7

Parts 53 to 209
Revised as of January 1, 2001

Agriculture

Containing a codification of documents
of general applicability and future effect

As of January 1, 2001

With Ancillaries

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Table of Contents

Explanation ................................................................................................ v

Title 7:

Subtitle B—Regulations of the Department of Agriculture—Continued:

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Continued) ................................................................. 5

Finding Aids:

Material Approved for Incorporation by Reference ........................ 425
Table of CFR Titles and Chapters .......................................................... 427
Alphabetical List of Agencies Appearing in the CFR ......................... 445
List of CFR Sections Affected ............................................................. 455
Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 7 CFR 53.1 refers to title 7, part 53, section 1.
Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

- Title 1 through Title 16..............................................................as of January 1
- Title 17 through Title 27.................................................................as of April 1
- Title 28 through Title 41.................................................................as of July 1
- Title 42 through Title 50.............................................................as of October 1

The appropriate revision date is printed on the cover of each volume.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.


The Food and Nutrition Service current regulations in the volume containing parts 210–299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing parts 400–699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the one volume containing parts 900–999. All marketing agreements and orders for milk appear in the volume containing parts 1000–1199. Part 900—General Regulations is carried as a note in the volume containing parts 1000–1199, as a convenience to the user.

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(This book contains parts 53 to 209)

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SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE (CONTINUED):

CHAPTER I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Continued) ................................................................. 53
Subtitle B—Regulations of the Department of Agriculture (Continued)
CHAPTER I—AGRICULTURAL MARKETING
SERVICE ¹ (STANDARDS, INSPECTIONS, MARKETING PRACTICES), DEPARTMENT OF AGRICULTURE (CONTINUED)

SUBCHAPTER C—REGULATIONS AND STANDARDS UNDER THE AGRICULTURAL MARKETING ACT OF 1946 AND THE EGG PRODUCTS INSPECTION ACT—(CONTINUED)

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>53</td>
<td>Livestock (grading, certification, and standards)</td>
</tr>
<tr>
<td>54</td>
<td>Meats, prepared meats, and meat products (grading, certification, and standards)</td>
</tr>
<tr>
<td>55</td>
<td>Voluntary inspection of egg products and grading</td>
</tr>
<tr>
<td>56</td>
<td>Voluntary grading of shell eggs</td>
</tr>
<tr>
<td>57</td>
<td>Inspection of eggs (Egg Products Inspection Act)</td>
</tr>
<tr>
<td>58</td>
<td>Grading and inspection, general specifications for approved plants and standards for grades of dairy products</td>
</tr>
<tr>
<td>59</td>
<td>Livestock mandatory reporting</td>
</tr>
<tr>
<td>60</td>
<td>[Reserved]</td>
</tr>
<tr>
<td>61</td>
<td>Cottonseed sold or offered for sale for crushing purposes (inspection, sampling and certification)</td>
</tr>
<tr>
<td>70</td>
<td>Voluntary grading of poultry products and rabbit products</td>
</tr>
<tr>
<td>75</td>
<td>Regulations for inspection and certification of quality of agricultural and vegetable seeds</td>
</tr>
</tbody>
</table>

SUBCHAPTER D—EXPORT AND DOMESTIC CONSUMPTION PROGRAMS

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>80</td>
<td>Fresh Irish potatoes</td>
</tr>
<tr>
<td>81</td>
<td>[Reserved]</td>
</tr>
</tbody>
</table>

SUBCHAPTER E—COMMODITY LABORATORY TESTING PROGRAMS

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>90</td>
<td>Introduction</td>
</tr>
<tr>
<td>91</td>
<td>Services and general information</td>
</tr>
</tbody>
</table>

¹Including matters within the responsibilities of the Federal Grain Inspection Service.
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>92</td>
<td>Tobacco</td>
<td>228</td>
</tr>
<tr>
<td>93</td>
<td>Processed fruits and vegetables</td>
<td>231</td>
</tr>
<tr>
<td>94</td>
<td>Poultry and egg products</td>
<td>234</td>
</tr>
<tr>
<td>95</td>
<td>[Reserved]</td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Cottonseed sold or offered for sale for crushing purposes</td>
<td>238</td>
</tr>
<tr>
<td></td>
<td>(chemical analysis and United States official grade certification)</td>
<td></td>
</tr>
<tr>
<td>97</td>
<td>Plant variety and protection</td>
<td>246</td>
</tr>
<tr>
<td>98</td>
<td>Meals, Ready-to-Eat (MRE's), meats, and meat products</td>
<td>265</td>
</tr>
<tr>
<td>99–109</td>
<td>[Reserved]</td>
<td></td>
</tr>
<tr>
<td>110</td>
<td>Recordkeeping on restricted use pesticides by certified applicators;</td>
<td>268</td>
</tr>
<tr>
<td></td>
<td>surveys and reports</td>
<td></td>
</tr>
<tr>
<td>111–159</td>
<td>[Reserved]</td>
<td></td>
</tr>
<tr>
<td>160</td>
<td>Regulations and standards for naval stores</td>
<td>280</td>
</tr>
<tr>
<td></td>
<td><strong>SUBCHAPTER F—NAVAL STORES</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>SUBCHAPTERS G-H [RESERVED]</strong></td>
<td></td>
</tr>
<tr>
<td>201</td>
<td>Federal Seed Act regulations</td>
<td>298</td>
</tr>
<tr>
<td>202</td>
<td>Federal Seed Act rules of practice</td>
<td>372</td>
</tr>
<tr>
<td>203–204</td>
<td>[Reserved]</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>SUBCHAPTER K—FEDERAL SEED ACT</strong></td>
<td></td>
</tr>
<tr>
<td>205</td>
<td>NATIONAL ORGANIC PROGRAM</td>
<td>376</td>
</tr>
<tr>
<td>206–209</td>
<td>[Reserved]</td>
<td></td>
</tr>
</tbody>
</table>
PART 53—LIVESTOCK (GRADING, CERTIFICATION, AND STANDARDS)

Subpart A—Regulations

Definitions

Sec.
53.1 Meaning of words.
53.2 Designation of official certificates, memoranda, marks, other identifications, for purposes of the Agricultural Marketing Act.

Administration

53.3 Authority.

Service

53.4 Kind of service.
53.5 Availability of service.
53.6 How to obtain service.
53.7 Order of furnishing service.
53.8 When request for service deemed made.
53.9 Withdrawal of application or request for service.
53.10 When request for service deemed made.
53.11 Withdrawal of application or request for service.
53.12 Authority of agent.
53.13 Denial or withdrawal of service.
53.14 Financial interest of official grader.
53.15 Accessibility to livestock.
53.16 Official certificates.
53.17 Advance information concerning service rendered.

Charges for Service

53.18 Fees and other charges for service.
53.19 Payment of fees and other charges.

Miscellaneous

53.20 Identification.
53.21 Errors in service.

Subpart B—[Reserved]


Source: 42 FR 33992, Oct. 4, 1977, unless otherwise noted.

Subpart A—Regulations

Definitions

§ 53.1 Meaning of words.

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

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


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

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

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

Branch. The Livestock Market News Branch of the Division.

Chief. The Chief of the Branch, or any officer or employee of the Branch to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

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

Compliance. Conformity of livestock to the specifications under which the livestock was purchased or sold, with particular reference to the weight, quality or other characteristics of livestock.

Cooperative agreement. A cooperative agreement between the Agricultural Marketing Service and another Federal agency or a State agency, or other agency, organization or person as specified in the Agricultural Marketing Act of 1946, as amended, for conducting the service.
§ 53.2 Designation of official certificates, memoranda, marks, other identifications, for purposes of the Agricultural Marketing Act.

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended by Pub. L. 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

(a) **Official certificate** means any form of certification, either written or printed, including that prescribed in §53.16, used under the regulations to certify with respect to the inspection, class, grade, quality, size, quantity, or condition of livestock with applicable specifications.

(b) **Official memorandum** means any initial record of findings made by an authorized person in the process of grading, determining compliance, or inspecting, pursuant to the regulations, any processing or plant-operation report made by an authorized person in connection with grading, determining compliance, inspecting, or sampling under the regulations, and any report made by an authorized person of services performed pursuant to the regulations.

(c) **Official mark or other official identification** means any form of mark or other identification, used under the regulations in marking livestock thereof, to show inspection, class,
Agricultural Marketing Service, USDA

§ 53.12  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 Director or Chief.
or the official in charge of the market news office or other employee receiving the application or request under §53.8.

§53.13 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 his employment or agency: (i) Has willfully made any misrepresentation or has committed any other fraudulent or deceptive practice in connection with any application or request for service 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 his 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, identification, or device; (vi) has knowingly obtained or retained possession of any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark, identification, or device, or of any livestock bearing any such falsely made, issued, altered, forged, or counterfeited mark or identification; or (vii) has in any manner not specified in this paragraph violated subsection 203(h) of the Act. Provided. That paragraph (a)(1)(ii) through (vi) of this section shall not be deemed to be violated by any act committed by any person prior to the making of an application for 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, or whose employee or agent in the scope of his employment or agency, has committed any of the offenses specified in paragraph (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 by a corporation, partnership, or other person from whom the benefits of the service are currently being withheld under this paragraph, or (b) 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 livestock in which any corporation, partnership, or other person within paragraph (a)(1)(vii)(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 §§1.130 through 1.151 of this title and the Supplemental Rules of Practice in part 50 of this chapter.

(b) For miscellaneous reasons. An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person, without a hearing, by the official in charge of the appropriate market news office with
§ 53.18 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 following provisions unless otherwise provided in the cooperative agreement under which the services are furnished, or as provided in §53.8.

(a) Fees based on hourly rates. Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15-minute period, including time required for the preparation of certificates and travel of the official grader in connection for compliance with specifications.

(b) [Reserved]

§ 53.16 Official certificates.

(a) Required; exception. The official grader shall prepare, sign, and issue a livestock acceptance certificate covering livestock for which compliance has been determined.

(b) Where weight is certified, the word “Not” shall be deleted from the phrases “Weights Not Verified.”

(c) Distribution. The original certificate, and not to exceed two copies, shall be delivered or mailed to the applicant or other person designated by him. The remaining copies shall be forwarded as required by agency, division, and branch instructions. Additional copies will be furnished to any person financially interested in livestock involved with the concurrence of the applicant and upon payment of fees, as provided in §53.18(d).

§ 53.17 Advance information concerning service rendered.

Upon request of any applicant, all or any part of the contents of any certificate issued to him under the regulations, or other notification concerning the determination of class, grade, other quality, or compliance of livestock for such applicant may be transmitted by telegraph or telephone to him, or to any person designated by him, at his expense.

CHARGES FOR SERVICE

§ 53.18 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 following provisions unless otherwise provided in the cooperative agreement under which the services are furnished, or as provided in §53.8.

(a) Fees based on hourly rates. Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15-minute period, including time required for the preparation of certificates and travel of the official grader in connection for compliance with specifications.

(b) [Reserved]
with the performance of service. A minimum charge for 1 hour shall be made for service pursuant to each request notwithstanding that the time required to perform service may be less than 60 minutes. The base hourly rate shall be $29.40 per hour for work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on legal holidays; $32.80 per hour for work performed before 6 a.m. or after 6 p.m., Monday through Friday, and anytime Saturday or Sunday except on legal holidays; and $58.80 per hour for all work performed on legal holidays.

(b) Travel charges. When service is requested at a place so distant from an official grader’s headquarters, or place of prior assignment on a circuitous routing that a total of one-half hour or more is required for the grader to travel to such place and back to the headquarters, or to the next place of assignment on a circuitous routing, the charge for such service shall include a mileage charge administratively determined by the Chief, and travel tolls, if applicable, for such travel prorated against all the applicants furnished the service involved on an equitable basis, or where the travel is made by public transportation (including hired vehicle), a fee equal to the actual cost thereof. However, the applicant will not be charged a new mileage rate without notification before the service is rendered.

(c) Per diem charges. When service is requested at a place away from the official grader’s headquarters, the fee for such service shall include a per diem charge if the employee performing the service is paid per diem in accordance with existing travel regulations. Per diem charges to applicants will cover a fee equal to the actual cost thereof. However, the applicant will not be charged a new per diem rate without notification before the service is rendered.

(d) Fees for extra copies of certificates. In addition to copies of certificates furnished under §53.16, any financially interested person may obtain not to exceed three copies of any such certificate within 1 year from its date of issuance upon payment of a fee of $1.00, and not to exceed three copies of any such certificate at any time thereafter, while a copy of such certificate is on file in the Department, upon payment of a fee of $5.00.

(e) Other charges. When costs, other than costs specified in paragraphs (a), (b), (c), and (d) of this section, are involved in providing the services, the applicant will be charged for these costs. The amount of these charges will be determined administratively by the Chief. However, the applicant will not be charged for such cost without notification before the service is rendered.

§53.20 Identification.
All official graders 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.
Agricultural Marketing Service, USDA

§ 54.1 Meaning of words.

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

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

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

Animals. Cattle, sheep, swine, or goats.

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

Branch. The Meat Grading Branch of the Division.

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

Carcass Data Service. The service established and conducted under the regulations to provide producers and other interested persons with data on carcass characteristics.
§ 54.1 Certification service. The service established and conducted under the regulations for the determination and certification or other identification of the compliance of products with specifications.

Chief. The Chief of the Branch, or any officer or employee of the Branch to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

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

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

Contract verification service. A program allowing institutions or other large purchasers of commodity products to have those products compared to contractual requirements.

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

Department. The United States Department of Agriculture.

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

Division. The Meat Quality Division of the Agricultural Marketing Service.

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


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

Grade. (1) As a noun, this term means an important commercial subdivision of a product based on certain definite and preference determining factors, such as, but not limited to, conformation, finish, and quality in meats.

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

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

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

Institutional Meat Purchase Specifications. Specifications describing various meat cuts, meat products, and meat food products derived from all livestock species, commonly abbreviated “IMPS”, and intended for use by any meat procuring activity. For labeling purposes, only product certified by the Meat Grading and Certification Branch may contain the letters “IMPS” on the product label.

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


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

Meat by-products. All edible parts (other than meat and prepared meats) intended for human food, derived from one or more animals, and including but
§ 54.2 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended by Pub. L. 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of
§ 54.3 Agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

(a) **Official certificate** means any form of certification, either written or printed, used under the regulations to certify with respect to the inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

(b) **Official memorandum** means any initial record of findings made by an authorized person in the process of grading, determining compliance, inspecting, or sampling pursuant to the regulations, any processing or plant-operation report made by an authorized person in connection with grading, determining compliance, inspecting, or sampling under the regulations, and any report made by an authorized person of services performed pursuant to the regulations.

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

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

**ADMINISTRATION**

§ 54.3 Authority.

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

7 CFR Ch. I (1–1–01 Edition)

**SERVICE**

§ 54.4 Kind of service.

(1) Grading service under the regulations shall consist of the determination and certification and other identification, upon request by the applicant, of the class, grade, or other quality of products under applicable standards. Class, grade, and other quality may be determined under said standards for meat of cattle, sheep, or swine in carcass form only, except upon approval by the Director upon his determination of good cause and provided that the meat can be identified in conformance with the standards.

(2) Certification service under the regulations shall consist of the determination of the conformity of products to specifications approved by the Director or Chief and the certification and other identification of such livestock or products in accordance with specifications, upon request by the applicant. Determination as to product compliance with specifications for ingredient content or method of preparation may be based upon information received from the inspection system having jurisdiction over the products involved.

(3) The Carcass Data Service, under the regulations, shall consist of the evaluation of carcass characteristics, in accordance with applicable official United States Standards of carcasses of animals identified with the official eartag as shown in §54.17, the recording of such data, and transmittal of the data to, or as directed by, the applicant for the service.

(4) The Contract Verification Service, under the regulations, provides wholesale buyers of noncertified commodity products a method of determining whether procurement(s) met contractually specified requirements.

(5) The Quality Systems Certification Program, under the regulations, provides meatpackers, processors, producers, or other businesses in the livestock and meat trade the ability to have special processes or documented quality management systems verified.

[63 FR 72102, Dec. 31, 1998]
§ 54.5 Availability of service.

Service under these regulations may be made available with respect to products shipped or received in interstate commerce, and with respect to the products not so shipped or received if the Director or Chief determines that the furnishing of service for such products would facilitate the marketing, distribution, processing, or utilization of agricultural products through commercial channels. Also, such service may be made available under a cooperative agreement. Service under these regulations shall be provided without discrimination as to race, color, sex, creed, or national origin. Service will be furnished for products only if they were derived from animals slaughtered in federally inspected establishments or operated under State meat inspection in a State other than one designated in 9 CFR 331.2. Service under these regulations will be furnished for imported meat only if it is marked so that the name of the country of origin appears on most of the major retail cuts. The mark of foreign origin shall be imprinted by roller brand or handstamp and shall be applied so that the imprint is at least 2 inches from the backbone of lamb, 3 inches from the backbone of veal and calf, and 4 inches from the backbone of beef carcasses. The mark of foreign origin shall be repeated parallel to the backbone of the carcass so as to appear on each round, rump, full loin, rib, and chuck of each bovine and ovine carcass in letters at least one-fourth of an inch high, with no more than three-fourths of an inch space between impressions. Imprints of each such brand shall be submitted to the Chief for the determination of compliance with these regulations prior to use of the brand on meats offered for Federal grading. It shall be the responsibility of the applicant to notify the meat grade performing the service whenever imported meat is offered for grading.

§ 54.6 How to obtain service.

(a) Application. Any person may apply to the Director or Chief for service under the regulations with respect to products in which the applicant is financially interested. The application shall be made on a form approved by the Director. In any case in which the service is intended to be furnished at an establishment not operated by the applicant, the application shall be approved by 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) the financial interest of the applicant in the products, except where application is made by an official of a Government agency in his official capacity; and (4) the signature of the applicant (or the signature and title of his representative). The application shall indicate the legal status of the applicant as an individual, partnership, corporation, or other form of legal entity. Any change in such status, at any time while service is being received, shall be promptly reported to the Director or Chief by the person receiving the service.

(b) Notice of eligibility for service. The applicant for service at any establishment will be notified whether his application is approved.

(c) Request by applicant for service—

(1) Noncommitment. Upon notification of the approval on an application for service, the applicant may, from time to time as desired, make oral or written requests for service under the regulations with respect to specific products for which the service is to be furnished under such application. Such requests shall be made at an office for grading either directly or through any employee of the Agricultural Marketing Service who may be designated for such purposes.

(2) Commitment. If desired, the applicant may request to enter into an agreement with the Agricultural Marketing Service for the furnishing of service on a weekly commitment basis, whereby the applicant agrees to pay for 8 hours of service per day, 5 days per week, Monday through Friday, excluding Federal legal holidays occurring Monday through Friday on which no grading and certification services are performed, as provided in § 54.27(b), and
§ 54.7 Order of furnishing service.

Service under the regulations shall be furnished to applicants 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 or any regular user of the service, and to requests for appeal service under § 54.20.

§ 54.8 When request for service deemed made.

A request for service under the regulations shall be deemed to be made when received by an office of grading.
his duties under the regulations by intimidation, threats, assaults, abuse, or any other improper means;

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

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

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

(vii) Has applied the designations “Prime,” “Choice,” “Select,” “Good,” “Standard,” “Commercial,” “Utility,” “Cutter,” “Canner,” “Cull,” “Medium,” “No. 1,” “No. 2,” “No. 3,” “No. 4,” “Yield Grade 1,” “Yield Grade 2,” “Yield Grade 3,” “Yield Grade 4,” or “Yield Grade 5” by stamp, or brand directly on any carcass, wholesale cut, or retail cut out of any carcass, as part of a grade designation;

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

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

(x) Has in any manner not specified in this paragraph violated subsection 203(h) of the 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 Director or Chief without such delay that he has possession of such item and, in the case of an official device, surrenders it to the Chief, and, in the case of any other item, surrenders it to the Director or Chief or destroys it or brings it into compliance with the regulations by obliterating or removing the violative features under supervision of the Director or Chief: And provided further, That paragraphs (a)(1)(ii) through (ix) of this section shall not be deemed to be violated by any act committed by any person prior to the making of an application of service under the regulations by the principal person. An application or a request for service may be rejected or the benefits of the service may be otherwise denied to, or withdrawn from, any person who operates an establishment for which he 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 (x) of this section after such application was made. Moreover, an application or a request for service made in the name of a person otherwise eligible for service under the regulations may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, such a person (A) in case the service is or would be performed at an establishment operated (J) 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)(x)(A)(J) of this section

19
§ 54.12 Financial interest of official grader.

No official grader shall grade or determine compliance of any products in which he or any of his relatives by blood or marriage is directly or indirectly financially interested.

§ 54.13 Accessibility and refrigeration of products; access to establishments.

(a) The applicant shall cause products, with respect to which service is requested, to be made easily accessible for examination and to be so placed, with adequate illuminating facilities, as to disclose their class, grade, other quality, and compliance. Supervisors of grading and other employees of the Department 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 products in the establishments which have been or are to be graded or examined for compliance with specifications or which bear any marks of grade or compliance.

(b) Grading service will only be furnished for meat that a USDA grader determines is chilled so that grade factors are developed to the extent that a proper grade determination can be made in accordance with the official standards. To be eligible for grading, beef carcasses must be ribbed at least 10 minutes prior to being offered for grading. Meat that is presented in a frozen condition shall not be eligible for a grade determination. Meat of all eligible species shall be graded only in the establishment where the animal was slaughtered or initially chilled (except for veal and calf carcasses, which shall be graded only after the hide is removed and only in the establishment where such removal occurs). The Director may grant prior approval for grading at a location other than the establishment of slaughter or initial chill upon notification to the Division if the Branch was unable to provide grading service in a timely manner and that
the meat can be identified in conformance with the standards.


§ 54.14 Official certificates.

(a) Agricultural Products Certificate Form LS–5–3 (Figure 1) is the official certificate for products under the regulations. The official grader shall prepare, sign, and issue an Agricultural Products Certificate Form LS–5–3 covering products for which that grader determined final specification compliance. Where weight or count is verified, the grader shall initial in the block titled “Weights and Total Count Verified.”

(b) Applicant Charges Certificate Form LS–5–5 (Figure 2) will be used to reduce paperwork for applicants assigned multiple graders. Assigned graders will complete one Form LS–5–5. Each grader will enter their code letters and signature in the appropriate location(s) to indicate certificate completion.
(c) Distribution. The original certificate, and not to exceed two copies, shall be delivered or mailed to the applicant or other person designated by him. The remaining copies shall be forwarded as required by agency, division, and branch instructions. Additional copies will be furnished to any person.
§ 54.15 Advance information concerning service rendered.

Upon request of any applicant, all or any part of the contents of any certificate issued to him under the regulations, or other notification concerning the determination of class, grade, other quality, or compliance of products for such applicant may be transmitted by telegraph or telephone to him, or to any person designated by him, at his expense.

§ 54.16 Marking of products.

All products for which class and grade under the standards are determined under the regulations, or the immediate and shipping containers thereof, shall be stamped, branded, or otherwise marked with an appropriate official identification: Provided, That except as otherwise directed by the Chief, such marking will not be required when an applicant only desires official certificates. The marking of products, or their containers, as required by this section shall be done by official graders or under their immediate supervision.

§ 54.17 Official identifications.

(a) A shield enclosing the letters "USDA" and code identification letters of the grader performing the service, as shown below, constitutes a form of official identification under the regulations for preliminary grade of carcasses.

(b) A shield enclosing the letters "USDA" as shown in Figure 1 with the appropriate quality grade designation "Prime," "Choice," "Select," "Good," "Standard," "Commercial," "Utility," "Cutter," "Canner," or "Cull," as provided in the official United States Standards for Grades of Beef, Veal and Calf, Lamb, Yearling Mutton, and Mutton Carcasses and accompanied by the class designation "Bullock," "Veal," "Calf," "Lamb," "Yearling Mutton," or "Mutton," constitutes a form of official identification under the regulations to show the quality grade, and where necessary the class, undersaid standards, of steer, heifer, and cow beef, veal, calf, lamb, yearling mutton and mutton. The code identification letters of the grader performing the service will appear intermittently outside the shield.

(c) A shield enclosing the letters "USDA" and the words "Yield Grade," as in Figure 1, with the appropriate yield grade designation "1," "2," "3," "4," or "5" as provided in the Official United States Standards for Grades of Fresh Beef Carcasses and the Official United States Standards for Grades of Lamb, Yearling Mutton, and Mutton Carcasses constitutes a form of official identification under the regulations to
show the yield grade under said standards. When yield graded, bull and bullock carcasses will be identified with the class designation “Bull” and “Bullock,” respectively. The code identification letters of the grader performing the service will appear outside the shield.

(d) Under the regulations, for carcass grade identification purposes only, a shield enclosing the letters “USDA” with the appropriate yield grade designation number of “1,” “2,” “3,” “4,” or “5” between the “US” and “DA”, with the appropriate quality grade designation of “Prime”, “Choice,” or “Select,” below both as shown in Figure 1. The code identification letters for the grader performing the service will appear outside underneath the shield.

(e) Under the regulations, for yield grade identification purposes only, a shield enclosing the letters “US” on one side and “DA” on the other, with the appropriate Yield Grade designation number “1,” “2,” “3,” “4,” or “5” as shown in Figure 1. The code identification letters for the grader performing the service will appear outside underneath the shield.

Figure 1.
§ 54.17

(f) Under the regulations, for quality grade identification only, a shield enclosing the letters "US" on one side and "DA" on the other with the appropriate Quality Grade designation of "Prime," "Choice," or "Select" as shown in Figure 1. The code identification letters for the grader performing the service will appear outside underneath the shield.

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

Figure 1.
(h) The following constitute forms of official identification under the regulations to show compliance of products:

**Figure 1.**

- USDA 2
- USDA ACCEPTED AS SPECIFIED RWX

(i) The following, as shown in Figure 1, constitutes official identification to show quality system certification:

**Figure 1.**

- USDA PROCESS VERIFIED
- USDA RWX

(j) A shield-shaped ear tag enclosing the letters “USDA”, the words “Carcass Data Service,” as shown below (Figure 1), and a serial number constitutes a form of official identification under the regulations for livestock and carcasses. Other information may appear on the backside of the ear tag at the option of the purchasers.
(k)(1) One device used by USDA graders is a rectangular, serially numbered, orange tag on which a shield encloses the letters "USDA" and the words "Product Control" as shown in Figure 1, constitutes a form of official identification under the regulations for meat and meat products.

Figure 1. USDA Product Control.

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

§ 54.18 Custody of identification devices.

(a) All identification devices used in marking products or the containers thereof under the regulations, including those indicating compliance with specifications approved by the Chief, shall be kept in the custody of the Branch, and accurate records shall be kept by the Branch of all such devices. Each office of grading shall keep a record of the devices assigned to it. Such devices shall be distributed only to persons authorized by the Department, who shall keep the devices in their possession or control at all times and maintain complete records of such devices.

(b) Upon request, applicants shall provide a metal cabinet(s) or locker(s) for the secure storage of official meat grading equipment and identification devices for each Federal meat grader assigned to their establishment. Such cabinet(s) or locker(s) shall be capable of being locked with a special Government-owned lock and shall be placed in an easily accessible and reasonably secure location within the applicant’s establishment.

§ 54.19 What is appeal service; marking products on appeal; requirements for appeal; certain determinations not appealable.

(a) Appeal service is a redetermination of the class, grade, other quality, or compliance of product when the applicant for the appeal service formally challenges the correctness of the original determination. Only a person who has title to, or is a party to a contract for the sale of, a product may request appeal service with respect to such product and if the original determination of class, grade, other quality or compliance is found on appeal to have been in error all incorrect marks of class, grade, other quality and compliance will be removed from the product, and if the person having title to the product so requests, correct marks as determined on the appeal will be applied to the product. Examination requested to determine the class, grade, other quality, or compliance of a product which has been altered or has undergone a material change since the original service, or examination of product requested for the purpose of obtaining an up-to-date certificate and not involving any question as to the correctness of the original service for the product involved shall be considered equivalent to original service and not appeal service.

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

§ 54.20 Request for appeal service.

Except as otherwise provided in § 54.19, a request for appeal service with respect to any product under the regulations may be made by any person who is financially interested in the product when he disagrees with the determination as to class, grade, other quality, or compliance of the product as shown by the markings on the product or its containers, or as stated in the applicable certificate. A request for appeal service shall be filed with the Chief, directly or through the official grader who performed the original service or the official in charge of the office of grading to which such grader was assigned at the time of the service, or through the nearest office of grading. The request shall state the reasons therefor 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 product at the time of the original service. Such request may be made orally (including by telephone) or in writing (including by telegram). If made orally, the person receiving the
§ 54.21 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.

§ 54.22 Denial or withdrawal of appeal service.

A request for appeal service may be rejected or such service may be otherwise denied to or withdrawn from any person, without a hearing, in accordance with the procedure set forth in §54.11(b), if it shall appear that the person or product involved is not eligible for appeal service under §54.19, or that the identity of the product has been lost; or for any of the causes set forth in §54.11(b). Appeal service may also be denied to, or withdrawn from, any person in any case under §54.11(a), in accordance with the procedure set forth in said section.

§ 54.23 Who shall perform appeal service.

Appeal service for products shall be performed by official graders designated by the Chief or by the official in charge of an office of grading when so authorized by the Chief, and shall be conducted jointly by two official graders, or more when practicable. No official grader shall perform appeal service for any product for which he previously performed the service.

§ 54.24 Appeal certificates.

Immediately after appeal service has been performed for any products, a certificate designated as an “appeal certificate” shall be prepared, signed, and issued referring specifically to the original certificate and stating the class, grade, other quality, or compliance of the products as shown by the appeal service.

§ 54.25 Superseded certificates.

The appeal certificate shall supersede the original certificate which, thereupon, shall become null and void and shall not thereafter be deemed to show the class, grade, other quality, or compliance of the products described therein. However, the fees charged for the original service shall not be remitted. If the original and all copies of the superseded certificate are not delivered to the official with whom the request for appeal service is filed, the official graders issuing the appeal certificate shall forward notice of such issuance and of the cancellation of the original certificate to such persons as they may deem necessary to prevent fraudulent use of the superseded certificate.

§ 54.26 Application of other regulations to appeal service.

The regulations in §§54.1 through 54.18 and §§54.27 through 54.30 shall apply to appeal service except insofar as they are manifestly inapplicable.

CHARGES FOR SERVICE

§ 54.27 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 following provisions unless otherwise provided in the cooperative agreement under which the services are furnished, or as provided in §54.6.

(a) Fees for Service on Noncommitment Basis (Hourly Rates). Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15-minute period, including official grader’s travel and certificate(s) preparation time in connection with the performance of service. A minimum charge of one-half hour shall be made for service pursuant to each request notwithstanding that the time required to perform service may be less than 30 minutes. The base hourly rate for noncommitment applicants shall be $52 per hour for 8 hours or less of work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on legal holidays; $57 per hour for work performed in excess of 8 hours per
day for each assigned official grader and for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time Saturday or Sunday, except on Federal legal holidays; and $90 per hour for all work performed on Federal legal holidays.

(b) Fees for Service on Commitment Basis. Minimum fees for service performed under such agreements shall be on the basis of 8 hours per day, Monday through Friday, excluding Federal legal holidays occurring Monday through Friday on which no grading and certification services are performed. The base hourly rate for service performed under such agreements shall be $45 per hour for 8 consecutive hours or less of work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays; $57 per hour for work performed in excess of 8 hours per day for each assigned official grader and for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time Saturday or Sunday, except on Federal legal holidays; and $90 per hour for all work performed on Federal legal holidays. The Agency reserves the right under such a commitment agreement or agreement by memorandum to use any grader assigned to the plant on a commitment basis to perform service for other applicants, as provided in §54.6(c), crediting the commitment applicant with the number of hours charged to the other applicant, provided the allowable credit hours plus hours actually worked for the applicants do not exceed 8 hours on any day, Monday through Friday, excluding Federal legal holidays.

(c) Travel charges. When service is requested at a place so distant from an official grader’s headquarters, or place of prior assignment on a circuitous routing that a total of one-half hour or more is required for the grader to travel to such place and back to the headquarters, or to the next place of assignment on a circuitous routing, the charge for such service shall include a mileage charge administratively determined by the Chief, and travel tolls, if applicable, for such travel prorated against all the applicants furnished the service involved on an equitable basis, or where the travel is made by public transportation (including hired vehicles), a fee equal to the actual cost thereof. However, the applicant will not be charged a new mileage rate without notification before the service is rendered.

(d) Per diem charges. When service is requested at a place away from the official grader’s headquarters, the fee for such service shall include a per diem charge if the employee performing the service is paid per diem in accordance with existing travel regulations. Per diem charges to applicants will cover the same period of time for which the grader receives per diem reimbursement. The per diem rate will be administratively determined by the Chief. However, the applicant will not be charged a new per diem rate without notification before the service is rendered.

(e) Fees for appeal service. Fees for appeal service shall be determined on the basis of the time, of two official graders, required to render the service, calculated to the nearest fifteen-minute period, including the time required for the preparation of certificates and travel of such graders in connection with the performance of the service, at the applicable hourly rate prescribed in paragraph (a) of this section, plus any travel charges and per diem for such graders ordinarily chargeable under paragraphs (c) and (d) of this section: Provided, That when on appeal it is found that there was error in the original determination equal to or exceeding ten percent of the total number of similar units of the products involved, no charge will be made for the appeal service unless a special agreement therefor was made with the applicant in advance.

(f) Fees for extra copies of certificates. In addition to copies of certificates furnished under §54.14, any financially interested person may obtain not to exceed three copies of any such certificate within one year from its date of issuance upon payment of a fee of $1.00, and not to exceed three copies of any such certificate at any time thereafter, while a copy of such certificate is on file in the Department, upon payment of a fee of $5.00.
§ 54.28 Payment of fees and other charges.

Fees and other charges for service shall be paid in accordance with the following provisions unless otherwise provided in the cooperative agreement under which the service is furnished. Upon receipt of billing for fees and other charges for service the applicant 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 grader or other authorized official.

MISCELLANEOUS

§ 54.29 Identification.

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

§ 54.30 Errors in service.

When an official grader, supervisor of grading, or other responsible employee of the Branch has evidence of misgrading, or of incorrect certification or other incorrect determination or identification as to the class, grade, other quality, or compliance of a product, he shall report the matter to his immediate supervisor. The supervisor of grading will investigate the matter and, if he deems advisable, will report it to the owner or his agent. The supervisor of grading shall take appropriate action to correct errors found in the determination or identification of class, grade or other quality or compliance of products if the products are still owned by the person who owned them when, and are still located at the establishment where, the incorrect service was rendered and if such service was rendered by a grader under the jurisdiction of such supervisor, and the supervisor of grading shall take adequate measures to prevent the recurrence of such errors.

§ 54.31 Uniforms.

All meat graders and their supervisory personnel are required to wear clean, white, well-maintained outer frocks while performing any function under these regulations involving contact with or the handling of any meat or meat product.

§ 55.40 Suspension of license; revocation.
§ 55.50 Cancellation of license.
§ 55.60 Surrender of license.
§ 55.70 Identification.
§ 55.80 Political activity.
§ 55.90 Authority and duties of inspectors performing service on a resident inspection basis.
§ 55.95 Facilities and equipment to be furnished for use of graders and inspectors in performing service on a resident inspection basis.
§ 55.96 Schedule of operation of official plants.

APPLICATION FOR SERVICE

§ 55.100 Who may obtain service.
§ 55.120 Authority of applicant.
§ 55.130 How application for service may be made; conditions of resident service.
§ 55.140 Application for inspection in official plants; approval.
§ 55.150 When application may be rejected.
§ 55.160 When application may be withdrawn.
§ 55.170 Order of service.
§ 55.180 Suspension of plant approval.

DENIAL OF SERVICE

§ 55.200 Debarment.
§ 55.220 Other applicable regulations.
§ 55.240 Report of violations.
§ 55.260 Reuse of containers bearing official identification prohibited.

IDENTIFYING AND MARKING PRODUCTS

§ 55.300 Approval of official identification.
§ 55.310 Form of official identification symbol and inspection mark.
§ 55.320 Products that may bear the inspection mark.
§ 55.330 Unauthorized use or disposition of approved labels.
§ 55.340 Supervision of marking and packaging.
§ 55.350 Accessibility of product.
§ 55.360 Certificates.
§ 55.370 Certificate issuance.
§ 55.380 Disposition of certificates.
§ 55.390 Advance information.

APPEALS

§ 55.400 Who may request an appeal grading or inspection or review of a grader’s or inspector’s decision.
§ 55.420 How to file an appeal.
§ 55.430 When an application for an appeal grading or inspection may be refused.
§ 55.440 Who shall perform the appeal.
§ 55.450 Procedures for selecting appeal samples.
§ 55.460 Appeal certificates.

FEES AND CHARGES

§ 55.500 Payment of fees and charges.
§ 55.510 Fees and charges for services other than on a continuous resident basis.
§ 55.530 Travel expenses and other charges.
§ 55.560 Charges for continuous inspection and grading service on a resident basis.
§ 55.570 Fees for service performed under cooperative agreement.

SANITARY AND PROCESSING REQUIREMENTS

§ 55.600 General.
§ 55.650 Inspection and grading.

Subpart B—Official U.S. Standards for Palatability Scores for Dried Whole Eggs

§ 55.800 Preparation of samples for palatability test.
§ 55.820 Palatability scores for dried whole eggs.


§ 55.2

Poultry Division, Agricultural Marketing Service.

*Class* means any subdivision of a product based on essential physical characteristics that differentiate between major groups of the same kind, species, or method of processing.

*Condition* means any condition (including, but not being limited to, the state of preservation, cleanliness, soundness, wholesomeness, or fitness for human food) of any product which affects its merchantability; or any condition, including, but not being limited to, the processing, handling, or packaging which affects such product.

*Department* means the U.S. Department of Agriculture.

*Eggs of Current Production* means shell eggs which have moved through the usual marketing channels since the time they were laid and are not in excess of 60 days old.

*Holiday* or *Legal holiday* shall mean the legal public holidays specified by the Congress in paragraph (a) of section 6103, Title 5, of the United States Code.

*Inspection/grading* means (1) the act of determining, according to the regulations, the class, quality, quantity, or condition of any product by examining each unit thereof or a representative sample drawn by a grader; (2) the act of issuing a certificate; or (3) the act of identifying, when requested by the applicant, any product by means of official identification pursuant to the Act and this part.

*Inspection and grading certificate or certificate* means a statement, either written or printed, issued by a grader or inspector pursuant to the Act and this part, relative to the class, quality, quantity, and condition of products.

*Inspector/grader* means any employee of the Department authorized by the Secretary, or any other person to whom a license has been issued by the Secretary, to investigate and certify, in accordance with the Act and this part, to shippers of products and other interested parties the class, quality, quantity, and condition of such products.

*Interested party* means any person financially interested in a transaction involving any grading, inspection, or appeal grading or inspection of any product.

*National Supervisor* means (1) the officer in charge of the service of AMS, and (2) such other employee of AMS as may be designated by him.

*Office of grading* means the office of any grader or inspector.

*Official plant* means any plant in which the facilities and methods of operation therein have been found by the Administrator to be suitable and adequate for grading service or inspection in accordance with this part and in which such service is carried on.

*Person* means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

*Product or products* means eggs (whether liquid, frozen, or dried), egg products and any food product which is prepared or manufactured and contains eggs as an ingredient.

*Quality* means the inherent properties of any product which determine its relative degree of excellence.

*Regional Director* means any employee of the Department in charge of the service in a designated geographical area.

*Regulations* means the provisions in this part.

*Sampling* means the act of taking samples of any product for grading or inspection.

*Secretary* means the Secretary of the Department or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

*Service* means (1) any grading or inspection, in accordance with the Act and the regulations in this part, of any product, (2) supervision, in any official plant, of the preparation or packaging of any product, or (3) any appeal grading or appeal inspection of any previously graded or inspected product.

*Shell eggs* means the shell eggs of the domesticated chicken, turkey, duck, goose, and guinea.

§ 55.20 Kinds of services available.

The regulations in this part provide for the following kinds of services:

(a) Inspection of the processing of products containing eggs in official plants.

(b) Sampling of products.
§ 55.22 Where service is offered.
Any product may be graded or inspected wherever a grader or inspector is available and the facilities and the conditions are satisfactory for the conduct of the service.

§ 55.24 Basis of service.
(a) Products shall be graded or inspected in accordance with such standards, methods, and instructions as may be issued or approved by the Administrator. All service shall be subject to supervision at all times by the applicable State supervisor, egg products supervisor, Regional Director, and National Supervisor. Whenever the supervisor of a grader or inspector has evidence that such grader or inspector incorrectly graded or inspected a product, such supervisor shall take such action as is necessary to correct the grading or inspection and to cause any improper official identification which appears on the product or containers thereof to be corrected prior to shipment of the product from the place of the initial grading or inspection.

(b) Whenever service is performed on a sample basis, such sample shall be drawn in accordance with the instructions as issued by the Administrator.

§ 55.25 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
(a) Purpose. This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR part 55 pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

(b) Display.

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<th>Current OMB control number</th>
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(49 FR 23421, June 8, 1984, as amended at 55 FR 23421, June 8, 1990)

PERFORMANCE OF SERVICES

§ 55.30 Licensed graders and inspectors.
(a) Any person who is a Federal or State employee, the employee of a local jurisdiction, or the employee of a cooperating agency possessing proper qualifications as determined by an examination for competency and who is to perform grading service under this part, may be licensed by the Secretary as a grader or inspector.

(b) All licenses issued by the Secretary are to be countersigned by the officer-in-charge of the service of the Agricultural Marketing Service or by any other official of AMS designated by such officer.

(c) No person may be licensed to grade or inspect any product in which he is financially interested.


§ 55.40 Suspension of license; revocation.
Pending final action by the Secretary, any person authorized to countersign a license to perform service may, whenever he deems such action necessary to assure that any grading or inspection services are properly performed, suspend any license to perform
§ 55.90 Authority and duties of inspectors performing service on a resident inspection basis.

(a) Each inspector is authorized:

(1) To make such observations and inspections as he deems necessary to enable him to certify that products have been prepared, processed, stored, and otherwise handled in conformity with the regulations in this part;

(2) To supervise the marking of packages containing products which are eligible to be identified with official identification;

(3) To retain in his custody, or under his supervision, labels with official identification, marking devices, samples, certificates, seals, and reports of inspectors;

(4) To deface or remove, or cause to be defaced or removed under his personal supervision, any official identification from any package containing products whenever he determines that such products were not processed in accordance with the regulations in this part or are not fit for human food;

(5) To issue a certificate upon request on any product processed in the official plant; and

(6) To use retention tags or other devices and methods as may be approved by the Administrator for the identification and control of products which are not in compliance with the regulations in this part or are held for further examination, and any equipment, utensils, rooms or compartments which are found to be unclean or otherwise in violation of any of the regulations in this part. No product, equipment, utensil, room or compartment shall be released for use until it has been made acceptable. Such identification shall not be removed by anyone other than inspector or grader.
§ 55.95 Facilities and equipment to be furnished for use of graders and inspectors in performing service on a resident inspection basis.

(a) Facilities and equipment for proper sampling, weighing, examination of products and monitoring processing procedures shall be furnished by the official plant for use by inspectors and graders. Such facilities and equipment shall include but not be limited to a room or area suitable for sampling product, and acceptable candling light, flashlight, heavy duty, high speed drill with an eleven sixteenths-inch or larger bit of sufficient length to reach the bottom of containers used for frozen eggs, metal stem thermometer(s), test thermometer(s), stop watch, test weighing scale(s) and test weight(s), test kit for determining the bactericidal strength of sanitizing solutions, and stationary or adequately secured storage box or cage (capable of being locked only by the inspector) for holding official samples.

(b) Acceptable furnished office space and equipment, including but not being limited to, a desk, lockers or cabinets (equipped with a satisfactory locking device) suitable for the protection and storage of supplies, and with facilities for inspectors and graders to change clothing.

§ 55.96 Schedule of operation of official plants.

Grading operating schedules for services performed pursuant to §55.560 shall be requested in writing and be approved by the Administrator. Normal operating schedules for a full week consist of a continuous 8-hour period per day (excluding not to exceed 1 hour for lunch), 5 consecutive days per week, within the administrative workweek, Sunday through Saturday, for each shift required. Less than 8-hour schedules may be requested and will be approved if a grader is available. Clock hours of daily operations need not be specified in the request, although as a condition of continued approval, the hours of operation shall be reasonably uniform from day to day. As an alternative, the normal operating schedule shall consist of a continuous 10-hour period per day (excluding not to exceed 1 hour for lunch), 4 consecutive days per week, within the administrative workweek, Sunday through Saturday for each full shift required. Graders are to be given reasonable advance notice by management of any change in the hours that grading service is requested.

[48 FR 20682, May 9, 1983, as amended at 60 FR 49168, Sept. 21, 1995]

§ 55.100 Who may obtain service.

(a) An application for service may be made by any interested person, including, but not being limited to, the United States, any State, county, municipality, or common carrier, and any authorized agent of the foregoing.

(b) Where service is offered: Any product may be graded or inspected, wherever a grader or inspector is available and the facilities and the conditions are satisfactory for the conduct of the service.


APPLICATION FOR SERVICE

§ 55.120 Authority of applicant.

Proof of the authority of any person applying for any service may be required at the discretion of the Administrator.

§ 55.130 How application for service may be made; conditions of resident service.

(a) On a fee basis. An application for any service may be made in any office of grading, or with any grader or inspector at or nearest the place where the service is desired. Such application for service may be made orally (in person or by telephone), in writing or by telegraph. If an application for grading service is made orally, the office of grading, grader or inspector with whom such application is made, or the Administrator may require that the application be confirmed in writing.

(b) On a resident inspection basis. An application for inspection on a resident
inspection basis to be rendered in an official plant must be made in writing on forms approved by the Administrator and filed with the Administrator. Such forms may be obtained at the national, regional, or State grading office. In making application, the applicant agrees to comply with the terms and conditions of the regulations in this part (including, but not being limited to, such instructions governing grading and inspection of products as may be issued from time to time by the Administrator). No member of or delegate to Congress or Resident Commissioner, shall be admitted to any benefit that may arise from such service unless derived through service rendered a corporation for its general benefit.

§ 55.140 Application for inspection in official plants; approval.

Any person desiring to process products under inspection service must receive approval of such plant and facilities as an official plant prior to the installation of such service. The initial survey, drawings, and specifications to be submitted, changes and revisions in the official plant, and final survey and procedure for plant approval shall be in accordance with and conform with the applicable provisions of § 59.146 of this chapter, regulations governing the inspection of eggs and egg products.


§ 55.150 When application may be rejected.

Any application for service may be rejected by the Administrator (a) whenever the applicant fails to meet the requirements of the regulations in this part prescribing the conditions under which the service is made available; (b) whenever the product is owned by or located on the premises of a person currently denied the benefits of the Act; (c) whenever any individual holding office or a responsible position with or having a substantial financial interest or share in the applicant is currently denied the benefits of the Act or was responsible in whole or in part for the current denial of the benefits of the Act to any person; (d) where the Administrator determines that the application is an attempt on the part of a person currently denied the benefits of the Act to obtain service; (e) whenever the applicant, after an initial survey has been made in accordance with § 55.140, fails to bring the plant, facilities, and operating procedures into compliance with the regulations in this part within a reasonable period of time; (f) notwithstanding any prior approval whenever, before inauguration of service, the applicant fails to fulfill commitments concerning the inauguration of the service; (g) when it appears that to perform the services specified in this part would not be to the best interests of the public welfare or of the Government; or (h) when it appears to the Administrator that prior commitments of the Department necessitate rejection of the application. Each such applicant shall be promptly notified by registered mail of the reasons for the rejection. A written petition for reconsideration of such rejection may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after receipt of notice of the rejection. Such petition shall state specifically the errors alleged to have been made by the Administrator in rejecting the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant by registered mail of the reasons for the rejection thereof.


§ 55.160 When application may be withdrawn.

An application for service may be withdrawn by the applicant at any time before the service is performed upon payment, by the applicant, of all expenses incurred by AMS in connection with such application.
§ 55.170 Order of service.

Service shall be performed, insofar as practicable, in the order in which applications therefor are made except that precedence may be given to any application for an appeal.


§ 55.180 Suspension of plant approval.

(a) Any plant approval pursuant to the regulations in this part may be suspended for (1) failure to maintain plant and equipment in a satisfactory state of repairs; (2) the use of operating procedures which are not in accordance with the regulations in this part; or (3) alterations of buildings, facilities, or equipment which cannot be approved in accordance with the regulations in this part.

(b) During such period of suspension, inspection service shall not be rendered. However, the other provisions of the regulations in this part pertaining to providing service on a resident basis will remain in effect unless service is terminated in accordance with the terms thereof. If the plant facilities or methods of operation are not brought into compliance within a reasonable period of time to be specified by the Administrator, the application and service shall be terminated. Upon termination of service in an official plant pursuant to the regulations in this part, the plant approval shall also become terminated and all labels, seals, tags, or packaging material bearing official identification shall, under the supervision of a person designated by the Administrator, either be destroyed, or the official identification completely obliterated, or sealed in a manner acceptable to the Department.

DENIAL OF SERVICE

§ 55.200 Debarment.

(a) The following acts or practices or the causing thereof may be deemed sufficient cause for the debarment by the Administrator, of any person, including any agents, officers, subsidiaries, or affiliates of such person, from any or all benefits of the Act for a specified period. The rules of practice governing withdrawal of inspection and grading services in formal adjudicatory proceedings instituted by the Secretary (7 CFR, part 1, subpart H) shall be applicable to such a debarment action:

1. Misrepresentation, deceptive, or fraudulent act or practice. Any willful misrepresentation or any deceptive or fraudulent act or practice found to be made or committed by any person in connection with:
   (i) The making or filing of an application for any service or appeal;
   (ii) The making of the product accessible for sampling, grading or inspection;
   (iii) The making, issuing or using or attempting to issue or use any certificate, symbol, stamp, label, seal, or identification authorized pursuant to the regulations in this part;
   (iv) The use of the terms “United States,” “U.S.,” “Government Grade,” “Federal-State Graded,” “U.S. Inspected,” “Government Inspected,” or terms of similar import in the labeling or advertising of any product;
   (v) The use of any official stamp, symbol, label, seal, or identification in the labeling or advertising of any product.

2. Use of facsimile forms. Using or attempting to use a form which simulates in whole or in part any certificate, symbol, stamp, label, seal, or identification authorized to be issued or used under the regulations in this part.

3. Willful violation of the regulations. Any willful violation of the regulations in this part or the Act.

4. Interfering with a grader, inspector, or employee of AMS. Any interference with or obstruction or any attempted interference or obstruction of or assault upon any grader, licensee, inspector or employee of AMS in the performance of his duties. The giving or offering, directly or indirectly, of any money, loan, gift, or anything of value to an employee of AMS, or the making or offering of any contribution to or in any way supplementing the salary, compensation or expenses of an employee of AMS, or the offering or entering into a private contract or agreement with an employee of AMS for any services to be rendered while employed by AMS.
(5) Miscellaneous. The existence of any of the conditions set forth in §55.150 constituting the basis for the rejection of an application for grading or inspection service.

§55.220 Other applicable regulations.
Compliance with the regulations in this part shall not excuse failure to comply with any other Federal or any State or municipal applicable laws or regulations.

§55.240 Report of violations.
Each grader and inspector shall report, in the manner prescribed by the Administrator, all violations and non-compliance under the Act and this part of which such grader or inspector has knowledge.

§55.260 Reuse of containers bearing official identification prohibited.
The reuse, by any person, of containers bearing official identification is prohibited unless such identification is applicable in all respects to product being packed therein. In such instances, the container and label may be used provided the packaging is accomplished under the supervision of an inspector or grader and the container is in clean, sound condition and lined with a suitable inner liner.

IDENTIFYING AND MARKING PRODUCTS
§55.300 Approval of official identification.
Labeling procedures, required information on labels, and method of label approval, shall be in accordance with and conform with the applicable provisions of §59.411 of this chapter, regulations governing the inspection of eggs and egg products, except where “egg product(s)” is used in §59.411, the word “product(s)” shall be substituted and used for this part 55.

§55.310 Form of official identification symbol and inspection mark.
(a) The shield set forth in Figure 1, containing the letters “USDA,” shall be the official identification symbol for the purposes of this part and when used, imitated, or simulated in any manner in connection with a product shall be deemed to constitute a representation that the product has been officially inspected for the purpose of §55.5.

(b) The inspection marks which are permitted to be used on products shall be contained within the outline of a shield and with the wording and design set forth in Figure 2 of this section, except the plant number may be preceded by the letter “P” in lieu of the word “plant”. Alternatively, it may be omitted from the official shield if applied on the container’s principal display panel or other prominent location and preceded by the letter “P” or the word “Plant”.

FIGURE 1.
§ 55.320 Products that may bear the inspection mark.

Products which are permitted to bear the inspection mark shall be processed in an official plant from edible shell eggs or other edible egg products eligible to bear the inspection mark and may contain other edible ingredients. The official mark, when used, shall be printed or lithographed and applied as a part of the principal display panel of the container, but shall not be applied to a detachable cover.

§ 55.330 Unauthorized use or disposition of approved labels.

(a) Containers or labels which bear official identification approved for use pursuant to §55.300 shall be used only for the purpose for which approved. Any unauthorized use or disposition of approved containers or labels which bear any official identification may result in cancellation of the approval and denial of the use of containers or labels bearing official identification or denial of the benefits of the Act pursuant to the provisions of §55.200;

(b) The use of simulations or imitations of any official identification by any person is prohibited;

(c) Upon termination of inspection service in an official plant pursuant to the regulations in this part, all labels or packaging material bearing official identification to be used to identify product packed by the plant shall either be destroyed, or have the official identification completely obliterated under the supervision of a USDA representative, or, if to be used at another location, modified in a manner acceptable to the Service.


§ 55.340 Supervision of marking and packaging.

(a) Evidence of label approval. No grader or inspector shall authorize the use of official identification on any inspected product unless he has on file evidence that such official identification or packaging material bearing such official identification has been approved in accordance with the provisions of §55.300.

(b) Affixing of official identification. No official identification may be affixed to or placed on or caused to be affixed to or placed on any product or container thereof except by a grader or inspector or under the supervision of a grader or inspector or other person authorized by the Administrator. All such products shall have been inspected in accordance with the regulations in this part. The grader or inspector shall have supervision over the use and handling of all material bearing any official identification.

(c) Labels for products sold under Government contract. The grader or inspector-in-charge may approve labels for containers of product sold under a contract specification to governmental agencies when such product is not offered for resale to the general public: Provided, That the contract specifications include complete specific requirements with respect to labeling, and are made available to the grader or inspector.

§ 55.350 Accessibility of product.

Each product for which service is requested shall be so placed as to disclose fully its class, quality, quantity, and...
§ 55.350 Certificates.

Certificates (including appeal certificates) shall be issued on forms approved by the Administrator.

§ 55.370 Certificate issuance.

(a) Resident service. Certificates will be issued only upon a request therefor by the applicant or AMS. When requested, an inspector shall issue a certificate covering product inspected by him. In addition, an inspector may issue a certificate covering product inspected in whole or in part by another inspector when the inspector has knowledge that the product is eligible for certification based on personal examination of the product or official inspection records.

(b) Other than resident service. Each inspector shall, in person or by his authorized agent, issue a certificate covering each product inspected by him. An inspector’s name may be signed on a certificate by a person other than the inspector, if such person has been designated as the authorized agent of such inspector by the National Supervisor: Provided, That the certificate is prepared from an official memorandum of inspection signed by the inspector: And provided further, That a notarized power of attorney authorizing such signature has been issued to such person by the inspector and is on file in the office of the service. In such case, the authorized agent shall sign both his own and the inspector’s name, e.g., “John Doe by Richard Roe.”

§ 55.380 Disposition of certificates.

The original and a copy of each certificate, issued pursuant to §55.370 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 inspection program records.


§ 55.390 Advance information.

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

§ 55.400 Who may request an appeal grading or inspection or review of a grader’s or inspector’s decision.

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

§ 55.410 Where to file an appeal.

(a) Appeal of resident grader’s or inspector’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 or inspected by a grader or inspector in an official plant and has not left such plant, and the operator of any official plant who is not satisfied with a decision by a grader or inspector on any other matter relating to grading or inspection in such plant may request an appeal grading or inspection or review of the decision by the grader or inspector by filing such request with the grader’s or inspector’s immediate supervisor.

(b) All other appeal requests. Any interested party who is not satisfied with the determination of the class, quality,
§ 55.420

How to file an appeal.

The request for an appeal grading or inspection or review of a grader’s or inspector’s decision may be made orally or in writing. If made orally, written confirmation may be required. The applicant shall clearly state the identity of the product, the decision which is questioned, and the reason(s) for requesting the appeal service. If such appeal request is based on the results stated on an official certificate, the original and all copies of the certificate available at the appeal grading or inspection site shall be provided to the appeal grader or inspector assigned to make the appeal grading or inspection.


§ 55.430 When an application for an appeal grading or inspection may be refused.

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


§ 55.440 Who shall perform the appeal.

(a) An appeal grading or inspection or review of a decision requested under §55.410(a) shall be made by the grader’s or inspector’s immediate supervisor or by a licensed grader or inspector assigned by the immediate supervisor other than the grader or inspector whose grading or inspection or decision is being appealed.

(b) Appeal gradings or inspections requested under §55.410(b) shall be performed by a grader or inspector other than the grader or inspector who originally graded or inspected the product.

(c) Whenever practical, an appeal grading or inspection shall be conducted jointly by two graders or inspectors. The assignment of the grader(s) or inspector(s) who will make the appeal grading or inspection under §55.410(b) shall be made by the Regional Director or the Chief of the Grading Branch.

§ 55.450 Procedures for selecting appeal samples.

(a) Prohibition on movement of product. Products shall not have been moved from the place where the grading or inspection being appealed was performed and must have been maintained under adequate refrigeration, when applicable.

(b) Laboratory analyses. The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. When the original sample containers cannot be located, the appeal sample shall consist of product taken at random from double the number of original sample containers.

(c) Condition inspection. The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. A condition appeal cannot be made unless all originally sampled containers are available.


§ 55.460 Appeal certificates.

Immediately after an appeal grading or inspection is completed, an appeal certificate shall be issued to show that
the original grading or inspection was sustained or was not sustained. Such certificate shall supersede 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 or inspector assigns a different class to the lot or determines that a net weight shortage exists, the lot shall be retained pending correction of the labeling or approval of the product disposition by the National Supervisor.

§ 55.560 Charges for continuous inspection and grading service on a resident basis.

Charges to be made for service on a resident basis shall be made in accordance with the terms of any cooperative agreement. Charges shall include the costs of transportation, per diem, shipping containers, postage, and any other expenses.

§ 55.560

those provided in this section. The fees to be charged for any appeal grading or inspection shall be as provided in §55.510.

(a) Charges. The charges for the service shall be paid by the applicant and shall include items listed in this section as are applicable. Payment for the full cost of the service rendered to the applicant shall be made by the applicant to the Agricultural Marketing Service, U.S. Department of Agriculture. Such full costs shall comprise such of the items listed in this section as are due and included in the bill or bills covering the period or periods during which the grading and inspection service was rendered. Bills will be rendered by the 10th day following the end of the billing period in which the service was rendered and are payable upon receipt.

(1) An inauguration charge of $310 will be made at the time an application for service is signed except when the application is required because of a change in name or ownership. If service is not installed within 6 months from the date the application is filed, or if service is inactive due to an approved request for removal of a grader(s) or inspector(s) for a period of 6 months, the application will be considered terminated, but a new application may be filed at any time. In addition, there will be a charge of $300 if the inauguration of service is terminated at the request of the applicant for reasons other than for a change in name or ownership. If service is not installed within 6 months from the date the application is filed, or if service is inactive due to an approved request for removal of a grader(s) or inspector(s) for a period of 6 months, the application will be considered terminated, but a new application may be filed at any time. 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§ 55.800 Preparation of samples for palatability test.

Reconstitute 33 grams of dried whole egg powder as completely as possible with 90 grams of distilled water in a suitable, clean container. Add the water and mix until the mixture is smooth and free from lumps. Place the container in gently boiling water and...
§ 55.820 Palatability scores for dried whole eggs.

The palatability score of the prepared sample shall be determined by a panel of officially qualified graders of dried eggs of the Agricultural Marketing Service, and shall be rated in accordance with the following table:

<table>
<thead>
<tr>
<th>Score</th>
<th>Description of Quality</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>No detectable off flavor, comparable to high quality fresh shell eggs.</td>
</tr>
<tr>
<td>7 1/2</td>
<td>Very slight off flavor.</td>
</tr>
<tr>
<td>7</td>
<td>Slight but not unpleasant off flavor.</td>
</tr>
<tr>
<td>6 1/2</td>
<td>Definite but not unpleasant off flavor.</td>
</tr>
<tr>
<td>6</td>
<td>Pronounced off flavor (slightly unpleasant).</td>
</tr>
<tr>
<td>5</td>
<td>Unpleasant off flavor.</td>
</tr>
<tr>
<td>4</td>
<td>Definite unpleasant off flavor.</td>
</tr>
<tr>
<td>3</td>
<td>Pronounced unpleasant off flavor.</td>
</tr>
<tr>
<td>2</td>
<td>Repulsive flavor.</td>
</tr>
<tr>
<td>1</td>
<td>Definite repulsive flavor.</td>
</tr>
<tr>
<td>0</td>
<td>Pronounced repulsive flavor.</td>
</tr>
</tbody>
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PART 56—VOLUNTARY GRADING OF SHELL EGGS

Subpart A—Grading of Shell Eggs

DEFINITIONS

Sec.
56.1 Meaning of words and terms defined.
56.2 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.

ADMINISTRATION

56.3 Administration.

GENERAL

56.4 Basis of grading service.
56.5 Accessibility and condition of product.
56.6 Supervision.
56.8 Other applicable regulations.
56.9 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

LICENSED GRADERS

56.10 Who may be licensed.
56.11 Authorization to perform limited grading services.
Agricultural Marketing Service, USDA

§ 56.1 Meaning of words and terms defined.

For the purpose of the regulations in this part, words in the singular shall be deemed to import the plural and vice versa, as the case may demand, and unless the context otherwise requires, the following terms shall be construed, respectively, as follows:


Administrator means the Administrator of the Agricultural Marketing Service of the Department or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated the authority to act in his stead.

Ambient temperature means the air temperature maintained in an egg storage facility or transport vehicle.

Applicant means an interested party who requests any grading service, appeal grading, or regrading with respect to any product.

Cage mark means any stain-type mark caused by an egg coming in contact with a material that imparts a rusty or blackish appearance to the shell.

Case means, when referring to containers, an egg case, as used in commercial practice in the United States, holding 30 dozens of shell eggs.

Chief of the Grading Branch means the Chief of the Poultry Grading Branch of the Poultry Division, Agricultural Marketing Service.

Class means any subdivision of a product based on essential physical characteristics that differentiate between major groups of the same kind, species, or method of processing.

Condition means any condition (including, but not being limited to, the state of preservation, cleanliness, soundness, wholesomeness, or fitness for human food) of any product which affects its merchantability.

Department means the United States Department of Agriculture.

Eggs of current production means shell eggs which have moved through usual marketing channels since the time they were laid and have not been held in refrigerated storage in excess of 30 days. “Refrigerator or storage eggs” means shell eggs which have been held under refrigeration for a period of more than 30 days.

Grader means any employee of the Department authorized by the Secretary, or any other person to whom a license has been issued by the Secretary, to investigate and certify, in accordance with the act and this part, to shippers of products and other interested parties the class, quality, quantity, and condition of such products.

Grading or grading service means: (1) The act whereby a grader determines, according to the regulations in this part, the class, quality, quantity, or condition of any product by examining each unit thereof or each unit of the representative sample thereof drawn by a grader and issues a grading certificate with respect thereto, except that with respect to grading service performed on a resident basis the issuance of a grading certificate shall be pursuant to a request therefor by the applicant or the Service; (2) the act whereby the grader identifies, according to the regulations in this part, the graded product; (3) continuous supervision, in an official plant, of the handling or packaging of any product; and (4) any regrading or any appeal grading of a previously graded product.
Grading certificate means a statement, either written or printed, issued by a grader pursuant to the act and this part, relative to the class, quantity, quality, or condition of products.

Holiday or legal holiday shall mean the legal public holidays specified by the Congress in paragraph (a) of section 6103, title 5, of the United States Code.

Interested party means any person financially interested in a transaction involving any grading, appeal grading, or regrading of any product.

National supervisor means (1) the officer in charge of the shell egg grading service of the Agricultural Marketing Service, and (2) such other employees of the Service as may be designated by him.

Nest run eggs means eggs which are packed as they come from the production facilities without having been washed, sized and/or candled for quality, with the exception that some Checks, Dirties, or other obvious undergrades may have been removed.

Office of grading means the office of any grader.

Official plant means any plant in which the facilities and methods of operation therein have been found by the Administrator to be suitable and adequate for grading service in accordance with this part and in which grading service is carried on.

Origin grading is a grading made on a lot of eggs at a plant where the eggs are graded and packed.

Person means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

Potable water means water that has been approved by the State health authority or agency or laboratory acceptable to the Administrator as safe for drinking and suitable for food processing.

Product or products means shell eggs of the domesticated chicken.

Quality means the inherent properties of any product which determine its relative degree of excellence.

Quality assurance inspector means any designated company employee other than the plant owner, manager, foreman, or supervisor, authorized by the Secretary to examine product and to supervise the labeling, dating, and lotting of officially graded shell eggs and to assure that such product is packaged under sanitary conditions, graded by authorized personnel, and maintained under proper inventory control until released by an employee of the Department.

Regional director means any employee of the Department in charge of the shell egg grading service in a designated geographical area.

Regulations means the provisions in this part.

Sampling means the act of taking samples of any product for grading.

Secretary means the Secretary of the Department or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

Service means the Agricultural Marketing Service of the Department.

Shell eggs means shell eggs of domesticated chickens.

Shell protected means eggs which have had a protective covering such as oil applied to the shell surface. The product used shall be acceptable to the Food and Drug Administration.

Washed ungraded eggs means eggs which have been washed but not sized or segregated for quality.

(20 FR 669, Feb. 1, 1955)

EDITORIAL NOTE: For Federal Register citations affecting § 56.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

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

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended by Pub. L. 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the grading of agricultural products under said section. For the purposes of said subsection and the
provisions in this part, the terms listed in this section shall have the respective meanings specified:

(a) Official certificate means any form of certification, either written or printed, used under this part to certify with respect to the sampling, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

(b) Official memorandum means any initial record of findings made by an authorized person in the process of grading or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

(c) Official mark means the grademark and any other mark, or any variations in such marks approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded, or indicating the appropriate U.S. grade or condition of the product, or for the purpose of maintaining the identity of products graded under this part, including but not limited to, those set forth in §56.36.

(d) Official identification means any United States (U.S.) standard designation of class, grade, quality, size, quantity, or condition specified in this part or any symbol, stamp, label or seal indicating that the product has been officially graded and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

(e) Official device means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Administrator for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

§ 56.3 Administration.

(a) The Administrator shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in the enforcement or administration of the provisions of the Act and this part. The Administrator is authorized to waive for limited periods any particular provisions of the regulations in this part to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements and at the same time to determine full compliance with the spirit and intent of the regulations in this part. The Agricultural Marketing Service and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this part.

(b) The conduct of all services and the licensing of graders under these regulations shall be accomplished without discrimination as to race, color, national origin, religion, age, sex, or disability.

§ 56.4 Basis of grading service.

(a) Any grading service in accordance with the regulations in this part shall be for class, quality, quantity, or condition or any combination thereof. Grading service with respect to the determination of the quality of products shall be on the basis of the “United States Standards, Grades, and Weight Classes” as contained in subpart C of this part. However, grading service may be rendered with respect to products which are bought and sold on the basis of institutional contract specifications or specifications of the applicant and such service, when approved by the Administrator, shall be rendered on the basis of such specifications. The supervision of packaging shall be in accordance with such instructions as may be approved or issued by the Administrator.
§ 56.5 Accessibility and condition of product.

Each product for which grading service is requested shall be so conditioned and placed as to permit a proper determination of the class, quality, quantity, or condition of such product.


§ 56.6 Supervision.

All grading service shall be subject to supervision at all times by the applicable State supervisor, regional director and national supervisor. Such service shall be rendered where the facilities and conditions are satisfactory for the conduct of the service and the requisite graders are available. Whenever the supervisor of a grader has evidence that such grader incorrectly graded a product, such supervisor shall take such action as is necessary to correct the grading and to cause any improper grademarks which appear on the product or the containers thereof to be corrected prior to shipment of the product from the place of initial grading.


§ 56.8 Other applicable regulations.

Compliance with the regulations in this part shall not excuse failure to comply with any other Federal, or any State, or municipal applicable laws or regulations.


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

(a) Purpose. This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR part 56 pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511.

(b) Display.

<table>
<thead>
<tr>
<th>7 CFR section where identified and described</th>
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LICENSED GRADERS

§ 56.10 Who may be licensed.

(a) Except as otherwise provided in paragraph (c) of this section, any person who is a Federal or State employee, the employee of a local jurisdiction, or the employee of a cooperating agency possessing proper qualifications as determined by an examination for competency and who is to perform grading service under this part, may be licensed by the Secretary as a grader.

(b) All licenses issued by the Secretary shall be countersigned by the officer in charge of the poultry grading service of the Agricultural Marketing Service or any other designated officer of such Service.

(c) No person may be licensed to grade or sample any product in which he is financially interested.

§ 56.11 Authorization to perform limited grading services.

Any person who is employed by any official plant and possesses proper qualifications, as determined by the Administrator, may be authorized to candle and grade eggs on the basis of the "U.S. Standards for Quality of Individual Shell Eggs," with respect to eggs purchased from producers or eggs to be packaged with official identification. In addition, such authorization may be granted to any qualified person to act as a "quality assurance inspector" in the packaging and grade labeling of products. No person to whom such authorization is granted shall have authority to issue any grading certificates, grading memoranda, or other official documents; and all eggs which are graded by any such person shall thereafter be check graded by a grader.

§ 56.12 Suspension of license; revocation.

Pending final action by the Secretary, any person authorized to countersign a license to perform grading service may, whenever he deems such action necessary to assure that any grading service is properly performed, suspend any license to perform grading service issued pursuant to this part, by giving notice of such suspension to the respective licensee, accompanied by a statement of the reasons therefor. Within 7 days after the receipt of the aforesaid notice and statement of reasons, the licensee may file an appeal in writing, with the Secretary, supported by any argument or evidence that he may wish to offer as to why his license should not be further suspended or revoked. After the expiration of the aforesaid 7-day period and consideration of such argument and evidence, the Secretary will take such action as he deems appropriate with respect to such suspension or revocation. When no appeal is filed within the prescribed 7 days, the license to perform grading service is revoked.

§ 56.13 Cancellation of license.

Upon termination of his services as a grader, each licensee shall surrender his license immediately for cancellation.

§ 56.14 Surrender of license.

Each license which is canceled, suspended, or has expired shall immediately be surrendered by the licensee to the office of grading serving the area in which he is located.
§ 56.15 Political activity.

All graders are forbidden during the period of their respective appointments or licenses, to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including, but not being limited to, temporary and cooperative employees, and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.


§ 56.16 Identification.

All graders shall each have in possession at all times, and present upon request, while on duty, the means of identification furnished by the Department to such person.


§ 56.17 Facilities and equipment for graders.

Facilities and equipment to be furnished by the applicant for use of graders in performing service on a resident basis shall include (when deemed necessary) the following:

(a)(1) An accurate metal stem thermometer;

(2) Electronic digital-display scales graduated in increments of 1/10-ounce or less for weighing individual eggs and test weights for calibrating such scales. Plants packing product based on metric weight must provide scales graduated in increments of 1-gram or less;

(3) Electronic digital-display scales graduated in increments of 1/4-ounce or less for weighing the lightest and heaviest consumer packages packed in the plant and test weights for calibrating such scales;

(b) Furnished office space, a desk and file or storage cabinets (equipped with a satisfactory locking device), suitable for the security and storage of official stamps and supplies, and other facilities and equipment as may otherwise be required. Such space and equipment must meet the approval of the National supervisor.


§ 56.18 Schedule of operation of official plants.

Grading operating schedules for services performed pursuant to §§ 56.52 and 56.54 shall be requested in writing and be approved by the Administrator. Normal operating schedules for a full week consist of a continuous 8-hour period per day (excluding not to exceed 1 hour for lunch), 5 consecutive days per week, within the administrative workweek, Sunday through Saturday, for each shift required. Less than 8-hour schedules may be requested and will be approved if a grader is available. Clock hours of daily operations need not be specified in the request, although as a condition of continued approval, the hours of operation shall be reasonably uniform from day to day. Graders are to be notified by management 1 day in advance of any change in the hours grading service is requested.

[48 FR 20683, May 9, 1983]

APPLICATION FOR GRADING

§ 56.20 Who may obtain grading service.

An application for grading service may be made by any interested person, including, but not being limited to, the United States, any State, county, municipality, or common carrier, and any authorized agent of the foregoing.

§ 56.21 How application for service may be made; conditions of service.

(a) Noncontinuous grading service on a fee basis. An application for any noncontinuous grading service on a fee basis may be made in any office of grading, or with any grader at or nearest the place where the service is desired. Such application may be made orally (in person or by telephone), in writing, or by telegraph. If the application for grading service is made orally, the office of grading or the grader with whom such application is made, or the Administrator, may require that the application be confirmed in writing.

(b) Continuous grading service on a resident basis or continuous grading service on a nonresident basis. An application for continuous grading service on a resident basis or for continuous grading service on a nonresident basis must be made in writing on forms approved by the Administrator and filed with the Administrator. Such forms may be obtained at the national, regional, or State grading office. In making application, the applicant agrees to comply with the terms and conditions of the regulations (including, but not being limited to, such instructions governing grading of products as may be issued from time to time by the Administrator) and file with the Administrator. Each member of or delegate to Congress or resident commissioner shall be admitted to any benefit that may arise from such service unless derived through service rendered a corporation for its general benefit.

§ 56.22 Filing of application.

An application for grading or sampling of a specified lot of any product shall be regarded as filed only when made pursuant to this part.

§ 56.23 Form of application.

Each application for grading or sampling a specified lot of any product shall include such information as may be required by the Administrator in regard to the product and the premises where such product is to be graded or sampled.

§ 56.24 When application may be rejected.

An application for grading service may be rejected by the Administrator (a) whenever the applicant fails to meet the requirements of the regulations prescribing the conditions under which the service is made available; (b) whenever the product is owned by or located on the premises of a person currently denied the benefits of the act; (c) where any individual holding office or a responsible position with or having a substantial financial interest or share in the applicant is currently denied the benefits of the act or was responsible in whole or in part for the current denial of the benefits of the act to any person; (d) where the Administrator determines that the application is an attempt on the part of a person currently denied the benefits of the act to obtain grading services; (e) whenever the applicant fails to bring the plant facilities, and operating procedures into compliance with the regulations within a reasonable period of time; (f) notwithstanding any prior approval whenever, before inauguration of service, the applicant fails to fulfill commitments concerning the inauguration of the service; (g) when it appears that to perform the services specified in this part would not be to the best interests of the public welfare or of the Government; or (h) when it appears to the Administrator that prior commitments of the Department necessitate rejection of the application. Each such applicant shall be promptly notified by registered mail of the reasons for the rejection. A written petition for reconsideration of such rejection may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after the receipt of notice of the rejection. Such petition shall state specifically the errors alleged to have been made by the Administrator in rejecting the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve.
§ 56.25 When application may be withdrawn.
An application for grading service may be withdrawn by the applicant at any time before the service is performed upon payment, by the applicant, of all expenses incurred by the Service in connection with such application.


§ 56.26 Authority of applicant.
Proof of the authority of any person applying for any grading service may be required at the discretion of the Administrator.


§ 56.27 Order of service.
Grading service shall be performed, insofar as practicable, in the order in which applications therefor are made except that precedence may be given to any application for an appeal grading.


§ 56.30 Report of violations.
Each grader, shall report in the manner prescribed by the Administrator, all violations and noncompliances under the Act and this part of which such grader has knowledge.

interference or obstruction of or assault upon any grader, licensee, or employee of the Service in the performance of his duties. The giving or offering, directly or indirectly, of any money, loan, gift, or anything of value to an employee of the Service or the making or offering of any contribution to or in any way supplementing the salary, compensation or expenses of an employee of the Service or the offering or entering into a private contract or agreement with an employee of the Service for any services to be rendered while employed by the Service.

(5) Misleading labeling. The use of the terms “Government Graded”, “Federal-State Graded”, or terms of similar import in the labeling or advertising of any product without stating in the label or advertisement the U.S. grade of the product as determined by an authorized grader.

(6) Miscellaneous. The existence of any of the conditions set forth in §56.24 constituting the basis for the rejection of an application for grading service.

§ 56.32 Retention authorities.

A grader may use retention tags or other devices and methods as approved by the Administrator for the identification and control of shell eggs which are not in compliance with the regulations or are held for further examination and for any equipment, utensils, rooms or compartments which are found unclean or otherwise in violation of the regulations. Any such item shall not be released until in compliance with the regulations and retention identification shall not be removed by anyone other than a grader.

§ 56.35 Authority to use, and approval of official identification.

(a) Authority to use official identification. Authority to officially identify product graded pursuant to this part is granted only to applicants who make the services of a grader or quality assurance inspector available for use in accordance with this part. Packaging materials bearing official identification marks shall be approved pursuant to §§56.35 to 56.37, inclusive, and shall be used only for the purpose for which approved and prescribed by the Administrator. Any unauthorized use or disposition of approved labels or packaging materials which bear any official identification may result in cancellation of the approval and denial of the use of labels or packaging materials bearing official identification or denial of the benefits of the Act pursuant to the provisions of §56.31.

(b) Approval of official identification. No label, container, or packaging material which bears official identification may contain any statement that is false or misleading. No label, container, or packaging material bearing official identification may be printed or prepared for use until the printers' or other final proof has been approved by the Administrator in accordance with the regulations in this part, the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, and the regulations promulgated under these acts. The use of finished labels must be approved as prescribed by the Administrator. A grader may apply official identification stamps to shipping containers if they do not bear any statement that is false or misleading. If the label is printed or otherwise applied directly to the container, the principal display panels of such container shall for this purpose be considered as the label. The label shall contain the name, address, and ZIP Code of the packer or distributor of the product, the name of the product, a statement of the net contents of the container, and the U.S. grademark.

(c) Nutritional labeling. Nutrition information must be included with the labeling on each unit container of consumer packaged shell eggs in accordance with the provisions of Title 21, Chapter I, Part 101, Regulations for the Enforcement of the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act. The nutrition information included on labels...
§ 56.36 is subject to review by the Food and Drug Administration prior to approval by the Department.

(d) Refrigeration labeling. All containers bearing official U.S. Grade AA, A, or B identification shall be labeled to indicate that refrigeration is required, e.g., “Keep Refrigerated,” or words of similar meaning.


§ 56.36 Form of grademark and information required.

(a) Form of official identification symbol and grademark. (1) The shield set forth in Figure 1 of this section shall be the official identification symbol for purposes of this part and when used, imitated, or simulated in any manner in connection with shell eggs, shall be deemed prima facia to constitute a representation that the product has been officially graded for the purposes of § 56.2.

(2) Except as otherwise authorized, the grademark permitted to be used to officially identify USDA consumer-graded shell eggs shall be of the form and design indicated in Figures 2 through 4 of this section. The shield shall be of sufficient size so that the printing and other information contained therein is legible and in approximately the same proportion as shown in these figures.

(3) The “Produced From” grademark in Figure 5 of this section may be used to identify products for which there are no official U.S. grade standards (e.g., pasteurized shell eggs), provided that these products are approved by the Agency and are prepared from U.S. Consumer Grade AA or A shell eggs under the continuous supervision of a grader.

(b) Information required on grademark. (1) Except as otherwise authorized by the Administrator, each grademark used shall include the letters “USDA” and the U.S. grade of the product it identifies, such as “A Grade,” as shown in Figure 2 of this section. Such information shall be printed with the shield and the wording within the shield in contrasting colors in a manner such that the design is legible and conspicuous on the material upon which it is printed.

(2) The size or weight class of the product, such as “Large,” may appear within the grademark as shown in Figure 3 of this section. If the size or weight class is omitted from the grademark, it must appear prominently on the main panel of the carton.

