

any foreign destination in violation of any provisions of the Act or this part, he shall cause notice to be given to the person accused of the nature of the charges against him and of the specific instances in which violation of the Act or the regulations in this part is charged.

[41 FR 32878, Aug. 6, 1976]

§35.15 Opportunity for hearing.

The person accused shall be entitled to a hearing, provided he makes written request therefor and files a written responsive answer to the charges made not later than 10 days after service of such notice upon him. The right to hearing shall be restricted to matters in issue. At such hearing, he shall have the right to be present in person or by counsel and to submit evidence and argument in his behalf. Failure to request a hearing within the specified time or failure to appear at the hearing when scheduled shall be deemed a waiver of the right to hearing. Such person may, in lieu of requesting an oral hearing, file a sworn written statement with the Secretary not later than 10 days after service of such notice upon him.

§35.16 Suspension of inspection.

Any order to withhold the issuance of a certificate, as provided in section 6 of the Act, will be effective from the date specified in the order but no earlier than the date of its service upon the person found to have been guilty. Such order will state the inclusive dates during which it is to remain in effect, and during this period no inspector employed or licensed by the Secretary shall issue any Certificate of Inspection to such person.

§35.17 Service of notice or order.

Service of any notice or order required by the Act or prescribed by the regulations in this part shall be deemed sufficient if made personally upon the person served, by registered mail, or by leaving a copy of such notice or order with an employee or agent at such person's usual place of business or abode or with any member of his immediate family at his place of abode. If the person named is a partnership, as-

sociation, or corporation, service may similarly be made by service on any member of the partnership or any officer, employee, or agent of the association or corporation.

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

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0581-0143.

[49 FR 23826, June 8, 1984]

PART 36—PROCEDURES BY WHICH THE AGRICULTURAL MARKETING SERVICE DEVELOPS, REVISES, SUSPENDS, OR TERMINATES VOLUNTARY OFFICIAL GRADE STANDARDS

Sec.

- 36.1 General information.
- 36.2 Initiating action on grade standards.
- 36.3 Public notification of grade standards action.

AUTHORITY: 7 U.S.C. 1621-1627.

SOURCE: 62 FR 43439, Aug. 13, 1997, unless otherwise noted.

§36.1 General information.

The Agricultural Marketing Service (AMS or agency) of the U.S. Department of Agriculture (USDA) facilitates the fair and efficient marketing of agricultural products by promulgating voluntary official grade standards for dairy, fresh and processed fruits and vegetables, livestock, meats and meat products, eggs, poultry and rabbit products, tobacco, wool, mohair, and other agricultural products. AMS standards provide a uniform language for describing the quality of various agricultural commodities in the marketplace. These standards may cover (but are not limited to) terms, classes, sizes (including quantities of packaged consumer agricultural commodities), dimensions, capacities, quality levels, performance criteria, inspection requirements, marking requirements, testing equipment, test procedures, and installation procedures.

(a) Grade standards are officially designated as U.S. Grade Standards and the AMS assigns each grade standard an appropriate identification number. AMS develops, revises, suspends, or terminates official grade standards under procedures that allows for input by interested parties.

(b) These procedures set forth the process by which AMS will develop, revise, suspend, or terminate the U.S. standards.

(c) Communications about AMS standards in general should be addressed to the Administrator, Attention: Functional Committee for Standards. Communications about specific standards (such as a request to develop or revise a standard) should be addressed to the Director of the appropriate Division (Dairy, Fruit and Vegetable, Livestock and Seed, Poultry, or Tobacco). All communications should include in the address: Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456.

§36.2 Initiating action on grade standards.

The Agency will develop, revise, suspend, or terminate grade standards if it determines that such action is in the public interest. Any standardization action should reflect the broad interest of individuals or an industry involved in manufacturing, producing, packaging, distributing, testing, consuming, or using the product; or the interest of a Federal, State, or local agency. Proposed actions should always be based on sound technical and marketing information and should include careful consideration of the factors that determine a commodity's quality and condition and that will allow trained personnel to determine objectively conformance or non-conformance.

