

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

[Docket No. LS-98-09]

RIN 0581-AB69

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to develop a voluntary, user-fee funded program under the authority of the Agricultural Marketing Act of 1946 to inspect and certify equipment and utensils used to process livestock and poultry products. Livestock and poultry processing equipment and utensils inspected and certified by AMS to voluntary consensus standards for sanitary design will provide a third party assurance that they meet minimum requirements for cleanliness, suitability of materials used in construction, durability and inspectability. Development of this program is required under the provisions of the 1999 Agricultural Appropriations Bill.

DATES: Comments must be received by August 7, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this program. Send two copies of comments to Barry L. Carpenter, Deputy Administrator, Livestock and Seed Program, Docket No. LS-99-12, Room 2092 South Agriculture Building, 1400 Independence Ave., SW, Washington, DC 20250-0249.

All comments received in response to this notice will be considered part of the public record and will be available for viewing in Room 2092 South Agriculture Building, 1400

Independence Ave., SW, Washington, DC 20250-0249 between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barry Carpenter, Deputy Administrator, Livestock and Seed Program, by telephone at (202) 720-5705 or by Fax at (202) 720-3499.

SUPPLEMENTARY INFORMATION:

Background

The 1999 Agricultural Appropriations Bill, (Pub. L. 105-277, sec. 747), requires AMS to develop a voluntary, user-fee funded program to inspect and certify equipment and utensils used to process livestock and poultry products. From 1975 to 1997, a similar function was carried out by USDA on a mandatory prior approval basis by USDA's Food Safety and Inspection Service (FSIS) as a prerequisite for equipment use in federally inspected meat and poultry packing and processing establishments. The FSIS Equipment Branch formally evaluated equipment and utensils proposed by manufacturers or suppliers before they could be used in official establishments to assure they could be maintained in a sanitary condition. The program focused on identifying and correcting problems during the initial development of equipment and utensils, instead of resolving problems after equipment and utensils were put into widespread use.

FSIS's acceptance of new, modified, or reconditioned equipment and utensils for use in federally inspected meat and poultry establishments was a two-step process. First, FSIS Equipment Branch personnel evaluated the design and construction of equipment by reviewing assembly-type drawings and corresponding parts and material lists submitted to the Branch by the equipment manufacturer. Then, if necessary, FSIS inspectors reviewed the in-establishment operation of the equipment and reported their findings to the Equipment Branch. Commercially available equipment was accepted and listed in an FSIS reference guide, "Accepted Meat and Poultry Equipment." Once equipment was listed in this reference as acceptable, no further approval was needed on an establishment basis.

FSIS continues to ensure that equipment and utensils used in federally inspected facilities are of such material and construction as will

facilitate their thorough cleaning and operational cleanliness, and not adulterate edible product. Also, FSIS still requires that equipment and utensils used in federally inspected establishments are constructed, maintained, and used in a manner that does not interfere with inspection. However, in an effort to remove "command and control" regulations that were contrary to FSIS' commitment to the Hazard Analysis and Critical Control Point approach to Federal meat inspection, and to provide federally inspected establishments with the flexibility to use equipment and utensils designed in the manner they deem to best maintain a sanitary environment for food production without having to seek prior approval, FSIS discontinued the mandatory prior approval program for equipment and utensils on September 24, 1997 (62 FR 45016).

At the time FSIS announced that it was discontinuing its prior approval program, equipment and utensil manufacturers and processors of livestock and poultry products expressed their desire to either continue the FSIS program or develop a new program through AMS on a voluntary, user-fee funded basis to inspect and certify equipment and utensils used to process livestock and poultry products to a sanitary standard. Subsequently, passage of the 1999 Omnibus Appropriations Bill required development of such a program under the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621-1627).

Accordingly, on July 16, 1999, AMS published in the **Federal Register** (64 FR 38315) an advance notice of proposed rulemaking (ANPRM) and notice of public meeting to assist the Agency in the development of a complete inspection and certification program for equipment and utensils used to process livestock and poultry products.

Through the ANPRM and the public meeting, AMS sought information which would enable the Agency to develop an efficient and cost-effective program for inspecting and certifying equipment and utensils used to process livestock and poultry products. Specifically, AMS requested comments concerning initiatives underway in the industry to develop a voluntary, consensus sanitary standard for the design and manufacture of equipment

and utensils used to process livestock and poultry products; the validity and usability of standards presented to AMS for consideration for adoption; criteria to be used by AMS to select a sanitary standard; and any other information which would aid AMS in administering the program.

The ANPRM solicited comments on the issue for a 60-day period ending September 14, 1999. The public meeting was held on August 10, 1999, in Room 107-A at the USDA Jamie L. Whitten Building, 12th and Jefferson Drive, SW, Washington, DC.

To assist interested parties in obtaining information on the proposed program and in reviewing comments as AMS received them, the Agency launched a website at www.ams.usda.gov/lsg/equip.htm/. Contained on this website were electronic versions of the AMS press releases related to the development of the program, the ANPRM, complete transcripts of the August 10, 1999, public meeting, and all comments received.