(3) Except as otherwise authorized, the bands of the shield in Figure 4 of this section shall be displayed in three colors, with the color of the top, middle, and bottom bands being blue, white, and red, respectively.

(4) The “Produced From” grademark in Figure 5 of this section may be any one of the designs shown in Figures 2 through 4 of this section. The text outside the shield shall be conspicuous, legible, and in approximately the same proportion and close proximity to the shield as shown in Figure 5 of this section.

(5) The plant number of the official plant preceded by the letter “P” must be shown on each carton or packaging material.

Figure 1
§ 56.37 Lot marking of officially identified product.

Each carton identified with the grademarks shown in §56.36 shall be legibly lot numbered on either the carton or the consumer package. The lot number shall be the consecutive day of the year on which the eggs were packed (e.g., 132), except other lot numbering systems may be used when submitted in writing and approved by the Administrator.


§ 56.38 [Reserved]

§ 56.39 Quality assurance inspector required.

The official identification of any graded product as provided in §§56.35 to 56.41, inclusive, shall be done only under the supervision of a grader or quality assurance inspector. The grader or quality assurance inspector shall have supervision over the use and handling of all material bearing any official identification.

§ 56.40 Grading requirements of shell eggs identified with consumer grademarks.

(a) Shell eggs to be identified with the grademarks illustrated in §56.36 must be individually graded by a grader or by authorized personnel pursuant to §56.11 and thereafter check graded by a grader.

(b) Shell eggs not graded in accordance with paragraph (a) of this section may be officially graded on a sample basis and the shipping containers may be identified with grademarks which contain the words “Sample Graded” and which are approved by the Administrator.

(c) Shell eggs which are to bear the U.S. consumer grademark shall be packed only from eggs of current production. They shall not possess any undesirable odors or flavors.

§ 56.41 Check grading officially identified product.

Officially identified shell eggs packed or received in an official plant may be subject to final check grading prior to their shipment. Such product found not to be in compliance with the assigned official grade shall be placed under a retention tag until it is regraded to comply with the grade assigned or until the official identification is removed.

§§ 56.42–56.43 [Reserved]

FEES AND CHARGES

§ 56.45 Payment for fees and charges.

(a) Fees and charges for any grading service shall be paid by the interested party making the application for such grading service, in accordance with the applicable provisions of this section and §§56.46 to 56.54, both inclusive; and, if so required by the grader, such fees and charges shall be paid in advance.

(b) Fees and charges for any grading service shall, unless otherwise required pursuant to paragraph (c) of this section, be paid by check, draft, or money order payable to the Agricultural Marketing Service and remitted promptly to the Service.

(c) Fees and charges for any grading service under a cooperative agreement with any State or person shall be paid in accordance with the terms of such cooperative agreement.

§ 56.46 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $51.32 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $59.12 per hour. Information on legal holidays is available from the Supervisor.

§ 56.47 Fees for appeal grading or review of a grader’s decision.

The cost of an appeal grading or review of a grader’s decision shall be borne by the appellant on a fee basis at rates set forth in §56.46, plus any travel and additional expenses. If the appeal grading or review of a grader’s decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

§ 56.49 Travel expenses and other charges.

Charges are to be made to cover the cost of travel and other expenses incurred by the service in connection with rendering grading service. Such
§ 56.52 Continuous grading performed on a resident basis.

Fees to be charged and collected for any grading service, other than for an appeal grading, on a resident grading basis, shall be those provided in this section. The fees to be charged for any appeal grading shall be as provided in § 56.47.

(a) Charges. The charges for the grading of shell eggs shall be paid by the applicant for the service and shall include items listed in this section as are applicable. Payment for the full cost of the grading service rendered to the applicant shall be made by the applicant to Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as "AMS"). Such full costs shall comprise such of the items listed in this section as are due and included in the bill or bills covering the period or periods during which the grading service was rendered. Bills will be rendered by the 10th day following the end of the period in which the service was rendered and are payable upon receipt.

(1) An inauguration charge of $310 will be made at the time an application for service is signed except when the application is required because of a change in name or ownership. If service is not installed within 6 months from the date the application is filed, or if service is inactive due to an approved request for removal of a grader(s) for a period of 6 months, the application will be considered terminated, but a new application may be filed at any time. In addition there will be a charge of $300 if the application is terminated at the request of the applicant for reasons other than for a change in location, within 12 months from the date of the inauguration of service.

(2) A charge for the salary and other costs, as specified in this paragraph, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by AMS to perform grading service for other than the applicant. Base salary rates will be determined on a national average for all official plants operating in States under a Federal Trust Fund Agreement where Federal graders, State graders, or a combination of Federal and State graders are used, by averaging the salary rates paid to each Federal or State grader assigned to such plants. Charges to plants are as follows:

(i) For all regular hours of work scheduled and approved as an established tour of duty for a plant, the regular rate charge will be made. The regular rate charge will be determined by adding an amount to the base salary rate to cover the costs to AMS for such items as the Employer's Tax imposed under the U.S. Internal Revenue Code (26 U.S.C.) for Old Age and Survivor's Benefits under the Social Security System, retirement benefits, group life insurance, severance pay, sick leave, annual leave, additional salary and travel costs for relief grading service, accident payments, certain moving costs, and related servicing costs.

(ii) All hours worked by an assigned grader or another grader in excess of the approved tour of duty, or worked on a nonscheduled workday, or actually worked on a holiday in excess of the tour of duty, will be considered as overtime. The charge for such overtime will be 150 percent of the grader's base salary rate.

(iii) For work performed on a holiday which is within the established tour of duty approved for a plant, the added charge will be the same as the grader's base rate.

(iv) For work performed between 6 p.m. and 6 a.m., night differential charges (for regular, overtime, or holiday hours worked during this period) will be at the applicable rates established plus 10 percent of the base rate.

(v) For work performed on Sunday, Sunday differential charges (for regular, overtime, or holiday hours worked on Sunday) will be at the applicable rates established plus 25 percent of the base rate.

(vi) For all hours of work performed in a plant without an approved tour of duty, the charge will be one of the applicable hourly rates in § 56.46.
§ 56.53 Fees or charges for grading service performed under cooperative agreement.

Fees or charges to be made to an applicant for grading service which differ from those listed in §§56.45 through 56.54 shall be provided for by a cooperative agreement.


§ 56.54 Charges for continuous grading performed on a nonresident basis.

Fees to be charged and collected for grading service on a nonresident grading basis, shall be those provided in this section. The fees to be charged for any appeal grading shall be as provided in §56.47.

(a) Charges. The charges for the grading of shell eggs shall be paid by the applicant for the service and shall include items listed in this section as are applicable. Payment for the full cost of the grading service rendered to the applicant shall be made by the applicant to the Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as “AMS”). Such full costs shall comprise such of the items listed in this section as are due and included in the bill or bills covering the period or periods during which the grading service was rendered. Bills will be rendered by the 10th day following the end of the billing period in which the service was rendered and are payable upon receipt.

(1) A charge for the salary and other costs, as specified in this paragraph, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by AMS to perform grading service for other than the applicant. Base salary rates will be determined on a national average for all official plants operating in States under a Federal Trust Fund Agreement where Federal graders, State graders, or a combination of Federal and State graders are used, by averaging the salary rates paid to each Federal or State grader assigned to such plants. Charges to plants are as follows:

Editorial Note: For Federal Register citations to §56.52, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.
§ 56.56 Grading certificate issuance.

(a) Resident grading basis. Certificates will be issued only upon request therefor by the applicant or the Service. When requested, a grader shall issue a

(i) For all regular hours of work scheduled and approved as an established tour of duty for a plant, the regular rate charge will be made. The regular rate charge will be determined by adding an amount to the base salary rate to cover the costs to AMS for such items as the Employer's Tax imposed under the U.S. Internal Revenue Code (26 U.S.C.) for Old Age and Survivor's Benefits under the Social Security System, retirement benefits, group life insurance, severance pay, sick leave, annual leave, additional salary and travel costs for relief grading service, accident payments, certain moving costs, and related servicing costs.

(ii) All hours worked by an assigned grader or another grader in excess of the approved tour of duty, or worked on a nonscheduled workday, or actually worked on a holiday in excess of the tour of duty, will be considered as overtime. The charge for such overtime will be 150 percent of the grader's base salary rate.

(iii) For work performed on a holiday which is within the established tour of duty approved for a plant, the added charge will be the same as the grader's base rate.

(iv) For work performed between 6 p.m. and 6 a.m. night differential charges (for regular, overtime, or holiday hours worked during this period) will be at the applicable rates established plus 10 percent of the base rate.

(v) For work performed on Sunday, Sunday differential charges (for regular, overtime, or holiday hours worked on Sunday) will be at the applicable rates established plus 25 percent of the base rate.

(vi) For all hours of work performed in a plant without an approved tour of duty, the charge will be one of the applicable hourly rates in §56.46.

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $260 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

(b) Other provisions. (1) The applicant shall designate in writing the employees of the applicant who will be required and authorized to furnish each grader with such information as may be necessary for the performance of the grading service.

(2) AMS will provide, as available, an adequate number of graders to perform the grading service. The number of graders required will be determined by AMS based on the expected demand for service.

(3) The grading service shall be provided at designated locations and shall be continued until the service is suspended, withdrawn, or terminated by:

(i) Mutual consent;

(ii) Thirty (30) days' written notice, by either the applicant or AMS specifying the date of suspension, withdrawal, or termination;

(iii) One (1) day's written notice by AMS to the applicant if the applicant fails to honor any invoice within thirty (30) days after date of invoice covering the cost of the grading service; or

(iv) Action taken by AMS pursuant to the provisions of §56.31.

(4) Graders will be required to confine their activities to those duties necessary in the rendering of grading service and such closely related activities as may be approved by AMS: Provided, That in no instance may the graders assume the duties of management.

(5) When similar nonresident grading services are furnished to the same applicant under part 55 or part 70 of this chapter, the charges listed in this section shall not be repeated.


EDITORIAL NOTE: For Federal Register citations to §56.54, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

GRADING CERTIFICATES

§ 56.55 Grading certificates and sampling report forms.

Grading certificates and sampling report forms shall be issued on forms approved by the Administrator.

§ 56.57 Disposition of grading certificates.

The original and a copy of each grading certificate, issued pursuant to § 56.56, 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.

§ 56.58 Advance information.

Upon 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.

§ 56.60 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 or on any other matter related to grading in the official plant.

§ 56.61 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 by a grader on any other matter related to grading in such plant may request an appeal grading or review of the decision by the grader by filing such request with the grader’s immediate supervisor.

(b) All other appeal requests. Any interested party who is not satisfied with 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 in the area where the product is located or with the Chief of the Grading Branch.

§ 56.62 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.

§ 56.63 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 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.

§ 56.64 Who shall perform the appeal.

(a) An appeal grading or review of a decision requested under §56.61(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 §56.61(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 §56.61(b) shall be made by the regional director or the Chief of the Grading Branch.

§ 56.65 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 §56.4(b).

(c) Shell eggs shall not have been moved from the original place of grading and must have been maintained under adequate refrigeration and humidity conditions.

§ 56.66 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 supersede 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 grade mark 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.

§ 56.75 Applicability of facility and operating requirements.

The provisions of §56.76 shall be applicable to any grading service that is provided on a resident basis.

§ 56.76 Minimum facility and operating requirements for shell egg grading and packing plants.

(a) General requirements for buildings and plant facilities. (1) Buildings shall be of sound construction so as to prevent, insofar as practicable, the entrance or harboring of vermin.
(2) Grading and packing rooms shall be of sufficient size to permit installation of necessary equipment and the conduct of grading and packing in a sanitary manner. These rooms shall be kept reasonably clean during grading and packing operations and shall be thoroughly cleaned at the end of each operating day.

(3) Adequate lavatory and toilet accommodations shall be provided. Toilet and locker rooms shall be maintained in a clean and sanitary condition. Hot and cold running water shall be provided. Rooms shall be ventilated to the outside of the building. Signs shall be posted in the rest rooms instructing employees to wash their hands before returning to work.

(4) A separate refuse room or a designated area for the accumulation of trash must be provided in plants which do not have a system for the daily removal or destruction of such trash.

(5) Wood benches, platforms, etc., in areas which are subjected to moisture and which develop odors shall be replaced with equipment of metal construction. Wood walls or partitions which develop odors shall be replaced with materials impervious to moisture. Newly constructed plants should be equipped with metal benches, platforms, etc., in areas which are subject to moisture.

(b) Grading room requirements. (1) The egg grading or candling area shall be adequately darkened to make possible the accurate quality determination of the candled appearance of eggs. There shall be no other light source or reflections of light that interfere with, or prohibit the accurate quality determination of eggs in the grading or candling area.

(2) The grading and candling equipment shall provide adequate light to facilitate quality determinations. Other light sources and equipment or facilities shall be provided to permit the detection and removal of stained and dirty eggs or other underage eggs.

(3) Adequate facilities, equipment, and light sources shall be provided to determine the condition of packing material.

(4) Egg weighing equipment shall be provided. The egg weighing equipment shall be constructed to permit cleaning; operation in a clean, sanitary manner; and shall be capable of ready adjustment.

(5) Adequate ventilation shall be provided.

(c) Cooler room requirements. (1) Cooler rooms shall be refrigerated and capable of maintaining an ambient temperature no greater than 45 °F (7.2 °C). Accurate thermometers shall be provided for monitoring cooler room temperatures.

(2) Cooler rooms shall be free from objectionable odors and from mold, and shall be maintained in a sanitary condition.

(3) All shell egg coolers shall be equipped with a hygrometer or portable equipment such as a psychrometer shall be available to determine the relative humidity. Humidifying equipment capable of maintaining a relative humidity which will minimize shrinkage shall be provided.

(d) Shell egg protecting operations. Shell egg protecting (oil processing) operations shall be conducted in a manner to avoid contamination of the product and maximize conservation of its quality.

(1) Eggs with excess moisture on the shell shall not be shell protected.

(2) Oil having any off odor, or that is obviously contaminated, shall not be used in shell egg protection.

(3) Processing oil that has been previously used and which has become contaminated shall be filtered and heat treated at 180 °F. for 3 minutes prior to use.

(4) Shell egg processing equipment shall be washed, rinsed, and treated with a bactericidal agent each time the oil is removed. It is preferable to filter and heat treat processing oil and clean processing equipment daily when in use.

(5) Adequate coverage and protection against dust and dirt shall be provided when the equipment is not in use.

(e) Shell egg cleaning operations. (1) Shell egg cleaning equipment shall be kept in good repair and shall be cleaned after each day’s use or more frequently, if necessary.

(2) The temperature of the wash water shall be maintained at 90 °F. or higher, and shall be at least 20 °F.
warmer than the temperature of the eggs to be washed. These temperatures shall be maintained throughout the cleaning cycle.

(3) An approved cleaning compound shall be used in the wash water. (The use of metered equipment for dispensing the compound into solution is recommended.)

(4) Wash water shall be changed approximately every 4 hours or more often if needed to maintain sanitary conditions, and at the end of each shift. Remedial measures shall be taken to prevent excess foaming during the egg washing operation.

(5) Replacement water shall be added continuously to the wash water of washers. Rinse water, chlorine, or quaternary sanitizing rinse may be used as part of the replacement water, provided, they are compatible with the washing compound. Iodine sanitizing rinse may not be used as part of the replacement water.

(6) Only potable water may be used to wash eggs. Each official plant shall submit certification to the national office stating that their water supply is potable. An analysis of the iron content of the water supply, stated in parts per million, is also required. When the iron content exceeds 2 parts per million, equipment shall be provided to correct the excess iron content. Frequency of testing shall be determined by the Administrator. When the water source is changed, new tests are required.

(7) Waste water from the egg washing operation shall be piped directly to drains.

(8) The washing and drying operation shall be continuous and shall be completed as rapidly as possible. Eggs shall not be allowed to stand or soak in water. Immersion-type washers shall not be used.

(9) Prewetting shell eggs prior to washing may be accomplished by spraying a continuous flow of water over the eggs in a manner which permits the water to drain away or other methods which may be approved by the Administrator. The temperature of the water shall be the same as prescribed in this section.

(10) Washed eggs shall be spray-rinsed with water having a temperature equal to, or warmer than, the temperature of the wash water and contain an approved sanitizer of not less than 50 ppm nor more than 200 ppm of available chlorine or its equivalent. Alternate procedures, in lieu of a sanitizer rinse, may be approved by the National Supervisor.

(11) Test kits shall be provided and used to determine the strength of the sanitizing solution.

(12) During any rest period, eggs shall be removed from the washing and rinsing area of the egg washer and from the scanning area whenever there is a buildup of heat.

(13) Washed eggs shall be reasonably dry before cartoning or casing.

(14) When steam or vapors originate from the washing operation, they shall be continuously and directly removed to the outside of the building.

(f) Requirements for eggs that are to be officially identified. (1) Shell eggs that are to be officially identified as U.S. Grade AA, A, or B shall be placed under refrigeration at an ambient temperature no greater than 45 °F (7.2 °C) promptly after packaging. Shell eggs officially identified as U.S. Grade AA, A, or B, when shipped between official plants, shall be transported at an ambient temperature no greater than 45 °F (7.2 °C).

(2) Every reasonable precaution shall be exercised to prevent “sweating” of eggs.

(3) Eggs that are to be officially identified as U.S. Grade AA, A, or B shall be packaged only in new or good used cases and packing materials. Cases and packing materials must be reasonably clean, free of mold, mustiness, and off odors, and must be of sufficient strength and durability to adequately protect the eggs during normal distribution.

(g) The following substances used in the plant shall be approved and handled in accordance with the manufacturer’s instructions: Pesticides, insecticides, rodenticides, cleaning compounds, destaining compounds, foam control compounds, sanitizers, and
§ 56.77

Health and hygiene of personnel.

(a) No person known to be affected by a communicable or infectious disease shall be permitted to come in contact with the product.

(b) Plant personnel coming into contact with the product shall wear clean clothing.


PART 57—INSPECTION OF EGGS

Subpart A—Regulations Governing the Inspection of Eggs

DEFINITIONS

Sec.
57.1 Meaning of words.
57.5 Terms defined.

ADMINISTRATION

57.10 Authority.
57.13 Federal and State cooperation.
57.17 Nondiscrimination.
57.18 OMB control number.

SCOPE OF INSPECTION

57.20 Inspection in accordance with methods prescribed or approved.
57.22 Basis of service.
57.28 Other inspections.

RELATION TO OTHER AUTHORITIES

57.35 Eggs outside official plants.

EGGS AND EGG PRODUCTS NOT INTENDED FOR HUMAN FOOD

57.45 Prohibition on eggs and egg products not intended for use as human food.

REFRIGERATION OF SHELL EGGS

57.50 Temperature and labeling Requirements.

EXEMPTIONS

57.100 Specific exemptions.
57.105 Suspension or termination of exemptions.

PERFORMANCE OF SERVICE

57.110 Licensed inspectors.
57.112 Suspension of license or authority; revocation.
57.114 Surrender of license.
57.116 Activities of inspectors.
57.118 Identification.
57.119 Political activity.
57.120 Financial interest of inspectors.
57.132 Access to plants.
57.134 Accessibility of product.

RECORDS AND RELATED REQUIREMENTS FOR EGG HANDLERS AND RELATED INDUSTRIES

57.200 Records and related requirements.
57.220 Information and assistance to be furnished to inspectors.

ADMINISTRATIVE DETENTION

57.240 Detaining product.

APPEAL OF AN INSPECTION OR DECISION

57.300 Who may request an appeal inspection or review of an inspector’s decision.
57.310 Where to file an appeal.
57.320 How to file an appeal.
57.330 When an application for an appeal grading or inspection may be refused.
57.340 Who shall perform the appeal.
57.350 Procedures for selecting appeal samples.
57.360 Appeal inspection certificates.
57.370 Cost of appeals.

IDENTIFYING AND MARKING PRODUCT

57.410 Shell eggs required to be labeled.

RETENTION

57.426 Retention.

PROCESSING REQUIREMENTS

57.504 General operating procedures.

REGISTRATION OF SHELL EGG HANDLERS

57.690 Persons required to register.

INSPECTION AND DISPOSITION OF RESTRICTED EGGS

57.700 Prohibition on disposition of restricted eggs.
57.720 Disposition of restricted eggs.
57.760 Inspection of egg handlers.

IDENTIFICATION OF RESTRICTED EGGS OR EGG PRODUCTS NOT INTENDED FOR HUMAN CONSUMPTION

57.800 Identification of restricted eggs.
57.801 Nest run or washed ungraded eggs.
57.840 Identification of inedible, unwholesome, or adulterated egg products.
57.860 Identification wording.

§ 57.840 Imports
57.900 Requirements for importation of restricted eggs into the United States.
57.905 Importation of restricted eggs or eggs containing more restricted eggs than permitted in the official standards for U.S. Consumer Grade B.
57.915 Foreign inspection certification required.
57.920 Importer to make application for inspection of imported eggs.
57.925 Inspection of imported eggs.
57.930 Imported eggs; retention in customs custody; delivery under bond; movement prior to inspection; sealing; handling; facilities, and assistance.
57.935 Means of conveyance and equipment used in handling eggs to be maintained in sanitary condition.
57.945 Foreign eggs offered for importation; reporting of findings to customs; handling of products refused entry.
57.950 Labeling of containers of eggs for importation.
57.955 Labeling of shipping containers of eggs for importation.
57.960 Small importations for consignee's personal use, display, or laboratory analysis.
57.965 Returned U.S. inspected and marked products; not importations.
57.970 Charges for storage, cartage, and labor with respect to products imported contrary to the Act.

Subpart A—Regulations Governing the Inspection of Eggs

DEFINITIONS

§ 57.1 Meaning of words.

Under these regulations, words in the singular shall be deemed to mean the plural and vice versa, as the case may demand.

§ 57.5 Terms defined.

For the purpose of these regulations, unless the context otherwise requires, the following terms shall be construed, respectively, as follows:

Acceptable means suitable for the purpose intended and acceptable to the Administrator.

Act means the applicable provisions of the Egg Products Inspection Act (Pub. L. 91–597, 84 Stat. 1620 et seq.).

Administrator means the Administrator of the Agricultural Marketing Service of the Department or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated the authority to act in his stead.

Adulterated means any egg or egg product under one or more of the following circumstances:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may in the judgment of the Secretary, make such article unfit for human food;

(2) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;
(3) If it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

(4) If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act; Provided, that an article which is not otherwise deemed adulterated under paragraph (b)(2), (3), or (4) of this definition shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the Secretary in official plants;

(c) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(d) If it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(e) If it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(f) If its container is composed, in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(g) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act; or

(h) If any valuable constituent has been, in whole or in part, omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if any inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

Ambient temperature means the air temperature maintained in an egg storage facility or transport vehicle.

Applicant means any person who requests any inspection service as authorized under the Act or the regulations of this part.

Capable of use as human food means any egg or egg product, unless it is denatured, or otherwise identified, as required by these regulations to deter its use as human food.

Chief of the Grading Branch means Chief of the Poultry Grading Branch, Poultry Division, Agricultural Marketing Service.

Class means any subdivision of a product based on essential physical characteristics that differentiate between major groups of the same kind, type, or method of processing.

Commerce means interstate, foreign, or intrastate commerce.

Condition means any condition (including, but not being limited to, the state of preservation, cleanliness, soundness, wholesomeness, or fitness for human food) of any product which affects its merchantability; or any condition, including but not being limited to, the processing, handling, or packaging which affects such product.

Container or Package includes for egg products, any box, can, tin, plastic, or other receptacle, wrapper, or cover and for shell eggs, any carton, basket, case, cart, pallet, or other receptacle.

(a) Immediate container means any package or other container in which egg products or shell eggs are packed for household or other ultimate consumers.

(b) Shipping container means any container used in packing an immediate container.

Department means the U.S. Department of Agriculture.

Dirty egg or Dirties means an egg(s) that has an unbroken shell with adhering dirt or foreign material.

Egg means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea. Some of the terms applicable to shell eggs are as follows:

(a) Check means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(b) Clean and sound shell egg means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(c) Dirty egg or Dirties means an egg(s) that has a shell that is unbroken
(d) **Incubator reject** means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(e) **Inedible** means eggs of the following descriptions: Black rots, yellow rots, white rots, mixed rots, sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(f) **Leaker** means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(g) **Loss** means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(h) **Restricted egg** means any check, dirty egg, incubator reject, inedible, leaker, or loss.

**Egg handler** means any person, excluding the ultimate consumer, who engages in any business in commerce that involves buying or selling any eggs (as a poultry producer or otherwise), or processing any egg products, or otherwise using any eggs in the preparation of human food.

**Egg product** means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion or historically have not been. In the judgment of the Secretary, considered by consumers as products of the egg food industry, and which may be exempted by the Secretary under such conditions as he may prescribe to assure that the egg ingredients are not adulterated and such products are not represented as egg products. For the purposes of this part, the following products, among others, are exempted as not being egg products: Freeze-dried products, imitation egg products, egg substitutes, dietary foods, dried no-bake custard mixes, egg nog mixes, acidic dressings, noodles, milk and egg dip, cake mixes, French toast, and sandwiches containing eggs or egg products, provided, such products are prepared from inspected egg products or eggs containing no more restricted eggs than are allowed in the official standards for U.S. Consumer Grade B shell eggs. Balut and other similar ethnic delicacies are also exempted from inspection under this part.

**Eggs of current production** means shell eggs which have moved through the usual marketing channels since the time they were laid and are not in excess of 60 days old.

**Fair Packaging and Labeling Act** means the Act so entitled, approved November 3, 1966 (80 Stat. 1296), and Acts amendatory thereof or supplementary thereto.

**Federal Food, Drug, and Cosmetic Act** means the Act so entitled, approved June 25, 1938 (52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.

**Inspection** means the application of such inspection methods and techniques as are deemed necessary by the responsible Secretary to carry out the provisions of the Egg Products Inspection Act and the regulations under this part.

**Inspection service** means the official service within the Department having the responsibility for carrying out the provisions of the Egg Products Inspection Act. Inspection service also means the activities performed, including official reporting by such official service.

**Inspector/Grader** means:

(a) Any employee or official of the United States Government authorized to inspect eggs or egg products under the authority of this part; or

(b) Any employee or official of the government of any State or local jurisdiction authorized by the Secretary to inspect eggs or egg products under the authority of this part, under an agreement entered into between the Secretary and the appropriate State or other agency.

**Interested party** means any person financially interested in a transaction involving any inspection or appeal inspection of any product, or the decision of an inspector.
Label means a display of any printed, graphic, or other method of identification upon the shipping container, if any, or upon the immediate container, including but not limited to, an individual consumer package of eggs and egg products, or accompanying such product.

Misbranded means any egg products which are not labeled and packaged in accordance with the requirements prescribed by regulations of the Administrator under this part.

National Supervisor means:
(a) The officer in charge of the inspection service; and
(b) Such other employee of the Service as may be designated by him.

Nest-run eggs means eggs which are packed as they come from the production facilities without having been washed, sized and/or candled for quality, with the exception that some checks, dirties, or other obvious undergrades may have been removed.

Official certificate means any certificate prescribed by regulations of the Administrator for issuance by an inspector or other person performing official functions under this part.

Official device means any device prescribed or authorized by the Secretary for use in applying any official mark.

Official identification means the official inspection mark or any other symbol prescribed by regulations of this part to identify the status of any article.

Official inspection mark means any symbol prescribed by the regulations of the Administrator showing that egg products were inspected in accordance with this part.

Official standards means the standards of quality, grades, and weight classes for eggs.

Office of inspection means the office of any inspector.

Pasteurize means the subjecting of each particle of egg products to heat or other treatments to destroy harmful viable microorganisms by such processes as may be prescribed by these regulations.

Person means any individual, partnership, corporation, association, or other business unit.

Pesticide chemical, Food additive, Color additive, and Raw agricultural commodity shall have the same meaning for purposes of this part as under the Federal Food, Drug, and Cosmetic Act.

Plant means any place of business where egg products are processed:
(a) Exempted plant means any plant where the Administrator has determined the facilities and operating procedures meet such standards as may be prescribed by this part, and where the eggs received or used in the manufacture of egg products contain no more restricted eggs than are allowed by the official standards of U.S. Consumer Grade B for shell eggs, and where an exemption has been granted.

(b) Official plant means any plant in which the plant facilities, methods of operation and sanitary procedures have been found suitable and adequate by the Administrator for the continuous inspection of egg products in accordance with this part and in which inspection service is carried on.

Potable water means water that has been approved by a State health authority or other agency or laboratory acceptable to the Administrator as safe for drinking and suitable for food processing.

Processing means manufacturing of egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing or drying, or packaging egg products at official plants.

Producer-packer means any producer who sorts eggs only from his own production and packs them into their various qualities.

Quality means the inherent properties of any product which determine its relative degree of excellence.

Regional Director means any employee of the Department in charge of inspection service in a designated geographical region.

Regulations means the provisions in this part.

Regulatory inspector means any employee of the U.S. Government, or State or local jurisdiction, who is authorized by the Secretary to make such inspections as required in §57.28 of these regulations.

Sampling means the act of taking samples of any product for inspection or analyses.
§ 57.22 Basis of service.

These regulations provide for inspection services pursuant to the Egg Products Inspection Act. Eggs and egg products shall be inspected in accordance
§ 57.28 Other inspections.

(a) Periodic inspections shall be made of:

(1) Business premises, facilities, inventories, operations, transport vehicles, and records of egg handlers, and the records of all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products. In the case of shell egg packers packing eggs for the ultimate consumer, such inspections shall be made a minimum of once each calendar quarter. Hatcheries are to be inspected a minimum of once each fiscal year.

(2) [Reserved]

(b) Inspections shall be made of imported eggs as required in this part.

[63 FR 69968, 69970, Dec. 17, 1998]

RELATION TO OTHER AUTHORITIES

§ 57.35 Eggs outside official plants.

(a) For eggs which have moved or are moving in interstate or foreign commerce, no State or local jurisdiction (1) may require the use of standards of quality, condition, grade, or weight classes which are in addition to or different than the official standards or (2) other than those in noncontiguous areas of the United States may require labeling to show the State or other geographical area of production or origin. This shall not preclude a State from requiring the name, address, and license number of the person processing or packaging eggs to be shown on each container.

(b) Any State or local jurisdiction may exercise jurisdiction with respect to eggs and egg products for the purpose of preventing the distribution for human food purposes of any such articles which are outside of the official plant and are in violation of this part or any of said Federal Acts or any State or local law consistent therewith.

EGGS AND EGG PRODUCTS NOT INTENDED FOR HUMAN FOOD

§ 57.45 Prohibition on eggs and egg products not intended for use as human food.

(a) No person shall buy, sell, or transport or offer to buy or sell, or offer or receive for transportation in commerce, any eggs or egg products which are not intended for use as human food, unless they are denatured or decharacterized, unless shipped under seal as authorized in §§57.504(c) and 57.720(a) and identified as required by the regulations in this part.

(b) No person shall import or export shell eggs classified as loss, inedible, or incubator rejects unless they are denatured or decharacterized and identified as required by the regulations in this part.

[63 FR 69968, 69970, Dec. 17, 1998]

REFRIGERATION OF SHELL EGGS

§ 57.50 Temperature and labeling requirements.

(a) No shell egg handler shall possess any shell eggs that are packed into containers destined for the ultimate consumer unless they are stored and transported under refrigeration at an ambient temperature of no greater than 45°F (7.2°C).

(b) No shell egg handler shall possess any shell eggs that are packed into containers destined for the ultimate consumer unless they are labeled to indicate that refrigeration is required.

(c) Any producer-packer with an annual egg production from a flock of 3,000 or fewer hens is exempt from the temperature and labeling requirements of this section.

EXEMPTIONS

§ 57.100 Specific exemptions.

The following are exempt to the extent prescribed as to the provisions for control of restricted eggs in section 8(a)(1) and (2) of the Act: Provided, That as to paragraphs (c) through (f) of this section, the exemptions do not apply to restricted eggs when prohibited by State or local law: And provided further, That the sale of “hard-cooked shell eggs” or “peeled hard-cooked shell
§ 57.105 Suspension or termination of exemptions.

(a) The Administrator may immediately suspend or terminate any exemption under §57.100(b) at any time with respect to any person, if the conditions of exemption prescribed by this section are not being met. The Administrator may modify or revoke any regulation of this part, granting exemptions whenever he determines such action appropriate to effectuate the purposes of the Act.

(b) Failure to comply with the condition of the exemptions contained in §57.100 shall subject such person to the penalties provided for in the Act and in this part.
§ 57.110 Licensed inspectors.

(a) Any person who is a Federal or State employee, or the employee of a local jurisdiction possessing proper qualifications as determined by an examination for competency and who is to perform services pursuant to this part, may be licensed by the Secretary as an inspector.

(b) Licenses issued by the Secretary are to be countersigned by the Administrator or by any other designated official of the Service.

(c) No person may be licensed to inspect any product in which he is financially interested.

§ 57.112 Suspension of license or authority; revocation.

Pending final action by the Secretary, any person authorized to countersign a license to perform inspection services may, whenever he deems such action necessary to assure that any inspection service is properly performed, suspend any license to perform inspection services issued pursuant to this part by giving notice of such suspension to the respective licensee, accompanied by a statement of the reasons therefor. Within 7 days after the receipt of the aforesaid notice and statement of reasons by the licensee, he may file an appeal in writing, with the Secretary, supported by any argument or evidence that he may wish to offer as to why his license should not be suspended or revoked. After the expiration of the aforesaid 7-day period and consideration of such argument and evidence, the Secretary will take such action as he deems appropriate with respect to such suspension or revocation. When no appeal is filed within the prescribed 7 days, the license is revoked or suspended.

§ 57.114 Surrender of license.

Upon termination of his services as an inspector or whenever his license has been suspended or revoked, the licensee shall surrender his license and other items of identification furnished by the Department immediately to the inspection service.

§ 57.116 Activities of inspectors.

Inspectors at official plants shall confine their activities to those duties necessary in the rendering of inspection service and such closely related activities as may be approved by the Administrator.

§ 57.118 Identification.

Inspectors shall have in their possession at all times while on duty, and present upon request, the means of identification furnished by the Department to such persons.

§ 57.119 Political activity.

Inspectors are forbidden during the period of their respective appointments, or licenses, to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, except as authorized by law or regulation of the Department, is prohibited. This applies to all appointees, including but not being limited to temporary and cooperative employees and employees on leave of absence with or without pay. Willful violation of this section or § 57.120 will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

§ 57.120 Financial interest of inspectors.

No inspector shall inspect any product in which he is financially interested.

§ 57.132 Access to plants.

Access shall not be refused to any representative of the Secretary to any plant, place of business, or transport vehicle subject to inspection under the provisions of this part upon presentation of proper credentials.

§ 57.134 Accessibility of product.

(a) Each product for which inspection service is required shall be so placed as to disclose fully its class, quality, quantity, and condition as the circumstances may warrant.

(b) The perimeter of each cooler room used to store shell eggs packed in
containers destined for the ultimate consumer shall be made accessible in order for the Secretary’s representatives to determine the ambient temperature under which shell eggs are stored.

RECORDS AND RELATED REQUIREMENTS FOR EGG HANDLERS AND RELATED INDUSTRIES

§ 57.200 Records and related requirements.

(a) Persons engaged in the business of transporting, shipping, or receiving any eggs in commerce, or holding such articles so received, and all egg handlers, including hatcheries, shall maintain records showing, for a period of 2 years, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, and disposition of all eggs handled by them, and shall, upon the request of an authorized representative of the Secretary, permit him, at reasonable times, to have access to and to copy all such records.

(b) Production records by categories of eggs such as graded eggs, nest-run eggs, dirties, checks, leakers, loss, inedible, etc., bills of sale, inventories, receipts, shipments, shippers, receivers, dates of shipment and receipt, carrier names, etc., as determined by the Administrator, shall be maintained by all shell egg handlers, except that, producers who ship all of their production as nest-run eggs without segregation need only to maintain records indicating the amount of shell eggs shipped, date of shipment, and the receivers’ name and address, need only to maintain records indicating the amount of eggs received, date received, and the name and address of the shipper.

(63 FR 69968, 69971, Dec. 17, 1998]

§ 57.220 Information and assistance to be furnished to inspectors.

When inspection service is performed at any plant, the plant operator shall furnish the inspector such information and assistance as may be required for the performance of inspection functions, preparing certificates, reports, and for other official duties.

ADMINISTRATIVE DETENTION

§ 57.240 Detaining product.

Whenever any eggs subject to the Act are found by any authorized representative of the Secretary upon any premises, and there is reason to believe that they are or have been processed, bought, sold, possessed, used, transported, or offered or received for sale or transportation in violation of the Act or the regulations in this part, or that they are in any other way in violation of the Act, or whenever any restricted eggs capable of use as human food are found by such a representative in the possession of any person not authorized to acquire such eggs under the regulations in this part, such articles may be detained by such representative for a period not to exceed 20 days, as more fully provided in section 19 of the Act. A detention tag or other similar device shall be used to identify detained product, and the custodian or owner shall be given a written notice of such detention. Only authorized representatives of the Secretary shall affix or remove detention identification. The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of the Act, the regulations in this part, or other laws.

(63 FR 69968, 69971, Dec. 17, 1998]

APPEAL OF AN INSPECTION OR DECISION

§ 57.300 Who may request an appeal inspection or review of an inspector’s decision.

Any appeal inspection may be requested by any interested party who is dissatisfied with the determination by an inspector of the class, quantity, or condition of any product, and a review may be requested by the operator of an official plant with respect to an inspector’s decision or on any other matter related to inspection in the official plant.

§ 57.310 Where to file an appeal.

Any interested party who is not satisfied with the determination of the class, quantity, or condition of product which was inspected other than in an
§ 57.320  How to file an appeal.

The request for an appeal inspection or review of an inspector’s decision may be made orally or in writing. If made orally, written confirmation may be required. The applicant shall clearly state the identity of the product, the decision which is questioned, and the reason(s) for requesting the appeal service. If such appeal request is based on the results stated on an official certificate, the original and all copies of the certificate available at the appeal inspection site shall be provided to the inspector assigned to make the appeal inspection.

§ 57.330  When an application for an appeal grading or inspection may be refused.

When it appears to the official with whom an appeal request is filed that the reasons given in the request are frivolous or not substantial, or that the condition of the product has undergone a material change since the original grading or inspection, 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 inspection may be refused. In such case, the applicant shall be promptly notified of the reason(s) for such refusal.

§ 57.340  Who shall perform the appeal.

The assignment of the inspector(s) who will make the appeal inspection under §57.310 shall be made by the Regional Director or the Chief of the Grading Branch, Poultry Division, Agricultural Marketing Service.

§ 57.350  Procedures for selecting appeal samples.

(a) Prohibition on movement of product. Products shall not have been moved from the place where the inspection being appealed was performed and must have been maintained under adequate refrigeration when applicable.

(b) Laboratory analyses. The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. When the original sample containers cannot be located, the appeal sample shall consist of product taken at random from double the number of original sample containers.

(c) Condition inspection. The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. A condition appeal cannot be made unless all originally sampled containers are available.

§ 57.360  Appeal inspection certificates.

Immediately after an appeal inspection is completed, an appeal certificate shall be issued to show that the original inspection was sustained or was not sustained. Such certificate shall supersede 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 inspector assigns a different class to the lot or determines that a net weight shortage exists, the lot shall be retained pending correction of the labeling or approval of the product disposition by the National Supervisor.

§ 57.370  Cost of appeals.

(a) There shall be no cost to the appellant when the appeal inspection discloses a material error was made in the original determination.

(b) The costs of an appeal shall be borne by the appellant at an hourly rate of $27.36, including travel time and expenses if the appeal was frivolous, including but not being limited to the following: The appeal inspection discloses that no material error was made in the original inspection, the condition of the product has undergone a material change since the original inspection, the original lot has changed in some manner, or the Act or these
regulations have not been complied with.

IDENTIFYING AND MARKING PRODUCT

§ 57.410 Shell eggs required to be labeled.

All shell eggs packed into containers destined for the ultimate consumer shall be labeled to indicate that refrigeration is required, e.g., "Keep Refrigerated," or words of similar meaning.

[63 FR 69968, 69971, Dec. 17, 1998]

RETENTION

§ 57.426 Retention.

Retention tags or other devices and methods as may be approved by the Administrator shall be used for the identification and control of products which are not in compliance with the regulations or are held for further examination, and any equipment, utensils, rooms or compartments which are found to be unclean or otherwise in violation of the regulations. No product, equipment, utensil, room, or compartment shall be released for use until it has been made acceptable. Such identification shall not be removed by anyone other than an inspector.


INSPECTION AND DISPOSITION OF RESTRICTED EGGS

§ 57.700 Prohibition on disposition of restricted eggs.

(a) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation in any business in commerce any restricted eggs, except as authorized in §§ 57.100 and 57.720.

(b) No egg handler shall possess any restricted eggs, except as authorized in §§ 57.100 and 57.720.

(c) No egg handler shall use any restricted eggs in the preparation of human food, except as provided in §§ 57.100 and 57.720.


§ 57.720 Disposition of restricted eggs.

(a) Eggs classified as checks, dirties, incubator rejects, inedibles, leakers, or loss shall be disposed of by one of the following methods at point and time of segregation:

(1) Checks and dirties shall be labeled in accordance with § 57.800 and shipped directly or indirectly to an official egg products plant for segregation and processing. Inedible and loss eggs shall not be intermingled in the same container with checks and dirties.

(2) By destruction in a manner approved by the Administrator, such as
§ 57.760 Inspection of egg handlers.

Duly authorized representatives of the Secretary shall make such periodic inspections of egg handlers, their transport vehicles, and their records as the Secretary may require to ascertain if any of the provisions of the Act or this part applicable to such egg handlers have been violated. Such representatives shall be afforded access to any place of business, plant, or transport vehicle subject to inspection under the provisions of the Act.

§ 57.800 Identification of restricted eggs.

The shipping container of restricted eggs shall be determined to be satisfactorily identified if such container bears the packer’s name and address, the quality of the eggs in the container (e.g., dirties, checks, inedibles, or loss), or the statement “Restricted Eggs—For Processing Only In Official USDA Egg Products Plant,” for checks or dirties, or “Restricted Eggs—Not To Be Used As Human Food,” for inedibles, loss, and incubator rejects, or “Restricted Eggs—To Be Regraded” for graded eggs which contain more restricted eggs than are allowed in the official standards for U.S. Consumer Grade B shell eggs. The size of the letters of the identification wording shall be as required in §57.860. When eggs are packed in immediate containers, e.g., cartons, sleeve packs, overwrapped 2½- or 3-dozen packs, etc., for sale to household consumers under the exemptions provided for in section 57.100 (c), the shipping container of restricted eggs shall be determined to be satisfactorily identified if such container bears the packer’s name and address, the quality of the eggs in the container (e.g., dirties, checks, inedibles, or loss), or the statement “Restricted Eggs—For Processing Only In Official USDA Egg Products Plant,” for checks or dirties, or “Restricted Eggs—Not To Be Used As Human Food,” for inedibles, loss, and incubator rejects, or “Restricted Eggs—To Be Regraded” for graded eggs which contain more restricted eggs than are allowed in the official standards for U.S. Consumer Grade B shell eggs. The size of the letters of the identification wording shall be as required in §57.860. When eggs are packed in immediate containers, e.g., cartons, sleeve packs, overwrapped 2½- or 3-dozen packs, etc., for sale to household consumers under the exemptions provided for in section 57.100 (c),
or (f), they shall be deemed to be satisfactorily identified in accordance with the requirements of this part if such immediate containers bear the packer’s name and address and the quality of the eggs. Alternatively, a point of sale sign may be displayed showing the above information.

§ 57.801 Nest run or washed ungraded eggs.

Nest run or washed ungraded eggs are exempt from the labeling provisions in § 57.800. However, when such eggs are packed and sold to consumers, they may not exceed the tolerance for restricted eggs permitted in the official standards for U.S. Consumer Grade B shell eggs.

§ 57.805 Importation of restricted eggs or eggs containing more restricted eggs than permitted in the official standards for U.S. Consumer Grade B.

(a) No containers of restricted egg(s) other than checks or dirties shall be imported into the United States. The shipping containers of such eggs shall be identified with the name, address, and country of origin of the exporter, and the date of pack and quality of the eggs (e.g., checks, or dirties) preceded by the word “Imported” or the statement “Imported Restricted Eggs—For Processing Only In An Official USDA Plant,” or “Restricted Eggs—Not To Be Used As Human Food.” Such identification shall be legible and conspicuous. Alternatively, for properly sealed and certified shipments of shell eggs imported for breaking at an official egg products plant, the shipping containers need not be labeled, provided that the shipment is segregated and controlled upon arrival at the destination breaking plant.

(b) Eggs which are imported for use as human food and upon entry are found to contain more restricted eggs than permitted in the official standards for U.S. Consumer Grade B, shall be refused entry and returned to the importing country or be conspicuously and legibly identified as “Imported Restricted Eggs” and be sent directly under official seal: (1) To a place where they may be regraded to comply with the official U.S. standards for consumer grades; (2) to an official USDA egg products processing plant; or (3) to be used as other than human food.

§ 57.905 Foreign inspection certification required.

(a) [Reserved]

(b) Except as otherwise provided in § 57.900, each consignment of shell eggs shall be accompanied by a foreign inspection certificate, which, unless otherwise approved by the Administrator contains the following information:

(1) Country exporting product;

(2) City and date where issued;

(3) Quality or description of eggs;

(4) Number of cases and total quantity;

(5) Identification marks on containers;
§ 57.920 Importer to make application for inspection of imported eggs.

Each person importing any eggs shall make application for inspection upon PY Form 222-Import Request, to the Chief, Poultry Grading Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, or to the Poultry Division, Poultry Grading Branch office at the port where the product is to be offered for importation. Application shall be made as long as possible prior to the arrival of each consignment of product, except in the case of product exempted from inspection by §57.960. Each application shall state the approximate date of product arrival in the United States, the name of the ship or other carrier, the country from which the product was shipped, the destination, the quantity and class of product, whether fresh, frozen, or dried, and the point of first arrival in the United States.

§ 57.925 Inspection of imported eggs.

(a) Except as provided in §57.960, eggs offered for importation from any foreign country shall be subject to inspection in accordance with established inspection procedures, including the examination of the labeling information on the containers, by an inspector before the product shall be admitted into the United States. Importers will be advised of the point where inspection will be made, and in case of small shipments (less than carload lots), the importer may be required to move the product to the location of the nearest inspector.

(b) Inspectors may take samples, without cost to the United States, of any product offered for importation which is subject to analysis or quality determination, except that samples shall not be taken of any products offered for importation under §57.960, unless there is reason for suspecting the presence therein of a substance in violation of that section.

(c) Means of conveyance or packages in which any product is moved in accordance with this part, prior to inspection, from the port or wharf where first unloaded in the United States, shall be sealed with special import seals of the U.S. Department of Agriculture or otherwise identified as provided herein, unless already sealed with customs or consular seals in accordance with the customs regulations. Such special seals shall be affixed by an inspector or, if there is no inspector at such port, by a customs officer. In
lieu of sealing packages, the carrier or importer may furnish and attach to each package of product a warning notice on bright yellow paper, not less than 5 x 8 inches in size, containing the following legend in black type of a conspicuous size:

(Name of Truck Line or Carrier)

NOTICE

This package of ____________________________ must be delivered intact to an inspector of the Poultry Division, U.S. Department of Agriculture.

WARNING

Failure to comply with these instructions will result in penalty action being taken against the holder of the customs entry bond.

If the product is found to be acceptable upon inspection, the product may be released to the consignee, or his agent, and this warning notice defaced.

(d) No person shall affix, break, alter, deface, mutilate, remove, or destroy any special import seal of the U.S. Department of Agriculture, except customs officers or inspectors, or as provided in paragraph (f) of this section.

(e) No product shall be removed from any means of conveyance or package sealed with a special import seal of the U.S. Department of Agriculture, except under the supervision of an inspector or a customs officer, or as provided in paragraph (f) of this section.

(f) In case of a wreck or similar extraordinary emergency, the special import seal of the U.S. Department of Agriculture on a car, truck, or other means of conveyance may be broken by the carrier and, if necessary, the articles may be reloaded into another means of conveyance for transportation to destination. In all such cases, the carrier shall immediately report the facts by telegraph to the Chief of the Grading Branch.

(g) The consignee or his agent shall provide such facilities and assistance as the inspector may require for the inspection and handling and marking of products offered for importation.

[63 FR 69968, 69971, Dec. 17, 1998]
§ 57.950 Labeling of containers of eggs for importation.

(a) Immediate containers of product offered for importation shall bear a label, printed in English, showing:

(1) The name of product;
(2) The name of the country of origin of the product, and for consumer packaged products, preceded by the words “Product of,” which statement shall appear immediately under the name of the product;
(3) The quality or description of shell eggs, including date of pack;
(4) For shell eggs, the words, “Keep Refrigerated,” or words of similar meaning;
(5) [Reserved]
(6) The name and place of business of manufacturer, packer, or distributor, qualified by a phrase which reveals the connection that such person has with the product;
(7) An accurate statement of the quantity;

(b) For properly sealed and certified shipments of shell eggs imported for breaking at an official egg products plant, the immediate containers need not be labeled, provided that the shipment is segregated and controlled upon arrival at the destination breaking plant.

(d) In the case of products which are not in compliance solely because of misbranding, such products may be brought into compliance with the regulations only under the supervision of an authorized representative of the Administrator.

[63 FR 69968, 69971, Dec. 17, 1998]

§ 57.955 Labeling of shipping containers of eggs for importation.

(a) Shipping containers of foreign product which are shipped to the United States shall bear in a prominent and legible manner:

(1) The common or usual name of the product;
(2) The name of the country of origin;
(3)-4 [Reserved]
(5) The quality or description of the eggs, except as required in §57.905;
(6) The words “Keep refrigerated” or words of similar meaning.

(b) Labeling on shipping containers examined at the time of inspection in the United States, if found to be false or misleading, shall be cause for the product to be refused entry.

(c) For properly sealed and certified shipments of shell eggs imported for breaking at an official egg products plant, the shipping containers need not be labeled, provided that the shipment is segregated and controlled upon arrival at the destination breaking plant.

§ 57.960 Small importations for consignee’s personal use, display, or laboratory analysis.

Any eggs which are offered for importation, exclusively for the consignee’s personal use, display, or laboratory analysis, and not for sale or distribution; which is sound, healthful, wholesome, and fit for human food; and which is not adulterated and does not contain any substance not permitted by the Act or regulations, may be admitted into the United States without a foreign inspection certificate. Such product is not required to be inspected upon arrival in the United States and may be shipped to the consignee without further restriction under this part.

Provided, That the Department may, with respect to any specific importation, require that the consignee certify that such product is exclusively for the consignee’s personal use, display, or laboratory analysis and not for sale or distribution. The amount of such product imported shall not exceed 30-dozen shell eggs, unless otherwise authorized by the Administrator.

[63 FR 69968, 69971, Dec. 17, 1998]

§ 57.965 Returned U.S. inspected and marked products; not importations.

Products which have been inspected by the United States Department of Agriculture and so marked, and which are returned from foreign countries are not importations within the meaning of this part. Such returned shipments shall be reported to the Administrator by letter.

§ 57.970 Charges for storage, cartage, and labor with respect to products imported contrary to the Act.

All charges for storage, cartage, and labor with respect to any product
which is imported contrary to this part shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against such product and any other product thereafter imported under the Act by or for such owner or consignee.

Subpart B—Rules of Practice Governing Proceedings Under the Egg Products Inspection Act

SOURCE: 64 FR 40738, July 28, 1999, unless otherwise noted.

SCOPE AND APPLICABILITY OF RULES OF PRACTICE

§ 57.1000 Administrative proceedings.

(a) The Uniform Rules of Practice for the Department of Agriculture promulgated in subpart H of part 1, subtitle A, title 7, Code of Federal Regulations, are the Rules of Practice applicable to adjudicating administrative proceedings under section 12(c) of the Egg Products Inspection Act (21 U.S.C. 1041).

(b) In addition to the proceedings set forth in paragraph (a) of this section, the Administrator, in his discretion, at any time prior to the issuance of a complaint seeking a civil penalty under the Act may enter into a stipulation with any person, in accordance with the following prescribed conditions:

1. The Administrator gives notice of an apparent violation of the Act or the regulations issued thereunder by such person and affords such person an opportunity for a hearing regarding the matter as provided by the Act;

2. Such person expressly waives hearing and agrees to a specified order including an agreement to pay a specified civil penalty within a designated time; and

3. The Administrator agrees to accept the specified civil penalty in settlement of the particular matter involved if it is paid within the designated time.

4. If the specified penalty is not paid within the time designated in such stipulation, the amount of the stipulated penalty shall not be relevant in any respect to the penalty that may be assessed after the institution of a formal administrative proceeding pursuant to the Uniform Rules of Practice, Subpart H, Part 1, Title 7, Code of Federal Regulations.

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

DEFINITIONS

Sec.
58.1 Meaning of words.
58.2 Designation of official certificates, memoranda, marks, identifications, and devices for purpose of the Agricultural Marketing Act.

ADMINISTRATION

58.3 Authority.

INSPECTION OR GRADING SERVICE

58.4 Basis of service.
58.5 Where service is offered.
58.6 Supervision of service.
58.7 Who may obtain service.
58.8 How to make application.
58.9 Form of application.
58.10 Filing of application.
58.11 Approval of application.
58.12 When application may be rejected.
58.13 When application may be withdrawn.
58.14 Authority of applicant.
58.15 Accessibility and condition of product.
58.16 Disposition of samples.
58.17 Order of service.
58.18 Inspection or grading certificates, memoranda, or reports.
58.19 Issuance of inspection or grading certificates.
58.20 Disposition of inspection or grading certificates or reports.
58.21 Advance information.

APPEAL INSPECTION OR GRADING AND REINSTATEMENT OF REGRADING

58.22 When appeal inspection or grading may be requested.
58.23 How to obtain appeal inspection or grading.
58.24 Record of filing time.
58.25 When an application for appeal inspection or grading may be refused.

1Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act.
Subpart B—General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

DEFINITIONS
58.100 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
58.101 Meaning of words.

PURPOSE
58.122 Approved plants under USDA inspection and grading service.

APPROVED PLANTS
58.123 Survey and approval.
58.124 Denial or suspension of plant approval.

PREMISES, BUILDINGS, FACILITIES, EQUIPMENT AND UTENSILS
58.125 Premises.
58.126 Buildings.
58.127 Facilities.
58.128 Equipment and utensils.

PERSONNEL, CLEANLINESS AND HEALTH
58.129 Cleanliness.
58.130 Health.

PROTECTION AND TRANSPORT OF RAW MILK AND CREAM
58.131 Equipment and facilities.

QUALITY SPECIFICATIONS FOR RAW MILK
58.132 Basis for classification.
58.133 Methods for quality and wholesomeness determination.
58.134 Sediment content.
58.135 Bacterial estimate.
58.136 Rejected milk.
58.137 Excluded milk.
58.138 Quality testing of milk from new producers.
58.139 Record of tests.
58.140 Field service.
58.141 Alternate quality control program.

OPERATIONS AND OPERATING PROCEDURES
58.142 Product quality and stability.
58.143 Raw product storage.
58.144 Pasteurization or ultra-pasteurization.
58.145 Composition and wholesomeness.
58.146 Cleaning and sanitizing treatment.
58.147 Insect and rodent control program.
58.148 Plant records.
58.149 Alternate quality control programs for dairy products.

PACKAGING AND GENERAL IDENTIFICATION
58.150 Containers.
58.151 Packaging and repackaging.
58.152 General identification.
Agricultural Marketing Service, USDA

Storage of Finished Product
58.153 Dry storage.
58.154 Refrigerated storage.

Inspection, Grading and Official Identification
58.155 Grading.
58.156 Inspection.
58.157 Inspection or grading certificates.
58.158 Official identification.

Explanation of Terms
58.159 Terms.

Supplemental Specifications for Plants Manufacturing, Processing and Packaging Nonfat Dry Milk, Instant Nonfat Dry Milk, Dry Whole Milk, and Dry Buttermilk

Definitions
58.205 Meaning of words.

Rooms and Compartments
58.210 Dry storage of product.
58.211 Packaging room for bulk products.
58.212 Hopper or dump room.
58.213 Repackaging room.

Equipment and Utensils
58.214 General construction, repair and installation.
58.215 Pre-heaters.
58.216 Hotwells.
58.217 Evaporators and/or vacuum pans.
58.218 Surge tanks.
58.219 High pressure pumps and lines.
58.220 Drying systems.
58.221 Collectors and conveyors.
58.222 Dry dairy product cooling equipment.
58.223 Special treatment equipment.
58.224 Sifters.
58.225 Clothing and shoe covers.
58.226 Portable and stationary bulk bins.
58.227 Sampling device.
58.228 Dump hoppers, screens, mixers and conveyors.
58.229 Filler and packaging equipment.
58.230 Heavy duty vacuum cleaners.

Quality Specifications for Raw Material
58.231 General.
58.232 Milk.
58.233 Skim milk.
58.234 Buttermilk.
58.235 Modified dry milk products.

Operations and Operating Procedures
58.236 Pasteurization and heat treatment.
58.237 Condensed surge supply.
58.238 Condensed storage tanks.
58.239 Drying.
58.240 Cooling dry products.
58.241 Packaging, repackaging and storage.
58.242 Product adulteration.
58.243 Checking quality.
58.244 Number of samples.
58.245 Method of official sample analysis.
58.246 Cleaning of dryers, collectors, conveyors, ducts, sifters and storage bins.
58.247 Insect and rodent control program.

Requirements for Finished Products Bearing USDA Official Identification
58.248 Nonfat dry milk.
58.249 Instant nonfat dry milk.
58.250 Dry whole milk.
58.251 Dry buttermilk and dry buttermilk product.

Supplemental Specifications for Plants Manufacturing, Processing and Packaging Butter and Related Products

Definitions
58.305 Meaning of words.

Rooms and Compartments
58.311 Coolers and freezers.
58.312 Churn rooms.
58.313 Print and bulk packaging rooms.

Equipment and Utensils
58.314 General construction, repair and installation.
58.315 Continuous churns.
58.316 Conventional churns.
58.317 Bulk butter trucks, boats, texturizers, and packers.
58.318 Butter, frozen or plastic cream melting machines.
58.319 Printing equipment.
58.320 Brine tanks.
58.321 Cream storage tanks.

Quality Specifications for Raw Material
58.322 Cream.
58.323 [Reserved]
58.324 Butteroil.
58.325 Anhydrous milkfat.
58.326 Plastic cream.
58.327 Frozen cream.
58.328 Salt.
58.329 Color.
58.330 Butter starter cultures.
58.331 Starter distillate.

Operations and Operating Procedures
58.332 Segregation of raw material.
58.334 Pasteurization.
58.335 Quality control tests.
58.336 Frequency of sampling for quality control of cream, butter and related products.
58.337 Official test methods.
58.338 Composition and wholesomeness.
58.339 Containers.
58.340 Printing and packaging.
58.341 Repackaging.
58.342 General identification.
58.343 Storage of finished product in coolers.
58.344 Storage of finished product in freezer.

Requirements for Finished Products Bearing USDA Official Identification

58.354 Butter.
58.355 Whipped butter.
58.356 Butteroil or anhydrous milkfat.
58.358 Plastic cream.
58.359 Frozen cream.

Supplemental Specifications for Plants Manufacturing and Packaging Cheese

Definitions

58.405 Meaning of words.

Rooms and Compartments

58.406 Starter facility.
58.407 Make room.
58.408 Brine room.
58.409 Drying room.
58.410 Paraffining room.
58.411 Rindless cheese wrapping area.
58.412 Coolers or curing rooms.
58.413 Cutting and packaging rooms.

Equipment and Utensils

58.414 General construction, repair and installation.
58.415 Starter vats.
58.416 Cheese vats, tanks and drain tables.
58.417 Mechanical agitators.
58.418 Automatic cheese making equipment.
58.419 Curd mill and miscellaneous equipment.
58.420 Hoops, forms and followers.
58.421 Press.
58.422 Brine tank.
58.423 Cheese vacuumizing chamber.
58.424 Monorail.
58.425 Conveyor for moving and draining block or barrel cheese.
58.426 Rindless cheese wrapping equipment.
58.427 Paraffin tanks.
58.428 Specialty equipment.
58.429 Washing machine.

Quality Specifications for Raw Material

58.430 Milk.
58.431 Hydrogen peroxide.
58.432 Catalase.
58.433 Cheese cultures.
58.434 Calcium chloride.
58.435 Color.
58.436 Rennet, pepsin, or other milk clotting enzymes and flavor enzymes.
58.437 Salt.

Operations and Operating Procedures

58.438 Cheese from pasteurized milk.
58.439 Cheese from unpasteurized milk.
58.440 Make schedule.
58.441 Records.
58.442 Laboratory and quality control tests.

58.443 Whey handling.
58.444 Packaging and repackaging.
58.445 General identification.

Supplemental Specifications for Plants Manufacturing and Packaging Cottage Cheese

Definitions

58.505 Meaning of words.

Rooms and Compartments

58.510 Rooms and compartments.

Equipment and Utensils

58.511 General construction, repair and installation.
58.512 Cheese vats or tanks.
58.513 Agitators.
58.514 Container fillers.
58.515 Mixers.
58.516 Starter vats.

Quality Specifications for Raw Material

58.517 General.
58.518 Milk.
58.519 Dairy products.
58.520 Nondairy ingredients.

Operations and Operating Procedures

58.521 Pasteurization and product flow.
58.522 Reconstituting nonfat dry milk.
58.523 Laboratory and quality control tests.
58.524 Packaging and general identification.
58.525 Storage of finished product.

Requirements for Cottage Cheese Bearing USDA Official Identification

58.526 Official identification.
58.527 Physical requirements.
58.528 Microbiological requirements.
58.529 Chemical requirements.
58.530 Keeping quality requirements.

Supplemental Specifications for Plants Manufacturing, Processing, and Packaging Frozen Desserts

Definitions

58.605 Meaning of words.

Rooms and Compartments

58.619 Mix processing room.
58.620 Freezing and packaging rooms.
58.621 Freezing tunnels.
58.622 Hardening and storage rooms.

Equipment and Utensils

58.623 Homogenizer.
58.624 Freezers.
58.625 Fruit or syrup feeders.
Agricultural Marketing Service, USDA

Pt. 58

58.626 Packaging equipment.

QUALITY SPECIFICATIONS FOR RAW MATERIAL

58.627 Milk and dairy products.
58.628 Sweetening agents.
58.629 Flavoring agents.
58.630 Stabilizers.
58.631 Emulsifiers.
58.632 Acid.
58.633 Color.

OPERATIONS AND OPERATING PROCEDURES

58.634 Assembling and combining mixing ingredients.
58.635 Pasteurization of the mix.
58.636 Homogenization.
58.637 Cooling the mix.
58.638 Freezing the mix.
58.639 Addition of flavor.
58.640 Packaging.
58.641 Hardening and storage.
58.642 Quality control tests.
58.643 Frequency of sampling.
58.644 Test methods.
58.645 General identification.

REQUIREMENTS FOR FINISHED PRODUCTS

BEARING USDA OFFICIAL IDENTIFICATION

58.646 Official identification.
58.647 Composition requirements for ice cream.
58.648 Microbiological requirements for ice cream.
58.649 Physical requirements for ice cream.
58.650 Requirements for frozen custard.
58.651 Requirements for ice milk.
58.652 Composition requirements for sherbet.
58.653 Microbiological requirements for sherbet.
58.654 Physical requirements for sherbet.

SUPPLEMENTAL SPECIFICATIONS FOR PLANTS MANUFACTURING, PROCESSING AND PACKAGING PASTEURIZED PROCESS CHEESE AND RELATED PRODUCTS

DEFINITIONS

58.705 Meaning of words.

EQUIPMENT AND UTENSILS

58.706 General construction, repair and installation.
58.707 Conveyors.
58.708 Grinders or shredders.
58.709 Cookers.
58.710 Fillers.

QUALITY SPECIFICATIONS FOR RAW MATERIAL

58.711 Cheddar, colby, washed or soaked curd, granular or stirred curd cheese.
58.712 Swiss.
58.713 Gruyere.
58.714 Cream cheese, Neufchatel cheese.
58.715 Cream, plastic cream and anhydrous milkfat.

58.716 Nonfat dry milk.
58.717 Whey.
58.718 Flavor ingredients.
58.719 Coloring.
58.720 Acidifying agents.
58.721 Salt.
58.722 Emulsifying agents.

OPERATIONS AND OPERATING PROCEDURES

58.723 Basis for selecting cheese for processing.
58.724 Blending.
58.725 Trimming and cleaning.
58.726 Cutting and grinding.
58.727 Adding optional ingredients.
58.728 Cooking the batch.
58.729 Forming containers.
58.730 Filling containers.
58.731 Closing and sealing containers.
58.732 Cooling the packaged cheese.
58.733 Quality control tests.

REQUIREMENTS FOR PROCESSED CHEESE PRODUCTS BEARING USDA OFFICIAL IDENTIFICATION

58.734 Official identification.
58.735 Quality specifications for raw materials.

QUALITY SPECIFICATIONS FOR FINISHED PRODUCTS

58.736 Pasteurized process cheese.
58.737 Pasteurized process cheese food.
58.738 Pasteurized process cheese spread and related products.

SUPPLEMENTAL SPECIFICATIONS FOR PLANTS MANUFACTURING, PROCESSING, AND PACKAGING WHEY, WHEY PRODUCTS AND LACTOSE

DEFINITIONS

58.805 Meaning of words.

ROOMS AND COMPARTMENTS

58.806 General.

EQUIPMENT AND UTENSILS

58.807 General construction, repair and installation.

QUALITY SPECIFICATIONS FOR RAW MATERIALS

58.808 Whey.

OPERATIONS AND OPERATING PROCEDURES

58.809 Pasteurization.
58.810 Temperature requirements.
58.811 General.
58.812 Methods of official sample analysis.

REQUIREMENTS FOR FINISHED PRODUCTS BEARING USDA OFFICIAL IDENTIFICATION

58.813 Dry whey.
§ 58.1

Supplemental Specifications for Plants Manufacturing, Processing and Packaging Evaporated and Condensed Milk or Ultra-Pasteurized Products

Definitions

§ 58.905 Meaning of words.

For the purpose of the regulations in this subpart, words in the singular form shall be deemed to import the plural and vice versa, as the case may demand. Unless the context otherwise requires, the following terms shall have the following meaning:


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

Agricultural Marketing Service or AMS means the Agricultural Marketing Service of the Department.

Applicant means any interested party who has applied for inspection or grading service.

Approved laboratory means a laboratory in which the facilities and equipment used for official testing have been adequate to perform the necessary official tests in accordance with this part.

Approved plant means one or more adjacent buildings, or parts thereof, comprising a single plant at one location in which the facilities and methods of operation therein have been surveyed and approved by the Administrator as suitable and adequate for inspection or grading service in accordance with this part.

Note: Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products


Definitions

§ 58.1 Meaning of words.

For the purpose of the regulations in this subpart, words in the singular form shall be deemed to import the plural and vice versa, as the case may demand. Unless the context otherwise requires, the following terms shall have the following meaning:


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

Agricultural Marketing Service or AMS means the Agricultural Marketing Service of the Department.

Applicant means any interested party who has applied for inspection or grading service.

Approved laboratory means a laboratory in which the facilities and equipment used for official testing have been adequate to perform the necessary official tests in accordance with this part.

Approved plant means one or more adjacent buildings, or parts thereof, comprising a single plant at one location in which the facilities and methods of operation therein have been surveyed and approved by the Administrator as suitable and adequate for inspection or grading service in accordance with this part.

Note: Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.
Area Supervisor means any employee of the Branch in charge of dairy inspection or grading service in a designated geographical area.

Branch means the Dairy Inspection Branch of the Poultry and Dairy Quality Division.

Chief means the Chief of the Branch, or any officer or employee of the Branch to whom authority has been heretofore delegated, or to whom authority may hereafter be delegated, to act in his stead.

Class means any subdivision of a product based on essential physical characteristics that differentiate between major groups of the same kind or method of processing.

Condition of container means the degree of acceptability of the container with respect to freedom from defects which affect its serviceability, including appearance as well as usability, of the container for its intended purpose.

Condition of product or condition is an expression of the extent to which a product is free from defects which affect its usability, including but not limited to, the state of preservation, cleanliness, soundness, wholesomeness, or fitness for human food.

Continuous resident service or resident service is inspection or grading service performed at a dairy manufacturing plant or grading station by an inspector or grader assigned to the plant or station on a continuous, year-round, resident basis.

Department or USDA means the U.S. Department of Agriculture.

Director means the Director of the Poultry and Dairy Quality Division, or any other officer or employee of the Division to whom authority has heretofore been delegated or to whom authority may hereafter be delegated, to act in his stead.

Division means the Poultry and Dairy Quality Division of the Agricultural Marketing Service.

Inspection or grading service or service means in accordance with this part, the act of (a) drawing samples of any product; (b) determining the class, grade, quality, composition, size, quantity, or condition of any product by examining each unit or representative samples; (c) determining condition of product containers; (d) identifying any product or packaging material by means of official identification; (e) regrading or appeal grading of a previously graded product; (f) inspecting dairy plant facilities, equipment, and operations; such as, processing, manufacturing, packaging, repackaging, and quality control; (g) supervision of packaging inspected or graded product; (h) reinspection or appeal inspection; and (i) issuing an inspection or grading certificate or sampling, inspection, or other report related to any of the foregoing.

Inspector or grader means any Federal or State employee to whom a license has been issued by the Administrator to perform one or more types of inspection or grading services.

Inspection or grading office means the office of any inspector or grader.

Interested party means any person financially interested in a transaction involving any inspection or grading service.

Licensed plant employee means an employee of an approved plant to whom a license is issued by the Administrator to supervise packaging of officially inspected or graded product, perform laboratory tests, or perform other duties as assigned by the Administrator. A licensed plant employee is not authorized to issue any inspection or grading certificate.

Product means butter, cheese (whether natural or processed), milk, cream, milk products (whether dried, frozen, evaporated, stabilized, or condensed), ice cream, dry whey, dry buttermilk, and any other food product, which is prepared or manufactured in whole or in part from any of the aforesaid products, as the Administrator may hereafter designate.

Person means any individual, partnership, association, business, trust, corporation, or any organized group of persons, whether incorporated or not.

Plant survey means an appraisal of the plant to determine extent to which facilities, equipment, method of operation, and raw material being received are in accordance with the provisions of this part. The survey shall be used to determine suitability of the plant for inspection or grading service.
§ 58.2 Designation of official certificates, memoranda, marks, identifications, and devices for purpose of the Agricultural Marketing Act.

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended by Pub. L. 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said Act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

(a) Official certificate means any form of certification, either written or printed (including that prescribed in §58.18) used under the regulations in this subpart to certify with respect to the inspection of dairy processing plants and the inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products and packaging material with applicable specifications).

(b) Official memorandum means any initial record of findings made by an authorized person in the process of inspecting, grading, determining compliance, or sampling pursuant to the regulations in this subpart, any processing or plant-operation report made by an authorized person in connection with inspecting, grading, determining compliance, or sampling under the regulations in this subpart, and any report made by an authorized person of services performed pursuant to the regulations in this subpart.

(c) Official identification or other official marks means any form of identification or mark (including, but not limited to, those in §§58.49 through 58.51) approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product certifying the inspection, class, grade, quality, size, quantity, or condition of the products (including the compliance of products with applicable specifications) or to maintain the identity of the product for which service is provided under the regulations in this subpart.

(d) Official device means a stamping applicance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Administrator for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

ADMINISTRATION

§ 58.3 Authority.

The Administrator shall perform such duties as may be required in the enforcement and administration of the provisions of the Act and this part.

INSPECTION OR GRADING SERVICE

§ 58.4 Basis of service.

Inspection or grading service shall be performed in accordance with the provisions of this part, the instructions and procedures issued or approved by the Administrator, U.S. standards for grades, Federal specifications, and specifications as defined in a specific
§ 58.12 When application may be rejected.

An application for inspection or grading service may be rejected by the Administrator (a) when the applicant fails to meet the requirements of the regulations in this subpart prescribing the conditions under which the service is made available; (b) when the product is owned by, or located on the premises of, a person currently denied the benefits of the Act; (c) when an individual holding office or a responsible position with or having a substantial financial interest or share with the applicant is currently denied the benefits of the Act or was responsible in whole or in part for the current denial of the benefits of the Act to any person; (d) when the application is an attempt on the part of a person currently denied the benefits of the Act to obtain inspection or grading service; (e) when the product was produced from unwholesome raw material or was produced under insanitary or otherwise unsatisfactory conditions; (f) when the product is of illegal composition or is lacking satisfactory keeping quality; (g) when the product has been produced in a plant which has not been surveyed and approved for inspection.
§ 58.13 When application may be withdrawn.

An application for inspection or grading service may be withdrawn by the applicant at any time before the service is performed upon payment, by the applicant, of all expenses incurred by AMS in connection with such application.

§ 58.14 Authority of applicant.

Proof of the authority of any person applying for any inspection or grading service may be required in the discretion of the Administrator.

§ 58.15 Accessibility and condition of product.

Each lot of product for which inspection or grading service is requested shall be so conditioned and placed as to permit selection of representative samples and proper determination of the class, grade, quality, quantity, or condition of such product. In addition, if sample packages are furnished by the applicant, such samples shall be representative of the lot to be inspected or graded and additional samples shall be made available for verification. The room or area where the service is to be performed shall be clean and sanitary, free from foreign odors, and shall be provided with adequate lighting, ventilation, and temperature control.

§ 58.16 Disposition of samples.

Any sample of product used for inspection or grading may be returned to the applicant at his request and at his expense if such request was made at the time of the application for the service. In the event the aforesaid request was not made at the time of application for the service, the sample of product may be destroyed, disposed of to a charitable organization, or disposed of by any other method prescribed by the Administrator.

§ 58.17 Order of service.

Inspection or grading service shall be performed, insofar as practicable and subject to the availability of qualified inspectors or graders, in the order in which applications are made except that precedence may be given to any application for an appeal inspection or grading.

§ 58.18 Inspection or grading certificates, memoranda, or reports.

Inspection or grading certificates and sampling, plant survey, and other memoranda or reports shall be issued on forms approved by the Administrator.

§ 58.19 Issuance of inspection or grading certificates.

An inspection or grading certificate shall be issued to cover a product inspected or graded in accordance with Instructions issued by the Administrator and shall be signed by an inspector or grader. This does not preclude an inspector or grader from granting a power of attorney to another person to sign in his stead, if such grant of power of attorney has been approved by the Administrator: Provided, That in all cases any such certificate shall be prepared in accordance with the facts set forth in the official memorandum defined in §58.2(b); And provided further, that whenever a certificate is signed by a person under a power of attorney the certificate should so indicate. The signature of the holder of the power shall appear in conjunction with the name of the grader or inspector who personally graded or inspected the product.

§ 58.20 Disposition of inspection or grading certificates or reports.

The original of any inspection or grading certificate or report issued pursuant to §58.19, and not to exceed four copies thereof, shall immediately upon issuance be delivered or mailed to the applicant or person designated by him. One copy shall be filed in the inspection and grading office serving the
§ 58.21 Advance information.

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

§ 58.22 When appeal inspection or grading may be requested.

(a) An application for an appeal inspection or grading may be made by any interested party who is dissatisfied with any determination stated in any inspection or grading certificate or report if the identity of the samples or the product has not been lost; or the conditions under which inspection service was performed have not changed. Such application for appeal inspection or grading shall be made within 2 days following the day on which the service was performed. Upon approval by the Administrator, the time within which an application for an appeal grading may be made may be extended.

(b) An appeal inspection shall be limited to a review of the sampling procedure and in analysis of the official sample used, when, as a result of the original inspection, the commodity was found to be contaminated with filthy, putrid, and decomposed material. If it is determined that the sampling procedures were improper, a new sample shall be obtained.

§ 58.23 How to obtain appeal inspection or grading.

Appeal inspection or grading may be obtained by filing a request therefore, (a) with the Administrator, (b) with the inspector or grader who issued the inspection or grading certificate or report with respect to which the appeal service is requested, or (c) with the supervisor of such inspector or grader. The application for appeal inspection or grading shall state the reasons therefore, and may be accompanied by a copy of the aforesaid inspection or grading certificate or report or any other information the applicant may have secured regarding the product or the service from which the appeal is requested. Such application may be made orally (in person or by telephone), in writing, or by telegraph. If made orally, written confirmation may be required.

§ 58.24 Record of filing time.

A record showing the date and hour when each such application for appeal inspection or grading is received shall be maintained in such manner as the Administrator may prescribe.

§ 58.25 When an application for appeal inspection or grading may be refused.

The Administrator may refuse an application for an appeal inspection or grading when (a) the quality or condition of the products has undergone a material change since the time of original service, (b) the identical products inspected or graded cannot be made accessible for reinspection or regrading, (c) the conditions under which inspection service was performed have changed, (d) it appears that the reasons for an appeal inspection or grading are frivolous or not substantial, or (e) the Act or this part have not been complied with. The applicant shall be promptly notified of the reason for such refusal.

§ 58.26 When an application for an appeal inspection or grading may be withdrawn.

An application for appeal inspection or grading may be withdrawn by the applicant at any time before the appeal inspection or grading is made upon payment, by the applicant, of all expenses incurred by AMS in connection with such application.

§ 58.27 Order in which appeal inspections or gradings are performed.

Appeal inspections or gradings shall be performed, insofar as practicable, in
§ 58.28
the order in which applications therefor are received; and any such application may be given precedence pursuant to §58.17.

§ 58.28 Who shall make appeal inspections or gradings.
An appeal inspection or grading of any product or service shall be made by any inspector or grader (other than the one from whose service the appeal is made) designated for this purpose by the Administrator; and, whenever practical, such appeal inspection or grading shall be conducted jointly by two such inspectors or graders.

§ 58.29 Appeal inspection or grading certificate or report.
Immediately after an appeal inspection or grading has been completed, an appeal inspection or grading certificate or report shall be issued showing the results of the inspection or grading. Such certificate or report shall thereupon supersede the previous certificate or report and will be effective retroactive to the date of the previous certificate or report. Each appeal certificate or report shall clearly set forth the number and date of the previous certificate or report which it supersedes. The provisions of §§58.18 through 58.21 shall, whenever applicable, also apply to appeal certificates or reports except that copies shall be furnished each interested party of record.

§ 58.30 Application for reinspection or regrading.
An application for the reinspection or regrading of any previously inspected or graded product may be made at any time by any interested party; and such application shall clearly indicate the reasons for requesting the reinspection or regrading. The provisions of the regulations in this subpart relative to inspection or grading service shall apply to reinspection or regrading service.

§ 58.31 Reinspection or regrading certificate or report.
Immediately after a reinspection or regrading has been completed, a reinspection or a regrading certificate or report shall be issued showing the results of such reinspection or regrading; and such certificate or report shall thereupon supersede, as of the time of issuance, the inspection or grading certificate or report previously issued. Each reinspection or regrading certificate or report shall clearly set forth the number and date of the inspection or grading certificate or report that it supersedes. The provisions of §§58.18 through 58.21 shall, whenever applicable, also apply to reinspection or regrading certificates or reports except that copies shall be furnished each interested party of record.

§ 58.32 Superseded certificates or reports.
When any inspection or grading certificate or report is superseded in accordance with this part, such certificate or report shall become null and void and, after the effective time of the supersede, shall no longer represent the class, grade, quality, quantity, or condition described therein. If the original and all copies of such superseded certificate or report are not returned to the inspector or grader issuing the reinspection or regrading or appeal inspection or grading certificate or report, the inspector or grader shall notify such persons as he considers necessary to prevent fraudulent use of the superseded certificate or report.

LICENSING OF INSPECTORS OR GRADERS

§ 58.33 Who may be licensed.
Any person possessing proper qualifications, as determined by an examination for competency, held at such time and in such manner as may be prescribed by the Administrator, may be licensed to perform specified inspection or grading service. Each license issued shall be signed by the Administrator.

(53 FR 20278, June 3, 1988)

§ 58.34 Suspension or revocation of license.
For good cause and in instances of willful wrongdoing, the Administrator may suspend any license issued under the regulations in this subpart by giving notice of such suspension to the respective individual involved, accompanied by a statement of reasons therefor. Within 10 days after receipt of the
§ 58.42 Travel expenses and other charges.

