determined under the applicable official standards, and if the identity of the carcasses can be maintained.

(c) If the Branch is unable to provide grading service in a timely manner and the meat can be identified in conformance with the official standards.

(d) Grading in the establishment other than where the hide is removed, provided the meat can be identified in conformance with the official standards.

(e) Grading imported carcasses, provided:

(1) The imported carcass is marked so that the name of the country of origin is conspicuous to the USDA grader. The mark of foreign origin shall be imprinted by roller brand, handstamp, tag, or other approved method.

(2) The imprints of the mark of foreign origin have been submitted to the Chief for the determination of compli-

ance with these regulations prior to use on meats offered for Federal grading.

(3) The applicant notifies the official grader performing the service whenever imported carcasses are offered for grading.

(f) For good cause and provided that the meat can be identified in conformance with the official standards and procedures.

[84 FR 48563, Sept. 16, 2019]

§§ 54.21—54.26 [Reserved]

CHARGES FOR SERVICE

§ 54.27 Fees and other charges for service.

(a) Fees and other charges equal as nearly as may be to the cost of the services rendered shall be assessed and collected from applicants in accordance with the following provisions unless otherwise provided in the cooperative agreement under which the services are furnished, or as provided in § 54.6. For each calendar year, AMS will calculate the rate for inspection, grading, or certification services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS grading, inspection, or certification 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, inspection, or certification 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, inspection, or certification 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 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, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(i) *Benefits rate.* The total AMS grading, inspection, or certification 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.* The total AMS grading, inspection, or certification program 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, inspection, or certification 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 the most recent Office of Management and Budget's Presidential Economic Assumptions.

(c) *Fees for service*—(1) *On a scheduled basis.* Minimum fees for service performed under a scheduled agreement or an agreement by memorandum will be based on 8 hours per day, Monday through Friday, excluding observed Federal legal holidays occurring Monday through Friday on which no grading and certification services are performed. 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 accord-

ance 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.

(2) *On an unscheduled basis.* Minimum fees for service performed under an unscheduled basis agreement will be based on the time required to render the service, calculated to the nearest 15-minute period, including official grader's travel and certificate, memorandum, and/or report preparation time performed in connection with the performance of service. A minimum charge of one-half hour shall be made for service pursuant to each request notwithstanding that the time required to perform service may be less than 30 minutes. Charges to plants are as follows:

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

(ii) 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.

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

(d) *Fees for appeal service.* Fees for appeal service shall be determined on the basis of the time of two official graders required to render the service, including the time required for the preparation of certificates and travel of such graders in connection with the performance of the service. *Provided*, that when on appeal it is found that there was error in the original determination equal to or exceeding ten percent of the total number of similar units of the products involved, no charge will be made for the appeal service unless a

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special agreement therefor was made with the applicant in advance.

(e) *Fees for extra copies of certificates.* In addition to copies of certificates furnished under § 54.14, any financially interested person may obtain not to exceed three copies of any such certificate within one year from its date of issuance upon payment of a fee, and not to exceed three copies of any such certificate at any time thereafter, while a copy of such certificate is on file in the Department. The fee for copies of certificates will be determined using the formulas in this section.

[79 FR 67321, Nov. 13, 2014, as amended at 84 FR 49641, Sept. 23, 2019]

§ 54.28 Payment of fees and other charges.

Fees and other charges for service must be paid in accordance with the following provisions unless otherwise provided in the cooperative agreement under which the service is furnished. Upon receipt of billing for fees and other charges for service, the applicant will remit 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.

[84 FR 49641, Sept. 23, 2019]

MISCELLANEOUS

§ 54.29 Identification.

All official graders and supervisors of grading shall have their Agricultural Marketing Service identification cards in their possession at all times while they are performing any function under the regulations and shall identify themselves by such cards upon request.

§ 54.30 [Reserved]

§ 54.31 OMB control number.

The information collection and recordkeeping requirements of this part have been approved by OMB under 44

U.S.C. Chapter 35 and have been assigned OMB Control Number 0581-0128.

[84 FR 48563, Sept. 16, 2019]

Subpart B [Reserved]

Subpart C—Regulations Governing the Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products

SOURCE: 66 FR 1198, Jan. 5, 2001, unless otherwise noted.

§ 54.1001 Meaning of words.

For the purposes of the regulations in this subpart, words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand.

