

**List of Subjects in 5 CFR Part 1201**

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board adopts as final its interim rule published at 62 FR 62689, November 25, 1997, with the following changes:

1. Section 1201.31(d), as added by the interim rule, is revised to read as follows:

**§ 1201.31 Representatives.**

\* \* \* \* \*

(d)(1) A judge may exclude a party, a representative, or other person from all or any portion of the proceeding before him or her for contumacious misconduct or conduct that is prejudicial to the administration of justice.

(2) When a judge determines that a person should be excluded from participation in a proceeding, the judge shall inform the person of this determination through issuance of an order to show cause why he or she should not be excluded. The show cause order shall be delivered to the person by the most expeditious means of delivery available, including issuance of an oral order on the record where the determination to exclude the person is made during a hearing. The person must respond to the judge's show cause order within three days (excluding Saturdays, Sundays, and Federal holidays) of receipt of the order, unless the judge provides a different time limit, or forfeit the right to seek certification of a subsequent exclusion order as an interlocutory appeal to the Board under paragraph (d)(3) of this section.

(3) When, after consideration of the person's response to the show cause order, or in the absence of a response to the show cause order, the judge determines that the person should be excluded from participation in the proceeding, the judge shall issue an order that documents the reasons for the exclusion. The person may obtain review of the judge's ruling by filing, within three days (excluding Saturdays, Sundays, and Federal holidays) of receipt of the ruling, a motion that the ruling be certified to the Board as an interlocutory appeal. The judge shall certify an interlocutory appeal to the Board within one day (excluding Saturdays, Sundays, and Federal holidays) of receipt of such a motion. Only the provisions of this paragraph apply to interlocutory appeals of rulings excluding a person from a proceeding; the provisions of §§ 1201.91 through 1201.93 of this part shall not apply.

(4) A proceeding will not be delayed because the judge excludes a person from the proceeding, except that:

(i) Where the judge excludes a party's representative, the judge will give the party a reasonable time to obtain another representative; and

(ii) Where the judge certifies an interlocutory appeal of an exclusion ruling to the Board, the judge or the Board may stay the proceeding *sua sponte* or on the motion of a party for a stay of the proceeding.

(5) The Board, when considering a petition for review of a judge's initial decision under subpart C of this part, will not be bound by any decision of the judge to exclude a person from the proceeding below.

2. Section 1201.41(b)(7), is revised to read as follows:

**§ 1201.41 Judges.**

\* \* \* \* \*

(b) \* \* \*

(7) Exclude any person from all or any part of the proceeding before him or her as provided under § 1201.31(d) of this part;

\* \* \* \* \*

Dated: June 22, 1998.

**Robert E. Taylor,**

*Clerk of the Board.*

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**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service**

**7 CFR Parts 29, 31, 32, 36, 51, 52, 53, 54, 56, 58, 70, and 160**

[Docket Number FV-95-303]

**Removal of U.S. Grade Standards and Other Selected Regulations**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture is adopting two interim final rules concerning removal of voluntary U.S. grade standards and other selected regulations from the Code of Federal Regulations (CFR). This action is part of the National Performance Review Program to eliminate unnecessary regulations and improve those that remain in force.

**EFFECTIVE DATE:** July 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Eric Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, USDA, AMS, Room 2085-S, P.O. Box 96456, Washington, D.C. 20090-6456, (202) 690-0262.

**SUPPLEMENTARY INFORMATION:** An interim final rule was published in the **Federal Register** on December 4, 1995. That rule removed most of the voluntary U.S. grade standards and other selected regulations covering a number of agricultural commodities (dairy products, tobacco, wool, mohair, fresh and processed fruits and vegetables, livestock, meats and meat products, eggs, and poultry and rabbit products) from the CFR. A second interim final rule was published on August 13, 1997 which: removed from the CFR those standards that had been retained pending completion of rulemaking at the time an interim final rule was published on December 4, 1995 which removed most of the U.S. standards from the CFR; reinstated the U.S. standards for Wisconsin Cigar-Binder Tobacco, and regulations related to the purchase of samples of wool and of mohair grades; and, lastly added a new part titled "Procedures by Which the Agricultural Marketing Service Develops, Revises, Suspends, or Terminates Voluntary Official Grade Standards." These procedures were first discussed in the original interim rule and further developed and published in the August 13, 1997 interim final rule providing specifics as to the procedures that AMS will follow when developing, revising, suspending, or terminating voluntary U.S. grade standards. The Department is making final the December 4, 1995, interim final rule, and the August 13, 1997, interim final rule. This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

**Executive Order 12866**

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

**Executive Order 12988**

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

**Effect on Small Entities**

This action was reviewed under the Regulatory Flexibility Act (RFA) (5

U.S.C. 601 *et seq.*) The Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The United States standards issued or revised pursuant to the Agricultural Marketing Act, and issued thereunder, are administered under the direction of the Administrator of AMS and, as in the past, will be based on input from interested parties, including various industries which are mostly comprised of small entities as defined by the Small Business Administration (13 CFR 121.601). Other users of the various standards are government agencies including USDA's Farm Services Agency and the Foreign Agricultural Service.