Charges shall be made to cover the cost of travel and other expenses incurred by AMS in connection with the

§ 58.35 Surrender of license.

Each license which is suspended or revoked shall be surrendered promptly by the licensee to his supervisor. Upon termination of the services of a licensee, the license shall be surrendered promptly by the licensee to his supervisor.

§ 58.36 Identification.

Each licensee shall have his license card in his possession at all times while performing any function under the regulations in this subpart and shall identify himself by such card upon request.

§ 58.37 Financial interest of licensees.

No licensee shall render service on any product in which he is financially interested.

FEES AND CHARGES

§ 58.38 Payment of fees and charges.

(a) Fees and charges for any inspection or grading service shall be paid by the interested party, making the application for such service, in accordance with the applicable provisions of this section and §§58.39 through 58.46 and, if so required by the inspector or grader, such fees and charges shall be paid in advance.

(b) Fees and charges for any inspection or grading service performed by any inspector or grader who is a salaried employee of the Department shall, unless otherwise required pursuant to paragraph (c) of this section, be paid by the interested party making application for such inspection or grading service by check, draft, or money order payable to the Agricultural Marketing Service and remitted promptly to the office indicated on the bill.

(c) Fees and charges for any inspection or grading service under a cooperative agreement with any State or person shall be paid in accordance with the terms of the cooperative agreement by the interested party making application for the service.

§ 58.39 Fees for holiday or other nonworktime.

If an applicant requests that inspection or grading service be performed on a holiday, Saturday, or Sunday or in excess of each 8-hour shift Monday through Friday, he shall be charged for such service at a rate of 1½ times the rate which would be applicable for such service if performed during normal working hours.

§ 58.40 Fees for appeal inspection or grading.

The fees to be charged for any appeal inspection or grading shall be double the fees specified on the inspection or grading certificate from which the appeal is taken: Provided, That the fee for any appeal grading requested by any agency of the U.S. Government shall be the same as set forth in the certificate from which the appeal is taken. If the result of any appeal inspection or grading discloses that a material error was made in the inspection or grading appealed from, no fee shall be required.

§ 58.41 Fees for additional copies of certificates.

Additional copies of any inspection or grading certificates (including take-off certificates), other than those provided for in §58.20 may be supplied to any interested party upon payment of a fee based on time required to prepare such copies at the hourly rate specified in §58.43.

[54 FR 15167, Apr. 17, 1989]
§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in §§ 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of $56.00 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 inspector or grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.


§ 58.45 Fees for continuous resident services.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of $51.00 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1 1/2 times the rate stated in this section.


§ 58.46 Fees for service performed under cooperative agreement.

The fees to be charged and collected for any service performed under cooperative agreement shall be those provided for by such agreement.

MARKING, BRANDING, AND IDENTIFYING PRODUCT

§ 58.49 Authority to use official identification.

Whenever the Administrator determines that the granting of authority to any person to package any product, inspected or graded pursuant to this part, and to use official identification, pursuant to §§ 58.49 through 58.57, will not be inconsistent with the Act and this part, he may authorize such use of official identification. Any application for such authority shall be submitted to the Administrator in such form as he may require.

§ 58.50 Approval and form of official identification.

(a) Any package label or packaging material which bears any official identification shall be used only in such manner as the Administrator may prescribe, and such official identification shall be of such form and contain such information as the Administrator may require. No label or packaging material bearing official identification shall be used unless finished copies or samples thereof have been approved by the Administrator.

(b) Inspection or grade mark permitted to be used to officially identify packages containing dairy products which are inspected or graded pursuant to this part shall be contained in a shield in the form and design indicated in Figures 1, 2, and 3 of this section or such other form, design, or wording as may be approved by the Administrator.

FIGURE 1.

FIGURE 2.
The official identification illustrated in Figure 1 is designed for use on graded product packed under USDA inspection. Figure 2 is designed for graded product processed and packed under USDA inspection. Figure 3 is designated for inspected product (when U.S. standards for grades are not established) processed and packed under USDA quality control service. The official identification shall be printed on the package label, on the carton or on the wrapper and, preferably, on one of the main panels of the carton or wrapper. The shield identification shall be not less than \( \frac{3}{4} \) inch by \( \frac{3}{4} \) inch in size, and preferably 1 inch by 1 inch on 1-pound cartons or wrappers. Consideration will be given by the Administrator of a smaller shield on special packages where the size of the label does not permit use of the \( \frac{3}{4} \) inch by \( \frac{3}{4} \) inch shield.

(c) Official identification under this subpart shall be limited to U.S. Grade B or higher or to an equivalent standard of quality for U.S. name grades or numerical score grades when U.S. standards for grades of a product have not been established.

(d) A sketch, proof, or photocopy of each proposed label or packaging material bearing official identification shall be submitted to the Chief of the Dairy Inspection Branch, Poultry and Dairy Quality Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, for review and tentative approval prior to acquisition of a supply of material.

(e) The firm packaging the product shall furnish to the Chief four copies of the printed labels and packaging materials bearing official identification for final approval prior to use.


§ 58.51 Information required on official identification.

Each official identification shall conspicuously indicate the U.S. grade of the product it identifies, if there be a grade, or such other appropriate terminology as may be approved by the Administrator. Also, it shall include the appropriate phrase: “Officially graded,” “Officially Inspected,” or “Federal-State graded.” When required by the Administrator, the package label, carton, or wrapper bearing official identification for dairy products shall be stamped or perforated with the date packed and the certificate number or a code number to indicate lot and date packed. Such coding shall be made available to and approved by the Administrator.

§ 58.52 Time limit for packaging inspected or graded products with official identification.

Any lot of butter which is graded for packaging with official grade identification shall be packaged within 10 days immediately following the date of grading, and any lot of natural cheese or dry milk shall be packaged within 30 days immediately following date of grading provided the product is properly stored during the 10- or 30-day period. Time limit for packaging other inspected or graded products shall be as approved by the Administrator. If inspected or graded product is moved to another location, a reinspection or regrading shall be required.
§ 58.53 Supervisor of packaging required.

The official identification of any inspected or graded product, as provided in §§58.50 through 58.52, this section, and §§58.54 through 58.57, shall be done only under the supervision of a supervisor of packaging. The authority to use official identification may be granted by the Administrator only to applicants who utilize the services of a supervisor of packaging in accordance with this subpart. The supervisor of packaging shall have jurisdiction over the use and handling of all packaging material bearing any official identification.

§ 58.54 Packing and packaging room and equipment.

Each applicant who is granted authority to package any product with official identification and who operates, for such purpose, a packaging room shall maintain the room and the equipment therein in accordance with this part.

§ 58.55 Facilities for keeping quality samples.

Each applicant granted authority, as aforesaid, to package product with official identification shall provide and maintain suitable equipment for the purpose of incubating samples of product.

§ 58.56 Incubation of product samples.

(a) Samples of product may be taken from any lot of product which is submitted for inspection or grading and packaging with official identification, or sample may be taken after packaging for the purpose of determining in accordance with provisions of this part if such product possesses satisfactory keeping quality.

(b) Samples of product may be taken for keeping quality tests in accordance with provisions of this part from any lot of product submitted for inspection or grading. Issuance of the inspection or grading certificate may be withheld pending completion of the tests.

§ 58.57 Product not eligible for packaging with official identification.

(a) When a lot of inspected or graded product shows unsatisfactory keeping quality, other lots from the same manufacturing plant shall not be packaged with official identification. Packaging with official identification may be resumed only when it is determined that product from such plant possesses satisfactory keeping quality.

(b) Any manufacturing or processing plant supplying product, directly or indirectly, for packaging with official identification shall be surveyed and approved for inspection or grading service.

§ 58.58 Debarment of service.

(a) The following acts or practices, or the causing thereof, may be deemed sufficient cause for the debarment, by the Administrator, of any person, including any agents, officers, subsidiaries, or affiliates of such person, from any or all benefits of the Act for a specified period. The rules of practice governing withdrawal of inspection and grading services in formal adjudicatory proceedings instituted by the Secretary (7 CFR, part 1, subpart H) shall be applicable to such debarment action.

(1) Fraud or misrepresentation. Any willful misrepresentation or deceptive or fraudulent practice or act found to be made or committed by any person in connection with:

(i) The making or filing of any application for any inspection or grading service, appeal reinpection, or regrading service;

(ii) The making of the product accessible for inspection or grading service;

(iii) The making, issuing, or using or attempting to issue or use any inspection or grading certificate issued pursuant to the regulations in this subpart or the use of any official stamp, label, or identification;

(iv) The use of the terms “United States,” “U.S.,” “Officially graded,” “Officially Inspected,” “Federal-State graded,” or “Government graded,” or terms of similar import in the labeling or advertising of any product without
stating in conjunction therewith the official U.S. grade of the product; or
(v) The use of any of the aforesaid terms or an official stamp, label, or identification in the labeling or advertising of any product that has not been inspected or graded pursuant to this part.

(2) Use of facsimile form. Using or attempting to use a form which simulates in whole or in part any official identification for the purpose of purporting to evidence the U.S. grade of any product; or the unauthorized use of a facsimile form which simulates in whole or in part any official inspection or grading certificate, stamp, label, or other official inspection mark; and
(3) Mislabelling. The use of any words, numerals, letters, or facsimile form which simulates in whole or in part any identification purporting to be a grade when such product does not comply with any recognized standards in general use for such grade, and such activity may be deemed sufficient cause for debarring such person from any or all benefits of the Act.

(4) Willful violation of the regulations in this subpart. Willful violation of the provisions in this part or the Act, or the instructions or specifications issued thereunder.

(5) Interfering with an inspector or grader. Any interference with or obstruction or any attempted interference or obstruction of any inspector or grader in the performance of his duties by intimidation, threat, bribery, assault, or other improper means.

(b) [Reserved].


MISCELLANEOUS

§ 58.61 Political activity.

All inspectors or graders are forbidden during the period of their respective appointments or licenses to take an active part in political management or in political campaigns. Political activities in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including, but not being limited to, temporary and cooperative employees and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

§ 58.62 Report of violations.

Each inspector, grader, and supervisor of packaging shall report, in the manner prescribed by the Administrator, all violations and noncompliances under the Act and this part of which such inspector, grader, or supervisor of packaging has knowledge.

§ 58.63 Other applicable regulations.

Compliance with the provisions in this part shall not excuse failure to comply with any other Federal, or any State, or municipal applicable laws or regulations.

§ 58.64 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 58, subpart A, by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

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<tr>
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[49 FR 6881, Feb. 24, 1984]
§ 58.100

Subpart B—General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service


Definitions

§ 58.100 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 58, subpart B, by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

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<td>0581–0110</td>
</tr>
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<td>58.441</td>
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</tbody>
</table>


§ 58.101 Meaning of words.

For the purpose of the regulations of this subpart, words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand. Unless the context otherwise requires, the following terms shall have the following meaning:


(b) Administrator. The Administrator of the Agricultural Marketing Service or any other officer or employee of the Agricultural Marketing Service of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated the authority to act in his stead.

(c) Approved laboratory. A laboratory in which the facilities and equipment used for official testing have been approved by the Administrator as being adequate to perform the necessary official tests in accordance with this part, and operates under a USDA surveillance program as set forth by the Administrator.

(d) Approved plant. One or more adjacent buildings, or parts thereof, comprising a single plant at one location in which the facilities and methods of operation therein have been surveyed and approved by the Administrator as suitable and adequate for inspection or grading service in accordance with the following:

1 Shall satisfactorily meet the specifications of this subpart as determined by the Administrator.

2 Receive dairy products only from plants, transfer stations, receiving stations and cream buying stations which satisfactorily comply with the applicable requirements of this subpart as determined by the Administrator. (Occasional shipments may be received from nonapproved plants provided the product is tested and meets the quality requirements for No. 2 milk.)

(e) Sanitizing treatment. Subjection of a clean product contact surface to steam, hot water, hot air, or an acceptable sanitizing solution of sufficient strength, and for a duration of time to effectively destroy microorganisms. Sanitizing solutions shall comply with 21 CFR 121.2547.2

(f) Resident service. Inspection or grading service performed at a dairy manufacturing plant or grading station by an inspector or grader assigned to the plant or station on a continuous basis.

(g) Dairy products. Butter, cheese (whether natural or processed), skim milk, cream, whey or buttermilk (whether dry, evaporated, stabilized or condensed), frozen desserts and any other food product which is prepared or manufactured in whole or in part from any of the aforesaid products, as the

1 Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, Environmental Protection Act, or applicable laws and regulations of any State or municipality.

2 Section 121.2547 of title 21 was redesignated as §178.1010 at 42 FR 14305, Mar. 15, 1977.
Administrator may hereafter designate.

(h) Grader. Any employee of the Department authorized by the Administrator to investigate and certify, in accordance with the Act and this part, to shippers of products and other interested parties, the class, quality, quantity, and condition of such products.

(i) Inspector. Any employee of the Department authorized by the Administrator or any other person to whom a license has been issued by the Administrator to inspect and certify quality, quantity and condition of products, observe the manufacturing, processing, packaging and handling of dairy products, and to perform dairy plant surveys in accordance with the regulations of this part.

(j) Inspection or grading service. Means in accordance with this part, the act of (1) drawing samples of any product; (2) determining the class, grade, quality, composition, size, quantity, condition, or wholesomeness of any product by examining each unit or representative samples; (3) determining condition of product containers; (4) identifying any product or packaging material by means of official identification; (5) regrading or appeal grading of a previously graded product; (6) inspecting dairy plant facilities, equipment, and operations; such as, processing, manufacturing, packaging, repackaging, and quality control; (7) supervision of packaging inspected or graded product; (8) reinspection or appeal inspection; and (9) issuing an inspection or grading certificate or sampling, inspection, or other report related to any of the foregoing.

(k) Milk. The term milk shall include the following:

(1) Milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. The cows shall be located in a Modified Accredited Area, an Accredited Free State, or an Accredited Free Herd for tuberculosis as determined by the Department. In addition, the cows shall be located in States meeting Class B status or Certified-Free Herds or shall be involved in a milk ring testing program under the current USDA Brucellosis Eradication Uniform Methods and Rules.

(2) Goat milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy goats. The goats shall be located in States meeting the current USDA Uniform Methods and Rules for Bovine Tuberculosis Eradication or an Accredited Free Goat Herd. Goat milk shall only be used to manufacture dairy products that are legally provided for in 21 CFR or recognized as non-standardized traditional products normally manufactured from goats milk.

(m) Official methods. Official Methods of Analysis of the Association of Official Analytical Chemists, a publication of the Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington, DC 20044.

(n) Pasteurization (Pasteurized). Pasteurization shall mean that every particle of product shall have been heated in properly operated equipment to one of the temperatures specified in the table and held continuously at or above that temperature for at least the specified time (or other time/temperature relationship equivalent thereto in microbial destruction):

<table>
<thead>
<tr>
<th>FLUID PRODUCTS</th>
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<tbody>
<tr>
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</tr>
<tr>
<td>145 °F (vat pasteurization)</td>
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<td>161 °F (high temperature short time pasteurization)</td>
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<td>194 °F (higher heat shorter time pasteurization)</td>
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<tr>
<td>204 °F (higher heat shorter time pasteurization)</td>
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<tr>
<td>212 °F (higher heat shorter time pasteurization)</td>
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§ 58.122

PRODUCTS HAVING DAIRY INGREDIENTS WITH A
FAT CONTENT OF 10 PERCENT OR MORE, OR
CONTAIN ADDED SWEETENERS

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FROZEN DESSERT MIX

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CONDENSED MILK TO BE REPASTEURIZED

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(o) Plant survey. An appraisal of a plant to determine the extent to which facilities, equipment, method of operation, and raw material being received are in accordance with the provisions of this part. The survey shall be used to determine suitability of the plant for USDA inspection or grading service.

(p) Plant status. The extent to which a plant complies with this subpart shall be determined under procedures as set forth by the Administrator.

(q) Producer. The person or persons who exercise control over the production of the milk delivered to a processing plant or receiving station and who receive payment for this product.

(r) Quality control. The inspection of the quality of the raw material and the conditions relative to the preparation of the product from its raw state through each step in the entire process. It includes the inspection of conditions under which the product is prepared, processed, manufactured, packed and stored. In addition, assistance and guidance is offered to improve the raw milk quality, processing methods, quality, stability, and packaging and handling of the finished product.

(s) Regulations. The term “regulations” means the provisions contained in this part.

(t) Shall. Expresses a provision that is mandatory.

(u) Should. Expresses recommended nonmandatory provisions which when followed would significantly aid in a quality improvement program.


(w) 3-A Sanitary Standards and Accepted Practice. The latest standards for dairy equipment and accepted practices formulated by the 3-A Sanitary Standards Committees representing the International Association of Milk, Food and Environmental Sanitarians, the Food and Drug Administration and the Dairy Industry Committee. Published by the International Association of Milk, Food and Environmental Sanitarians, Box 701, Ames, Iowa.

(x) USDA or Department. Means the United States Department of Agriculture.

(y) Receiving Station. Any place, premise, or establishment where milk or dairy products are received, collected or handled for transfer to a processing or manufacturing plant.

(2) Transfer station. Any place, premise, or establishment where milk or dairy products are transferred directly from one transport tank to another.

(aa) Corrosion-resistant. Those materials that maintain their original surface characteristics under prolonged influence of the product to be contacted, cleaning compounds and sanitizing solutions, and other conditions of the environment in which used.


58.122 Approved plants under USDA inspection and grading service.

(a) Adoption of certain sound practices at dairy plants will significantly aid the operators to manufacture more consistently, uniform high-quality stable dairy products. Only dairy products manufactured, processed and packaged in an approved plant may be graded or inspected and identified with official identification. The specifications established herein provide the basis for a quality maintenance program which may be effectively carried forward through official inspection, grading, and quality control service.

(b) USDA inspection and grading service is provided to dairy product manufacturing plants on a voluntary basis. The operator of any dairy plant desiring to have such a plant qualified
as an approved plant under USDA inspection and grading service may request surveys of such plant, premises, equipment, facilities, methods of operation, and raw material to determine whether they are adequate to permit inspection and grading service. The cost of this survey shall be borne by the applicant.

**APPROVED PLANTS**

§ 58.123 Survey and approval.

Prior to the approval of a plant, a designated representative of the Administrator shall make a survey of the plant, premises, storage facilities, equipment and raw material, volume of raw material processed daily, and facilities for handling the products at the plant. The survey shall be made at least twice a year to determine whether the facilities, equipment, method of operation, and raw material being received are adequate and suitable for USDA inspection and grading service in accordance with the provisions of this part. To be eligible for approval a plant shall satisfactorily meet the specifications of this subpart as determined by the Administrator.

§ 58.124 Denial or suspension of plant approval.

Plant approval may be denied or suspended if a determination is made by a designated representative of the Administrator that the plant is not performing satisfactorily in regard to: (a) the classification of milk, (b) proper segregation and disposal of unwholesome raw materials or finished product, (c) adequate facilities and condition of processing equipment, (d) sanitary conditions of plant and equipment, (e) control of insects, rodents and other vermin, (f) use of non-toxic product contact surfaces and prevention of adulteration of raw materials and products with chemicals or other foreign material, (g) proper operating procedures, (h) the maintenance of legal composition of finished products, (i) the manufacture of stable dairy products, of desirable keeping quality characteristics, (j) proper storage conditions for ingroupacking methods and material.

**PREMISES, BUILDINGS, FACILITIES, EQUIPMENT AND UTENSILS**

§ 58.125 Premises.

(a) The premises shall be kept in a clean and orderly condition, and shall be free from strong or foul odors, smoke, or excessive air pollution. Construction and maintenance of drive- ways and adjacent plant traffic areas should be of cement, asphalt, or similar material to keep dust and mud to a minimum.

(b) Surroundings. The immediate surroundings shall be free from refuse, rubbish, overgrown vegetation, and waste materials to prevent harborage of rodents, insects and other vermin.

(c) Drainage. A suitable drainage system shall be provided which will allow rapid drainage of all water from plant buildings and driveways, including surface water around the plant and on the premises, and all such water shall be disposed of in such a manner as to prevent an environmental or health hazard.

§ 58.126 Buildings.

The building or buildings shall be of sound construction and shall be kept in good repair to prevent the entrance or harboring of rodents, birds, insects, vermin, dogs, and cats. All service pipe openings through outside walls shall be effectively sealed around the opening or provided with tight metal collars.

(a) Outside doors, windows, openings, etc. All openings to the outer air including doors, windows, skylights and transoms shall be effectively protected or screened against the entrance of flies and other insects, rodents, birds, dust and dirt. All outside doors opening into processing rooms shall be in good condition and fit properly. All hinged, outside screen doors shall open outward. All doors and windows should be kept clean and in good repair. Outside conveyor openings and other special-type outside openings shall be effectively protected to prevent the entrance of flies and rodents, by the use of doors, screens, flaps, fans or tunnels. Outside openings for sanitary pipelines shall be covered when not in use. On new construction window sills should be slanted downward at approximately a 45° angle.
§ 58.126 7 CFR Ch. I (1–1–01 Edition)

(b) Walls, ceilings, partitions and posts. The walls, ceilings, partitions, and posts of rooms in which milk, or dairy products are processed, manufactured, handled, packaged or stored (except dry storage of packaged finished products and supplies) or in which utensils are washed and stored, shall be smoothly finished with a suitable material of light color, which is substantially impervious to moisture and kept clean. They shall be refinished as often as necessary to maintain a neat, clean surface. For easier cleaning new construction should have rounded cove at the juncture of the wall and floor in all receiving, pasteurizing, manufacturing, packaging and storage rooms.

(c) Floors. The floors of all rooms in which milk, or dairy products are processed, manufactured, packaged or stored or in which utensils are washed shall be constructed of tile properly laid with impervious joint material, concrete, or other equally impervious material. The floors shall be smooth, kept in good repair, graded so that there will be no pools of standing water or milk products after flushing, and all openings to the drains shall be equipped with traps properly constructed and kept in good repair. On new construction, bell and standpipe type traps shall not be used. The plumbing shall be so installed as to prevent the back-up of sewage into the drain lines and to the floor of the plant. Cold storage rooms used for storage of product and starter rooms need not be provided with floor drains if the floor is sloped to drain to an exit.

Sound, smooth, wood floors which can be kept clean, may be used in rooms where new containers and supplies and certain packaged finished products are stored.

d) Lighting and ventilation. (1) Light shall be ample, natural or artificial, or both, of good quality and well distributed. All rooms in which dairy products are manufactured or packaged or where utensils are washed shall have at least 30 foot-candles of light intensity on all working surfaces. Rooms where dairy products are graded or examined for condition and quality shall have at least 50 foot-candles of light intensity on the working surface. Restrooms and locker rooms should have at least 30 foot-candles of light intensity. In all other rooms there shall be provided at least 5 foot-candles of light intensity when measured at a distance of 30 inches from the floor. Where contamination of product by broken glass is possible, light bulbs and fluorescent tubes shall be protected against breakage.

(2) There shall be adequate heating, ventilation or air conditioning for all rooms and compartments to permit maintenance of sanitary conditions. Exhaust or inlet fans, vents, hoods or temperature and humidity control equipment shall be provided where and when needed, to minimize or control room temperatures, eliminate objectionable odors, and aid in prevention of moisture condensation and mold. Inlet fans should be provided with an adequate air filtering device to eliminate dirt and dust from the incoming air. Ventilation systems shall be cleaned periodically as needed and maintained in good repair. Exhaust outlets shall be screened or provided with self closing louvers to prevent the entrance of insects when not in use.

e) Rooms and compartments. Rooms and compartments in which any raw material, packaging, ingredient supplies or dairy products are handled, manufactured, packaged or stored shall be so designed, constructed and maintained as to assure desirable room temperatures and clean and orderly operating conditions free from objectionable odors and vapors. Enclosed bulk milk receiving rooms, when present, shall be separated from the processing rooms by a wall. Rooms for receiving can milk shall be separated from the processing rooms by a partition or by suitable arrangement of equipment. Processing rooms shall be kept free from equipment and materials not regularly used.

(1) Coolers and freezers. Coolers and freezers where dairy products are stored shall be clean, reasonably dry and maintained at the proper uniform temperature and humidity to adequately protect the product, and minimize the growth of mold. Adequate circulation of air shall be maintained at all times. They shall be free from rodents, insects, and pests. Shelves shall be kept clean and dry. Refrigeration
units shall have provisions for collecting and disposing of condensate.

(2) Supply room. The supply rooms or areas used for the storing of packaging materials; containers, and miscellaneous ingredients shall be kept clean, dry, orderly, free from insects, rodents, and mold, and maintained in good repair. Such items stored therein shall be adequately protected from dust, dirt, or other extraneous material and so arranged on racks, shelves or pallets to permit access to the supplies and cleaning and inspection of the room. Insecticides, rodenticides, cleaning compounds and other nonfood products shall be properly labeled and segregated, and stored in a separate room or cabinet away from milk, dairy products, ingredients or packaging supplies.

(3) Boiler rooms, shop rooms and shop areas. The boiler, and shop rooms shall be separated from other rooms where milk, and dairy products are processed, manufactured, packaged, handled or stored. Shop rooms or areas should be kept orderly and reasonably free from dust and dirt.

(4) Toilet and dressing rooms. Adequate toilet and dressing room facilities shall be conveniently located.

(i) Toilet rooms shall not open directly into any room in which milk or dairy products are processed, manufactured, packaged or stored; doors shall be self-closing; ventilation shall be provided by mechanical means to the outer air; fixtures shall be kept clean and in good repair.

(ii) All employees shall be furnished with a locker or other suitable facility and the lockers and dressing rooms shall be kept clean and orderly. Adequate handwashing facilities shall be provided. Legible signs shall be posted conspicuously in each toilet or dressing room directing employees to wash their hands before returning to work.

(5) Laboratory. (i) Consistent with the size and type of plant and the volume of dairy products manufactured, an adequately equipped laboratory shall be maintained and properly staffed with qualified and trained personnel for quality control and analytical testing. The laboratory should be located reasonably close to the processing activity and be of sufficient size to perform tests necessary in evaluating the quality of raw and finished products.

(ii) Approved laboratories shall be supervised by the USDA resident inspector in all aspects of official testing and reporting results. Plant laboratory personnel in such plants may be licensed by the USDA to perform official duties. The AMS Science Division will provide independent auditing of laboratory analysis functions.

(iii) An approved central control laboratory serving more than one plant may be acceptable, if conveniently located to the dairy plants, and if samples and results can be transmitted without undue delay.

(6) Starter facilities. Adequate facilities shall be provided for the handling of starter cultures. The facilities shall not be located near areas where contamination is likely to occur.

(7) Grading and inspection room. When grading or inspection of product is performed the plants shall furnish a room or designated area specifically for this purpose. The room or area shall be suitably located, sufficient in size, well lighted (see §58.126d), ventilated and the temperature shall be not less than 60 °F. It shall be kept clean and dry, free from foreign odors and reasonably free from disturbing elements which would interfere with proper concentration by the grader or inspector. The grading or inspection room or area shall be equipped with a table or desk and convenient facilities for washing hands.

(8) Resident inspector’s facilities. In resident plants, an office or space shall be provided for official purposes. The room or space should be conveniently located in or near the approved laboratory, adequate in size, and equipped with desk and a lockable storage supply cabinet, and clothes locker. It shall be well lighted, ventilated or air conditioned, and heated. Custodial service shall be furnished on a regular basis.

(9) Lunch rooms and eating areas. When these areas are provided, they (i) shall be kept clean and orderly, (ii) should not open directly into any room in which milk or dairy products are processed, manufactured or packaged, and (iii) signs shall be posted directing
§ 58.127  
employees to wash their hands before returning to work.  

§ 58.127 Facilities.

(a) Water supply. There shall be an ample supply of both hot and cold water of safe and sanitary quality, with adequate facilities for its proper distribution throughout the plant, and protected against contamination. Water from other facilities, when officially approved, may be used for boiler feed water and condenser water provided that such water lines are completely separated from the water lines carrying the sanitary water supply, and the equipment is so constructed and controlled as to preclude contamination of product contact surfaces. There shall be no cross connection between potable water lines and nonpotable water lines or between public and private water supplies. Bacteriological examinations shall be made of the plant’s sanitary water supply taken at the plant at least twice a year, or as often as necessary to determine safety and suitability as related to product keeping quality for use in manufactured products shall be made by a USDA or State agency laboratory except for supplies that are regularly tested for purity and bacteriological quality, and approved by the local health officer. The results of all water tests shall be kept on file at the plant for which the test was performed.

The location, construction, and operation of any well shall comply with regulations of the appropriate agency.

(b) Drinking-water facilities. Drinking-water facilities of a sanitary type shall be provided in the plant and should be conveniently located.

(c) Hand-washing facilities. Convenient hand-washing facilities shall be provided, including hot and cold running water, soap or other detergents, and sanitary single service towels or air dryers. Such accommodations shall be located in or adjacent to toilet and dressing rooms and also at such other places in the plant as may be essential to the cleanliness of all personnel handling products. Vats for washing equipment or utensils shall not be used as hand-washing facilities. Containers shall be provided for used towels and other wastes. The containers may be metal or plastic, disposable or reusable and should have self-closing covers.

(d) Steam. Steam shall be supplied in sufficient volume and pressure for satisfactory operation of each applicable piece of equipment. Culinary steam used in direct contact with milk or dairy products shall be free from harmful substances or extraneous material and only those boiler water additives which meet the requirements of 21 CFR 121.1088 shall be used, or a secondary steam generator shall be used in which soft water is converted to steam and no boiler compounds are used. Steam traps, strainers and condensate traps shall be used wherever applicable to insure a satisfactory and safe steam supply. Culinary steam shall comply with the recommended practices for “Producing Culinary Steam for Processing Milk and Milk Products” as published by the National Association of Food and Dairy Equipment Manufacturers, Washington, DC, April 1963 or latest revision thereof.

(e) Air under pressure. The method for supplying air under pressure, which comes in contact with milk or dairy products or any product contact surface shall comply with the 3-A Accepted Practices for Supplying Air Under Pressure.

(f) Disposal of wastes. Dairy wastes shall be properly disposed of from the plant and premises consistent with requirements imposed by the Environmental Protection Act. The sewer system shall have sufficient slope and capacity to readily remove all waste from the various processing operations. Where a public sewer is not available, all wastes shall be properly disposed of so as not to contaminate milk equipment or to create a nuisance or public health hazard. Containers used for the collection and holding of wastes shall be constructed of metal, plastic, or other equally impervious material and kept covered with tight fitting lids. Waste shall be stored in an area or room in a manner to protect it from flies and vermin. Solid wastes shall be
disposed of regularly and the containers cleaned before reuse. Accumulation of dry waste paper and cardboard shall be kept to a minimum and disposed of in a manner that is environmentally acceptable.

§ 58.128 Equipment and utensils.

(a) General construction, repair and installation. The equipment and utensils used for the processing of milk and manufacture of dairy products shall be constructed to be readily demountable where necessary for cleaning and sanitizing. The product contact surfaces of all utensils and equipment such as holding tanks, pasteurizers, coolers, vats, agitators, pumps, sanitary piping and fittings or any specialized equipment shall be constructed of stainless steel, or other materials which under conditions of intended use are as equally corrosion resistant. Non-metallic parts other than glass having product contact surfaces shall comply with 3-A Sanitary Standards for Plastic or Rubber and Rubber-Like Materials. Equipment and utensils used for cleaning shall be in an acceptable condition, such as not rusty, pitted or corroded. All equipment and piping shall be designed and installed so as to be easily accessible for cleaning, and shall be kept in good repair, free from cracks and corroded surfaces. New or rearanged equipment, shall be set away from any wall or spaced in such a manner as to facilitate proper cleaning and to maintain good housekeeping. All parts or interior surfaces of equipment, pipes (except certain piping cleaned-in-place) or fittings, including valves and connections shall be accessible for inspection. Milk and dairy product pumps shall be of a sanitary type and easily dismantled for cleaning or shall be of specially approved construction to allow effective cleaning in place.

All C.I.P. systems shall comply with the 3-A Accepted Practices for Permanently Installed Sanitary Product, Pipelines and Cleaning Systems.

(b) Weigh cans and receiving tanks. Weigh cans and receiving tanks shall comply with the 3-A Sanitary Standards for Weigh Cans and Receiving Tanks for Raw Milk and shall be easily accessible for cleaning both inside and outside and shall be elevated above the floor and protected sufficiently with the necessary covers or baffles to prevent contamination from splash, condensate and drippage. Where necessary to provide easy access for cleaning of floors and adjacent wall areas, the receiving tank shall be equipped with wheels or casters to allow easy removal.

(c) Can washers. Can washers shall have sufficient capacity and ability to discharge a clean dry can and cover and shall be kept properly timed in accordance with the instructions of the manufacturer. They should be equipped with proper temperature controls on the wash and rinse tanks and the following additional devices: Prerinse jet, wash tank solution feeder, can sanitizing attachment, forced air vapor exhaust, and removable air filter on drying chamber. The water and steam lines supplying the washer shall maintain a reasonably uniform pressure and if necessary be equipped with pressure regulating valves. The steam pressure to the can washer should be not less than 80 pounds, and the temperature of the wash and final rinse solution should be automatically controlled and not exceed 140°F.

(d) Product storage tanks or vats. Storage tanks or vats shall be fully enclosed or tightly covered and well insulated. The entire interior surface, agitator and all appurtenances shall be accessible for thorough cleaning and inspection. Any opening at the top of the tank or vat including the entrance of the shaft shall be suitably protected against the entrance of dust, moisture, insects, oil or grease. The sight glasses, if used, shall be sound, clear, and in good repair. Vats which have hinged covers shall be easily cleaned and shall be so designed that moisture, or dust on the surface cannot enter the vat when the covers are raised. If the storage tanks or vats are equipped with air agitation, the system shall be of an approved type and properly installed in accordance with the 3-A Accepted Practices for Supplying Air Under Pressure. Storage tanks or vats intended to hold product for longer than approximately 8 hours shall be equipped with adequate refrigeration and/or have adequate insulation. New or replacement storage tanks or vats
(g) Short time pasteurizing systems. When pasteurization is intended or required, an approved timing pump or device, recorder-controller, automatic flow diversion valve and holding tube or its equivalent, if not a part of the existing equipment, shall be installed on all such equipment used for pasteurization, to assure complete pasteurization. The entire facility shall comply with the 3-A Accepted Practices for the Sanitary Construction, Installation, Testing and Operation of High Temperature Short Time Pasteurizers. After the unit has been tested according to the 3-A Accepted Practices, the timing pump or device and the recorder controller shall be sealed at the correct setting to assure pasteurization. The system should be rechecked semi-annually to assure continued compliance with the 3-A Accepted Practices. Sealing and rechecking of the unit shall be performed by the control authority having jurisdiction. When direct steam pasteurizers are used, the steam, prior to entering the product, shall be conducted through a steam strainer and a steam purifier equipped with a steam trap and only steam meeting the requirements for culinary steam shall be used.

(h) Thermometers and recorders—(1) Indicating thermometers. (i) Long stem indicating thermometers which are accurate within 0.5 °F., plus or minus, for the applicable temperature range, shall be provided for checking the temperature of pasteurization and cooling of products in vats and checking the accuracy of recording thermometers.

(ii) Short stem indicating thermometers, which are accurate within 0.5 °F., plus or minus, for the applicable temperature range, shall be installed in the proper stationary position in all pasteurizers. Storage tanks where temperature readings are required shall have thermometers which are accurate within 2.0 °F., plus or minus.

(iii) Air space indicating thermometers, where applicable, which are accurate within 1.0 °F., plus or minus, for the proper temperature range shall also be installed above the surface of the products pasteurized in vats, to make certain that the temperature of the foam and/or air above the products pasteurized also received the required minimum temperature treatment.

(2) Recording thermometers. (i) Recording thermometers that are accurate within 1 °F., plus or minus, for the applicable temperature range, shall be used on each heat treating, pasteurizing or thermal processing unit to record the heating process.

(ii) Additional use of recording thermometers accurate within 2 °F., plus or minus may be required where a record of temperature or time of cooling and holding is of significant importance.

(iii) Recorder charts shall be marked to show date and plant identification.
reading of the indicating thermometer at a particular referenced reading point on the recording chart, amount and name of product, product temperature at which the "cut-in" and "cut-out" function, record of the period in which flow diversion valve is in forward-flow position, signature or initials of operator.

(i) **Surface coolers.** Surface coolers shall be equipped with hinged or removable covers for the protection of the product. The edges of the fins shall be so designed as to divert condensate on nonproduct contact surfaces away from product contact surfaces. All gaskets or swivel connections shall be leak proof.

(j) **Plate type heat exchangers.** Plate type heat exchanger shall comply with the 3–A Sanitary Standards Plate Type Heat Exchangers for Milk and Milk Products. All gaskets shall be tight and kept in good operating order. Plates shall be opened for inspection by the operator at sufficiently frequent intervals to determine if the equipment is clean and in satisfactory condition. A cleaning regimen should be posted to insure proper cleaning procedures between inspection periods.

(k) **Internal return tubular heat exchangers.** Internal return tubular heat exchangers shall comply with the 3–A Sanitary Standards for Internal Return Tubular Heat Exchangers for Use with Milk and Milk Products. (This table taken from the presently effective 1973 revision.)

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Compliance shall be determined by the appropriate regulatory authority.

(n) **Homogenizers.** Homogenizers and high pressure pumps of the plunger type shall comply with the 3–A Sanitary Standards for Homogenizers and Pumps of the Plunger Type and shall be disassembled and thoroughly cleaned after use.

(o) **New equipment and replacements.** New equipment and replacements, including all plastic parts and rubber and rubberlike materials for parts and gaskets having product contact surfaces, shall comply with the then current 3–A Sanitary Standards. If 3–A Sanitary Standards are not available, such equipment and replacements shall meet the general requirements of this section. Only material that is sanitary, readily cleanable and non-toxic shall be used for product contact surfaces, parts and gaskets.

(p) **Vacuumizing equipment.** The vacuum chamber, as used for flavor control, shall be made of stainless steel or other equally corrosion resistant metal. The unit shall be constructed to facilitate cleaning and all product contact surfaces shall be accessible for inspection.
§ 58.129  Vacuum chambers located on the pasteurized side of the unit shall be isolated by means of a vacuum breaker and a positive activated check valve on the product inlet side and a vacuum breaker and a positive activated check valve on the discharge side. If direct steam is used, it should also be equipped with a ratio controller to regulate the composition when applicable to the finished product. Only steam which meets the requirements for culinary steam shall be used. The incoming steam supply shall be regulated by an automatic solenoid valve which will cut off the steam supply in the event the flow diversion valve of the pasteurizer is not in the forward flow position. Condensers when used shall be equipped with a water level control and an automatic safety shutoff valve.

PERSONNEL, CLEANLINESS AND HEALTH

§ 58.129  Cleanliness.
All employees shall wash their hands before beginning work and upon returning to work after using toilet facilities, eating, smoking or otherwise soiling their hands. They shall keep their hands clean and follow good hygienic practices while on duty. Expectorating or use of tobacco in any form shall be prohibited in each room and compartment where any milk, dairy products, or supplies are prepared, stored or otherwise handled. Clean white or light-colored washable or disposable outer garments and caps (paper caps, hard hats, or hair nets acceptable) shall be worn to adequately protect the hair and beards when grown by all persons engaged in receiving, testing, processing milk, manufacturing, packaging or handling dairy products.

§ 58.130  Health.
No person afflicted with a communicable disease shall be permitted in any room or compartment where milk and dairy products are prepared, manufactured or otherwise handled. No person who has a discharging or infected wound, sore or lesion on hands, arms or other exposed portion of the body shall work in any dairy processing rooms or in any capacity resulting in contact with milk, or dairy products. Each employee whose work brings him in contact with the processing or handling of dairy products, containers or equipment should have a medical and physical examination by a registered physician or by the local department of health at the time of employment. An employee returning to work following illness from a communicable disease shall have a certificate from the attending physician to establish proof of complete recovery.

PROTECTION AND TRANSPORT OF RAW MILK AND CREAM

§ 58.131  Equipment and facilities.
(a)(1)  Milk cans. Cans used in transporting milk from dairy farm to plant shall be of such construction (preferably seamless with umbrella lids) as to be easily cleaned, and shall be inspected, repaired, and replaced as necessary to exclude substantially the use of cans and lids with open seams, cracks, rust, milkstone, or any unsanitary condition. Adequate provisions should be made so that milk in cans will be cooled immediately after milking to 50 °F. or lower unless delivered to the plant within two hours after milking.

(2)  Farm bulk tanks. Farm bulk tanks shall comply with 3-A Sanitary Farm Cooling and Holding Tanks or 3-A Sanitary Standards for Farm Cooling and Holding Tanks or 3-A Sanitary Standards for Farm Milk Storage Tanks as applicable. They shall be installed in a milk house in accordance with the requirements of the regulatory agency in jurisdiction. The bulk cooling tanks shall be designed and equipped with refrigeration to permit the cooling of the milk to 40 °F. or lower within two hours after milking, and maintain it at 45 °F. or below until picked up.

(b)(1)  Receiving stations. Receiving stations shall comply with the applicable sections of this subpart covering premises, buildings, facilities, equipment, utensils, personnel, cleanliness and health.

(2)  Transfer stations. Transfer stations shall comply with the applicable sections of this subpart covering premises, floors, lighting, water supply, handwashing facilities, disposal of wastes,
general construction, repair and installation of equipment, piping and utensils and personnel—cleanliness and health. As climatic and operating conditions require the transfer station shall comply with the applicable sections for walls, ceilings, doors and windows.

(3) Cream stations. Cream stations shall provide adequate protection and facilities for the handling, transferring and cooling of farm separated cream. The area shall be large enough to avoid undue crowding with a normal volume of business and shall be separated from other areas and the outside by self closing, tight fitting doors. All openings shall be screened during fly season. The floor, walls and ceiling shall be of satisfactory construction, in good repair and kept clean. Lighting and ventilation shall meet the requirements of §58.126(d). Cooling facilities shall be provided to cool the cream to 50 °F or lower unless shipped within 8 hours after receipt. Facilities shall be provided to wash, sanitize and store cans and equipment used in the operation. The cream should not be more than 4 days old when picked up for delivery to the processing plant.

(c)(1) Transporting milk or cream. Vehicles used for the transportation of can milk or cream shall be of the enclosed type, constructed and operated to protect the product from extreme temperature, dust, or other adverse conditions and they shall be kept clean. Decking boards or racks shall be provided where more than one tier of cans is carried. Cans or vehicles used for the transportation of milk from the farm to the plant shall not be used for transporting skim milk, buttermilk, or whey to producers.

(2) Transport tanks. The exterior shell shall be clean and free from open seams or cracks which would permit liquid to enter the jacket. The interior shell shall be stainless steel and so constructed that it will not buckle, sag or prevent complete drainage. All product contact surfaces shall be smooth, easily cleaned and maintained in good repair. The pump and hose cabinet shall be fully enclosed with tight fitting doors and the inlet and outlet shall be provided with dust covers to give adequate protection from road dust. Tank manholes should be equipped with an adequate filtering system during loading and unloading. New and replacement transport tanks shall comply with 3-A Sanitary Standards for Stainless Steel Automotive Milk and Milk Products Transportation Tanks for Bulk Delivery and/or Farm Pick-up Service.

(3) Facilities for cleaning and sanitizing. Enclosed or covered facilities (as climatic conditions require) shall be available for washing and sanitizing of transport tanks, piping, and accessories, at central locations or at all plants that receive or ship milk or milk products in transport tanks.

(d) Transfer of milk to transport tank. Milk shall be transferred under sanitary conditions from farm bulk tanks through stainless steel piping or approved tubing. The sanitary piping and tubing shall be capped when not in use.

QUALITY SPECIFICATIONS FOR RAW MILK

§58.133 Methods for quality and wholesomeness determination.

(a) Appearance and odor. The appearance of acceptable raw milk shall be normal and free of excessive coarse sediment when examined visually or by an acceptable test procedure. The milk shall not show any abnormal condition (including, but not limited to, curdled,ropy, bloody or mastitic condition), as indicated by sight or other test procedures. The odor shall be fresh and sweet. The milk shall be free from objectionable feed and other off-odors

[58 FR 26912, May 6, 1993]
§ 58.133 that adversely affect the finished product.

(b) Somatic cell count. (1) A laboratory examination to determine the level of somatic cells shall be made at least four times in each 6-month period at irregular intervals on milk received from each patron.

(2) A confirmatory test for somatic cells shall be done when a herd sample exceeds either of the following screening test results:

(i) California Mastitis Test—Weak Positive (CMT 1).

(ii) Wisconsin Mastitis Test—WMT value of 18 mm.

(3) The confirmatory test for somatic cells shall be performed by using one of the following procedures:

(i) Direct Microscopic Somatic Cell Count (Single Strip Procedure). Pyronin Y-methyl green stain shall be used for goat milk.

(ii) Electronic Somatic Cell Count.

(iii) Optical Somatic Cell Count.

(4) The results of the confirmatory test for somatic cells shall be the official result.

(5) Whenever the confirmatory somatic cell count indicates the presence of more than 1,000,000 somatic cells per ml., the following procedures shall be applied:

(i) The producer shall be notified with a warning of the excessive somatic cell count.

(ii) Whenever two of the last four consecutive somatic cell counts exceed 1,000,000 per ml., the appropriate state regulatory authority shall be notified and a written notice given to the producer. This notice shall be in effect as long as two of the last four consecutive samples exceed 1,000,000 per ml.

(6) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (b)(5)(i) of this section. If this sample also exceeds 1,000,000 per ml., subsequent milkings shall not be accepted for market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the appropriate State regulatory agency when an additional sample of herd milk is tested and found satisfactory. The producer may be assigned a full reinstatement status when three out of four consecutive somatic cell count tests do not exceed 1,000,000 per ml. The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

(c) Drug residue level. (1) USDA-approved plants shall not accept for processing any milk testing positive for drug residue. All milk received at USDA-approved plants shall be sampled and tested, prior to processing, for beta lactam drug residue. When directed by the regulatory agency, additional testing for other drug residues shall be performed. Samples shall be analyzed for beta lactams and other drug residues by methods evaluated by the Association of Official Analytical Chemists (AOAC) and accepted by the Food and Drug Administration (FDA) as effective in determining compliance with “safe levels” or established tolerances. “Safe levels” and tolerances for particular drugs are established by the FDA. Other test methods evaluated by the Virginia Polytechnic Institute and State University, or by other institutions using equivalent evaluation procedures, and determined to demonstrate accurate compliance results, may be employed on a temporary basis until they are evaluated by the AOAC and accepted or rejected by the FDA.

(2) Individual producer milk samples for beta lactam drug residue testing shall be obtained from each milk shipment as follows:

(i) Milk in farm bulk tanks. A sample shall be taken at each farm and shall include milk from each farm bulk tank.

(ii) Milk in cans. A sample shall be formed separately at the receiving plant for each can milk producer included in a delivery, and shall be representative of all milk received from the producer.

(3) Load milk samples for beta lactam drug residue testing shall be obtained from each milk shipment as follows:

(i) Milk in bulk milk pickup tankers. A sample shall be taken at the bulk milk pickup tanker after its arrival at the plant and prior to further commingling.

(ii) Milk in cans. A sample representing all of the milk received on a shipment shall be formed at the plant.
using a sampling procedure that includes milk from every can on the vehicle.

(4) Follow-up to positive-testing samples. (i) When a load sample tests positive for drug residue, the appropriate State regulatory agency shall be notified immediately of the positive test result and of the intended disposition of the shipment of milk containing the drug residue.

(ii) Each individual producer sample represented in the positive-testing load sample shall be singly tested to determine the producer of the milk sample testing positive for drug residue. Identification of the producer responsible for producing the milk testing positive for drug residue, and details of the final disposition of the shipment of milk containing the drug residue, shall be reported immediately to the appropriate agency.

(iii) Milk shipment from the producer identified as the source of milk testing positive for drug residue shall cease immediately and may resume only after a sample from a subsequent milking does not test positive for drug residue.

[50 FR 34672, Aug. 27, 1985, as amended at 58 FR 26912, May 6, 1993]

§ 58.134 Sediment content.

(a) Method of testing. Methods for determining the sediment content of the milk of individual producers shall be those described in the latest edition of Standard Methods for the Examination of Dairy Products. Sediment content shall be based on comparison with applicable charts of the United States Sediment Standards for Milk and Milk Products, subpart T, §58.2728 through 58.2732, of this part.

(b) Sediment content classification. Milk shall be classified for sediment content, regardless of the results of the appearance and odor examination required in §58.133(a), as follows:

USDA SEDIMENT STANDARD

No. 1 (acceptable)—not to exceed 0.50 mg. or equivalent.
No. 2 (acceptable)—not to exceed 1.50 mg. or equivalent.
No. 3 (probational, not over 10 days)—not to exceed 2.50 mg. or equivalent.
No. 4 (reject)—over 2.50 mg. or equivalent.

(c) Frequency of tests. At least once each month, at irregular intervals, the milk from each producer shall be tested as follows:

(1) Milk in cans. One or more cans of milk selected at random from each producer.

(2) Milk in farm bulk tanks. A sample shall be taken from each farm bulk tank.

(d) Acceptance or rejection of milk. If the sediment disc is classified as No. 1, No. 2, or No. 3 the producer’s milk may be accepted. If the sediment disc is classified No. 4 the milk shall be rejected: Provided that, If the shipment of milk is commingled with other milk in a transport tank the next shipment shall not be accepted until its quality has been determined before being picked up; however, if the person making the test is unable to get to the farm before the next shipment it may be accepted but no further shipments shall be accepted unless the milk meets the requirements of No. 3 or better. In the case of milk classified as No. 3 or No. 4, if in cans, all cans shall be tested. Producers of No. 3 or No. 4 milk (cans or bulk) shall be notified immediately and shall be furnished applicable sediment discs and the next shipment shall be tested.

(e) Retests. On test of the next shipment (if in cans, all cans shall be tested) milk classified as No. 1, No. 2, or No. 3 may be accepted, but No. 4 milk shall be rejected. Retests of bulk milk classified as No. 4 shall be made before pickup. The producers of No. 3 or No. 4 milk shall be notified immediately, furnished applicable sediment discs and the next shipment tested.

This procedure of retesting successive shipments and accepting probational (No. 3) milk and rejecting No. 4 milk may be continued for not more than 10 calendar days. If at the end of this time all of the producer’s milk does not meet the acceptable sediment content classification (No. 1 or No. 2), it shall be rejected.


§ 58.135 Bacterial estimate.

(a) Method of testing. Methods for determining the bacterial estimate of the milk of individual producers shall be
§ 58.136 Rejected milk.

A plant shall reject specific milk from a producer if the milk fails to meet the requirements for appearance and odor (§58.133(a)), if it is classified No. 4 for sediment content (§58.134), or if it tests positive for drug residue (§58.133(c)).

[58 FR 26913, May 6, 1993]

§ 58.137 Excluded milk.

A plant shall not accept milk from a producer if:

(a) The milk has been in a provisional (No. 3) sediment content classification for more than 10 calendar days (§58.134);

(b) The milk has been classified “Undergrade” for bacterial estimate for more than 4 successive weeks (§58.135);

(c) Three of the last five milk samples have exceeded the maximum somatic cell count level of 1,000,000 per ml. (§58.133(b)(6)); or

(d) The producer’s milk shipments to either the Grade A or the manufacturing grade milk market currently are not permitted due to a positive drug residue test (§58.133(c)(4)).

[58 FR 26913, May 6, 1993]

§ 58.138 Quality testing of milk from new producers.

A quality examination and tests shall be made on the first shipment of milk from a producer shipping milk to a plant for the first time or resuming shipment to a plant after a period of non-shipment. The milk shall meet the requirements for acceptable milk, somatic cell count and drug residue level (§§ 58.133, 58.134 and 58.135). The buyer shall also confirm that the producer’s milk is currently not excluded from the market (§58.137). Thereafter, the milk shall be tested in accordance with the provisions in §§58.133, 58.134 and 58.135.

[58 FR 26913, May 6, 1993]

§ 58.139 Record of tests.

Accurate records listing the results of quality and drug residue tests for each producer shall be kept on file at the plant. Additionally, the plant shall obtain the quality and drug residue test records (§§58.148(a), (e) and (g)) for any producer transferring milk shipment from another plant. These records shall be available for examination by the inspector.

[58 FR 26913, May 6, 1993]

§ 58.140 Field service.

A representative of the plant shall arrange to promptly visit the farm of each producer whose milk tests positive for drug residue, exceeds the maximum somatic cell count level, or does not meet the requirements for acceptable milk. The purpose of the visit...
shall be to inspect the milking equipment and facilities and to offer assistance to improve the quality of the producer’s milk and eliminate any potential causes of drug residues. A representative of the plant should routinely visit each producer as often as necessary to assist and encourage the production of high quality milk.

[58 FR 26913, May 6, 1993]

§ 58.141 Alternate quality control program.

When a plant has in operation an acceptable quality program, at the producer level, which is approved by the Administrator as being effective in obtaining results comparable to or higher than the quality program as outlined above for milk or cream, then such a program may be accepted in lieu of the program herein prescribed.

OPERATIONS AND OPERATING PROCEDURES

§ 58.142 Product quality and stability.

The receiving, holding and processing of milk and cream and the manufacturing, handling, packaging, storing and delivery of dairy products shall be in accordance with clean and sanitary methods, consistent with good commercial practices to promote the production of the highest quality of finished product and improve product stability. Milk should not be more than three days old when picked up from the producer and delivered to the plant, receiving station or transfer station.

§ 58.143 Raw product storage.

(a) All milk shall be held and processed under conditions and at temperatures that will avoid contamination and rapid deterioration. Drip milk from can washers and any other source shall not be used for the manufacture of dairy products. Bulk milk in storage tanks within the dairy plant shall be handled in such a manner as to minimize bacterial increase and shall be maintained at 45 °F. or lower until processing begins. This does not preclude holding milk at higher temperatures for a period of time, where applicable to particular manufacturing or processing practices.

(b) The bacteriological quality of commingled milk in storage tanks shall not exceed 3,000,000/ml.

§ 58.144 Pasteurization or ultra-pasteurization.

When pasteurization or ultra-pasteurization is intended or required, or when a product is designated “pasteurized” or “ultra-pasteurized” every particle of the product shall be subjected to such temperatures and holding periods in approved systems as will assure proper pasteurization or ultra-pasteurization of the product. The heat treatment by either process shall be sufficient to insure public health safety and to assure adequate keeping quality, yet retaining the most desirable flavor and body characteristics of the finished product.

§ 58.145 Composition and wholesomeness.

All necessary precautions shall be taken to prevent contamination or adulteration of the milk or dairy products during manufacturing. All substances and ingredients used in the processing or manufacturing of any dairy product shall be subject to inspection and shall be wholesome and practically free from impurities. The finished products shall comply with the requirements of the Federal Food, Drug, and Cosmetic Act as to their composition and wholesomeness.

§ 58.146 Cleaning and sanitizing treatment.

(a) Equipment and utensils. The equipment, sanitary piping and utensils used in receiving and processing of the milk, and manufacturing and handling of the product shall be maintained in a sanitary condition. Sanitary seal assemblies shall be removable on all agitators, pumps, and vats and shall be inspected at regular intervals and kept clean. Unless other provisions are recommended in the following supplement sections, all equipment not designed for C.I.P. cleaning or mechanical cleaning shall be disassembled after each day’s use for thorough cleaning. Dairy cleaners, detergents, wetting agents or sanitizing agents, or other similar materials which will not contaminate or adversely affect the products may be
used. Steel wool or metal sponges shall not be used in the cleaning of any dairy equipment or utensils.

(1) Product contact surfaces shall be subjected to an effective sanitizing treatment prior to use, except where dry cleaning is permitted. Utensils and portable equipment used in processing and manufacturing operations shall be stored above the floor in clean, dry locations and in a self draining position on racks constructed of impervious corrosion-resistant material.

(2) C.I.P. cleaning or mechanical cleaning systems shall be used only on equipment and pipeline systems which have been designed, engineered and installed for that purpose. When such cleaning is used, careful attention shall be given to the proper procedures to assure satisfactory cleaning. All C.I.P. installations and cleaning procedures shall be in accordance with 3-A Suggested Method for the Installation and Cleaning of Cleaned-In-Place Sanitary Milk Pipelines for Milk and Milk Products Plants. Because of the possibilities of corrosion, the recommendations of the cleaning compound manufacturer should be followed with respect to time, temperature and concentration of specific acid or alkaline solutions and bactericides. Such cleaning operation should be preceded by a thorough rinse at approximately 110–115 °F. continuously discarding the water. Following the circulation of the cleaning solution the equipment and lines shall be thoroughly rinsed with lukewarm water and checks should be made for effectiveness of cleaning. All caps, plugs, special fittings, valve seats, cross ends, pumps, and tee ends shall be opened or removed and brushed clean. All non-pasteurized product contact surfaces should be sanitized. Immediately prior to starting the product flow, the pasteurized product contact surfaces shall be given sanitizing treatment.

(b) Milk cans and can washers. Milk cans and lids shall be cleaned, sanitized and dried before returning to producers. Inspection, repair or replacement of cans and lids shall be adequate to substantially exclude from use cans and lids showing open seams, cracks, rust condition, milkstone or any unsanitary condition. Washers shall be maintained in a clean and satisfactory operating condition and kept free from accumulation of scale or debris which will adversely affect the efficiency of the washer. Only washing compounds which are compatible with the water for effective cleaning, should be used. The can washer should be checked regularly during the run for proper operation. At the end of the day, the wash and rinse tanks should be drained and cleaned, jets and strainers cleaned, air filters checked and changed or cleaned if needed, and checks should be made for proper adjustment and condition of mechanical parts.

(c) Milk transport tanks. A covered or enclosed wash dock and cleaning and sanitizing facilities shall be available to all plants that receive or ship milk in tanks. Milk transport tanks, sanitary piping, fittings, and pumps shall be cleaned and sanitized at least once each day after use: Provided that, if they are not to be used immediately after emptying a load of milk, they shall be washed promptly after use and given bactericidal treatment immediately before use. After being washed and sanitized, each tank should be identified by a tag attached to the outlet valve, bearing the following information: Plant and specific location where cleaned, date and time of day of washing and sanitizing, and name of person who washed and name of person who sanitized the tank. The tag shall not be removed until the tank is again washed and sanitized.

(d) Building. All windows, glass, partitions, and skylights should be washed as often as necessary to keep them clean. Cracked or broken glass shall be replaced promptly. The walls, ceilings and doors should be washed periodically and kept free from soil and unsightly conditions. The shelves and ledges should be wiped or vacuumed as often as necessary to keep them free from dust and debris. The material picked up by the vacuum cleaners shall be disposed of in sealed containers which will prevent contamination or insect infestation from the waste material.
§ 58.147 Insect and rodent control program.

In addition to any commercial pest control service, if one is utilized, a specially designated employee should be made responsible for the performance of a regularly scheduled insect and rodent control program. Poisonous substances shall be properly labeled, and shall be handled, stored and used in such a manner as considered satisfactory by the Environmental Protection Agency.

§ 58.148 Plant records.

Adequate plant records shall be maintained of all required tests and analyses performed in the laboratory or throughout the plant during storage, processing and manufacturing, on all raw milk receipts and dairy products. Such records shall be available for examination at all reasonable times by the inspector. The following are the records which shall be maintained for examination at the plant or receiving station where performed.

(a) Sediment and bacterial test results on raw milk from each producer. Retain for 12 months.

(b) Pasteurization recorder charts. Retain for 3 months.

(c) Water supply test certificate. Retain current copy for 6 months.

(d) Cooling and heating recorder charts. Retain for 3 months.

(e) Load and individual drug residue test results. Retain for 12 months.

(f) Notifications to appropriate State regulatory agencies of positive drug residue tests and intended and final dispositions of milk testing positive for drug residue. Retain for 12 months.

(g) Somatic cell count test results on raw milk from each producer. Retain for 12 months.

(Approved by the Office of Management and Budget under OMB control number 0583-0047)


§ 58.149 Alternate quality control programs for dairy products.

(a) When a plant has in operation an acceptable quality control program which is approved by the Administrator as being effective in obtaining results comparable to or higher than the quality control program as outlined in this subpart, then such a program may be accepted in lieu of the program herein prescribed.

(b) Where a minimum number of samples per batch of product, or per unit of time on continuous production runs are not specified, the phrase “as many samples shall be taken as is necessary to assure compliance to specific quality requirements” is used. Acceptable performance of this would be any method approved by the Administrator as meeting sound statistical methods of selecting samples and determining the number of samples to be taken.

PACKAGING AND GENERAL IDENTIFICATION

§ 58.150 Containers.

(a) The size, style, and type of packaging used for dairy products shall be commercially acceptable containers and packaging materials which will satisfactorily cover and protect the quality of the contents during storage and regular channels of trade and under normal conditions of handling.

(b) Packaging materials for dairy products shall be selected which will provide sufficiently low permeability.

1EDITORIAL NOTE: See table appearing in §58.100 for correct OMB control number.
§ 58.151 Packaging and repackaging.

(a) Packaging dairy products or cutting and repackaging all styles of dairy products shall be conducted under rigid sanitary conditions. The atmosphere of the packaging rooms, the equipment and packaging materials shall be practically free from mold and bacterial contamination. Methods for checking the level of contamination shall be as prescribed by the latest edition of Standard Methods or by other satisfactory methods approved by the Administrator.

(b) When officially graded bulk dairy products are to be repackaged into consumer type packages with official grade labels or other official identification, a supervisor of packaging shall be required, see subpart A of this part. (title 7, §§ 58.2 and 58.53 of the Code of Federal Regulations). If the packaging or repackaging is done in a plant other than the one in which the dairy product is manufactured, the plant, equipment, facilities and personnel shall meet the same requirements as outlined in this subpart.

§ 58.152 General identification.

All commercial bulk packages or consumer packaged product containing dairy products manufactured under the provisions of this subpart shall comply with the applicable regulation of the Food and Drug Administration.

§ 58.153 Dry storage.

The product should be stored at least 18 inches from the wall in aisles, rows, or sections and lots, in such a manner as to be orderly and easily accessible for inspection. Rooms should be cleaned regularly. It is recommended that dunnage or pallets be used when practical. Care shall be taken in the storage of any other product foreign to dairy products in the same room, in order to prevent impairment or damage to the dairy product from mold, absorbed odors, or vermin or insect infestation. Control of humidity and temperature shall be maintained at all times, consistent with good commercial practices, to prevent conditions detrimental to the product and container.

§ 58.154 Refrigerated storage.

Finished product in containers subject to such conditions that will affect its useability shall be placed on shelves, dunnage or pallets and properly identified. It shall be stored under temperatures that will best maintain the initial quality. The product shall not be exposed to anything from which it might absorb any foreign odors or be contaminated by dripping or condensation.

§ 58.155 Grading.

Dairy products which have been processed or manufactured in accordance with the provisions of this subpart may be graded by the grader in accordance with the U.S. Standards for Grades. Laboratory analyses, when required in determining the final grade shall be conducted in an approved laboratory.

§ 58.156 Inspection.

Dairy products, which have been processed or manufactured in an approved plant, and for which there are no official U.S. Standards for Grades, shall be inspected for quality by the inspector in accordance with contract requirements or product specifications established by the U.S. Department of Agriculture or other Federal agency or buyer and seller. Laboratory analysis when required shall be conducted in an approved laboratory.

§ 58.157 Inspection or grading certificates.

All dairy products which have been processed or manufactured, packaged and inspected or graded in accordance with the provision of this part may be covered by an inspection or grading certificate.
certificate issued by the inspector or grader.

§ 58.158 Official identification.

(a) Application for authority to apply official identification to packaging material or containers shall be made in accordance with the provisions of subpart A of this part. (title 7, §§ 58.49 through 58.57 of the Code of Federal Regulations.)

(b) Only dairy products received, processed, or manufactured in accordance with the specifications contained in this subpart and inspected and/or graded in accordance with the provisions of this part may be identified with official identification.

EXPLANATION OF TERMS

§ 58.159 Terms.

(a) Fresh and sweet. Free from “old milk” flavor of developed acidity or other off-flavors.

(b) Normal feed. Regional feed flavors, such as alfalfa, clover, silage, or similar feeds or grasses (weed flavors, such as peppergrass, French weed, onion, garlic, or other obnoxious weeds, excluded).

(c) Off-flavors. Tastes or odors, such as utensil, bitter, barny, or other associated defects when present to a degree readily detectable.

(d) Developed acidity. An apparent increase from the normal acidity of the milk to a degree of taste and odor which is detectable.

(e) Extraneous matter. Foreign substances, such as filth, hair, insects and fragments thereof, and rodents, and materials, such as metal, fiber, wood and glass.

(f) Sediment. Fine particles of material other than the foreign substances and materials defined in paragraph (e) of this section.

(g) C.I.P. The abbreviation of an approved system of cleaning pipelines called “Cleaned-in-Place.”

(h) Mechanical cleaning. Denotes cleaning solely by circulation and/or flowing chemical detergent solution and water rinses onto and over the surfaces to be cleaned, by mechanical means.

SUPPLEMENTAL SPECIFICATIONS FOR PLANTS MANUFACTURING, PROCESSING, AND PACKAGING NONFAT DRY MILK, INSTANT NONFAT DRY MILK, DRY WHOLE MILK, AND DRY BUTTERMILK

DEFINITIONS

§ 58.205 Meaning of words.

For the purpose 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. Unless the context otherwise requires, the following terms shall have the following meaning:

(a) Nonfat dry milk. The product obtained by the removal of only water from pasteurized skim milk. It contains not more than 5 percent by weight of moisture and not more than 1½ percent by weight of milkfat and it conforms to the applicable provisions of 21 CFR 131 “Milk and Cream” as issued by the Food and Drug Administration. Nonfat dry milk shall not contain nor be derived from dry buttermilk, dry whey, or products other than skim milk, and shall not contain any added preservative, neutralizing agent, or other chemical.

(b) Instant nonfat dry milk. Instant nonfat dry milk is nonfat dry milk which has been produced in such a manner as to substantially improve its dispersing and reconstitution characteristics over that produced by the conventional process. Instant nonfat dry milk shall not contain dry buttermilk, dry whey, or products other than nonfat dry milk, except that lactose may be added as a processing aid during instantizing. The instant nonfat dry milk shall not contain any added preservatives, neutralizing agent, or other chemical. If lactose is used, the amount of lactose shall be the minimum required to produce the desired effect, but in no case shall the amount exceed 2.0 percent of the weight of the nonfat dry milk. If instant nonfat dry milk is fortified with vitamin A, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 2000 International Units thereof. If instant nonfat dry milk is fortified with vitamin D, and the product is reconstituted in accordance with
§ 58.210 Dry storage of product.

Storage rooms for the dry storage of product shall be adequate in size, kept clean, orderly, free from rodents, insects, and mold, and maintained in good repair. They shall be adequately lighted and ventilated. The ceilings, walls, beams and floors should be free from structural defects and inaccessible false areas which may harbor insects.

§ 58.211 Packaging room for bulk products.

A separate room or area shall be provided for filling bulk containers, and shall be constructed in accordance with § 58.126. The number of control panels and switch boxes in this area should be kept to a minimum. Control panels shall be mounted a sufficient distance from the walls to facilitate cleaning or satisfactorily sealed to the wall, or shall be mounted in the wall and provided with tight fitting removable doors to facilitate cleaning. An adequate exhaust system shall be provided to minimize the accumulation of product dust within the packaging room and where needed, a dust collector shall be provided and properly maintained to keep roofs and outside areas free of dry product. Only packaging materials that are used within a day’s operation may be kept in the packaging area. These materials shall be kept on metal racks or tables at least six inches off the floor. Unnecessary fixtures, equipment, or false areas which may collect dust and harbor insects, should not be allowed in the packaging room.

§ 58.212 Hopper or dump room.

A separate room shall be provided for the transfer of bulk dry dairy products to the hoppers and conveyors which lead to the fillers. This room shall meet the same requirements for construction and facilities as the bulk packaging operation. Areas and facilities provided for the transfer of dry dairy products from portable bulk bins will be accepted if gasketed surfaces or direct connections are used that appreciably eliminate the escape of product into the area.

§ 58.213 Repackaging room.

A separate room shall be provided for the filling of small packages and shall meet the same requirements for construction and facilities as the bulk packaging operation.
§ 58.214 General construction, repair and installation.

All equipment and utensils necessary to the manufacture of dry milk products, including pasteurizer, timing-pump or device, flow diversion valve and recorder controller, shall meet the same general requirements as outlined in §58.128 of this subpart. In addition, for certain other equipment the following requirements shall be met.

§ 58.215 Pre-heaters.

The pre-heaters shall be of stainless steel or other equally corrosion resistant material, cleanable, accessible for inspection and shall be equipped with suitable automatic temperature controls.

§ 58.216 Hotwells.

The hotwells shall be enclosed or covered and should be equipped with indicating thermometers either in the hotwell or in the hot milk inlet line to the hotwell. If used for holding high heat products, they should also have recorders.

§ 58.217 Evaporators and/or vacuum pans.

Evaporators or vacuum pans or both, with open type condensers shall be equipped with an automatic condenser water level control, barometric leg, or so constructed so as to prevent water from entering the product. New or replacement units shall comply with the 3-A Sanitary Standards for Milk and Milk Products Evaporators and Vacuum Pans. When enclosed type condensers are used, no special controls are needed to prevent water from entering the product. Water collected from the condensing of product (cow water) in this equipment may be utilized for prerinising and cleaning solution make-up; provided it is equipped with proper controls that will automatically divert water with entrained solids to the waste water system. “Cow water” shall not be used for acidified or final equipment rinse.

§ 58.218 Surge tanks.

If surge tanks are used for hot milk, and temperatures of product including foam being held in the surge tank during processing, is not maintained at a minimum of 150 °F, then two or more surge tanks shall be installed with cross connections to permit flushing and cleaning during operation. Covers easily removable for cleaning shall be provided and used at all times.

§ 58.219 High pressure pumps and lines.

High pressure lines may be clean-in-place and shall be of such construction that dead ends, valves and the high pressure pumps can be disassembled for hand cleaning. The high pressure pump shall comply with the 3-A Sanitary Standard for Homogenizers and Pumps of the Plunger Type.

§ 58.220 Drying systems.

(a) Spray dryers. Spray dryers shall be of a continuous discharge type and all product contact surfaces shall be of stainless steel or other equally corrosion resistant material. All joints and seams in the product contact surfaces shall be welded and ground smooth. All dryers shall be constructed so as to facilitate ease in cleaning and inspection. Sight glasses or ports of sufficient size shall be located at strategic positions. Dryers shall be equipped with suitable air intake filters. The filter system shall comply with the applicable requirements of the 3-A Accepted Practices for Milk and Milk Products Spray Drying Systems. The filtering system shall be cleaned or component parts replaced as often as necessary to maintain a clean and adequate air supply. In gas fired dryers, precautions should be taken to assure complete combustion. Air shall be drawn into the dryer from sources free from objectionable odors and smoke, dust or dirt. New systems, replacement systems, or portions of systems replaced shall comply with the requirements of the 3-A Accepted Practices for Milk and Milk Products Spray Drying Systems.

(b) Roller dryers. (1) The drums of a roller dryer shall be smooth, readily cleanable and free of pits and rust. The knives shall be maintained in such condition so as not to cause scoring of the drums.
§ 58.221 Collectors and conveyors.

Collectors shall be made of stainless steel or equally noncorrosive material and should be constructed to facilitate cleaning and inspection. Filter sack collectors, if used, shall be in good condition and the system shall be of such construction that all parts are accessible for cleaning and inspection. Conveyors shall be of stainless steel or equally corrosion resistant material and should be constructed to facilitate thorough cleaning and inspection.

§ 58.222 Dry dairy product cooling equipment.

Cooling equipment shall be provided with sufficient capacity to cool the product as specified in §58.240. A suitable dry air supply with an effective filtering system meeting the requirements of §58.220(a) shall be provided where air cooling and conveying is used.

§ 58.223 Special treatment equipment.

Any special equipment (instantizers, hammer mills, etc.) used to treat dry milk products shall be of sanitary construction and all parts shall be accessible for cleaning and inspection. New or replacement instantizing systems shall comply with the 3-A Accepted Practices for Instantizing Systems for Dry Milk and Dry Milk Products.

§ 58.224 Sifters.

All newly installed sifters used for dry milk and dry milk products shall comply with the 3-A Sanitary Standards for Sifters for Dry Milk and Dry Milk Products. All other sifters shall be constructed of stainless steel or other equally noncorrosive material and shall be of sanitary construction and accessible for cleaning and inspection. The mesh size of sifter screen used for various dry dairy products shall be those recommended in the appendix of the 3-A Standard for sifters.

§ 58.225 Clothing and shoe covers.

Clean clothing and shoe covers shall be provided exclusively for the purpose of cleaning the interior of the dryer when it is necessary to enter the dryer to perform the cleaning operation.

§ 58.226 Portable and stationary bulk bins.

Bulk bins shall be constructed of stainless steel, aluminum or other equally corrosion resistant materials, free from cracks, seams and must have an interior surface that is relatively smooth and easily cleanable. All product contact surfaces shall be easily accessible for cleaning. The capacity of each portable and bulk bin shall be limited to permit proper operating procedures such as sampling and daily removal of all product to preclude commingling of different days production.

§ 58.227 Sampling device.

If automatic sampling devices are used, they shall be constructed in such a manner as to prevent contamination.
of the product, and all parts must be readily accessible for cleaning. The type of sampler and the sampling procedure shall be as approved by the Administrator.

§ 58.228 Dump hoppers, screens, mixers and conveyors.

The product contact surfaces of dump hoppers, screens, mixers and conveyors which are used in the process of transferring dry products from bulk containers to fillers for small packages or containers, shall be of stainless or equally corrosion resistant material and designed to prevent contamination. All parts should be accessible for cleaning. The dump hoppers shall be of such height above floor level as to prevent foreign material or spilled product from entering the hopper.

§ 58.229 Filler and packaging equipment.

All filling and packaging equipment shall be of sanitary construction and all parts, including valves and filler heads accessible for cleaning. New or replacement equipment should comply with the 3-A Sanitary Standards for equipment for Packaging Dry Milk and Dry Milk Products.

§ 58.230 Heavy duty vacuum cleaners.

Each plant handling dry milk products shall be equipped with a heavy duty industrial vacuum cleaner. The vacuum cleaner shall be of a type that has a collector or disposable bag which will not contaminate the atmosphere of the processing and packaging areas. Regular scheduling shall be established for its use in vacuuming applicable areas.

QUALITY SPECIFICATIONS FOR RAW MATERIALS

§ 58.231 General.

All raw materials received at the drying plant shall meet the following quality specifications.

§ 58.232 Milk.

Raw milk shall meet the requirements as outlined in §§ 58.132 through 58.138, and unless processed within two hours after being received, it shall be cooled to and held at a temperature of 45 °F. or lower until processed.

§ 58.233 Skim milk.

The skim milk shall be separated from whole milk meeting the requirements as outlined in §§ 58.132 through 58.138, and unless processed immediately, it shall be cooled to and maintained at a temperature of 45 °F. or lower from the time of separating until the time of processing.

§ 58.234 Buttermilk.

Buttermilk for drying as dry buttermilk or dry buttermilk product shall be fresh and derived from the churning of butter, with or without the addition of harmless lactic culture. No preservative, neutralizing agent or other chemical may be added. Fluid buttermilk, unless cultured, shall be held at 45 °F or lower unless processed within 2 hours.

[56 FR 33855, July 24, 1991]

§ 58.235 Modified dry milk products.

Dry milk products to which approved neutralizing agents or chemicals have been added or constituents removed to alter their original characteristics for processing or usage shall come from products meeting the requirements of §§ 58.232, 58.233, or 58.234. These products shall meet the applicable labeling requirements.

OPERATIONS AND OPERATING PROCEDURES

§ 58.236 Pasteurization and heat treatment.

All milk and buttermilk used in the manufacture of dry milk products and modified dry milk products shall be pasteurized at the plant where dried, except that acidified buttermilk containing 40 percent or more solids may be transported to another plant for drying without repasteurization. Provided the condensed product is handled according to sanitary conditions approved by the Administrator.

(a) Pasteurization. (1) All milk or skim milk to be used in the manufacture of nonfat dry milk shall be pasteurized prior to condensing at a minimum temperature of 161 °F. for at least 15 seconds or its equivalent in
§ 58.237  Bacterial destruction. Condensed milk products made from pasteurized milk may be transported to a drying plant, provided that it shall be effectively repasteurized at the drying plant, prior to drying, at no less than 166 °F, for 15 seconds or its equivalent in bacterial destruction.

(2) All buttermilk to be used in the manufacture of dry buttermilk or dry buttermilk product shall be pasteurized prior to condensing at a temperature of 161 °F for 15 seconds or its equivalent in bacterial destruction.

(b) Heat treatment—(1) High-heat. The finished product shall not exceed 1.5 mg. undenatured whey protein nitrogen per gram of nonfat dry milk as classified in the U.S. Standards for Grades of Nonfat Dry Milk (Spray Process).

(2) Medium-heat. The finished product shall show undenatured whey protein nitrogen between the levels of “high-heat” and “low-heat” (1.51 to 5.99 mg.).

(3) Low-heat. The finished product shall show not less than 6.0 undenatured whey protein nitrogen per gram of non-fat dry milk as classified in the U.S. Standards for Grades of Nonfat Dry Milk (Spray Process).

§ 58.238  Condensed storage tanks.

(a) Excess production of condensed product over that which the dryer will take continuously from the pans should be bypassed through a cooler into a storage tank at 50 °F. or lower and held at this temperature until used.

(b) Product cut-off points shall be made at least every 24 hours and the tank completely emptied, washed, and sanitized before reuse.

§ 58.239  Drying.

Each dryer should be operated to produce the highest quality dry product consistent with the most efficient operation. The dry products shall be removed from the drying chamber continuously during the drying process.

§ 58.240  Cooling dry products.

Prior to packaging and immediately following removal from the drying chamber the dry product shall be cooled to a temperature not exceeding 110 °F, however, if the product is to be held in a bulk bin the temperature should be reduced to approximately 90 °F but shall be not more than 110 °F.

§ 58.241  Packaging, repackaging and storage.

(a) Containers. Packages or containers used for the packaging of nonfat dry milk or other dry milk products shall be any clean, sound commercially accepted container or packaging material which will satisfactorily protect the contents through the regular channels of trade, without significant impairment of quality with respect to flavor, wholesomeness or moisture content under the normal conditions of handling. In no instance will containers which have previously been used for nonfood items, or food items which would be deleterious to the dairy product be allowed to be used for the bulk handling of dairy products.

(b) Filling. Empty containers shall be protected at all times from possible contamination and containers which are to be lined shall not be prepared more than one hour in advance of filling. Every precaution shall be taken during the filling operation to minimize product dust and spillage. When necessary a mechanical shaker shall be provided; the tapping or pounding of containers should be prohibited. The containers shall be closed immediately after filling and the exteriors shall be vacuumed or brushed when necessary to render them practically free of residual product before being transferred.
from the filling room to the palleting or dry storage areas.

(c) Repackaging. The entire repackaging operation shall be conducted in a sanitary manner with all precautions taken to prevent contamination and to minimize dust. All exterior surfaces of individual containers shall be practically free of product before overwrapping or packing in shipping containers. The room shall be kept free of dust accumulation, waste, cartons, liners, or other refuse. Conveyors, packaging and carton making equipment shall be vacuumed frequently during the operating day to prevent the accumulation of dust. No bottles or glass materials of any kind shall be permitted in the repackaging or hopper room. The inlet openings of all hoppers and bins shall be of minimum size, screened and placed well above the floor level. The room and all packaging equipment shall be cleaned as often as necessary to maintain a sanitary operation. Close attention shall be given to cleaning equipment where residues of the dry product may accumulate. A thorough clean-up including windows, doors, walls, light fixtures and ledges, should be performed as frequently as is necessary to maintain a high standard of cleanliness and sanitation. All waste dry dairy products including dribble product at the fillers, shall be properly identified and disposed of as animal feed.

(d) Storage—(1) Product. The packaged dry milk product shall be stored or so arranged in aisles, rows, or sections and lots at least 18 inches from any wall and in such a manner as to be orderly, easily accessible for inspection or for cleaning of the room. All bags and small containers of products shall be placed on pallets elevated from the floor. Products in small containers may be stored by methods preventing direct contact with the floor when the condition of the container is satisfactorily maintained. The storage room shall be kept clean and dry and all openings protected against entrance of insects and rodents.