The public meeting was attended by 42 representatives of the meat and poultry packing and processing industry, equipment and utensil manufacturing industry, trade and professional associations, standards developers, and other interested parties. Twelve individuals provided prepared remarks at the meeting.

AMS received 51 comments during the comment period. One commenter submitted two comments requesting an extension of the comment period on the ANPRM until December 31, 1999. The agency believes that the 60-day comment period on the ANPRM and the public meeting that was held on August 10, 1999, gave interested persons sufficient opportunity to comment on the ANPRM. Furthermore, interested persons would have an opportunity to submit comments on AMS' proposed equipment and utensil certification program during the 60-day comment period for this proposed rule.

Nine commenters supported the development of the program. These commenters wanted a Government certification program for equipment and utensil design as an assurance of quality for buyers. While no commenters specifically stated opposition to the development of a equipment and utensil certification program, several commenters did provide differing recommendations on specific characteristics of such a program.

Several commenters recommended criteria that AMS should use in selecting standards to use as the basis of its certification program for equipment

and utensils used to process livestock and poultry products. These criteria were (1) compatibility with current regulations, (2) compatibility with current industry practices, (3) ability to be understood and used by all interested parties, and (4) ability to be revised in a timely manner as regulatory requirements and industry practices change. AMS agrees that these criteria are important for evaluating proposed standards for equipment and utensil certification and has considered them in the development of this proposal.

Several commenters recommended that government employees administer the proposed equipment and utensil inspection and certification program. AMS agrees. AMS is proposing that Agency employees would perform the inspection and certification of equipment and utensils.

Three commenters recommended AMS offer an accreditation service for third parties to administer inspections and certifications of equipment and utensils on behalf of the Agency. In complying with the 1999 Agricultural Appropriations Bill which requires the Secretary of Agriculture to develop a program to inspect and certify agricultural processing equipment, and impose a fee for the inspection and certification, in a manner that is similar to the inspection and certification of agricultural products under the AMA, AMS would administer the certification program by using government employees.

One commenter provided criteria they believed should be a part of the administration of any certification program involving food safety. It is important to note that the purpose of this program is to provide a third-party inspection and certification program that equipment and utensils used to process livestock and poultry products meet the requirements of an identified sanitary standard. It is not to ensure food safety per se. Rather, the proposed program is designed to inspect and certify that equipment and utensils are capable of producing food products in a sanitary manner. The hygienic standards are developed with food safety as a primary focus. Hygienically designed equipment and utensils are capable of producing safe food. However, equipment and utensils meeting any sanitary standard, if not properly cleaned, maintained or used can result in the production of unsafe products. Equipment and utensil sanitation is only one aspect of food safety. FSIS is responsible for ensuring all Federally inspected meat and poultry establishments produce safe and wholesome products, regardless of

whether the equipment and utensils used to process the products was certified by AMS under this proposed program.

Several commenters recommended that the proposed rule also address preventing conflicts of interest, employing staff with adequate qualifications and training, re-evaluation of equipment and utensils, appeals processes, providing a process for investigating reports of non-compliance, and control of certification marks. Most of these concerns are addressed in this proposed rule. The remaining concerns regarding employee conduct and ethics are dealt with in existing AMS and USDA instructions, policy and regulations.

Several commenters stated that any proposed program should be cost-effective. AMS agrees. The 1999 Agricultural Appropriations Bill directs the Secretary of Agriculture to develop this inspection and certification program, and impose a fee for the inspection and certification, in a manner that similar to the inspection and certification of agricultural products under the Agricultural Marketing Act of 1946, as amended (AMA). Under the AMA, AMS is required to collect reasonable fees for providing official services under 7 CFR part 54, including services provided under this proposed equipment and utensil certification program, to cover as nearly as practicable AMS costs for performing the service including related administrative and supervisory costs. Since the procedures used to inspect and certify equipment and utensils used to process livestock and poultry products are similar to those used to inspect and certify dairy processing equipment, AMS has decided to charge the same hourly fees for inspecting and certifying equipment and utensils used to process livestock and poultry products. Inspection and certification services are based on the hourly rate for applicants who request services on an hourly basis and appear at 7 CFR part 58 as published in the **Federal Register** at 62 FR 66258 on December 18, 1997. The current base hourly rate for such service is \$56 per hour for service performed between 6:00 a.m. and 6:00 p.m. and \$61.60 for service performed between 6:00 p.m. and 6:00 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the equipment review specialist in connection with the performance of the service. A minimum charge of one-half hour would be made for the service pursuant to each request

or certificate issued. If an applicant requests that certification service be performed on a holiday, Saturday, or Sunday or in excess of each 8-hour shift Monday through Friday, the applicant would be charged such service at a rate of 1 1/2 times the rate which would be applicable for such service if performed during normal working hours.

Each applicant should determine if there is an economic advantage of using the service that outweighs the user-fees associated with receiving certification.