§ 54.1002 Terms defined.

Act. The Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*).

Administrator. The Administrator of the Agricultural Marketing Service (AMS), United States Department of Agriculture, or the representative to whom authority has been delegated to act in the stead of the Administrator.

Agricultural Marketing Service (AMS). The Agricultural Marketing Service of the United States Department of Agriculture.

Applicant. Any person who applies for service under the regulations in this subpart.

Branch. The Dairy Grading Branch, Dairy Programs, Agricultural Marketing Service.

Chief. The Chief of the Dairy Grading Branch, Dairy Programs, Agricultural Marketing Service, or the representative to whom authority has been delegated to act in the stead of the Chief.

Compliance. Conformity of a processing system, piece of processing equipment, or a utensil to identified standards.

Department. The United States Department of Agriculture.

Deputy Administrator. The Deputy Administrator of the Dairy Programs of

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the Agricultural Marketing Service or any officer or employee of the Dairy Programs to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in the stead of the Deputy Administrator.

Design Review Specialist. An employee of the Branch who determines and certifies or otherwise evaluates the compliance of equipment or utensils under the regulations.

Design Evaluation and Certification Service. The service established and conducted under the regulations for the evaluation and certification or other identification of the compliance of equipment or utensils used for the slaughter, processing or packaging of livestock and poultry products (Referred to hereinafter as “equipment” or “utensils”) with sanitary specifications or standards.

Fabricator. Commercial entity engaged in the manufacture or assembly of equipment or utensils.

Financially interested person. Any person having a financial interest in the equipment or utensils involved, including but not limited to the designer, fabricator, or user of the equipment or utensils.

Legal Holiday. Those days designated as legal public holidays in Title 5, United States Code, section 6103(a).

Person. Any individual, partnership, corporation, or other legal entity, or Government agency.

Processing. Cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes the packaging, canning, jarring, or otherwise enclosing in a container.

Program. The Dairy Programs of the Agricultural Marketing Service.

Standards. The most recent version of standards for equipment and utensils formulated by the NSF/3-A Joint Committee on Food Processing Equipment (Referred to hereinafter as “NSF/3-A”).

The regulations. The regulations in this Subpart.

§ 54.1003 Designation of official certificates, memoranda, marks, and other identifications, for purposes of the Agricultural Marketing Act.

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended provides criminal penalties for various specified offenses relating to official certificates, memoranda, and marks or other identifications, issued or authorized under section 203 of said Act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this subpart, the terms listed in paragraphs (a) through (c) of this section shall have the respective meanings specified:

(a) “Official certificate” means any form of certification, either written or printed, used under the regulations to certify with respect to the evaluation, review, condition, or acceptance of equipment or utensils (including the compliance of equipment or utensils with applicable standards).

(b) “Official memorandum” means any initial record of findings made by an authorized employee of the Dairy Grading Branch in the process of determining compliance, evaluating, or reviewing equipment or utensils pursuant to the regulations, any processing or in plant-operation report made by an authorized Dairy Grading Branch employee in connection with determining compliance, evaluating, or reviewing equipment or utensils under the regulations, and any report made by an authorized employee of the Dairy Grading Branch of any other services performed pursuant to the regulations.

(c) “Official mark” or “other official identification” means any form of mark or other identification, including those prescribed in § 54.1018; used under the regulations in marking any equipment or utensils or displayed as an indication that the equipment or utensils has been evaluated by AMS (including the compliance of the equipment or utensils with applicable standards).

§ 54.1004 Administration and implementation.

The Administrator designates the administration and implementation of the Certification of Sanitary Design

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and Fabrication of Equipment Used in the Processing of Livestock and Poultry Products service to the Dairy Grading Branch, Dairy Programs, Agricultural Marketing Service. The Chief is charged with the administration, under the general supervision and direction of the Deputy Administrator, of the regulations and the Act insofar as they relate to equipment or utensils used to process livestock and poultry products.

§ 54.1005 Basis of service.

(a) Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products service shall be performed in accordance with the provisions of this subpart, the instructions and guidelines issued or approved by the Chief and the applicable standards developed by the NSF/3-A.