Removal of voluntary standards and other selected regulations covering a number of agricultural commodities from the CFR is expected to benefit the affected industries because it will provide for more timely improvement in the standards in accordance with the published procedures. Notice of any actions as to the development, revision, suspension or termination of U.S. standards will be published in the **Federal Register** with request for comment to ensure that all interested parties, including small businesses as well as the general public, have an opportunity to have their views considered regarding any actions taken concerning the U.S. grade standards. This rule will specify a new CFR part titled "Procedures by Which the Agricultural Marketing Service Develops, Revises, Suspends, or Terminates Voluntary Official Grade Standards." These procedures reflect the steps that were discussed in the original interim final rule concerning the procedures that AMS will follow when developing, revising, suspending, or terminating U.S. grade standards.

#### **Paperwork Reduction Act**

In accordance with the provisions of the Paperwork Reduction Act, the information collection requirements contained in the provisions have been previously approved by the Office of Management and Budget.

#### **Background**

The Secretary of Agriculture is authorized under various statutes to provide various services to provide Federal grading/certification services and to develop and establish efficient marketing methods and practices of

agricultural commodities. For more than 75 years, AMS has facilitated the marketing of agricultural commodities by developing official U.S. grade standards which provide a uniform language that may be used to describe the characteristics of more than 450 commodities as valued by the marketplace. These standards are widely used in private contracts, government procurement, marketing communication and, for some commodities, consumer information.

Although use of the U.S. standards is usually voluntary, they have through the years been promulgated as regulations and codified in the CFR. Rapid changes in consumer preferences, together with associated changes in commodity characteristics, processing technology, and marketing practices have often out paced the revision of existing or, the issuance of new regulations. As a result, the marketplace has been in some instances burdened with outdated trading language. The President's regulatory review initiative provided the impetus to develop new approaches to meet more effectively the needs of U.S. industry, government agencies, and consumers by reducing the regulatory burden. As part of this initiative, AMS determined that certain regulations that were in the CFR which could be administered under the authority of AMS should be removed from the CFR.

With this objective, on December 4, 1995, AMS published an interim final rule with a request for comments that removed most of the voluntary U.S. standards and related regulations from the CFR. That action included all of the standards except those that at the time were in rulemaking, incorporated by reference in marketing orders/agreements appearing at 7 CFR Parts 900 through 999, or those used to implement government price supports. Those grade standard regulations have remained in the CFR, even though the text will also be available as AMS standards along with all other grade standards.

On March 11, 1996, in response to requests by representatives of the dairy and meat industries, USDA published a notice in the **Federal Register** that it would reopen and extend the comment period until July 10, 1996. The industry association comments asked for more time to evaluate how the changes AMS was initiating would impact their respective industries.

Twenty one comments were received from interested persons in connection with the interim final rule. Those commenting included representatives of trade associations, a food processor, a state department of agriculture and

other interested persons. The majority of comments were commodity specific and were addressed on an AMS program basis with regard to the appropriate commodity topic.

One comment expressed its concern about the process AMS would follow with regard to drafting new or revising existing standards and wanted assurance that AMS would continue to solicit input from industry when developing and revising U.S. grade standards.

Taking into account the various comments received in response to the request for comment on the December 4, 1995 interim final rule, AMS prepared a second interim final rule which was published in the **Federal Register** on August 13, 1997. That rule addressed by Program and commodity the specific concerns or comments from industry.

One comment was received in response to the August 13, 1997, interim final rule. The American Meat Institute stated that their " \* \* \* initial reservations to the December 1995 version of the rule regarding the ability of industry to fully participate in the development of future changes to grade standards appear to have been resolved. \* \* \* " The August 13, 1997, interim final rule codified in Part 36 of 7 CFR procedures that AMS will follow when developing, revising, suspending, or terminating U.S. grade standards.