One commenter recommended that equipment that had prior approval from FSIS and was listed in the discontinued FSIS Directive 11220.1, "Acceptable Meat and Poultry Equipment," be automatically certified as meeting the requirements of the proposed AMS program. AMS does not agree. The equipment and utensil certification program proposed herein would be based on a new set of sanitary standards, the requirements of which differ from the standards used in the former prior approval program administered by FSIS. To have equipment and utensils certified by AMS, manufacturers would have to resubmit their design of equipment and utensils previously approved by FSIS to AMS for evaluation.

One commenter requested that AMS work with FSIS to educate local FSIS inspectors about the proposed program when it begins. This suggestion has merit. AMS worked with FSIS during preparation of the advance notice of proposed rulemaking, the public meeting, and in the development of this proposed rule. AMS would continue to work with FSIS as this program develops to ensure FSIS is aware of components of the program as it develops.

Several commenters recommended that the proposed program adopt a standard or group of standards which are in harmony with other international standards and thus would aid equipment and utensil manufacturers in marketing their products internationally. Although the international marketing of equipment and utensils could be an allied benefit of this program, the primary purpose of this proposed program is to provide a third-party certification that equipment and utensils meet specified standards. International harmonization was one factor considered by AMS in selecting standards to inspect and certify equipment and utensils. However, AMS recognizes that international standards and foreign buyer requirements can change over time.

Two voluntary consensus standards bodies transmitted draft standards to

AMS for consideration as examples of the types of standards AMS would inspect and certify to. These voluntary consensus standards bodies were the Technical Committee for Underwriters Laboratories 2128—the Standard for Meat and Poultry Plant Equipment (Underwriters Laboratories, North Brook, Illinois) and the NSF/3-A Joint Committee on Food Processing Equipment (a group jointly administered by NSF International (formerly the National Sanitation Foundation), Ann Arbor, Michigan, and the 3-A Sanitary Standards Committees, a standards development group supported by the International Association of Food Industry Suppliers, McLean, Virginia).

One group representing a consortium of equipment manufacturing associations submitted a draft standard to AMS for consideration as a basis for a standard AMS would develop and use as a government-unique standard. Additionally, several commenters stated AMS should apply the guidelines used by FSIS in its former Equipment Acceptance Program as a government-unique standard.

When considering the comments pertaining to the selection of standards for AMS to inspect and certify to, careful attention was paid to Circular A-119 of the Office of Management and Budget; Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (63 FR 8546). Circular A-119 directs Federal agencies to use voluntary consensus standards in regulatory activities in lieu of government-unique standards except where inconsistent with law or otherwise impractical.

Voluntary consensus standards bodies are defined by Circular A-119 as domestic or international organizations which plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures. A voluntary consensus standards body is further defined by the following attributes: (1) Openness, (2) balance of interest, (3) due process, (4) an appeals process, and (5) consensus.

Other types of standards, which are distinct from voluntary consensus standards, include: (1) Industry standards which are developed by the private sector but not in the full consensus process, (2) government unique standards which are developed by the government for its own uses, and (3) standards mandated by law.

After reviewing the comments received, AMS believes that two standards presented by voluntary consensus standards bodies are

consistent with Circular A-119. Standards presented or supported by other commenters, including the FSIS guidelines and the request that AMS develop its own standard were not further pursued. Further, after considering the comments received, AMS concluded that there is more support for standards developed by the NSF/3-A Joint Committee on Food Processing Equipment than those developed by the Technical Committee for Underwriters Laboratories 2128—the Standard for Meat and Poultry Plant Equipment. Also, commenters stated that the NSF/3-A Joint Committee on Food Processing Equipment maintained better participation and consensus, and developed standards that contain more fully developed criteria necessary for AMS to use in providing an inspection and certification program. AMS also has extensive experience in working with the voluntary consensus standards for equipment used to process dairy products that are developed by the 3-A Sanitary Standards Committees through the AMS Dairy Equipment Acceptance Program.

Therefore, AMS is proposing to inspect and certify equipment and utensils to standards developed by the NSF/3-A Joint Committee on Food Processing Equipment. This group submitted a proposed generic standard titled NSF/3-A 14159-1, "Hygiene Requirements for the Design of Meat and Poultry Processing Equipment."

AMS believes the selection of standards developed by the NSF/3-A Joint Committee on Food Processing Equipment best meet the stated objectives commenters submitted to the Agency for it to use to select a standard. AMS believes the broad-based representation on the NSF/3-A Joint Committee on Food Processing Equipment will ensure the development of standards that are compatible with applicable FSIS regulations that apply to federally inspected meat and poultry packing and processing establishments, current industry practices, transparent and objective requirements, and be able to be revised over time.

The standards developed by the NSF/3-A Joint Committee on Food Processing Equipment, which AMS proposes to adopt as the basis for the certification program, would establish minimum hygienic design requirements. The requirements are to be applied by designers and manufacturers of equipment and utensils. The standards will incorporate the following features.