(b) Copies of standards developed by NSF/3-A that AMS will inspect and certify to are available, for a nominal fee, from NSF International at www.nsf.org or contact Techstreet, 310 Miller Avenue, Ann Arbor, MI 48103; Phone (800) 699-9277. Copies of all other instructions and guidelines can be obtained from, and copies of standards developed by NSF/3-A may be inspected at, the U.S. Department of Agriculture, Agricultural Marketing Service, Dairy Programs, Dairy Grading Branch; Room 2746-S; 1400 Independence Ave., SW., Washington, DC 20250-6456.

(c) All services provided in accordance with the regulations shall be rendered without discrimination on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status.

§ 54.1006 Kind of service.

Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products service under the regulations shall consist of the evaluation, certification and/or identification, upon request by the applicant, of the adherence of the design and fabrication of equipment and utensils to sanitary principles and criteria under applicable standards identified in this subpart. Equipment

or utensils having an identical design, materials of construction, and fabrication, except for scaling up or down in size, may be submitted for evaluation as a model line or series. Determination as to equipment or utensils compliance with standards for materials of fabrication or method of fabrication may be based upon information received from the fabricator.

§ 54.1007 Availability of service.

Service under these regulations may be made available to the designers, fabricators, users, or other interested person or party, of the equipment or utensils. Subject to the provisions of this subpart, services shall be performed only when a qualified design review specialist is available, and when the location of the equipment or utensils, evaluation facilities and conditions, as determined by the Chief, are suitable for conducting such service.

§ 54.1008 How to obtain service.

(a) *Application.* Any person may apply to the Chief for service under the regulations with respect to equipment or utensils in which the applicant is financially interested. The application shall be made on a form approved by the Chief. In any case in which the service is intended to be furnished at an establishment not operated by the applicant, the applicant shall be responsible for obtaining approval for accessibility of the equipment or utensil from the operator of such establishment and such approval shall constitute an authorization for any employees of the Department to enter the establishment for the purpose of performing their functions under the regulations. The application shall state:

- (1) The name and address of the establishment at which service is desired;
- (2) The name and post office address of the applicant;
- (3) Identification of the party that will be responsible for payment of all services rendered in response to the request;
- (4) The type of equipment or utensil presented for evaluation;
- (5) The date(s) on which service is requested to be performed; and

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(6) The signature of the applicant (or the signature and title of the applicant's representative) and date of the request.

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

§ 54.1009 Order of furnishing service.

Service under the regulations shall be furnished to applicants, insofar as practicable and subject to the availability of a qualified design review specialist, in the order in which requests therefor are received, insofar as consistent with good management, efficiency and economy. Precedence will be given, when necessary, to requests made by any government agency and to requests for appeal service under § 54.1021.

§ 54.1010 When request for service deemed made.

A request for service under the regulations shall be deemed to be made when received by the Branch. Records showing the date and time of the request shall be maintained.

§ 54.1011 Withdrawal of application or request for service.

An application or a request for service under the regulations may be withdrawn by the applicant at any time before the application is approved or prior to performance of service. The applicant shall be responsible for payment, in accordance with § 54.1028 and § 54.1029, of any expenses already incurred by the Agricultural Marketing Service in connection therewith.

§ 54.1012 Authority of agent.

Proof of the authority of any person making an application or a request for service under the regulations on behalf of any other person may be required at the discretion of the Deputy Administrator or Chief or other employee receiving the application or request under § 54.1008.

§ 54.1013 When an application may be rejected.

(a) An application or a request for service may be denied by the design review specialist, with the concurrence of

the Deputy Administrator or Chief when:

(1) For administrative reasons such as the non-availability of personnel to perform the service;

(2) The application or request relates to equipment or utensils which are not eligible for service under § 54.1006;

(3) The applicant fails to meet either the application requirements prescribed in this subpart or the conditions for receiving such service;

(4) The equipment or utensil is owned by, or located on the premises of, a person currently denied the benefits of the Act;

(5) The applicant has substantial financial ties to a person who is currently denied the benefits of the Act, or who has been adjudged, in an administrative or judicial proceeding, responsible in any way for a current denial of benefits of the Act to any other person.

(6) The applicant is currently denied services under the Act.

(7) Any fees billed to the applicant are not paid within 30 days; or

(8) The applicant has failed to comply with the Act or this subpart or with the instructions or guidelines issued hereunder.

(b) The Chief shall provide notice to an applicant whose application is rejected, and shall explain the reason(s) for the rejection. If such notification is made verbally, written confirmation may be provided.