Further, during the period of time since the comment period ended, AMS has had an opportunity to revise several grade standards using the procedures that were established under Part 36. At this time AMS is confident that the procedures effectively provide for public input.

This action will make final those regulations. As has been longstanding practice, the standards for the various commodities will be administered by the respective commodity programs within AMS. Also, AMS has had time to evaluate the effectiveness of procedures that were published in Part 36 and believes that they are serving their intended purposes. Accordingly, it is appropriate that the provisions of the December 4, 1995, interim final rule, and the August 13, 1997, interim final rule be made final, without change.

#### **List of Subjects**

##### *7 CFR Part 29*

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

##### *7 CFR Part 31*

Wool.

**7 CFR Part 32**

Mohair.

**7 CFR Part 36**

Administrative practice and procedure, Agricultural commodities, Food grades and standards, Reporting and recordkeeping requirements.

**7 CFR Part 51**

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

**7 CFR Part 52**

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

**7 CFR Part 53**

Cattle, Hogs, Livestock, Sheep.

**7 CFR Part 54**

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

**7 CFR Part 56**

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

**7 CFR Part 58**

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

**7 CFR Part 70**

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

**7 CFR Part 160**

Administrative practice and procedure, Advertising, Forests and forest products, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

**PART 29—TOBACCO INSPECTION****PART 31—WOOL STANDARDS****PART 32—MOHAIR STANDARDS****PART 36—PROCEDURES BY WHICH THE AGRICULTURAL MARKETING SERVICE DEVELOPS, REVISES, SUSPENDS, OR TERMINATES VOLUNTARY OFFICIAL GRADE STANDARDS****PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS<sup>1 2</sup> (INSPECTION, CERTIFICATION, AND STANDARDS)****PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS<sup>3</sup>****PART 53—LIVESTOCK (GRADING, CERTIFICATION, AND STANDARDS)****PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)****PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS****PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS<sup>4</sup>****PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES****PART 160—REGULATIONS AND STANDARDS FOR NAVAL STORES**

Accordingly the interim final rule amending 7 CFR Parts 29, 31, 32, 51, 52, 53, 54, 56, 58, 70, and 160, which was published at 60 FR 62172 on December 4, 1995, and the interim final rule

<sup>1</sup> Among such other products are the following: Raw nuts, Christmas trees and evergreens; flowers and flower bulbs; and onion sets.

<sup>2</sup> None of the requirements in the regulations of this part shall excuse failure to comply with any Federal, State, county, or municipal laws applicable to products covered in the regulations in this part.

<sup>3</sup> Among such other processed food products are the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea; cocoa; coffee; spices; condiments.

<sup>4</sup> Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act.

amending 7 CFR Parts 29, 31, 32, 36, 52, 53, 54, and 58, which was published at 62 FR 43430 on August 13, 1997, are adopted as final rules, without change.

Dated: June 24, 1998.

**Enrique E. Figueroa,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 98-17349 Filed 6-29-98; 8:45 am]

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**DEPARTMENT OF AGRICULTURE****Grain Inspection, Packers and Stockyards Administration****7 CFR Parts 800 and 801**

RIN 0580-AA62

**Official Testing Service for Corn Oil, Protein, and Starch**

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Grain Inspection, Packers and Stockyards Administration (GIPSA) is extending the use of the currently approved near-infrared spectroscopy (NIRS) analyzers in its official inspection program to include testing of corn for oil, protein, and starch content. GIPSA is incorporating by reference the Corn Refiners Association Method A-20, Starch method, into the regulations and will use it as the chemical reference method for determining the starch content in corn. To recover the cost of providing this service, GIPSA is establishing a fee identical to the fees already established for other near-infrared spectroscopy measurements (wheat protein and soybean oil and protein). GIPSA is offering this service to meet a market demand for reliable official testing procedures created by anticipated increases in high-oil corn (HOC) production.

**DATES:** This interim rule is effective July 1, 1998. To be assured of consideration, written comments must be filed before July 30, 1998.

The incorporation by reference of Analysis for Starch in Corn, Method A-20, 2nd revision, April 15, 1986, Standard Analytical Methods of the Member Companies of the Corn Refiners Association, Inc., listed in the rule is approved by the Director of the Federal Register as of July 1, 1998.

**ADDRESSES:** Written comments must be sent to Sharon Vassiliades, GIPSA, USDA, STOP 3649, Washington, DC 20250-3649; FAX to (202) 720-4628; or e-mail svassili@fgisdc.usda.gov.