(2) Supplies. All supplies shall be placed on dunnage or pallets and arranged in an orderly manner for accessibility and cleaning of the room. It is preferable that supplies be stored in an area separate from that used for storing the dry products. Supplies shall be kept enclosed in their original wrapping material until used. After removal of supplies from their original containers, they shall be kept in an enclosed metal cabinet, bins or on shelving and if not enclosed shall be protected from powder, and dust or other contamination. The room should be vacuumed as often as necessary and kept clean and orderly.

§ 58.242 Product adulteration.

All necessary precautions shall be taken throughout the entire operation to prevent the adulteration of one product with another. The commingling of one type of liquid or dry product with another shall be considered as an adulteration of that product. This does not prohibit the normal standardization of like products in accordance with good commercial practices or the production of specific products for special uses, provided applicable labeling requirements are met.

§ 58.243 Checking quality.

All milk, milk products and dry milk products shall be subject to inspection and analysis by the dairy plant for quality and condition throughout each processing operation. Periodically samples of product and environmental material shall be tested for salmonella. Test results shall be negative when samples are tested for salmonella. Line samples should be taken periodically as an aid to quality control in addition to the regular routine analysis made on the finished products.

§ 58.244 Number of samples.

As many samples shall be taken from each dryer production lot as is necessary to assure proper composition and quality control. A sufficient number of representative samples from the lot shall be taken to assure compliance with the stated net weight on the container.

§ 58.245 Method of official sample analysis.

Samples shall be tested according to the applicable methods of laboratory analysis contained in DA Instruction 918–105, 918–109–1 and 918–109–3 as issued
§ 58.246 Cleaning of dryers, collectors, conveyors, ducts, sifters and storage bins.

This equipment shall be cleaned as often as is necessary to maintain such equipment in a clean and sanitary condition. The kind of cleaning procedure either wet or dry and the frequency of cleaning shall be based upon observation of actual operating results and conditions.

§ 58.247 Insect and rodent control program.

In addition to any commercial pest control service, if one is utilized, a specially designated employee should be made responsible for the performance of a regularly scheduled insect and rodent control program as outlined in University of Wisconsin Extension Bulletin A2518 or subsequent revisions thereof, or one equivalent thereto.

REQUIREMENTS FOR FINISHED PRODUCTS BEARING USDA OFFICIAL IDENTIFICATION

§ 58.248 Nonfat dry milk.

(a) Nonfat dry milk in commercial bulk containers bearing an official identification shall meet the requirements of U.S. Extra Grade or U.S. Standard Grade.

(b) Regular nonfat dry milk in consumer size packages which bears an official identification shall meet the requirements of U.S. Extra Grade. In addition, the nonfat dry milk shall be sampled and tested in accordance with §§58.244 and 58.245.

§ 58.249 Instant nonfat dry milk.

(a) Only instant nonfat dry milk manufactured and packaged in accordance with the requirements of this part and with the applicable requirements in part A of this part which has been officially inspected in process and found to be in compliance with these requirements may be identified with the official USDA U.S. Extra Grade, processed and packed inspection shield.

(b) Instant nonfat dry milk shall meet the applicable standard for U.S. Extra Grade.

§ 58.250 Dry whole milk.

Dry whole milk in commercial bulk containers which bears an official identification shall meet the requirements for the U.S. Standards for Grades of Dry Whole Milk. Quality requirements for dry whole milk in consumer packages shall be for U.S. Extra Grade and shall be gas packed with an oxygen content of not more than 2.0 percent.

§ 58.251 Dry buttermilk and dry buttermilk product.

The quality requirements for dry buttermilk or dry buttermilk product bearing an official identification shall be in accordance with the U.S. Standards for Grades of Dry Buttermilk and Dry Buttermilk Product.

[56 FR 33855, July 24, 1991]

SUPPLEMENTAL SPECIFICATIONS FOR PLANTS MANUFACTURING, PROCESSING AND PACKAGING BUTTER AND RELATED PRODUCTS

DEFINITIONS

§ 58.305 Meaning of words.

For the purpose 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. Unless the context otherwise requires, the following terms shall have the following meaning.

(a) Butter. The food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, with or without additional coloring matter, and containing not less than 80 percent by weight of milkfat, all tolerances having been allowed for.

(b) Butteroil. The food product resulting from the removal of practically all of the moisture and solids-not-fat from butter. It contains not less than 99.6 percent fat and not more than 0.3 percent moisture and not more than 0.1 percent other butter constituents, of which the salt shall be not more than 0.05 percent. Antioxidants permitted to be used are as follows:

<table>
<thead>
<tr>
<th>Antioxidant</th>
<th>Maximum level</th>
</tr>
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<tbody>
<tr>
<td>Propyl gallate</td>
<td>0.02% of fat.</td>
</tr>
<tr>
<td>Butylated hydroxytoluene (BHT)</td>
<td>0.02% of fat.</td>
</tr>
<tr>
<td>Butylated hydroxyanisole (BHA)</td>
<td>0.02% of fat.</td>
</tr>
</tbody>
</table>
An inert gas may be used to flush air-tight containers before, during, and after filling. Carbon dioxide may not be used for this purpose.

(c) Anhydrous milkfat. The food product resulting from the removal of practically all of the moisture and solids-not-fat from pasteurized cream or butter. It contains not less than 98.8 percent fat and not more than 0.1 percent moisture and, when produced from butter, not more than 0.1 percent other butter constituents, of which the salt shall be not more than 0.05 percent. An inert gas may be used to flush air-tight containers before, during, and after filling. Carbon dioxide may not be used for this purpose.

(d) Frozen cream. Sweet cream which has been pasteurized and frozen. It contains approximately 40 percent milkfat.

(e) Plastic cream. Sweet cream which has been pasteurized and contains approximately 80 percent milkfat.

(f) Whipped butter. The food product is made by the uniform incorporation of air or inert gas into butter.


ROOMS AND COMPARTMENTS

§ 58.311 Coolers and freezers.

The coolers and freezers shall be equipped with facilities for maintaining proper temperature and humidity conditions, consistent with good commercial practices for the applicable product, to protect the equality and condition of the products during storage or during tempering prior to further processing. Coolers and freezers shall be kept clean, orderly, free from insects, rodents, and mold, and maintained in good repair. They shall be adequately lighted and proper circulation of air shall be maintained at all times. The floors, walls, and ceilings shall be of such construction as to permit thorough cleaning.

§ 58.312 Churn rooms.

Churn rooms in addition to proper construction and sanitation shall be so equipped that the air is kept free from objectionable odors and vapors and extreme temperatures by means of adequate ventilation and exhaust systems or air conditioning and heating facilities.

§ 58.313 Print and bulk packaging rooms.

Rooms used for packaging print or bulk butter and related products should, in addition to proper construction and sanitation, provide an atmosphere relatively free from mold (not more than 15 colonies per plate during a 15 min. exposure), dust, or other airborne contamination and maintain a reasonable room temperature in accordance with good commercial practices.

EQUIPMENT AND UTENSILS

§ 58.314 General construction, repair and installation.

All equipment and utensils necessary to the manufacture of butter and related products shall meet the same general requirements as outlined in §58.128. In addition for certain other equipment, the following requirements shall be met.

§ 58.315 Continuous churns.

All product contact surfaces of the churn and related equipment shall be of noncorrosive material. All non-metallic product contact surfaces shall comply with 3-A Standards for Plastic, Rubber, and Rubber-Like Materials. All product contact surfaces of the churn and related equipment shall be readily accessible for cleaning and inspection. Construction shall follow the applicable principles of the 3-A Sanitary Standards.

§ 58.316 Conventional churns.

Churns shall be constructed of aluminum, stainless steel or equally corrosion resistant metal, free from
§ 58.317 Bulk butter trucks, boats, texturizers, and packers.

Bulk butter trucks, boats, texturizers, and packers shall be constructed of aluminum, stainless steel, or equally corrosion resistant metal free from cracks, seams and must have a surface that is relatively smooth and easily cleanable. All non-metallic product surfaces shall comply with 3-A Standards for Plastic, Rubber, and Rubber-Like Material.

§ 58.318 Butter, frozen or plastic cream melting machines.

Shavers, shredders or melting machines used for rapid melting of butter, frozen or plastic cream shall be of stainless steel or equally corrosion resistant metal, free from cracks and of sanitary construction, and readily cleanable.

§ 58.319 Printing equipment.

All printing equipment shall be designed so as to adequately protect the product and be readily demountable for cleaning of product contact surfaces. All product contact surfaces shall be aluminum, stainless steel or equally corrosion resistant metal, or plastic, rubber and rubber like material which comply with 3-A standards, except that conveyors may be constructed of material which can be properly cleaned and maintained in a satisfactory manner.

§ 58.320 Brine tanks.

Brine tanks used for the treating of parchment liners shall be constructed of noncorrosive material and have an adequate and safe means of heating the salt solution for the treatment of the liners. The tank should also be provided with a satisfactory drainage outlet.

§ 58.321 Cream storage tanks.

Cream storage tanks shall meet the requirements of §58.128(d). Cream storage tanks for continuous churns should be equipped with effective temperature controls and recording devices.

QUALITY SPECIFICATIONS FOR RAW MATERIAL

§ 58.322 Cream.

Cream separated at an approved plant and used for the manufacture of butter shall have been derived from raw material meeting the requirements as listed under §§58.132 through 58.138 of this subpart.

§ 58.323 [Reserved]

§ 58.324 Butteroil.

To produce butteroil eligible for official certification, the butter used shall conform to the flavor requirements of U.S. Grade AA, U.S. Grade A, or U.S. Grade B, and shall have been manufactured in an approved plant.

§ 58.325 Anhydrous milkfat.

If cream is used in the production of anhydrous milkfat that is eligible for official certification, the anhydrous milkfat shall be made by a continuous separation process directly from milk or cream. The cream used shall be comparable to the flavor quality specified above for U.S. Grade AA or U.S. Grade A butter. The milkfat from cream may then be further concentrated into oil. The cream or oil shall be pasteurized in accordance with the procedures for cream for buttermaking (§58.334a). If butter is used in the production of anhydrous milkfat that is eligible for official certification, the butter used shall conform to the flavor requirements of U.S. Grade AA or U.S. Grade A butter and shall have been manufactured in an approved plant. The appearance of anhydrous milkfat should be fairly smooth and uniform in consistency.

§ 58.326 Plastic cream.

To produce plastic cream eligible for official certification, the quality of the cream used shall meet the requirements of cream acceptable for the manufacture of U.S. Grade AA or U.S. Grade A butter.
§ 58.327 Frozen cream.

To produce frozen cream eligible for official certification, the quality of the cream used shall meet the requirements of cream acceptable for the manufacture of U.S. Grade AA or U.S. Grade A butter.

§ 58.328 Salt.

The salt shall be free-flowing, white refined sodium chloride and shall meet the requirements of The Food Chemical Codex.

§ 58.329 Color.

Coloring, when used shall be Annatto or any color which is approved by the U.S. Food and Drug Administration.

§ 58.330 Butter starter cultures.

Harmless bacterial cultures when used in the development of flavor components in butter and related products shall have a pleasing and desirable flavor and shall have the ability to transmit these qualities to the finished product.

§ 58.331 Starter distillate.

The refined flavor components when used to flavor butter and related products. It shall be of food grade quality, free of extraneous material and prepared in accordance with good commercial practice.

OPERATIONS AND OPERATING PROCEDURES

§ 58.332 Segregation of raw material.

The milk and cream received at the dairy plant shall meet the quality specifications as indicated under § 58.322. The milk and cream should be segregated by quality and processed separately in such a manner that the finished product will fully meet the requirements of a particular U.S. Grade or other specification, whichever is applicable.

§ 58.333 Pasteurization.

The milk or cream shall be pasteurized at the plant where the milk or cream is processed into the finished product or by procedures as set forth by the Administrator.

(a) Cream for butter making. The cream for butter making shall be pasteurized at a temperature of not less than 165 °F and held continuously in a vat at such temperature for not less than 30 minutes; or pasteurized by HTST method at a minimum temperature of not less than 185 °F. for not less than 15 seconds; or it shall be pasteurized by any other equivalent temperature and holding time which will assure adequate pasteurization. Additional heat treatment above the minimum pasteurization requirement is advisable to insure improved keeping-quality characteristics.

(b) Cream for plastic or frozen cream. The pasteurization of cream for plastic or frozen cream shall be accomplished in the same manner as in paragraph (a) of this section, except that the temperature for the vat method shall be not less than 170 °F for not less than 30 minutes, or not less than 190 °F. for not less than 15 seconds or by any other temperature and holding time which will assure adequate pasteurization and comparable keeping-quality characteristics.

§ 58.335 Quality control tests.

All milk, cream and related products are subject to inspection for quality and condition throughout each processing operation. Quality control tests shall be made on flow samples as often as necessary to check the effectiveness of processing and manufacturing and as an aid in correcting deficiencies in processing and manufacturing. Routine analysis shall be made on raw materials and finished products to assure adequate microbiological, composition and chemical control.
§ 58.336 Frequency of sampling for quality control of cream, butter and related products.

(a) Microbiological. Samples shall be taken from churnings or batches and should be taken as often as is necessary to insure microbiological control.

(b) Composition. Sampling and testing for product composition shall be made on churns or batches as often as is necessary to insure adequate composition control. For in-plant control, the Kohman or modified Kohman test may be used.

(c) Chemical—(1) Acid degree value. This test should be made on churnings or batches from samples taken from the cream as often as is necessary to aid in the control of lipase activity.

(2) Free fatty acid. This test should be made on churnings or batches from samples taken from the butter as often as is necessary to aid in the control of lipase activity.

(d) Other analysis. Other chemical analysis or physical measurements shall be performed as often as is necessary to insure meeting grade standards and contract specifications.

(e) Weight or volume control. Representative samples of the packaged product should be checked using procedures prescribed by the Administrator during the packaging operation to assure compliance with the stated net weight or volume on the container.

(f) Keeping quality and stability. Samples from churnings shall be subjected to a seven day keeping quality test at a temperature of 72 °F. to establish and maintain a satisfactory keeping quality history. Optionally 98 °F. for 48 hours may be used, however, in case of a dispute, the results of the seven days at 72 °F. will prevail.

§ 58.337 Official test methods.

(a) Chemical. Chemical analyses except where otherwise prescribed herein, shall be made in accordance with the methods described in the latest edition of Official Methods of Analysis of the Association of Official Analytical Chemists, published by the Association of Official Analytical Chemists, the Official and Tentative Methods of the American Oil Chemists Society or any other methods giving equivalent results.

(b) Microbiological. Microbiological determinations shall be made in accordance with the methods described or suggested in the latest edition of Standard Methods for the Examination of Dairy Products, published by the American Public Health Association.

§ 58.338 Composition and wholesomeness.

All ingredients used in the manufacture of butter and related products shall be subject to inspection and shall be wholesome and practically free from impurities. Chlorinating facilities shall be provided for butter wash water if needed and all other necessary precautions shall be taken to prevent contamination of products. All finished products shall comply with the requirements of the Federal Food, Drug and Cosmetic Act, as to composition and wholesomeness.

§ 58.339 Containers.

(a) Containers used for the packaging of butter and related products shall be commercially acceptable containers or packaging material that will satisfactorily protect the quality of the contents in regular channels of trade. Caps or covers which extend over the lip of the container shall be used on all cups or tubs containing two pounds or less, to protect the product from contamination during subsequent handling.

(b) Liners and wrappers. Supplies of parchment liners, wrappers and other packaging material shall be protected against dust, mold and other possible contamination.

(1) Prior to use, parchment liners for bulk butter packages shall be completely immersed in a boiling salt solution in a suitable container constructed of stainless steel or other equally non-corrosive material. The liners shall be maintained in the solution for not less than 30 minutes. The liners shall be effectively treated with a solution consisting of at least 15 pounds of salt for every 85 pounds of water and shall be strengthened or changed as frequently as necessary to keep the solution full strength and in good condition.
(2) Other liners such as polyethylene shall be treated or handled in such a manner as to prevent contamination of the liner prior to filling.

(c) Filling bulk butter containers. The lined butter containers shall be protected from possible contamination prior to filling. Use of parchment liners may be accomplished by alternately inverting one container over the other or stacking the lined boxes on their sides in a rack, until ready for use. When using polyethylene liners the boxes should be lined immediately prior to use. When packing butter into the bulk containers, care shall be taken to fill the corners leaving as few holes or openings as possible. The surface of the butter as well as the covering liner shall be smoothed evenly over the top surface before closing and sealing the container. Containers should be stacked only as high as the firmness of the product will support weight, so as not to crush or distort the container.

§ 58.340 Printing and packaging.

Printing and packaging of consumer size containers of butter shall be conducted under sanitary conditions. Separate rooms equipped with automatic filling and packaging equipment should be provided. The outside cartons should be removed from bulk butter in a room outside of the printing operation but the parchment removal and cutting of the butter may be done in the print room.

§ 58.341 Repackaging.

When officially graded or inspected bulk product is to be repackaged into consumer type packages for official labeling or other official identification, a supervisor of packaging shall be required and the plant, equipment, facilities and personnel shall meet the same specifications as outlined in this part, including such markings or identification as may be required.

§ 58.342 General identification.

Commercial bulk shipping containers shall be legibly marked with the name of the product, net weight, name and address of manufacturer, processor or distributor or other assigned plant identification (manufacturer's lot number, churn number, etc.) and any other identification that may be required. Packages of plastic or frozen cream shall be marked with the percent of milkfat.

§ 58.343 Storage of finished product in coolers.

All products shall be kept under refrigeration at temperatures of 40 °F. or lower after packaging and until ready for distribution or shipment. The products shall not be placed directly on floors or exposed to foreign odors or conditions such as drippage due to condensation which might cause package or product damage.

§ 58.344 Storage of finished product in freezer.

(a) Sharp freezers. Plastic cream or frozen cream intended for storage shall be placed in quick freezer rooms immediately after packaging, for rapid and complete freezing within 24 hours. The packages shall be piled or spaced in such a manner that air can freely circulate between and around the packages. The rooms shall be maintained at −10 °F. or lower and shall be equipped to provide sufficient high velocity, air circulation for rapid freezing. After the products have been completely frozen, they may be transferred to a freezer storage room for continued storage.

(b) Freezer storage. The room shall be maintained at a temperature of 0 °F. or lower. Adequate air circulation is desirable. Butter intended to be held more than 30 days shall be placed in a freezer room as soon as possible after packaging. If not frozen before being placed in the freezer, the packages shall be spaced in such a manner as to permit rapid freezing and repiled, if necessary, at a later time.

Requirements for finished products bearing USDA official identification

§ 58.345 Butter.

The quality requirements for butter shall be in accordance with the U.S. Standards for Grades of Butter for U.S. Grade AA, U.S. Grade A, or U.S. Grade B, respectively.
§ 58.346 Whipped butter.

(a) The quality requirements for whipped butter shall be in accordance with the U.S. Standards for Grades of Whipped Butter for U.S. Grade AA and U.S. Grade A, respectively.

(b) Whipped butter shall also be subject to the following specifications when sampled and tested in accordance with §§58.336 and 58.337:

1. Proteolytic count, not more than 50 per gram; yeast and mold count, not more than 10 per gram; coliform count, not more than 10 per gram; and keeping-quality test, satisfactory after 7 days at 70°F.

2. Optional except when required or requested: Copper content, not more than 0.3 ppm; iron content, not more than 1.0 ppm; enterococci, not more than 10 per gram.

§ 58.347 Butteroil or anhydrous milkfat.

The flavor shall be bland and free from rancid, oxidized, or other objectionable flavors.

(a) In addition, the finished products shall meet the following specifications when sampled and tested in accordance with §§58.336 and 58.337:

<table>
<thead>
<tr>
<th>Butteroil</th>
<th>Anhydrous milkfat</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milkfat</td>
<td>Not less than 99.6 percent</td>
</tr>
<tr>
<td>Moisture</td>
<td>Not more than 0.3 percent</td>
</tr>
<tr>
<td>Other butter constituents including salt</td>
<td>Not more than 0.05 percent</td>
</tr>
<tr>
<td>Salt</td>
<td>Those permitted by standards of the Food and Drug Administration.</td>
</tr>
<tr>
<td>Antioxidants</td>
<td>Not more than 0.1 miliequivalent per kilogram of fat.</td>
</tr>
<tr>
<td>Free fatty acids</td>
<td>Not more than 0.2 ppm</td>
</tr>
<tr>
<td>Peroxide value</td>
<td>Not more than 0.5 percent (calculated as oleic acid).</td>
</tr>
<tr>
<td>Iron content</td>
<td>Not more than 0.05 ppm</td>
</tr>
<tr>
<td>Copper content</td>
<td>Not more than 0.5 ppm</td>
</tr>
</tbody>
</table>

(b) [Reserved]

(60 FR 4826, Jan. 24, 1995)

§ 58.348 Plastic cream.

The flavor shall be sweet, pleasing and desirable, but may possess the following flavors to a slight degree: aged, bitter, flat, smothered and storage; and cooked and feed flavors to a definite degree. It shall be free from rancid, oxidized or other objectionable flavors.

(a) In addition, the finished product shall meet the following specifications when sampled and tested in accordance with §§58.336 and 58.337:

1. Standard plate count, not more than 30,000 per gram; coliform count, not more than 10 per gram; yeast and mold, not more than 20 per gram;

2. Optional except when required or requested: Copper content not more than 0.3 ppm; iron content not more than 1.0 ppm.

§ 58.349 Frozen cream.

The flavor shall be sweet, pleasing and desirable, but may possess the following flavors to a slight degree: Aged, bitter, flat, smothered, storage; and cooked and feed flavors to a definite degree. It shall be free from rancid, oxidized or other objectionable flavors.

(a) In addition, the product shall meet the following specifications when sampled and tested in accordance with §§58.336 and 58.337. Samples for analysis should be taken prior to freezing of the product.
§ 58.412 Coolers or curing rooms.

Coolers or curing rooms where cheese is held for curing or storage shall be clean and maintained at the proper uniform temperature and humidity to

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1 21 CFR part 19 was redesignated as part 133 at 42 FR 14302, Mar. 15, 1977.
adequately protect the cheese, and minimize the undesirable growth of mold. Proper circulation of air shall be maintained at all times. The shelves shall be kept clean and dry. This does not preclude the maintenance of suitable conditions for the curing of mold and surface ripened varieties.

§ 58.413 Cutting and packaging rooms.

When small packages of cheese are cut and wrapped, separate rooms shall be provided for the cleaning and preparation of the bulk cheese and for the cutting and wrapping operation. The rooms shall be well lighted, ventilated and provided with filtered air. Air movement shall be outward to minimize the entrance of unfiltered air into the cutting and packaging room. The waste materials and waste cheese shall be disposed of in an environmentally and/or sanitary approved manner.

EQUIPMENT AND UTENSILS

§ 58.414 General construction, repair and installation.

All equipment and utensils necessary to the manufacture of cheese and related products shall meet the same general requirements as outlined in § 58.128. In addition, for certain other equipment the following requirements shall be met.

§ 58.415 Starter vats.

Bulk starter vats shall be of stainless steel or equally corrosion resistant metal and should be constructed according to the applicable 3-A Sanitary Standards. New or replacement vats shall be constructed according to the applicable 3-A Sanitary Standards. The vats shall be in good repair, equipped with tight fitting lids and have adequate temperature controls such as valves, indicating and/or recording thermometers.

§ 58.416 Cheese vats, tanks and drain tables.

(a) The vats, tanks and drain tables used for making cheese should be of metal construction with adequate jacket capacity for uniform heating. The inner liner shall be minimum 16 gauge stainless steel or other equally corrosion resistant metal, properly pitched from side to center and from rear to front for adequate drainage. The liner shall be smooth, free from excessive dents or creases and shall extend over the edge of the outer jacket. The outer jacket shall be constructed of stainless steel or other metal which can be kept clean and sanitary. The junction of the liner and outer jackets shall be constructed so as to prevent milk or cheese from entering the inner jacket.

(b) The vat, tank and/or drain table shall be equipped with a suitable sanitary outlet valve. Effective valves shall be provided and properly maintained to control the application of heat to this equipment. If this equipment is provided with removable cloth covers, they shall be clean.

§ 58.417 Mechanical agitators.

The mechanical agitators shall be of sanitary construction. The carriages shall be of the enclosed type and all product contact surfaces, shields, shafts, and hubs shall be constructed of stainless steel or other equally corrosion resistant metal. Metal blades, forks, or stirrers shall be constructed of stainless steel and of material approved in the 3-A Sanitary Standards for Plastic, and Rubber and Rubber-Like Materials and shall be free from rough or sharp edges which might scratch the equipment or remove metal particles.

§ 58.418 Automatic cheese making equipment.

(a) Automatic Curd Maker. The automatic curd making system shall be constructed of stainless steel or of material approved in the 3-A Sanitary Standards for Plastic, and Rubber and Rubber-Like Material. All areas shall be free from cracks and rough surfaces and constructed so that they can be easily cleaned.

(b) Curd conveying systems. The curd conveying system, conveying lines and cyclone separator shall be constructed of stainless steel or other equally corrosion resistant metal and in such manner that it can be satisfactorily cleaned. The system shall be of sufficient size to handle the volume of curd and be provided with filtered air of the quality satisfactory for the intended use. Air compressors or vacuum pumps
shall not be located in the processing or packaging areas.

(c) **Automatic salter.** The automatic salter shall be constructed of stainless steel or other equally corrosion resistant metal. This equipment shall be constructed to equally distribute the salt throughout the curd. It shall be designed to accurately weigh the amount of salt added. The automatic salter shall be constructed so that it can be satisfactorily cleaned. The salting system shall provide for adequate absorption of the salt in the curd. Water and steam used to moisten the curd prior to salting shall be potable water or culinary steam.

(d) **Automatic curd filler.** The automatic curd filler shall be constructed of stainless steel or other equally corrosion resistant metal. This equipment shall be of sufficient size to handle the volume of curd and constructed and controlled so as to accurately weigh the amount of curd as it fills. The curd filler shall be constructed so that it can be satisfactorily cleaned.

(e) **Hoop and barrel washer.** The washer shall be constructed so that it can be satisfactorily cleaned. It shall also be equipped with temperature and pressure controls to ensure satisfactory cleaning of the hoops or barrels. It should be adequately vented to the outside.

§ 58.419 Curd mill and miscellaneous equipment.

Knives, hand rakes, shovels, scoops, paddles, strainers, and miscellaneous equipment shall be stainless steel or of material approved in the 3-A Sanitary Standards for Plastic and Rubber-like Material. The product contact surfaces of the curd mill should be of stainless steel. All pieces of equipment shall be so constructed that they can be kept clean and free from rough or sharp edges which might scratch the equipment or remove metal particles. The wires in the curd knives shall be stainless steel, kept tight and replaced when necessary.

§ 58.420 Hoops, forms and followers.

The hoops, forms, and followers shall be constructed of stainless steel, heavy tinned steel, or other approved materials. If tinned, they shall be kept tinned and free from rust. All hoops, forms, and followers shall be kept in good repair. Drums or other special forms used to press and store cheese shall be clean and sanitary.

§ 58.421 Press.

The cheese press should be constructed of stainless steel and all joints welded and all surfaces, seams and openings readily cleanable. The pressure device shall be the continuous type. Press cloths shall be maintained in good repair and in a sanitary condition. Single service press cloths shall be used only once.

§ 58.422 Brine tank.

The brine tank shall be constructed of suitable non-toxic material and should be resistant to corrosion, pitting or flaking. The brine tank shall be operated so as to assure the brine is clean, well circulated, and of the proper strength and temperature for the variety of cheese being made.

§ 58.423 Cheese vacuumizing chamber.

The vacuum chamber shall be satisfactorily constructed and maintained so that the product is not contaminated with rust or flaking paint. An inner liner of stainless steel or other corrosion resistant material should be provided.

§ 58.424 Monorail.

The monorail shall be constructed so as to prevent foreign material from falling on the cheese or cheese containers.

§ 58.425 Conveyor for moving and draining block or barrel cheese.

The conveyor shall be constructed so that it will not contaminate the cheese and be easily cleaned. It shall be installed so that the press drippings will not cause an environmental problem.

§ 58.426 Rindless cheese wrapping equipment.

The equipment used to heat seal the wrapper applied to rindless cheese shall have square interior corners, reasonably smooth interior surface and have controls that shall provide uniform pressure and heat equally to all surfaces. The equipment used to apply
§ 58.427 Shrinkable wrapping material to rindless cheese shall operate to maintain the natural intended shape of the cheese in an acceptable manner, reasonably smooth surfaces on the cheese and tightly adhere the wrapper to the surface of the cheese.

§ 58.427 Paraffin tanks.

The metal tank should be adequate in size, have wood rather than metal racks to support the cheese, have heat controls and an indicating thermometer. The cheese wax shall be kept clean.

§ 58.428 Speciality equipment.

All product contact areas of speciality equipment shall be constructed of stainless steel or of material approved in the 3-A Sanitary Standards for Plastic and Rubber and Rubber-Like Material, and constructed following 3-A Sanitary Standards principles.

§ 58.429 Washing machine.

When used, the washing machine for cheese cloths and bandages shall be of commercial quality and size; or of sufficient size to handle the applicable load. It should be equipped with temperature and water level controls.

QUALITY SPECIFICATIONS FOR RAW MATERIAL

§ 58.430 Milk.

The milk shall be fresh, sweet, pleasing and desirable in flavor and shall meet the requirements as outlined under §§58.132 through 58.138. The milk may be adjusted by separating part of the fat from the milk or by adding one or more of the following dairy products: Cream, skim milk, concentrated skim milk, nonfat dry milk, and water in a quantity sufficient to reconstitute any concentrated or dry milk used. Such dairy products shall have originated from raw milk meeting the same requirements as outlined under §§58.132 through 58.138.

§ 58.431 Hydrogen peroxide.

The solution shall comply with the specification of the U.S. Pharmacopeia, except that it may exceed the concentration specified therein and it does not contain added preservative. Application and usage shall be as specified in the “Definitions and Standards of Identity for Cheese and Cheese Products”, Food and Drug Administration.

§ 58.432 Catalase.

The catalase preparation shall be a stable, buffered solution, neutral in pH, having a potency of not less than 100 Keil units per milliliter. The source of the catalase, its application and usage shall be as specified in the “Definitions and Standards of Identity for Cheese and Cheese Products,” Food and Drug Administration.

§ 58.433 Cheese cultures.

Harmless microbial cultures used in the development of acid and flavor components in cheese shall have a pleasing and desirable taste and odor and shall have the ability to actively produce the desired results in the cheese during the manufacturing process.

§ 58.434 Calcium chloride.

Calcium chloride, when used, shall meet the requirements of the Food Chemical Codex.

§ 58.435 Color.

Coloring when used, shall be Annatto or any cheese or butter color which meet the requirements of the Food and Drug Administration.

§ 58.436 Rennet, pepsin, other milk clotting enzymes and flavor enzymes.

Enzyme preparations used in the manufacture of cheese shall be safe and suitable.

§ 58.437 Salt.

The salt shall be free-flowing, white refined sodium chloride and shall meet the requirements of the Food Chemical Codex.

 OPERATIONS AND OPERATING PROCEDURES

§ 58.438 Cheese from pasteurized milk.

If the cheese is labeled as pasteurized, the milk shall be pasteurized by subjecting every particle of milk to a minimum temperature of 161 °F. for
not less than 15 seconds or by any other acceptable combination of temperature and time treatment approved by the Administrator. HTST pasteurization units shall be equipped with the proper controls and equipment to assure pasteurization. If the milk is held more than 2 hours between the time of pasteurization and setting, it shall be cooled to 45 °F. or lower until time of setting.

§ 58.439 Cheese from unpasteurized milk.

If the cheese is labeled as “heat treated”, “unpasteurized,” “raw milk”, or “for manufacturing” the milk may be raw or heated at temperatures below pasteurization. Cheese made from unpasteurized milk shall be cured for a period of 60 days at a temperature not less than 35 °F. If the milk is held more than 2 hours between time of receipt or heat treatment and setting, it shall be cooled to 45 °F. or lower until time of setting.

§ 58.440 Make schedule.

A uniform schedule should be established and followed as closely as possible for the various steps of setting, cutting, cooking, draining the whey and milling the curd, to promote a uniform quality of cheese.

§ 58.441 Records.

Starter and make records should be kept at least three months.

(Approved by the Office of Management and Budget under OMB control number 0583-0047)1


§ 58.442 Laboratory and quality control tests.

(a) Chemical analyses—(1) Milkfat and moisture. One sample shall be tested from each vat of the finished cheese to assure compliance with composition requirements.

(b) Test method. Chemical analysis shall be made in accordance with the methods described in Official Methods of Analysis of the Association of Official Analytical Chemists as specified in the appropriate standards of identity, the latest edition of Standard Methods or by other methods giving equivalent results.

(b) Weight or volume control. Representative samples of the finished product shall be checked during the packaging operation to assure compliance with the stated net weight on the container of consumer size packages.

§ 58.443 Whey handling.

(a) Adequate sanitary facilities shall be provided for the handling of whey. If outside, necessary precautions shall be taken to minimize flies, insects and development of objectionable odors.

(b) Whey or whey products intended for human food shall at all times be handled in a sanitary manner in accordance with the procedures of this subpart as specified for handling milk and dairy products.

(c) Milkfat from whey should not be more than four days old when shipped.

§ 58.444 Packaging and repackaging.

(a) Packaging rindless cheese or cutting and repackaging all styles of bulk cheese shall be conducted under rigid sanitary conditions. The atmosphere of the packaging rooms, the equipment and the packaging material shall be practically free from mold and bacterial contamination.

(b) When officially graded bulk cheese is to be repackaged into consumer type packages with official grade labels or other official identification, a supervisor of packaging shall be required. If the repackaging is performed in a plant other than the one in which the cheese is manufactured and the product is officially identified, the plant, equipment, facilities and personnel shall meet the same requirements as outlined in this part.

§ 58.445 General identification.

Bulk cheese for cutting and the container for cheese for manufacturing shall be legibly marked with the name of the product, code or date of manufacture, vat number, officially designated code number or name and address of manufacturer. Each consumer
§ 58.446 Quality requirements.

(a) Cheddar cheese. The quality requirements for Cheddar cheese shall be in accordance with the U.S. Standards for Grades of Cheddar Cheese.

(b) Colby cheese. The quality requirements for Colby cheese shall be in accordance with the U.S. Standards for Grades of Colby Cheese.

(c) Monterey (Monterey Jack) cheese. The quality requirements for Monterey (Monterey Jack) cheese shall be in accordance with the U.S. Standards for Grades of Monterey (Monterey Jack) Cheese.

(d) Swiss cheese, Emmentaler cheese. The quality requirements for Swiss cheese, Emmentaler cheese shall be in accordance with the U.S. Standards for Grades for Swiss Cheese, Emmentaler Cheese.

(e) Bulk American cheese for manufacturing. The quality requirements for bulk American cheese for manufacturing shall be in accordance with the U.S. Standards for Grades of Bulk American Cheese for Manufacturing.

SUPPLEMENTAL SPECIFICATIONS FOR PLANTS MANUFACTURING AND PACKAGING COTTAGE CHEESE

DEFINITIONS

§ 58.505 Meaning of words.

For the purpose 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. Unless the context otherwise requires, the following terms shall have the following meaning:

(a) Condensed skim. Skim milk which has been condensed to approximately one-third the original volume in accordance with standard commercial practice.

(b) Cottage cheese. (1) Cottage cheese dry curd. The soft uncured cheese meeting the requirements of 21 CFR 19.5251 Food and Drug Administration.

(2) Cottage cheese. The soft uncured cheese meeting the requirements of 21 CFR 19.530.1 Food and Drug Administration.

(c) Lowfat Cottage cheese. The soft uncured cheese meeting the requirements of 21 CFR 19.531.1 Food and Drug Administration.

(d) Cottage cheese with fruits, nuts, chives, or other vegetables. Shall consist of cottage cheese to which has been added fruits, nuts, chives or other vegetables. The finished cheese shall comply with §58.505(b).

(e) Cream. The milkfat portion of milk which rises to the surface of milk on standing or is separated from it by centrifugal force and contains not less than 18.0 percent of milkfat.

(f) Creaming mixture. The creaming mixture consists of cream or a mixture of cream with milk or skim milk or both. To adjust the solids content, non-fat dry milk or concentrated skim milk may be added but not to exceed 3.0 percent by weight of the creaming mixture. It may or may not contain a culture of harmless lactic acid and flavor producing bacteria, food grade acid, salt, and stabilizers with or without carriers. The creaming mixture in its final form may or may not be homogenized and shall conform to the provisions of 21 CFR 19.530(b).1 Food and Drug Administration.

ROOMS AND COMPARTMENTS

§ 58.510 Rooms and compartments.

(a) Processing operations with open cheese vats should be separated from other rooms or areas. Excessive personnel traffic or other possible contaminating conditions should be avoided. Rooms, compartments, coolers, and

1 See footnote at §58.405.

21 CFR part 20 was redesignated as part 135 at 42 FR 14305, Mar. 15, 1977.
§ 58.517

Dry storage space in which any raw material, packaging or ingredients supplies or finished products are handled, processed, packaged or stored shall be designed and constructed to assure clean and orderly operations.

(b) Ventilation. Processing and packaging rooms or compartments shall be ventilated to maintain sanitary conditions, preclude the growth of mold and air borne bacterial contaminants, prevent undue condensation of water vapor and minimize or eliminate objectionable odors. To minimize air borne contamination in processing and packaging rooms a filtered air supply meeting the requirements of § 58.510(c) shall be provided. The incoming air shall exert an outward pressure so that the movement of air will be outward and prevent the movement of unfiltered air inward.

(c) Starter facility. A separate starter room or properly designed starter tanks and satisfactory air movement techniques shall be provided for the propagation and handling of starter cultures. All necessary precautions shall be taken to prevent contamination of the room, equipment and the air therein. A filtered air supply with a minimum average efficiency of 90% when tested in accordance with the ASHRAE Synthetic Dust Arrestance Test should be provided so as to obtain an outward movement of air from the room to minimize contamination.

(d) Coolers. Coolers shall be equipped with facilities for maintaining proper temperature and humidity conditions, consistent with good commercial practices for the applicable product, to protect the quality and condition of the products. Coolers shall be kept clean, orderly and free from mold, and maintained in good repair. They shall be adequately lighted and proper circulation of air shall be maintained at all times. The floors, walls, and ceilings shall be of such construction as to permit thorough cleaning.

EQUIPMENT AND UTENSILS

§ 58.511 General construction, repair and installation.

The equipment and utensils used for the manufacture and handling of cottage cheese shall be as specified in § 58.128. In addition for certain other equipment the following requirements shall be met.

§ 58.512 Cheese vats or tanks.

(a) Cheese vats or tanks shall meet the requirements of § 58.416. When direct steam injection is used for heating the milk, the vat or tank may be of single shell construction. The steam shall be culinary steam.

(b) Vats shall be equipped with valves to control the heating and cooling medium and a suitable sanitary outlet valve. Vats used for creaming curd should be equipped with a refrigerated cooling medium. A circulating pump for the heating and cooling medium is recommended.

§ 58.513 Agitators.

Mechanical agitators shall meet the requirements of § 58.417.

§ 58.514 Container fillers.

Shall comply with the 3-A Sanitary Standards for Equipment for Packaging Frozen Desserts and Cottage Cheese.

§ 58.515 Mixers.

Only mixers shall be used which will mix the cheese carefully and keep shattering of the curd particles to a minimum. They shall be constructed in such a manner as to be readily cleanable. If shafts extend through the wall of the tank below the level of the product, they shall be equipped with proper seals which are readily removable for cleaning and sanitizing. The mixer shall be enclosed or equipped with tight fitting covers.

§ 58.516 Starter vats.

Bulk starter vats shall meet the requirements of § 58.415.

QUALITY SPECIFICATIONS FOR RAW MATERIAL

§ 58.517 General.

Raw materials used for manufacturing cottage cheese shall meet the following quality specifications.
§ 58.518 Milk.

The selection of raw milk for cottage cheese shall be in accordance with §§58.132 through 58.138.

§ 58.519 Dairy products.

(a) Raw skim milk. All raw skim milk obtained from a secondary source shall be separated from milk meeting the same quality requirements for milk as outlined in §58.518 above. Skim milk after being pasteurized and separated shall be cooled to 45 °F. or lower unless the skim milk is to be set for cheese within two hours after pasteurizing. The skim milk should not be more than 48 hours old from the time the milk was received at the plant and the skim milk is set for cheese.

(b) Nonfat dry milk. Nonfat dry milk, when used, shall be obtained from milk meeting the same quality requirements as outlined in §58.518 above. It shall be processed according to the requirements of this Subpart, and should meet the requirements of §58.236(b)(3).

(c) Condensed skim milk. Condensed skim milk, if used, shall be prepared from raw milk or skim milk that meets the same quality requirements outlined above for raw milk or skim milk. It shall be cooled promptly after drawing from the vacuum pan or evaporator and shall have been pasteurized before concentrating or during the manufacture. The standard plate count of the concentrated milk shall not exceed 30,000 per ml. at time of use.

(d) Cream. Any cream used for preparing the dressing for creamed cottage cheese shall be separated from milk meeting at least the same quality requirements as the skim milk used for making the curd. The flavor of the cream shall be fresh and sweet. Cream obtained from a secondary source shall meet the same requirements. The creaming mixture prepared from this cream, after pasteurization, shall have a standard plate count of no more than 30,000 per ml.

§ 58.520 Nondairy ingredients.

(a) Calcium chloride. Calcium chloride, when used, shall be of food grade quality and free from extraneous material.

(b) Salt. Salt shall be free flowing, white refined sodium chloride and shall meet the requirements of The Food Chemical Codex.

(c) Other ingredients. Other ingredients such as fruits, nuts, chives or other vegetables used or blended with cottage cheese shall be reasonably free of bacteria so as not to appreciably increase the bacterial count of the finished product. The various ingredients in kind shall be consistent in size and color so as to produce the desired appearance and appeal of the finished product. The flavor of the ingredients used shall be natural and represent the intended flavor and intensity desired in the finished product. Such ingredients shall be clean, wholesome, of uniformly good quality, free from mold, rancid or decomposed particles. Vegetables used in cottage cheese may first be soaked for 15 to 20 minutes in a cold 25 to 50 ppm chlorine solution to appreciably reduce the bacterial population. After soaking, the vegetables shall be drained and used soon thereafter.

§ 58.521 Pasteurization and product flow.

(a) The skim milk used for the manufacture of cottage cheese shall be pasteurized not more than 24 hours prior to the time of setting by heating every particle of skim milk to a temperature of 161 °F. for not less than 15 seconds or by any other combination of temperature and time treatment giving equivalent results. All skim milk must be cooled promptly to 40 °F. or lower after pasteurization to aid in further cooling of cottage cheese curd for improved keeping quality.

(b) Cream or cheese dressing shall be pasteurized at not less than 150 °F. for not less than 30 minutes or at not less than 166 °F. for not less than 15 seconds or by any other combination of temperature and time treatment giving equivalent results. Cream and cheese dressing shall be cooled promptly to 40 °F. or lower after pasteurization to aid in further cooling of cottage cheese curd for improved keeping quality.

(c) Reconstituted nonfat dry milk for cottage cheese manufacture need not
be re-pasteurized provided it is reconstituted within two hours prior to the time of setting using water which is free from viable pathogenic or otherwise harmful microorganisms as well as microorganisms which may cause spoilage of cottage cheese. Skim milk separated from pasteurized whole milk need not be re-pasteurized provided it is separated in equipment from which all traces of raw milk from previous operations have been removed by proper cleaning and sanitizing.

§ 58.522 Reconstituting nonfat dry milk.

Nonfat dry milk shall be reconstituted in a sanitary manner.

§ 58.523 Laboratory and quality control tests.

(a) Quality control tests shall be made on samples as often as necessary to determine the shelf-life and stability of the finished product. Routine analyses shall be made on raw materials and finished product to assure satisfactory composition, shelf-life and stability.

(b) Frequency of sampling—(1) Microbiological. Samples of raw milk for testing shall be taken as prescribed in §58.135. Representative samples shall be taken of finished cottage cheese and from each lot or batch of product used as an ingredient. For keeping quality tests representative samples shall be taken of finished cottage cheese; dry cottage cheese shall be tested for moisture only.

(ii) pH. Representative samples shall be taken of finished cottage cheese.

(3) Chemical—(i) Milkfat and Moisture. Representative samples shall be taken of cottage cheese; dry cottage cheese shall be tested for moisture only.

(4) Test methods—(1) Microbiological. Microbiological determinations shall be made for coliform, psychrotrophic and yeasts and molds. These tests shall be made in accordance with the methods described in the latest edition of Standard Methods for the Examination of Dairy Products, published by the American Public Health Association.


§ 58.524 Packaging and general identification.

(a) Containers. Containers used for packaging cottage cheese shall be any commercially acceptable multiple use or single service container or packaging material which will satisfactorily protect the contents through the regular channels of trade without significant impairment of quality with respect to flavor, or contamination under normal conditions of handling. Caps or covers which extend over the lip of the container shall be used on all cups or tubs containing two pounds or less, to protect the product from contamination during subsequent handling.

(b) Packaging. The cheese shall be packaged in a sanitary manner and automatic filling and capping equipment shall be used on all small sizes. The containers shall be checked weighed during the filling operation to assure they are filled uniformly to not less than the stated net weight on the container. Also care shall be taken that the cottage cheese be of uniform consistency at the time of packaging to assure legal composition in all packages.

(c) General identification. Bulk packages containing cottage cheese shall be adequately and legibly marked with the name of the product, net weight, name and address of the manufacturer, lot number, code or date of packaging and any other identification as may be required. Consumer size packaged products shall meet the applicable regulations of the Food and Drug Administration.

§ 58.525 Storage of finished product.

Cottage cheese after packaging shall be promptly stored at a temperature of 45 °F. or lower to maintain quality and condition until loaded for distribution. During distribution and storage prior to sale the product should be maintained at a temperature of 45 °F. or lower. The product shall not be exposed to foreign odors or conditions such as drippage or condensation that might
cause package or product damage. Packaged cottage cheese shall not be placed directly on floors.

REQUIREMENTS FOR COTTAGE CHEESE BEARING USDA OFFICIAL IDENTIFICATION

§ 58.526 Official identification.

(a) Only cottage cheese manufactured and packaged in accordance with the requirements of this part and with the applicable requirements in subpart A of this part which has been officially inspected in process and found to be in compliance with these requirements may be identified with the official USDA Quality Approved Inspection Shield.

(b) Nonfat dry milk. Nonfat dry milk, when used in cottage cheese bearing official identification, shall meet the requirements for U.S. Extra Grade (Spray Process), at time of use, and should be of U.S. Low Heat Classification (not less than 6.0 mg. undenatured whey protein nitrogen per gram of nonfat dry milk). In addition, the nonfat dry milk shall have a direct microscopic count not exceeding 75 million per gram. The age of the nonfat dry milk shall be covered by a USDA grading certificate, evidencing compliance with quality requirements, dated not more than 6 months prior to use of the dry milk. In the interim between manufacture and use, the nonfat dry milk shall be stored in a clean, dry, vermin-free space. In any case, if the nonfat dry milk is more than 120 days old, at time of use, it shall be examined for flavor to make certain that it meets the requirements for U.S. Extra Grade.

§ 58.527 Physical requirements.

(a) Flavor. The cottage cheese shall possess a mild pleasing flavor, similar to fresh whole milk or light cream and may possess the delicate flavor and aroma of a good lactic starter. The product may possess to a slight degree a feed, acid, or salty flavor but shall be free from chalky, bitter, utensil, fruity, yeasty, or other objectionable flavors.

(b) Body and texture. The curd particles shall have a meaty texture, but sufficiently tender to permit proper absorption of cream or cheese dressing. The texture shall be smooth and velvety and shall not be mealy, crumbly, pasty, sticky, mushy, watery, rubbery or slimy or possess any other objectionable characteristics of body and texture. Small curd style (cut with ¼ inch knives) should have curd particles approximately ¼ inch or less in size. Large curd style (cut with knives over ¼ inch) should have curd particles approximately ¾ inch or more in size.

(c) Color and appearance. The finished cottage cheese, creamed or plain curd, shall have an attractive natural color and appearance with curd particles of reasonably uniform size. The creamed cottage cheese shall be uniformly mixed with the cream or dressing properly absorbed or adhering to the curd so as to prevent excessive drainage.

§ 58.528 Microbiological requirements.

Compliance shall be based on 3 out of 5 consecutive samples taken at the time of packaging.

(a) Coliform. Not more than 10 per gram.

(b) Psychrotrophic. No more than 100 per gram.

(c) Yeasts and molds. Not more than 10 per gram.

§ 58.529 Chemical requirements.

(a) Moisture. See §58.505(b).

(b) Milkfat. See §58.505(b).

(c) pH. Not higher than 5.2.

(d) Phosphatase. Not more than 4 micrograms of phenol equivalent per gram of cheese.

§ 58.530 Keeping quality requirements.

Keeping quality samples taken from the packaging line shall be held at 45 °F. for 10 days. At the end of the 10 day period the samples shall possess a satisfactory flavor and appearance, and shall be free from bitter, sour, fruity, or other objectionable tastes and odors. The surface shall not be discolored, translucent, slimy or show any other objectionable condition.
SUPPLEMENTAL SPECIFICATIONS FOR PLANTS MANUFACTURING, PROCESSING AND PACKAGING FROZEN DESSERTS

DEFINITIONS

§ 58.605 Meaning of words.
For the purpose 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. Unless the context otherwise requires, the following terms shall have the following meaning as applied to frozen desserts meeting FDA requirements and briefly defined as follows:

(a) Ice cream. The product conforming to the requirements of §20.21 "Definitions and Standards of Identity for Frozen Desserts," U.S. Food and Drug Administration (21 CFR 20.2).1

(b) Frozen custard. The product conforming to the requirements of §20.21 "Definitions and Standards of Identity for Frozen Desserts," U.S. Food and Drug Administration (21 CFR 20.2).1

(c) Ice milk. The product conforming to the requirements of §20.31 "Definitions and Standards of Identity for Frozen Desserts," U.S. Food and Drug Administration (21 CFR 20.3).1

(d) Sherbet. The product conforming to the requirements of §20.41 "Definitions and Standards of Identity for Frozen Desserts," U.S. Food and Drug Administration (21 CFR 20.4).1

(e) Mellorine. The product conforming to the requirements of §20.81 "Definitions and Standards of Identity for Frozen Desserts," U.S. Food and Drug Administration (21 CFR 20.8).1

(f) Overrun. The trade expression used to reference the increase in volume of the frozen product over the volume of the mix. This increase in volume is due to air being whipped into the product during the freezing process. It is expressed as percent of the volume of the mix.

(g) Mix. The trade name for the combined and processed ingredients which after freezing become a frozen dessert.

1 21 CFR part 20 was redesignated as part 135 at 42 FR 14303, Mar. 15, 1977.

ROOMS AND COMPARTMENTS

§ 58.619 Mix processing room.
The rooms used for combining mix ingredients and processing the mix shall meet the applicable requirements for rooms specified in §58.126. The room shall be ventilated to remove moisture and prevent condensation from forming on walls and ceiling. The room shall be well lighted.

§ 58.620 Freezing and packaging rooms.
The rooms used for freezing and packaging frozen desserts shall be adequate in size to permit satisfactory air circulation and maintained in a clean and sanitary condition. The rooms shall be constructed in the same manner as prescribed above for mix rooms.

§ 58.621 Freezing tunnels.
Freezing tunnels for quick freezing at extremely low temperatures shall be designed and constructed as to insure ease in cleaning and satisfactory conditions of operation.

§ 58.622 Hardening and storage rooms.
Hardening and storage rooms for frozen desserts shall be constructed of satisfactory material for this purpose. The rooms shall be maintained in a clean and orderly manner. Adequate shelves, bins, or pallets shall be provided to keep the packages of finished products off the floor and to prevent damage to the containers. Sufficient refrigeration should be provided to insure adequate storage temperature (−10° or lower). Air shall be circulated to maintain uniform temperature throughout the rooms. A vestibule or double entry way should be provided to minimize heat shock of the frozen products.

EQUIPMENT AND UTENSILS

§ 58.623 Homogenizer.
Homogenizer shall comply with 3-A Sanitary Standards.

§ 58.624 Freezers.
Product contact surfaces of freezers used to lower the temperature of the liquid mix to a semi-frozen mass by a stirring action shall be constructed of a stainless steel or equally corrosion resistant metal.
§ 58.625  
Resistant metal and all parts easily accessible for cleaning and sanitizing. Batch and continuous freezers should comply with the applicable 3-A Standards.

§ 58.625  Fruit or syrup feeders.

Fruit or syrup feeders inject flavoring material into the semi-frozen product. Product contact surfaces shall be constructed of stainless steel or equally corrosion resistant metal and all pumps shall be in accordance to 3-A Sanitary Standards for dairy equipment. The feeder shall be constructed to enable complete disassembly for cleaning and sanitizing.

§ 58.626  Packaging equipment.

Packaging equipment designed to mechanically fill and close single service containers with frozen desserts shall be constructed so that all product contact surfaces shall be of stainless steel or equally corrosion-resistant metal. All product contact surfaces shall be easily accessible for cleaning. The design and operation of the machine shall in no way contaminate the container of the finished product placed therein. New or replacement equipment shall comply with the 3A Sanitary Standards for Equipment for Packaging Frozen Desserts and Cottage Cheese.

QUALITY SPECIFICATIONS FOR RAW MATERIAL

§ 58.627  Milk and dairy products.

To produce ice cream and related products the raw milk and cream shall meet the quality requirements as prescribed in §§58.132 through 58.138, except that only commingled milk and cream meeting the bacteriological requirements of No. 1 shall be used.

§ 58.628  Sweetening agents.

Sweetening agents shall be clean and wholesome and consist of one or more of the approved sweeteners listed in §58.605.

§ 58.629  Flavoring agents.

Flavoring agents either natural or artificial shall be wholesome and free from undesirable flavors. They must impart the desired characteristic to the finished product. Flavoring agents shall be one or more of those approved in §58.605.

§ 58.630  Stabilizers.

Stabilizers shall be clean and wholesome and consist of one or more of those approved in §58.605.

§ 58.631  Emulsifiers.

Emulsifiers shall be clean and wholesome and consist of one or more of those approved in §58.605.

§ 58.632  Acid.

Acids used in sherbet shall be wholesome and of food grade quality and consist of one or more of those approved in §58.605.

§ 58.633  Color.

Coloring used for ice cream and related products shall be those certified by the U.S. Food and Drug Administration as safe for human consumption.

OPERATIONS AND OPERATING PROCEDURES

§ 58.634  Assembling and combining mix ingredients.

The assembling and combining of mix ingredients for processing shall be in accordance with clean and sanitary methods and shall be consistent with good commercial practices. All raw materials shall be subjected to inspection for quality and condition prior to being combined and processed into the finished mix. All necessary precautions shall be taken to prevent the contamination of any raw material or the finished mix with any foreign substance.

§ 58.635  Pasteurization of the mix.

Every particle of the mix, except added flavoring ingredients, shall be pasteurized at not less than 155 °F and held at that temperature for 30 minutes or for 175 °F for 25 seconds; or it may be pasteurized by any other equivalent temperature and holding time which will assure adequate pasteurization.

§ 58.636  Homogenization.

Homogenization of the pasteurized mix shall be accomplished to effectively reduce the size of the milkfat
globules and evenly disperse them throughout the mix.

§ 58.637 Cooling the mix.

The mix shall be immediately cooled to a temperature of 45 °F. or lower, and stored at this temperature until further processing begins.

§ 58.638 Freezing the mix.

After the mix enters the freezer, it shall be frozen as rapidly as possible to assure the formation of minute crystals. Proper adjustment of rate of flow, refrigerant and air pressure controls shall be achieved to assure correct overrun and consistency of the product for packaging and further freezing.

§ 58.639 Addition of flavor.

The addition of flavoring ingredients to semi-frozen mix just prior to packaging shall be performed in a clean and sanitary manner. Care shall be taken to insure the flavor injection equipment has been properly cleaned and sanitized prior to use and that the flavor ingredients are of good quality and wholesome.

§ 58.640 Packaging.

The packaging of the semifrozen product shall be done by means which will in no way contaminate the container or the product. When single service containers and lids are used, they shall be of good construction and protect the finished product. Containers used for frozen products shall be stored and handled in a sanitary manner so as to protect them from dust and bacterial contamination.

§ 58.641 Hardening and storage.

Immediately after the semifrozen product is placed in its intended container it shall be placed in a hardening tunnel or hardening room to continue the freezing process. Rapid freezing to 0° to −15 °F is desirable to produce a good textured product.

§ 58.642 Quality control tests.

All mix ingredients shall be subject to inspection for quality and condition throughout each processing operation. Quality control tests shall be made on flow line samples as often as necessary to check the effectiveness of processing and sanitation and as an aid in correcting deficiencies. Routine analysis shall be made on raw materials and finished products to assure adequate composition, weight or volume control.

§ 58.643 Frequency of sampling.

(a) Microbiological. Representative samples shall be taken from each type of mix, and for the finished frozen product one sample from each flavor made.

(b) Composition. Representative samples shall be tested for fat and solids-not-fat on each type of mix manufactured. Spot checks shall be made on the finished products as often as is necessary to assure compliance with composition standards.

(c) Weight or volume control. Representative samples of the packaged products shall be checked during the packaging operation to assure compliance with the stated volume on the container as well as weight and overrun requirements.

§ 58.644 Test methods.

(a) Microbiological. Microbiological determinations shall be made in accordance with the methods described in the latest edition of Standard Methods for the Examination of Dairy Products.

(b) Chemical. Chemical analysis shall be made in accordance with the methods described in the latest edition of Official Methods of Analysis of the Association of Official Analytical Chemists, the latest edition of Standard Methods, or by other methods giving equivalent results.

§ 58.645 General identification.

The various types of frozen desserts shall be packaged and labeled in accordance with the applicable regulations of the Food and Drug Administration.

Requirements for Finished Products Bearing USDA Official Identification

§ 58.646 Official identification.

(a) Only ice cream and related products manufactured and packaged in accordance with the requirements of this part and with the applicable requirements in subpart A of this part which
have been officially inspected in process and found to be in compliance with these requirements may be identified with the official USDA Quality Approved Inspection Shield.

(b) Dairy products used in the manufacture of frozen desserts for which there are U.S. grades established (non-fat dry milk, whole milk, buttermilk and whey) shall be U.S. Extra Grade or better, and in the case of unsalted butter, shall be no lower than U.S. Grade A. Dairy products for which there are not USDA grade shall meet the applicable requirements of this part which permit such product to bear the USDA Quality Approved Inspection Shield.

§ 58.647 Composition requirements for ice cream.

See § 58.605(a).

§ 58.648 Microbiological requirements for ice cream.

The finished product shall contain not more than 50,000 bacteria per gram as determined by the standard plate count, and shall contain not more than 10 coliform organisms per gram for plain and not more than 20 coliform per gram in chocolate, fruit, nut or other flavors in three out of five samples.

§ 58.649 Physical requirements for ice cream.

(a) Flavor. The flavor of the finished ice cream shall be pleasing and desirable, and characteristic of the fresh milk and cream and the particular flavoring used.

(b) Body and texture. The body shall be firm, have substance and readily melt to a creamy consistency when exposed to room temperatures; the texture shall be fine, smooth, and have the appearance of creaminess throughout.

(c) Color. The color shall be attractive, pleasing, uniform and characteristic of the flavor represented.

§ 58.650 Requirements for frozen custard.

The same requirements apply as for ice cream except plain frozen custard shall have a minimum egg yolk solids content of 1.4 percent, and 1.12 percent when fruits, nuts and other such ingredients are used for flavoring.

§ 58.651 Requirements for ice milk.

The requirements are the same as for ice cream except: (a) The minimum milk fat content shall be 2 percent by weight and the maximum milk fat content 7 percent by weight, (b) the total milk solids content shall be no less than 11 percent by weight, (c) the minimum total food solids weight per gallon shall be 1.3 pounds, (d) no reduction in the standards are permitted when fruits, nuts and other such ingredients are used for flavoring.

§ 58.652 Composition requirements for sherbet.

See § 58.605(d).

§ 58.653 Microbiological requirements for sherbet.

The finished product shall contain not more than 50,000 bacteria per gram as determined by the standard plate count and shall contain not more than 10 coliform organisms per gram in three out of five samples.

§ 58.654 Physical requirements for sherbet.

(a) Flavor. The flavor of the finished sherbet shall be pleasing and desirable and characteristic of the particular flavoring used and shall impart a sweet yet tart sensation.

(b) Body and texture. The body shall be firm, compact, somewhat chewy and readily melt to an even syrupy consistency at room temperatures; the texture shall be smooth but not as fine as in ice cream and shall be even throughout.

(c) Color. The color shall be attractive, pleasing, uniform and characteristic of the flavor represented.

SUPPLEMENTAL SPECIFICATIONS FOR PLANTS MANUFACTURING, PROCESSING AND PACKAGING PASTEURIZED PROCESS CHEESE AND RELATED PRODUCTS

DEFINITIONS

§ 58.705 Meaning of words.

(a) Pasteurized process cheese and related products. Pasteurized process cheese and related products are the foods which conform to the applicable provisions of part 19, title 21, §§ 19.750.
§ 58.712 Swiss.

Swiss cheese used in the manufacture of pasteurized process cheese and related products should be equivalent to U.S. Grade B or better, except that the cheese may be blind or possess finish.
§ 58.713 Gruyere.

Gruyere cheese used in the manufacture of process cheese and related products should be of good wholesome quality and except for smaller eyes and sharper flavor shall meet the same requirements as for Swiss cheese.

§ 58.714 Cream cheese, Neufchatel cheese.

These cheeses when mixed with other foods, or used for spreads and dips should possess a fresh, pleasing and desirable flavor.

§ 58.715 Cream, plastic cream and anhydrous milkfat.

These food products shall be pasteurized, sweet, have a pleasing and desirable flavor and be free from objectionable flavors, and shall be obtained from milk which complies with the quality requirements as specified in §§ 58.132 through 58.138 of this subpart.

§ 58.716 Nonfat dry milk.

Nonfat dry milk used in cheese products should meet the requirements equivalent to U.S. Extra Grade except that the moisture content may be in excess of that specified for the particular grade.

§ 58.717 Whey.

Whey used in cheese products should meet the requirements equivalent to USDA Extra Grade except that the moisture requirement for dry whey may be waived.

§ 58.718 Flavor ingredients.

Flavor ingredients used in process cheese and related products shall be those permitted by the Food and Drug Standards of Identity, and in no way deleterious to the quality or flavor of the finished product. In the case of bulky flavoring ingredients such as pimento, the particles should be, to at least a reasonable degree, uniform in size, shape and consistency. The individual types of flavoring materials should be uniform in color and should impart the characteristic flavor desired in the finished product.

§ 58.719 Coloring.

Coloring shall be Annatto or any other cheese or butter color which is approved by the Food and Drug Administration.

§ 58.720 Acidifying agents.

Acidifying agents if used shall be those permitted by the Food and Drug Administration for the specific pasteurized process cheese product.

§ 58.721 Salt.

Salt shall be free flowing, white refined sodium chloride and shall meet the requirements of The Food Chemical Codex.

§ 58.722 Emulsifying agents.

Emulsifying agents shall be those permitted by the Food and Drug Administration for the specific pasteurized process cheese product, and shall be free from extraneous material.

§ 58.723 Basis for selecting cheese for processing.

A representative sample shall have been examined to determine fat and moisture content. One sample unit from each vat of cheese shall have been examined to determine the suitability of the vat for use in process cheese products in accordance with the flavor, body and texture characteristics permitted in §§ 58.111 through 58.114 as applicable, and to determine the characteristics it will contribute to the finished product when blended with other cheese. The cheese included in each blend shall be selected on the basis of the desirable qualities which will result in the desired finished product. Recook from equivalent blends may be used in an amount that will not adversely affect the finished product. Hot cheese from the filler may be added to the cooker in amounts which will not adversely affect the finished product.

§ 58.724 Blending.

To as great an extent as is practical, each vat of cheese should be divided and distributed throughout numerous cooker batches. The purpose being to
minimize the preponderance and consequent influence of any one vat on the characteristics of the finished product, and to promote as much uniformity as is practical. In blending also consider the final composition requirements for fat and moisture. Quantities of salt, color, emulsifier and other allowable ingredients to be added shall be calculated and predetermined for each cooker batch.

§ 58.725 Trimming and cleaning.

The natural cheese shall be cleaned free of all non-edible portions. Paraffin and bandages as well as rind surface, mold or unclean areas or any other part which is unwholesome or unappetizing shall be removed.

§ 58.726 Cutting and grinding.

The trimmed and cleaned cheese should be cut into sections of convenient size to be handled by the grinder or shredder. The grinding and mixing of the blended lots of cheese should be done in such a manner as to insure a homogeneous mixture throughout the batch.

§ 58.727 Adding optional ingredients.

As each batch is added to the cooker, the predetermined amounts of salt, emulsifiers, color, or other allowable optional ingredients shall be added. However, a special blending vat may be used to mix the ground cheese and other ingredients before they enter the cooker to provide composition control.

§ 58.728 Cooking the batch.

Each batch of cheese within the cooker, including the optional ingredients, shall be thoroughly commingled and the contents pasteurized at a temperature of at least 158 °F. and held at that temperature for not less than 30 seconds or any other equally effective combination of time and temperature approved by the Administrator. Care shall be taken to prevent the entrance of cheese particles or ingredients after the cooker batch of cheese has reached the final heating temperature. After holding for the required period of time, the hot cheese shall be emptied from the cooker as quickly as possible.

§ 58.729 Forming containers.

Containers either lined or unlined shall be assembled and stored in a sanitary manner to prevent contamination. The handling of containers by filler crews should be done with extreme care and observance of personal cleanliness. Preforming and assembling of pouch liners and containers shall be kept to a minimum and the supply rotated to limit the length of time exposed to possible contamination prior to filling.

§ 58.730 Filling containers.

Hot fluid cheese from the cookers may be held in hotwells or hoppers to assure a constant and even supply of processed cheese to the filler or slice former. Filler valves shall effectively measure the desired amount of product into the pouch or container in a sanitary manner and shall cut off sharply without drip or drag of cheese across the opening. An effective system shall be used to maintain accurate and precise weight control. Damaged or unsatisfactory packages shall be removed from production, and the cheese may be salvaged into sanitary containers, and added back to cookers.

§ 58.731 Closing and sealing containers.

Pouches, liners, or containers having product contact surfaces, after filling shall be folded or closed and sealed in a sanitary manner, preferably by mechanical means, so as to assure against contamination. Each container in addition to other required labeling shall be coded in such a manner as to be easily identified as to date of manufacture by lot or sublot number.

§ 58.732 Cooling the packaged cheese.

After the containers are filled they shall be stacked, or cased and stacked in such a manner as to prevent breaking of seals due to excessive bulging and to allow immediate progressive cooling of the individual containers of cheese. As a minimum the cheese should be cooled to a temperature of 100 °F. or lower within 24 hours after filling. The temperature of the cheese should be reduced further, before being shipped or if storage is intended.
§ 58.733 Quality control tests.

(a) Chemical analyses. The following chemical analyses shall be performed in accordance with the appropriate edition of the Official Methods of Analysis of the AOAC as specified in the appropriate Standards of Identity or in accordance with methods that give equivalent results.

(1) Cheese. A representative sample of cheese used in the manufacture of pasteurized process cheese products shall have been tested prior to usage to determine its moisture and fat content.

(2) Pasteurized process cheese products. As many samples as is necessary to assure meeting the required physical characteristics of the products. Representative samples shall be taken from production for examination of physical characteristics. The samples shall be examined at approximately 70 °F. the first day of operation after the date of processing for the following characteristics: (1) Finish and appearance, (2) flavor, (3) color, (4) body and texture, and (5) slicing or spreading properties.

(b) Examination of physical characteristics. As many samples as is necessary to assure meeting the required physical characteristics of the products. Representative samples shall be taken from production for examination of physical characteristics. The samples shall be examined at approximately 70 °F. the first day of operation after the date of processing for the following characteristics: (1) Finish and appearance, (2) flavor, (3) color, (4) body and texture, and (5) slicing or spreading properties.

(c) Keeping quality. During processing or preferably from the cooled stock select sufficient samples at random from the production run. The samples should be stored at approximately 50 °F. for 3 months for evaluation of physical characteristics as in paragraph (b) of this section. Additional samples may be selected and held at different temperatures or time.

(d) Weight control. During the filling operation as many samples shall be randomly selected and weighed from each production run as is necessary to assure accuracy of the net weight established for the finished products.

§ 58.734 Official identification.

Only process cheese products manufactured and packaged in accordance with the requirements of this part and with the applicable requirements in subpart A of this part which have been officially inspected in process and found to be in compliance with these requirements may be identified with official USDA Quality Approved Inspection Shield.

§ 58.735 Quality specifications for raw materials.

(a) Cheddar colby, washed or soaked curd, granular or stirred curd cheese. Cheese, used in the manufacture of pasteurized process cheese products which are identified with the USDA official identification shall possess a pleasing and desirable taste and odor consistent with the age of the cheese; shall have body and texture characteristics which will impart the desired body and texture characteristics in the finished product; and shall possess finish and appearance characteristics which will permit removal of all packaging material and surface defects. The cheese shall at least meet the requirements of U.S. Standard Grade for Bulk American Cheese for Manufacturing provided the quantity of the cheese with any one defect as listed for U.S. Standard Grade is limited, to assure compliance with the specifications of the finished product.

(b) Swiss. Swiss cheese used in the manufacture of pasteurized process cheese and related products bearing official identification shall be U.S. Grade B or better, except that the cheese may be blind or possess finish characteristics which do not impair the interior quality.

(c) Gruyere. Gruyere cheese used in the manufacture of process cheese and related products shall be of good wholesome quality and except for smaller eyes and sharper flavor shall meet the same requirements as for Swiss cheese.

(d) Cream cheese, Neufchatel cheese. Mixed with other foods, or used for spreads and dips shall possess a fresh, pleasing and desirable flavor.
Agricultural Marketing Service, USDA

§ 58.737 Pasteurized process cheese food.

Shall conform to the provisions of the Definitions and Standards of Identity for Pasteurized Process Cheese Food and Related Products, Food and Drug Administration. The average age of the cheese in the blend shall be such that the desired flavor, body and texture will be achieved in the finished product. The quality of pasteurized process cheese food shall be determined on the basis of flavor, body and texture, color, and finish and appearance.

(a) Flavor. Has a pleasing and desirable mild cheese taste and odor characteristic of the variety or varieties of cheese ingredients used. If additional optional ingredients are used they shall be incorporated in accordance with good commercial practices and the flavor imparted shall be pleasing and desirable. May have a slight cooked or very slight acid or emulsifier flavor; is free from any undesirable tastes and odors.

(b) Body and texture. Shall have a medium-firm, smooth and velvety body free from uncooked cheese particles. Is resilient and not tough, brittle, short, weak, or sticky. It shall be free from pin holes or openings except those caused by trapped steam. The cheese shall slice freely, and shall not stick to the knife or break when cut into approximately \( \frac{1}{8} \) inch slices. If in sliced form, the slices shall separate readily.

(c) Color. May be colored or uncolored but shall be uniform throughout. If colored it shall be bright and not be dull or faded. To promote uniformity and a common reference to describe color use the color designations as depicted by the National Cheese Institute standard color guide for cheese.

(d) Finish and appearance. The wrapper may be slightly wrinkled but shall envelop the cheese, adhere closely to the surface, and be completely sealed and not broken or soiled.
§ 58.738 Pasteurized process cheese spread and related products.

Shall conform to the applicable provisions of the Definitions and Standards of Identity for Pasteurized Process Cheese Spreads, Food and Drug Administration. The pH of pasteurized process cheese spreads shall not be below 4.0.

The quality of pasteurized process cheese spreads shall be determined on the basis of flavor, body and texture, color, and finish and appearance.

(a) Flavor. Has a pleasing and desirable cheese taste and odor characteristic of the variety or varieties of cheese ingredients used. If additional optional ingredients are used they shall be incorporated in accordance with good commercial practices and the flavor imparted shall be pleasing and desirable. May have a slight cooked, acid, or emulsifier flavor; is free from any undesirable tastes and odors.

(b) Body and texture. Shall have a smooth body free from uncooked cheese particles and when packaged shall form into a homogeneous plastic mass, and be free from pin holes or openings except those caused by trapped steam. Product made for slicing shall slice freely when cut into approximately ½ inch slices with only a slight amount of sticking. Product made for spreading shall be spreadable at approximately 70 °F.

(c) Color. May be colored or uncolored but shall be uniform throughout. If colored it shall be bright and not be dull or faded. To promote uniformity and a common reference to describe color the color designations as depicted by the National Cheese Institute standard color guide for cheese may be used.

(d) Finish and appearance. Wrappers, if used, may be slightly wrinkled but shall envelop the cheese, adhere closely to the surface, and be completely sealed and not broken or soiled. Other containers made of suitable materials shall be completely filled, sealed and not broken or soiled.

SUPPLEMENTAL SPECIFICATIONS FOR PLANTS MANUFACTURING, PROCESSING, AND PACKAGING WHEY, WHEY PRODUCTS AND LACTOSE

DEFINITIONS

§ 58.805 Meaning of words.

For the purpose 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. Unless the context otherwise requires, the following terms shall have the following meaning:

(a) Whey. “Whey” is the fluid obtained by separating the coagulum from milk, cream, and/or skim milk in cheesemaking. The acidity of the whey may be adjusted by the addition of safe and suitable pH adjusting ingredients. Moisture removed from cheese curd as a result of salting may be collected for further processing as whey if the collection of the moisture and the removal of the salt from the moisture are conducted in accordance with procedures approved by the Administrator.

(b) Dry Whey. “Dry Whey” is the product resulting from drying fresh whey which has been pasteurized and to which nothing has been added as a preservative. It contains all constituents, except moisture, in the same relative proportions as in the whey.
(c) **Dry Sweet Whey.** Dry whey not over 0.16 percent titratable acidity on a reconstituted basis.

(d) **Dry Whey—% Titratable Acidity.** Dry whey over 0.16 percent, but below 0.35 percent titratable acidity on a reconstituted basis. The blank being filled with the actual acidity.

(e) **Dry Acid Whey.** Dry whey with 0.35 percent or higher titratable acidity on a reconstituted basis.

(f) **Modified Whey Products:***
   1. Partially demineralized whey,
   2. Partially delactosed whey,
   3. Demineralized whey, and
   4. Whey protein concentrate-products defined by regulations of the Food and Drug Administration.

(g) **Lactose (milk sugar).** That food product defined by regulations of the Food and Drug Administration.

§ 58.809 Pasteurization.

(a) All fluid whey used in the manufacture of dry whey, dry whey products, modified whey products, and lactose shall be pasteurized prior to condensing. When the condensing and drying operations for dry whey take place at the same plant, the pasteurization may be located at a different point in the operation provided it will protect the quality of the finished product and not adversely affect the processing procedure.

(b) Pasteurized products transported to another plant for final processing shall be repasteurized, except that condensed whey containing 40 percent or more solids may be transported to another plant for further processing into dry whey, dry whey products or lactose without repasteurization.

ROOMS AND COMPARTMENTS

§ 58.806 General.

Dry storage of product, packaging room for bulk product, and hopper or dump room shall meet the requirements of §§58.210 through 58.212 as applicable.

EQUIPMENT AND UTENSILS

§ 58.807 General construction, repair and installation.

All equipment and utensils necessary for the manufacture of whey, whey products and lactose shall meet the same general requirements for materials and construction as outlined in §§58.128 and 58.215 through 58.230 as applicable, except for the following:

(a) **Modified Whey Products.** Equipment for whey fractionation, such as ultrafiltration, reverse osmosis, gel filtration, and electrodialysis shall be constructed in accordance with 3-A sanitary design principles, except where engineering requirements preclude strict adherence to such standards. Materials used for product contact surfaces shall meet applicable 3-A Sanitary Standards or Food and Drug Administration requirements. All equipment shall be of sanitary construction and readily cleanable.

(b) **Lactose.** Equipment used in the further processing of lactose following its separation from whey shall have smooth surfaces, be cleanable, free from cracks or crevices, readily accessible for inspection and shall be constructed of non-toxic material meeting applicable Food and Drug Administration requirements and under conditions of use shall be resistant to corrosion, pitting or flaking. [The use of stainless steel is optional.]

QUALITY SPECIFICATIONS FOR RAW MATERIALS

§ 58.808 Whey.

Whey for processing shall be fresh and originate from the processing of products made from milk meeting the requirements as outlined in §§58.132 through 58.138. Only those ingredients approved by the Food and Drug Administration may be added to the whey for processing, except when restricted by this subpart. Whey products to which approved ingredients have been added or constituents removed to alter original characteristics for processing or usage shall be labeled to meet the applicable requirements.
§ 58.810  Temperature requirements.

(a) Unless processed within 2 hours, all whey or condensed whey, except acid type whey with a titratable acidity of 0.40 percent or above, or a pH of 4.6 or below, shall be cooled to 45 °F or less, or heated to 145 °F or higher. Other temperatures may be used when essential for the technology of the process, such as lactose crystallization and membrane whey separation processes, when the quality and wholesomeness of the product is not impaired.

(b) Recording thermometers shall be required and so located to assure that the cooling or heating requirements in paragraph (a) of this section are met.

§ 58.811  General.

The operating procedures as contained in §§ 58.237 through 58.244, 58.246, 58.247, and 58.443 (a) and (b) shall be followed as applicable.

§ 58.812  Methods of official sample analysis.

Samples shall be tested according to the applicable methods of laboratory analysis contained in DA Instruction 918–109–1 and 918–109–3 as issued by the USDA, Agricultural Marketing Service, Poultry and Dairy Quality Division.

(60 Stat. 1087, 7 U.S.C. 1621 et seq.; 84 Stat. 1031 et seq.)


REQUIREMENTS FOR FINISHED PRODUCTS BEARING USDA OFFICIAL IDENTIFICATION

§ 58.813  Dry whey.

The quality requirements for dry whey shall be in accordance with the U.S. Standards for Dry Whey.

SUPPLEMENTAL SPECIFICATIONS FOR PLANTS MANUFACTURING, PROCESSING, AND PACKAGING EVAPORATED AND CONDENSED MILK OR ULTRA-PASTEURIZED PRODUCTS

DEFINITIONS

§ 58.905  Meaning of words.

For the purpose 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. Unless the context otherwise requires, the following terms shall have the following meaning:

(a) Evaporated milk. The liquid food made by evaporating sweet milk to such point that it contains not less than 7.5 percent of milkfat and not less than 25.5 percent of the total milk solids. The finished product shall conform to the requirements of § 18.520 “Definitions and Standards of Identity for Milk and Cream,” Food and Drug Administration (21 CFR 18.520).1

(b) Concentrated milk, plain condensed milk. The product which conforms to the standard of identity for evaporated milk except that it is not processed by heat to prevent spoilage. The container may be unsealed, and stabilizing ingredients are not used. The finished product shall conform to the requirements of § 18.525 “Definitions and Standards of Identity for Milk and Cream,” Food and Drug Administration (21 CFR 18.525).

(c) Sweetened condensed milk. The liquid or semi-liquid food made by evaporating a mixture of sweet milk and refined sugar (sucrose) or any combination of refined sugar (sucrose) and refined corn sugar (dextrose) to such point that the finished sweetened condensed milk contains not less than 28.0 percent of total milk solids and not less than 8.5 percent of milkfat. The quantity of sugar used is sufficient to prevent spoilage. The finished product shall conform to the requirements of §§ 18.530 or 18.535, respectively, “Definitions and Standards of Identity for Milk and Cream,” Food and Drug Administration (21 CFR 18.530 and 18.535).1

1  21 CFR Part 18 was redesignated as Part 131 at 42 FR 14902, Mar. 15, 1977.
Ultra-pasteurized. The product shall have been thermally processed at or above 280 °F for at least 2 seconds, either before or after packaging, so as to produce a product which has an extended shelf life under refrigerated conditions.

EQUIPMENT AND UTENSILS

§ 58.912 General construction, repair and installation.

The equipment and utensils used for processing and packaging evaporated, condensed or ultra pasteurized dairy products shall be as specified in § 58.128. In addition for certain other equipment, the following requirements shall be met.