§ 54.1014 Accessibility of equipment and utensils; access to establishments.

(a) The applicant shall cause equipment and utensils to be made easily accessible for examination and to be so placed, with adequate illumination to facilitate evaluation for compliance. The applicant shall furnish or make available any necessary tools; such as boroscope, profilometer, disassembly tools, ladders, radius gauges, and the like; necessary to complete the evaluation.

(b) Supervisors of USDA design review specialists responsible for maintaining uniformity and accuracy of service under the regulations shall have access to all parts of establishments covered by approved applications for service under the regulations,

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for the purpose of examining all equipment or utensils in the establishments which have been or are to be evaluated for compliance with standards or which bear any marks of compliance.

§ 54.1015 Official reports, forms, and certificates.

(a) *Report.* The design review specialist shall prepare, sign, and issue a narrative report covering the observations, comments and recommendations based on the evaluation for conformance with standards of equipment and utensils as provided for in § 54.1005 and indicate the fees and other charges incurred for the services rendered.

(b) *Forms.* Form DA-161 is the official certificate for equipment or utensils evaluated and is accepted under the regulations. Issuance of this certificate is optional at the request of the applicant.

(c) *Distribution.* The original report and official certificate (if requested) shall be delivered or mailed to the applicant or other persons designated by the applicant. Other copies shall be forwarded as required by agency, program, and branch instructions. Additional copies will be furnished to any person financially interested in the equipment or utensil involved with the concurrence of the applicant and upon payment of fees, as provided in § 54.1028 and § 54.1029.

§ 54.1016 Advance information concerning service rendered.

Upon request of any applicant, all or any part of the contents of any report issued to the applicant under the regulations, or other notification concerning the determination of compliance of equipment or utensils for such applicant may be transmitted by facsimile transmission to the applicant, or to any person designated by the applicant at the applicant's expense.

§ 54.1017 Authority to use official identification.

The Chief may authorize an applicant or any persons designated by the applicant to use the official identification symbol to mark equipment or utensils, or for display in descriptive or promotional materials providing the equipment or utensils is evaluated pursuant to this subpart and found to be in compliance.

§ 54.1018 Form of official identification and approval for use.

(a) The official identification symbol approved for use on equipment, utensils, or descriptive or promotional materials shall appear in the form and design shown in Figure 1.

(b) The official identification symbol on equipment or utensils shall be displayed by etching or the placement of a non-removable sticker located in close proximity to the equipment identification plate.

(c) The official identification symbol is recommended to be at least $\frac{3}{4}$ inch by $\frac{3}{4}$ inch in size. Symbols which are smaller in size will be considered provided they are sufficiently large to be identifiable and legible.

(d) The official identification symbol shall not be used in descriptive and promotional materials without prior approval by the Chief. The official identification symbol, if used, on the descriptive or promotional materials shall be printed as part of the text or format.

(e) An applicant shall submit to the Chief of the Dairy Grading Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, D.C. 20090-6456, an application, if one is not on file, requesting approval to use the official identification symbol on officially accepted equipment and in descriptive or promotional materials.

Figure 1. Official identification symbol.



§54.1019 Renewal of acceptance certification.

The manufacturer of any equipment or utensil which has been issued a report or certification stating acceptance of compliance shall resubmit the design and fabrication details of any change in materials of construction, design, or fabrication which may impair the cleanability or hygienic design of the equipment or utensil. If no change in materials of construction, design, or fabrication which may im-

pair the cleanability or hygienic design of the equipment or utensil has occurred during the period of four years after the date of the most recent report stating acceptance of compliance or if no design or fabrication changes have been made, the applicant may submit a certificate of conformance signed by the chief engineering officer and the chief executive officer of the company stating that no design changes have been made to the specified equipment or utensil.

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§ 54.1020 Appeal service; marking equipment or utensils on appeal; requirements for appeal; certain determinations not appealable.

(a) Appeal service is a re-evaluation of the compliance of a piece of equipment, portion of a piece of equipment, or utensil to design or fabrication criteria according to the standards prescribed by this subpart.

(b) Only the original applicant or their representative may request appeal service requesting a reevaluation of the original determination of the design and fabrication of the equipment or utensil for compliance with the standards specified in this subpart.