—A scope that clearly defines the intended limits and application of the standards;

- Normative references to other national or international standards that are germane to the scope of the standards;
- Definitions to define the terms used within the standards;
- A listing of potential hazards that may arise;
- Hygiene requirements including strategies used by the manufacturer to identify hygiene measures, risk assessment, materials of construction, design and fabrication requirements for product contact and non-product contact surfaces; and
- Information to the users.

One commenter stated that any sanitary standard adopted by AMS should allow all of the options for establishing that equipment, utensils and their components have a satisfactory regulatory status for materials of construction under the laws and regulations administered by the Food and Drug Administration (FDA). The objective of this program is to offer a voluntary, user-fee funded service to provide a third-party assurance that equipment and utensils meet the requirements of a voluntary consensus standard. Because the objective requirements of the standard itself are developed and maintained by the NSF/3-A Joint Committee on Food Processing Equipment, the commenter's concerns pertaining to FDA compliance of food-contact materials are more appropriately directed to the NSF/3-A Joint Committee.

The Proposed Regulation

The equipment and utensil inspection and certification proposed herein would be conducted by AMS on a voluntary, fee-for-service basis. Manufacturers of new, modified, or reconditioned equipment and utensils designed to process livestock and poultry products who want to have the equipment and utensils they manufacture officially inspected and accepted by AMS as meeting the NSF/3-A standards which outline minimum requirements for cleanability, suitability of materials used in construction, inspectability and durability would apply to AMS. Copies of the NSF/3-A standards may be obtained by contacting the NSF/3-A Joint Committee on Food Processing Equipment at: 3475 Plymouth Road, Ann Arbor, Michigan 48105, Phone (734) 769-9060 or Fax (734) 769-9064. AMS will also have copies of the NSF/3-A standards available for inspection at: USDA, AMS Dairy Programs, 1400 Independence Ave, SW, Washington, DC 20250, Phone (202) 720-3171 or Fax (202) 720-2643.

To have equipment and utensils accepted under this program, equipment

and utensil manufacturers would submit an application to AMS requesting evaluation of equipment and utensils. Manufacturers would apply by submitting an application and be required to indicate whether the evaluation is to be performed on a prototype, manufactured equipment and utensils, or drawing and materials list. AMS does not require the drawings, blueprints and a material list, however such blueprints and lists are encouraged as they may facilitate evaluation of equipment complex in design against the standard. It may be necessary for AMS to conduct an on-site review of the actual equipment at the point of fabrication or installed and operating in an establishment to fully evaluate the design and construction and execute final acceptance.

The cost for evaluation of equipment or utensils would depend on the complexity of design, location of the equipment or utensil to be evaluated on-site, and whether the manufacturer has provided resource materials that would facilitate inspection of the equipment or utensils by AMS to determine acceptance. Collectively, AMS estimates the average total costs to process and in-plant review a piece of equipment or a utensil to be \$1,120 plus added travel costs for the required on-site review. Assuming all equipment and utensil manufacturers would use an AMS equipment and utensil certification program to the extent they used the FSIS program, it is estimated that the total cost to the industry under an AMS program would be about \$2,800,000 plus travel costs for on-site reviews annually.

Manufacturers whose equipment and utensils receive AMS acceptance may, upon request, be issued an official certificate as proof that the equipment or utensil meets NSF/3-A standards and is therefore accepted. Upon written application, manufacturers of accepted equipment and utensils may receive permission to display the official mark of acceptance on equipment and utensils or in promotional literature as illustrated in the regulatory text (Figure 1).

Manufacturers whose equipment or utensil does not meet the design and fabrication requirements of the NSF/3-A standards and does not receive acceptance by AMS may appeal AMS' determination. The manufacturers would make a request for appeal service with the Chief, Dairy Grading Branch by completing and submitting a request for service to have equipment or utensils reevaluated. The appeal process is set forth in § 54.1020 through 54.1027 of the proposed regulations.

Any manufacturer whose equipment or utensil has been accepted shall resubmit the design and fabrication details of the accepted equipment or utensils whenever a change of design or fabrication has occurred. Acceptance of equipment or utensils that have not changed remains in effect for a period of four years. If no changes in equipment or utensil design or fabrication have occurred over the four year period since the last acceptance was made, manufacturers must submit a certificate of conformance signed by the chief engineering officer and chief executive officer of the company stating that no design changes have been made to receive acceptance renewal.

As was stated in the May 10, 1999, AMS News Release, this proposed equipment and utensil certification program will be operated by the AMS Dairy Programs. This decision was made because the AMS Dairy Programs has extensive technical expertise and many years of experience in working with domestic and international standards organizations and equipment manufacturers for the acceptance of dairy processing equipment.

Executive Order 12866 and the Regulatory Flexibility Act

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

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses would not be disproportionately burdened. Accordingly, we have prepared an initial regulatory flexibility analysis.