§ 58.913 Evaporators and vacuum pans.

All equipment used in the removal of moisture from milk or milk products for the purpose of concentrating the solids should comply with the requirements of the 3-A Sanitary Standards for Milk and Milk Products Evaporators and Vacuum Pans.

§ 58.914 Fillers.

Both gravity and vacuum type fillers shall be of sanitary design and all product contact surfaces, if metal, shall be made of stainless steel or equally corrosion-resistant material; except that, certain evaporated milk fillers having brass parts may be approved if free from corroded surfaces and kept in good repair. Nonmetallic product contact surfaces shall comply with the requirements for 3-A Sanitary Standards for Plastic, and Rubber and Rubber-Like Materials. Fillers shall be designed so that they in no way will contaminate or detract from the quality of the product being packaged.

§ 58.915 Batch or continuous in-container thermal processing equipment.

shall comply with title 21, chapter 1, subpart 128b—“Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.” The equipment shall be maintained in such a manner as to assure control of the length of time of processing, and to minimize the number of damaged containers.

§ 58.916 Homogenizer.

Homogenizers where applicable shall be used to reduce the size of the fat particles and to evenly disperse them in the product. Homogenizers shall comply with the applicable 3-A Sanitary Standards.

OPERATIONS AND OPERATING PROCEDURES

§ 58.917 General.

There are many operations and procedures used in the preparation of evaporated, condensed and ultra pasteurized dairy products that are similar, therefore, the following general requirements will apply when such operations or procedures are used.

§ 58.918 Standardization.

The standardization of the product to obtain a finished product of a given composition shall be accomplished by the addition or removal of milkfat, milk solids-not-fat and/or water. The ingredients added to accomplish the desired composition shall be of the same hygienic quality as the product being standardized.

§ 58.919 Pre-heat, pasteurization.

When pasteurization is intended or required by either the vat method, HTST method, or by the HHST method it shall be accomplished by systems and equipment meeting the requirements outlined in § 58.128. Pre-heat temperatures prior to ultra pasteurization will be those that have the most favorable effect on the finished product.

§ 58.920 Homogenization.

Where applicable concentrated products shall be homogenized for the purpose of dispersing the fat throughout the product. The temperature of the product at time of homogenization and the pressure at which homogenization is accomplished will be that which accomplishes the most desired results in the finished products.
§ 58.921 Concentration.

Concentrating by evaporation shall be accomplished with a minimum of chemical change in the product. The equipment and systems used shall in no way contaminate or adversely affect the desirability of the finished product.

§ 58.922 Thermal processing.

The destruction of living organisms shall be performed in one of the following methods: (a) The complete in-container method, by heating the container and contents to a range of 212 °F to 280 °F for a sufficient time; (b) by a continuous flow process at or above 280 °F for at least 2 seconds, then packaged aseptically; (c) the product is first processed according to methods as in paragraph (b) of this section, then packaged and given further heat treatment to complete the process.

§ 58.923 Filling containers.

(a) The filling of small containers with product shall be done in a sanitary manner. The containers shall not contaminate or detract from the quality of the product in any way. After filling, the container shall be hermetically sealed.

(b) Bulk containers for the product shall be suitable and adequate to protect the product in storage or transit. The bulk container (including bulk tankers) shall be cleaned and sanitized before filling, and filled and closed in a sanitary manner.

§ 58.924 Aseptic filling.

A previously ultra pasteurized product shall be filled under conditions which prevent contamination of the product by living organisms or spores. The containers prior to being filled shall be sterilized and maintained in a sterile condition. The containers shall be sealed in a manner that prevents contamination of the product.

§ 58.925 Sweetened condensed.

After condensing, the sweetened condensed product should be cooled rapidly to about 85 °F to induce crystallization of the oversaturated lactose. When the desired crystallization is reached further cooling is resumed to 68°–70 °F.

§ 58.926 Heat stability.

Prior to thermal processing of concentrated products and where stabilizers are allowed, tests should be made on the heat stability of the product to determine necessity for, and the amount of stabilizer needed. Based on the stability tests, safe and suitable stabilizers and emulsifiers may be added.

§ 58.927 Storage.

Finished products which are to be held more than 30 days should be stored at temperatures below 72 °F. Precautions shall be taken to prevent freezing of the product.

§ 58.928 Quality control tests.

All dairy products and other ingredients shall be subject to inspection for quality and condition throughout each processing operation. Quality control tests shall be made on flow samples as often as is necessary to check the effectiveness of processing and manufacturing and as an aid in correcting deficiencies. Routine analyses shall be made on raw materials and finished products to assure adequate composition control. For each batch or production run a keeping quality test shall be made to determine product stability.

§ 58.929 Frequency of sampling for quality control.

(a) Composition. Sampling and testing for composition shall be made on batches of product as often as is necessary to control composition. On continuous production runs, enough samples shall be taken throughout the run to adequately assure composition requirements.

(b) Other chemical analysis or physical analysis. Such tests shall be performed as often as is necessary to assure compliance with standards, specifications or contract requirements.

(c) Weight or volume control. Representative samples of the packaged products shall be checked during the filling operation to assure compliance with the stated net weight or volume on the container.

(d) Keeping quality and stability. A minimum of one sample from each batch of product or one representative
Agricultural Marketing Service, USDA § 58.938

sample per hour from a continuous production run shall be taken. For continuous runs, samples shall be taken at the start, each hour, and at the end of the run. Samples should also be taken after resumption of processing following an interruption in continuous operation. Each sample shall be incubated at 90 °F to 100 °F for seven days.

§ 58.930 Official test methods.
(a) Chemical. Chemical analysis, except where otherwise prescribed herein, shall be made in accordance with the methods described in the latest edition of Official Methods of Analysis of the AOAC or by the latest edition of Standard Methods for the Examination of Dairy Products.
(b) Microbiological. Microbiological determinations shall be made in accordance with the methods described in the latest edition of Standard Methods for the Examination of Dairy Products.

§ 58.931 General identification.
Bulk shipping containers shall be legibly marked with the name of the product, net weight, name and address of manufacturer, processor or distributor, a lot number and coded date of manufacture. Consumer sized containers shall meet the applicable regulations of the Food and Drug Administration.

§ 58.932 Milk.
The raw milk shall meet the requirements as outlined in §§ 58.132 through 58.138. Unless processed within two hours after being received, it shall be cooled to, and held at a temperature of 45 °F or lower until processed.

§ 58.933 Stabilizers.
Shall be those permitted by the Food and Drug Administration’s “Standards of Identity” as optional ingredients for specific products. Stabilizers shall be free from extraneous material, be of food grade quality and not be in violation of the Federal Food, Drug and Cosmetic Act.

§ 58.934 Sugars.
Any sugar used in the manufacture of sweetened condensed or sterilized milk products shall be refined, and of food grade quality.

§ 58.935 Chocolate and cocoa.
Such products used as flavor ingredients shall meet the requirements of the Food and Drug Administration, “Definitions and Standards of Identity for Cocoa Products.”

REQUIREMENTS FOR FINISHED PRODUCTS BEARING USDA OFFICIAL IDENTIFICATION

§ 58.936 Milk.
To process and package evaporated and condensed milk of ultra-pasteurized dairy products eligible for official identification with the USDA Quality Approved Inspection Shield the raw incoming milk shall meet the requirements as outlined in §§ 58.132 through 58.136. Unless processed within two hours after being received, it shall be cooled to, and held at a temperature of 45 °F or lower until processed.

§ 58.937 Physical requirements for evaporated milk.
(a) Flavor. The product shall possess a sweet, pleasing and desirable flavor with not more than a definite cooked flavor. It shall be free from scorched, oxidized or other objectionable tastes and odors.
(b) Body and texture. The product shall be of uniform consistency and appearance. It shall be smooth and free from fat separation, lumps, clots, gel formation, coarse milk solids precipitate or sedimentation and extraneous material.
(c) Color. The color shall be of a natural white or light cream.
(d) Degree of burn-on. The interior walls of the container shall not show excessive burn-on of product (product fused to more than 75 percent of the inner surface of the can).
(e) Keeping quality. Samples incubated at 90-100 °F shall show no sensory, chemical or microbiological deterioration after seven days.

§ 58.938 Physical requirements and microbiological limits for sweetened condensed milk.
(a) Flavor. Shall be sweet, clean, and free from rancid, oxidized, scorched,
§ 58.2825 United States Standard for ice cream.

(a) Ice cream shall contain at least 1.6 pounds of total solids to the gallon, weigh not less than 4.5 pounds to the gallon, and contain not less than 20 percent total milk solids, constituted of not less than 10 percent milkfat. In no case shall the content of milk solids not fat be less than 6 percent. Whey shall not, by weight, be more than 25 percent of the milk solids not fat.

(b) When one or more of the bulky optional ingredients, as approved by the Food and Drug Administration, are used, the weights of milk fat and total milk solids (exclusive of such fat and solids in any malted milk used) are not less than 10 percent and 20 percent, respectively, of the remainder obtained by subtracting the weight of such optional ingredients, from the weight of the finished ice cream; but in no case is the weight of milk fat or total milk solids less than 8 percent and 16 percent, respectively, of the weight of the finished ice cream. In calculating the reduction of milk fat and total milk solids from the use of bulky optional ingredients, chocolate and cocoa solids used shall be considered the bulky ingredients. In order to make allowance for additional sweetening ingredients needed when bulky ingredients are used, the weight of chocolate or cocoa solids may be multiplied by 2.5; the weight of fruit or nuts used may be multiplied by 1.4; and the weight of partially or wholly dried fruits or fruit juices may be multiplied by appropriate factors to obtain the original weights before drying and this weight multiplied by 1.4. The finished ice cream contains not less than 1.6 pounds to the gallon; except that when the optional ingredient microcrystalline cellulose is used, the finished ice cream contains not less than 1.6 pounds of total solids to the gallon and weighs not less than 4.5 pounds to the gallon exclusive, in both cases, of the weight of the microcrystalline cellulose.

(c) Optional characterizing ingredients, optional sweetening ingredients, stabilizers, and emulsifiers as approved by the Food and Drug Administration may be used.

§ 58.2826 General identification.

Consumer packaged product shall comply with the applicable labeling regulations of the Food and Drug Administration.

Subpart W—United States Department of Agriculture Standard for Ice Cream

Subparts C–V [Reserved]


§ 58.2825 United States Standard for ice cream.

(7 CFR Ch. I (1–1–01 Edition))

(a) The amount of sediment retained on a lintine disc after a sample composed of 225 grams of product dissolved in 500 ml. of 140 °F water has passed through it, shall not exceed 0.10 mg., as indicated by the USDA Sediment Standard for Milk and Milk Products (7 CFR 58.2726).

(b) Color. Shall be white to light cream.

(c) Texture. Shall be smooth and uniform, free from lumps or coarse graininess. There shall not be sufficient settling of the lactose to cause a deposit on the bottom of the container.

(d) Body. Shall be sufficiently viscous so that the product upon being poured at room temperature piles up above the surface of that previously poured, but does not retain a definite form.

(e) Microbiological limits. (1) Coliforms, less than 10 per gram; (2) yeasts, less than 5 per gram; (3) molds, less than 5 per gram; (4) total plate count, less than 1,000 per gram.

(f) Keeping quality. Samples incubated at 90–100 °F shall show no physical evidence of deterioration after seven days.

(g) Composition. Shall meet the minimum requirements as set forth in the "Standards of Identity for Milk and Cream," Food and Drug Administration (21 CFR 18.530). In addition, the quantity of refined sugar used shall be sufficient to give a sugar-in-water ratio of not less than 61.5 percent.

(h) Sediment. The amount of sediment retained on a lintine disc after a sample composed of 225 grams of product dissolved in 500 ml. of 140 °F water has passed through it, shall not exceed 0.10 mg. as indicated by the USDA Sediment Standard for Milk and Milk Products (7 CFR 58.2726).

121 CFR parts 18 and 19 were redesignated as parts 131 and 133, respectively, at 42 FR 14302, Mar. 15, 1977.
Agricultural Marketing Service, USDA

§ 58.2827 Official identification.
(a) The official symbol to be used to identify product meeting the USDA standard for ice cream shall be as follows:

(b) Ice cream manufacturing plants using this symbol shall be USDA approved as set forth in subpart B of this regulation, and the ice cream bearing the symbol shall be manufactured under continuous resident or continuous nonresident USDA inspection service in accordance with subpart A of this regulation. The dairy ingredients used in such ice cream shall come from USDA approved plants.

PART 59—LIVESTOCK MANDATORY REPORTING

Subpart A—General Provisions

Sec.
59.10 General administrative provisions.
59.20 Recordkeeping.
59.30 Definitions.

Subpart B—Cattle Reporting

59.100 Definitions.
59.101 Mandatory daily reporting for live cattle.
59.102 Mandatory weekly reporting for live cattle.
59.103 Mandatory reporting of boxed beef sales.

Subpart C—Swine Reporting

59.200 Definitions.
59.201 General reporting provisions.
59.202 Mandatory daily reporting for swine.
59.203 Mandatory weekly reporting for swine.

Subpart D—Lamb Reporting

59.300 Definitions.
59.301 Mandatory daily reporting for lambs.
59.302 Mandatory weekly reporting for lambs.

§ 59.10 General administrative provisions.

(a) Reporting by packers and importers. A packer or importer shall report all information required under this Part on an individual lot basis.

(b) Reporting schedule. Whenever a packer or importer is required to report information on transactions of livestock and livestock products under this Part by a set time, all covered transactions up to within one half hour of the reporting deadline shall be reported. Transactions completed during the one half hour prior to the previous reporting time, but not reported in the previous report, shall be reported at the next scheduled reporting time.

(c) Regional reporting and aggregation. The Secretary shall make information obtained under this Part available to the public only in a manner that:
(1) Ensures that the information is published on a national and a regional or statewide basis as the Secretary determines to be appropriate;
(2) Ensures that the identity of a reporting person or the entity which they represent is not disclosed; and
(3) Market information reported to the Secretary by packers and importers shall be aggregated in such a manner that the market reports issued will not disclose the identity of persons, packers and importers, including parties to a contract and packer’s and importer’s proprietary information.

(d) Adjustments. Prior to the publication of any information required under this Part, the Secretary may make reasonable adjustments in information reported by packers and importers to reflect price aberrations or other unusual
or unique occurrences that the Secretary determines would distort the published information to the detriment of producers, packers, or other market participants.

(e) **Reporting of activities on weekends and holidays.** Livestock and livestock products committed to a packer, or importer, or purchased, sold, or slaughtered by a packer or importer on a weekend day or holiday shall be reported to the Secretary in accordance with the provisions of this Part and reported by the Secretary on the immediately following reporting day. A packer shall not be required to report such actions more than once on the immediately following reporting day.

(f) **Reporting methods.** Whenever information is required to be reported under this Part, it shall be reported by electronic means and shall adhere to a standardized format established by the Secretary to achieve the objectives of this Part, except in emergencies or in cases when an alternative method is agreeable to the entity required to report and AMS.

§ 59.20 **Recordkeeping.**

(a) **In General.** Each packer or importer required to report information to the Secretary under the Act and this Part shall maintain for 2 years and make available to the Secretary the following information on request:

1. The original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock or livestock products; and
2. Such records or other information as is necessary or appropriate to verify the accuracy of the information required to be reported under the Act and this Part.

(b) **Purchases of cattle and swine and sales of boxed beef cuts.** A record of a purchase of a lot of cattle or swine, or a sale of a unit of boxed beef cuts, by a packer shall evidence whether the purchase or sale occurred:

1. Before 10 a.m. Central Time;
2. Between 10 a.m. and 2 p.m. Central Time; or
3. After 2 p.m. Central Time.

(c) **Purchases of lambs.** A record of a purchase of a lot of lambs by a packer shall evidence whether the purchase occurred:

1. Before 2 p.m. Central Time; or
2. After 2 p.m. Central Time.

(d) **Sales of lamb carcasses and sales of boxed lamb cuts.** A record of a sale by a packer of lamb carcasses and cuts, or of a sale by an importer of lamb cuts shall evidence time and date the sale occurred:

1. Before 2 p.m. Central Time; or
2. After 2 p.m. Central Time.

(e) **Reporting sales of boxed beef cuts and sales of boxed lamb cuts.**

1. Beef packers must report all sales of boxed beef items by the applicable Institutional Meat Purchase Specifications (IMPS) item number or the boxed beef items’ cutting and trimming specifications.

2. Lamb packers and importers must report all sales of boxed lamb items by the applicable Institutional Meat Purchase Specifications (IMPS) item number or the boxed lamb items’ cutting and trimming specifications.

§ 59.30 **Definitions.**

The following definitions apply to this part.

**Base price.** The term “base price” means the price paid for livestock, delivered at the packing plant, before application of any premiums or discounts, expressed in dollars per hundred pounds of hot carcass weight.

**Basis level.** The term “basis level” means the agreed on adjustment to a future price to establish the final price paid for livestock.

**Current slaughter week.** The term “current slaughter week” means the period beginning Monday, and ending Sunday, of the week in which a reporting day occurs.

**Discount.** The term “discount” means the adjustment, expressed in dollars per one hundred pounds, subtracted from the base price due to weight, quality characteristics, yield characteristics, livestock class, dark cutting, breed, or dressing percentage.

**Exported.** The term “exported” means livestock or livestock products that are physically shipped to locations outside of the 50 States.
F.O.B. The term “F.O.B.” means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer (e.g., F.O.B. Plant, F.O.B. Feedlot).

Imported. The term “imported” means livestock that are raised to slaughter weight outside of the 50 States or livestock products produced outside of the 50 States.

Institutional meat purchase specifications. Specifications describing various meat cuts, meat products, and meat food products derived from all livestock species, commonly abbreviated “IMPS”, and intended for use by any meat procuring activity. Copies of the IMPS may be obtained from the U.S. Department of Agriculture, Agricultural Marketing Service, Livestock and Seed Program located at Room 2603 South Building, 1400 Independence Ave, SW., PO Box 96456, Washington, DC 20090-6456. Phone (202) 720-4486 or Fax (202) 720-1112. Copies may also be obtained over the Internet at: www.ams.usda.gov/lsig/stand/ft-pubs.htm.

Livestock. The term “livestock” means cattle, swine, and lambs.

Lot. (1) When used in reference to livestock, the term “lot” means a group of one or more livestock that is identified for the purpose of a single transaction between a buyer and a seller;

(2) When used in reference to lamb carcasses, the term “lot” means a group of one or more lamb carcasses sharing a similar weight range category and comprising a single transaction between a buyer and seller;

(3) When used in reference to boxed beef and lamb, the term “lot” means a group of one or more boxes of beef or lamb items sharing cutting and trimming specifications and comprising a single transaction between a buyer and seller.

Marketing. The term “marketing” means the sale or other disposition of livestock, livestock products, or meat or meat food products in commerce.

Negotiated purchase. The term “negotiated purchase” means a cash or spot market purchase by a packer of livestock from a producer under which the base price for the livestock is determined by seller-buyer interaction and agreement on a delivery day. The livestock are scheduled for delivery to the packer not more than 14 days after the date on which the livestock are committed to the packer.

Negotiated sale. The term “negotiated sale” means a cash or spot market sale by a producer of livestock to a packer under which the base price for the livestock is determined by seller-buyer interaction and agreement on a delivery day. The livestock are scheduled for delivery to the packer not later than 14 days after the date on which the livestock are committed to the packer. When used in reference to sales of boxed beef or lamb cuts or lamb carcasses the term “negotiated sale” means a sale by a packer selling boxed beef or lamb cuts or lamb carcasses to a buyer of boxed beef or lamb cuts or lamb carcasses under which the price for the boxed beef or lamb cuts or lamb carcasses is determined by seller-buyer interaction and agreement on a day.

Origin. The term “origin” means the State where the livestock were fed to slaughter weight.

Premium. The term “premium” means the adjustment, expressed in dollars per one hundred pounds, added to the base price due to weight, quality characteristics, yield characteristics, livestock class, and breed.

Priced. The term “priced” means the time when the final price is determined either through buyer-seller interaction and agreement or as a result of some other price determining method.

Prior slaughter week. The term “prior slaughter week” means the Monday through Sunday prior to a reporting day.

Producer. The term “producer” means any person engaged in the business of selling livestock to a packer for slaughter (including the sale of livestock from a packer to another packer).

Purchased. The term “purchased” means the agreement on a price, or the method for calculating a price, determined through buyer-seller interaction and agreement.

Reporting day. The term “reporting day” means a day on which a packer conducts business regarding livestock committed to the packer, or livestock purchased, sold, or slaughtered by the packer; the Secretary is required to
§ 59.100 Definitions.

The following definitions apply to this subpart.

Boxed beef. The term “boxed beef” means those carlot-based portions of a beef carcass including fresh primals, subprimals, cuts fabricated from subprimals (excluding portion-control cuts such as chops and steaks similar to those portion cut items described in the Institutional Meat Purchase Specifications (IMPS) for Fresh Beef Products Series 100, and thin meats (e.g. inside and outside skirts, pectoral meat, cap and wedge meat, and blade meat) not older than 14 days from date of manufacture; fresh ground beef, beef trimmings, and boneless processing beef not older than 7 days from date of manufacture; and frozen beef trimmings and boneless processing beef not older than 60 days from date of manufacture.

Branded. The term “branded” means boxed beef cuts produced and marketed under a corporate trademark (for example, products that are marketed on their quality, yield, or breed characteristics), or boxed beef cuts produced and marketed under one of USDA’s Meat Grading and Certification Branch, Certified Beef programs.

Carcass characteristics. The term “carcass characteristics” means the range and average carcass weight in pounds, the quality grade and yield grade (if applicable), and the average cattle dressing percentage.

Carlot-based. The term “carlot-based” means any transaction between a buyer and a seller destined for two or less delivery stops consisting of one or more individual boxed beef items.

Cattle committed. The term “cattle committed” means cattle that are scheduled to be delivered to a packer within the 7-day period beginning on the date of an agreement to sell the cattle.

Cattle type. The term “cattle type” means the following types of cattle purchased for slaughter:

(1) Fed steers;
(2) Fed heifers;
(3) Fed Holsteins and other fed dairy steers and heifers;
(4) Cows; and
(5) Bulls.

Established. The term “established”, when used in connection with prices, means that point in time when the buyer and seller agree upon a net price.

Formula marketing arrangement.

(1) When used in reference to live cattle, the term “formula marketing arrangement” means the advance commitment of cattle for slaughter by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

(2) When used in reference to boxed beef, the term “formula marketing arrangement” means the advance commitment of boxed beef by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

Forward contract.

(1) When used in reference to live cattle, the term “forward contract” means an agreement for the purchase of cattle, executed in advance of slaughter, under which the base price is established by reference to prices quoted on the Chicago Mercantile Exchange, or other comparable publicly available prices.

(2) When used in reference to boxed beef, the term “forward contract” means an agreement for the sale of boxed beef, executed in advance of manufacture, under which the base price is established by reference to publicly available quoted prices.

Packer. The term “packer” means any person engaged in the business of buying cattle in commerce for purposes...
of slaughter, of manufacturing or preparing meats or meat food products from cattle for sale or shipment in commerce, or of marketing meats or meat food products from cattle in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term “packer” includes only a federally inspected cattle processing plant that slaughtered an average of 125,000 head of cattle per year during the immediately preceding 5 calendar years. Additionally, in the case of a cattle processing plant that did not slaughter cattle during the immediately preceding 5 calendar years, it shall be considered a packer if the Secretary determines the processing plant should be considered a packer under this subpart after considering its capacity.

Packaging-owned cattle. The term “packer-owned cattle” means cattle that a packer owns for at least 14 days immediately before slaughter.

Prices for cattle. The term “prices for cattle” includes the price per hundredweight; the purchase type; the quantity on a live and a dressed weight basis; the estimated live weight range; the average live weight; the estimated percentage of cattle of a USDA quality grade Choice or better; beef carcass classification; any premiums or discounts associated with weight, quality grade, yield grade, or type of purchase; cattle State of origin; estimated cattle dressing percentage; and price basis as F.O.B. feedlot or delivered at the plant.

Terms of trade. The term “terms of trade” means, with respect to the purchase of cattle for slaughter:

(1) Whether a packer provided any financing agreement or arrangement with regard to the cattle;
(2) Whether the delivery terms specified the location of the producer or the location of the packer’s plant;
(3) Whether the producer is able to unilaterally specify the date and time during the business day of the packer that the cattle are to be delivered for slaughter; and
(4) The percentage of cattle purchased by a packer as a negotiated purchase that are delivered to the plant for slaughter more than 7 days, but fewer than 14 days, after the earlier of either the date on which the cattle were committed to the packer, the date on which the cattle were purchased by the packer, or the date on which the cattle were priced by the packer.

Type of purchase. The term “type of purchase” with respect to cattle, means a negotiated purchase, a formula market arrangement, and a forward contract.

Type of sale. The term “type of sale” with respect to boxed beef, means a negotiated sale, a formula market arrangement, and a forward contract.

§ 59.101 Mandatory daily reporting for live cattle.

(a) In General. The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least two times each reporting day not later than 10:00 a.m. Central Time and not later than 2:00 p.m. Central Time the following information for each cattle type, inclusive since the last reporting, categorized to clearly delineate domestic from imported market purchases as described in §59.10(b).

(1) The prices for cattle (per hundredweight) established on that day, categorized by:
   (i) The type of purchase;
   (ii) The quantity of cattle purchased on a live weight basis;
   (iii) The quantity of cattle purchased on a dressed weight basis;
   (iv) A range and average of estimated live weights of cattle purchased;
   (v) An estimate of the percentage of the cattle purchased that were of a quality grade of Choice or better; and
   (vi) Any premiums or discounts associated with weight, quality grade, or yield grade expressed in dollars per hundredweight on a dressed basis.

(2) The quantity of cattle delivered to the packer (quoted in numbers of head) on that day, categorized by:
   (i) The type of purchase;
   (ii) The quantity of cattle delivered on a live weight basis; and
   (iii) The quantity of cattle delivered on a dressed weight basis.

(3) The quantity of cattle committed to the packer (quoted in numbers of head) as of that day, categorized by:
   (i) The type of purchase;
   (ii) The quantity of cattle committed on a live weight basis; and

   (iii) The quantity of cattle committed on a dressed weight basis.

(4) The quantity of cattle purchased by a packer as a negotiated purchase that are delivered to the plant for slaughter more than 7 days, but fewer than 14 days, after the earlier of either the date on which the cattle were committed to the packer, the date on which the cattle were purchased by the packer, or the date on which the cattle were priced by the packer.

(5) The prices for cattle (per hundredweight) for each day, categorized by:
   (i) The type of purchase;
   (ii) The quantity of cattle purchased on a live weight basis;
   (iii) The quantity of cattle purchased on a dressed weight basis;
   (iv) A range and average of estimated live weights of cattle purchased;
   (v) An estimate of the percentage of the cattle purchased that were of a quality grade of Choice or better; and
   (vi) Any premiums or discounts associated with weight, quality grade, or yield grade expressed in dollars per hundredweight on a dressed basis.

(6) The quantity of cattle delivered to the packer (quoted in numbers of head) on that day, categorized by:
   (i) The type of purchase;
   (ii) The quantity of cattle delivered on a live weight basis; and
   (iii) The quantity of cattle delivered on a dressed weight basis.

(7) The quantity of cattle committed to the packer (quoted in numbers of head) as of that day, categorized by:
   (i) The type of purchase;
   (ii) The quantity of cattle committed on a live weight basis; and
   (iii) The quantity of cattle committed on a dressed weight basis.

(8) The percentage of cattle purchased by a packer as a negotiated purchase that are delivered to the plant for slaughter more than 7 days, but fewer than 14 days, after the earlier of either the date on which the cattle were committed to the packer, the date on which the cattle were purchased by the packer, or the date on which the cattle were priced by the packer.
§ 59.102 Mandatory weekly reporting for live cattle.

(a) In General. The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary on the first reporting day of each week, not later than 9:00 a.m. Central Time, the following information applicable to the prior slaughter week, categorized to clearly delineate domestic from imported market purchases:

(1) The quantity of cattle purchased through forward contracts that were slaughtered;
(2) The quantity of cattle delivered under a formula marketing arrangement that were slaughtered;
(3) The quantity and carcass characteristics of packer-owned cattle that were slaughtered;
(4) The quantity, basis level, and delivery month for all cattle purchased through forward contracts;
(5) The range and average of intended premiums and discounts (including those associated with weight, quality grade, yield grade, or type of cattle) that are expected to be in effect for the current slaughter week; and
(6) The following information for cattle purchased through a formula marketing arrangement and slaughtered during the prior slaughter week:
   (i) The quantity (quoted in both numbers of head and pounds) of cattle;
   (ii) The weighted average price paid for a carcass, including applicable premiums and discounts;
   (iii) The range of premiums and discounts paid;
   (iv) The weighted average of premiums and discounts paid;
   (v) The range of prices paid; and
   (vi) The terms of trade regarding the cattle, as applicable.

(b) Publication. The Secretary shall make available to the public the information obtained under paragraph (a) of this section not less frequently than twice each reporting day.

§ 59.103 Mandatory reporting of boxed beef sales.

(a) Daily reporting. The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least twice each reporting day (once by 10 a.m. Central Time, and once by 2 p.m. Central Time) the following information on total boxed beef domestic and export sales established on that day inclusive since the last reporting as described in §59.10(b):

(1) The price for each lot of each boxed beef sale, quoted in dollars per hundredweight on a F.O.B. plant basis;
(2) The quantity for each lot of each sale, quoted by number of pounds sold; and
(3) The information regarding the characteristics of each sale is as follows:
   (i) The type of sale;
   (ii) The branded product characteristics, if applicable;
   (iii) The grade for steer and heifer beef (e.g., USDA Prime, USDA Choice or better, USDA Choice, USDA Select, ungraded no-roll product);
   (iv) The grade for cow beef or packer yield and/or quality sort for cow beef (e.g., Breakers, Boners, White Cow);
   (v) The cut of beef, referencing the most recent version of the Institutional Meat Purchase Specifications (IMPS), when applicable;
   (vi) The trim specification;
   (vii) The weight range of the cut;
   (viii) The product delivery period; and
   (ix) The beef type (steer/heifer, dairy steer/heifer, or cow).

(b) Publication. The Secretary shall make available to the public the information obtained under paragraph (a) of this section not less frequently than twice each reporting day.

Subpart C—Swine Reporting

§ 59.200 Definitions.

The following definitions apply to this subpart.

Affiliate. The term “affiliate”, with respect to a packer, means:
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Agricultural Marketing Service, USDA

§ 59.200

(1) A person that directly or indirectly owns, controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of the packer;

(2) A person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the packer; and

(3) A person that directly or indirectly controls, or is controlled by or under common control with, the packer;

Applicable reporting period. The term “applicable reporting period” means the period of time prescribed by the prior day report, the morning report, and the afternoon report, as provided in §59.202.

Average carcass weight. The term “average carcass weight” means the weight obtained by dividing the total carcass weight of the swine slaughtered at the packing plant during the applicable reporting period by the number of these same swine.

Average lean percentage. The term “average lean percentage” means the value equal to the average percentage of the carcass weight comprised of lean meat for the swine slaughtered during the applicable reporting period. Whenever the packer changes the manner in which the average lean percentage is calculated, the packer shall make available to the Secretary the underlying data, applicable methodology and formulae, and supporting materials used to determine the average lean percentage, which the Secretary may convert either to the carcass measurements or lean percentage of the swine of the individual packer to correlate to a common percent lean measurement.

Average net price. The term “average net price” means the quotient (stated per hundred pounds of carcass weight of swine) obtained by dividing the total amount paid for the swine slaughtered at a packing plant during the applicable reporting period (including all premiums and less all discounts) by the total carcass weight of the swine (in hundred pound increments).

Average sort loss. The term “average sort loss” means the average discount (in dollars per hundred pounds carcass weight) for swine slaughtered during the applicable reporting period, resulting from the fact that the swine did not fall within the individual packer’s established carcass weight range or lot variation range.

Backfat. The term “backfat” means the fat thickness (in inches) measured between the third and fourth rib from the last rib, 7 centimeters from the carcass split (or adjusted from the individual packer’s measurement to that reference point using an adjustment made by the Secretary) of the swine slaughtered during the applicable reporting period.

Barrow. The term “barrow” means a neutered male swine, with the neutering performed before the swine reached sexual maturity.

Base market hog. The term “base market hog” means a hog for which no discounts are subtracted from and no premiums are added to the base price.

Base price. The term “base price” means the price from which no discounts are subtracted and no premiums are added.

Boars. The term “boar” means a sexually-intact male swine.

Bred female swine. The term “bred female swine” means any female swine, whether a sow or gilt, that has been mated or inseminated, or has been confirmed, to be pregnant.

Formula price. The term “formula price” means a price determined by a mathematical formula under which the price established for a specified market serves as the basis for the formula.

Gilt. The term “gilt” means a young female swine that has not produced a litter.

Highest net price. The term “highest net price” means the highest net price paid for a single lot or group of swine slaughtered at a packing plant during the applicable reporting period per hundred pounds of carcass weight of swine.

Hog Class. The term “hog class” means, as applicable, barrows or gilts; sows; or boars or stags.

Loin depth. The term “loin depth” means the muscle depth (in inches) measured between the third and fourth ribs from the last rib, 7 centimeters from the carcass split (or adjusted from the individual packer’s measurement.
§ 59.200  7 CFR Ch. I (1–1–01 Edition)

to that reference point using an adjustment made by the Secretary) of the swine slaughtered during the applicable reporting period.

Lowest net price. The term “lowest net price” means the lowest net price paid for a single lot or group of swine slaughtered at a packing plant during the applicable reporting period per hundred pounds of carcass weight of swine.

Net price. The term “net price” means the total amount paid by a packer to a producer (including all premiums, less all discounts) per hundred pounds of carcass weight of swine delivered at the plant. The total amount paid shall include any sum deducted from the price (per hundredweight) paid to a producer that reflects the repayment of a balance owed by the producer to the packer or the accumulation of a balance to later be repaid by the packer to the producer. The total amount paid shall exclude any sum earlier paid to a producer that must be repaid to the packer.

Noncarcass merit premium. The term “noncarcass merit premium” means an increase in the base price of the swine offered by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium is known before the sale and delivery of the swine.

Other market formula purchase. The term “other market formula purchase” means a purchase of swine by a packer in which the pricing mechanism is a formula price based on any market other than the market for swine, pork, or a pork product. The term “other market formula purchase” includes a formula purchase in a case which the price formula is based on 1 or more futures or options contracts.

Other purchase arrangement. The term “other purchase arrangement” means a purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase; and does not involve packer-owned swine.

Packer. The term “packer” means any person engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term “packer” includes only a federally inspected swine processing plant that slaughtered an average of 100,000 head of swine per year during the immediately preceding 5 calendar years. Additionally, in the case of a swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years, it shall be considered a packer if the Secretary determines the processing plant should be considered a packer under this subpart after considering its capacity.

Packer-owned swine. The term “packer-owned swine” means swine that a packer (including a subsidiary or affiliate of the packer) owns for at least 14 days immediately before slaughter.

Packer-sold swine. The term “packer-sold swine” means the swine that are owned by a packer (including a subsidiary or affiliate of the packer) for more than 14 days immediately before sale for slaughter; and sold for slaughter to another packer.

Pork. The term “pork” means the meat of a porcine animal.

Pork product. The term “pork product” means a product or byproduct produced or processed in whole or in part from pork.

Purchase data. The term “purchase data” means all of the applicable data, including base price and weight (if purchased live), for all swine purchased during the applicable reporting period, regardless of the expected delivery date of the swine, reported by:

(1) Hog class;
(2) Type of purchase; and
(3) Packer-owned swine.

Slaughter data. The term “slaughter data” means all of the applicable data for all swine slaughtered by a packer during the applicable reporting period, regardless of whether the price of the swine was negotiated or otherwise determined, reported by:

(1) Hog class;
(2) Type of purchase; and
(3) Packer-owned swine.
Agricultural Marketing Service, USDA

§ 59.202 Mandatory daily reporting for swine.

(a) Prior day report. The corporate officers or officially designated representatives of each packer shall report to the Secretary for each business day of the packer not later than 7:00 a.m. Central Time on each reporting day information regarding all swine purchased, priced, or slaughtered during the prior business day of the packer as specified in §59.10(b):

1. All purchase data, reported by lot, including:
   (i) The total number of swine purchased;
   (ii) The total number of swine scheduled for delivery to a packer for slaughter;
   (iii) The base price and weight for all swine purchased on a live weight basis; and
   (iv) The base price and premiums and discounts paid for carcass characteristics for all swine purchased on a carcass basis for which a price has been established.

2. The following slaughter data for the total number of swine slaughtered:
   (i) The average net price;
   (ii) The lowest net price;
   (iii) The highest net price;
   (iv) The average carcass weight;
   (v) The average sort loss;
   (vi) The average backfat;
   (vii) The average loin depth;
   (viii) The average lean percentage; and
   (ix) Total quantity slaughtered.

3. Packer purchase commitments, which shall be equal to the number of swine scheduled for delivery to a packer for slaughter for each of the next 14 calendar days.

4. Publication. The Secretary shall publish the information obtained under this paragraph in a prior day report not later than 8:00 a.m. Central Time on the reporting day on which the information is received from the packer.

(b) Morning report. The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary not later than 10:00 a.m. Central Time each reporting day as described in §59.10(b):

1. The packer’s best estimate of the total number of swine and packer-owned swine expected to be purchased throughout the reporting day through each type of purchase:

2. The total number of swine and packer-owned swine purchased up to that time of the reporting day through each type of purchase:

3. All purchase data for base market hogs purchased up to that time of the
§ 59.203 Mandatory weekly reporting for swine.

(a) Weekly noncarcass merit premium report. Not later than 4:00 p.m. Central Time in accordance with §59.10(b) on the first reporting day of each week, the corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary a noncarcass merit premium report that lists:

(1) Each category of standard noncarcass merit premiums used by the packer in the prior slaughter week; and

(2) The dollar value (in dollars per hundred pounds of carcass weight) paid to producers by the packer, by category.

(b) Premium list. A packer shall maintain and make available to a producer, on request, a current listing of the dollar values (per hundred pounds of carcass weight) of each noncarcass merit premium used by the packer during the current or the prior slaughter week.

(c) Publication. The Secretary shall publish the information obtained under this subsection as soon as practicable, but not later than 5:00 p.m. Central Time, on the first reporting day of each week.

Subpart D—Lamb Reporting

§ 59.300 Definitions.

The following definitions apply to this subpart.

Boxed lamb. The term “boxed lamb” means those carlot-based portions of a lamb carcass including fresh primal cuts, subprimals, cuts fabricated from subprimals (excluding portion-control cuts such as chops and steaks similar to those portion cut items described in the Institutional Meat Purchase Specifications (IMPS) for Fresh Lamb and Mutton Series 200, and thin meats (e.g. inside and outside skirts, pectoral meat, cap and wedge meat, and blade meat) not older than 14 days from date of manufacture; fresh ground lamb, lamb trimmings, and boneless processing lamb not older than 7 days from date of manufacture; frozen ground lamb, lamb trimmings, and boneless processing...
lamb not older than 90 days from date of manufacture.

**Branded.** The term “branded” means boxed lamb cuts produced and marketed under a corporate trademark (for example, products that are marketed on their quality, yield, or breed characteristics), or boxed lamb cuts produced and marketed under one of USDA’s Meat Grading and Certification Branch, Certified programs.

**Carcass characteristics.** The term “carcass characteristics” means the range and average carcass weight in pounds, the quality grade and yield grade (if applicable), and the lamb average dressing percentage.

**Carlot-based.** The term “carlot-based” means any transaction between a buyer and a seller destined for three or less delivery stops consisting of one or more individual boxed lamb items or any combination of carcass weights.

**Established.** The term “established”, when used in connection with prices, means that point in time when the buyer and seller agree upon a net price.

**Formula marketing arrangement.**
(1) When used in reference to live lambs, the term “formula marketing arrangement” means the advance commitment of lambs for slaughter by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

(2) When used in reference to boxed lamb, the term “formula marketing arrangement” means the advance commitment of boxed lamb by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

**Forward contract.**
(1) When used in reference to live lambs, the term “forward contact” means an agreement for the purchase of lambs, executed in advance of slaughter, under which the base price is established by reference to publicly available quoted prices.

(2) When used in reference to boxed lamb, the term “forward contract” means an agreement for the sale of boxed lamb, executed in advance of manufacture, under which the base price is established by reference to publicly available quoted prices.

**Importer.** The term “importer” means any person engaged in the business of importing lamb meat products who takes ownership of such lambs during the immediately preceding 5 calendar years. Additionally, the term includes those that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years, if the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

**Lambs committed.** The term “lambs committed” means lambs that are scheduled to be delivered to a packer within the 7-day period beginning on the date of an agreement to sell the lambs.

**Packer.** The term “packer” means any person engaged in the business of buying lambs in commerce for purposes of slaughtering, of manufacturing or preparing meat products from lambs for sale or shipment in commerce, or of marketing meats or meat products from lambs in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term includes only a federally inspected lamb processing plant which slaughtered or processed the equivalent of an average of 75,000 head of lambs per year during the immediately preceding 5 calendar years. Additionally, the term includes a lamb processing plant that did not slaughter or process an average of 75,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the processing plant should be considered a packer after considering its capacity.

**Packer-owned lambs.** The term “packer-owned lambs” means lambs that a packer owns for at least 14 days immediately before slaughter.

**Terms of trade.** The term “terms of trade” includes, with respect to the purchase of lambs for slaughter:
§ 59.301  Mandatory daily reporting for lambs.

(a) In general. The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least once each reporting day not later than 2:00 p.m. Central Time the following information applicable to the prior slaughter week contained in paragraphs (a)(1) through (a)(4) and (a)(6) of this section not later than 9:00 a.m. Central Time on the first reporting day of the current slaughter week categorized to clearly delineate domestic from imported market purchases as described in §59.10(b):

(1) The quantity of lambs purchased through forward contracts that were slaughtered;

(2) The quantity of lambs delivered under a formula marketing arrangement that were slaughtered;

(3) The quantity and carcass characteristics of packer-owned lambs that were slaughtered;

(4) The quantity, basis level, and delivery month for all lambs purchased through forward contracts.

(b) Publication. The Secretary shall make the information available to the public not less than once each reporting day.

§ 59.302  Mandatory weekly reporting for lambs.

(a) In general. The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary the following information applicable to the prior slaughter week contained in paragraphs (a)(1) through (a)(4) and (a)(6) of this section not later than 9:00 a.m. Central Time on the first reporting day of the current slaughter week:

(1) The quantity of lambs purchased through forward contracts that were slaughtered;

(2) The quantity of lambs delivered under a formula marketing arrangement that were slaughtered;

(3) The quantity and carcass characteristics of packer-owned lambs that were slaughtered;

(4) The quantity, basis level, and delivery month for all lambs purchased through forward contracts;
(5) The following information applicable to the current slaughter week. The range and average of intended premiums and discounts (including those associated with weight, quality grade, yield grade, or type of lamb) that are expected to be in effect for the current slaughter week; and

(6) The following information for lambs purchased through a formula marketing arrangement and slaughtered during the prior slaughter week, categorized to clearly delineate domestic from imported market purchases:
   (i) The quantity (quoted in both numbers of head and pounds) of lambs;
   (ii) The weighted average price paid for a carcass, including applicable premiums and discounts;
   (iii) The range of premiums and discounts paid;
   (iv) The weighted average of premiums and discounts paid;
   (v) The range of prices paid; and
   (vi) The terms of trade regarding the lambs, as applicable.

(b) Publication. The Secretary shall make available to the public the information obtained under paragraphs (a)(1) through (a)(4) and (a)(6) of this section on the second reporting day of the current slaughter week and information obtained in paragraph (a)(5) of this section on the first reporting day of the current slaughter week.

§ 59.303 Mandatory reporting of lamb carcasses and boxed lamb.

(a) Daily reporting of lamb carcass transactions. The corporate officers or officially designated representatives of each packer shall report to the Secretary each reporting day the following information on total carlot-based lamb carcass transactions not later than 3:00 p.m. Central Time in accordance with §59.10(b):
   (1) The price for each lot of each lamb carcass transaction, quoted in dollars per hundredweight on an F.O.B. plant basis;
   (2) The quantity for each lot of each transaction, quoted by number of carcasses sold; and
   (3) The following information regarding the characteristics of each transaction:
      (i) The type of sale;
      (ii) The USDA quality grade of lamb;
      (iii) The USDA yield grade;
      (iv) The estimated weight range of the carcasses; and
      (v) The product delivery period.

(b) Daily reporting of domestic boxed lamb sales. The corporate officers or officially designated representatives of each packer shall report to the Secretary each reporting day the following information on total domestic boxed lamb cut sales not later than 2:30 p.m. Central Time as described in §59.10(b):
   (1) The price for each lot of each boxed lamb cut sale, quoted in dollars per hundredweight on a F.O.B. plant basis;
   (2) The quantity for each lot of each sale, quoted by product weight sold; and
   (3) The following information regarding the characteristics of each transaction:
      (i) The type of sale;
      (ii) The branded product characteristics, if applicable;
      (iii) The U.S.D.A. quality grade of lamb;
      (iv) The cut of lamb, referencing the most recent version of the Institutional Meat Purchase Specifications (IMPS), when applicable;
      (v) U.S.D.A. yield grade, if applicable;
      (vi) The product state of refrigeration;
      (vii) The weight range of the cut; and
      (viii) The product delivery period.

(c) Weekly reporting of imported boxed lamb sales. The corporate officers or officially designated representatives of each lamb importer shall report to the Secretary on the first reporting day of each week the following information applicable to the prior week for imported boxed lamb cut sales not later than 10 a.m. Central Time:
   (1) The price for each lot of a boxed lamb cut sale, quoted in dollars per hundredweight on a F.O.B. plant basis;
   (2) The quantity for each lot of a transaction, quoted by product weight sold; and
   (3) The following information regarding the characteristics of each transaction:
      (i) The type of sale;
      (ii) The branded product characteristics, if applicable;
§59.400  

(iii) The cut of lamb, referencing the most recent version of the Institutional Meat Purchase Specifications (IMPS), when applicable;  
(iv) The product state of refrigeration;  
(v) The weight range of the cut; and  
(vi) The product delivery period.

(d) Publication. The Secretary shall make available to the public the information required to be reported in paragraphs (a) and (b) of this section not less frequently than once each reporting day and the information required to be reported in paragraph (c) of this section on the first reporting day of the current slaughter week.

Subpart E—OMB Control Number

§59.400  OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements of 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 0581–0186.

PART 60 [RESERVED]

PART 61—COTTONSEED SOLD OR OFFERED FOR SALE FOR CRUSHING PURPOSES (INSPECTION, SAMPLING AND CERTIFICATION)

Subpart A—Regulations

DEFINITIONS

Sec.  
61.1 Words in singular form.  
61.2 Terms defined.  
61.2a Designation of official certificates, memoranda, marks, other identifications, and devices for purpose of the Agricultural Marketing Act.

ADMINISTRATIVE AND GENERAL

61.3 Director.  
61.4 Supervisor of cottonseed inspection.  
61.5 Regulations to govern.  
61.6 Denial of further services.  
61.7 Misrepresentation.  
61.8 Application for review.  
61.9 Cost of review.
Agricultural Marketing Service, USDA

§ 61.2a

(d) Secretary. The Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

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

(f) Administrator. The Administrator of the Agricultural Marketing Service, or any officer or employee of the Service, to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(g) Division. The Cotton Division of the Agricultural Marketing Service.

(h) Director. The Director of the Cotton Division, or any officer or employee of the Division to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(i) Custodian. Person who has possession or control of cottonseed or of samples of cottonseed as agent, controller, broker, or factor, as the case may be.

(j) Owner. Person who through financial interest owns or controls, or has the disposition of either cottonseed or of samples of cottonseed.

(k) Official cottonseed standards. The official standards of the United States for the grading, sampling, and analyzing of cottonseed sold or offered for sale for crushing purposes.

(l) Supervisor of cottonseed inspection. An officer of the Division designated as such by the Director.

(m) License. A license issued under the act by the Secretary.

(n) Licensed cottonseed chemist. A person licensed under the act by the Secretary to make quantitative and qualitative chemical analyses of samples of cottonseed according to the methods prescribed by the Science Division Director of the Agricultural Marketing Service and to certificate the grade according to the official cottonseed standards of the United States.

(o) Licensed cottonseed sampler. A person licensed by the Secretary to draw and to certificate the authenticity of samples of cottonseed in accordance with the regulations in this subpart.

(p) Dispute. A disagreement as to the true grade of a sample of cottonseed analyzed and graded by a licensed chemist.

(q) Party. A party to a dispute.

(r) Commercial laboratory. A chemical laboratory operated by an individual, firm, or corporation in which one or more persons are engaged in the chemical analysis of materials for the public.

(s) Cottonseed. The word “cottonseed” as used in this part means the seed, after having been put through the usual and customary process known as cotton ginning, of any cotton produced within the continental United States.

(t) Lot. That parcel or quantity of cottonseed offered for sale or tendered for delivery or delivered on a sale or contract of sale, in freight cars, trucks, wagons, or otherwise in the quantities and within the time limits prescribed from time to time by the Director for the drawing and preparation of official samples by licensed cottonseed samplers.

(u) Official sample. A specimen of cottonseed drawn and prepared by a licensed cottonseed sampler and certified by him as representative of a certain identified lot, in accordance with the regulations in this subpart.


§ 61.2a Designation of official certificates, memoranda, marks, other identifications, and devices for purpose of the Agricultural Marketing Act.

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended by Pub. L. 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks, or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:
§61.3 Official certificate means any form of certification, either written or printed, used under this part to certify with respect to the inspection, sampling, class, grade, quality, quantity, or condition of products (including the compliance of products with applicable specifications).

(b) Official memorandum means any initial record of findings made by an authorized person in the process of grading, inspecting, or sampling, pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading, inspecting, or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

(c) Official mark means the grade mark, inspection mark, and any other mark, approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded or inspected or both, or indicating the appropriate U.S. grade or condition of the product, or for the purpose or maintaining the identity of products graded or inspected or both under this part.

(d) Official identification means any United States (U.S.) standard designation of class, grade, quality, quantity, or condition specified in this part, or any symbol, stamp, label, or seal indicating that the product has been officially graded or inspected and/or indicating the class, grade, quality, quantity, or condition of the product, approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

(e) Official device means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Administrator for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

ADMINISTRATIVE AND GENERAL

§61.3 Director.

The Director shall perform for and under the supervision of the Secretary and the Administrator, such duties as the Secretary or the Administrator may require in enforcing the provisions of the act and the regulations.

§61.4 Supervisor of cottonseed inspection.

The Director, whenever he deems necessary, may designate an officer of the Division as supervisor of cottonseed inspection who shall supervise the inspection and sampling of cottonseed and perform such other duties as may be required of him in administering the act and the regulations.

§61.5 Regulations to govern.

The inspection, sampling, analyzing, and grading of cottonseed in the United States pursuant to the act shall be performed as prescribed in methods approved from time to time by the Director.

§61.6 Denial of further services.

Any person, partnership, or corporation that shall have undertaken to utilize the services of licensed cottonseed samplers under these regulations who shall not make available for official sampling and analysis each lot of cottonseed purchased or sold on grade and received by such person or partnership or corporation, may be denied further services under the act and these regulations: Provided, That in cases of persons, partnerships, or corporations operating two or more cottonseed crushing units under separate local management, such penalty shall apply only to the offending unit, unless it shall be shown that the actions of such unit were at the direction or with the knowledge, approval, or acquiescence of the general management.


§61.7 Misrepresentation.

Any willful misrepresentation or any deceptive or fraudulent practice made or committed by an applicant for a cottonseed sampler's certificate or for a cottonseed chemist's certificate, or for an appeal grade certificate in connection with the sampling or grading of cottonseed by persons licensed under the act and the regulations or the issuance or use of a certificate not issued by a person licensed under the act and the regulations, or the issuance or use of a certificate not issued by a person licensed under the act and the regulations, or the issuance or use of a certificate not issued by a person licensed under the
regulations in imitation of or that might mislead anyone to believe that such certificate was in fact issued by a person licensed under the act, or that might be otherwise false, misleading, or deceptive, may be deemed sufficient cause for debarring such applicant from any further benefits of the act.

§ 61.8 Application for review.

In case of dispute in which a review is desired of the grading of any official sample of cottonseed covered by a valid certificate issued by a licensed cottonseed chemist, application therefor shall be filed with or mailed to a supervisor of cottonseed inspection within ten days after the date of the original certificate, whereupon the licensed chemist issuing the certificate shall immediately surrender to such supervisor the retained portion of the original sample, together with such records as may be required, for the determination of the true grade. The supervisor shall assign to such retained portion an identification number, shall divide such retained portion into two parts and submit the parts to two other licensed cottonseed chemists for reanalysis. Should the supervisor determine that such reanalyses indicate a grade differing from the original by not more than plus or minus one full grade, the original grade shall be considered the true grade. Should he find that such reanalyses indicate a grade differing more than plus or minus one full grade from the original, he shall determine the true grade. In any case, the supervisor shall issue over his name an appeal cottonseed grade certificate showing the true grade of the cottonseed involved.


§ 61.9 Cost of review.

In cases of review of the grade of any official sample of cottonseed, payment covering the costs of re-analysis shall accompany the application.

LICENSED COTTONSEED SAMPLERS

§ 61.25 Application for license as sampler; form.

(a) Applications for licenses to sample cottonseed shall be made to the Director on forms furnished for the purpose by him.

(b) Each such application shall be in English, shall be signed by the applicant, and shall contain or be accompanied by (1) satisfactory evidence that he is an actual resident of the United States, (2) satisfactory evidence of his experience in the handling and sampling of cottonseed, (3) a statement by the applicant that he agrees to comply with and abide by the terms of the act and these regulations so far as they relate to him, and with instructions issued from time to time governing the sampling of cottonseed, and (4) such other information as may be required.

§ 61.27 Period of license; renewals.

The period for which a license may be issued under the regulations in §§61.25 through 61.42 shall be from the first day of August following receipt of the application, and shall continue for 5 years, ending on the 31st of July in the fifth year. Renewals shall be for 5 years also, beginning with the first day of August and ending on the 31st day of July in the fifth year: Provided, That licenses or renewals issued on and after June 1 of any year shall be for the period ending July 31 of the fifth year following.

[59 FR 26411, May 20, 1994]

§ 61.30 Examination of sampler.

Each applicant for a license as a sampler and each licensed sampler whenever requested by an authorized representative of the Director, shall submit to an examination or test to show
§ 61.31 License must be posted.
Each licensed sampler shall keep his license conspicuously posted at the place where he functions as a sampler or in such other place as may be approved by the Director.

§ 61.32 No discrimination in sampling.
Each licensed sampler, when requested, shall without discrimination, as soon as practicable and upon reasonable terms, sample any cottonseed if the same be made available to him at his place of business, under conditions that will permit proper sampling. Each such licensee shall give preference to those who request his services as such over persons who request his services in any other capacity.

§ 61.33 Equipment of sampler; contents of certificate.
Each licensed sampler shall have available suitable triers or sampling tools, sample containers, scales, seed cleaners, seed mixers, and air-tight containers for enclosing and forwarding the official samples to licensed chemist, and with tags and samplers’ certificates approved or furnished by the Director or his representative for identifying the samples of cottonseed and for certificating the condition of the cottonseed represented by such samples. There shall be clearly written or printed on the face of such certificate (a) a suitable caption; (b) the location of the cottonseed involved and its point of origin; (c) the identification of the lot from which the sample was drawn; (d) the date on which the sample was drawn; (e) the gross weight of the original sample, and the net weight of the cleaned sample; (f) a statement indicating that the sample was drawn in accordance with sampling methods prescribed by the Director of the Cotton Division; and (g) the signature of the licensed sampler as such. The use of such tags and certificates shall be in conformity with instructions issued from time to time by the Division.

§ 61.34 Drawing and preparation of sample.
Each licensed cottonseed sampler shall draw, prepare, and identify one official sample of cottonseed and a duplicate thereof from each lot made available to him in such manner as may be required by the Director, and shall promptly prepare it for forwarding to a licensed cottonseed chemist for analysis and grading. The duplicate shall be sealed and retained by the sampler until the original official sample shall have been analyzed by a licensed chemist. If the original official sample shall become lost or destroyed before having been analyzed the duplicate shall become the official sample; otherwise the licensed sampler shall immediately remove the identification marks from the duplicate and discard it. In no case shall the duplicate be offered for analysis unless the original shall have been lost or destroyed before analysis.

§ 61.36 Cause for suspension or revocation.
The failure or refusal of any cottonseed sampled, duly licensed as such under the regulations in this subpart, to draw, prepare, identify, and to forward an official sample of every lot of cottonseed made available to him for the purpose, in accordance with these regulations, shall be cause for the suspension or revocation of his license. A sampler’s license may also be suspended when the sampler (a) has ceased to perform services as a licensed cottonseed sampler, (b) has knowingly or carelessly sampled cottonseed improperly, (c) has violated or evaded any provision of the Act, these regulations, or the sampling methods prescribed by the Director, (d) has used his license or allowed it to be used for any fraudulent or improper purposes, or (e) has in any manner become incompetent or incapacitated to perform the duties of a licensed sampler.

§ 61.37 License may be suspended.
The Director may, without a hearing, suspend or revoke the license issued to
§ 61.101 Determination of grade.

The grade of cottonseed shall be determined from the analysis of samples by licensed chemists, and it shall be the result, stated in the nearest whole or half numbers, obtained by multiplying a quantity index by a quality index and dividing the result by 100. The quantity index and the quality index shall be determined as hereinafter provided.

(a) The basis grade of cottonseed shall be grade 100.

(b) High grades of cottonseed shall be those grades above 100.

(c) Low grades of cottonseed shall be those grades below 100.

(d) Grades for American Pima cottonseed shall be suffixed by the designation “American Pima” or by the symbol “AP.”

§ 61.102 Determination of quantity index.

The quantity index of cottonseed shall be determined as follows:

(a) For upland cottonseed the quantity index shall equal four times percentage of oil plus six times percentage of ammonia, plus 5.

(b) For American Pima cottonseed the quantity index shall equal four times percentage of oil, plus six times percentage of ammonia, minus 5.

[37 FR 20157, Sept. 27, 1972]

§ 61.103 Determination of quality index.

The quality index of cottonseed shall be an index of purity and soundness, and shall be determined as follows:

(a) Prime quality cottonseed. Cottonseed that by analysis contains not more than 1.0 percent of foreign matter, not more than 12.0 percent of moisture, and not more than 1.8 percent of free fatty acids in the oil in the seed, shall be known as prime quality cottonseed and shall have a quality index of 100.

(b) Below prime quality cottonseed. The quality index of cottonseed that, by analysis, contain foreign matter, moisture, or free fatty acids in the oil in the seed, in excess of the percentages prescribed in paragraph (a) of this section shall be found by reducing the quality index of prime quality cottonseed as follows:

(1) Four-tenths of a unit for each 0.1 percent of free fatty acids in the oil in the seed in excess of 1.8 percent.

(2) One-tenth of a unit for each 0.1 percent of foreign matter in excess of 1.0 percent.

(3) One-tenth of a unit for each 0.1 percent of moisture in excess of 12.0 percent.

(c) Off quality cottonseed. Cottonseed that has been treated by either mechanical or chemical process other than the usual cleaning, drying, and ginning (except sterilization required by the United States Department of Agriculture for quarantine purposes) or that are fermented or hot, or that upon analysis are found to contain 12.5 percent or more of free fatty acids in the oil in the seed, or more than 10.0 percent of foreign matter, or more than 20.0 percent of moisture, or more than 25.0 percent of moisture and foreign matter combined, shall be designated as "off quality cottonseed."

(d) Below grade cottonseed. Cottonseed the grade of which when calculated according to § 61.101 is below grade 40.0 shall be designated as "below grade cottonseed," and a numerical grade shall not be indicated.


PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

Subpart A—Grading of Poultry Products and Rabbit Products

GENERAL

Sec. 70.1 Definitions.
70.2 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.
70.3 Administration.
70.4 Grading services available.
70.5 Nondiscrimination.
70.6 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

BASIS OF SERVICE

70.10 Grading service.
70.11 [Reserved]
70.12 Supervision.
70.13 Ready-to-cook poultry and rabbits and specified poultry food products; eligibility.
70.14 Squabs and domesticated game birds; eligibility.
70.15 Equipment and facilities to be furnished for use of graders in performing service on a resident basis.
70.16 Prerequisites to grading.
70.17 Accessibility of products.
70.18 Schedule of operation of official plants.

PERFORMANCE OF SERVICES

70.20 Licensed or authorized graders.
Agricultural Marketing Service, USDA

§ 70.1

70.21 Suspension of license; revocation.
70.22 Surrender of license.
70.23 Identification.
70.24 Financial interest of graders.
70.25 Political activity.

APPLICATION FOR GRADING SERVICE

70.30 Who may obtain grading service.
70.31 How application for service may be made; conditions of service.
70.32 Filing of application.
70.33 Authority of applicant.
70.34 Application for grading service in official plants; approval.
70.35 Rejection of application.
70.36 Withdrawal of application.
70.37 Order of service.
70.38 Suspension or withdrawal of plant approval for correctable cause.

DENIAL OF SERVICE

70.40 Debarment.
70.41 Misrepresentation, deceptive, or fraudulent acts or practices.
70.42 Use of facsimile forms.
70.43 Willful violation of the regulations.
70.44 Interfering with a grader or employee of Service.
70.45 Misleading labeling.
70.46 Miscellaneous.

IDENTIFYING AND MARKING PRODUCTS

70.50 Approval of official identification and wording on labels.
70.51 Form of grademark and information required.
70.52 Prerequisites to packaging ready-to-cook poultry or rabbits identified with consumer grademarks.
70.54 Retention authorities.
70.55 Check grading officially identified product.

REPORTS

70.60 Report of grading work.
70.61 Information to be furnished to graders.
70.62 Reports of violations.

FEES AND CHARGES

70.70 Payment of fees and charges.
70.71 On a fee basis.
70.72 Fees for appeal grading, or examination or review of a grader’s decision.
70.73 Travel expenses and other charges.
70.74 Charges for continuous poultry grading performed on a nonresident basis.
70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.
70.78 Fees or charges for grading service performed under cooperative agreement.

GRADING

70.80 General.

70.81 Ready-to-cook poultry and rabbits and specified poultry food products.

GRADING CERTIFICATES

70.90 Forms.
70.91 Issuance and disposition.
70.92 Advance information.

APPEAL OF A GRADING OR DECISION

70.100 Who may request an appeal grading or review of a grader’s decision.
70.101 Where to file an appeal.
70.102 How to file an appeal.
70.103 When an application for an appeal grading may be refused.
70.104 Who shall perform the appeal.
70.105 Procedures for appeal gradings.
70.106 Appeal grading certificates.

SANITARY REQUIREMENTS, FACILITIES, AND OPERATING PROCEDURES

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

Subparts B–C [Reserved]


Subpart A—Grading of Poultry Products and Rabbit Products

GENERAL

§ 70.1 Definitions.

Unless the context otherwise requires, the following terms shall have the following meaning:

Acceptable means suitable for the purpose intended and acceptable to the Service.

Act means the applicable provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087, as amended; 7 U.S.C. 1621 et seq.) or any other act of Congress conferring like authority.

Administrator means the Administrator of the Agricultural Marketing Service of the Department or any other officer or employee of the Department to whom there has heretofore been delegated or to whom there may hereafter be delegated the authority to act in his stead.

Applicant means any interested person who requests any grading service.

Carcass means any poultry or rabbit carcass.
§ 70.1

Chief of the Grading Branch means Chief of the Poultry Grading Branch, Poultry Division, Agricultural Marketing Service.

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

Condition means any condition, including but not being limited to, the state of preservation, cleanliness, or soundness of any product; or any condition, including but not limited to the processing, handling, or packaging which affects such product.

Condition and wholesomeness means the condition of any product and its healthfulness and fitness for human food.

Department means the United States Department of Agriculture.

Free from protruding feathers or hairs means that a poultry carcass, part, or poultry product with the skin on is free from protruding feathers or hairs which are visible to a grader during an examination at normal operating speeds. However, a poultry carcass, part, or poultry product may be considered as being free from protruding feathers or hairs if it has a generally clean appearance and if not more than an occasional protruding feather or hair is evidenced during a more careful examination.

Giblets means the following poultry organs when properly trimmed and washed: The liver from which the bile sac has been removed, the heart from which the pericardial sac has been removed, and the gizzard from which the lining and contents have been removed. With respect to rabbits “giblets” means the liver from which the bile sac has been removed and the heart from which the pericardial sac has been removed.

Grader means any Federal or State employee or the employee of a local jurisdiction or cooperating agency to whom a license has been issued by the Secretary to investigate and certify in accordance with the regulations in this part the class, quality, quantity, or condition of any product by examining each unit thereof or each unit of the representative sample thereof drawn by a grader, and issues a grading certificate with respect thereto, except that with respect to grading service performed on a resident basis, the issuance of a grading certificate shall be pursuant to a request therefor by the applicant or the Service; (b) the act whereby the grader identifies, according to the regulations in this part, the graded product; (c) with respect to any official plant, the act whereby a grader determines that the product in such plant was processed, handled, and packaged in accordance with §70.110, or (d) any regrading or any appeal grading of a previously graded product.

Grading certificate means a statement, either written or printed, issued by a grader, pursuant to the regulations in this part, relative to the class, quality, quantity, or condition of a product.

Holiday or Legal Holiday shall mean the legal public holidays specified by the Congress in paragraph (a) of section 6103, title 5, of the United States Code.

Identify means to apply official identification to products or the containers thereof.

Lightly shaded discolorations on poultry are generally reddish in color and are usually confined to areas of the skin or the surface of the flesh.

Moderately shaded discolorations on poultry skin or flesh are areas that are generally dark red or bluish, or are areas of flesh bruising. Moderately shaded discolorations are free from blood clots that are visible to a grader during an examination of the carcass, part, or poultry product at normal grading speeds.

National supervisor means (a) the officer in charge of the poultry grading service of the Agricultural Marketing Service, and (b) other officers and employees of the Department designated by the officer in charge of the poultry grading service of the Agricultural Marketing Service.

Office of grading means the office of any grader.

Official plant or official establishment means one or more buildings or parts thereof comprising a single plant in
which the facilities and methods of operation therein have been approved by the Administrator as suitable and adequate for grading service and in which grading is carried on in accordance with the regulations in this part.  

Person means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.  

Poultry means any kind of domesticated bird, including, but not being limited to, chickens, turkeys, ducks, geese, pigeons, and guineas.  

Poultry food product means any article of human food or any article intended for or capable of being so used, which is prepared or derived in whole or in substantial part, from any edible part or parts of poultry.  

Poultry product means any ready-to-cook poultry carcass or part therefrom or any specified poultry food product.  

Poultry grading service means the personnel who are actively engaged in the administration, application, and direction of poultry and rabbit grading programs and services pursuant to the regulations in this part.  

Quality means the inherent properties of any product which determine its relative degree of excellence.  

Rabbit means any domesticated rabbit whether live or dead.  

Rabbit product means any ready-to-cook rabbit carcass or part therefrom.  

Ready-to-cook poultry means any slaughtered poultry free from protruding feathers, vestigial feathers (hair or down as the case may be) and from which the head, feet, crop, oil gland, trachea, esophagus, entrails, mature reproductive organs, and lungs have been removed, and the kidneys have been removed from certain mature poultry as defined in 9 CFR part 381, and with or without the giblets, and which is suitable for cooking without need of further processing.  

Ready-to-cook rabbit means any rabbit which has been slaughtered for human food, from which the head, blood, skin, feet, and inedible viscera have been removed, that is ready to cook without need of further processing. Ready-to-cook rabbit also means any cut-up or disjointed portion of rabbit or any edible part thereof.  

Regional director means any employee of the Department in charge of poultry grading service in a designated geographical area.  

Regulations means the provisions of this entire part and such United States classes, standards, and grades for products as may be in effect at the time grading is performed.  

Secretary means the Secretary of the Department, or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.  

Service means the Agricultural Marketing Service of the Department.  

Slight discolorations on poultry skin or flesh are areas of discoloration that are generally pinkish in color and do not detract from the appearance of the carcass, part, or poultry product.  

Soundness means freedom from external evidence of any disease or condition which may render a carcass or product unfit for food.  

State supervisor or Federal-State supervisor means any authorized and designated individual who is in charge of the poultry grading service in a State.  

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

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended by Pub. L. 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks, or other identification and devices for making such marks or identifications, issued or authorized under section 203 of said Act, and certain misrepresentations concerning the grading of agricultural
§ 70.3 Administration.

The Administrator shall perform for and under the supervision of the Secretary such duties as are prescribed in the regulations in this part and as the Secretary may require in the administration of the regulations in this part. The Administrator is authorized to waive for limited periods any particular provisions of the regulations to permit experimentation so that new procedures and grading techniques may be tested to facilitate definite improvements and at the same time to determine full compliance with the spirit and intent of the regulations. The Agricultural Marketing Service and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this part.

§ 70.4 Grading services available.

The regulations in this part provide for the following kinds of service; and any one or more of the different services applicable to official plants may be rendered in an official plant:

(a) Grading of ready-to-cook poultry and rabbits in an official plant or at other locations with adequate facilities.

(b) Grading of specified poultry food products in official plants.

§ 70.5 Nondiscrimination.

The conduct of all services and the licensing of graders and inspectors under these regulations shall be accomplished without regard to race, color, national origin, religion, age, sex, or disability.

[60 FR 6640, Feb. 2, 1995]

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

(a) Purpose. This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR part 70 pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511.

(b) Display.
§ 70.10 Grading service.

Any grading service in accordance with the regulations in this part shall be for class, quality, quantity, or condition or any combination thereof. Grading service with respect to determination of quality of products shall be on the basis of United States classes, standards, and grades as contained in subparts B and C of this part. However, grading service may be rendered with respect to products which are bought and sold on the basis of institutional contract specifications or specifications of the applicant, and such service, when approved by the Administrator, shall be rendered on the basis of such specifications.

§ 70.11 [Reserved]

§ 70.12 Supervision.

All grading service shall be subject to supervision at all times by the responsible State supervisor, regional director, and national supervisor. Such service shall be rendered in accordance with instructions issued by the Administrator where the facilities and conditions are satisfactory for the conduct of the service and the requisite graders are available. Whenever the supervisor of a grader has evidence that such grader incorrectly graded a product, such supervisor shall take such action as is necessary to correct the grading and to cause any improper grademarks which appear on the product or containers thereof to be corrected prior to shipment of the product from the place of initial grading.

§ 70.13 Ready-to-cook poultry and rabbits and specified poultry food products; eligibility.

Only ready-to-cook poultry and rabbits and specified poultry food products which are inspected and passed by the poultry inspection service of the U.S. Department of Agriculture or by any other official inspection system acceptable to the Department may be graded.

§ 70.14 Squabs and domesticated game birds; eligibility.

Squabs and domesticated game birds (including, but not being limited to, quail, pheasants, and wild species of ducks and geese raised in captivity) may be graded under the regulations in this part, only if they have been inspected and passed by the poultry inspection service of the U.S. Department of Agriculture or have been inspected by any other official inspection system acceptable to the Department.

§ 70.15 Equipment and facilities to be furnished for use of graders in performing service on a resident basis.

Such equipment and facilities shall include but not be limited to:

(a) An accurate metal stem thermometer.

(b) A drill with a steel bit to drill holes in frozen product for inserting the metal thermometer stem to determine temperature.

(c) Scales graduated in tenths of a pound or less for weighing carcasses, parts, or products individually or in containers up to 100 pounds, and test weights for such scales.

(d) Scales graduated in one-pound graduation or less for weighing bulk

Basis of Service

§ 70.15

7 CFR section where identified and described

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§ 70.16 Containers of poultry and test weights for such scales.
(e) Furnished adequate office space, a desk equipped with a satisfactory locking device, lockers or cabinets suitable for the protection and storage of official supplies and facilities suitable for graders to change clothing.

§ 70.16 Prerequisites to grading.
Grading of products shall be rendered pursuant to the regulations in this part and under such conditions and in accordance with such methods as may be prescribed or approved by the Administrator.

§ 70.17 Accessibility of products.
Each product for which grading service is requested shall be so placed as to disclose fully its class, quality, quantity, and condition as the circumstances may warrant.

§ 70.18 Schedule of operation of official plants.
Grading operation schedules for services performed pursuant to §§70.76 and 70.77 shall be requested in writing and be approved by the Administrator. Normal operating schedules for a full week consist of a continuous 8-hour period per day (excluding not to exceed 1 hour for lunch), 5 consecutive days per week, within the administrative workweek, Sunday through Saturday, for each shift required. Less than 8-hour schedules may be requested and will be approved if a grader is available. Clock hours of daily operations need not be specified in the request, although as a condition of continued approval, the hours of operation shall be reasonably uniform from day to day. Graders are to be notified by management 1 day in advance of any change in the hours grading service is requested.

§ 70.20 Licensed or authorized graders.
(a) Any person who is a Federal or State employee, the employee of a local jurisdiction, or the employee of a cooperating agency possessing proper qualifications as determined by an examination for competency and who is to perform grading service under this part may be licensed by the Secretary as a grader.

(b) All licenses issued by the Secretary shall be countersigned by the officer in charge of the poultry grading service of the Agricultural Marketing Service or any other designated officer of such Service.

(c) Any person who is employed by any official plant and possesses proper qualifications as determined by the Administrator may be authorized to grade poultry and/or rabbits on the basis of the U.S. classes, standards, and grades under the supervision of a grader. No person to whom such authorization is granted shall have authority to issue any grading certificates, grading memoranda, or other official documents; and all products graded by any such person shall thereafter be check graded by a grader.

§ 70.21 Suspension of license; revocation.
Pending final action by the Secretary, any person authorized to countersign a license to perform grading service may, whenever he deems such action necessary to assure that any grading services are properly performed, suspend any license to perform grading service issued pursuant to this part, by giving notice of such suspension to the respective licensee, accompanied by a statement of the reasons therefor. Within 7 days after the receipt of the aforesaid notice and statement of reasons, the licensee may file an appeal in writing, with the Secretary, supported by any argument or evidence that he may wish to offer as to why his license should not be further suspended or revoked. After the expiration of the aforesaid 7-day period and consideration of such argument and evidence, the Secretary will take such action as he deems appropriate with respect to such suspension or revocation. When no appeal is filed within the prescribed 7 days, the license to perform grading service is revoked.
§ 70.22 Surrender of license.
Each license which is suspended or revoked shall immediately be surrendered by the licensee to the office of grading serving the area in which he is located. Upon termination of the services of a licensed grader, the licensee shall surrender his license immediately for cancellation.

§ 70.23 Identification.
Each grader shall have in his possession at all times, and present upon request while on duty, the means of identification furnished by the Department to such person.

§ 70.24 Financial interest of graders.
No grader shall render service on any product in which he is financially interested.

§ 70.25 Political activity.
All graders are forbidden, during the period of their respective appointments or licenses, to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including, but not being limited to, temporary and cooperative employees and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

§ 70.30 Who may obtain grading service.
An application for grading service may be made by any interested person, including, but not being limited to, the United States, any State, county, municipality, or common carrier, and any authorized agent of the foregoing.

§ 70.31 How application for service may be made; conditions of service.
(a) Noncontinuous grading service on a fee basis. An application for any noncontinuous grading service on a fee basis may be made in any office of grading or with any grader at or nearest the place where the service is desired. Such application may be made orally (in person or by telephone), in writing, or by telegraph. If the application for grading service is made orally, the office of grading or the grader with whom such application is made or the Administrator may require that the application be confirmed in writing.
(b) Continuous grading service on a resident basis or continuous grading service on a nonresident basis. An application for continuous grading service on a resident basis or for continuous grading service on a nonresident basis must be made in writing on forms approved by the Administrator and filed with the Administrator. Such forms may be obtained at the national, regional, or State grading office. In making application, the applicant agrees to comply with the terms and conditions of the regulations (including, but not being limited to, such instructions governing grading of products as may be issued from time to time by the Administrator). No member of or Delegate to Congress or Resident Commissioner shall be admitted to any benefit that may arise from such service unless derived through service rendered a corporation for its general benefit.

§ 70.32 Filing of application.
An application for grading service shall be regarded as filed only when made pursuant to the regulations in this part.

§ 70.33 Authority of applicant.
Proof of the authority of any person applying for grading service may be required at the discretion of the Administrator.

§ 70.34 Application for grading service in official plants; approval.
Any person desiring to process and pack products in a plant under grading service must receive approval of such plant and facilities as an official plant prior to the rendition of such service.
§ 70.35  Application for grading service to be rendered in an official plant shall be approved according to the following procedure: Survey. When application has been filed for grading service, as aforesaid, the State supervisor or his assistant shall examine the grading office, facilities, and equipment and specify any additional facilities or equipment needed for the service. When the plant survey for poultry or rabbit grading has been completed and approved in accordance with the regulations in this part, service may be installed.

§ 70.35  Rejection of application.

Any application for grading service may be rejected by the Administrator (a) whenever the applicant fails to meet the requirements of the regulations prescribing the conditions under which the service is made available; (b) whenever the product is owned by or located on the premises of a person currently denied the benefits of the Act; (c) where any individual holding office or a responsible position with or having a substantial financial interest or share in the applicant, is currently denied the benefits of the Act, or was responsible in whole or in part for the current denial of the benefits of the Act to any person; (d) where the Administrator determines that the application is an attempt on the part of a person currently denied the benefits of the Act to obtain grading service; (e) whenever the applicant, after an initial survey has been made in accordance with §70.34, fails to bring the grading facilities and equipment into compliance with the regulations within a reasonable period of time; or (f) notwithstanding any prior approval whenever, before inauguration of service, the applicant fails to fulfill commitments concerning the inauguration of the service. Each such applicant shall be promptly notified by registered mail of the reasons for the rejection. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant by registered mail of the reasons for the rejection thereof.

§ 70.36  Withdrawal of application.

Any application for grading service may be withdrawn by the applicant at any time before the service is performed upon payment by the applicant, of all expenses incurred by the Service in connection with such application.

§ 70.37  Order of service.

Grading service shall be performed, insofar as practicable and subject to the availability of qualified graders, in the order in which applications therefor are made, except that precedence may be given to any application for an appeal grading.

§ 70.38  Suspension or withdrawal of plant approval for correctable cause.

(a) Any plant approval given pursuant to the regulations in this part may be suspended by the Administrator for (1) failure to maintain grading facilities and equipment in a satisfactory state of repair, sanitation, or cleanliness; (2) the use of operating procedures which are not in accordance with the regulations in this part; or (3) alterations of grading facilities or equipment which have not been approved in accordance with the regulations in this part.

(b) Whenever it is feasible to do so, written notice in advance of a suspension shall be given to the person concerned and shall specify a reasonable period of time in which corrective action must be taken. If advance written notice is not given, the suspension action shall be promptly confirmed in writing and the reasons therefor shall be stated, except in instances where the person has already corrected the deficiency. Such service, after appropriate corrective action is taken, will be restored immediately, or as soon thereafter as a grader can be made available. During such period of suspension, grading service shall not be rendered. However, the other provisions of the regulations pertaining to...
providing service on a resident basis will remain in effect unless such service is terminated in accordance with the provisions of this part.

(c) If the grading facilities or methods of operation are not brought into compliance within a reasonable period of time as specified by the Administrator, he shall initiate withdrawal action pursuant to the Rules of Practice Governing Withdrawal of Inspection and Grading Service (7 CFR part 1, subpart H), and the operator shall be afforded an opportunity for an oral hearing upon his written request in accordance with such Rules of Practice, with respect to the merits or validity of the withdrawal action, but any suspension shall continue in effect pending the outcome of such hearing unless otherwise ordered by the Administrator. Upon withdrawal of grading service in an official plant, the plant approval shall also become terminated, and all labels, seals, tags, or packaging material bearing official identification shall, under the supervision of a person designated by the service, either be destroyed, or the official identification completely obliterated, or sealed in a manner acceptable to the service.

(d) In any case where grading service is withdrawn under this §70.38, the person concerned may thereafter apply for grading service as provided in §§70.30 through 70.37 of these regulations.

DENIAL OF SERVICE

§ 70.40 Debarment.