(c) Appeal service will not be furnished for:

(1) A piece of equipment, portion of a piece of equipment, or utensil which has been altered or has undergone a material change since the original service.

(2) For the purpose of obtaining an up-to-date report or certificate which does not involve a question as to the correctness of the original service for the piece of equipment, portion of a piece of equipment, or utensil.

§ 54.1021 Request for appeal service.

(a) Except as otherwise provided in § 54.1020, an applicant or their representative may request appeal service when the applicant or their representative disagree with the determination as to compliance with the standard of the piece of equipment, portion of a piece of equipment, or utensil as documented in the applicable report.

(b) A request for appeal service shall be filed with the Chief, directly or through the design review specialist who performed the original service. The request shall state the reasons for the disagreement with the original determination and may be accompanied by a copy of any previous certificate or report, or any other information which the applicant may have received regarding the piece of equipment, portion of a piece of equipment, or utensil at the time of the original service. Such request may be made orally (including by telephone) or in writing (including by facsimile transmission). If made orally, the Dairy Grading Branch em-

ployee receiving the request may require that it be confirmed in writing.

§ 54.1022 When request for appeal service may be withdrawn.

A request for appeal service may be withdrawn by the applicant at any time before the appeal service has been performed, upon payment of any expenses already incurred under the regulations by the Branch in connection therewith.

§ 54.1023 Denial or withdrawal of appeal service.

A request for appeal service may be rejected or such service may be otherwise denied to or withdrawn from any person in accordance with the procedure set forth in § 54.1013(a), if it appears that the person or product involved is not eligible for appeal service under § 54.1020, or that the identity of the piece of equipment, portion of a piece of equipment, or utensil has been lost; or for any of the causes set forth in § 54.1032.

§ 54.1024 Who shall perform appeal service.

Appeal service for equipment or utensils shall be performed by the Chief or a design review specialist designated by the Chief. No design review specialist may perform appeal service for any piece of equipment, portion of a piece of equipment or utensil for which the original design review specialist performed the initial evaluation service.

§ 54.1025 Appeal reports.

After appeal service has been performed for any piece of equipment, portion of a piece of equipment or utensils, an official report shall be prepared, signed, and issued referring specifically to the original report and stating the determination of the reevaluation of compliance of the piece of equipment, portion of a piece of equipment or utensil.

§ 54.1026 Superseded reports.

The appeal report shall supersede the original report which, thereupon, shall become null and void for all or a portion of the report pertaining to the appeal service and shall not thereafter be

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deemed to show the compliance of the equipment or utensils described therein. However, the fees charged for the original service shall not be remitted to the applicant who filed the appeal.

§ 54.1027 Application of other regulations to appeal service.

The regulations in this subpart shall apply to appeal service except insofar as they are inapplicable.

§ 54.1028 Fees and other charges for service.

Fees and other charges equal as nearly as may be to the cost of the services rendered shall be assessed and collected from applicants in accordance with the provisions for Fees and Charges set forth in 7 CFR part 58, Subpart A, Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products, sections §§58.38, 58.39, 58.41, 58.42, and 58.43, as appropriate.

§ 54.1029 Payment of fees and other charges.

Fees and other charges for service shall be paid upon receipt of billing for fees and other charges for service. The applicant shall remit by check, draft, or money order, made payable to the Agricultural Marketing Service, USDA, payment for the service in accordance with directions on the billing, and such fees and charges shall be paid in advance if required by the official design review specialist or other authorized official.

§ 54.1030 Identification.

All official design review specialists and supervisors shall have their Agricultural Marketing Service identification cards in their possession at all times while they are performing any function under the regulations and shall identify themselves by such cards upon request.

§ 54.1031 Errors in service.

When a design review specialist, supervisor, or other responsible employee of the Branch has evidence of inaccurate evaluation, or of incorrect certification or other incorrect determination or identification as to the compliance of a piece of equipment or

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utensil, such person shall report the matter to the Chief. The Chief will investigate the matter and, if deemed advisable, will report any material errors to the owner or the owner's agent. The Chief shall take appropriate action to correct errors found in the determination of compliance of equipment or utensils, and the Chief shall take adequate measures to prevent the recurrence of such errors.

§ 54.1032 Denial or withdrawal of service.