Development of this proposed program was authorized by the 1999 Agricultural Appropriations Bill (Pub. L. 105-277, sec. 747) and under the authority of the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621-1627).

AMS is proposing to conduct a voluntary, user-fee funded inspection and certification program for equipment and utensils that are used to process livestock and poultry products that is similar to the inspection and certification of agricultural products under the AMA. Under this proposed program, manufacturers of new, modified, or reconditioned equipment

and utensils designed to process livestock and poultry products who want to have the equipment and utensils they manufacture officially inspected and accepted by AMS as meeting the NSF/3-A standards which outline minimum requirements for cleanability, suitability of materials used in construction, inspectability and durability would apply to AMS.

Alternatively, AMS could establish through rulemaking a process to approve private parties who could then perform inspection and acceptance on behalf of AMS. However it was determined that in complying with the authorizing legislation for this program which requires the Secretary to develop a program to inspect and certify agricultural processing equipment, and impose a fee for the inspection and certification, in a manner similar to the inspection and certification of agricultural products under the Agricultural Marketing Act of 1946, AMS would administer this proposed program by using government employees.

Additionally, AMS considered proposing alternative standards as the basis of its inspection and certification program. However, AMS believes that the standards proposed herein represent the best alternative taking into account the program's requirements.

Under this proposed equipment and utensil acceptance program, equipment and utensil manufacturers seeking AMS acceptance and certification would apply to AMS for an evaluation of their equipment and utensils. Although AMS does not require the drawings, blueprints and a material list upon application, AMS encourages applicants to submit such blueprints and lists to facilitate evaluation of complex equipment and utensils. Additionally, some equipment and utensils will require AMS to conduct an on-site review at the point of fabrication or installed and operating in an establishment to fully evaluate the design and construction and execute final acceptance.

To maintain acceptance and certification, these regulations would require any manufacturer whose equipment or utensil has been accepted to resubmit the design and fabrication details of the accepted equipment or utensils whenever a change of design or fabrication occurs. Barring changes in equipment or utensil design and fabrication, acceptance is granted for a four year period. When equipment or utensil acceptance nears expiration at the end of the four year period, manufacturers may send a letter stating that no design changes have been made

to receive an additional four year acceptance renewal.

This action will benefit manufacturers of equipment and utensils used for processing meat and poultry products and the purchasers of such equipment and utensils by providing AMS certification that the equipment and utensils meet the minimum requirements of voluntary consensus standards for sanitary design. Acceptance by AMS will provide manufacturers and buyers assurance that equipment and utensils can be cleaned, are constructed of suitable materials, are durable, and can be inspected.

This proposed equipment and utensil inspection and certification program affects manufacturers or other vendors of equipment and utensils. The equipment and utensil manufacturers range in size from small to large concerns. According to the Standard Industrial Classification (SIC) (13 CFR 121.201) which are used by the Small Business Administration to identify small businesses, a small business equipment and utensil manufacturer is defined a firm with less than 500 employees (SIC Division D. Major Group 20). According to the most complete data available to AMS, it is estimated that there are about 2000 equipment and utensil manufacturers, about 90 percent of these can be classified as small entities.

Previously, FSIS maintained a mandatory prior approval program for equipment and utensil inspection as a prerequisite for use in Federally inspected meat and poultry packing and processing establishments that affected these same entities. Under FSIS' former mandatory prior approval program for equipment, an estimated 2,500 applications for equipment approval were received each year. Evaluation and certification of equipment and utensils is based on the complexity and sophistication of the design and fabrication of the equipment or utensil being evaluated.

The paperwork burden that may be imposed on equipment and utensil manufacturers by this proposed action is further discussed in the section entitled Paperwork Reduction Act that follows.

In addition, we have not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule. Further, as discussed below, this program will be operated by the AMS Dairy Programs using its relevant fee structure.

The 1999 Agricultural Appropriations Bill directed the Secretary of

Agriculture to develop this inspection and certification program for equipment used to process livestock and poultry products in a manner similar to other inspection and certification programs administered by AMS under the authority of the Agricultural Marketing Act of 1946. Under the Agricultural Marketing Act of 1946, AMS is required to collect reasonable fees for providing official services provided under this proposed equipment and utensil certification program, to cover as nearly as practicable AMS costs for performing the service including related administrative and supervisory costs. Since the procedures used to inspect and certify equipment and utensils used to process livestock and poultry products are similar to those used to inspect and certify dairy processing equipment, AMS has decided to charge the same hourly fees for inspecting and certifying equipment used to process livestock and poultry products. Inspection and certification services are based on the hourly rate for applicants who request services on an hourly basis and appear at 7 CFR part 58 as published in the **Federal Register** at 62 FR 66258 on December 18, 1997. The current base hourly rate for such service is \$56 per hour for service performed between 6:00 a.m. and 6:00 p.m. and \$61.60 for service performed between 6:00 p.m. and 6:00 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the equipment review specialist in connection with the performance of the service. A minimum charge of one-half hour will be made for the service pursuant to each request or certificate issued. If an applicant requests that certification service be performed on a holiday, Saturday, or Sunday or in excess of each 8-hour shift Monday through Friday, the applicant would be charged such service at a rate of 1½ times the rate which would be applicable for such service if performed during normal working hours.