The acts or practices set forth in §§70.41 through 70.46, or the causing thereof, may be deemed sufficient cause for the debarment by the Administrator of any person, including any agents, officers, subsidiaries, or affiliates of such person, from any or all benefits of the Act for a specified period. The rules of practice governing withdrawal of grading services in formal adjudicatory proceedings instituted by the Secretary (7 CFR, part 1, subpart H) shall be applicable to such debarment action.

§ 70.41 Misrepresentation, deceptive, or fraudulent acts or practices.

Any willful misrepresentation or any deceptive or fraudulent act or practice found to be made or committed by any person in connection with:

(a) The making or filing of any application for any grading service, appeal or regrading service;

(b) The making of the product accessible for grading;

(c) The making, issuing, or using, or attempting to issue or use any grading certificate, symbol, stamp, label, seal, or identification, authorized pursuant to the regulations in this part;

(d) The use of the terms “United States” or “U.S.” in conjunction with the grade of the product;

(e) The use of any of the aforesaid terms or any official stamp, symbol, label, seal, or identification in the labeling or advertising of any product.

§ 70.42 Use of facsimile forms.

Using or attempting to use a form which simulates in whole or in part any certificate, symbol, stamp, label, seal, or identification authorized to be issued or used under the regulations in this part.

§ 70.43 Willful violation of the regulations.

Any willful violation of the regulations in this part or the Act.

§ 70.44 Interfering with a grader or employee of Service.

Any interference with or obstruction or any attempted interference or obstruction of, or assault upon any grader, licensee, or employee of the Service in the performance of his duties. The giving or offering, directly or indirectly, of any money, loan, gift, or anything of value to an employee of the Service, or the making or offering of
any contribution to or in any way supplementing the salary, compensation, or expenses of an employee of the Service, or the offering or entering into a private contract or agreement with an employee of the Service for any services to be rendered while employed by the Service.

§ 70.45 Misleading labeling.
The use of the terms “Government Graded” and “Federal-State Graded” or terms of similar import in the labeling or advertising of any product without stating in the labeling or advertisement the U.S. grade of the product as determined by an authorized grader.

§ 70.46 Miscellaneous.
The existence of any of the conditions set forth in §70.35 constituting a basis for the rejection of an application for grading service.

IDENTIFYING AND MARKING PRODUCTS

§ 70.50 Approval of official identification and wording on labels.
Any label or packaging material which bears any official grade identification shall be used only in such a manner as the Administrator may prescribe, and such labeling or packaging materials, including the wording used on such materials, shall be approved in accordance with and conform with the provisions of this part and the applicable provisions of §§381.115 through 381.141 of 9 CFR part 381. Poultry Products Inspection Regulations. Labeling requirements for ready-to-cook rabbits, except for the product name, shall be the same as for ready-to-cook poultry. For ready-to-cook rabbits the class name shall be shown on the label. The appropriate designation, “young,” “mature,” or “old,” may be used as a prefix to the word “rabbit” in lieu of the class name.

(b) Information required on grademark.
(1) Except as otherwise authorized by the Administrator, each grademark used shall include the letters “USDA” and the U.S. grade of the product it identifies, such as “A Grade,” as shown in Figure 2 of this section. Such information shall be printed with the shield and the wording within the shield in contrasting colors in a manner such that the design is legible and conspicuous on the material upon which it is printed.

(2) Except as otherwise authorized, the bands of the shield in Figure 4 of this section shall be displayed in three colors, with the color of the top, middle, and bottom bands being blue, white, and red, respectively.

(3) The “Prepared From” grademark in Figure 5 of this section may be any one of the designs shown in Figures 2 through 4 of this section. The text outside the shield shall be conspicuous, legible, and in approximately the same proportion and close proximity to the

§ 70.51 Form of grademark and information required.
(a) Form of official identification symbol and grademark. (1) The shield set forth in Figure 1 of this section shall be the official identification symbol for purposes of this part and when used, imitated, or simulated in any manner in connection with poultry or rabbits, shall be deemed prima facia to constitute a representation that the product has been officially graded for the purposes of §70.2.

(2) Except as otherwise authorized, the grademark permitted to be used to officially identify USDA consumer-graded poultry and rabbit products shall be of the form and design indicated in Figures 2 through 4 of this section. The shield shall be of sufficient size so that the printing and other information contained therein is legible and in approximately the same proportion as shown in these figures.

(3) The “Prepared From” grademark in Figure 5 of this section may be used to identify specialized poultry products for which there are no official U.S. grade standards, provided that these products are approved by the Agency and are prepared from U.S. Consumer Grade A poultry carcasses, parts, or other products that comply with the requirements of AMS §70.220. All poultry products shall be processed and labeled in accordance with 9 CFR part 381.

(b) Information required on grademark.
(1) Except as otherwise authorized by the Administrator, each grademark used shall include the letters “USDA” and the U.S. grade of the product it identifies, such as “A Grade,” as shown in Figure 2 of this section. Such information shall be printed with the shield and the wording within the shield in contrasting colors in a manner such that the design is legible and conspicuous on the material upon which it is printed.

(2) Except as otherwise authorized, the bands of the shield in Figure 4 of this section shall be displayed in three colors, with the color of the top, middle, and bottom bands being blue, white, and red, respectively.

(3) The “Prepared From” grademark in Figure 5 of this section may be any one of the designs shown in Figures 2 through 4 of this section. The text outside the shield shall be conspicuous, legible, and in approximately the same proportion and close proximity to the
shield as shown in Figure 5 of this section.

(c) Products that may be individually grademarked. The grademarks set forth in Figures 2 through 4 of this section may be applied individually to ready-to-cook poultry, rabbits, and specified poultry food products for which consumer grades are provided in the U.S. Classes, Standards, and Grades for Poultry and Rabbits, AMS 70.200 and 70.300 et seq., respectively, or to the containers in which such products are enclosed for the purpose of display and sale to household consumers, only when such products qualify for the particular grade indicated in accordance with the consumer grades.
§ 70.51

Figure 1

Figure 2

Figure 3

[63 FR 40628, July 30, 1998]
§ 70.52 Prerequisites to packaging ready-to-cook poultry or rabbits identified with consumer grademarks.

The official identification of any graded product as provided in §§70.50 and 70.51 shall be done only under the supervision of a grader. The grader shall have supervision over the use and handling of all material bearing any official identification.

§ 70.54 Retention authorities.

A grader may use retention tags or other devices and methods as approved by the Administrator for the identification and control of poultry or rabbit products which are not in compliance with the regulations or are held for further examination. Any such item shall not be released until in compliance with the regulations and retention identification shall not be removed by anyone other than a grader.

§ 70.55 Check grading officially identified product.

Officially identified poultry or rabbit products may be subject to final check grading prior to their shipment. Such product found not to be in compliance with the assigned official grade shall be placed under a retention tag until it is regraded to comply with the grade assigned or until the official identification is removed.

REPORTS

§ 70.60 Report of grading work.

Reports of the work of grading carried on within official plants shall be forwarded to the Administrator by the grader in such manner as may be specified by the Administrator.

§ 70.61 Information to be furnished to graders.

The applicant for grading service shall furnish to the grader rendering such service such information as may be required for the purposes of this part.


§ 70.62 Reports of violations.

Each grader shall report, in the manner prescribed by the Administrator, all violations of and noncompliance with the Act and the regulations in this part of which he has knowledge.

FEES AND CHARGES

§ 70.70 Payment of fees and charges.

(a) Fees and charges for any grading service shall be paid by the interested party making the application for such service in accordance with the applicable provisions of this section and §§70.71 through 70.78 inclusive. If so required by the grader, such fees and charges shall be paid in advance.

(b) Fees and charges for any grading service shall, unless otherwise required pursuant to paragraph (c) of this section, be paid by check, draft, or money order payable to the Agricultural Marketing Service and remitted promptly to the Service.

(c) Fees and charges for any grading under a cooperative agreement with any State or person shall be paid in accordance with the terms of such cooperative agreement.

§ 70.71 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $51.32 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $59.12 per hour. Information on legal holidays is available from the Supervisor.

[65 FR 57941, Sept. 27, 2000]
§ 70.72 Fees for appeal grading, or examination or review of a grader’s decision.

The costs of an appeal grading, or examination or review of a grader’s decision, will be borne by the appellant on a fee basis at rates set forth in §70.71, plus any travel and additional expenses. If the appeal grading, or examination or review of a grader’s decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

[63 FR 52133, Sept. 30, 1998]

§ 70.73 Travel expenses and other charges.

Charges are to be made to cover the cost of travel and other expenses incurred by the Service in connection with rendering grading service. Such charges shall include the cost of transportation, per diem, and any other expenses.


§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.

Fees to be charged and collected for grading service on a nonresident grading basis shall be those provided in this section. The fees to be charged for any appeal grading shall be as provided in §70.72.

(a) Charges. The charges for the grading of poultry and edible products thereof shall be paid by the applicant for the service and shall include items listed in this section as are applicable. Payment for the full cost of the grading service rendered to the applicant shall be made by the applicant to the Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as “AMS”). Such full costs shall comprise such of the items listed in this section as are due and included in the bill or bills covering the period or periods during which the grading service was rendered. Bills will be rendered by the 10th day following the end of the billing period in which the service was rendered and are payable upon receipt.

(i) A charge for the salary and other costs, as specified in this paragraph, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by AMS to perform grading service for other than the applicant. Base salary rates will be determined on a national average for all official plants operating in States under a Federal Trust Fund Agreement where Federal graders, State graders, or a combination of Federal and State graders are used, by averaging the salary rates paid to each Federal or State grader assigned to such plants. Charges to plants are as follows:

(ii) All hours worked by an assigned grader or another grader in excess of the approved tour of duty, or worked on a nonscheduled workday, or actually worked on a holiday in excess of the tour of duty, will be considered as overtime. The charge for such overtime will be 150 percent of the grader’s base salary rate.

(iii) For work performed on a holiday which is within the established tour of duty approved for a plant, the added charge will be the same as the grader’s base rate.

(iv) For work performed between 6 p.m. and 6 a.m., night differential charges (for regular, overtime, or holiday hours worked during this period) will be at the applicable rates established plus 10 percent of the base rate.

(v) For work performed on Sunday, Sunday differential charges (for regular, overtime, or holiday hours
Agricultural Marketing Service, USDA  

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

Fees to be charged and collected for any grading service, other than for an appeal grading, on a resident grading basis, shall be those provided in this section. The fees to be charged for any appeal grading shall be as provided in §70.72.

(a) Charges. The charges for the grading of poultry and rabbits and edible products thereof shall be paid by the applicant for the service and shall include items listed in this section as are applicable. Payment for the full cost of the grading service rendered to the applicant shall be made by the applicant to the Agricultural Marketing Service U.S. Department of Agriculture (hereinafter referred to as "AMS"). Such full costs shall comprise such of the items listed in this section as are due and included in the bill or bills covering the period or periods during which the grading service was rendered. Bills will be rendered by the 10th day following the end of the billing period in which the service was rendered and are payable upon receipt.

(1) An inauguration charge of $310 will be made at the time an application for service is signed, except when the application is required because of a change in name or ownership. If service is not installed within 6 months from the date the application is filed, or if service is inactive due to an approved request for removal of a grader(s) for a period of 6 months, the application will be considered terminated, but a new application may be filed at any time. In addition, there will be a charge of $300 if the application is terminated at the request of the applicant for reasons other than for a change in location within 12 months from the date of the inauguration of service.

(2) A charge for the salary and other costs, as specified in this paragraph, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by AMS to perform

Finding Aids section of the printed volume and on GPO Access.

(1) An inauguration charge of $310 will be made at the time an application for service is signed, except when the application is required because of a change in name or ownership. If service is not installed within 6 months from the date the application is filed, or if service is inactive due to an approved request for removal of a grader(s) for a period of 6 months, the application will be considered terminated, but a new application may be filed at any time. In addition, there will be a charge of $300 if the application is terminated at the request of the applicant for reasons other than for a change in location within 12 months from the date of the inauguration of service.

(2) A charge for the salary and other costs, as specified in this paragraph, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by AMS to perform

Finding Aids section of the printed volume and on GPO Access.

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

Fees to be charged and collected for any grading service, other than for an appeal grading, on a resident grading basis, shall be those provided in this section. The fees to be charged for any appeal grading shall be as provided in §70.72.

(a) Charges. The charges for the grading of poultry and rabbits and edible products thereof shall be paid by the applicant for the service and shall include items listed in this section as are applicable. Payment for the full cost of the grading service rendered to the applicant shall be made by the applicant to the Agricultural Marketing Service U.S. Department of Agriculture (hereinafter referred to as "AMS"). Such full costs shall comprise such of the items listed in this section as are due and included in the bill or bills covering the period or periods during which the grading service was rendered. Bills will be rendered by the 10th day following the end of the billing period in which the service was rendered and are payable upon receipt.

(1) An inauguration charge of $310 will be made at the time an application for service is signed, except when the application is required because of a change in name or ownership. If service is not installed within 6 months from the date the application is filed, or if service is inactive due to an approved request for removal of a grader(s) for a period of 6 months, the application will be considered terminated, but a new application may be filed at any time. In addition, there will be a charge of $300 if the application is terminated at the request of the applicant for reasons other than for a change in location within 12 months from the date of the inauguration of service.

(2) A charge for the salary and other costs, as specified in this paragraph, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by AMS to perform

Finding Aids section of the printed volume and on GPO Access.
grading service for other than the applicant. Base salary rates will be determined on a national average for all official plants operating in States under a Federal Trust Fund Agreement where Federal graders, State graders, or a combination of Federal and State graders are used, by averaging the salary rates paid to each Federal or State grader assigned to such plants. Charges to plants are as follows:

(i) For all regular hours of work scheduled and approved as an established tour of duty for a plant, the regular rate charge will be made. The regular rate charge will be determined by adding an amount to the base salary rate to cover the costs to AMS for such items as the Employer’s Tax imposed under the U.S. Internal Revenue Code (26 U.S.C.) for Old Age and Survivor’s Benefits under the Social Security System, retirement benefits, group life insurance, severance pay, sick leave, annual leave, additional salary and travel costs for relief grading service, accident payments, certain moving costs, and related servicing costs.

(ii) All hours worked by an assigned grader or another grader in excess of the approved tour of duty, or worked on a nonscheduled workday, or actually worked on a holiday in excess of the tour of duty will be considered as overtime. The charge for such overtime will be 150 percent of the grader’s base salary rate.

(iii) For work performed on a holiday which is within the established tour of duty approved for a plant, the added charge will be the same as the grader’s base salary rate.

(iv) For work performed between 6 p.m. and 6 a.m., night differential charges (for regular, overtime, or holiday hours worked during this period) will be at the applicable rates established plus 10 percent of the base rate.

(v) For work performed on Sunday, Sunday differential charges (for regular, overtime, or holiday hours worked on Sunday) will be at the applicable rates established plus 25 percent of the base rate.

(vi) For all hours of work performed in a plant without an approved tour of duty, the charge will be one of the applicable hourly rates in §70.71.

(3) A charge at the hourly rates specified in §70.71, plus actual travel expenses incurred by AMS for intermediate surveys to firms without grading service in effect.

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00035, except that the minimum charge per billing period shall be $225 and the maximum charge shall be $2,625. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) For rabbit grading: An administrative service charge equal to 25 percent of the grader’s total salary costs. A minimum charge of $250 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

(b) Other provisions. (1) The applicant shall designate in writing the employees of the applicant who will be required and authorized to furnish each grader with such information as may be necessary for the performance of the grading service.

(2) AMS will provide, as available, an adequate number of graders to perform the grading service. The number of graders required will be determined by AMS based on the expected demand for service.

(3) The grading service shall be provided at the designated plant and shall be continued until the service is suspended, withdrawn, or terminated by:

(i) Mutual consent;

(ii) Thirty (30) days’ written notice by either the applicant or AMS specifying the date of suspension, withdrawal, or termination;

(iii) One (1) day’s written notice by AMS to the applicant if the applicant fails to honor any invoice within thirty (30) days after date of invoice covering the cost of the grading service; or

(iv) Action taken by AMS pursuant to the provisions of §70.38 through §70.40.
§ 70.81 Ready-to-cook poultry and rabbits and specified poultry food products.

(a) Ready-to-cook poultry or rabbit carcasses or parts or specified poultry food products may be graded only if they have been inspected and certified by the poultry inspection service of the U.S. Department of Agriculture, or inspected and passed by any other inspection system which is acceptable to the Department.

(b) Only when ready-to-cook poultry carcasses, parts, poultry food products, including those used in preparing raw poultry food products, have been graded on an individual basis by a grader or by an authorized person pursuant to §70.20(c) and thereof checkgraded by a grader, and when poultry food products have been prepared under the supervision of a grader, may the individual container, carcass, part, or poultry food product be identified with the appropriate official letter grademark. Checkgrading will be accomplished in accordance with a statistical sampling plan prescribed by the Administrator. Grading with respect to quality factors for freezing defects and appearance of the finished products may be done on a sample basis in accordance with a plan prescribed by the Administrator.

(c) Only when ready-to-cook rabbit carcasses or parts have been graded on an individual basis by a grader or by an authorized person pursuant to §70.20(c) and thereafter checkgraded by a grader, may the container or the individual carcass or part be identified with the appropriate official letter grademark. Checkgrading will be accomplished in accordance with a statistical sampling plan prescribed by the Administrator. Grading with respect to quality factors for freezing defects and appearance of the finished products may be done on a sample basis in accordance with a plan prescribed by the Administrator.


§ 70.80 General.

Whenever grading service is provided for examination of quality, condition, or for test weighing on a representative sample basis, such sample shall be drawn and consist of not less than the minimum number of containers indicated in the following table. The number of representative samples for large bulk containers (combo bins, tanks, etc.) may be reduced by one-half. For quality or condition, all of the poultry and rabbits in each representative sample shall be examined except for individual ready-to-cook carcasses weighing under 6 pounds in large bulk containers. For individual carcasses weighing under 6 pounds in large bulk containers, 100 carcasses shall be examined for quality or condition. Procedures for test weighing shall be in accordance with those prescribed by the Administrator.

<table>
<thead>
<tr>
<th>Containers in lot</th>
<th>Containers in sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>1–4</td>
<td>All</td>
</tr>
<tr>
<td>5–50</td>
<td>4</td>
</tr>
<tr>
<td>51–100</td>
<td>5</td>
</tr>
<tr>
<td>101–200</td>
<td>6</td>
</tr>
<tr>
<td>201–400</td>
<td>7</td>
</tr>
<tr>
<td>401–600</td>
<td>8</td>
</tr>
<tr>
<td>For each additional 100 containers, or fraction thereof, in excess of 600 containers</td>
<td>Include one additional container</td>
</tr>
</tbody>
</table>

§ 70.90 Grading Certificates

Forms.

Grading certificates (including appeal grading certificates and regrading certificates) shall be issued on forms approved by the Administrator.

Issuance and disposition.

(a) Resident grading basis. Certificates will be issued only upon a request therefor by the applicant or the Service. When requested, a grader shall issue a certificate covering product graded by him. In addition, a grader may issue a grading certificate covering product graded in whole or in part by another grader when the grader has knowledge that the product is eligible 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.

§ 70.91 Issuance and disposition.

(a) Resident grading basis. Certificates will be issued only upon a request therefor by the applicant or the Service. When requested, a grader shall issue a certificate covering product graded by him. In addition, a grader may issue a grading certificate covering product graded in whole or in part by another grader when the grader has knowledge that the product is eligible 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.

§ 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.

§ 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
§ 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 100-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...
Pt. 75

distinguish one type of product from another.


Subparts B–C [Reserved]

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

DEFINITIONS

Sec.
75.1 Meaning of words.
75.2 Terms defined.

ADMINISTRATION

75.3 Authority.
75.4 Federal and State cooperation.
75.5 Regulations not applicable for certain purposes.
75.6 Nondiscrimination.

INSPECTION

75.7 Inspection in accordance with methods prescribed or approved.
75.8 Basis of service.
75.9 Who may obtain service.
75.10 How to make application.
75.11 Content of application.
75.12 When application deemed filed.
75.13 When application may be rejected.
75.14 When application may be withdrawn.
75.15 Authority of agent.
75.16 Accessibility of seeds.
75.17 Testing.
75.18 Sampling.
75.19 Seed lot inspection.
75.20 Submitted sample inspection.
75.21 Grain sample inspection.
75.22 Form of inspection certificate.
75.23 Issuance of inspection certificate.
75.24 Disposition of inspection certificate.
75.25 Issuance of corrected certificate.

APPEAL INSPECTION

75.26 When appeal inspection may be requested.
75.27 How to file an appeal.
75.28 When a request for an appeal inspection may be withdrawn.
75.29 When an appeal may be refused.
75.30 Who shall perform appeal inspection.
75.31 Appeal inspection certificate.

LICENSED INSPECTORS

75.32 Who may become licensed inspector.
75.33 Suspension or revocation of license of inspector.

7 CFR Ch. I (1–1–01 Edition)

75.34 Surrender of license.

SAMPLING PROVISIONS AND REQUIREMENTS

75.35 Obtaining samples for lot inspections.
75.36 Representative sample.
75.37 Submitted samples.
75.38 Lot inspections.
75.39 Use of file samples.
75.40 Protecting samples.

FEES AND CHARGES

75.41 General.
75.42 Sampling and sealing.
75.43 Laboratory testing.
75.44 When application rejected or withdrawn.
75.45 Charge for appeals.
75.46 When appeal refused or withdrawn.
75.47 For certificates.

MISCELLANEOUS

75.48 Identification number.
75.49 OMB control numbers.


SOURCE: 49 FR 18724, May 2, 1984, unless otherwise noted.

DEFINITIONS

§ 75.1 Meaning of words.

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

§ 75.2 Terms defined.

For the purpose of these regulations unless the context otherwise requires, the following terms shall be construed, respectively, as follows:

(a) Act means the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.).

(b) Regulations means the regulations in this part.

(c) Department means the United States Department of Agriculture (USDA).

(d) Secretary means the Secretary of the United States Department of Agriculture, or any officer or employee of the Department to whom authority has been delegated to act in the Secretary’s stead.

(e) Administrator means the Administrator of the Agricultural Marketing Service (AMS) of the Department, or any other officer or employee of AMS to whom authority has been delegated to act in the Administrator’s stead.
§ 75.8 Basis of service.

The regulations provide for inspection services pursuant to the Act. Seeds shall be inspected in accordance with the methods of either the Association of Official Seed Analysts (AOSA) or the International Seed Testing Association (ISTA); provided, that limitations in these rules respecting maximum lot size will not be observed and

relate to the subject matter of the regulations, under the supervision of the Secretary and the Administrator.
§ 75.9 provided further, that certification as to origin may be based on examination of records and certification of other seed certifying agencies.

§ 75.9 Who may obtain service.

An application for inspection service may be made by any interested party or his authorized agent.

§ 75.10 How to make application.

An application for service shall be confirmed in writing and addressed to the Federal Seed Laboratory, WSD, AMS, USDA, Beltsville, Maryland 20705.

§ 75.11 Content of application.

An application for service shall include the following information: (a) The date of application; (b) the kind and quantity of seed, and test(s) to be performed; (c) the methods and instructions for the inspection of the seed (either Association of Official Seed Analysts (AOSA) or International Seed Testing Association (ISTA) rules); (d) the name and address of the applicant and, if made by an authorized agent; and (e) such further information relating to the inspection as may be required.

§ 75.12 When application deemed filed.

An application shall be deemed filed when received by the Division or the Federal Seed Laboratory.

§ 75.13 When application may be rejected.

Any application for service may be rejected by the Director (a) for non-compliance with the Act or the regulations relating to applications for service in this subpart, or (b) when it is not practicable to provide the service. Each such applicant shall be promptly notified in writing.

§ 75.14 When application may be withdrawn.

An application may be withdrawn at any time before the requested service is rendered. The applicant will remain responsible for payment of expenses incurred in connection therewith as provided in §75.44.

§ 75.15 Authority of agent.

Proof of authority of any person making an application as an agent may be required in the discretion of the official receiving the application.

§ 75.16 Accessibility of seeds.

Each lot of seed for which a lot inspection is requested shall be placed by the applicant so as to permit the entire lot to be sampled and a representative sample to be obtained as required.

§ 75.17 Testing.

Upon request by the applicant, tests may be made for kind, variety, germination, purity, weed seeds, disease pathogens, treatment, moisture, and other special tests, or any combination thereof for which prescribed methods of testing are established. The tests shall be in accordance with the methods of either the Association of Official Seed Analysts (AOSA) or the International Seed Testing Association (ISTA) as requested by the applicant.

§ 75.18 Sampling.

Sampling, when requested by the applicant, shall be in accordance with the methods of either the Association of Official Seed Analysts (AOSA) or the International Seed Testing Association (ISTA), depending upon the test method requested by the applicant.

§ 75.19 Seed lot inspection.

A lot inspection shall be made by obtaining a representative sample from a specified quantity of seed identified with a distinguishing mark or number to appear on all containers in the lot, and performing such test(s) as may be requested by the applicant. The identification mark or number must be approved by the inspector and will appear on the certificate to be issued.

§ 75.20 Submitted sample inspection.

A sample inspection shall be made by testing a sample of seed submitted by an applicant for inspection.

§ 75.21 Grain sample inspection.

A sample inspection shall be performed by examining official grain samples received from FGIS to identify
specified weed and crop seeds upon the request of FGIS.

§ 75.22 Form of inspection certificate.
Inspection certificates shall be approved by the Director as to their form. No correction, erasure, or other change shall be made in the information on a certificate.

§ 75.23 Issuance of inspection certificate.
After an inspection has been completed, an inspection certificate shall be issued showing the results of the inspection in accordance with paragraph (a) or (b) of this section.

(a) Lot inspection certificate. A lot inspection certificate shall be issued to include the name of the inspector sampling and sealing the seed lot, the analysis results from testing the sample, the identifying mark or number which has been approved by the inspector to appear on each container in the seed lot, and any other factual information pertinent to the inspection.

(b) Sample inspection certificate. A sample inspection certificate shall be issued to show the results of the inspection of a sample of seed or grain submitted by an interested party. Each sample inspection certificate shall state the results of the inspection that applies only to the sample described in the certificate.

(c) General authorization to issue certificates. Certificates for inspections may be issued by any inspector authorized by the Director to perform the inspection covered by the certificate.

(d) Name requirements. The name and signature of the person who issued the inspection certificate shall be shown on the certificate. The original certificate must be signed, and the signature or a stamped facsimile shall be shown on each copy.

§ 75.24 Disposition of inspection certificate.
Upon issuance, the original and one copy of each inspection certificate shall be delivered or mailed to the applicant or otherwise delivered or mailed in accordance with the applicant’s instructions. One copy of each inspection certificate shall be filed in the Federal Seed Laboratory. In case of a lost or destroyed certificate, a duplicate thereof labeled as such may be issued under the same number, date, and name.

§ 75.25 Issuance of corrected certificate.
(a) If any error is made in an inspection, a corrected inspection certificate may be issued.

(b) The original and copies of the corrected certificate shall be issued as promptly as possible to the same interested persons who received the incorrect certificate.

(c) The corrected certificate shall supersede the incorrect inspection certificate previously issued. The corrected certificate shall clearly identify, by certificate number and date, the incorrect certificate which it supersedes.

(d) The original and all copies of the superseded incorrect certificate shall be obtained by the Director, if possible. If it is not possible to obtain the original and all copies of the superseded certificate, to the extent possible, all parties involved will be notified to prevent misuse of the superseded certificate and the corrected certificate so marked as to the outstanding certificate.

APPEAL INSPECTION

§ 75.26 When appeal inspection may be requested.
A request for an appeal inspection may be made by any interested party regarding the results of an inspection as stated on an inspection certificate. Such request shall be made within thirty (30) days following the day on which an inspection certificate was issued.

§ 75.27 How to file an appeal.
Any request for an appeal inspection may be made orally or in writing to the Federal Seed Laboratory. If made orally, written confirmation is required. The applicant shall clearly state the reasons for requesting the appeal service. The original and all available copies of the certificate shall be returned to the appeal inspector assigned to make the appeal inspection.
§ 75.28 When a request for an appeal inspection may be withdrawn

A request for an appeal inspection may be withdrawn by the applicant at any time before the appeal inspection is performed: Provided, that, the appellant shall pay any expenses incurred in connection with the appeal as provided in §75.46.

§ 75.29 When an appeal may be refused.

A request for an appeal inspection may be refused if:
(a) The reasons for an appeal inspection are frivolous or not substantial;
(b) The quality or condition of the seed has been altered since the inspection covering the seed on which the appeal inspection is requested;
(c) The lot in question in a lot inspection is not or cannot be made accessible for sampling;
(d) The lot relative to which appeal inspection is requested cannot be positively identified by the inspection as the lot from which drawn samples were previously inspected in a lot inspection; or
(e) The application is not in compliance with the regulations; and
(f) Such applicant shall be notified promptly of the reason for such refusal.

§ 75.30 Who shall perform appeal inspection.

An appeal inspection shall be performed by an inspector (other than the one from whose inspection the appeal is requested) authorized for this purpose by the Director.

§ 75.31 Appeal inspection certificate.

After an appeal inspection has been completed, an appeal inspection certificate shall be issued showing the results of such appeal inspection; and such certificate shall supersede the inspection certificate previously issued for the seed involved. Each appeal inspection certificate shall clearly identify the number and date of the inspection certificate which it supersedes. The superseded certificate shall become null and void upon the issuance of the appeal inspection certificate and shall no longer represent the quality or condition of the seed described therein. The inspector issuing an appeal inspection certificate shall forward notice of such issuance to such persons as considered necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the inspector issuing the appeal inspection certificate. The appeal inspection certificate shall be marked as to the existence of the outstanding certificate. The provisions in the regulations concerning forms of certificates and disposition of certificates shall apply to appeal inspection certificates, except that copies of such appeal inspection certificates shall be furnished to all interested parties who received copies of the superseded certificate.

LICENSING OF INSPECTORS

§ 75.32 Who may become licensed inspector.

Any person nominated by a cooperating State and who is found to have the necessary qualifications may be licensed by the Director as an inspector to perform such duties of inspection as specified by the Memorandum of Understanding. Such a license shall bear the signature of an authorized employee of the Department. A licensed inspector shall perform duties pursuant to the regulations in accordance with instructions issued or approved by the Director.

§ 75.33 Suspension or revocation of license of inspector.

Pending final action by the Administrator, the Director may suspend, whenever it is deemed that such action is necessary to assure that any service provided is performed properly, the license of any inspector, issued pursuant to the regulations by giving notice of such suspension to the respective licensee, accompanied by a statement of the reasons therefore. Within 7 days after receipt of notice and statement of reasons by a licensee, an appeal may be filed in writing with the Administrator supported by any argument or evidence as to why the license should not be suspended. After expiration of the 7-day period and consideration of such argument and evidence, the Administrator...
shall take such action as deemed appropriate with respect to a suspension or revocation.

§ 75.34 Surrender of license.

Upon termination of service as an inspector or suspension or revocation of such license, such licensee shall surrender the license immediately to the Federal Seed Laboratory.

SAMPLING PROVISIONS AND REQUIREMENTS

§ 75.35 Obtaining samples for lot inspections.

Samples of seed for lot inspections may be obtained by licensed inspectors or authorized employees of the Department.

§ 75.36 Representative sample.

No lot inspection sample shall be deemed representative of a lot of seed unless the sample (a) has been obtained by a licensed inspector or an authorized employee of the Department; (b) is of the size prescribed in the instructions; and (c) has been obtained, handled, and submitted in accordance with the Association of Official Seed Analysts (AOSA) or the International Seed Testing Association (ISTA) procedures.

§ 75.37 Submitted samples.

Submitted samples may be obtained by or for any interested person. (Instructions for sampling seed may be obtained upon request to the Director or the Federal Seed Laboratory.)

§ 75.38 Lot inspections.

Each lot inspection shall be made on the basis of a representative sample obtained from that lot of seed by a licensed inspector or an authorized employee of the Department. Each lot of seed which is offered for lot inspection shall be sealed at the time of sampling in accordance with methods and procedures of the Association of Official Seed Analysts (AOSA) or the International Seed Testing Association (ISTA).

§ 75.39 Use of file samples.

(a) File samples which are retained by inspection personnel in accordance with the regulations may be deemed representative for appeal inspections: Provided, that (1) the samples have remained in the custody of the inspection personnel who certificated the inspection; and (2) the inspection personnel who performed the inspection and the inspection personnel who are to perform the appeal inspection determined that the sample was representative of the seed at the time of the inspection and that the quality or condition of the seed in the sample and in the lot has not changed since the time of the inspection.

(b) Upon request of the applicant, and if practicable, a new sample may be obtained and examined as a part of an appeal inspection.

§ 75.40 Protecting samples.

Inspection personnel shall protect each sample from manipulation, substitution, and improper or careless handling which would deprive the sample of its representative character from the time of collection until the inspection is completed and the file sample has been discarded.

FEES AND CHARGES

§ 75.41 General.

Fees and charges for inspection services performed by Federal employees shall cover the cost of performing the service. Fees shall be for actual time required to render the service, calculated to the nearest 15-minute period except that a minimum of 1 hour shall apply for testing and a 2-hour minimum shall apply for sampling and sealing. Fees and charges shall be at the rate of $44.40 per hour. (Cost estimates may be obtained upon request to the Director or the Federal Seed Laboratory.)


§ 75.42 Sampling and sealing.

(a) Fees for inspection services provided by licensed inspectors may be charged by States participating in the program at rates established by the individual States.
§ 75.43

(b) When onsite inspection services are performed by Federal employees at the request of the applicant:

(1) Fees for onsite inspections for sampling and sealing shall include the time for actual sampling and sealing, standby at the service site, travel time and actual travel costs to and from the site, and a per diem charge if the employee performing the service is paid per diem in accordance with existing travel regulations as appear in Agricultural Travel Regulations, including the Federal Travel Regulations, DM 2300–1.

(2) Hourly rates shall begin when the inspector begins travel to the service site and end when the inspector arrives back at his official station or residence, computed to the nearest quarter hour, less meal time, if any.

(3) A 2-hour minimum shall be charged for each onsite inspection.

§ 75.43 Laboratory testing.

Fees for testing each sample shall include the time required for actual testing, preparation of test records, issuing the certificate, and filing of samples and documents, with:

(a) Charges billed at the hourly rate in increments of 15 minutes.

(b) A minimum fee of 1 hour per sample for testing shall be charged.

§ 75.44 When application rejected or withdrawn.

When an application for inspection is rejected in accordance with §75.13 or withdrawn in accordance with §75.14, the applicant will be required to pay applicable fees for the time used by an inspector and other expenses incurred in connection with such application prior to its rejection or withdrawal.

§ 75.45 Charge for appeals.

A charge of 1 hour shall be made for each appeal filed under §75.26, and the fee for an appeal inspection shall equal the fee for the original inspection from which the appeal is taken, plus any charges for travel or other expenses incurred in performing the appeal: Provided, That when a material error in the certificate or sample from which the appeal is taken is found by the appeal inspector the charge and fee shall be waived.

§ 75.46 When appeal refused or withdrawn.

When an appeal is refused in accordance with §75.29 or withdrawn in accordance with §75.28, the applicant will be required to pay for the time used by the appeal inspector and other expenses incurred in connection with such appeal prior to its denial, dismissal, or withdrawal.

§ 75.47 For certificates.

A charge of $11.10 per certificate will be made for copies of certificates other than those required to be distributed in §75.23 and for the issuance of a duplicate certificate in accordance with §75.24 and an appeal certificate in §75.31.


MISCELLANEOUS

§ 75.48 Identification number.

The Director may require the use of official identification numbers in connection with seed certificated or sampled under the Act. When identification numbers are required, they shall be specified by the Director and shall be attached to, or stamped, printed, or stenciled on the lot of seed certificated or sampled in a manner specified by the Director.

§ 75.49 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 is as follows: OMB Control No. 0581–0140.

[56 FR 51320, Oct. 11, 1991]
SUBCHAPTER D—EXPORT AND DOMESTIC CONSUMPTION PROGRAMS

PART 80—FRESH IRISH POTATOES

Subpart A—Fresh Irish Potato—Diversion Program

Sec.
80.1 Applicability.
80.2 Administration.
80.3 Definitions.
80.4 Length of program.
80.5 Rate of payment.
80.6 Eligibility for payment.
80.7 Application and approval for participation.
80.8 Inspection and certificate of diversion.
80.9 Claim for payment.
80.10 Compliance with program provisions.
80.11 Inspection of premises.
80.12 Records and accounts.
80.13 Offset and assignment.
80.14 Appeals.

Subpart B [Reserved]


Source: 58 FR 29098, May 19, 1993, unless otherwise noted.

Subpart A—Fresh Irish Potato—Diversion Program

Source: 62 FR 29650, June 2, 1997, unless otherwise noted.

§ 80.1 Applicability.
In order to encourage the domestic consumption of the 1996 crop of fresh Irish potatoes by diverting them from normal channels of trade and commerce, the Secretary of Agriculture, pursuant to the authority conferred by section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) (Section 32), will make payment to producers who divert fresh Irish potatoes that they produced by donating them to charitable institutions for human consumption or by using such fresh Irish potatoes as livestock feed in accordance with the terms and conditions set forth herein.

§ 80.2 Administration.
The program will be administered under the general direction and supervision of the Director, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), and will be implemented by the Farm Service Agency (FSA). AMS, FSA, or their authorized representatives do not have authority to modify or waive any of the provisions of this subpart.

§ 80.3 Definitions.
Application means Form FSA–117.
Charitable institutions means those organizations which offer food, housing, and other necessities to low income, homeless, or other persons in need of assistance in obtaining basic sustenance.
Diversion means the delivery of potatoes to an eligible outlet.
Eligible outlet means charitable institutions or livestock feeding operations.
Fresh Irish potatoes means the 1996 crop of all types and varieties of potatoes (except sweet potatoes) fit for human consumption and produced and stored in the United States.
Invoice and certificate of inspection and diversion means Form FSA–118.
Producer means an individual, partnership, association, or corporation located in the United States who grows potatoes for market and is in possession of such potatoes as of the date of May 29, 1997, and whose Form FSA–117 has been approved by USDA.

§ 80.4 Length of program.
This program will be effective May 29, 1997, and will continue until August 27, 1997. Producers diverting potatoes to charitable institutions must file an application at the FSA office responsible for the county in which the farm is located for FSA purposes within the first ten Federal Government business days following the effective date of this program. Producers diverting potatoes to livestock feed must file an application at such office no later than August 27, 1997. Application for charitable diversions, as well as for livestock feed, will be accepted until August 27, 1997.

§ 80.5 Rate of payment.

(a) The rate of payment for potatoes for charitable institutions will be $1.50 per hundredweight for fresh Irish potatoes if packed in bags or cartons, and will be $0.75 if shipped in bulk. All eligible fresh Irish potatoes intended for donation to charitable institutions must: Meet U.S. Grade No. 2 (fairly clean) requirements as certified by the AMS or the Federal-State Inspection Service; and be in a quantity of 40,000 pounds net or a multiple of 40,000 pounds net. Only transportation costs associated with donations to charitable institutions may be arranged for and paid by USDA. USDA will make no other payment with respect to such potatoes.

(b) Livestock feed payments will be $0.75 per hundredweight for U.S. Grade No. 2 Processing potatoes when whole as certified by AMS or the Federal-State Inspection Service. Payment will not be made for any fractional part of a hundredweight not meeting grade requirements. All arrangements and costs for: U.S. grading and inspection; processing, and transportation, as well as identifying the livestock feed recipient will be included in the $0.75 per hundredweight payment. USDA will make no other payment with respect to such potatoes.


§ 80.6 Eligibility for payment.

(a) To the extent applications for payment do not exceed $9 million, payments will be made under this program to any producer of fresh Irish potatoes who:

(1) Provides fresh Irish potatoes that are free from any water damage and:

(i) If intended for human consumption, meet the requirements of 7 CFR 51.1540–51.3006 U.S. Grade No. 2 (fairly clean); or

(ii) If intended for livestock feed, meet the requirements of 7 CFR 51.3410–51.3418 U.S. Grade No. 2 Processing when whole, and are cut, chopped sliced, gouged, crushed, ensiled, or cooked to the degree that the potatoes are readily and obviously identifiable as having been rendered unsuitable to enter into normal channels of trade and commerce as determined by FSA or its representative;

(2) Executes and files Form FSA–117 with the FSA county office responsible for the county where the producer’s farm is located for FSA program purposes;

(3) Receives approval for their application:

(4) Completes form FSA–118 and whose fresh Irish potatoes are shipped in accordance with this regulation;

(5) Diverts fresh Irish potatoes and submits required documentation by July 28, 1997, if Form FSA–117 is approved by USDA from May 29 through July 11, 1997; or diverts fresh Irish potatoes and submits required documentation by August 13, 1997, if Form FSA–117 is approved by USDA from July 14 through July 28, 1997; or diverts fresh Irish potatoes and submits required documentation by August 27, 1997, if Form FSA–117 is approved by USDA from July 29 through August 27, 1997. Allocations unused by the applicable date will no longer be available for that producer. Final dates to complete diversions and submit documentation may be waived by USDA if it is determined that severe weather conditions prevented the completion of the diversion during the allotted time period.

(6) Files a claim as provided in §80.10; and

(7) Complies with all other terms and conditions in this subpart.

(b) In the event applications for participation in the program authorized by this subpart exceed $9 million, USDA shall, at its sole discretion, determine which applications to accept.


§ 80.7 Application and approval for participation.

(a) The applications will be reviewed by the FSA in the order shown on the FSA register located at the respective FSA county office and will be approved taking into account the availability of funds, for each method of diversion;

(b) An approved Form FSA–117 may be modified or amended with the consent of the applicant and the duly authorized representative of AMS or FSA provided that such modification or
amendment does not conflict with the provisions of this subpart; and

(c) Copies of the applicable U.S. grade standards and the application for participation in the Fresh Irish Potato Diversion Program can be obtained from the local county FSA office.

§ 80.8 Inspection and certificate of diversion.

Prior to diversion of potatoes to a charitable institution, the fresh Irish potatoes must be inspected by an inspector authorized or licensed by the USDA to inspect and certify the class, quality, and condition of fresh Irish potatoes. The producer will be responsible for requesting and arranging for inspection. For charitable institutions the product must be Positive Lot Identification (PLI) or certified by USDA grading personnel at time of loading. With respect to potatoes diverted for livestock feed, the producer must furnish to FSA such scale tickets, weighing facilities, or volume measurements as determined by the inspector to be necessary for ascertaining the net weight of the potatoes being diverted.

§ 80.9 Claim for payment.

(a) In order to obtain payment for shipments to charitable institutions, the producer must submit to the county FSA office which approved the application: A properly executed Form FSA–118; a copy of the Notice to Deliver sent from FSA, Kansas City Commodity Office, Kansas City, Missouri; a bill of lading showing shipment was made. All such claims must be filed no later than 30 days after the termination date specified in the applicable approved application. For those potatoes which fail to meet the definition of fresh Irish potatoes provided in §80.3 or the eligibility requirements of §80.6, the producer may request an appeal inspection; however, payment of the truck detention and storage charges will be the responsibility of the producer.

(b) Livestock feed payments will be based on the percentage of the offered fresh Irish potatoes meeting U.S. Grade No. 2 Processing. In order to obtain payment the producer must submit to the county FSA office which approved the application a properly executed FSA–118, and a livestock feed recipient delivery receipt indicating hundred-weight received, the date and name, address, and telephone number of the recipient.

§ 80.10 Compliance with program provisions.

If USDA determines that any provisions of the application or of these regulations has not been complied with, whether by the producer, charitable institution, or livestock feeder, or that any quantity of fresh Irish potatoes diverted under this program was not used exclusively for donation to charitable institutions or livestock feeders (whether such failure was caused directly by the producer or by any other person or persons), the producer will not be entitled to diversion payments in connection with such fresh Irish potatoes, must refund any USDA payment made in connection with such fresh Irish potatoes, and will also be liable to USDA for any other damages incurred as a result of such failure to use the fresh Irish potatoes exclusively for donation to charitable institutions or for use as livestock feed. The USDA may deny any producer the right to participate in this program or the right to receive payments in connection with any diversion previously made under this program, or both, if USDA determines that:

(a) The producer has failed to use or caused to be used any quantity of fresh Irish potatoes diverted under this program exclusively for donation to charitable institutions or livestock feed, whether such failure was caused directly by the producer or by any other person or persons;

(b) The producer has not acted in good faith in connection with any transaction under this program; or

(c) The producer has failed to discharge fully any obligation assumed by him under this program.

§ 80.11 Inspection of premises.

The producer, charitable institution, or livestock feeder must permit authorized representatives of USDA, at any reasonable time, to have access to their premises to inspect and examine such fresh Irish potatoes as are being diverted or stored for diversion, and to
§ 80.12 Records and accounts.

The producer, charitable institution, or livestock feeder participating in this program must keep accurate records and accounts showing the details relative to the diversion and livestock feeding of the fresh Irish potatoes. The producer, charitable institution, or livestock feeder must permit authorized representatives of USDA and the General Accounting Office at any reasonable time to inspect, examine, and make copies of such records and accounts to determine compliance with provisions of this program; such records and accounts must be retained for three years after the date of last payment to the producer under the program, or for 2 years after date of audit of records by USDA as provided herein, whichever is the later.

§ 80.13 Offset and assignment.

(a) Except as provided in paragraph (b) of this section, below, any payment or portion thereof due any person shall be allowed without regard to questions of title under state law, and without regard to any claim or lien against the crop or proceeds thereof in favor of the owner or any other creditor, except for statutory liens belonging to agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 3 shall be applicable to such payments.

(b) Assignments. Assignments will be done in accordance with Form FSA–117.

§ 80.14 Appeals.

Appeals under this part will be in accordance with 7 CFR part 780.
SUBCHAPTER E—COMMODITY LABORATORY TESTING PROGRAMS

PART 90—INTRODUCTION

Subpart A—Scope of Subchapter

Sec. 90.1 General.

Subpart B—Subchapter Definitions

90.2 General terms defined.

Subpart C—Good Laboratory Practices for Commodity Laboratory Analyses

90.3 General.

90.4–90.100 [Reserved]

Subpart D—Quality Assurance

90.101 General.

90.102 Quality assurance review.

90.103 Maintenance of quality control records.

90.104–90.200 [Reserved]


SOURCE: 58 FR 42414, Aug. 9, 1993, unless otherwise noted.

Subpart A—Scope of Subchapter

§ 90.1 General.

This subchapter sets forth the functions and responsibilities of the Science and Technology (S&T) of the Agricultural Marketing Service (AMS) relating to:

(a) The performance of comprehensive analytical tests and laboratory determinations of agricultural commodities and processed products.

(b) The conduct of experiments and collaborative studies to validate new analytical procedures and improved methodologies in order to promote faster, more precise, or safer laboratory testing for agricultural commodities and processed products.

(c) The supervised issuance of external quality control or proficiency check samples to laboratories under the Science and Technology’s direction or performance review in order to regularly spot check and assess that analytical or test data produced by each laboratory is reproducible, precise, and reliable for a specific test program.

(d) The granting of laboratory program accreditation or certification or approval for specialty testing of agricultural commodities and products.

(e) The licensing of chemists to analyze cottonseed in order to certify its quality and grade.

(f) The granting of certification to non-federal laboratories for testing for trichinae in horsemeat for export to the European Community (EC).

(g) The granting of acceptance of standardized methodology or new procedures for commodity testing.

(h) The auditing of the facilities, equipment, quality control procedures, standard methodologies, and good laboratory practices for a commodity testing program of a laboratory.

(i) The examination of plants for novelty and distinctiveness in order to grant certificates of protection for new varieties of sexually reproduced plants, and the provision of other fee based services authorized by the Plant Variety Protection Act.

(j) The extension or coordination of research for the determination of a new chemical analyte or microorganism in a commodity product or food.

(k) The analysis of imported flue-cured and burley tobacco for pesticide residues.

(l) The supervision and implementation of the State enforcement of the recordkeeping requirements for private applicators of restricted-use pesticides for agricultural production.


Subpart B—Subchapter Definitions

§ 90.2 General terms defined.

Words used in the regulations in this subchapter in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subchapter and unless the context requires otherwise, the following terms will be construed to mean:
§ 90.3 General.

Laboratory service programs of laboratories certified and approved by the Science and Technology shall have quality assurance requirements that are generalized in this subpart.

§ 90.101 General.

Laboratory service programs of laboratories certified and approved by the Science and Technology shall have quality assurance requirements that are generalized in this subpart.

§ 90.102 Quality assurance review.

(a) Each laboratory performing tests and analysis under this subchapter will be subject to a quality assurance program evaluation at least annually, and more often if deemed necessary by the
Agricultural Marketing Service, USDA

Deputy Administrator. Such evaluation will include:
(1) A review of the adequacy of quality control measures taken by the laboratory for the standardized method of analysis for a commodity and its related products;
(2) A review of the laboratory methodologies and procedures;
(3) A review of records for the calibration and maintenance of equipment;
(4) A review of records documenting sample handling;
(5) The evidence of quality control records;
(6) The evidence of correct reporting and determination of analytical data.

(b) A laboratory will receive a quality assurance report following the review. This evaluation will address any necessary improvements to the laboratory program(s) being examined.

§ 90.103 Maintenance of quality control records.
Quality control records pertaining, but not limited to the following areas, shall be retained by the laboratory for at least the 3 most recent years:
(a) Prepared solution standardizations;
(b) Recovery studies by known analyte additions;
(c) The purity checks of reagents and test materials;
(d) Apparatus and equipment calibrations;
(e) The quality examination and testing of materials;
(f) The mandatory participation in proficiency check sample testing or collaborative studies;
(g) Daily critical parameter checks of equipment, such as temperature readings;
(h) The equivalency tests of new procedures with standard methodologies.

§§ 90.104-90.200 [Reserved]
Subpart I—Fees and Charges

91.37 Standard hourly fee rate for laboratory testing, analysis, and other services.
91.38 Additional fees for appeal of analysis.
91.39 Premium hourly fee rate for overtime and holiday service.
91.40 Fees for courier service and facsimile of the analysis report.
91.41 Charges for demonstrations and courses of instruction.
91.42 Billing.
91.43 Payment of fees and charges.
91.44 Charges on overdue accounts and issuance of delinquency notices.
91.45 Charges for laboratory services on a contract basis.


Source: 58 FR 42415, Aug. 9, 1993, unless otherwise noted.

Editorial Note: Nomenclature changes to part 91 appear at 61 FR 51350, Oct. 21, 1996.

Subpart B—General Services

§ 91.4 Kinds of services.

(a) Analytical tests. Analytical laboratory testing services under the regulations in this subchapter consist of microbiological, chemical, and certain other analyses, requested by the applicant and performed on tobacco, seed, dairy, egg, fruit and vegetable, meat and poultry products, and related processed products. Analyses are performed to determine if products meet Federal specifications or specifications defined in purchase contracts and cooperative agreements. Laboratory analyses are also performed on egg products as part of the mandatory Egg Products Inspection Program under the management of USDA’s Food Safety and Inspection Service (FSIS) as detailed in 9 CFR 590.580.

(b) Examination and licensure. The manager of the Science and Technology’s Cottonseed Chemist Licensing Program administers examinations and licenses chemists to certify the official grade of cottonseed.

(c) Quality assurance reviews. The Science and Technology representative performs on-site laboratory quality assurance reviews (both required and voluntary) to ensure that appropriate technical methods, equipment maintenance, and quality control procedures are being observed.

(d) Consultation. Technical advice, statistical science consultation, and quality assurance program assistance by Federal Statute or Executive Order. Under section 6103 and Executive Order 10937, as amended, if the specified public legal holiday falls on a Saturday, the preceding Friday shall be considered the holiday, or if the specified legal holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

are provided by the representatives for the Science and Technology programs for domestic and foreign laboratories.

§ 91.5 Where services are offered.

(a) Services are offered to applicants at the Science and Technology laboratories and facilities in the following list:

(1) Science and Technology regional laboratories. A variety of tests and laboratory analyses are available in two regional multi-disciplinary Science and Technology (S&T) laboratories, and are located as follows:

(i) USDA, AMS, S&T Eastern Laboratory (Microbiology), 2311-B Aberdeen Boulevard, Gastonia, NC 28054-0614.

(ii) USDA, AMS, S&T Eastern Laboratory (Chemistry), 645 Cox Road, Gastonia, NC 28054-0614.

(2) Science and Technology (S&T) aflatoxin laboratories. The specialty laboratories performing aflatoxin testing on peanuts, peanut products, dried fruits, grains, edible seeds, tree nuts, shelled corn products, oilseed products and other commodities are located as follows:

(i) USDA, AMS, S&T 1211 Schley Avenue, Albany, GA 31707.

(ii) USDA, AMS, S&T c/o Golden Peanut Company, Mail: P.O. Box 273, 301 West Pearl Street, Aulander, NC 27805.

(iii) USDA, AMS, S&T 610 North Main Street, Blakely, GA 31723.

(iv) USDA, AMS, S&T 107 South Fourth Street, Madill, OK 73446.

(v) USDA, AMS, S&T c/o Cargill Peanut Products, Mail: P.O. Box 1130, 308 Culloden Street, Suffolk, VA 23434.

(3) Citrus laboratory. The Science and Technology’s citrus laboratory specializes in testing citrus juices and other citrus products and is located as follows: USDA, AMS, S&T Eastern Laboratory (Citrus), 98 Third Street, S.W., Winter Haven, FL 33880.

(4) Program laboratories. Laboratory services are available in all areas covered by cooperative agreements providing for this laboratory work and entered on behalf of the Department with cooperating Federal or State laboratory agencies pursuant to authority contained in Act(s) of Congress. Also, services may be provided in other areas not covered by a cooperative agreement if the Administrator determines that it is possible to provide such laboratory services.

(5) Other alternative laboratories. Laboratory analyses may be conducted at alternative Science and Technology laboratories and can be reached from any commodity market in which a laboratory facility is located to the extent laboratory personnel are available.

(6) The Plant Variety Protection (PVP) Office. The PVP office and plant examination facility of the Science and Technology programs issues certificates of protection to developers of novel varieties of plants which reproduce sexually. The PVP office is located as follows: USDA, AMS, Science & Technology, Plant Variety Protection Office, National Agricultural Library Building, Room 500, 10301 Baltimore Boulevard, Beltsville, MD 20705-2351.

(7) Science and Technology headquarters offices. The examination, licensure, quality assurance reviews, laboratory accreditation/certification and consultation services are provided by headquarters staff located in Washington, DC. The main headquarters office is located as follow: USDA, AMS, Science and Technology, Office of the Deputy Administrator, Room 3507 South Agriculture Bldg., Mail Stop 0222, 1400 Independence Ave., S.W., Washington, DC 20250.

(8) The Information Technology (IT) Office. The IT office of the Science and Technology programs is headed by AMS’s Chief Information Officer (CIO) and provides information technology services and management systems to the Agency and other agencies within the USDA. The main IT office is located as follow: USDA, AMS, Science and Technology, Office of the Chief Information Officer, 1752 South Agriculture Bldg., 1400 Independence Ave., S.W., Washington, DC 20250.
§91.6 Availability of services.
(a) Services may be furnished whenever a Science and Technology staff is available and the facilities and conditions are satisfactory for the conduct of such service.
(b) Laboratories may provide limited service on Saturdays and Sundays at a premium fee. Weekend service may be obtained by contacting the laboratory director or supervisor.
(c) Holiday and overtime laboratory service may be obtained with a minimum 24 hour advance notice, at a premium fee, by any prospective applicant through the laboratory director or supervisor.


Subpart C—Application for Services

§91.7 Nondiscrimination.
All services under these regulations are provided to applicants without discrimination as to race, color, handicapped or disabled condition, religion, sex, age, or national origin.

§91.8 Who may apply.
An application for service may be made by any individual or interested party including, but not limited to, the United States and any instrumentality or agency thereof, any State, county, municipality, or common carrier, and any authorized agent on behalf of the foregoing.

§91.9 How to make an application.
(a) Voluntary. An application for analysis and testing may be made by contacting the director or supervisor of the Science and Technology laboratory where the service is provided, or by contacting the Technical Services Branch Chief at Science and Technology Headquarters, Washington, DC. A list of the Science and Technology laboratories is included in §91.5.
(b) Mandatory. In the case of mandatory analyses, such as those required to be performed on eggs and egg products, application for services may be submitted to the office or USDA agency which administers the program, or by contacting an inspector or grader who is involved with the program.

[65 FR 64310, Oct. 26, 2000]
§ 91.10 Information required in connection with an application.

(a) An application for laboratory service shall be made in the English language and may be made orally (in person or by telephone), in writing, or by facsimile. If an application for laboratory service is made orally, written confirmation may be required by the laboratory involved.

(b) In connection with each application for a laboratory service, information that may be necessary to perform analyses on the processed product(s) shall also be furnished. The information shall include, but is not limited to, the name of the product, name and address of the packer or plant where such product was packed, the location of the product, its lot or load number, codes or other identification marks, the number of containers, the type and size of the containers, the analytical test requested, and the size of the sample. In addition, information regarding analysis of the lot by any federal agency previous to the application and the purpose of the desired laboratory service may be requested.

§ 91.11 Filing of an application.

An application for a laboratory service shall be regarded as filed only when made in accordance with the regulations in this part.

§ 91.12 Record of filing time and laboratory tests.

A record showing the date of receipt for each application for a laboratory service or an appeal of a laboratory service shall be maintained. In addition, the requested laboratory analyses shall be recorded at the time of sample receipt.

§ 91.13 When an application may be rejected.

(a) An application for a laboratory service may be rejected by the Administrator when deemed appropriate as follows:

(1) For non-compliance by the applicant with the regulations in this part,

(2) For non-payment of previous laboratory services rendered,

(3) When the sample is not properly identified by a code or other marks,

(4) When the samples are received in an unsatisfactory condition and are rejected for analysis,

(5) When there is evidence or knowledge of tampering with the sample,

(6) When it appears that to perform the analytical testing or laboratory service specified in this part would not be to the best interests of the public welfare or of the Government, or

(7) When it appears to the Administrator that prior commitments of the Department necessitate rejection of the application.

(b) Each such applicant shall be promptly notified by registered mail of the reasons for the rejection.

(c) A written petition for reconsideration of such rejection may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after the receipt of notice of the rejection. Such petition shall state specifically the errors alleged to have been made by the Administrator in rejecting the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant by registered mail of the reasons for the rejection thereof.

§ 91.14 When an application may be withdrawn.

An application for a laboratory service may be withdrawn by the applicant at any time before the analytical testing is performed; Provided, That, the applicant shall pay, at the hourly rate prescribed in § 91.37, for the time incurred by the scientist or laboratory technician, in connection with such application and any travel expenses, telephone, facsimile, mailing, telegraph or other expenses, which have been incurred by the laboratory servicing office, in connection with such application.

Subpart D—Laboratory Service

§ 91.15 Basis of a laboratory service.

Analytical testing and laboratory determination for analyte or quality constituent shall be based upon the appropriate standards promulgated by the U.S. Department of Agriculture, applicable standards prescribed by the laws
§ 91.16 Order of a laboratory service.
Laboratory service shall be performed, insofar as possible, in the order in which applications are made except that precedence may be given to any such applications which are made by the United States (including, but not being limited to, any instrumentality or agency thereof) and to any application for an appeal inspection.

§ 91.17 Postponing a laboratory service.
If the scientist determines that it is not possible to accurately analyze or make a laboratory determination of a sample immediately after receipt because standard materials, laboratory equipment and supplies need replacement, or for any other substantial reason, the scientist may postpone laboratory service for such period as may be necessary.

§ 91.18 Financial interest of a scientist.
No scientist shall perform a laboratory analysis on any product in which he is directly or indirectly financially interested.

Subpart E—Samples

§ 91.19 General requirements of suitable samples.
(a) Samples must be representative of the product tested and provided in sufficient quantity for the analyses requested.
(b) Each sample must be identified with the following information:
(1) Product type (specific description);
(2) Lot number or production date;
(3) Analyses desired;
(4) Date/time collected;
(5) Storage conditions prior to shipping;
(6) Name of applicant;
(7) Name of sampler;
(8) Any other information which is required by the specific program under which analysis or test is performed.

§ 91.20 Shipping.
(a) Samples must be submitted to the laboratory in a condition (including temperature) that does not compromise the quality and validity of analytical results.
(b) All samples must be submitted in sealed, leakproof containers.
(c) Containers for perishable refrigerated samples should contain ice or ice packs to maintain temperatures of 0° to 5°C, unless a different temperature is required for the sample to be tested.
(d) Containers for frozen samples should contain dry ice or other effective methods of maintaining samples in a frozen state.
(e) The applicant is responsible for providing shipping containers and paying shipping costs for fee basis tests.
(f) A courier charge may apply for the shipment of some samples.

§ 91.21 Protecting samples.
Laboratory personnel shall protect each sample from manipulation, substitution, and improper or careless handling which would deprive the sample of its representative character from the time of receipt in the laboratory until the analysis is completed and the sample has been discarded.

§ 91.22 Disposition of analyzed sample.
(a) Excess samples not used in analyses will be placed in proper storage for a maximum period of 30 days after reporting results of tests.
(b) Any sample of a processed commodity that has been used for a laboratory service may be returned to the applicant at his or her request and expense; otherwise, it shall be destroyed or disposed of to a charitable institution.
§ 91.24 Reports of test results.

(a) Results of analyses are provided, in writing, by facsimile, by e-mail or other electronic means to the applicant.
§ 91.25 Certificate requirements.

Certificates of analysis and other memoranda concerning laboratory service and the reporting of results should have the following requirements:

(a) Certificates of analysis shall be on standard printed forms approved by the Deputy Administrator;

(b) Shall be printed in English;

(c) Shall have results typewritten, computer generated, or handwritten in ink and shall be clearly legible;

(d) Shall show the results of laboratory tests in a uniform, accurate, and concise manner with abbreviations identified on the form;

(e) Shall show the information required by §§91.25–91.29; and

(f) Show only such other information and statements of fact as are provided in the instructions authorized by the Deputy Administrator.


§ 91.26 Issuance of certificates.

(a) The person signing and issuing the certificate of analysis shall be one of the following:

(1) The scientist who performed the analysis;

(2) Another technician of the laboratory facility, who has been given power of attorney by the scientist who performed the analytical testing and been authorized by the Deputy Administrator to affix the scientist’s signature to a certificate. The power of attorney shall be on file with the employing office or laboratory of the Science and Technology program;

(3) A person designated as the “laboratory director in charge,” when the certificate represents composite analyses by several technicians.

(b) The laboratory certificate shall be prepared in accordance with the facts set forth in the official memoranda made by the scientist or technicians in connection with the analysis.

(c) Whenever a certificate is signed by a person under a power of attorney, the certificate should so indicate. The signature of the holder of power shall appear under the name of the scientist who personally analyzed the sample, and whenever a certificate issued is signed by a scientist in charge, that title must appear in connection with the signature.


§ 91.27 Corrections to certificates prior to issuance.

(a) The accuracy of the statements and information shown on certificates of analysis must be verified by the individual whose name or signature, or both, is shown on the certificate or by the authorized agent who affixed the name or signature, or both. When a name or signature, or both, is affixed by an authorized agent, the initials of the agent shall appear directly below or following the name, or signature of the person. Errors found during this process shall be corrected according to this section.

(b) Only official personnel or their authorized agents may make corrections, additions, or other changes to certificates.

(c) No corrections, additions, or other changes shall be made which involve identification, quality, or quantity. If such errors are found, a new certificate shall be prepared and issued and the incorrect certificate marked “Void.” Otherwise, errors may be corrected, provided there is evidence of satisfactory correction procedures as follows:

(1) The corrections are neat and legible;

(2) Each correction is initialed by the individual who corrects the certificate; and
§ 91.28 Issuance of corrected certificates or amendments for analysis reports.

(a) A corrected certificate of analysis or an amended letter report may be issued by the laboratory representative who issued the original certificate or report after distribution of the form if errors, such as incorrect dates, analytical results, or test determination statements, lot numbers, or errors in any other pertinent information require the issuance of a corrected certificate or an amended report.

(b) Whenever a corrected certificate or amended report is issued, such certificate or report shall supersede the original form which was issued in error. The superseded certificate or incorrect report shall become null and void after the issuance of the corrected certificate or the amended analysis report.

(c) The corrected certificates or amended reports shall show the following:

1. The terms “Corrected Original” and “Corrected Copy”; and
2. A statement identifying the superseded certificate or incorrect letter report and the corrections;
3. A new serial number or new date of issuance; and
4. The same statements and information, including permissive statements, that were shown on the incorrect certificate or the incorrect report, along with the correct statement or information, shall be shown on the corrected form.

(d) If all copies of the incorrect certificate or incorrect report can be obtained, then the superseded form shall be marked “Void” when submitted.

(e) Corrected certificates or amended letter reports cannot be issued for a certificate that has been superseded by another certificate, or superseded on the basis of a subsequent analysis or an additional laboratory test determination.

§ 91.29 Issuance of duplicate certificates or reissuance of an analysis report.

(a) Upon request by an applicant, a duplicate certificate or an additional report may be issued for a lost, destroyed, or otherwise not obtainable original form.

(b) The duplicate certificate or the reissuance of an analysis report shall be at the expense of the applicant.

(c) Requests for duplicate certificates or additional analysis reports shall be filed as follows:

1. In writing;
2. By the applicant who requested the service covered by the lost, destroyed, or otherwise not obtainable original form; and
3. With the office that issued the initial certificate or original laboratory analysis report.

(d) The duplicate certificates or reissued analysis reports shall show the following:

1. The terms “Duplicate Original,” and the copies shall show “Duplicate Copy,”
2. A statement that the certificate or letter report was issued in lieu of a lost or destroyed or otherwise not obtainable certificate or laboratory analysis report; and
3. The same statements and information, including permissive statements, that were shown on the original certificate or the initial analysis report shall be shown on the duplicate form.

(e) Duplicate certificates or duplicate analysis reports shall be issued as promptly as possible and distributed as the original certificates or original analysis reports and their copies.

(f) Duplicate certificates shall not be issued for certificates that have been superseded.

§ 91.30 Maintenance and retention of copies of certificates or analysis reports.

(a) At least one copy of each certificate or analysis report shall be filed in the laboratory for a period of not less than 3 years either from the date of issuance of the document, from the date of voiding a certificate, or from
§ 91.31 When an appeal of a laboratory service may be requested.

(a) An application for an appeal of a laboratory service may be made by any interested party who is dissatisfied with the results of an analysis as stated in a certificate or laboratory report, if the lot of the commodity can be positively identified by the laboratory service as the lot from which originally drawn samples were previously analyzed.

(b) An application for an appeal of a laboratory service shall be made within thirty (30) days following the day on which the previous analysis was performed. However, upon approval by the Deputy Administrator, the filing time for an appeal application may be extended.


§ 91.32 Where to file for an appeal of a laboratory service and information required.

(a) Application for an appeal of a laboratory service may be filed with the supervisor in the office or the director of the laboratory facility that issued the certificate or laboratory report on which the appeal analysis covering the commodity product is requested.

(b) The application for an appeal of a laboratory service shall state the location of the lot of the commodity product and the reasons for the appeal; and date and serial number of the certificate covering the laboratory service of the commodity product on which the appeal is requested. In addition, such application shall be accompanied by the original and all available copies of the certificate or laboratory report.

(c) Application for an appeal of a laboratory service may be made orally (in person or by telephone), in writing, by e-mail, by facsimile, or by telegraph. If made orally, written confirmation shall be made promptly.

[65 FR 64311, Oct. 26, 2000]

§ 91.33 When an application for an appeal of a laboratory service may be withdrawn.

An application for an appeal of a laboratory service may be withdrawn by the applicant at any time before the appealed laboratory service is performed; Provided, That, the applicant shall pay, at the hourly rate prescribed in § 91.37, for the time incurred by the laboratory personnel, any travel, telephone, telegraph, or other expenses which have been incurred by the laboratory service in connection with such application.

§ 91.34 When an appeal of a laboratory service may be refused.

An application for an appeal of a laboratory service may be refused if:

(a) The reasons for the appealed laboratory service are frivolous or not substantial;

(b) The quality or condition of the commodity product has undergone a material change since the laboratory service covering the commodity product on which the appealed laboratory service is requested;
(c) The lot in question is not, or cannot be made accessible for sampling;
(d) The lot relative to which the appealed laboratory service is requested cannot be positively identified as the lot from which samples were previously drawn and originally analyzed; or
(e) There is noncompliance with the regulations in this part. Such applicant shall be notified promptly of the reason for such refusal.

§ 91.35 Who shall perform an appealed laboratory service.

An appealed laboratory service shall be performed, whenever possible, by another individual or other individuals than the scientist(s) or the technician(s) that performed the original analytical determination.

§ 91.36 Appeal laboratory certificate.

(a) An appeal laboratory certificate shall be issued showing the results of such appealed analysis. This certificate shall supersede the laboratory certificate previously issued for the commodity product involved.

(b) Each appeal laboratory certificate shall clearly identify the number and date of the laboratory certificate which it supersedes. The superseded certificate shall become null and void upon the issuance of the appealed laboratory certificate and shall no longer represent the analytical results of the commodity product.

(4) The individual issuing an appeal laboratory certificate shall forward notice of such issuance to such persons as he or she considers necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the individual issuing the appeal certificate.

(d) The provisions in the regulations in this part concerning forms and certificates, issuance of certificates, and retention and disposition of certificates shall apply to appeal laboratory certificates, except that copies of such appeal certificates shall be furnished to all interested parties who received copies of the superseded certificate.

Subpart I—Fees and Charges

§ 91.37 Standard hourly fee rate for laboratory testing, analysis, and other services.

(a) The standard hourly fee rate in this section for the individual laboratory analyses cover the costs of Science and Technology laboratory services, including issuance of certificates and personnel and overhead costs other than the commodity inspection fees referred to in 7 CFR §§ 52.42 through 52.46, 52.48 through 52.51, 55.510 through 55.530, 55.560 through 55.570, 58.38 through 58.43, 58.45 through 58.46, 70.71 through 70.72, and 70.75 through 70.78. The hourly fee rates in this part 91 apply to all processed commodity products, except flue-cured and burley tobacco, and exclude aflatoxin analyses, citrus juices and certain citrus products. The printed updated schedules of the laboratory testing fees for processed fruits and vegetables (7 CFR part 93), poultry and egg products (7 CFR part 94), and meat and meat products (7 CFR part 98) will be available for distribution by the individual Laboratory Directors of Science and Technology laboratories listed in § 91.5. The updated schedules of the laboratory testing fees are also available for electronic access on the world wide web (www) site at: http://ams.usda.gov/science. The fees for chemical analysis of cottonseed associated with grading and novel variety seed certification under the Plant Variety Protection Act are specified in 7 CFR parts 96 and 97, respectively. Except as otherwise provided in this section, charges will be made for laboratory analysis at the standard hourly rate of $45.00 for the time required to perform the service. A minimum charge of one-quarter hour at $11.25 will be made for service pursuant to each request or certificate issued.

(b) When a laboratory test service is provided for AMS by a commercial or State government laboratory, the applicant will be assessed a fee which covers the costs to the Science and Technology program for the service provided.
§ 91.37

(c) When Science and Technology staff provides applied and developmental research and training activities for microbiological, physical and chemical analyses on agricultural commodities the applicant will be charged a fee on a reimbursable cost basis.

GENERAL SCHEDULES OF FEES FOR OFFICIAL LABORATORY TEST SERVICES PERFORMED AT THE AMS SCIENCE AND TECHNOLOGY LABORATORIES FOR PROCESSED COMMODITY PRODUCTS

TABLE 1—SINGLE TEST LABORATORY FEES FOR PROXIMATE ANALYSES

<table>
<thead>
<tr>
<th>Type of analysis</th>
<th>List fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ammonia, Ion Selective Electrode</td>
<td>$101.25</td>
</tr>
<tr>
<td>Ash, Total</td>
<td>45.00</td>
</tr>
<tr>
<td>Chloride Salt Titration (Dairy)</td>
<td>22.50</td>
</tr>
<tr>
<td>Fat, Acid Hydrolysis (Cheese)</td>
<td>45.00</td>
</tr>
<tr>
<td>Fat, Acid Hydrolysis (Mojonnier)</td>
<td>45.00</td>
</tr>
<tr>
<td>Fat, (Dairy Products except Cheese)</td>
<td>22.50</td>
</tr>
<tr>
<td>Fat (Dry Basis)</td>
<td>67.50</td>
</tr>
<tr>
<td>Fat, Ether Extraction (Soapbath)</td>
<td>45.00</td>
</tr>
<tr>
<td>Fat (Kohman Analysis)</td>
<td>45.00</td>
</tr>
<tr>
<td>Fat, Microwave—Solvent Extraction</td>
<td>45.00</td>
</tr>
<tr>
<td>Moisture, Distillation</td>
<td>45.00</td>
</tr>
<tr>
<td>Moisture, Oven</td>
<td>22.50</td>
</tr>
<tr>
<td>Moisture, Kohman Analysis</td>
<td>11.25</td>
</tr>
<tr>
<td>Protein, Combustion</td>
<td>90.00</td>
</tr>
<tr>
<td>Protein, Kjeldahl</td>
<td>90.00</td>
</tr>
<tr>
<td>Salt, Back Titration</td>
<td>33.75</td>
</tr>
<tr>
<td>Salt, Potentiometric</td>
<td>22.50</td>
</tr>
<tr>
<td>Salt (Rapid)</td>
<td>33.75</td>
</tr>
</tbody>
</table>

TABLE 2—SINGLE TEST LABORATORY FEES FOR LIPID RELATED ANALYSES

<table>
<thead>
<tr>
<th>Type of analysis</th>
<th>List fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acid Degree Value (Dairy)</td>
<td>$45.00</td>
</tr>
<tr>
<td>Acidity, Titratable</td>
<td>22.50</td>
</tr>
<tr>
<td>Density (Specific Gravity)</td>
<td>11.25</td>
</tr>
<tr>
<td>Dispersibility (Instant Dry Whole Milk)</td>
<td>67.50</td>
</tr>
<tr>
<td>Dispersibility (Moates-Dabiah Method)</td>
<td>22.50</td>
</tr>
<tr>
<td>Fat Stability, AOM</td>
<td>45.00</td>
</tr>
<tr>
<td>Fatty Acid Profile (AOAC—GC method)</td>
<td>180.00</td>
</tr>
<tr>
<td>Flash Point Test only</td>
<td>90.00</td>
</tr>
<tr>
<td>Free Fatty Acids</td>
<td>22.50</td>
</tr>
<tr>
<td>Meltability (Process Cheese)</td>
<td>22.50</td>
</tr>
<tr>
<td>Peanut Oil Analyses (Oil, Moisture, Free Fatty Acids, Ammonia, and Foreign Matter)</td>
<td>45.00</td>
</tr>
<tr>
<td>Peroxide Value</td>
<td>33.75</td>
</tr>
<tr>
<td>Smoke Point Test only</td>
<td>90.00</td>
</tr>
<tr>
<td>Smoke Point and Flash Point</td>
<td>157.50</td>
</tr>
<tr>
<td>Solids, Total (Oven Drying)</td>
<td>22.50</td>
</tr>
<tr>
<td>Soluble Solids, Refractometer</td>
<td>22.50</td>
</tr>
</tbody>
</table>

1 Peroxide value analysis is required as a prerequisite to the fat stability test at the additional fee.

TABLE 3—SINGLE TEST LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)

<table>
<thead>
<tr>
<th>Type of analysis</th>
<th>List fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vitamin A, Carr-Price (Dairy)</td>
<td>112.50</td>
</tr>
<tr>
<td>Vitamin A, HPLC</td>
<td>90.00</td>
</tr>
<tr>
<td>Vitamin B₁ (Thiamin)</td>
<td>90.00</td>
</tr>
<tr>
<td>Vitamin B₂, Riboflavin</td>
<td>90.00</td>
</tr>
<tr>
<td>Vitamin D, HPLC (Vitamins D₂, D₃, D₄, D₅ .... Dairy</td>
<td>382.50</td>
</tr>
</tbody>
</table>
TABLE 3—SINGLE TEST LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)—Continued

<table>
<thead>
<tr>
<th>Type of analysis</th>
<th>List fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whey Protein Nitrogen</td>
<td>33.75</td>
</tr>
<tr>
<td>Whey Protein Nitrogen, Kjeldahl</td>
<td>112.50</td>
</tr>
<tr>
<td>Xanthrolot Test For Urea</td>
<td>67.50</td>
</tr>
</tbody>
</table>

This is an optional test to the extraneous materials isolation test.

1 Antibiotic testing includes tests for chlorotetracycline, oxytetracycline, and tetracycline.
2 Heavy metal screen includes tests for cadmium, lead, and mercury.
3 This profile includes the following components: Dextrose, Fructose, Lactose, Maltose and Sucrose.

TABLE 4—SINGLE TEST LABORATORY FEES FOR OTHER CHEMICAL AND PHYSICAL COMPONENT ANALYSES

<table>
<thead>
<tr>
<th>Type of analysis</th>
<th>List fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cheese(Fines)</td>
<td>$11.25</td>
</tr>
<tr>
<td>Color, Apparent-Visual</td>
<td>11.25</td>
</tr>
<tr>
<td>Complete Kohman Analysis (Daily)</td>
<td>45.00</td>
</tr>
<tr>
<td>Hot Water Insolubles</td>
<td>$67.50</td>
</tr>
<tr>
<td>Linaleric Acid</td>
<td>90.00</td>
</tr>
<tr>
<td>Net Weight (Per Can)</td>
<td>11.25</td>
</tr>
<tr>
<td>Non-Volatile Methylene Chloride Extract</td>
<td>112.50</td>
</tr>
<tr>
<td>Overrun for Whipped Topping</td>
<td>33.75</td>
</tr>
<tr>
<td>Particle Size (Ether Wash)</td>
<td>22.50</td>
</tr>
<tr>
<td>pH</td>
<td>11.25</td>
</tr>
<tr>
<td>pH—Quinhydrone (Cheese)</td>
<td>22.50</td>
</tr>
<tr>
<td>Potassium Nitrate (Table Salt)</td>
<td>67.50</td>
</tr>
<tr>
<td>Protein Reducing Substances</td>
<td>45.00</td>
</tr>
<tr>
<td>Quinic Acid (Cranberry Juice)</td>
<td>78.75</td>
</tr>
<tr>
<td>Quinic Acid (Bartlet Pear)</td>
<td>67.50</td>
</tr>
<tr>
<td>Quinic Acid (Linden Leaves)</td>
<td>22.50</td>
</tr>
<tr>
<td>Quinic Acid (Yeast Yeast)</td>
<td>22.50</td>
</tr>
<tr>
<td>Reducing Sugars</td>
<td>90.00</td>
</tr>
<tr>
<td>Serum Drainage for Whipped Topping</td>
<td>22.50</td>
</tr>
<tr>
<td>Sieve or Particle Size</td>
<td>22.50</td>
</tr>
<tr>
<td>Rate of Wetting (Nondairy Creamer)</td>
<td>22.50</td>
</tr>
<tr>
<td>Reducing Sugars</td>
<td>90.00</td>
</tr>
<tr>
<td>Water Activity</td>
<td>22.50</td>
</tr>
<tr>
<td>Water Insoluble Inorganic Residues (WIR)</td>
<td>90.00</td>
</tr>
</tbody>
</table>

TABLE 5—SINGLE TEST LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES

<table>
<thead>
<tr>
<th>Type of analysis</th>
<th>List fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aerobic (Standard) Plate Count</td>
<td>$22.50</td>
</tr>
<tr>
<td>Anaerobic Bacterial Plate Count</td>
<td>33.75</td>
</tr>
<tr>
<td>Bacillus cereus</td>
<td>90.00</td>
</tr>
<tr>
<td>Bacterial Direct Microscopic Count</td>
<td>45.00</td>
</tr>
<tr>
<td>Coliform Plate Count (Dairy Products)</td>
<td>22.50</td>
</tr>
<tr>
<td>Coliform Plate Count, Violet Red Bile Agar (Pseudomalleus Coliform Plate Count)</td>
<td>33.75</td>
</tr>
<tr>
<td>Coliforms, Most Probable Number (MPN)1: Step 1</td>
<td>33.75</td>
</tr>
<tr>
<td>Step 2</td>
<td>22.50</td>
</tr>
<tr>
<td>Direct Microscopic Clump—(Field Submitted Smears, Less Than or Equal To 75 Million)</td>
<td>11.25</td>
</tr>
<tr>
<td>Direct Microscopic Clump—(Field Submitted Smears, Greater Than 75 Million)</td>
<td>45.00</td>
</tr>
<tr>
<td>Direct Microscopic Clump—(Lab Prepared Smears)</td>
<td>45.00</td>
</tr>
<tr>
<td>E. coli, Presumptive MPN (Additional)2</td>
<td>$45.00</td>
</tr>
<tr>
<td>E. coli (HUG)</td>
<td>33.75</td>
</tr>
<tr>
<td>Enterococcus Count</td>
<td>135.00</td>
</tr>
<tr>
<td>Howard Mold Count4</td>
<td>56.25</td>
</tr>
<tr>
<td>Lactobacillus Count</td>
<td>56.25</td>
</tr>
<tr>
<td>Lactic Acid Tolerant Microbes</td>
<td>22.50</td>
</tr>
</tbody>
</table>

1 Coliform MPN analysis may be in two steps as follows: Step 1—presumptive test through lauryl sulfate tryptose broth; Step 2—confirmatory test through brilliant green lactose bile broth.
2 Step 1 of the coliform MPN analysis is a prerequisite for the performance of the presumptive E. coli test. Prior enrichment in lauryl sulfate tryptose broth is required for optical recovery of E. coli from inoculated and incubated EC broth (Escherichia coli broth). The E. coli test is performed through growth on eosin methylene blue agar. The fee stated for E. coli analysis is a supplementary charge to step 1 of coliform test.
3 This profile includes the following components: Dextrose, Fructose, Lactose, Maltose and Sucrose.
4 Determination of bacterial plate count of different species of Lactobacillus.
5 Listeria monocytogenes test using the USDA method may be in three steps as follows: Step 1—Isolation by University of Vermont modified (UV) broth and Fraser's broth enrichment and selective plating with Modified Oxford (MOX) agar; Step 2—Typical colonies inoculated from Horse Blood broth into brain heart infusion (BHI) broth and check for characteristic motility; Confirmatory Step 3—culture from BHI broth with typical motility is inoculated into the seven biochemical media, BHI agar for oxidase and catalase tests, Motility test medium, and Christie-Akins-Munch-Peterson (CAMP) test. Positive Confirmation: Confirmation Step 3—culture from BHI broth with typical motility is inoculated into the seven biochemical media, BHI agar for oxidase and catalase tests, Motility test medium, and Christie-Akins-Munch-Peterson (CAMP) test. Positive Confirmation: Confirmation Step 3—culture from BHI broth with typical motility for wet mount is inoculated into the required 10 biochemical media, Sulfite-Indole-Motility (SIM) medium, and the CAMP test. Serology is checked using growth from TSA-YES plates. Both methods for Listeria determination have the equivalent time needed for each step.
6 Salmonella test may be in three steps as follows: Step 1—growth through differential agars; Step 2—growth and testing through triple sugar iron and xyline iron agars; Step 3—confirmatory test through biochemicals, and polyvalent serological testing with Poly “O” and Poly “H” antisera. The serological typing of Salmonella is requested on occasion.
§ 91.38 Additional fees for appeal of analysis.