(a)(1) *Bases for denial or withdrawal.* An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person who, or whose employee or agent in the scope of the person's employment or agency:

(i) Has wilfully made any misrepresentation or has committed any other fraudulent or deceptive practice in connection with any application or request for service under the regulations;

(ii) Has given or attempted to give, as a loan or for any other purpose, any money, favor, or other thing of value, to any employee of the Department authorized to perform any function under the regulations;

(iii) Has interfered with or obstructed, or attempted to interfere with or to obstruct, any employee of the Department in the performance of duties under the regulations by intimidation, threats, assaults, abuse, or any other improper means;

(iv) Has knowingly falsely made, issued, altered, forged, or counterfeited any official certificate, memorandum, mark, or other identification;

(v) Has knowingly uttered, published, or used as true any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark or identification;

(vi) Has knowingly obtained or retained possession of any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark or identification, or of any equipment or utensil bearing any such falsely made, issued, altered, forged, or counterfeited mark or identification;

(vii) Has applied the designation "USDA Accepted Equipment", "AMS

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Accepted Equipment”, “USDA Approved Equipment”, “AMS Approved Equipment”, “Approved By USDA”, “Approved By AMS”, “Accepted By USDA”, “Accepted By AMS”, “USDA Approved”, “USDA Accepted”, “AMS Approved”, “AMS Accepted”, or any other variation of wording which states or implies official sanction by the United States Department of Agriculture by stamp, or brand directly on any equipment or utensil, or used as part of any promotional materials which has not been inspected and deemed in compliance with this subpart; or,

(viii) Has in any manner not specified in this paragraph violated subsection 203(h) of the AMA: *Provided*, That paragraph (a)(1)(vi) of this section shall not be deemed to be violated if the person in possession of any item mentioned therein notifies the Deputy Administrator or Chief without such delay that such person has possession of such item and, in the case of an official identification, surrenders it to the Chief, and, in the case of any other item, surrenders it to the Deputy Administrator or Chief or destroys it or brings it into compliance with the regulations by obliterating or removing the violative features under supervision of the Deputy Administrator or Chief: *And provided further*, That paragraphs (a)(1) (ii) through (vii) of this section shall not be deemed to be violated by any act committed by any person prior to the making of an application of service under the regulations by the principal person. An application or a request for service may be rejected or the benefits of the service may be otherwise denied to, or withdrawn from, any person who operates an establishment for which such person has made application for service if, with the knowledge of such operator, any other person conducting any operations in such establishment has committed any of the offenses specified in paragraphs (a)(1) (i) through (vii) of this section after such application was made. Moreover, an application or a request for service made in the name of a person otherwise eligible for service under the regulations may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, such a person:

(A) In case the service is or would be performed at an establishment operated:

(1) By a corporation, partnership, or other person from whom the benefits of the service are currently being withheld under this paragraph; or

(2) By a corporation, partnership, or other person having an officer, director, partner, or substantial investor from whom the benefits of the service are currently being withheld and who has any authority with respect to the establishment where service is or would be performed; or

(B) In case the service is or would be performed with respect to any product in which any corporation, partnership, or other person within paragraph (a)(1)(viii)(A)(1) of this section has a contract or other financial interest.

(2) *Procedure*. All cases arising under this paragraph shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in 7 CFR §§1.130 through 1.151 and the Supplemental Rules of Practice in part 50, 7 CFR § 50.1 *et seq.*

(b) *Filing of records*. The final orders in formal proceedings under paragraph (a) of this section to deny or withdraw the service under the regulations (except orders required for good cause to be held confidential and not cited as precedents) and other records in such proceedings (except those required for good cause to be held confidential) shall be filed with the Hearing Clerk and shall be available for inspection by persons having a proper interest therein.

§ 54.1033 Confidential treatment.

Every design review specialist providing service under these regulations shall keep confidential all information secured and not disclose such information to any person except an authorized representative of the Department.

§ 54.1034 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The following control number has been assigned to the information collection requirements in 7 CFR part 54, subpart C, by the Office of Management

and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

7 CFR section where requirements are described	Current OMB control No.
54.1008(a)	0581-0126
54.1017	0581-0126
54.1018(e)	0581-0126
54.1019	0581-0126
54.1020	0581-0126
54.1021	0581-0126

PART 56—VOLUNTARY GRADING OF SHELL EGGS

Subpart A—Grading of Shell Eggs

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