

for certification based on personal examination of the product or official grading records.

(b) *Other than resident grading.* Each grader shall, in person or by his authorized agent, issue a grading certificate covering each product graded by him. A grader's name may be signed on a grading certificate by a person other than the grader if such person has been designated as the authorized agent of such grader by the national supervisor: *Provided*, That the certificate is prepared from an official memorandum of grading signed by the grader.

(c) The original and a copy of each grading certificate, issued pursuant to §§ 70.90 through 70.92, and not to exceed two additional copies thereof if requested by the applicant prior to issuance shall, immediately upon issuance, be delivered or mailed to the applicant or person designated by him. Other copies shall be filed and retained in accordance with the disposition schedule for grading program records.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 30514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981, and amended at 47 FR 46071, Oct. 15, 1982 and 47 FR 54421, Dec. 3, 1982; 51 FR 17281, May 9, 1986]

§ 70.92 Advance information.

Upon the request of an applicant, all or part of the contents of any grading certificate issued to such applicant may be telephoned or telegraphed to him, or to any person designated by him, at his expense.

APPEAL OF A GRADING OR DECISION

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

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

§ 70.101 Where to file an appeal.

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

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

§ 70.102 How to file an appeal.

Any request for an appeal grading or review of a grader's decision may be made orally or in writing. If made orally, written confirmation may be required. The applicant shall clearly state the reasons for requesting the appeal service, and a description of the product or the decision which is questioned. If such appeal request is based on the results stated on an official certificate, the original and all available copies of the certificate shall be returned to the appeal grader assigned to make the appeal grading.

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

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

be promptly notified of the reason(s) for such refusal.

§ 70.104 Who shall perform the appeal.

(a) An appeal grading or review of a decision requested under § 70.101(a) shall be made by the grader's immediate supervisor or by a licensed grader assigned by the immediate supervisor other than the grader whose grading or decision is being appealed.

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

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

§ 70.105 Procedures for appeal gradings.

(a) When all of the originally graded and identified samples are available, the appeal sample shall consist of such samples plus an equal number of samples.

(b) When the original samples are not available, the appeal sample size for the lot shall consist of double the samples required in § 70.80.

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

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

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

§ 70.106 Appeal grading certificates.

Immediately after an appeal grading is completed, an appeal certificate shall be issued to show that the original grading was sustained or was not sustained. Such certificate shall super-

sede any previously issued certificate for the product involved and shall clearly identify the number and date of the superseded certificate. The issuance of the appeal certificate may be withheld until any previously issued certificate and all copies have been returned when such action is deemed necessary to protect the interest of the Government. When the appeal grader assigns a different grade to the lot, the existing grademark shall be changed or obliterated as necessary. When the appeal grader assigns a different class or quantity designation to the lot, the labeling shall be corrected.

SANITARY REQUIREMENTS, FACILITIES, AND OPERATING PROCEDURES

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

(a) The requirements for sanitation, facilities, and operating procedures in official plants shall be the applicable provisions stated in 9 CFR part 381 for poultry, and for rabbits the requirements shall be the applicable provisions stated in 9 CFR part 354.

(b) With respect to grading services, there shall be a minimum of 50-foot candles of light intensity at grading stations; and acceptable means, when necessary, of maintaining control and identity of products segregated for quality, class, condition, weight, lot, or any other factor which may be used to distinguish one type of product from another.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981, and amended at 51 FR 17281, May 9, 1986]

Subpart B-C—[Reserved]

PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS

DEFINITIONS

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