(a) The appellant will be charged an additional fee at a rate of 1.5 times the standard rate stated in §91.37 (a) if, as a result of an authorized appeal analysis, it is determined that the original test results are correct. The appeal laboratory rate is $67.50 per analysis hour.

(b) The appeal fee will be waived if the appeal laboratory test discloses
that an inadvertent error was made in the original analysis.

§91.39 Premium hourly fee rate for overtime and legal holiday service.

(a) Laboratory analyses initiated at the special request of the applicant to be rendered on Saturdays, Sundays, Federal holidays, and on an overtime basis will be charged at a rate of 1.5 times the standard rate stated in §91.37 (a). The premium laboratory rate for holiday and overtime service will be $67.50 per analysis hour.

(b) Information on legal holidays or what constitutes overtime service at a particular S&T laboratory is available from the Laboratory Director or facility supervisor.

§91.40 Fees for courier service and facsimile of the analysis report.

(a) The Science and Technology laboratories have a courier charge per trip to retrieve the sample package. The courier service charge is determined from the established single standard mileage rate and from the total authorized distance based on the shortest round trip route from laboratory to sample retrieval site. Pursuant to the requirements of paragraph (a) (1) of §5704 of Title 5, United States Code (U.S.C.), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS).

(b) The faxing of laboratory analysis reports or certificates is an optional service for each S&T facility offered at a fee specified in table 8 in §91.37.

§91.41 Charges for demonstrations and courses of instruction.

Charges, not in excess of the cost thereof and as approved by the Deputy Administrator, may be made for demonstrations, samples, or courses of instruction when such are furnished upon request.

§91.42 Billing.

(a) Each billing cycle will end on the 25th of the month. The applicant will be billed by the National Finance Center using the Billings and Collections System (BLCO) on the 1st day, following the end of the billing cycle in which voluntary laboratory services and other services were rendered at a particular Science and Technology laboratory.

(b) The total charge shall normally be stated directly on the analysis report or on a standardized official certificate form for the laboratory analyses of a specific agricultural commodity and related commodity products.

(c) The actual bill for collection will be issued by the USDA, National Finance Center Billings and Collection Branch, (Mail: P.O. Box 60075), 13800 Old Gentilly Road, New Orleans, Louisiana 70160–0001.

§91.43 Payment of fees and charges.

(a) Fees and charges for services shall be paid by the applicant, by check or money order payable, to the “Agricultural Marketing Service, USDA” and sent to the office indicated on the bill.

(b) Fees and charges for services under a cooperative agreement with a State or other AMS programs or other governmental agency will be paid in accordance with the terms of the cooperative agreement.

(c) As necessary, the Deputy Administrator may require that fees shall be paid in advance of the performance of the requested service. Any fees paid in excess of the amount due shall be used to offset future billings, unless a request for a refund is made by applicant.

§91.44 Charges on overdue accounts and issuance of delinquency notices.

(a) Accounts are considered overdue if payment is late with the National Finance Center (NFC). The timeliness of a payment will be based on the postmark date of the payment or the date of receipt by the NFC if no postmark
date is present or legible. Bills are payable upon receipt and become delinquent 30 days from date of billing.

(b) Any amount due not paid by the due date will be increased by a late payment charge. The actual assessed rate applied to overdue accounts is set quarterly by the Department of the Treasury. This amount is one-twelfth of one year’s late penalty interest rate computed at the prescribed rate.

(c) Overtime or holiday laboratory service will not be performed for any applicant with a notice of delinquency.

(d) Applicants with three notices of delinquency will be reviewed for possible termination of services. A deposit in advance sufficient to cover the fees and expenses for any subsequent service may be required of any person failing to pay in claim after issuance of such notice of delinquency.

(e) The Deputy Administrator of S&T program and personnel of the USDA, NFC Billings and Collections Branch (address as listed in §91.42) will take such actions as may be necessary to collect any delinquent amounts due for accounts in claim status.


§91.45 Charges for laboratory services on a contract basis.

(a) Irrespective of hourly fee rates and charges prescribed in §91.37, or in other sections of this subchapter E, the Deputy Administrator may enter into contracts with applicants to perform continuous laboratory services or other types of laboratory services pursuant to the regulations in this part and other requirements, as prescribed by the Deputy Administrator in such contract. In addition, the charges for such laboratory services, provided in such contracts, shall be on such basis as will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such laboratory services, including an appropriate overhead administrative overhead charge.

(b) Irrespective of hourly fee rates and charges prescribed in this subpart I, or in other parts of this subchapter E, the Deputy Administrator may enter into a written Memorandum of Understanding (MOU) or agreement with any administrative agency or governing party for the performance of laboratory services pursuant to said agreement or order on a basis that will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such laboratory service, including an appropriate overhead administrative overhead charge.

(c) The conditions and terms for renewal of such Memorandum of Understanding or agreement shall be specified in the contract.

[65 FR 64315, Oct. 26, 2000]

PART 92—TOBACCO

Sec. 92.1 General.
92.2 Definitions.
92.3 Location for laboratory testing and kind of services available.
92.4 Approved forms for reporting analytical results.
92.5 Analytical methods.
92.6 Cost for pesticide analysis set by cooperative agreement.

AUTHORITY: 7 U.S.C. 511m, 511r.

SOURCE: 58 FR 42424, Aug. 9, 1993, unless otherwise noted.

§92.1 General.

Analytical testing of imported flue-cured and burley tobacco is performed for maximum allowable pesticide residue levels. Domestic grown tobacco may also be analyzed for pesticide residues at the Science and Technology’s Eastern Laboratory facility.


§92.2 Definitions.

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

Air-cured. Tobacco cured under natural atmospheric conditions. Artificial heat is sometimes used to control excess humidity during the curing period to prevent house-burn, barn-burn and pole-burn in damp weather. Air-cured tobacco should not carry the odor of
smoke or fumes resulting from the application of artificial heat.

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

Burley. A thin to medium-bodied tobacco, usually a light tan to reddish-brown in color.

Burley, Type 93. That type of air-cured tobacco commonly known as foreign-grown Burley, produced in countries other than the United States.

Certificate of Analysis (Form TB–92). A legal document on which the confirmed test results for official samples will be testified to be correct by a Science and Technology chemist in charge of testing.

Cured. Tobacco dried of its sap by either natural or artificial processes.

2,4-D. The common abbreviation for the herbicide 2,4-Dichlorophenoxyacetic acid.

DBCP. The common abbreviation for the volatile fumigant pesticide 1,2-Dibromo-3-chloropropane.

DDE. The common abbreviation for the chlorinated pesticide Dichlorodiphenyldichloroethylene. Degradation product of DDT by loss of one molecule of hydrochloric acid or referred to as a dehydrohalogenation process.

DDT. The common abbreviation for Dichloro diphenyl trichloroethane or the common name for the chlorinated insecticide or contact poison 1,1-Bis(p-chlorophenyl)-2,2,2-trichloroethane.

Dicamba. The common name for the acid herbicide 2-Methoxy-3,6-dichlorobenzoic acid.

EDB. The common abbreviation for Ethylene dibromide or the common name for the volatile fumigant pesticide 1,2-Dibromoethane.

Flue-cured. Tobacco cured under artificial atmospheric conditions by a process of regulating the heat and ventilation without allowing smoke or fumes from the fuel to come in contact with the tobacco; or tobacco cured by some other process which accomplishes the same results.

Flue-cured, Type 92. That type of flue-cured tobacco commonly known as Foreign-grown Flue-cured, produced in countries other than the United States.

Formothion. The common name for the organophosphorus pesticide S-(2-Formylimethylamino)-2-oxoethyl O-O-dimethyl phosphorodithioate.

HCB. The common abbreviation for the organochlorine pesticide Hexachlorobenzene.

Lot. A unit of shipment of tobacco encompassed by a single invoice. The lot may represent a pile, basket, bulk, hack, burden, or more than one bale, case, hoghead, tierce, package, or other definite package unit.

Maximum pesticide residue level. The maximum concentration of residue allowable for a specific pesticide or combination of pesticides, as set forth in 7 CFR 29.427 by the AMS Deputy Administrator of the Tobacco Programs.

Pesticide. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

Pesticide certification. A document issued by the Tobacco Programs in a form approved by its AMS Deputy Administrator, containing a certification by the importer that flue-cured and burley tobacco offered for importation does not exceed the maximum allowable residue levels of any pesticide that has been canceled, suspended, revoked, or otherwise prohibited under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Pesticide test sample. An official sample or samples, collected from a lot of tobacco by the AMS Tobacco Programs inspector for analysis by a certified chemist to ascertain the residue levels of pesticides that have been canceled, suspended, revoked, or otherwise prohibited under the FIFRA.

Sample Identification Form (Form TB–89). A document titled “Imported Tobacco Pesticide Residue Analysis” that is approved by the AMS Deputy Administrator of the Tobacco Programs that identifies and accompanies the sample to the testing facility.

2,4,5-T. The common abbreviation for the acid herbicide 2,4,5-Trichlorophenoxyacetic acid.

TDE. DDD or the common abbreviation for the chlorinated insecticide 1,1-Dichloro-2,2-bis(p-chlorophenyl)ethane (CAS number 72-54-8).
Testing. The chemical analysis of a pesticide test sample to determine the presence and levels of pesticide residues.

Tobacco. Tobacco as it appears between the time it is cured and stripped from the stalk, or primed and cured, in whole leaf or staple form, and the time it enters into the different manufacturing processes. Conditioning, sweating, stemming, and threshing are not regarded as manufacturing processes. Tobacco, as used in this part, does not include manufactured or semi-manufactured products, stems, cuttings, clippings, trimmings, siftings, or dust.

§ 92.3 Location for laboratory testing and kind of services available.

(a) The analytical testing of imported Type 92 flue-cured tobacco samples and imported Type 93 burley tobacco samples for maximum pesticide residue level determinations is performed at the AMS Science and Technology’s Eastern Laboratory, and is located at: USDA, AMS, Science and Technology, Eastern Laboratory (Chemistry), 645 Cox Road, Gastonia, NC 28054–6614.

(b) Domestic-grown tobacco and tobacco products may be analyzed for acid herbicides, chlorinated hydrocarbons, fumigants, and organophosphates at the Science and Technology facility in this section.

(c) The Science and Technology facility performs for the AMS Tobacco Programs the quantitative and confirmatory chemical residue analyses on pesticide test samples of imported tobacco for the following specific pesticides:

(1) Organochlorine pesticides such as Dichloro-diphenyldichloroethylene (DDE), Dichloro Diphenyl Trichloroethane (DDT), 1,1-Dichloro-2,2-bis(p-chlorophenyl)ethane (TDE), Toxaphene, Endrin, Aldrin, Dieldrin, Heptachlor, Methoxychlor, Chloridane, Heptachlor Epoxide, Hexachlorobenzene (HCB), Cypermethrin, and Permethrin.

(2) Organophosphorus pesticides such as Formothion.

(3) Fumigants such as Ethylene Dibromide (EDB) and Dibromochloropropane (DBCP).

(4) Acid herbicides such as 2,4-D, 2,4,5-T, and Dicamba.

§ 92.4 Approved forms for reporting analytical results.

(a) Form TB–89, “Imported Tobacco Pesticide Residue Analysis” certificate, is enclosed with and identifies the sample submitted to the laboratory.

(b) Test results of the pesticide analyses for tobacco shall be recorded on “Certificate of Analysis For Official Samples”, Form TB–92, and shall be expressed as parts by weight of the residue per one million parts by weight of the tobacco sample (parts per million or ppm), which concentration is representative for each particular pesticide residue found in the lot of tobacco. Form TB–92 is attached to Form TB–89 that is returned to the AMS Tobacco Programs. The analytical data on Form TB–92 substantiates the information placed on Form TB–89.

§ 92.5 Analytical methods.

Every chemist certified to analyze tobacco samples for pesticide residue contamination shall follow precisely the USDA developed analytical test methods and all successive official method updates, as approved by the AMS Deputy Administrator, Science and Technology. Many of the official analyses for tobacco are found in the following manuals:

(a) Manual of Analytical Methods for the Analysis of Pesticide Residues in Human and Environmental Samples, EPA 600/9–80–038, U.S. Environmental Protection Agency (EPA) Chemical Exposure Research Branch, EPA Office of Research and Development (ORD), 26 West Martin Luther King Drive, Cincinnati, Ohio 45268.

(b) Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II, AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

(c) U.S. Food and Drug Administration, Pesticide Analytical Manuals (PAM), Volumes I and II, Food and Drug Administration, Center for Food Safety and Applied Nutrition (CFSAN),
§ 93.6 Cost for pesticide analysis set by cooperative agreement.

The fee for the pesticide analysis of tobacco is set by the AMS Tobacco Programs, in conjunction with the AMS Science and Technology program, and appears at 7 CFR 29.500 as part of Tobacco Programs’ fees for sampling and certification of imported flue-cured and burley tobacco. A Memorandum of Understanding (MOU) exists between the Tobacco Programs and the Science and Technology (S&T) for the testing of imported tobacco samples for pesticide residue contamination, and the corresponding agreement on the cost of analyses is specified in the MOU.

[65 FR 64316, Oct. 26, 2000]

PART 93—PROCESSED FRUITS AND VEGETABLES

Subpart A—Citrus Juices and Certain Citrus Products

Sec. 93.1 General.
93.2 Definitions.
93.3 Analyses available and location of laboratory.
93.4 Analytical methods.
93.5 Fees for citrus product analyses set by cooperative agreement.

Subpart B—Peanuts, Tree Nuts, Corn and Other Oilseeds

93.10 General.
93.11 Definitions.
93.12 Analyses available and locations of laboratories.
93.13 Analytical methods.
93.14 Fees for aflatoxin analysis and fees for testing of other mycotoxins.
93.15 Fees for analytical testing of oilseeds.


SOURCE: 61 FR 51351, Oct. 2, 1996, unless otherwise noted.
§ 93.3 Analyses available and location of laboratory.

(a) Laboratory analyses of citrus juice and other citrus products are being performed at the following Science and Technology location: USDA, AMS, S&T Eastern Laboratory (Citrus), 98 Third Street, SW., Winter Haven, FL 33880.

(b) Laboratory analyses of citrus fruit and products in Florida are available in order to determine if such commodities satisfy the quality and grade standards set forth in the Florida Citrus Code (Florida Statutes Pursuant to Chapter 601). Such analyses include tests for acid as anhydrous citric acid, Brix, Brix/acid ratio, recoverable oil, and artificial coloring matter additive, as turmeric. The Fruit and Vegetable Inspectors of the Division of Fruit and Vegetable of the Florida Department of Agriculture and Consumer Services may also request analyses for arsenic metal, pulp wash (ultraviolet and fluorescence), standard plate count, yeast with mold count, and nutritive sweetening ingredients as sugars.

(c) There are additional laboratory tests available upon request at the Science and Technology Eastern (Citrus) Laboratory at Winter Haven, Florida. Such analyses include tests for vitamins, naringin, sodium benzoate, Salmonella, protein, salt, pesticide residues, sodium metal, ash, potassium metal, and coliforms for citrus products.

[65 FR 64316, Oct. 26, 2000]

§ 93.4 Analytical methods.

(a) The majority of analytical methods for citrus products are found in the Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II, AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.

(b) Other analytical methods for citrus products may be used as approved by the AMS Deputy Administrator, Science and Technology (S&T).

[65 FR 64317, Oct. 26, 2000]

§ 93.5 Fees for citrus product analyses set by cooperative agreement.

The fees for the analyses of fresh citrus juices and other citrus products shall be set by mutual agreement between the applicant, the State of Florida, and the AMS Deputy Administrator, Science and Technology programs. A Memorandum of Understanding (MOU) or cooperative agreement exists presently with the AMS Science and Technology and the State of Florida, regarding the set hourly rate and the costs to perform individual analytical tests on Florida citrus products, for the State.

[65 FR 64317, Oct. 26, 2000]
Agricultural Marketing Service, USDA

§ 93.13

aflatoxin G₂ with a green-blue fluorescence, aflatoxin M₁ with a blue-violet fluorescence, and aflatoxin M₂ with a violet fluorescence. These closely related molecular structures are referred to as aflatoxin B₁, B₂, G₁, G₂, M₁, M₂, GM₁, B₂a, G₂a, R₀, B₃, 1-OCH₃B₂, and 1-CH₃G₂.

Peanut Administrative Committee (PAC). The committee established under the United States Department of Agriculture Marketing Agreement for Peanuts, 7 CFR part 998, which administers the terms and provisions of this Agreement, including the aflatoxin control program for domestically produced raw peanuts, for peanut shellers. The Peanut Administrative Committee (PAC) headquarters are at 2537 Lafayette Plaza Drive Suite A; Albany, Georgia 31707.

Peanut Marketing Agreement. The agreement concerning the regulations and instructions set forth since July 12, 1965, by the Peanut Administrative Committee for the marketing of peanuts entered into by handlers of domestically produced peanuts under the authority of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

Peanuts. The seeds of the legume Arachis hypogaea, and includes both inshell and shelled nuts.

Seed. Any vegetable or other agricultural plant ovule having an embryo that is capable of germinating to produce a plant.


§ 93.12 Analyses available and locations of laboratories.

(a) Aflatoxin testing services. The aflatoxin analyses for peanuts, peanut products, dried fruits, grains, edible seeds, tree nuts, shelled corn products, cottonseed, oilseed products and other commodities are performed at the following 6 locations for AMS Science and Technology (S&T) Aflatoxin Laboratories:

(1) USDA, AMS, S&T 1211 Schley Avenue, Albany, GA 31707.
(2) USDA, AMS, S&T c/o Golden Peanut Company, Mail: P.O. Box 279, 301 West Pearl Street, Aulander, NC 27805.

(3) USDA, AMS, S&T 610 North Main Street, Blakely, GA 31723.
(4) USDA, AMS, S&T 107 South Fourth Street, Madill, OK 73446.
(5) USDA, AMS, S&T c/o Cargill Peanut Products, Mail: P.O. Box 272, 715 North Main Street, Dawson, GA 31742-0272.
(6) USDA, AMS, S&T Mail: P.O. Box 1130, 308 Culloden Street, Suffolk, VA 23434.

(b) Peanuts, peanut products, and oilseed testing services.

(1) The Science and Technology (S&T) Aflatoxin Laboratories at Madill, Oklahoma and Blakely, Georgia will perform other analyses for peanuts, peanut products, and a variety of oilseeds. The analyses for oilseeds include testing for free fatty acids, ammonia, nitrogen or protein, moisture and volatile matter, foreign matter, and oil (fat) content.

(2) All of the analyses described in paragraph (b)(1) of this section performed on a single seed sample are billed at the rate of one hour per sample. Any single seed analysis performed on a single sample is billed at the rate of one-half hour per sample. The standard hourly rate shall be as specified in §91.37(a) of this subchapter.

(c) Vegetable oil testing services. The analyses for vegetable oils are performed at the USDA, AMS, Science and Technology (S&T) Midwestern Laboratory, 3570 North Avondale Avenue, Chicago, IL 60618-5391. The analyses for vegetable oils will include the flash point test, smoke point test, acid value, peroxide value, phosphorus in oil, and specific gravity. The fee charged for any single laboratory analysis for vegetable oils shall be obtained from the Midwestern Laboratory Director and it is based on the hourly fee rates and charges as specified in 7 CFR part 91, subpart I.

[65 FR 63317, Oct. 26, 2000]

§ 93.13 Analytical methods.

Official analyses for peanuts, nuts, corn, oilseeds, and related vegetable oils are found in the following manuals:

(a) Approved Methods of the American Association of Cereal Chemists
§ 93.14 Fees for aflatoxin analysis and fees for testing of other mycotoxins.

(a) The fee charged for any laboratory analysis for aflatoxins and other mycotoxins shall be obtained from the Laboratory Director for aflatoxin laboratories at the Dothan administrative office as follows: USDA, AMS, Science & Technology, 3119 Wesley Way, Suite 6, Dothan, Alabama 36305, Voice Phone: 334–794–5070, Facsimile: 334–792–1432.

(b) The charge for the aflatoxin testing of raw peanuts under the Peanut Marketing Agreement for subsamples 1-AB, 2-AB, 3-AB, and 1-CD is a set cost per pair of analyses and shall be set by cooperative agreement between the Peanut Administrative Committee and AMS Science and Technology program.

[65 FR 64317, Oct. 26, 2000]

§ 93.15 Fees for analytical testing of oilseeds.

The fee charged for any laboratory analysis for oilseeds shall be obtained from the Laboratory Director for aflatoxin laboratories at the Dothan administrative office as listed in 7 CFR 93.14(a).

[65 FR 66318, Oct. 26, 2000]
Agricultural Marketing Service, USDA § 94.3

EDITORIAL NOTE: Nomenclature changes to part 94 appear at 61 FR 51352, Oct. 2 1996.

Subpart A—Mandatory Analyses of Egg Products

§ 94.1 General.
Microbiological, chemical, and physical analysis of liquid, frozen, and dried egg products is performed under authority of the Egg Products Inspection Act (21 U.S.C. 1031–1056).

§ 94.2 Definitions.
Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Egg. The shell egg of the domesticated chicken, turkey, duck, goose, or guinea. Some of the terms applicable to shell eggs are defined by the AMS Poultry Programs in 7 CFR 57.5.

Egg product. Any dried, frozen, or liquid eggs, with or without added ingredients. However, products which contain eggs only in a relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry may be exempted by the Secretary under such conditions as may be prescribed to assure that the egg ingredients are not adulterated and such products are not represented as egg products. Some of the products exempted as not being egg products are specified by the AMS Poultry Programs in 7 CFR 57.5.

Mandatory sample. An official sample of egg product(s) taken for testing under authority of the Egg Products Inspection Act (21 U.S.C. 1031–1056) for analysis by a United States Department of Agriculture, Agricultural Marketing Service, Science and Technology laboratory at government expense. A mandatory sample shall include an egg product sample to be analyzed for microbiological, chemical, or physical attributes. A mandatory egg product sample analyzed for the presence of Salmonella is also referred to as a confirmation sample as specified by the Food Safety and Inspection Service agency of USDA in 9 CFR 590.580, paragraph (d).

Official plant. Any plant, as determined by the Secretary, at which the U.S. Department of Agriculture maintains inspection of the processing of egg products under the authority of the Egg Products Inspection Act.

Pasteurize. The subjecting of each particle of egg products to heat or other treatments to destroy harmful viable microorganisms by such processes as may be prescribed by the regulations in the EPIA.

Pesticide chemical, food additive, color additive, and raw agricultural commodity. These terms shall have the same meaning for purposes of this subpart as under sections 408, 409, and 706 of the Federal Food, Drug, and Cosmetic Act.

Plant. Any place of business where egg products are processed.

Processing. Manufacturing of egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products at official plants.


§ 94.3 Analyses performed and locations of laboratories.

(a) Samples drawn by a USDA egg products inspector will be analyzed by AMS Science and Technology (S&T) personnel for microbiological, chemical, and physical attributes. The analytical results of these samples will be reported to the resident egg products inspector at the applicable plant on the official certificate.

(b) Mandatory egg product samples for Salmonella are required and are analyzed in S&T laboratories to spot check and confirm the adequacy of USDA approved and recognized laboratories for analyzing routine egg product samples for Salmonella.

(c) Mandatory egg product samples for chlorinated hydrocarbons are required and are submitted by the plant inspectors on a random basis. These samples screen for pesticide residues and industrial chemical contaminants in egg products.

(d) Samples are drawn by a USDA egg products inspector to determine potential adulteration. These egg product samples...
samples may be analyzed for extraneous material, color, color additive, pesticide, heavy metal, microorganism, dextrin, or other substance.

(e) The AMS Science and Technology’s Eastern Laboratory shall conduct the majority of laboratory analyses for egg products. The analyses for mandatory egg product samples are performed at the following USDA location: USDA, AMS, Science & Technology, Eastern Laboratory (Microbiology), 2311-B Aberdeen Boulevard, Gastonia, NC 28054-0614.

§ 94.4 Analytical methods.

The majority of analytical methods used by the USDA laboratories to perform mandatory analyses for egg products are listed as follows:

(a) Compendium Methods for the Microbiological Examination of Foods, Carl Vanderzant and Don Splittstoesser (Editors), American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005.


(c) FDA Bacteriological Analytical Manual (BAM), AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877-2417.

(d) Manual of Analytical Methods for the Analysis of Pesticide Residues in Human and Environmental Samples, EPA 600/9-80-038, U.S. Environmental Protection Agency (EPA) Chemical Exposure Research Branch, EPA Office of Research and Development (ORD), 26 West Martin Luther King Drive, Cincinnati, Ohio 45268.

(e) Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II, AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877-2417.

(f) Standard Methods for the Examination of Dairy Products, American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005.

(g) Standard Methods for the Examination of Water and Wastewater, American Public Health Association (APHA), the American Water Works Association (AWWA) and the Water Pollution Control Federation, AWWA Bookstore, 6666 West Quincy Avenue, Denver, CO 80225.


(i) U.S. Food and Drug Administration, Pesticide Analytical Manuals (PAM), Volumes I and II, Food and Drug Administration, Center for Food Safety and Applied Nutrition (CFSAN), 200 C Street, SW, Washington, DC 20204 (available from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161).

Subpart B—Voluntary Analyses of Egg Products

§ 94.100 General.

Analyses for voluntary egg product samples may be requested to certify that specifications regarding stated identity, quality, and wholesomeness are met; to test routinely for the presence of Salmonella; and to ensure laboratory quality control with testing activities.
§ 94.101 Definitions.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

Certification sample. An egg product sample submitted by an applicant for chemical, physical, or microbiological analyses and tests at a Science and Technology Division laboratory. This voluntary sample is analyzed or tested by the Division’s analyst or scientist to certify that an egg product lot meets applicable specifications for identity, quality, and wholesomeness.

Surveillance sample. This is a 100 gram sample for Salmonella analysis that is drawn by the USDA egg product inspector from each lot of egg product processed at an official plant. This sample may be analyzed by a Science and Technology Division laboratory, or by a laboratory approved and recognized by the Division to analyze for Salmonella in egg products.

Unofficial sample. These samples of egg products are drawn by plant personnel upon the request of plant management. Analyses of these samples are usually conducted for the plant’s refractometer correlation, bacteriological evaluation of production techniques, or quality control of procedures. Official plant or Science and Technology Division laboratories can analyze these samples.

§ 94.102 Analyses available.

A wide array of analyses for voluntary egg product samples is available. Voluntary egg product samples include surveillance, certification, and unofficial samples. The physical and chemical tests for voluntary egg products include analyses for total ash, fat by acid hydrolysis, moisture, salt, protein, beta-carotene, catalase, cholesterol, NEPA color, density, total solids, aflatoxin, dinitrophenol and amitraz residues, BHA, BHT, alcohol, chlorinated hydrocarbon and fumigant residues, dextrin, heavy and light filth, glucose, glycerol and gums. In addition, egg products can be analyzed for high sucrose content, pH, heavy metals and minerals, monosodium dihydrogen phosphate, monosodium glutamate, nitrites, oxygen, palatability and odor, phosphorus, propylene glycol, SLS, and zeolex. There are also be tests for starch, total sugars, sugar profile, whey, standard plate count, direct microscopic count, Campylobacter, coliforms, presumptive Escherichia coli, Listeria monocytogenes, proteolytic count, psychrotrophic bacteria, Salmonella, Staphylococcus, thermoduric bacteria, and yeast with mold count.

§ 94.103 Analytical methods.

The analytical methods used by the Science and Technology Division laboratories to perform voluntary analyses for egg products shall be the same as listed in §94.4.

§ 94.104 Fees and charges.

(a) The fee charged for any single laboratory analysis of voluntary egg product samples shall be obtained from the schedules of charges in paragraph (a) of §91.37 of this subchapter.

(b) The charge for any requested laboratory analysis not listed shall be based on the standard hourly rate specified in §91.37, paragraph (b).

Subpart C—Salmonella Laboratory Recognition Program

§94.200 [Reserved]

Subpart D—Processed Poultry Products

§ 94.300 General.

Laboratory services of processed poultry products are conducted to derive their analytical attributes used to determine the compliance of the product with applicable specifications.

§ 94.301 Definitions.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:
§ 94.302 Analyses available and locations of laboratories.

(a) The Science and Technology Division laboratories will analyze processed poultry products for moisture, fat, salt, protein, nitrites, and added citric acid.

(b) Deboned poultry for roasting will have the individual dark meat, light meat, and skin portions tumbled separately in the natural juices prior to grinding. The skin, light meat, and dark meat portion weight percentages of the total product are determined. The ground skin, ground dark meat, and ground light meat portions will be analyzed separately for moisture, protein, salt, and fat. Moisture to protein ratios will be reported also for the individual portions of poultry.

(c) Canned boned poultry for a variety of USDA programs will be tested as a total can composite of the canned product for moisture, fat, salt, and protein analyses. Additional poultry commodities and related products for specific USDA sponsored programs will be tested for different chemical and physical attributes.

(d) Microbiological analyses, as the Salmonella determination, are available for poultry products.

(e) The majority of analyses for processed poultry products shall be performed at the Science and technology Division Eastern Laboratory, as indicated in paragraph (e) of §94.3.

§ 94.303 Analytical methods.

The analytical methods used by the USDA laboratories to perform analyses for processed poultry products are found in the latest edition of the Official Methods of Analysis of AOAC INTERNATIONAL, Suite 500, 481 North Frederick Avenue, Gaithersburg, MD 20877–2417.

[61 FR 51352, Oct. 2, 1996]

§ 94.304 Fees and charges.

(a) The fee charged for any single laboratory analysis of processed poultry products shall be obtained from the schedules of charges in paragraph (a) of §91.37 of this subchapter.

(b) The laboratory analyses for processed poultry products shall result in an additional fee, found in Table 7 of §91.37 of this subchapter, for sample preparation or grinding.

(c) The charge for any requested laboratory analysis of processed poultry products not listed shall be based on the standard hourly rate specified in §91.37 (b) of this subchapter.

PART 95 [RESERVED]

PART 96—COTTONSEED SOLD OR OFFERED FOR SALE FOR CRUSHING PURPOSES (CHEMICAL ANALYSIS AND UNITED STATES OFFICIAL GRADE CERTIFICATION)

Subpart A—Cottonseed Chemists—Licensing Regulations

Sec.
96.1 General.

DEFINITIONS

96.2 Terms defined.

LICENSED COTTONSEED CHEMISTS

96.3 Application for license as cottonseed chemist; form.

96.4 Examination of applicant.

96.5 Period of license; renewals.

96.6 Conditions in licensing.

96.7 Sustained proficiency; suspension of license of cottonseed chemist.

96.8 Annual review of licensed chemist.

96.9 Fees for grading and certification.

96.10 Records of analyses; inspection of certificate recordkeeping.

96.11 Official and unofficial samples; analyses; certificate.

96.12 Unlicensed persons shall not analyze and certify the grade of official samples.

96.13 Grade certificate; form.

96.14 Reports of licensed chemists.

96.15 Information of violations.
subpart B—Official Cottonseed Grade Calculations

96.23 General.
96.24 Definitions, cottonseed quality analysis terms.
96.25 Determination of grade.
96.26 Determination of quantity index.
96.27 Determination of quality index.
96.28 Calculation of grades of official samples.
96.29 Analysis and certification of samples and grades.

A FEES AND CHARGES

96.20 Fee for chemist’s license.
96.21 Fee for certificates to be paid by licensee to Service.
96.22 Fees for the review of grading of cottonseed.

subpart A—Cottonseed Chemists—Licensing Regulations

96.2 Terms defined.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Blind check sample. A sample designated to check the routine analytical testing performance of the licensed USDA cottonseed chemist. The cottonseed is originally mixed in bulk quantities at a Division laboratory and packaged so that it is a representative portion for the samples forwarded to all chemists in a region under a certain number code. An oil mill representative and official cottonseed sampler repackage and identify the cottonseed as an official sample so that it would be blind or unknown as a check sample to the analyst.

Commercial laboratory. A chemical laboratory operated by an individual, firm, or corporation in which one or more persons are engaged in the chemical analysis of materials for the public.

Cotton gin. The machine or device used to separate the cotton fiber from the cottonseed.

Cottonseed. The word “cottonseed” as used in this part means the seed, after having been put through the usual and customary process known as cotton ginning, of any cotton produced within the continental United States.

Dispute. A disagreement between parties as to the true grade of a sample of cottonseed analyzed and graded by a licensed chemist.

License. A license issued under the Act by the Secretary.

Licensed cottonseed chemist. A person licensed under the Act by the Secretary to make quantitative and qualitative chemical analyses of official samples of cottonseed, according to the methods prescribed by the Director of the Division, and to certify the grade according to the official cottonseed standards of the United States.

Licensed cottonseed sampler. A person licensed by the Secretary to draw and to certify the authenticity of samples of cottonseed in accordance with the regulations in this subpart.

Lot. That parcel or quantity of cottonseed, offered for sale or tendered for delivery, or delivered on a sale or contract of sale, in freight cars, trucks, wagons, or otherwise in the quantities and within the time limits, prescribed from time to time by the Director of the AMS Cotton Division, for the drawing and preparation of official samples by licensed cottonseed samplers.

Official cottonseed standards. The official standards of the United States for the grading, sampling, and analyzing of
§ 96.3 Application for license as cottonseed chemist; form.

(a) Application for a license to analyze and grade cottonseed shall be made to the Director on a form furnished for the purpose by the Science and Technology Division.

(b) Each application shall be in English, shall be signed by the applicant, and shall contain or be accompanied by satisfactory evidence:

(1) That the applicant is at least 25 years of age and that the applicant is an actual resident of the continental United States;

(2) That the applicant holds a degree in chemistry or chemical engineering from a recognized college or university, and has had not less than 3 years practical experience in laboratory work, in which the applicant shall have analyzed quantitatively and qualitatively samples of cottonseed; or in the absence of a degree from a recognized college or university, that the applicant has had at least 5 years practical laboratory experience, 3 years of which shall have been devoted chiefly to the analysis of samples of cottonseed;

(3) That the applicant has no financial interest, or is in the employ of anyone having a financial interest in any cottonseed oil mill or cotton ginning establishment;

(4) That the applicant agrees to comply with and abide by the terms of the Act and these regulations so far as they may relate to him or her;

(5) That the applicant is an independent analytical chemist or an employee of a commercial analytical laboratory; and

(6) That the applicant owns or will have the use of all of the apparatus specified in the regulations, established hereunder for the analysis and grading of cottonseed.

(c) Every chemist licensed hereunder to analyze cottonseed and to certify the grade thereof shall comply with the Society’s official analytical test methods and other methods of analysis approved by the Director.

(d) The applicant shall furnish such additional information, as the Director shall at any time find to be necessary, to the consideration of the submitted application.

(e) Upon receipt of an incomplete or improperly executed application, the applicant will be notified of the deficiency in the application. If the application is not corrected and returned within 30 days following the date of notification, the application will be considered as having been abandoned.


§ 96.4 Examination of applicant.

Each applicant for a license as a chemist and each licensed chemist shall, when requested, submit to a practical examination and written test, to show an ability to analyze and grade cottonseed. These examinations can only be administered by the supervisor of cottonseed chemists. The chemist’s failure to pass such tests may be considered sufficient ground for withholding the issuance of a license or of a renewal of a license.


§ 96.5 Period of license; renewals.

The period for which a license may be issued shall be from the first day of August, until, and including the 31st day of July, following. Renewals shall be for not more than 1 year beginning with the first day of August of each year, provided that licenses issued on
and after June 1 of any year shall be for the period ending on July 31 of the following year.

§ 96.6 Conditions in licensing.

(a) It shall be a condition of the licensing of any person and of the retention by him or her of a license, that during the active cotton season each year, the licensee shall be engaged in or in connection with the grading of cottonseed; that each cottonseed sample offered for grading shall be analyzed and grade certified by the licensee, in accordance with the official cottonseed standards of the United States; and that the USDA license of the cottonseed chemist shall not be used or be allowed to be used for any improper purpose.

(b) A USDA licensed cottonseed chemist shall be required to participate in each quality assurance program and each collaborative study for the analytical testing of cottonseed as follows:

(1) The licensed chemist must participate in the American Oil Chemists’ Society (AOCS) cottonseed series which requires the testing of 10 known cottonseed samples per year for foreign matter, moisture, free fatty acids, oil, and ammonia.

(2) The licensed chemist must analyze and issue a grade for 10 blind cottonseed check samples per year from the Science and Technology Division. These blind check samples will be submitted as “official” samples.

(3) The chemist shall participate in all collaborative cottonseed analytical method validation studies, initiated by the Division Director.

(c) Each licensed chemist shall keep his or her license conspicuously posted at the place where he or she functions as a chemist, or in such other place as may be approved by the Division Director.

(d) Each licensed chemist must pay in a timely manner an annual licensing renewal fee and other charges and fees assessed by the Division, as listed in §§96.20 and 96.21. In the event the chemist fails to pay the annual license renewal fee by the 31st day of August, the chemist will be sent a written notice of a 7-day review by the Director for the suspension of his or her license.

§ 96.7 Sustained proficiency; suspension of license of cottonseed chemist.

(a) Sustained proficiency in the analysis of the two check sample series is required to maintain a license. If a licensed chemist fails to perform satisfactorily during a 1 year period on either the AOCS or the USDA check cottonseed series, the chemist shall be placed on probation for 1 year, providing that the person achieves a passing score (90 or higher) on a retake of the proficiency examination. In the event that the chemist fails the examination, he or she may be subject to an immediate suspension of the license.

(b) Failure to perform satisfactorily with either quality assurance program during a 1 year probationary period may also result in suspension of the license.

(c) Pending final action by the Director to suspend a license of a cottonseed chemist, a written notice of such suspension shall be given to the respective licensee, accompanied by a statement of the reasons therefore. Within 7 days after receipt of notice and statement of reasons by a licensee, an appeal may be filed in writing with the Director supported by any argument or evidence as to why the license should not be suspended. After expiration of the 7-day period and consideration of such argument and evidence, the Director shall take such action, as deemed appropriate, with respect to a suspension.

(d) Upon termination of service as a cottonseed chemist or suspension of such license, such licensee shall surrender the license immediately to the supervisor of the cottonseed chemists.

(e) The minimum period of license suspension for a cottonseed chemist shall be 1 year, after which the chemist may reapply and be reexamined for a USDA license.

(f) At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates
of the suspension period shall be endorsed thereon and returned to the licensed chemist to whom it was originally issued.

§ 96.8 Annual review of licensed chemist.

Each licensed chemist shall be subject to an annual on-site review, by the supervisor of the cottonseed chemists, to assess the chemist's continued conformance with procedure and equipment requirements of official analytical test methods.

§ 96.9 Fees for grading and certification.

Whenever any licensed chemist shall grade and/or certify any cottonseed or samples for a fee, the fee charged shall be reasonable, unconditional, nondiscriminatory, and shall be in accordance with a schedule previously submitted to and approved by the Division. The schedule shall include the certificate fee provided for in §96.21.

§ 96.10 Records of analyses; inspection of certificate recordkeeping.

(a) Certificate recordkeeping responsibilities. The laboratory shall have an adequate system for the numbering and accounting of issued official cottonseed certificates. Provisions shall be made for consecutively numbering all cottonseed grade certificates issued and listing in a separate journal certificate numbers with the sample identification for accurate billing.

(b) Retention of records for inspection. Each licensed chemist, shall keep, or shall cause to be kept for him or her, for a period of at least 3 years after date of analysis, a record of the analysis of each individual sample of cottonseed graded by the licensee.

(c) Each licensed chemist shall permit any authorized officer or agent of the Department to inspect or examine, on any business day during normal business hours, books and records relating to analyses of cottonseed samples and issuance of cottonseed grade certificates under the Act and the regulations in this subpart.

§ 96.11 Official and unofficial samples; analyses; certificate.

(a) Each licensed cottonseed chemist shall designate a certificate number from a series of assigned numbers to each official sample of cottonseed as received and shall analyze and certify over his or her signature the grade of each sample or lot of cottonseed in the order of its receipt.

(b) Each such sample which is in proper condition for analysis under these regulations and which is accompanied by the certificate of a licensed cottonseed sampler certifying it to be an official sample that represents an identified lot of cottonseed shall be considered an official sample. In any case where the original sample is lost or destroyed before analysis, the duplicate thereof, retained by the licensed cottonseed sampler, as provided in §61.34 of this subchapter, shall become the official sample. Each licensed chemist shall retain for at least 2 weeks a portion of each official sample first analyzed; and in any case where a review is requested under §61.8 of this subchapter, such retained portion shall be considered an official sample for purposes of review analysis.

(c) Each such sample which is: (1) Not sufficient for proper analysis as an official sample under these regulations, or

(2) Not accompanied by a certificate of a licensed cottonseed sampler, or

(3) Not believed to be samples of the same seed represented by an official sample (except duplicates or lost or destroyed official samples) shall be considered an unofficial sample and the licensed cottonseed chemist's certificate of the grade thereof shall be plainly marked: “Sample not official; grade applies to sample only.” This paragraph shall not apply to mill control or crush samples.

§ 96.12 Unlicensed persons shall not analyze and certify the grade of official samples.

(a) No person shall in any way represent that he or she is a chemist licensed under the Act, unless that person holds a license issued under the Act. Title 18 U.S.C. 1001, Crimes and
Criminal Procedures, makes it a criminal offense to knowingly and willfully make such false representations.

(b) Only licensed chemists shall analyze and certify the grade of official cottonseed samples.

$§ 96.13$ Grade certificate; form.

Each grade certificate issued under the Act by a licensed chemist shall be in a form, approved for the purpose by the Director and shall embody within its written or printed terms:

(a) The caption “Cottonseed Grade Certificate.”

(b) The serial number assigned to it.

(c) The date and place of issuance.

(d) A statement certifying that the analysis of the cottonseed sample was made according to the methods approved by the Director of the Division and that the grade given is according to the official standards of the United States.

(e) A statement of the condition of the lot of cottonseed as reported by the sampler, and in cases where the sample was submitted by a licensed sampler, the name and license number of the sampler.

(f) The identification of each lot of cottonseed by the marks and notations by which the seed was identified at the time the sample was taken, and the origin of the cottonseed by county and State.

(g) All analytical data required by the Director.

(h) The signature and license number of the chemist. In addition, the grade certificate form shall be submitted to and approved by the Division, before use by a licensed chemist. A copy of each certificate shall be mailed to a designated office of the Division within 36 hours after its issuance.

§ 96.14 Reports of licensed chemists.

Each licensed chemist shall periodically, when requested by the Director, make reports on forms furnished for the purpose by the Division, concerning the activities as such licensed chemist.

§ 96.15 Information of violations.

Whenever any person licensed under this part becomes aware of information relating to the violation of the Act or these regulations, such person shall inform the Director of the Division of the alleged violations.

§ 96.16 Licensed chemists; suspension or revocation of license.

The Director may, without a hearing, suspend or revoke the license issued to a licensed chemist upon written request and a satisfactory statement of reasons submitted by such licensed chemist. Pending final action by the Secretary, the Director may, whenever such action is deemed necessary, suspend or revoke the license of any licensed chemist when such licensed chemist:

(a) Has ceased to perform services as such chemist;

(b) Has knowingly or carelessly analyzed cottonseed improperly;

(c) Has violated or evaded any provision of the Act or the regulations so far as they relate to the licensee;

(d) Has used the license or allowed it to be used for any fraudulent or improper purposes; or

(e) Has in any manner become incompetent or incapacitated to perform the duties of a licensed chemist.

In such cases the Director shall give written notice of the suspension or revocation to the licensed chemist, accompanied by a statement of the reasons therefor. Within 10 days after the receipt of the aforesaid notice and statement of reasons by such licensee, the individual may file an appeal, in writing, with the Secretary, supported by any argument or evidence that the licensee may wish to offer, as to why the license should not be suspended or revoked. After the expiration of the aforesaid 10-day period and consideration of such argument and evidence, the Secretary will take such action as is deemed appropriate with respect to such suspension or revocation. When no appeal is filed within the prescribed 10 days, the license shall be automatically suspended or revoked.
§ 96.17 Revoked license to be returned to Division.

If a license issued to a licensed chemist is revoked, such license shall be returned to the Division.

§ 96.18 Duplicate license.

Upon satisfactory proof of the loss or destruction of a license issued to a licensed chemist, a duplicate thereof may be issued under the same or a new number.

§ 96.19 Information on grading to be kept confidential.

Every person licensed under the Act as a licensed chemist shall keep confidential all information secured by the licensee, relative to cottonseed analyzed and graded by the licensee. The licensee shall not disclose such information to any person, except to the owner or custodian of the seed in question, or to an authorized agent of the Department.

FEES AND CHARGES

§ 96.20 Fee for chemist’s license.

(a) The fee for the examination of an applicant for a license as a chemist to analyze and certify the grade of cottonseed shall be $1,166.00.

(b) The examination fee shall be paid at the time the application is filed or at a time prior to the administration of the examinations. This fee shall be paid regardless of the outcome of the licensing examinations. The examination fee shall be nonrefundable to the applicant; however, in the event of death of the applicant prior to the examination, full payment of the fee may be returned to the applicant’s beneficiary. If an application is filed with an insufficient fee, the application and fee submitted will be returned to the applicant.

(c) For each renewal of a chemist’s license, the fee shall be $292.00.

§ 96.21 Fee for certificates to be paid by licensee to Service.

(a) To cover the cost of administering the regulations in this part, each licensed cottonseed chemist shall pay to the Service $3.18 for each certificate of the grade of cottonseed issued by the licensee.

(b) Upon receipt of a statement from the Service each month, showing the number of certificates issued by the licensee, such licensee will forward the appropriate remittance in the form of a check, draft, or money order payable to the “Agricultural Marketing Service, USDA.”

§ 96.22 Fees for the review of grading of cottonseed.

For the review of the grading of any lot of cottonseed, the fee shall be $60.00. Remittance to cover such fee, in the form of a check, draft, or money order payable to the “Agricultural Marketing Service, USDA” shall accompany each application for review. For each such fee collected, $20.00 shall be disbursed to each of the two licensed chemists designated to make reanalysis of such seed.

Subpart B—Official Cottonseed Grade Calculations

§ 96.23 General.

Using methods prescribed by the Science and Technology Division, the licensed cottonseed chemist makes quantitative and qualitative chemical analyses, certificating the grade according to the official cottonseed standards of the United States.

§ 96.24 Definitions, cottonseed quality analysis terms.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Cottonseed quality analysis. In determining the quality of cottonseed, testing is performed by licensed chemists for total composition of oil, ammonia, moisture, free fatty acids, and foreign matter. These individual analytical factors of cottonseed samples are combined to form indexes of quantity and...
Agricultural Marketing Service, USDA

§ 96.27 Determination of quality index.

The quality index of cottonseed shall be an index of purity and soundness, and shall be determined as follows:

(a) Prime quality cottonseed. Cottonseed, that by analysis, contains not more than 1.0 percent of foreign matter, not more than 12.0 percent of moisture, and not more than 1.8 percent of free fatty acids in the oil in the seed, shall be known as prime quality cottonseed and shall have a quality index of 100.

(b) Below prime quality cottonseed. The quality index of cottonseed that, by analysis, contains foreign matter, moisture, or free fatty acids in the oil in the seed, in excess of the percentages prescribed in paragraph (a) of this section, shall be found by reducing the quality index of prime quality cottonseed as follows:

(1) Four-tenths of a unit for each 0.1 percent of free fatty acids in the oil, in the seed, in excess of 1.8 percent.

(2) One-tenth of a unit for each 0.1 percent of foreign matter in excess of 1.0 percent.

(3) One-tenth of a unit for each 0.1 percent of moisture in excess of 12.0 percent.

(c) Off quality cottonseed. Cottonseed that has been treated by either mechanical or chemical process other than the usual cleaning, drying, and ginning (except sterilization required by the United States Department of Agriculture for quarantine purposes) or that are fermented or hot, or that upon analysis are found to contain 12.5 percent or more of free fatty acids, in the oil, in the seed, or more than 10.0 percent of foreign matter, or more than 20.0 percent of moisture, or more than 25.0 percent of moisture and foreign matter combined, shall be designated as “off quality cottonseed.”

(d) Below grade cottonseed. Cottonseed, the grade of which, when calculated according to §96.25 is below grade 40.0, shall be designated as “below grade cottonseed,” and a numerical grade shall not be indicated.
§ 96.28 Calculation of grades of official samples.

(a) Data on certificates of official cottonseed analyses shall be expressed as follows:
- Foreign Matter to 0.1 percent
- Oil to 0.1 percent
- Ammonia to 0.01 percent
- Free Fatty Acid, when 5% or under, to 0.1 percent
- Free Fatty Acid, when over 5%, to 0.5 percent
- Quantity Index to 0.01 percent
- Quality Index to 0.1 percent

(b) Grade to whole or half units, whichever actual calculation is nearest shall be determined as follows:

1. The calculation of grades shall be made by the method of disregarding the figures to the right of the second decimal place.
2. Calculated grades ending with .2500 through .7499 will be considered to be in the .25 through .74 range, and will be reported to the nearest half grade.
3. Calculated grades ending with .7500 through .2499 will be considered to be in the .75 through .24 range, and will be reported to the nearest whole grade.

§ 96.29 Analysis and certification of samples and grades.

The certification of samples of cottonseed, and the analysis and certification of grades of cottonseed shall be performed in accordance with methods, approved from time to time for the purposes by the Director, or a designated representative.

PART 97—PLANT VARIETY AND PROTECTION

SCOPE

Sec.
97.1 General.

DEFINITIONS
97.2 Meaning of words.

ADMINISTRATION
97.3 Plant Variety Protection Board.

THE APPLICATION
97.5 General requirements.
97.6 Application for certificate.
97.7 [Reserved]
97.8 Specimen requirements.
97.9 Drawings and photographs.

7 CFR Ch. I (1–1–01 Edition)

97.10 Parts of an application to be filed together.
97.11 Application accepted and filed when received.
97.12 Number and filing date of an application.
97.13 When the owner is deceased or legally incapacitated.
97.14 Joint applicants.
97.15 Assigned varieties and certificates.
97.16 Amendment by applicant.
97.17 Papers of completed application to be retained.
97.18 Applications handled in confidence.
97.19 Publication of pending applications.
97.20 Abandonment for failure to respond within the time limit.
97.21 Extension of time for a reply.
97.22 Revival of an application abandoned for failure to reply.
97.23 Voluntary withdrawal and abandonment of an application.
97.24 Assignee.

EXAMINATIONS, ALLOWANCES, AND DENIALS
97.100 Examination of applications.
97.101 Notice of allowance.
97.102 Amendments after allowance.
97.103 Issuance of a certificate.
97.104 Application or certificate abandoned.
97.105 Denial of an application.
97.106 Reply by applicant; request for reconsideration.
97.107 Reconsideration and final action.
97.108 Amendments after final action.

CORRECTION OF ERRORS IN CERTIFICATE
97.120 Corrected certificate—office mistake.
97.121 Corrected certificate—applicant's mistake.

REISSUANCE OF CERTIFICATE
97.122 Certified seed only election.

ASSIGNMENTS AND RECORDING
97.130 Recording of assignments.
97.131 Conditional assignments.
97.132 Assignment records open to public inspection.

MARKING OR LABELING PROVISIONS
97.140 After filing.
97.141 After issuance.
97.142 For testing or increase.
97.143 Certified seed only.
97.144 Additional marking or labeling.

ATTORNEYS AND AGENTS
97.150 Right to be represented.
97.151 Authorization.
97.152 Revocation of authorization; withdrawal.
97.153 Persons recognized.
97.154 Government employees.
97.155 Signatures.
Public Use Declaration

97.700 Public interest in wide usage.

Publication

97.800 Publication of public variety descriptions.
97.900 Form of official identification symbol.


Source: 58 FR 42435, Aug. 9, 1993, unless otherwise noted.

Scope

§ 97.1 General.

Certificates of protection are issued by the Plant Variety Protection office for new, distinct, uniform, and stable varieties of sexually reproduced or tuber propagated plants. Each certificate of plant variety protection certifies that the breeder has the right, during the term of the protection, to prevent others from selling the variety, offering it for sale, reproducing it, importing or exporting it, conditioning it, stocking it, or using it in producing a hybrid or different variety from it, as provided by the Act.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995]

Definitions

§ 97.2 Meaning of words.

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. The definitions of terms contained in the Act shall apply to such terms when used in this part. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

Abandoned application. An application which has not been pursued to completion within the time allowed by the Office or has been voluntarily abandoned.

Act. The Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

Administrator. The Administrator of the Agricultural Marketing Service of the U.S. Department of Agriculture, or any other officer or employee of the Department of Agriculture to whom
authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his or her stead.

Applicant. The person who applied for a certificate of plant variety protection.

Application. An application for plant variety protection under the Act.

Assignee. A person to whom an owner assigns his/her rights in whole or in part.

Board. The Plant Variety Protection Board appointed by the Secretary.

Certificate. A certificate of plant variety protection issued under the Act by the Office.

Certified seed. Seed which has been determined by an official seed certifying agency to conform to standards of genetic purity and identity as to variety, which standards have been approved by the Secretary.

Commissioner. The Examiner in Chief of the Office.

Decision and order. Includes the Secretary’s findings of fact; conclusions with respect to all material issues of fact and law, as well as the reasons or basis therefor; and order.

Examiner. An employee of the Plant Variety Protection Office who determines whether a certificate is entitled to be issued. The term shall, in all cases, include the Commissioner.

Foreign application. An application for plant variety protection filed in a foreign country.

Hearing Clerk. The Hearing Clerk, U.S. Department of Agriculture, Washington, DC.

Hearing Officer. An Administrative Law Judge, U.S. Department of Agriculture, or other officer or employee of the Department of Agriculture, duly assigned to preside at a hearing held pursuant to the rules of this part.

Office or Plant Variety Protection Office. The Plant Variety Protection Office, Science and Technology Division, AMS, USDA.


Owner. A breeder who developed or discovered a variety for which plant variety protection may be applied for under the Act, or a person to whom the rights to such variety have been assigned or transferred.

Person. An individual, partnership, corporation, association, government agency, or other business or governmental entity.

Secretary. The Secretary of Agriculture of the United States or any other officer or employee of the U.S. Department of Agriculture, to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his or her stead.

Seed certifying agency. It shall be defined as set forth in the Federal Seed Act (53 Stat. 1275).

Sale for other than seed purposes. The transfer of title to and possession of the seed by the owner to a grower or other person, for reproduction for the owner, for testing, or for experimental use, and not for commercial sale of the seed or the reproduced seed for planting purposes.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995; 61 FR 248, Jan. 4, 1996]

ADMINISTRATION

§ 97.3 Plant Variety Protection Board.

(a) The Plant Variety Protection Board shall consist of 14 members appointed for a 2-year term. The Board shall be appointed every 2 years and shall consist of individuals who are experts in various areas of varietal development. The membership of the Board, which shall include farmer representation, shall be drawn approximately equally from the private or seed industry sector and from the government or public sector. No member shall be eligible to act on any matter involving any appeal or questions under section 44 of the Act, in which the member or his or her employer has a direct financial interest.

(b) The functions of the Board are to:

(1) Advise the Secretary concerning adoption of rules and regulations to facilitate the proper administration of the Act;

(2) Make advisory decisions on all appeals from the examiner or Commissioner;

(3) Advise the Secretary on the declaration of a protected variety open to use in the public interest; and
(4) Advise the Secretary on any other matters under the regulations in this part.

(c) The proceedings of the Board shall be conducted in accordance with the Federal Advisory Committee Act, Administrative Regulations of the U.S. Department of Agriculture (7 CFR part 25), and such additional operating procedures as are adopted by members of the Board.

[58 FR 42435, Aug. 9, 1993, as amended at 61 FR 248, Jan. 4, 1996]

THE APPLICATION

§ 97.5 General requirements.

(a) Protection under the Act shall be afforded only as follows:

(1) Nationals and residents of the United States shall be eligible to receive all of the protection under the Act.

(2) Nationals and residents of Member States of the International Union for the Protection of New Varieties of Plants (including states which are members of an intergovernmental organization which is a UPOV member) shall be eligible to receive the same protection under the Act as is provided to nationals of the United States.

(3) Persons who are not entitled to protection under paragraph (a)(1) or (2) of this section, and who are nationals of a foreign state which is not a member of the International Union for the Protection of New Varieties of Plants, shall be entitled to receive only so much of the protection provided under the Act, as is afforded by such foreign state to nationals of the United States.

(3) Persons who are not entitled to protection under paragraph (a)(1) or (2) of this section, and who are nationals of a foreign state which is not a member of the International Union for the Protection of New Varieties of Plants, shall be entitled to receive only so much of the protection provided under the Act, as is afforded by such foreign state to nationals of the United States, for the same genus and species under the laws of such foreign state in effect at the time that the application for protection under the Act is filed, except where further protection under the Act must be provided in order to avoid the violation of a treaty to which the United States is a party.

(b) Applications for certificates shall be made to the Plant Variety Protection Office. An application shall consist of:

(1) A completed application form, except that the section specifying that seed of the variety shall be sold by variety name only, as a class of certified seed, need not be completed at the time of application.

(2) A completed set of the exhibits, as specified in the application form, unless the examiner waives submission of certain exhibits as unnecessary, based on other claims and evidence presented in connection with the application.

(3) Language and legibility: (i) Applications and exhibits must be in the English language and legibly written, typed or printed.

(ii) Any interlineation, erasure, cancellation, or other alteration must be made in permanent ink before the application is signed and shall be clearly initialed and dated by the applicant to indicate knowledge of such fact at the time of signing.

(4) To determine the extent of reciprocity of the protection to be provided under the Act, persons filing an application for plant variety protection in the United States under the provisions of paragraph (a)(3) of this section shall, upon request 1, furnish the Plant Variety Protection Office with a copy of the current plant variety protection laws and regulations for the country of which the applicant is a national, and an accurate English translation of such laws and regulations.

(c) Application and exhibit forms shall be issued by the Commissioner. (Copies of the forms may be obtained from the Plant Variety Protection Office, Science and Technology Division, AMS, USDA, room 500, National Agricultural Library Building, Beltsville, Maryland 20705.)

(d) Effective the date of these regulations and rules of practice, the signature of the applicant, or his or her agent or attorney on any affidavit or other statement filed pursuant to these regulations and rules constitutes a certification by the applicant. The signature certifies that all information relied on in any affidavit or statement filed in the course of the proceeding is

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1 Copies and translations of foreign laws and regulations will be requested only if they are not in the files of the Plant Variety Protection Office. Applicants may learn whether such a request will be made by writing to the address given in paragraph (c) of this section.
§ 97.6 Application for certificate.

(a) An application for a plant variety protection certificate shall be signed by, or on behalf, of the applicant.

(b) The application shall state the full name, including the full first name and the middle initial or name, if any, and the capacity of the person executing it.

(c) The fees for filing an application, and search or examination, shall be submitted with the application in accordance with §§ 97.175 through 97.178.

(d) The applicant shall submit with the application:

(1) At least 2,500 seeds of the viable basic seed required to reproduce the variety;

(2) With the application for a tuber propagated variety, verification that a viable cell culture has been deposited in a public depository approved by the Commissioner and will be maintained for the duration of the certificate; or

(3) With the application for a hybrid from self-incompatible parents, verification that a plot of vegetative material for each parent has been established in a public depository approved by the Commissioner and will be maintained for the duration of the certificate.

§ 97.6 [Reserved]

§ 97.7 Specimen requirements.

(a) The applicant may be required by the examiner to furnish representative specimens of the variety, or its flower, fruit, or seeds, in a quantity and at a specified stage of growth, as may be necessary to verify the statements in the application. Such specimens shall be packed and forwarded in conformity with instructions furnished by the examiner. If the applicant requests the examiner to inspect plants in the field before a final decision is made, all such inspection costs shall be borne by the applicant by payment of fees sufficient to reimburse the Office for all costs, including travel, per diem or subsistence, and salary.

(b) Plant specimens submitted in support of an application shall not be removed from the Office except by an employee of the Office or other person authorized by the Secretary.

(c) Plant specimens submitted to the Office shall, except as provided below, and upon request, be returned to the applicant at his or her expense after the specimens have served their intended purpose. The Commissioner, upon a finding of good cause, may require that certain specimens be retained in the Office for indefinite periods of time. Specimens which are not returned or not retained as provided above shall be destroyed.

§ 97.9 Drawings and photographs.

(a) Drawings or photographs submitted with an application shall disclose the distinctive characteristics of the variety.

(b) Drawings or photographs shall be in color when color is a distinguishing characteristic of the variety, and the color shall be described by use of Nickerson’s or other recognized color chart.

(c) Drawings should be sent flat, or may be sent in a suitable mailing tube, in accordance with instructions furnished by the Commissioner.

(d) Drawings or photographs submitted with an application shall be retained by the Office as part of the application file.

§ 97.10 Parts of an application to be filed together.

All parts of an application, including exhibits, should be submitted to the Office together, otherwise, each part shall be accurately and clearly referenced to the application.

§ 97.11 Application accepted and filed when received.

(a) An application, if materially complete when initially submitted, shall be accepted and filed to await examination.

(b) If any part of an application is so incomplete, or so defective that it cannot be handled as a completed application for examination, as determined by the Commissioner, the applicant will be notified. The application will be
Agricultural Marketing Service, USDA

§ 97.16 Amendment by applicant.

An application may be amended before or after the first examination and action by the Office, after the second or subsequent examination or reconsideration as specified in §97.107, or when and as specifically required by the examiner. Such amendment may include a specification that seed of the variety be sold by variety name only as a class of certified seed, if not previously specified or if previously declined. Once an affirmative specification is made, no

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17189, Apr. 4, 1995]
§ 97.17 Amendment to reverse such a specification will be permitted unless the variety has not been sold and labeled or publication made in any manner that the variety is to be sold by variety name, only as a class of certified seed.

§ 97.17 Papers of completed application to be retained.

The papers submitted with a completed application shall be retained by the Office except as provided in §97.23(c). After issuance of a certificate of protection the Office will furnish copies of the application and related papers to any person upon payment of the specified fee.

§ 97.18 Applications handled in confidence.

(a) Pending applications shall be handled in confidence. Except as provided below, no information may be given by the Office respecting the filing of an application, the pendency of any particular application, or the subject matter of any particular application. Also, nor will access be given to or copies furnished of any pending application or papers relating thereto, without written authority of the applicant, or his or her assignee or attorney or agent. Exceptions to the above may be made by the Commissioner in accordance with 5 U.S.C. 552 and §1.4 of this title, and upon a finding that such action is necessary to the proper conduct of the affairs of the Office, or to carry out the provisions of any Act of Congress, or as provided in sections 56 or 57 of the Act and §97.19.

(b) Abandoned applications shall not be open to public inspection. However, if an abandoned application is directly referred to in an issued certificate and is available, it may be inspected or copies obtained by any person on written request, and with written authority received from the applicant. Abandoned applications shall not be returned.

(c) Decisions of the Commissioner on abandoned applications not otherwise open to public inspection (see paragraph (b) of this section) may be published or made available for publication at the Commissioner’s discretion. When it is proposed to release such a decision, the applicant shall be notified directly or through the attorney or agent of record, and a time, not less than 30 days, shall be set for presenting objections.

§ 97.19 Publication of pending applications.

Information relating to pending applications shall be published in the Official Journal periodically as determined by the Commissioner to be necessary in the public interest. With respect to each application, the Official Journal shall show:

(a) Application number and date of filing;

(b) The name of the variety or temporary designation;

(c) The name of the kind of seed; and

(d) Whether the applicant specified that the variety is to be sold by variety name only as a class of certified seed, together with a limitation in the number of generations that it can be certified.

Additional information, such as the name and address of the applicant or a brief description of the distinctive features of the variety, may be published only upon request or approval received from the applicant, at the time the application is filed or at any time before the notice of allowance of a certificate is issued.

§ 97.20 Abandonment for failure to respond within the time limit.

(a) Except as otherwise provided in §97.104, if an applicant fails to advance actively his or her application within 30 days after the date when the last request for action was mailed to the applicant by the Office, or within such longer time as may be fixed by the Commissioner, the application shall be deemed abandoned. The application fee in such cases will not be refunded.

(b) The submission of an amendment to the application, not responsive to the last request by the Office for action, and any proceedings relative thereto, shall not operate to save the application from abandonment.

(c) When the applicant makes a bona fide attempt to advance the application, and is in substantial compliance
§ 97.101 Notice of allowance.

If, on examination, it shall appear that the applicant is entitled to a certificate, a notice of allowance shall be

§ 97.21 Extension of time for a reply.

The time for reply by an applicant to a request by the Office for certain action, shall be extended by the Commissioner only for good and sufficient cause, and for a specified reasonable time. A request for extension and appropriate fee shall be filed on or before the specified time for reply. In no case shall the mere filing of a request for extension require the granting of an extension or state the time for reply.

§ 97.22 Revival of an application abandoned for failure to reply.

An application abandoned for failure on the part of the applicant to advance actively his or her application to its completion, in accordance with the regulations in this part, may be revived as a pending application within 3 months of such abandonment, upon a finding by the Commissioner that the failure was inadvertent or unavoidable and without fraudulent intent. A request to revive an abandoned application shall be accompanied by a written statement showing the cause of the failure to respond, a response to the last request for action, and by the specified fee.

§ 97.23 Voluntary withdrawal and abandonment of an application.

(a) An application may be voluntarily withdrawn or abandoned by submitting to the Office a written request for withdrawal or abandonment, signed by the applicant or his or her attorney or agent of record, if any, or the assignee of record, if any.

(b) An application which has been voluntarily abandoned may be revived within 3 months of such abandonment by the payment of the prescribed fee and a showing that the abandonment occurred without fraudulent intent.

(c) An original application which has been voluntarily withdrawn shall be returned to the applicant and may be reconsidered only by refiling and payment of a new application fee.

(d) Transitional provision. An applicant whose application is pending on April 4, 1995, may notify the Plant Variety Protection Office in writing that he or she wishes to withdraw the application and refile it under the Plant Variety Protection Act as amended in 1994. Payment of the current application fee is required but no other formalities are necessary.

§ 97.24 Assignee.

The assignee of record of the entire interest in an application is entitled to advance actively or abandon the application to the exclusion of the applicant.

EXAMINATIONS, ALLOWANCES, AND DENIALS

§ 97.100 Examination of applications.

(a) [Reserved]

(b) Examinations of applications shall include a review of all available documents, publications, or other material relating to varieties of the species involved in the application, except that if there are fundamental defects in the application, as determined by the examiner, the examination may be limited to an identification of such defects and notification to the applicant of needed corrective action. However, matters of form or procedure need not, but may, be raised by an examiner until a variety is found to be new, distinct, uniform, and stable and entitled to protection.

§ 97.101 Notice of allowance.

If, on examination, it shall appear that the applicant is entitled to a certificate, a notice of allowance shall be
§ 97.102 Amendments after allowance.

Amendments to the application, after the notice of allowance is issued, may be made, if the certificate has not been issued.

§ 97.103 Issuance of a certificate.

(a) After the notice of allowance has been issued, the prescribed fee is received by the Office, and the applicant has clearly specified whether or not the variety shall be sold by variety name only as a class of certified seed, the certificate shall be promptly issued. Once an election is made and a certificate issued specifying that seed of the variety shall be sold by variety name only as a class of certified seed, no waiver of such rights shall be permitted by amendment of the certificate.

(b) The certificate shall be delivered or mailed to the owner.

§ 97.104 Application or certificate abandoned.

(a) Except as provided in paragraph (c) of this section, if the fee specified in the notice of allowance is not paid within 1 month from the date of the notice, the application shall be considered abandoned.

(b) Upon request by the Office, the owner shall replenish the viable basic seed sample of the variety. Upon request, the sample of seed which has been replaced shall be returned to the owner, otherwise it shall be destroyed. Failure to replenish viable basic seed within 3 months from the date of request shall result in the certificate being regarded as abandoned. No sooner than 1 year after the date of such request, notices of abandoned certificates shall be published in the Official Journal, indicating that the variety has become open for use by the public and, if previously specified to be sold by variety name only as “certified seed only,” that such restriction no longer applies.

(c) If the allowance fee, the viable basic seed sample or the fee for delayed payment are submitted within 9 months of the final due date, it may be accepted by the Commissioner as though no abandonment had occurred. For good cause, the Commissioner may extend for a reasonable time the period for submitting a viable basic seed sample before declaring the certificate abandoned.

(d) A certificate may be voluntarily abandoned by the applicant or his or her attorney or agent of record or the assignee of record by notifying the Commissioner in writing. Upon receipt of such notice, the Commissioner shall publish a notice in the Official Journal that the variety has become open for use by the public, and if previously specified to be sold by variety name as “certified seed only,” that such restriction no longer applies.

§ 97.105 Denial of an application.

(a) If the variety is found by the examiner to be not new, distinct, uniform, and stable, the application shall be denied.

(b) In denying an application, the examiner shall cite the reasons the application was denied. When a reason involves the citation of certain material which is complex, the particular part of the material relied on shall be designated as nearly as practicable. The pertinence of each reason, if not obvious, shall be clearly explained.

(c) If prior domestic certificates are cited as a reason for denial, their numbers and dates and the names of the owners shall be stated. If prior foreign certificates or rights are cited, as a reason for denial, their nationality or country, numbers and dates, and the names of the owners shall be stated, and such other data shall be furnished, as may be necessary to enable the applicant to identify the cited certificates or rights.

(d) If printed publications are cited as a reason for denial, the author (if any), title, date, pages or plates, and places of publication, or place where a copy can be found shall be given.
(e) When a denial is based on facts known to the examiner, and upon request by the applicant, the denial shall be supported by the affidavit of the examiner. Such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

(f) Abandoned applications may not be cited as reasons for denial.

§ 97.106 Reply by applicant; request for reconsideration.

(a) After an adverse action by the examiner, the applicant may respond to the denial and may request a reconsideration, with or without amendment of his or her application. Any amendment shall be responsive to the reason or reasons for denial specified by the examiner.

(b) To obtain a reconsideration, the applicant shall submit a request for reconsideration in writing and shall specifically point out the alleged errors in the examiner’s action. The applicant shall respond to each reason cited by the examiner as the basis for the adverse action. A request for reconsideration of a denial based on a faulty form or procedure may be held in abeyance by the Commissioner until the question of the variety being new, distinct, uniform, and stable is settled.

(c) An applicant’s request for a reconsideration must be a bona fide attempt to advance the case to final action. A general allegation by the applicant that certain language which he or she cites in the application or amendment thereto establishes the variety is new, distinct, uniform, and stable without specifically explaining how the language distinguishes the alleged new, distinct, uniform, and stable variety from the material cited by the examiner shall not be grounds for a reconsideration.

§ 97.107 Reconsideration and final action.

If, upon reconsideration, the application is denied by the Commissioner, the applicant shall be notified by the Commissioner of the reason or reasons for denial in the same manner as after the first examination. Any such denial shall be final unless appealed by the applicant to the Secretary within 60 days from the date of denial, in accordance with §§97.300–97.303. If the denial is sustained by the Secretary on appeal, the denial shall be final subject to appeal to the courts, as provided in §97.500.

§ 97.108 Amendments after final action.

(a) After a final denial by the Commissioner, amendments to the application may be made to overcome the reason or reasons for denial. The acceptance or refusal of any such amendment by the Office and any proceedings relative thereto shall not relieve the applicant from the time limit set for an appeal or an abandonment for failure to reply.

(b) No amendment of the application can be made in an appeal proceeding. After decision on appeal, amendments can only be made to carry into effect a recommendation under §97.302(b).

CORRECTION OF ERRORS IN CERTIFICATE

§ 97.120 Corrected certificate—office mistake.

When a certificate is incorrect because of a mistake in the Office, the Commissioner may issue a corrected certificate stating the fact and nature of such mistake, under seal, without charge, to be issued to the owner and recorded in the records at the Office.

§ 97.121 Corrected certificate—applicant’s mistake.

When a certificate is incorrect because of a mistake by the applicant of a clerical or typographical nature, or of minor character, or in the description of the variety (including, but not limited to, the use of a misleading variety name or a name assigned to a different variety of the same species), and the mistake is found by the Commissioner to have occurred in good faith and does not require a further examination, the Commissioner may, upon payment of the required fee and return of the original certificate, correct the certificate by issuing a corrected certificate, in accordance with section 85
§ 97.122
of the Act. If the mistake requires a re-examination, a correction of the certificate shall be dependent on the results of the reexamination.

REISSUANCE OF CERTIFICATE
§ 97.122 Certified seed only election.
When an owner elects after a certificate is issued to sell the protected variety by variety name only as a class of certified seed, a new certificate may be issued upon return of the original certificate to the Office and payment of the appropriate fee.

ASSIGNMENTS AND RECORDING
§ 97.130 Recording of assignments.
(a) Any assignment of an application for a certificate, or of a certificate of plant variety protection, or of any interest in a variety, or any license or grant and conveyance of any right to use of the variety, may be submitted for recording in the Office in accordance with section 101 of the Act (7 U.S.C. 2531).
(b) No instrument shall be recorded which is not in the English language or which does not identify the certificate or application to which it relates.
(c) An instrument relating to title of a certificate shall identify the certificate by number and date, the name of the owner, and the name of the variety as stated in the certificate. An instrument relating to title of an application shall identify an application by number and date of filing, the name of the owner, and the name of the variety as stated in the application.
(d) If an assignment is executed concurrently or subsequent to the filing of an application, but before its number and filing date are ascertained, the assignment shall identify the application by the date of the application, the name of the owner, and the name of the variety.

§ 97.131 Conditional assignments.
Assignments recorded in the Office are regarded as absolute assignments for Office purposes until canceled in writing by both parties to the assignment or by a decree of a court of competent jurisdiction. The Office shall not determine whether conditions precedent to the assignment, such as the payment of money, have been fulfilled.

§ 97.132 Assignment records open to public inspection.
(a) Assignment records relating to original or amended certificates shall be open to public inspection and copies of any recorded document may be obtained upon payment of the prescribed fee.
(b) Assignment records relating to any pending or abandoned application shall not be available for inspection except to the extent that pending applications are published as provided in section 57 of the Act and §97.19, or where necessary to carry out the provisions of any Act of Congress. Copies of assignment records and information on pending or abandoned applications shall be obtainable only upon written authority of the applicant or his or her assignee, or attorney or agent of record, or where necessary to carry out the provisions of any Act of Congress. An order for a copy of an assignment shall give the proper identification of the assignment.

MARKING OR LABELING PROVISIONS
§ 97.140 After filing.
Upon filing an application for protection of a variety and payment of the prescribed fee, the owner, or his or her designee, may label the variety or containers of the seed of the variety or plants produced from such seed, substantially as follows: “Unauthorized Propagation Prohibited—(Unauthorized Seed Multiplication Prohibited)—U.S. Variety Protection Applied For.”
Where applicable, “PVPA 1994” or “PVPA 1994—Unauthorized Sales for Reproductive Purposes Prohibited” may be added to the notice.

§ 97.131 As amended at 60 FR 17190, Apr. 4, 1995.
§ 97.141 After issuance.
Upon issuance of a certificate, the owner of the variety, or his or her designee, may label the variety or containers of the seed of the variety or
plants produced from such seed substantially as follows: “Unauthorized Propagation Prohibited—(Unauthorized Seed Multiplication Prohibited)—U.S. Protected Variety.” Where applicable, “PVPA 1994” or “PVPA 1994—Unauthorized Sales for Reproductive Purposes Prohibited” may be added to the notice.

§ 97.142 For testing or increase.

An owner who contemplates filing an application and releases for testing or increase, seed of the variety or reproducible plant material of the variety, may label such plant material or containers of the seed or plant material substantially as follows: “Unauthorized Propagation Prohibited—For Testing (or Increase) Only.”

§ 97.143 Certified seed only.

(a) Upon filing an application, or amendment thereto, specifying seed of the variety is to be sold by variety name only as a class of certified seed, the owner, or his or her designee, may label containers of seed of the variety substantially as follows: “Unauthorized Propagation Prohibited—U.S. Variety Protection Applied for Specifying That Seed of This Variety Is To Be Sold By Variety Name Only as a Class of Certified Seed.”

(b) An owner who has received a certificate specifying that a variety is to be sold by variety name only, as a class of certified seed, may label containers of the seed of the variety substantially as follows: “Unauthorized Propagation Prohibited—To Be Sold By Variety Name Only as a Class of Certified Seed—U.S. Protected Variety.”

§ 97.144 Additional marking or labeling.

Additional clarifying information that is not false or misleading may be used by the owner, in addition to the above markings or labeling.

§ 97.154 Attorney and agents

§ 97.150 Right to be represented.

An applicant may actively advance an application or may be represented by an attorney or agent authorized in writing.

§ 97.151 Authorization.

Only attorneys or agents specified by the applicant shall be allowed to inspect papers or take action of any kind, on behalf of the applicant, in any pending application or proceedings.

§ 97.152 Revocation of authorization; withdrawal.

An authorization of an attorney or agent may be revoked by an attorney at any time, and an attorney or agent may withdraw, upon application to the Commissioner. When the authorization is so revoked, or the attorney or agent has so withdrawn, the Office shall inform the interested parties and shall thereafter communicate directly with the applicant, or with such other attorney or agent as the applicant may appoint. An assignment will not of itself operate as a revocation of authorization previously given, but the assignee of the entire interest may revoke previous authorizations and be represented by an attorney or agent of his or her own selection.

§ 97.153 Persons recognized.

Unless specifically authorized as provided in §97.151, no person shall be permitted to file or advance applications before the Office on behalf of another person.

§ 97.154 Government employees.