(a) AMS encourages interested parties to participate in the review, development, and revision of grade standards. Interested parties include growers, producers, processors, shippers, distributors, consumers, individuals or groups, trade associations, companies, and State or Federal agencies. Such groups and individuals may at any time recommend that AMS develop, revise suspend, or terminate a grade

standard. Requests for Agency action should be in writing, preferably accompanied by a draft of the suggested change.

(1) The Agency, in cooperation with interested parties, as applicable, will:

(i) Determine the need for new or revised standards;

(ii) Collect technical, marketing, or other appropriate data;

(iii) Conduct research regarding new or revised standards, as appropriate; and,

(iv) Draft the proposed standards;

(2) [Reserved]

(b) If the Agency determines that new standards are needed, existing standards need to be revised, or the suspension or termination of existing standards is justified, it will undertake the action, with input from all interested parties.

§36.3 Public notification of grade standards action.

After developing a standardization proposal, the Agency will publish a notice in the FEDERAL REGISTER describing new or changes to existing standards or to suspend or terminate existing standards. AMS will simultaneously issue a news release about these actions. AMS will also distribute copies of the full text of the proposals to anyone requesting a copy or to anyone the Agency believes may be interested, including other Federal, State, or local government agencies, and on the Internet. For other than minor editorial or technical changes, the notice will provide at least 60 days for interested parties to submit comments to the Agency.

(a) All comments received within the comment period will be part of the public record maintained by the Agency, will be available to the public for review, and will be considered by the Agency before final action is taken on the proposal.

(1) Based on the comments received, the Agency's knowledge of standards, grading, marketing, and other technical factors, and any other relevant information AMS will decide whether the proposed actions should be implemented.

(2) If AMS concludes that the actions as proposed or with minor modifications should be adopted, AMS will publish a description of the changes or actions in a FEDERAL REGISTER notice. The Agency, through the appropriate AMS Divisions, will make the grade standards and related information available in printed form and electronic media.

(3) If the Agency determines that proposed changes are not warranted, or otherwise are not in the public interest, the Agency will either publish in the FEDERAL REGISTER a notice withdrawing the proposal, or will revise the proposal and again seek public input.

(b) [Reserved]

PART 42—STANDARDS FOR CONDITION OF FOOD CONTAINERS

Subpart A—Definitions

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- 42.101 Meaning of words.
- 42.102 Definitions, general.

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- 42.103 Purpose and scope.
- 42.104 Sampling plans and defects.
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- 42.106 Classifying and recording defects.
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- 42.108 Normal, tightened or reduced inspection.
- 42.109 Sampling plans for normal condition of container inspection, Tables I and I-A.
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- 42.111 Sampling plans for reduced condition of container inspection, Tables III and III-A; and limit number for reduced inspection, Table III-B.
- 42.112 Defects of containers: Tables IV, V, VI, and VII.
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Subpart C—Skip Lot Sampling and Inspection Procedures

- 42.120 Description and qualification.
- 42.121 Sampling and inspection procedures.
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- 42.130 Description and qualifications.
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- 42.140 Operating Characteristic (OC) curves for on-line sampling and inspection.
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- 42.142 Curve for obtaining Operating Characteristic (OC) curve information for skip lot sampling and inspection.
- 42.143 Operating Characteristic (OC) curves for on-line sampling and inspection.

AUTHORITY: Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

Subpart A—Definitions

§ 42.101 Meaning of words.

Words used in this part in the singular form shall be considered to import the plural, or vice versa, as the case may demand.

[31 FR 4687, Mar. 19, 1966; 31 FR 4949, Mar. 25, 1966; Redesignated at 42 FR 32514, June 27, 1977 and at 46 FR 63203, Dec. 31, 1981]

§ 42.102 Definitions, general.

For the purpose of this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

Acceptable Quality Level (AQL). The maximum number of defects per hundred units (DHU) which is acceptable as a process average. Lots, or portions of production, having a quality level equal to a specified AQL will be accepted approximately 95 percent of the time when using the sampling plans prescribed for the AQL.

Acceptance Number (Ac). The number in a sampling plan that indicates the maximum number of defects permitted in a sample in order to consider a lot as meeting a specific requirement.

Administrator. The Administrator of the Agricultural Marketing Service