AMS estimates that the time required to review and accept an initial submission for simple designs would be 1 hour. For complex designs, AMS estimates that the time required to review and accept an initial submission would be 8 hours. Based on the proposed AMS base hourly fee for service of \$56 per hour, an initial submission of assembly type drawings and corresponding parts and material lists should range from \$56 to \$448. However, the final cost for equipment or utensil inspection and certification

would be contingent on a final on-site review of the equipment or utensil at the point of fabrication or under conditions of actual use. The cost of this on-site review would include associated travel and per diem costs in addition to the hourly fee for service. AMS estimates the average time to perform a on-site review for a piece of equipment or utensil to be 12 hours.

The cost for evaluation of equipment or utensils would depend on the complexity of design, location of the equipment or utensil to be evaluated on-site, and whether the manufacturer has provided resource materials that would facilitate inspection of the equipment or utensil by AMS to determine acceptance. AMS estimates the average total costs to process and in-plant review a piece of equipment or utensil to be \$1,120 plus added travel costs for the required on-site review. Assuming all equipment and utensil manufacturers would use an AMS equipment and utensil certification program to the extent they used the FSIS program, it is estimated that the total cost to the industry under an AMS program would be about \$2,800,000 plus travel costs for on-site reviews annually. Since approximately 90 percent of equipment and utensil manufacturers are small businesses, the estimated share of the total annual industry burden directly affecting small businesses would be \$2,520,000.

In assessing alternatives to the scheme provided for in these proposed regulations, we believe that the provisions contained herein would best accomplish its purpose and at the same time minimize any burden that might be placed upon affected parties. Nonetheless, we invite comments concerning the potential effects of this proposed regulation on affected parties, including more information on the benefits or burden that small entities may incur as a result of implementation of this proposal.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform and is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. Further, section 747 of the 1999 Agricultural Appropriations Bill states that the provision does not affect the authority of the Secretary to carry out the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*); the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*); or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*). There are no

administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Paperwork Reduction Act Requirements

This proposed rule contains paperwork submission requirements that are subject to public comment and to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35). In accordance with 5 CFR part 1320, we included the description of the reporting requirements and an estimate of the annual burden on manufacturers of equipment and utensils used to process livestock and poultry products. As identified in § 54.1004 of these proposed regulations, the Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products service would be administered by the Dairy Programs of AMS. During the administration of the service, Dairy Programs will expand the use of existing Dairy Programs forms currently approved by OMB under 7 CFR part 58, subpart A, Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products. The Agency published a **Federal Register** Notice 65 FR 2370, dated January 14, 2000, that expanded the use of these forms and allowed for a 60-day comment period. The following is provided in this proposed action to allow for an additional opportunity for public comment on the specified burden that would be placed on those entities affected by this rule.

OMB Number: 0581-0126.

Expiration Date of Approval: July 31, 2001.

Abstract: The dairy grading program is a voluntary, user-fee funded program. In order for a voluntary inspection program to perform satisfactorily with a minimum of confusion, there must be written requirements and rules for both Government and industry. The information collections are essential to carry out and administer the inspection and grading program. The information requested is used to identify the product offered for grading, to identify a request from an equipment manufacturer of equipment used in the dairy, meat or poultry industries for evaluation for sanitary design and construction, to identify and contact the party responsible for payment of the inspection, grading or equipment evaluation fee and expense, to identify applicants who wish to be authorized for the display of official identification

on product packaging materials, equipment, utensils, or on descriptive or promotional materials.

The equipment and utensil inspection and certification proposed herein would use the forms described above in a program that would be conducted by AMS on a voluntary, fee-for-service basis. Manufacturers of new, modified, or reconditioned equipment and utensils designed to process livestock and poultry products who want to have the equipment or utensils they manufacture officially inspected and accepted by AMS as meeting the NSF/3-A standards which outline minimum requirements for cleanability, suitability of materials used in construction, inspectability and durability would apply to AMS.

For the purposes of this burden estimate, AMS estimates that the hourly wage for those submitting information would be \$20 per hour. To have equipment and utensils accepted under this program, equipment and utensil manufacturers would submit an application to AMS requesting evaluation of equipment or utensils (Form DA-162). AMS estimates that of the 2000 livestock and poultry equipment and utensil manufacturers, AMS will receive approximately 2500 applications per year or, on average, 1.25 applications from each manufacturer. Form DA-162 requires 0.038 hours to complete. The total annual burden on the industry for this proposed collection of information would be 95 hours or \$1,900 annually. Since AMS does not require the drawings, blueprints and a material list to be submitted, they have not been included in this burden estimate.

Manufacturers whose equipment or utensil receives AMS acceptance may, upon request, be issued an official certificate as proof that the equipment or utensil meets NSF/3-A standards and is therefore accepted. Since completion of this certificate is performed by AMS, it has also not been included in this burden estimate. Upon written application (Form DA-155 and Form DA-156), manufacturers of accepted equipment or utensils may receive permission to display the official mark of acceptance on equipment and utensils, or in promotional literature as illustrated in the regulatory text (Figure 1). Form DA-155 is a one-time application from each manufacturer, and therefore has been estimated to only be sent by a respondent once in every four-year cycle of equipment and utensil approval. The estimate of the total annual burden of this collection of information is 10.5 hours or \$210 annually. Form DA-156 is submitted by

a manufacturer each time there is a request to use the symbol on a piece of equipment or utensil, or in promotional literature. AMS estimates that it would receive one request each year to use the symbol on equipment or utensils, or in promotional material for each piece of equipment or utensil accepted. Therefore, AMS estimates that the total annual burden for this collection of information would be 42.5 hours or \$850 annually.

Manufacturers whose equipment or utensil does not meet the design and fabrication requirements of the NSF/3-A standards and does not receive acceptance by AMS may appeal AMS' determination. The manufacturers would make a request for appeal service with the Chief, Dairy Grading Branch by completing and submitting a request for service (Form DA-162) to have equipment or utensils reevaluated. The appeal process is set forth in sections § 54.1020 through § 54.1027 of the proposed regulations. As the AMS Dairy Program has never received an appeal for service under its current equipment acceptance program, AMS has estimated that 1% of applicants will appeal service in this estimate of the burden of the collection of information. Accordingly, with 2500 applications per year and Form DA-162 requiring 0.038 hours to complete and an estimate of only 1 percent of applicants requiring an appeal, the total annual burden on the industry for this proposed collection of information would be 0.95 hours or \$19 annually.

Any manufacturer whose equipment or utensil has been certified shall resubmit the design and fabrication details of the certified equipment or utensil whenever a change of design or fabrication has occurred. Certification of equipment or utensils that have not changed remains in effect for a period of four years. If no changes in equipment or utensil design or fabrication have occurred over the four year period since the last certification was made, manufacturers must submit a certificate of conformance signed by the chief engineering officer and chief executive officer of the company stating that no design changes have been made to receive certification renewal. AMS estimates that it would receive one such request every four years for each piece of equipment or utensil accepted. AMS estimates that the total annual burden for this collection of information would be 52 hours or \$1,040 annually.

Collectively, AMS estimates that the total annual burden for the collection of information would be 200.95 hours or \$4019 annually.

1. Equipment Review Request—Form DA-162.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.038 hours per response.

Respondents: Manufacturers of equipment and utensils used to process livestock and poultry products.

Estimated Number of Respondents: 2000.

Estimated Number of Responses per Respondent: 1.25.

Estimated Total Annual Burden on Respondents: 95 hours.

Total Cost: \$1,900.

2. Application to use official ID—Form DA-155.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.021 hours per response.

Estimated number of respondents: 2000.

Estimated Number of Responses per Respondent: 0.250.

Estimated Total Annual Burden on Respondents: 10.5 hours.

Total Cost: \$210.

3. Request to Display Official ID—Form DA-156.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.017 hours per response.

Estimated number of respondents: 2000.

Estimated Number of Responses per Respondent: 1.25.

Estimated Total Annual Burden on Respondents: 42.5 hours.

Total Cost: \$850.

4. Appeal—Equipment Review Request—Form DA-162.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.038 hours per response.

Respondents: Manufacturers of equipment and utensils used to process livestock and poultry products.

Estimated Number of Respondents: 2000.

Estimated Number of Responses per Respondent: 0.0125.

Estimated Total Annual Burden on Respondents: 0.95 hours.

Total Cost: \$19.

5. Letter requesting renewal of acceptance.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hours per response.

Estimated number of respondents: 2000.

Estimated Number of Responses per Respondent: 0.313.

Estimated Total Annual Burden on Respondents: 52 hours.

Total Cost: \$1,040.

Estimated Total Annual Burden on Respondents: 200.95 hours total or 0.1 hours per respondent.

Estimated Total Annual Costs: \$4,019 or \$2 per respondent.

AMS is soliciting comments from all interested parties concerning the information collection requirements contained in this proposed rule. Comments are specifically invited on the following: (1) The accuracy of the agency's burden estimate of the proposed collection of information including the validity of the methodology and assumptions used; (2) ways to minimize the burden of the collection of information on those who would respond, including through the use of appropriate electronic collection methods; (3) whether the proposed collection of information is sufficient or necessary for the proper performance of the functions of the agency to perform this program; and (4) ways to enhance the quality, utility, and clarity of the information to be collected.

Send two copies of comments concerning the collection requirements of this proposed rule to Barry L. Carpenter, Deputy Administrator, Livestock and Seed Program, Docket No. LS-99-12, Room 2092 South Agriculture Building, 1400 Independence Ave., SW, Washington, DC 20250-0249.

All comments received in response to this notice will be considered part of the public record and will be available for viewing in Room 2092 South Agriculture Building, 1400 Independence Ave., SW, Washington, DC 20250-0249 between 8:30 a.m. and 4:30 p.m., Monday through Friday.

Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

For the reasons set forth in the preamble 7 CFR part 54 is proposed to be amended as follows:

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

1. The authority citation for part 54 is revised to read as follows:

Authority: 7 U.S.C. 1621-1627; Pub. L. 105-277, sec. 747)

2. In part 54 a new subpart C consisting of §§ 54.1001 through 54.1034 is added to read as follows:

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

- Sec.
- 54.1001 Meaning of words.
- 54.1002 Terms defined.
- 54.1003 Designation of official certificates, memoranda, marks, and other identifications for purposes of the Agricultural Marketing Act of 1946.
- 54.1004 Administration and implementation.
- 54.1005 Basis of service.
- 54.1006 Kind of service.
- 54.1007 Availability of service.
- 54.1008 How to obtain service.
- 54.1009 Order of furnishing service.
- 54.1010 When request for service deemed made.
- 54.1011 Withdrawal of application or request for service.
- 54.1012 Authority of agent.
- 54.1013 When an application may be rejected.
- 54.1014 Accessibility of equipment and utensils; access to establishments.
- 54.1015 Official reports, forms, and certificates.
- 54.1016 Advance information concerning service rendered.
- 54.1017 Authority to use official identification.
- 54.1018 Form of official identification and approval for use.
- 54.1019 Renewal of Acceptance Certification.
- 54.1020 Appeal service; marking products or appeal; requirements for appeal; certain determinations not appealable.
- 54.1021 Request for appeal service.
- 54.1022 When request for appeal service may be withdrawn.
- 54.1023 Denial or withdrawal of appeal service.
- 54.1024 Who shall perform appeal service.
- 54.1025 Appeal reports.
- 54.1026 Superseded reports.
- 54.1027 Application of other regulations to appeal service.
- 54.1028 Fees and other charges for service.
- 54.1029 Payment of fees and other charges.
- 54.1030 Identification.
- 54.1031 Errors in service.
- 54.1032 Denial or withdrawal of service.
- 54.1033 Confidential treatment.
- 54.1034 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

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

§ 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. 1621–1627).

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 specifications or standards.

Department. The United States Department of Agriculture.

Deputy Administrator. The Deputy Administrator of the Dairy Programs of 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 to determine and certify or otherwise evaluate 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 of 1946.

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 and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging 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, guidelines and procedures 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, 3475 Plymouth Road, Ann Arbor, MI 48105; www.nsf.org; Phone (800) 673-6275; Fax (734) 769-9064. Copies of all other instructions, guidelines and procedures 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 2750-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. 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
- (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 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:

- (1) For administrative reasons such as the non-availability of personnel to perform the service;
- (2) In case 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, guidelines or procedures 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, 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 shall be 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, PO Box 96456, Washington, DC 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.

BILLING CODE 3410-02-P

Figure 1. Official identification symbol.

BILLING CODE 3410-02-C

§ 54.1019 Renewal of acceptance certification.

Any equipment and utensil which has been issued a report or certification stating acceptance of compliance, or approval to display official identification shall resubmit the design and fabrication details of the equipment or utensil whenever a change of design or fabrication has occurred but in no case longer than four years after the date of the most recent report stating acceptance of compliance. 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.

§ 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 on 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 other persons who have a financial interest in a piece of equipment, portion of a piece of equipment, or utensil under the regulations may request appeal service when the applicant or other persons who have a financial interest in a piece of equipment, portion of a piece of equipment, or utensil 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 employee 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 § 54.1013(a).

§ 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 re-evaluation 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 that portion of the report pertaining to the appeal service and shall not thereafter be 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 § 54.1001 through 54.1019 and § 54.1028 through 54.1034 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, § 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 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) *For misconduct—(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 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

Dated: June 1, 2000.

Barry L. Carpenter,
Deputy Administrator, Livestock and Seed Program.

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BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-SW-03-AD]

Airworthiness Directives; MD Helicopters, Inc. Model MD-900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) for MD Helicopters, Inc. (MDHI) Model MD-900 helicopters. The AD would require modifying the non-rotating swashplate assembly and re-identifying it and the swashplate assembly with a new part number (P/N). The AD would also require creating a component history card or equivalent record to track the life of the newly identified non-rotating swashplate assembly and establishing a life limit of 1800 hours time-in-service (TIS). In addition, the AD would require inspecting and modifying, if necessary, the longitudinal drive link assembly. This proposal is prompted by reports of damage to the longitudinal drive link assembly caused by the sharp inner edge of the bushing in the non-rotating swashplate assembly. The actions specified by the proposed AD are intended to prevent damage to the longitudinal drive link, loss of control of the main rotor system, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before August 7, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000-SW-03-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.