Officers and employees of the United States who are disqualified by statute (18 U.S.C. 203 and 205) from practicing as attorneys or agents in proceedings or other matters before government departments or agencies, shall not be eligible to represent applicants, except officers and employees whose official duties require the preparation and prosecution of applications for certificates of variety protection.
§ 97.155 Signatures.

Every document filed by an attorney or agent representing an applicant or party to a proceeding in the Office shall bear the signature of such attorney or agent, except documents which are required to be signed by the applicant or party.

§ 97.156 Addresses.

Attorneys and agents practicing before the Plant Variety Protection Office shall notify the Office in writing of any change of address. The Office shall address letters to any person at the last address received.

§ 97.157 Professional conduct.

Attorneys and agents appearing before the Office shall conform to the standards of ethical and professional conduct, generally applicable to attorneys appearing before the courts of the United States.

§ 97.158 Advertising.

(a) The use of advertising, circulars, letters, cards, and similar material to solicit plant variety protection business, directly or indirectly, is forbidden as unprofessional conduct, and any person engaging in such solicitation, or associated with or employed by others who so solicit, shall be refused recognition to practice before the Office or may be suspended, excluded, or disbarred from further practice before the Office.

(b) The use of simple professional letterheads, calling cards, or office signs, simple announcements necessitated by opening an office, change of association, or change of address, distributed to clients and friends and insertion of listings in common form (not display) in a classified telephone or city directory, and listings and professional cards with biographical data in standard professional directories, shall not be considered a violation of this section.

FEES AND CHARGES

§ 97.175 Fees and charges.

The following fees and charges apply to the services and actions specified below:

(a) Filing the application and notifying the public of filing—$320.00.
(b) Search or examination—$2,385.00.
(c) Allowance and issuance of certificate and notifying public of issuance—$320.00.
(d) Revive an abandoned application—$320.00.
(e) Reproduction of records, drawings, certificates, exhibits, or or pointed material (copy per page of material)—$1.10.
(f) Authentication (each page)—$1.10.
(g) Correcting or re-issuance of a certificate—$320.00.
(h) Recording assignments (per certificate/application)—$28.00.
(i) Copies of 8 x 10 photographs in color—$28.00.
(j) Additional fee for reconsideration—$320.00.
(k) Additional fee for late payment—$28.00.
(l) Additional fee for late replenishment of seed—$28.00.
(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)—$3,050.00.
(n) Granting of extensions for responding to a request—$55.00.
(o) Field inspections by a representative of the Plant Variety Protection Office, made at the request of the applicant, shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulations.
(p) Any other service not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $66.00 per employee-hour.

[65 FR 47244, Aug. 2, 2000]

§ 97.176 Fees payable in advance.

Fees and charges shall be paid at the time of making application or at the time of submitting a request for any action by the Office for which a fee or charge is payable and established in this part.

§ 97.177 Method of payment.

Checks or money orders shall be made payable to the Treasurer of the United States. Remittances from foreign countries must be payable and immediately negotiable in the United States.
§ 97.205 Definition; when declared.

A priority contest may be instituted by the Secretary, on his or her own

[Agricultural Marketing Service, USDA]
§ 97.206 Preparation for priority contest between applicants.

(a) Before a priority contest will be handled by the Office, an examiner must determine that the same novel variety is involved in separate applications filed by two or more parties and apparently certifiable to each of the parties, subject to the determination of the question of priority.

(b) The fact that a certificate has been issued will not prevent a priority contest.

§ 97.207 Preparation of priority papers and declaration of priority contest.

(a) When a priority question is found to exist, the examiner shall forward the pertinent files to the Commissioner, together with a written statement showing the reason for the contest.

(b) The Commissioner shall institute and declare the priority contest by forwarding a notice to each of the applicants involved. Each notice shall include the name and residence of each of the other applicants or those of his or her attorney or agent, if any, and of any assignee, and will identify the application of each opposing party by number and filing date, or in the case of a certificate, by the number and date of the certificate. The notice shall specify the basis of the priority contest. The notice shall specify a time, not to exceed 2 months, for filing preliminary statements.

(c) When a notice is returned to the Office undelivered, or when one of the parties resides abroad and his or her agent in the United States is unknown, notice may be given once by publication in the Official Journal.

§ 97.208 Burden of proof.

The parties to a priority contest will be presumed to have developed their varieties in the chronological order of the filing dates of their applications for certificates involved in the priority contest, and the burden of proof will rest upon the party who last filed an application.

§ 97.209 Preliminary statement on novel variety developed in the United States.

(a) Each party to the priority contest is required to file on or before a date fixed by the Office, a concise preliminary statement giving the facts and dates relating to the development of his or her alleged novel variety. The preliminary statement must be signed by the owner; Provided, however, That in appropriate circumstances, as when the owner is dead or legally incapacitated, or a showing is made of inability to obtain a statement from the owner, the preliminary statement may be made by the assignee or by someone authorized or entitled to make the statement, having knowledge of the facts.

(b) Preliminary statements shall be filed with the Office in duplicate. A copy shall be forwarded to each opposing party by the Office as soon as practicable after both parties have filed their statements within the requisite period.

(c) In filing a preliminary statement each party must show the following information:

1. The date upon which the first determination of the novel variety was made.

2. The date upon which the first written description of the novel variety was made. If a written description of the novel variety has not been made prior to the filing date of the application, it must be so stated.
(3) The date of the first act or acts susceptible of proof (other than making a written description or disclosing the novel variety to another person), which, if proven, would establish determination of the novel variety, and a brief description of such act or acts. If there have been no such acts, it must be so stated.

(4) The date of the actual production of the novel variety. If the novel variety had not been actually produced before the filing date of the application, it must be so stated.

(d) When an allegation as to the first written description (paragraph (c)(2) of this section) is made, a copy of such written description shall be attached to the statement.

(e) If a party intends to rely on a prior application, domestic or foreign, the preliminary statement shall clearly identify such prior application. Copies of the cited application and related documents will be served by the Office, upon all interested parties to the contest. In the case of an application filed in a foreign country, English translations shall be served to all interested parties by the party relying on the application filed in the foreign country.

§ 97.210 Preliminary statement on novel variety developed in a foreign country.

When the novel variety was developed in a foreign country, the preliminary statement must show (a) the information specified in §97.209 (c) through (e) and (b) whether, and if so, when and under what circumstances the novel variety was introduced into the United States by or on behalf of the party.

§ 97.211 Statements sealed before filing.

The preliminary statement shall be submitted in a sealed envelope bearing the name of the party filing it and the number and title of the priority contest as shown on the notice issued by the Office. The envelope should be enclosed in an outer mailing envelope marked “To Be Opened Only by the Commissioner.”

§ 97.212 Correction of a statement on motion.

In case of material error arising through inadvertence or mistake, a preliminary statement may be corrected upon a satisfactory showing to the Commissioner that the correction is of material significance. Correction of the statement must be made as soon as practicable after the discovery of the error.

§ 97.213 Failure to file statements.

If any party to a priority contest fails to file a preliminary statement, he or she shall be restricted to his or her earliest effective filing date.

§ 97.214 Access to preliminary statements.

The preliminary statements shall be open to the inspection of any party after the date set for the filing of preliminary statements (§97.207(b)), but shall not be open to inspection prior to that time.

§ 97.215 Dissolution at the request of the Commissioner.

If during a priority contest, information is submitted or found which, in the opinion of the Commissioner, may render the variety ineligible for a certificate, the priority contest may be suspended by the Commissioner and referred to an examiner for consideration of the matter. The parties will be notified of the reason for the suspension. Arguments of the parties regarding the suspension will be considered, if filed within 60 days of the notification. The suspension will then be continued, modified, or dismissed, in accordance with the determination by the Commissioner.

§ 97.216 Concession; abandonment.

(a) An applicant or a certificate holder involved in a priority contest may, at any time, file a written concession of priority, or abandonment of the certificate, signed by him or her. Upon the filing of such an instrument by any party, the decision shall be rendered against the interested party by the Commissioner.

(b) A concession of priority may not be made by an assignee of a part interest.
§ 97.217 Affidavits and exhibits.

Affidavits and exhibits, including official records and any special matter contained in a printed publication, pertinent to the issue involved in the contest, may be introduced as evidence in a priority contest by any party to the contest. In the case of official records and printed publications, the party introducing the evidence shall specify the record or the printed publication, the page or pages to be used, indicate generally its relevancy, and submit to the Commissioner the record or authenticated copy, or the printed publication, or a copy. Copies of affidavits and exhibits, including any record or publication, shall be served by the Commissioner on each of the other interested parties.

§ 97.218 Matters considered in determining a priority.

In determining priority, the Commissioner will consider only priority of development based on the evidence submitted. Questions of novelty generally will not be considered in the decision on priority. The Commissioner may refer proposed findings of fact, conclusions, and notice of priority to the Board for an advisory decision.

§ 97.219 Recommendation by the Commissioner.

The Commissioner may, either before or concurrently with a decision on the question of priority, but independently of such decision, direct the attention of the examiner to any matter not relating to priority which may come to the Commissioner’s attention, and which in his or her opinion establishes the fact that there has been an irregularity which amounts to a bar to the granting of a certificate to either of the parties. The Commissioner may suspend the priority contest and remand the case to the examiner for further consideration of the matters, to which attention has been directed.

§ 97.220 Decision by the Commissioner.

(a) When a priority contest is concluded on the basis of preliminary statements, or proposed findings of fact, conclusions and notice of priority shall be issued by the Commissioner to the interested parties, giving them a specified period, not less than 30 days, to show cause why such proposed findings of fact, conclusions, and notice of priority should not be made final. Any response made during the specified period will be considered by the Commissioner. Additional affidavits or exhibits will not be considered, unless accompanied by a showing of good cause acceptable to the Commissioner. Thereafter, final findings of fact, conclusions, and notice of priority shall be issued by the Commissioner.

(b) The decision shall be entered by the Commissioner against a party whose preliminary statement alleges a date of determination later than the filing date of the other party’s application.

§ 97.221 Status of claims of defeated applicant.

Whenever a final notice of priority has been issued by the Commissioner in a priority proceeding, and the time limit for an appeal from such decision has expired, the claim or claims constituting the issue of the priority stand finally disposed of without further action by the Commissioner.

§ 97.222 Second priority contest.

A second priority contest between the same parties shall not be entertained by the Commissioner for the same novel variety.

Appeal to the Secretary

§ 97.300 Petition to the Secretary.

(a) Petition may be made to the Secretary from any final action of the Commissioner denying an application or refusing to allow a certificate to be issued, or from any adverse decision of the Commissioner made under §§97.18(c), 97.107, 97.201(e), and 97.220.

(b) Any such petition shall contain a statement of the facts involved and the point or points to be reviewed, and the actions requested.

(c) A petition to the Secretary shall be filed in duplicate and accompanied by the prescribed fee (see §97.175).

(d) Upon request, an opportunity to present data, views, and arguments orally, in an informal manner or in a
formal hearing, shall be given to interested persons. If a formal hearing is requested, the proceeding shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§1.130 through 1.151 of this title.

(e) Except as otherwise provided in the rules in this part, any such petition not filed within 60 days from the action complained of shall be dismissed as untimely.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 8464, Feb. 14, 1995]

§ 97.301 Commissioner’s answer.

(a) The Commissioner may, within such time as may be directed by the Secretary, furnish a written statement to the Secretary in answer to the appellant’s petition, including such explanation of the reasons for the action as may be necessary and supplying a copy to the appellant.

(b) Within 20 days from the date of such answer, the appellant may file a reply statement directed only to such new points of argument as may be raised in the Commissioner’s answer.

§ 97.302 Decision by the Secretary.

(a) The Secretary, after receiving the advice of the Board, may affirm or reverse the decision of the Commissioner, in whole or in part.

(b) Should the decision of the Secretary include an explicit statement that a certificate be allowed, based on an amended application, the applicant shall have the right to amend his or her application in conformity with such statement and such decision shall be binding on the Commissioner.

§ 97.303 Action following the decision.

(a) Copies of the decision of the Secretary shall be served upon the appellant and the Commissioner in the manner provided in §97.403.

(b) When an appeal petition is dismissed, or when the time for appeal to the courts pursuant to the Act has expired and no such appeal or civil action has been filed, proceedings in the appeal shall be considered terminated as of the dismissal or expiration date, except in those cases in which the nature of the decision requires further action by the Commissioner. If the decision of the Secretary is appealed or a civil action has been filed pursuant to the Act, the decision of the Secretary will be stayed pending the outcome of the court appeal or civil action.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 17190, Apr. 4, 1995]

GENERAL PROCEDURES IN PRIORITY, PROTEST, OR APPEAL PROCEEDINGS

§ 97.400 Extensions of time.

Upon a showing of good cause, extensions of time not otherwise provided for may be granted by the Commissioner or, if an appeal has been filed by the Secretary for taking any action required in any priority, protest, or appeal proceeding.

§ 97.401 Miscellaneous provisions.

(a) Petitions for reconsideration or modification of the decision of the Commissioner in priority or protest proceedings shall be filed within 20 days after the date of the decision.

(b) The Commissioner may consider on petition any matter involving abuse of discretion in the exercise of an examiner’s authority, or such other matters as may be deemed proper to consider. Any such petition, if not filed within 20 days from the decision complained of, may be dismissed as untimely.

§ 97.402 Service of papers.

(a) Every paper required to be served on opposing parties and filed in the Office in any priority, protest, or appeal proceeding, must be served by the Secretary in the manner provided in §97.403.

(b) The requirement in certain sections that a specified paper shall be served includes a requirement that all related supporting papers shall also be served. Proof of such service upon other parties to the proceeding must be made before the supporting papers will be considered by the Commissioner or Secretary.

§ 97.403 Manner of service.

Service of any paper under this part must be on the attorney or agent of the party if there be such, or on the party
§ 97.500  
If there is no attorney or agent, and may be made in any of the following ways:

(a) By mailing a copy of the paper to the person served by certified mail, with the date of the return receipt controlling the date of service;
(b) By leaving a copy at the usual place of business of the person served with someone in his or her employ;
(c) When the person served has no usual place of business, by leaving a copy at his or her home with a member of the family over 14 years of age and of discretion; and
(d) Whenever it shall be found by the Commissioner or Secretary that none of the above modes of serving the paper is practicable, service may be by notice, published once in the Office Journal.

REVIEW OF DECISIONS BY COURT

§ 97.500  Appeal to U.S. Courts.

Any applicant dissatisfied with the decision of the Secretary on appeal may appeal to the U.S. Court of Customs and Patent Appeals or the U.S. Courts of Appeals, or institute a civil action in the U.S. District Court as set forth in the Act. In such cases, the appellant or plaintiff shall give notice to the Secretary, state the reasons for appeal or civil action, and obtain a certified copy of the record. The certified copy of the record shall be forwarded to the Court by the Plant Variety Protection Office on order of, and at the expense of the appellant or plaintiff.

§ 97.700  Public interest in wide usage.

(a) If the Secretary has reason to believe that a protected variety should be declared open to use by the public in accordance with section 44 of the Act, the Secretary shall give the owner of the variety appropriate notice and an opportunity to present views orally or in writing, with regard to the necessity for such action to be taken in the public interest.

(b) Upon the expiration of the period for the presentation of views by the owner, as provided in paragraph (a) of this section, the Secretary shall refer the matter to the Plant Variety Protection Board for advice, including advice on any limitations or rate of remuneration.

(c) Upon receiving the advice of the Plant Variety Protection Board, the Secretary shall advise the owner of the variety, the members of the Plant Variety Protection Board, and the public, by issuance of a press release, of any decision not to declare a variety open to use by the public. Any decision to declare a variety open to use by the public will be transmitted only to the owner of the variety and the members of the Plant Variety Protection Board.

§ 97.800  Publication of public variety descriptions.

Voluntary submissions of varietal descriptions of “public varieties” on forms obtainable from the Office will be accepted for publication in the Official Journal. Such publication shall not constitute recognition that the variety is, in fact, distinct, uniform, and stable.

§ 97.900  Form of official identification symbol.

The symbol set forth in Figure 1, containing the words “Plant Variety Protection Office” and “U.S. Department of Agriculture,” shall be the official identification symbol of the Plant
Variety Protection Office. This information symbol, used by the Plant Variety Protection Office on the seal on certificates of Plant Variety Protection, has been approved by the Office of Communications to be added to the USDA/AMS inventory of symbols. It is approved for use with AMS materials.

Figure 1. Official identification symbol of the Plant Variety Protection Office.

[65 FR 47244, Aug. 2, 2000]

PART 98—MEALS, READY-TO-EAT (MRE’s), MEATS, AND MEAT PRODUCTS

§ 98.2 Definitions.
Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

Lard (Edible). The fat rendered from clean and sound edible tissues from swine.

Meals, Ready-To-Eat (MRE). Meals, Ready-To-Eat are complete portions of one meal for one military person and are processed and packaged to destroy...
or retard the growth of spoilage-type microorganisms in order to extend product shelf life for 7 years. Composition analyses for MRE’s are covered by the reimbursable agreement in the Memorandums of Understanding (MOU’s) between AMS, USDA and the Defense Personnel Support Center, Department of Defense (DOD). These DOD, Defense Personnel Support Center (DPSC) contracts state certain military specifications for an acceptable one meal serving, retorted pouched or 18-24 serving hermetically-sealed tray packed meat, or meal product regarding satisfactory analyses for fat, salt, protein, moisture content, added stabilizer ingredient, and sometimes microbiological composition. MRE’s are for use by the DOD, DPSC as a component of operational food rations, and as an item of general issue by the military.

Meat. This includes the edible part of the muscle of any cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, and which is intended for human food, with or without the accompanying and overlying fat, and the portions of bone, skin, tendon, nerve, and blood vessels which normally accompany the muscle tissue, and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears. This term, as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

Meat food product. Any article capable for use as human food (other than meat, prepared meat, or a meat by-product), which is derived or prepared wholly or in substantial part from meat or other portion of the carcass of any cattle, sheep, swine, or goats. An article exempted from definition as a meat food product by the Administrator, such as an organotherapeutic substance, meat juice, meat extract, and the like, which is used only for medicinal purposes and is advertised solely to the medical profession is not included.

Ready-to-eat. The term means consumers are likely to apply little or no additional heat to the fully-cooked and the fully-prepared food product before consumption.

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

Tallow (Edible). The hard fat derived from USDA inspected and passed cattle, sheep, or goats.

Titer. The measure of the hardness or softness of the tested material as determined by the solidification point of fatty acids and expressed in degrees centigrade (°C).

§ 98.3 Analyses performed and locations of laboratories.

(a) Tables 1 through 4 list the special laboratory analyses rendered by the Science and Technology as a result of an agreement with the Livestock and Seed Division. The payment for such laboratory services rendered at the request of an individual or third party served shall be reimbursed pursuant to the terms as specified in the cooperative agreement.

<table>
<thead>
<tr>
<th>Identity</th>
<th>Analyses</th>
<th>Samples tested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule BC (Beef Chunks, Canned)</td>
<td>Fat, salt</td>
<td>1</td>
</tr>
<tr>
<td>Schedule BJ (Beef with Natural Juices, Canned)</td>
<td>Fat</td>
<td>1</td>
</tr>
<tr>
<td>Schedule CS (Canned Meatball Stew)</td>
<td>Fat</td>
<td>3</td>
</tr>
<tr>
<td>Schedule GP (Frozen Ground Pork)</td>
<td>Fat</td>
<td>4</td>
</tr>
<tr>
<td>Schedule PJ (Pork with Natural Juices, Canned)</td>
<td>Fat</td>
<td>1</td>
</tr>
<tr>
<td>Schedule RB (Beef for Reprocessing)</td>
<td>Fat</td>
<td>4</td>
</tr>
<tr>
<td>Schedule RG (Beef Roasts and Ground Beef)</td>
<td>Fat</td>
<td>4</td>
</tr>
<tr>
<td>Schedule SB (Slab or Sliced Bacon)</td>
<td>Moisture, fat, salt</td>
<td>1</td>
</tr>
<tr>
<td>Schedule WS (Beef or Wafer Steaks)</td>
<td>Fat</td>
<td>1</td>
</tr>
</tbody>
</table>
(b) Meats, such as ground beef or ground pork, meat food products, and MRE's, not covered by an agreement with Livestock and Seed Division, are analyzed for fat, moisture, salt, sulfur dioxide, nitrites, sulfites, ascorbates, citric acid, protein, standard plate counts, and coliform counts, among other analyses. These food product analyses are performed at any one of the Science and Technology (S&T) field laboratories as follows:

(1) USDA, AMS, Science and Technology, Midwestern Laboratory, 3570 North Avondale Avenue, Chicago, IL 60618.

(2) USDA, AMS, S&T Aflatoxin Laboratory, 107 South 4th Street, Madill, OK 73446.

(3) USDA, AMS, S&T, Eastern Laboratory, 2311-B Aberdeen Boulevard, Gastonia, NC 28054.

§ 98.4 Analytical methods.

(a) The majority of analytical methods used by the USDA laboratories to perform analyses of meat, meat food products and MRE's are listed as follows:

(1) Official Methods of Analysis of AOAC INTERNATIONAL, Suite 500, 481 North Frederick Avenue, Gaithersburg, MD 20877–2417.
§ 98.5 Fees and charges.

(a) The fee charged for any single laboratory analysis of meat, meat food products, and MRE’s, not covered by an agreement with Livestock and Seed Division, is specified in the schedules of charges in paragraph (a) of §91.37 of this subchapter.

(b) The laboratory analyses of meat, meat food products, and MRE’s, not covered by a cooperative agreement, shall result in an additional fee, found in Table 7 of §91.37 of this subchapter, for sample preparation or grinding.

(c) The charge for any requested laboratory analysis of meat, meat food products, and MRE’s, not listed shall be based on the standard hourly rate specified in §91.37, paragraph (b).

Subpart B—USDA Certification of Laboratories for the Testing of Trichinae in Horsemeat

§ 98.100 General.

A laboratory that has met the requirements for certification specified in this subpart shall receive an AMS Science and Technology certificate to approve its analysis for Trichinella spiralis in horsemeat. Certification would be granted to a qualified analyst or a laboratory based on having the proper training, facilities, and equipment. This AMS laboratory certification program will enable horsemeat exporters to comply with trichinae testing requirements of the European Community.


§ 98.101 Definitions.

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

European Community. The European Community (EC) consists of the initial 12 European countries and the updated and expanded membership of nations. The original EC members are Belgium, Britain, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal and Spain.

Horsemeat. That U.S. inspected and passed clean, wholesome muscle tissue of horses, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat and the portions of sinews, nerves, and blood vessels, which normally accompany the muscle tissue and which are not separated from it in the process of dressing.

Trichinae. Round worms or nematodes of the genus Trichinella, which live as parasites in man, horses, rats, and other animals.

Trichinella spiralis. A small parasitic nematode worm which lives in the flesh of various animals, including the horse. When such infected meat is inadequately cooked and eaten by man, the live worm multiplies within the body and the larvae burrow their way into the muscles, causing a disease referred to as trichinosis.

§§ 98.102–98.600 [Reserved]
§ 110.1 Scope.

This part sets forth the requirements for recordkeeping on restricted use pesticides by all certified applicators, both private applicators and commercial applicators.

§ 110.2 Definitions.

As used in this part, the following terms shall be construed, respectively, to mean:

Administrator. The Administrator of the Agricultural Marketing Service, United States Department of Agriculture, or any individual to whom the Administrator delegates authority to act in his or her behalf.

Authorized representative. Any person who is authorized to act on behalf of the Secretary or a State lead agency for the purpose of surveying records required to be kept under this part and enforcing this part.

Certification number. A number issued by EPA or a State to an individual who is authorized by EPA or the State to use or supervise the use of any restricted use pesticide.

Certified applicator. Any individual who is certified by EPA or the State to use or supervise the use of any restricted use pesticide covered by that individual’s certification.

Commercial applicator. A certified applicator, whether or not the individual is a private applicator with respect to some uses, who uses or supervises the use of any restricted use pesticide for any purpose on any property other than as provided by the definition of private applicator.

Comparable. With respect to the records required to be kept under this part, similar to those required under EPA-approved State certification programs.

Complainant. The Administrator or an official of a cooperating State that deals with pesticide use or health or environmental issues related to the pesticide use, who institutes a proceeding pursuant to §110.8 of this part.

EPA. The United States Environmental Protection Agency.

EPA registration number. The number assigned to a product registered with EPA in accordance with sections 3 or 24c of the Federal Insecticide, Fungicide, and Rodenticide Act and implementing regulations, and borne on the label of the product.

Indian governing body. The governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

Licensed health care professional. A physician, nurse, emergency medical technician, or other qualified individual, licensed or certified by a State to provide medical treatment.

Medical emergency. A situation that requires immediate medical treatment or first aid to treat possible symptoms of pesticide poisoning or exposure.

Parties. Includes the Administrator or cooperating State agencies who institute proceedings against whom such proceedings are instituted, under §110.8 of this part.

Person. Any individual, corporation, company, association, firm, partnership, society, or other legal entity.

Presiding officer. Any individual designated in writing by the Administrator to preside at a proceeding conducted pursuant to §110.8 of this part.

Private applicator. A certified applicator who uses or supervises the use of any restricted use pesticide for purposes of producing any agricultural commodity:

1 On property owned or rented by the applicator or the employer of the applicator; or

2 If applied without compensation, other than trading of personal services between producers of agricultural commodities, on the property of another person.

Record. The legible recording of all required elements under section 110.3(a) (1) through (6) for the application of a federally restricted use pesticide.\(^1\)

Recordkeeping. The recording by the certified applicator, or the agent of the certified applicator, of the information required by §110.3(a) and (b) concerning

\(^1\) Records can be handwritten on individual notes or forms, consist of invoices, be computerized, and or be maintained in record-keeping books.
§ 110.3 Records, retention, and access to records.

(a) Certified applicators of restricted use pesticides shall maintain records of the application of restricted use pesticides. Except as provided in paragraph (b) of this section, these records shall include the following information for each application:

(1) The brand or product name, and the EPA registration number of the restricted use pesticide that was applied;

(2) The total amount of the restricted use pesticide applied;

(3) The location of the application, the size of area treated, and the crop, commodity, stored product, or site to which a restricted use pesticide was applied. The location of the application may be recorded using any of the following designations:

(i) County, range, township, and section;

(ii) An identification system utilizing maps and/or written descriptions which accurately identify location;

(iii) An identification system established by a United States Department of Agriculture agency which utilizes maps and numbering system to identify field locations; or

(iv) The legal property description.

(4) The month, day, and year on which the restricted use pesticide application occurred; and

(5) The name and certification number (if applicable) of the certified applicator who applied or who supervised the application of the restricted use pesticide.

(b) Certified applicators shall maintain records of the application of restricted use pesticides made on the same day in a total area of less than one-tenth ($\frac{1}{10}$) of an acre. Except for applications of restricted use pesticides in greenhouses and nurseries, to which the requirements of paragraph (a) of this section apply, these records shall include the following information for the application:

(1) The brand or product name, and the EPA registration number of the restricted use pesticide that was applied;

(2) The total amount of the restricted use pesticide applied;

(3) The location of the application, designated as “spot application,” followed by a concise description of location and treatment; and

(4) The month, day, and year on which the restricted use pesticide application occurred.

(c) The information required in this section shall be recorded within 14 days following the pesticide application. However, whether or not the written record has been completed, the certified applicator shall provide the information to be recorded in accordance with §110.5(a).

(d) The records required in this section shall be retained for a period of 2 years from the date of the restricted use pesticide application and be maintained in a manner that is accessible by authorized representatives.

Respondent. The party proceeded against pursuant to §110.8 of this part, restricted use pesticide. A pesticide that is federally classified for restricted use under section 3(d)(1)(c) of the Federal Insecticide, Fungicide, and Rodenticide Act.

Secretary. The Secretary of Agriculture, United States Department of Agriculture, or any individual to whom the Secretary delegates authority to act in his or her behalf.

State. A State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States, or an Indian governing body.

State lead agency. The agency designated by a State to have access to the records required to be maintained under this part.

Supervise. To provide instruction and guidance in the application of restricted use pesticides and exercise control over an applicator of restricted use pesticides in accordance with standards prescribed by the EPA in 40 CFR part 171.

[58 FR 19022, Apr. 9, 1993, as amended at 60 FR 8123, Feb. 10, 1995]
Agricultural Marketing Service, USDA

§ 110.6 Federal cooperation with States.

(a) For the purpose of carrying out this part, the Administrator may enter into agreements with States.

(b) The Administrator may, after entering a State-Federal cooperative agreement with a State, utilize employees and facilities of the State to carry out any provisions of this part in that State. This State-Federal cooperative agreement shall specify:

(1) The agency of the State that is designated as the State lead agency;

(2) The responsibilities of State agencies for the enforcement of this part.
and the imposition of penalties under this part;
(3) The qualifications required of the State employees administering and enforcing this part;
(4) That the State-Federal cooperative agreement may be terminated at any time by the mutual agreement of the parties to the agreement;
(5) That the State-Federal cooperative agreement may be terminated by either party by giving written notice to the other party at least 90 days before a specified date of termination; and
(6) The provisions for liaison between the State and the Administrator concerning the administration and enforcement of this part as may be agreed by the Administrator and the State.

(c) If at any time the Administrator shall determine that the State lead agency or other State agencies charged with carrying out the terms of the State-Federal cooperative agreement are unable or unwilling to carry out the terms of the agreement, or, if for any reason the Administrator or State shall determine that the agreement is no longer in effect, the Administrator shall administer and enforce this part in the State.

(d) If a State shall notify the Administrator of its readiness to enter into a State-Federal cooperative agreement prior to passage of State legislation and regulations governing recordkeeping by certified applicators of restricted use pesticides, the Administrator may enter into a State-Federal cooperative agreement with the State on an annual basis.

(e) For a State to be eligible for Federal technical or financial assistance under a State-Federal cooperative agreement, the State requirements for recordkeeping by certified applicators of restricted use pesticides must be comparable to the recordkeeping requirements under this part.

§ 110.7 Penalties.
Any certified applicator who violates 7 U.S.C. 136i–1 (a), (b), or (c) or this part shall be subject to a civil penalty of not less than $1,000 for each violation, except that the civil penalty shall be less than $1,000 if the Administrator determines that the certified applicator made a good faith effort to comply with 7 U.S.C. 136i–1 (a) (b), and (c) and this part.

[60 FR 8123, Feb. 10, 1995]

§ 110.8 Rules of practice.
(a) Notice of violation. If there is reason to believe that a person has violated or is violating any provision of this part, the complainant may file with the Presiding Officer a notice of violation signed by the complainant. The notice of violation shall state:
(1) The date of issuance of the notice of violation;
(2) The nature of the proceeding;
(3) The identification of the complainant and respondent;
(4) The legal authority under which the proceeding is instituted;
(5) The allegations of fact and provisions of law which constitute the basis for the proceeding;
(6) The amount of the proposed civil penalty; and
(7) The name, mailing address, and telephone number of the Presiding Officer.

(b) Answer. Within 30 days after the service of the notice of violation, the respondent shall file with the Presiding Officer an answer signed by the respondent or by the attorney of record in the proceeding. The answer shall:
(1) Admit, deny, or explain each of the allegations in the notice of violation and set forth any defense asserted by the respondent; or
(2) State that the respondent admits all the facts alleged in the notice of violation; or
(3) State that the respondent admits the jurisdictional allegations in the notice of violation and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

(c) Default. Failure to file an answer within 30 days after service of the notice of violation shall be deemed, for purposes of the proceeding, an admission of the allegations in the notice of violation, and failure to deny or otherwise respond to an allegation in the notice of violation shall be deemed, for
purposes of the proceeding, an admission of the allegation, unless the complainant and respondent have agreed to a consent decision pursuant to paragraph (e) of this section.

(d) Amendment of notice of violation or answer. At any time prior to the filing of a motion for a hearing, the notice of violation or answer may be amended with the consent of the complainant and respondent or as authorized by the Presiding Officer upon a showing of good cause.

(e) Consent decision. At any time before the Presiding Officer files the decision, the complainant and respondent may agree to the entry of a consent decision. The agreement shall be in the form of a decision signed by the complainant and respondent, with appropriate space for signature by the Presiding Officer, and shall contain an admission of at least the jurisdictional facts, consent to the issuance of the agreed decision without further procedure, and such other admissions or statements as may be agreed to by the complainant and respondent. The Presiding Officer shall enter such decision without further procedure, unless an error is apparent on the face of the document. The consent decision shall become final and effective without further proceedings 35 days after the date of service of the decision upon the respondent, unless there is an appeal to the Administrator by the complainant or respondent, pursuant to paragraph (l) of this section.

(f) Procedure upon failure to file an answer or admission of facts. The failure to file an answer with the Presiding Officer, or the admission by the answer of all the material allegations of fact contained in the notice of violation, shall constitute a waiver of hearing. Upon such admission or failure to submit an answer, complainant shall file with the Presiding Officer a proposed decision, along with a motion for the adoption of the proposed decision both of which shall be served upon the respondent by the Presiding Officer. Within 20 days after service of the motion and proposed decision, the respondent may file with the Presiding Officer objections to the motion and proposed decision. If the Presiding Officer finds that meritorious objections have been filed, complainant’s motion shall be denied with supporting reasons. If meritorious objections are not filed, the Presiding Officer shall issue a decision without further procedure or hearing. Copies of the decision or denial of complainant’s motion shall be served by the Presiding Officer upon the respondent and the complainant and may be appealed pursuant to paragraph (l) of this section. Where the decision as proposed by complainant is entered, such decision shall become final and effective without further proceedings 35 days after the date of service of the decision upon the respondent, unless there is an appeal to the Administrator by the complainant or respondent, pursuant to paragraph (l) of this section.

(g) Conferences. (1) Upon motion of the complainant or respondent, the Presiding Officer may direct the complainant and respondent or their counsel to attend a conference at any reasonable time, prior to or during the course of the hearing, when the Presiding Officer finds that the proceeding would be expedited by a conference. Reasonable notice of the time and place of the conference shall be given. The Presiding Officer may order the complainant or respondent to furnish at or subsequent to the conference any or all of the following:

(i) An outline of the case or defense;
(ii) The legal theories upon which the party will rely;
(iii) A list of documents which the party anticipates introducing at the hearing; and
(iv) A list of anticipated witnesses who will testify on behalf of the party.

At the discretion of the party furnishing such list of witnesses, the names of the witnesses need not be furnished if they are otherwise identified in some meaningful way, such as a short statement of the type of evidence they will offer.

(2) The Presiding Officer shall not order a party to furnish the information or documents listed in paragraph (g)(1) (i) through (iv) of this section if the party can show that providing the particular information or document is inappropriate or unwarranted under the circumstances of the particular case.

(3) At the conference, the following matters may be considered:

(i) The simplification of issues;
§ 110.8

(i) The necessity of amendments to the notice of violation or answer;

(ii) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(iii) The limitation of the number of expert or other witnesses;

(iv) Negotiation, compromise, or settlement of issues;

(v) The exchange of copies of proposed exhibits;

(vi) The identification of documents or matters of which official notice may be requested;

(vii) A schedule to be followed by the parties for completion of the actions decided at the conference; and

(ix) Such other matters as may expedite and aid in the disposition of the proceeding.

(4) A conference will not be stenographically reported unless so directed by the Presiding Officer.

(5) In the event the Presiding Officer concludes that personal attendance by the Presiding Officer and the parties or counsel at a conference is unwarranted or impractical, but determines that a conference would expedite the proceeding, the Presiding Officer may conduct the conference by telephone or correspondence.

(6) Actions taken as a result of a conference shall be reduced to a written order, unless the Presiding Officer concludes that a stenographic report shall suffice, or, the Presiding Officer elects to make a statement on the record at the hearing summarizing the actions taken.

(h) Procedure for hearing. (1) Request for hearing. The complainant or respondent may request a hearing on the facts by including such a request in the notice of violation or answer, or by a separate request, in writing, filed with the Presiding Officer within the time in which an answer may be filed. Failure to request a hearing within the time allowed for the filing of the answer shall constitute a waiver of a hearing. In the event the respondent denies any material fact and fails to file a timely request for a hearing, the matter may be set down for hearing on motion of the complainant filed with the Presiding Officer or upon the Presiding Officer's own motion.

(2) Time and place. If any material issue of fact is joined by the pleading, the Presiding Officer, upon motion of any of the parties stating that the matter is at issue and is ready for hearing, shall set a time and place for hearing as soon as feasible with due regard for the public interest and the convenience and necessity of the parties. The Presiding Officer shall issue a notice stating the time and place of hearing. If any change in the time or place of the hearing is made, the Presiding Officer shall issue a notice of this change, which notice shall be served upon the complainant and respondent, unless it is made during the course of an oral hearing and made a part of the transcript, or actual notice is given to the parties.

(3) Appearances. The parties may appear in person or by attorney of record in the proceeding. Any individual who appears as an attorney must conform to the standard of ethical conduct required of practitioners before the courts of the United States.

(4) Debarment of attorney. Whenever a Presiding Officer finds that an individual acting as attorney for any party to the proceeding is guilty of unethical or contumacious conduct, in or in connection with a proceeding, the Presiding Officer may order that the individual be precluded from further acting as attorney in the proceeding. An appeal to the Administrator may be taken from any such order, but no proceeding shall be delayed or suspended pending disposition of the appeal: Provided, That the Presiding Officer shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney.

(5) Failure to appear. A respondent who, after being duly notified, fails to appear at the hearing without good cause, shall be deemed to have waived the right to an oral hearing in the proceeding and to have admitted any facts which may be presented at the hearing. The failure by the respondent to appear at the hearing shall also constitute an admission of all the material allegations of fact contained in the notice of violation. The complainant shall have
an election whether to follow the procedure set forth in paragraph (f) of this section or whether to present evidence, in whole or in part, in the form of affidavits, exhibits, or by oral testimony before the Presiding Officer. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Presiding Officer’s decision and to appeal to the Administrator pursuant to paragraph (l) of this section.

(6) Order of proceeding. Except as may be determined otherwise by the Presiding Officer, the complainant shall proceed first at the hearing.

(7) Evidence. (i) The testimony of witnesses at a hearing shall be on oath or affirmation and subject to cross-examination.

(ii) Upon a finding of good cause, the Presiding Officer may order that any witness be examined separately and apart from all other witnesses except those who are parties to the proceeding.

(iii) Evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded insofar as practicable.

(8) Objections. (i) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination or to any other ruling of the Presiding Officer, the party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the Presiding Officer.

(ii) Only objections made before the Presiding Officer may subsequently be relied upon.

(9) Exhibits. Unless the Presiding Officer finds that the furnishing of copies is impracticable, four copies of each exhibit shall be filed with the Presiding Officer: Provided, That, where there are more than two parties in the proceeding, an additional copy shall be filed for each additional party. A true copy of an exhibit may be substituted for the original.

(10) Official records or documents. An official government record or document, if admissible for any purpose, shall be admissible in evidence without the production of the individual who made or prepared the same, and shall be prima facie evidence of the relevant facts stated in the record or document. Such record or document shall be evidenced by an official publication of the record or document or by a copy certified by an individual having legal authority to make such certification.

(11) Official notice. Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: Provided, That the parties shall be given adequate notice of matters so noticed, and shall be given adequate opportunity to show that such facts are erroneously noticed.

(12) Offer of proof. Whenever evidence is excluded by the Presiding Officer, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, the statement shall be included in the transcript in its entirety. If the evidence consists of an exhibit, it shall be marked for identification and inserted in the hearing record. In either event, the evidence shall be considered a part of the transcript and hearing record if the Administrator, upon appeal, decides the Presiding Officer’s ruling excluding the evidence was erroneous and prejudicial. If the Administrator, upon appeal, decides the Presiding Officer’s ruling excluding the evidence was erroneous and prejudicial and that it would be appropriate to have such evidence considered a part of the hearing record, the Administrator may direct that the hearing be reopened to permit the taking of such evidence or for any purpose in connection with the excluded evidence.

(13) Transcript. Hearings shall be recorded and transcribed verbatim.

(i) Post-hearing procedure—(1) Corrections to transcript. (i) Within the period of time fixed by the Presiding Officer, any party may file a motion proposing corrections to the transcript.

(ii) Unless a party files a motion proposing corrections to the transcript in
§ 110.8  
The time fixed by the Presiding Officer, the transcript shall be presumed, except for obvious typographical errors, to be a true, correct, and complete transcript of the testimony given at the hearing and to contain an accurate description or reference to all exhibits received in evidence and made part of the hearing record and shall be deemed to be certified without further action by the Presiding Officer.

(iii) As soon as practicable after the close of the hearing and after consideration of any timely objection filed as to the transcript, the Presiding Officer shall issue an order making any corrections to the transcript which the Presiding Officer finds are warranted, which corrections shall be entered on to the original transcript by the Presiding Officer without obscuring the original text.

(2) Proposed finding of fact, conclusions, order, and briefs. Prior to the Presiding Officer’s decision, each party shall be afforded a reasonable opportunity to submit for consideration proposed findings of fact, conclusions, order, and brief in support of the proposed findings of fact, conclusions and order. A copy of each such document filed by a party shall be served upon each of the other parties.

(3) Presiding Officer’s decision. (i) The Presiding Officer shall issue a decision within 30 days after the hearing, or, if any party submits proposed findings of fact, conclusions, order, and brief in support thereof in accordance with paragraph (i)(2) of this section, 30 days after the last such submission. The Presiding Officer’s decision shall include the Presiding Officer’s findings of the fact, conclusions of law, and the reasons or basis for the findings of fact and conclusions of law.

(ii) The Presiding Officer’s decision shall become effective without further proceedings 35 days after the date of service of the decision upon the respondent, unless there is an appeal to the Administrator by a party to the proceeding pursuant to paragraph (l) of this section.

(i) Requests for extensions of time pursuant to paragraph (m)(3) of this section; and

(ii) Motions and requests made on the record during the oral hearing. The Presiding Officer shall rule upon all motions and requests filed or made prior to the filing of an appeal of the Presiding Officer’s decision pursuant to paragraph (l) of this section except motions directly relating to the appeal. Thereafter, the Administrator will rule on any motions and requests, as well as the motions directly relating to the appeal.

(2) Motions entertained. (i) Any motion will be entertained other than a motion to dismiss on the pleading. (A motion by the complainant seeking the voluntary dismissal of the notice of violation may be entertained by the Presiding Officer or the Administrator.)

(ii) All motions and requests concerning the notice of violation must be made within the time allowed for filing an answer, except motions by the complainant seeking voluntary dismissal of the notice of violation.

(3) Contents. All written motions and requests shall state the particular order, ruling, or action desired and the grounds for the order, ruling, or action desired.

(4) Response to motions and requests. Within 10 days after service of any written motion or request, or within a shorter or longer period as may be fixed by the Presiding Officer or the Administrator, an opposing party may file a response to the motion or request. The other party shall have no right to reply to the response; however, the Presiding Officer or the Administrator, in their discretion, may order that a reply be filed.

(k) Presiding Officer—(1) Assignment. No Presiding Officer shall be assigned to serve in any proceeding who:

(i) Has any pecuniary interest in any matter or business involved in the proceeding;

(ii) Is related within the third degree by blood or marriage to any party to the proceeding; or

(iii) Has any conflict of interest which might impair the Presiding Officer’s objectivity in the proceeding.
§ 110.8  

(2) Disqualification of Presiding Officer.  
(i) Any party to the proceeding may, by motion made to the Presiding Officer, request that the Presiding Officer withdraw from the proceeding because of an alleged disqualifying reason. Such motion shall set forth with particularity the grounds of alleged disqualification. The Presiding Officer may then either rule upon or certify the motion to the Administrator, but not both.  
(ii) A Presiding Officer shall withdraw from any proceeding for any reason deemed by the Presiding Officer to be disqualifying.  

(3) Powers. The Presiding Officer, in any assigned proceeding, shall have power to:  
(i) Rule upon motions and requests;  
(ii) Set the time and place of a conference and the hearing, adjourn the hearing from time to time, and change the time and place of hearing;  
(iii) Administer oaths and affirmations;  
(iv) Summon and examine witnesses and receive evidence at the hearing;  
(v) Admit or exclude evidence;  
(vi) Hear oral argument on facts or law;  
(vii) Do all acts and take all measures necessary for maintenance or order, including the exclusion of contumacious counsel or other persons; and  
(viii) Take all other actions authorized under this section.  

(1) Appeal to the Administrator—(1) Filing of petition. Within 30 days after receiving notice of the Presiding Officer’s decision, a party who disagrees with the decision, or any part of the Presiding Officer’s decision, or any ruling by the Presiding Officer or a party who alleges a deprivation of rights, may appeal the Presiding Officer’s decision or rulings to the Administrator by filing an appeal petition with the Administrator. As provided in paragraph (h)(6) of this section, objections regarding evidence or a limitation regarding examination or cross examination or other rulings made before the Presiding Officer may be relied upon in an appeal. The appeal petition shall state the name and address of the person filing the appeal petition. Each issue set forth in the appeal petition, and the arguments on each issue, shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations of the record, statutes, regulations, or authorities being relied upon in support of the argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.  
(2) Response to appeal petition. Within 20 days after the service of a copy of an appeal petition and any brief in support of the appeal petition, filed by a party to the proceeding, any other party may file with the Administrator a response in support of or in opposition to the appeal petition and, in such response any relevant issue, not presented in the appeal petition, may be raised.  

(3) Transmittal of record. Whenever an appeal to the Presiding Officer’s decision is filed and a response to the appeal has been filed or time for filing a response has expired, the Presiding Officer shall transmit to the Administrator the record of the proceeding. The record shall include: the pleading; motions and requests filed and rulings on such motions and requests; the transcript of the testimony taken at the hearing, together with the exhibits filed in connection with the hearing; any documents or papers filed in connection with a conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Presiding Officer’s decision; and such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding.  

(4) Decision of the Administrator on appeal. As soon as practicable after the receipt of the record from the Presiding Officer, the Administrator, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Administrator decides that no change or modification of the Presiding Officer’s decision is warranted, the Administrator may adopt the Presiding Officer’s decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum.
§ 110.8

(m) Filing; service; extensions of time; and computation of time—(1) Filing; number of copies. Except as otherwise provided in this section, all documents or papers required or authorized by this section to be filed with the Presiding Officer or Administrator shall be filed in quadruplicate: Provided, That where there are more than two parties in the proceeding, an additional copy shall be filed for each additional party.

(2) Service; proof of service. Copies of all documents or papers required or authorized by this section to be filed with the Presiding Officer or Administrator shall be served upon the parties by the person with whom such documents or papers are filed. Service shall be made either:

(i) By delivering a copy of the document or paper to the individual to be served or to a member of the partnership to be served, or to the president, secretary, or other executive officer or any director of the corporation or association to be served, or to the attorney of record representing such person; or

(ii) By leaving a copy of the document or paper at the principal office or place of business or residence of such individual, partnership, corporation, organization, or association, or of the attorney of record representing such person and mailing by regular mail another copy to such person at such address; or

(iii) By registering or certifying and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to the attorney of record representing such person and mailing by regular mail another copy to such person at such address.

(3) Extensions of time. The time for the filing of any document or paper required or authorized under this section to be filed may be extended by the Presiding Officer or the Administrator as provided in paragraph (j) of this section, if in the judgment of the Presiding Officer or the Administrator, as the case may be, there is good reason for the extension. In all instances in which time permits, notice of the request for extension of the time shall be given to the other party with opportunity to submit views concerning the request.

(4) Effective date of filing. Any document or paper required or authorized under this section to be filed shall be deemed to be filed at the time when it reaches the person with whom the document or paper must be filed.

(5) Computation of time. Saturdays, Sundays, and holidays shall be included in computing the time allowed for the filing of any document or paper: Provided, That, when such time expires on a Saturday, Sunday, or holiday, such period shall be extended to include the next following business day.

(n) Ex parte communications. (1) At no stage of the proceeding between its institution and the issuance of the final decision shall the Presiding Officer or Administrator discuss ex parte the merits of the proceeding with any person who is connected with the proceeding in an advocative or in an investigative capacity, or with any representative of such person: Provided, That the Presiding Officer or Administrator may discuss the merits of the case with such a person if all parties to the proceeding, or their attorneys have been given notice and an opportunity to participate. A memorandum of such discussion shall be included in the record.

(2) No interested person shall make or knowingly cause to be made to the Presiding Officer or Administrator an ex parte communication relevant to the merits of the proceeding.
(3) If the Presiding Officer of the Administrator receives an ex parte communication in violation of this paragraph (n), the individual who receives the communication shall place in the public record of the proceeding:

(i) Any such written communication;

(ii) Memoranda stating the substance of such oral communication; and

(iii) Any written response, and memoranda stating the substance of any oral response to the ex parte communication.

(4) For purposes of this section *ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or the proceeding.

§ 110.9 Miscellaneous.

In accordance with Section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the recordkeeping provisions in this rule have been approved by the Office of Management and Budget (OMB) and there are no new requirements. The assigned OMB control number is 0581–AA39.

PARTS 111–159 [RESERVED]
SUBCHAPTER F—NAVAL STORES

PART 160—REGULATIONS AND STANDARDS FOR NAVAL STORES

GENERAL

Sec. 160.1 Definitions of general terms.
160.2 Spirits of turpentine defined.
160.3 Rosin defined.
160.4 Reclaimed rosin.
160.5 Standards for naval stores.
160.6 Standard designations for turpentine.
160.7 Gum spirits of turpentine.
160.8 Steam distilled wood turpentine.
160.9 Destructively distilled wood turpentine.
160.10 Sulphate wood turpentine.
160.11 Quality requirements.
160.12 Standard designations for rosin.
160.13 Grade designations for rosin.
160.14 Opaque rosin.

ESTABLISHMENT OF NEW AND MODIFIED STANDARDS

160.15 New standards.
160.16 Modification of existing standards.

METHODS OF ANALYSIS, INSPECTION, SAMPLING AND GRADING

160.17 Laboratory analysis.
160.18 Determining the grade of rosin.
160.19 Samples of rosin for grading.
160.20 More than one grade in a container.
160.21 Rosin not fit for grading.
160.22 Collecting samples; issuing certificates.
160.23 Disposition of samples.

ANALYSIS, INSPECTION, AND GRADING ON REQUEST

160.24 Inspection on request.
160.24a Inspection as to condition of drums containing rosin and the quality and condition of the rosin therein upon request.
160.25 How requests shall be made.
160.26 Withdrawal of request.
160.27 Containers to be made ready.
160.28 Tank cars of turpentine.
160.29 Containers to remain intact.
160.30 Contents of containers to be designated.
160.31 Time and manner of sampling.
160.32 Marking containers.
160.33 Containers not acceptable for inspection.
160.34 Responsibility of interested person.
160.35 Illegible inspection marks.
160.36 Authority for changing marks.
160.37 Prior marks to be removed.

REQUEST INSPECTION BY LICENSED INSPECTORS

160.38 Permit to use licensed inspector.
160.39 Form of application for license or permit.
160.40 Applicant for license to be examined.
160.41 Issuance of temporary license.
160.42 Limitation of license.
160.43 Licensed inspector to be disinterested.
160.44 Other duties of licensed inspectors.
160.45 Conditions governing licensed inspection.
160.46 Identification of containers.
160.47 Periodic re-inspection.
160.48 Form of certificate.
160.49 Responsibility for inspection certificates and forms.
160.50 Reports to be made by accredited processors.
160.51 Report of non-conformance.
160.52 Suspension or revocation of licenses.
160.53 Stopping inspection by suspended inspector.
160.54 Suspension or revocation of permits.
160.55 Voluntary discontinuance of licensed inspection.
160.56 Compensation of licensed inspectors.
160.57 Fees for licensed inspection permits.
160.58 Fees for inspection and certification by licensed inspectors.
160.59 Appeal inspections.
160.60 Charge for appeal inspection.

CERTIFICATES AND REPORTS

160.61 Kinds of certificates issued.
160.62 When a certificate may be issued.
160.63 When a certificate may not be issued.
160.64 Issue of loan and sale certificate.
160.65 Prior certification required.

FEES AND CHARGES FOR SERVICES RENDERED

160.66 Fees for inspection services.
160.67 Fees under cooperative agreements.
160.68 Collection of fees.
160.69 Expenses to be borne by person requesting service.
160.70 Rendition of claims.
160.71 Delinquent claims.

LOAN AND CARE OF UNITED STATES STANDARDS

160.73 Availability of standards.
160.74 Loan of standards without security.
160.75 Loan of standards under security deposit.
160.76 Annual charge for use of standards.
160.77 Reporting on use of standards.
160.78 Loss or damage of standards.
160.79 Request for additional standards.
160.80 Denial of loan of additional standards.
160.81 Surrender of standards.
160.82 Return of security.
160.83 Miscellaneous receipts.
SALES AND SHIPMENTS
160.84 Identification of shipments.
160.85 Sale of mixed turpentine not lawful.
160.86 Prohibited use of United States Standards.
160.87 Prohibited use of word “turpentine” or derivatives thereof.
160.88 Permitted use of words “turpentine” and “rosin.”
160.89 Medicinal preparations.

LABELING, ADVERTISING AND PACKING
160.90 False, misleading, or deceitful practices.
160.91 Meaning of words “pine” and “pine tree.”
160.92 Meaning of word “gallon.”
160.93 Powdered rosin.
160.94 Spirits of turpentine for medicinal use.

PROCEDINGS IN CASE OF VIOLATION
160.95 Proceedings prior to reporting violations of the act.
160.96 Report of violations for prosecution.
160.97 Publication.

SPECIFIC FEES PAYABLE FOR SERVICES RENDERED
160.201 Fees generally for field inspection and certification of naval stores and drum containers of rosin.
160.202 Fees generally for laboratory analysis and testing.
160.203 Fees for inspection and certification of other naval stores material.
160.204 Fees for extra cost and hourly rate service.
160.205 Permit fees for eligible processing plants under licensed inspection.

SOURCE: 11 FR 14665, Dec. 27, 1946, as amended at 17 FR 221, Jan. 9, 1952; 20 FR 6433, Sept. 1, 1955, unless otherwise noted.

GENERAL

§ 160.1 Definitions of general terms.

The terms as defined in section 2 of the Naval Stores Act shall apply with equal force and effect when used in the provisions in this part. In addition, unless the context requires otherwise, the terms hereinafter set forth shall be defined respectively as follows:


(b) Department: The United States Department of Agriculture.

(c) Administrator: The Administrator of the Agricultural Marketing Service of the Department, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) Official inspector: Any person designated or licensed by the Secretary to sample, examine, analyze, classify or grade naval stores.

(e) Licensed inspector: A person licensed by the Administrator upon recommendation of an accredited processor to act as an official inspector with respect to naval stores produced at an eligible processing plant of such processor.

(f) Eligible processing plant: A plant which on examination by the Administrator has been found to be designed, operated, and staffed so as to permit proper samplings and inspections of the naval stores produced thereat, and where a substantial proportion of the output comes from oleoresin obtained from trees growing on land not owned or leased by the processor himself, or from oleoresin contained within felled trees or stumps removed from such land.

(g) Accredited processor: Any person owning or having charge of or jurisdiction over the operation of an eligible processing plant, to whom a permit has been issued under these regulations to have inspections of naval stores made by a licensed inspector.

(h) Interested person: Any person who is a party to a factual or prospective transaction in a specific lot of naval stores, whether as producer, seller, shipper, dealer, or purchaser thereof; or any person who in the opinion of the Administrator has sufficient and proper interest in the analysis, classification, grading, or sale of naval stores to merit the loan and use of duplicates of the United States Standards.

(i) Dealer: Any person who sells or ships in commerce any naval stores produced by a person other than himself.

(j) Cooperative agreement: A written agreement between the Department and any person specifying the conditions under which special inspection
§ 160.2 Spirits of turpentine defined.

Spirits of turpentine, also commonly known as turpentine, is the colorless or faintly colored volatile oil consisting principally of terpene hydrocarbons of the general empirical formula $C_{10}H_{16}$ and having a characteristic odor and taste. It occurs naturally in and may be recovered by distillation from the oleoresinous secretions obtained from living trees of the family Pinaceae, or present in the cellular structure, or wood, of species thereof.

§ 160.3 Rosin defined.

Except as provided in §160.15, rosin is the vitreous, well-strained, transparent, solid resin which (a) remains after the volatile terpene oils are distilled from (1) the oleoresin collected from living trees or (2) the oleoresin extracted from wood; or (b) remains after distillation of the fatty acids from tall oil recovered from wood in the course of its chemical disintegration to produce cellulose. In addition to the free resin acids, rosin may contain relatively small proportions of fatty acids, resin esters and other non-resinous foreign matter naturally occurring therein.

§ 160.4 Reclaimed rosin.

Reclaimed rosin is rosin that has been recovered or reclaimed by any means from waste or deteriorated material: Provided, That such reclaimed product may be graded as rosin under the act and the provisions in this part only if the concentration of rosin acids therein has not been reduced below the concentration normal for rosin, and any residual or contaminating component remaining from the waste material itself or from any article used in the recovery process is not sufficient to cause the physical or chemical properties of the reclaimed product to differ substantially from the normal properties of rosin.

§ 160.5 Standards for naval stores.

In addition to the standards of identity for spirits of turpentine and rosin and the grade designations for rosin specified in the act, certain standards for naval stores have been promulgated by the Administrator pursuant to the act as indicated in §160.301 et seq.

§ 160.6 Standard designations for turpentine.

Spirits of turpentine within the meaning of the act and the provisions in this part shall be designated as "gum spirits of turpentine," "steam distilled wood turpentine," "destructively distilled wood turpentine," or...
“sulphate wood turpentine,” as the case may be.

§ 160.7 Gum spirits of turpentine.

The designation “gum spirits of turpentine” shall refer to the kind of spirits of turpentine obtained by distillation of the oleoresin (gum) from living trees, and commonly known prior to the passage of the act as gum spirits, gum turpentine, spirits of turpentine, or oil of turpentine.

§ 160.8 Steam distilled wood turpentine.

The designation “steam distilled wood turpentine” shall refer to the kind of spirits of turpentine obtained by steam distillation from the oleoresinous component of wood whether in the presence of the wood or after extraction from the wood, and commonly known prior to the passage of the act as wood turpentine, steam distilled turpentine, steam distilled wood turpentine, or S. D. wood turpentine.

§ 160.9 Destructively distilled wood turpentine.

The designation “destructively distilled wood turpentine” shall refer to the kind of spirits of turpentine prepared from the distillate obtained in the destructive distillation (carbonization) of wood, and commonly known prior to the passage of the act as wood turpentine, steam distilled turpentine, steam distilled wood turpentine, or S. D. wood turpentine.

§ 160.10 Sulphate wood turpentine.

The designation “sulphate wood turpentine” shall refer to the kind of spirits of turpentine prepared from the condensates that are recovered in the sulphate process of cooking wood pulp, and commonly known as sulphate turpentine or sulphate wood turpentine.

§ 160.11 Quality requirements.

The several standards for spirits of turpentine, as defined in §§160.8 to 160.10, inclusive, shall be deemed to mean the respective kinds of spirits of turpentine having properties that conform with the standard specifications adopted therefor by the American Society for Testing Materials, contained in appendix A to this part.

§ 160.12 Standard designations for rosin.

(a) Rosin within the meaning of the act and the provisions in this part shall be designated as “gum rosin,” “wood rosin,” or “tall oil rosin,” as the case may be.

(b) The designation “gum rosin” shall refer to the kind of rosin remaining after the distillation of gum spirits of turpentine from the oleoresin (gum) obtained from living pine trees.

(c) The designation “wood rosin” shall refer to the kind of rosin recovered after the distillation of the volatile oil from the oleoresin within or extracted from pine wood by any suitable process, followed by any necessary further refinement.

(d) The designation “tall oil rosin” shall refer to the kind of rosin remaining after the removal of the fatty acids from tall oil by fractional distillation, and having the characteristic form and appearance and other physical and chemical properties normal for other kinds of rosin.

§ 160.13 Grade designations for rosin.

The grades of rosin shall be designated, from highest to lowest, by the following letters, respectively: XC, XB, XA, X, WW, WG, N, M, K, I, H, G, F, E, D, B. In addition, the letters OP shall be used to designate the grade of opaque rosin, and the letters FF shall be used to designate the grade of normal wood rosin: Provided, That the product recovered in the refining of wood rosin, that is darker in color than the standard for FF grade, and that contains rosin acids in lesser quantity than is normal for such rosin, shall be graded and designated as B wood resin.

§ 160.14 Opaque rosin.

The term “opaque rosin” shall apply to the article resulting when rosin undergoes internal modification indicated by a turbid, clouded, or opaque appearance, that is, loss of transparency, brought about by the occlusion of moisture or the formation of an excessive quantity of resin acid crystals in the rosin.
§ 160.15

ESTABLISHMENT OF NEW AND MODIFIED STANDARDS

§ 160.15 New standards.
Whenever in the opinion of the Administrator a new standard for any naval stores is necessary in the interest of the trade, he shall announce a hearing thereon, to be held not less than 3 months subsequent to such announcement. Notice of the hearing stating the terms or description of the proposed new standard, or a summary thereof, shall be given by publication in the Federal Register and by such other means as may be practicable. The hearing shall be conducted by an official designated by the Administrator, and reasonable opportunity shall be afforded at the hearing to all interested persons to present their views, arguments and data, verbally or in writing, in favor of or in opposition to the proposed new standard. All relevant material presented at said hearing, or a summary thereof, and a recommendation as to adoption or rejection of the proposed modification shall be transmitted to the Administrator for his consideration. A modified standard established and promulgated by the Administrator shall become effective not less than 6 months after the promulgation thereof.

§ 160.16 Modification of existing standards.
Whenever in the opinion of the Administrator a modification of an existing standard for naval stores is necessary in the interest of the trade, he shall announce a hearing thereon, to be held not less than 6 months subsequent to such announcement. Notice of the hearing stating the terms or description of the proposed modification of any standard, or a summary thereof, shall be given by publication in the Federal Register and by such other means as may be practicable. The hearing shall be conducted by an official designated by the Administrator, and reasonable opportunity shall be afforded to all interested persons to present their views, arguments and data, verbally or in writing, in favor of or in opposition to the proposed modification. All relevant material presented at said hearing, or a summary thereof, and a recommendation as to adoption or rejection of the proposed modification shall be transmitted to the Administrator for his consideration. A modified standard established and promulgated by the Administrator shall become effective not less than 6 months after the promulgation thereof.

§ 160.17 Laboratory analysis.
The analysis and laboratory testing of naval stores shall be conducted, so far as is practicable, according to methods of the American Society for Testing Materials. When any such method is deemed to be insufficient or unsuitable or when no method has been so presented, the analysis shall be made according to any method deemed appropriate by the Administrator.

§ 160.18 Determining the grade of rosin.
The grade of rosin shall be determined by comparing a representative sample, taken and prepared in accordance with the provisions in this part, with the appropriate standard types. The grade shall be the grade designation of the standard type which the sample equals or excels in color, but below the next higher grade.

§ 160.19 Samples of rosin for grading.
Samples of rosin for grading shall be approximately cubical in shape, and shall be seven-eighths inch thick in the direction through which they are viewed or graded. Samples may be taken by any of the following methods:
(a) By cutting or cleaving the same from a lump of the rosin removed from the solid mass in the barrel or drum, the top side of which lump shall come from not less than 4 inches below the surface of the rosin.
(b) By placing a tin mold of suitable design inside the barrel or drum through an opening in the side, the center of which opening is approximately 9 inches from the top or 12 inches from the bottom so that when the container is filled, the rosin within the mold will have come from a position not less than 4 inches below the surface of the rosin. The mold thus
§ 160.24 Inspection on request.

Insofar as it may be practicable, official inspectors shall sample, analyze, classify, or grade any naval stores at the request of any interested person, as provided for by the act and in accordance with the provisions in this part.
§ 160.24a Inspection as to condition of drums containing rosin and the quality and condition of the rosin therein upon request.

Before or after the shipment in commerce of any lot of rosin in drums from a processing or storage point, and upon request by an interested person, an inspection may be made by an official inspector of the external appearance of the drums, and a report may be made by such inspector, on the basis of such inspection, of the condition, including soundness, of the drums with reference to the effect thereof upon the quality, and preservation of the quality, of the rosin in the drums. In conjunction with such service, when practicable, the inspector may upon similar request determine and certify the grade, class, other quality, or condition of the rosin within the drums, and report the internal condition of the drums, under any applicable standards and procedural instructions issued to such inspector by the Administrator. Certificates and reports issued under this section will be furnished only to the interested person requesting the service. Fees and charges for service under this section shall be paid by such interested person in accordance with §§160.201, 160.202, and 160.204.

[20 FR 6433, Sept. 1, 1955]

§ 160.25 How requests shall be made.

An interested person desiring the analysis, classification, or grading of any naval stores, or of samples thereof, shall submit to the nearest official inspector a written request, in which he shall state the number and kind of containers of rosin, or the number and kind of containers and the number of gallons of turpentine, as the case may be, together with the name of the interested person for whose account such service is requested, his interest in the naval stores, and other information by which the identity of the naval stores in question and the propriety of its examination may be determined. Requests for seasonal or recurrent services shall so indicate, and the approximate quantity of naval stores to be graded and the duration of the desired service shall be stated. Fees for such service shall be paid in accordance with the provisions in this part.

§ 160.26 Withdrawal of request.

A request for service under the provisions in this part may be withdrawn at any time before the service has been completed, on notice to the official inspector: Provided, however, That the interested person shall reimburse the United States for the time spent and any expenses incurred prior to receipt of such withdrawal notice.

§ 160.27 Containers to be made ready.

The interested person shall cause the naval stores to be made available, and shall provide any hold required to remove the bungs or heads, or otherwise open the containers for sampling, to spike the rosin or extract the sampler devices from the barrels or drums, to rebung or otherwise close the containers, to handle the commodity for weighing, and to mark the containers at the direction of the official inspector.

§ 160.28 Tank cars of turpentine.

A tank car loaded for shipment with spirits of turpentine shall, after the same has been sampled for analysis, classification, and certification, be sealed by the official inspector. Any certificate issued thereon prior to shipment shall be valid only for a reasonable time to permit arrival at destination, and only so long as the seals placed thereon by the inspector remain unbroken.

§ 160.29 Containers to remain intact.

The results of any analysis, classification, or grading of naval stores will be certifiable only if the containers holding such naval stores remain intact as sampled until the analysis, classification, or grading has been completed and the results reported, except when the container is a tank car subject to demurrage.

§ 160.30 Contents of containers to be designated.

Prior to inspection at the request of the producer, containers of naval stores, other than tank cars, shall have marked thereon a designation by such producer of the kind or identity of the
product in accordance with the standard of identity provided therefor by or under the act.

§ 160.31 Time and manner of sampling.
Except when batch sampling is authorized at an eligible processing plant using licensed inspectors, samples of naval stores to be used for official inspection and certification shall be taken direct from the commercial containers holding such naval stores by or under the immediate supervision of the inspector at the time of inspection.

§ 160.32 Marking containers.
The interested person shall provide any labor necessary for marking the containers, after the contents have been sampled and graded, at the direction of the official inspector. The container of an article which does not conform with any United States Standard for naval stores as to kind or grade, shall not be marked or certified, and any unauthorized marks appearing on the container shall be removed.

§ 160.33 Containers not acceptable for inspection.
Any container so filled or packed as to conceal the fact that it contains anything other than naval stores within the meaning of the act or the provisions in this part, and any naval stores in a container deemed by an official inspector to be unsuitable for use as a container of naval stores in commerce, shall not be accepted for classification or grading.

§ 160.34 Responsibility of interested person.
The sampling or acceptance of any sample of naval stores by an official inspector for use in grading and certifying the same at the request of an interested person, or the placing of any incorrect classification or grade marks upon the container thereof, or the issue of any incorrect certificate inadvertently to cover the contents, because of inability of the inspector to observe the true condition of the naval stores, shall not prevent the correction or recall of any such certificate, nor relieve the interested person from responsibility for the condition of the article or its container.

§ 160.35 Illegible inspection marks.
In case any mark placed on a container of rosin by or under the direction of an official inspector has become illegible, he will make such examination before remarking as may be necessary to establish the proper grade or identity of the rosin. No fee will be charged for this service, but the cost of handling, opening, spiking, and closing the container shall be borne by the interested person.

§ 160.36 Authority for changing marks.
No mark placed upon any container of naval stores by or at the direction of an official inspector shall be obliterated, covered up, defaced, or otherwise made illegible, except under authority of an official inspector.

§ 160.37 Prior marks to be removed.
Any marking appearing on a container to be used for naval stores, relating to the kind, classification, grade, certification, or method of inspection of naval stores shall be removed by the user whenever such marking does not in all respects describe the kind, classification, grade, certification, and method of inspection of the naval stores to be placed therein.

REQUEST INSPECTION BY LICENSED INSPECTORS

§ 160.38 Permit to use licensed inspector.
Any naval stores produced at an eligible processing plant, as herein defined, may be inspected, classified, graded, and certified by a licensed inspector, after the accredited processor has applied to and has been granted a permit by the Administrator to use a licensed inspector.

§ 160.39 Form of application for license or permit.
Applications for licenses to inspect and permits to have inspections made by licensed inspectors shall be made to the Administrator upon forms provided for the purposes. Each such application shall fully and truly state the information therein required and shall be signed by the applicant.
§ 160.40 Applicant for license to be examined.

Each applicant for a license shall be required to demonstrate his qualifications and competency to perform the duties of an official inspector at such time and place and in such manner as may be determined by the Administrator.

§ 160.41 Issuance of temporary license.

In a case of special urgency, and in the discretion of the Administrator, a temporary license may be issued without reference to §160.40 upon presentation of satisfactory evidence by the accredited processor of the need therefor and the competency of the applicant for such temporary license. Such processor shall receive prompt notice of the issuance of any such temporary license. A temporary licensee shall be subject to all the provisions in this part. A temporary license shall be valid for a specified period not to exceed 30 days, except that if application is made for a permanent license by a person at the same time he applies for a temporary license, any temporary license issued to him shall not expire until a permanent license has been denied or granted.

§ 160.42 Limitation of license.

The license issued by the Administrator to a licensed inspector of naval stores shall state the name of the processing plant or plants at which the licensee may perform the duties of an official inspector, and shall be countersigned by such official as may be designated and authorized.

§ 160.43 Licensed inspector to be disinterested.

No person who determines or controls sales policies or methods of distribution of an eligible processing plant, or the selling prices of the naval stores processed at such plant, shall be licensed as an inspector.

§ 160.44 Other duties of licensed inspectors.

A licensed inspector may perform duties other than those of an official inspector, to the extent indicated by the accredited processor and not disapproved in writing by the Administrator:

Provided, That such additional duties not pertaining to the official inspection work shall not be permitted to interfere with the proper performance of the duties of the licensee as an official inspector.

§ 160.45 Conditions governing licensed inspection.

The work performed by licensed inspectors under the provisions in this part shall be supervised and reviewed by authorized representatives of the Administrator, who shall issue to such licensed inspectors instructions for taking, preserving, and identifying samples; marking and maintaining the identity of containers when filled; preparing, issuing, and disposing of certificates; the keeping of adequate inspection records; and such other procedures as may be necessary in carrying out the licensed inspection. The handling, sampling, grading, marking, and certification of naval stores at an eligible processing plant by a licensed inspector shall be conducted in accordance with such instructions and the provisions in this part.

§ 160.46 Identification of containers.

Containers packed with naval stores which have been inspected, classified, graded, and certified by a licensed inspector at an eligible processing plant shall be marked to show the name and location or other acceptable identification of the plant, and the legend “U.S. Graded” or “U.S. Inspected”, and, in the case of rosin, the batch number indicating the date of production.

§ 160.47 Periodic re-inspection.

Any eligible processing plant may from time to time be re-inspected and any rosin produced by such plant may be graded or re-graded by any official inspector authorized to make such examinations. The results of such examinations shall be made known only to the affected processor, the licensed inspector, and to such employees of the Department officially authorized to receive such information.

§ 160.48 Form of certificate.

The certificates issued under this part by licensed inspectors shall be on forms approved by the Administrator.
§ 160.49 Responsibility for inspection certificates and forms.

Certificate forms and other inspection record forms may be issued to an accredited processor, and the said processor shall be responsible for and accountable to the Department for all such material supplied to him. He shall require the licensed inspector to submit or otherwise make disposition of issued certificates in accordance with instructions received from the Administrator.

§ 160.50 Reports to be made by accredited processors.

Each accredited processor shall furnish the Administrator such reports and other information relative to the operation and output of his eligible processing plant as the Administrator may deem necessary or appropriate for the administration of the provisions in this part applicable to licensed inspection, subject to the approval of the Bureau of the Budget. Failure by an accredited processor to keep such records as may be necessary for him to submit correct reports, or failure by the processor to supply correct information to the Administrator shall be deemed a violation of the provisions in this part, and cause for suspension or revocation of his inspection permit.

§ 160.51 Report of non-conformance.

Each licensed inspector shall promptly report to his supervising inspector and to the accredited processor, any evidence of which he has knowledge indicating non-conformance with the provisions in this part, and shall also report any attempt or effort to influence him to sample, grade, or certify any naval stores incorrectly or contrary to the provisions in this part.

§ 160.52 Suspension or revocation of licenses.

(a) Any license to inspect, grade, and certify naval stores may be suspended or revoked for repeated failure by the licensee correctly to inspect, grade, classify, or certify naval stores, or upon the persistence of any condition which renders him unfit to perform the duties of a licensed inspector, or for other continued non-conformance with any provision of the act or the provisions in this part. A license may be suspended for similar failures, conditions or non-conformance of shorter duration or less serious nature.

(b) A license to inspect, grade and certify naval stores may be summarily suspended or revoked by any official authorized to issue or countersign such licenses where the public health, interest, or safety so requires or for willful acts or omissions by the licensee which constitute grounds for suspension or revocation of his license under paragraph (a) of this section. In all other cases, prior to the institution of proceedings for the suspension or revocation of a license, such authorized official shall cause to be served upon the licensee, in person or by registered mail, a statement of the facts which appear to warrant such suspension or revocation, specifying a reasonable time, depending upon the circumstances in each case, within which the licensee may demonstrate or achieve compliance with the act, and the provisions in this part. The licensee may demonstrate compliance by the presentation of evidence in writing or, in the discretion of such authorized official, at an oral hearing. If, at the end of the time allowed for the licensee to demonstrate or achieve compliance, such authorized official finds he is in compliance, his license shall not be suspended or revoked. If such authorized official finds the licensee not in compliance, the license may be suspended or revoked after service upon the licensee, in person or by registered mail, of a notice that such action is under consideration for reasons specified in the statement of facts previously served upon him and after reasonable opportunity is given the licensee to present further evidence in his behalf. Within 7 days after receipt of notice of the suspension or revocation of his license, the inspector by letter may appeal to the Administrator for its reinstatement and may attach to such letter any evidence he may wish to submit.

§ 160.53 Stopping inspection by suspended inspector.

An accredited processor upon receipt of notice of the suspension or revocation of a license shall discontinue the
§ 160.54 Suspension or revocation of permits.

(a) Any permit issued to an accredited processor to have naval stores inspected, graded, and certified by a licensed inspector may be suspended or revoked for the failure of the processor, after official notice, to correct any condition which renders his plant unqualified for licensed inspection service, or for repeated or continued non-conformance with any other provision of the act or the provisions in this part. A permit may be suspended for similar non-conformance or failure of shorter duration or less serious nature.

(b) A permit for licensed inspection may be summarily suspended or revoked by any official authorized to issue or countersign such permits where the public health, interest, or safety so requires or for willful acts or omissions by the permittee which constitute grounds for suspension or revocation of his permit under paragraph (a) of this section. In all other cases, prior to the institution of proceedings for the suspension or revocation of a permit, such authorized official shall cause to be served upon the permittee, in person or by registered mail, a statement of the facts which appear to warrant such suspension or revocation, specifying a reasonable time, depending upon the circumstances in each case, within which the permittee may demonstrate or achieve compliance with the act and the provisions in this part. The permittee may demonstrate compliance by the presentation of evidence in writing or, in the discretion of such authorized official, at an oral hearing. If, at the end of the time allowed for the permittee to demonstrate or achieve compliance, such authorized official finds he is in compliance, his permit shall not be suspended or revoked. If such authorized official finds the permittee is not in compliance, the permit may be suspended or revoked after service upon the permittee, in person or by registered mail, of a notice that such action is under consideration for reasons specified in the statement of facts previously served upon him after reasonable opportunity is given the permittee to present further evidence in his behalf. Within 7 days after receipt of notice of the suspension or revocation of his permit, the processor by letter may appeal to the Administrator for its reinstatement, and may attach to such letter any evidence he may wish to submit.

§ 160.55 Voluntary discontinuance of licensed inspection.

An accredited processor desiring to discontinue the use of licensed inspectors for making official inspections, gradings, and certifications of naval stores, shall give not less than 30 days notice in writing to the Administrator of the intention to discontinue such service. At the termination of the service such processor shall surrender to the authorized representative of the Administrator the permit for licensed inspection, together with all unused certificates, forms, or other supplies and equipment furnished by the Department and held by the processor for the use of his licensed inspectors, other than standards or such other material as may be covered by a separate loan application or agreement.

§ 160.56 Compensation of licensed inspectors.

Each licensed inspector shall be paid directly by the accredited processor for his services as an official inspector and for such other services or duties to which he may be assigned in accordance with §160.44: Provided, That whenever the Administrator shall deem it to be in the best interest of the Federal inspection service, he may require such processor to report to him the terms and amounts of compensation paid to a licensed inspector during any specified period.

§ 160.57 Fees for licensed inspection permits.

Each accredited processor shall pay to the Department annually such permit fee for each eligible processing plant for which a permit has been issued, as may be prescribed by the Administrator.
§ 160.58 Fees for inspection and certification by licensed inspectors.

Each accredited processor for whom naval stores have been inspected and certified hereunder by a licensed inspector during any calendar month shall on receipt of invoice pay to the Department the fee for each container of naval stores so inspected and certified as may be prescribed by the Administrator.

§ 160.59 Appeal inspections.

Any inspection certificate issued by a licensed inspector may be appealed in writing to the Administrator, such appeal to state the circumstances, the certificate number, and the quantity and certified grade of the naval stores covered thereby. A prompt regrade inspection shall be made by an official inspector other than the original inspector.

§ 160.60 Charge for appeal inspection.

If the findings in an appeal inspection confirm the original inspection, the accredited processor shall pay for such reinspection in accordance with the fees established for original inspections made by inspectors who are paid employees of the Department. If the findings do not confirm the original inspection, a corrected certificate will be issued and no charge will be made for reinspection.

CERTIFICATES AND REPORTS

§ 160.61 Kinds of certificates issued.

A certificate as provided for by section 4 of the act shall be issued to the interested person in duplicate covering naval stores examined at his request, and additional copies, if desired, may be obtained from the inspector. The kind of certificates issued are as follows:

(a) Turpentine analysis and classification certificate.
(b) Turpentine field classification certificate.
(c) Rosin classification and grade certificate.
(d) Rosin grade and weight certificate.
(e) Loan and sale certificate for United States graded rosin.
(f) Classification and grade certificate for rosin in small containers.

§ 160.62 When a certificate may be issued.

A certificate showing the results of any analysis, classification, or grading shall be issued on any naval stores which conform with a United States Standard as to kind and grade and which have been sampled by or under the direction and supervision of an official inspector in accordance with the provisions in this part. The certificate shall be valid only so long as the naval stores described therein shall remain under seal or in the identical condition obtaining at the time of their examination.

§ 160.63 When a certificate may not be issued.

No certificate shall be issued for naval stores unless the naval stores have been packed, sampled, marked, and identified as required by the provisions in this part, and otherwise conform with the act and such provisions. The results of the examination of such naval stores or anything offered as such may be covered by a written report, which in no case shall be construed as a certificate.

§ 160.64 Issuance of loan and sale certificate.

On request of the owner, a “Loan and Sale Certificate for United States Graded Rosin” (designated “L. S. Certificate” in this part) may be issued to cover any rosin for which a Rosin Classification and Grade Certificate has previously been issued by an official inspector, and which remains in the original container. No inspector shall issue and L. S. Certificate until he has made certain that the rosin had previously been officially inspected and certified. The request for such certificate may be made to the nearest inspector.

§ 160.65 Prior certification required.

If an L. S. Certificate is desired for a quantity of rosin, a part of which has not been previously classified and graded by an official inspector and covered by a certificate, such part shall be so inspected, classified, graded, marked,
§ 160.66 Fees and charges for services rendered.

The Administrator shall from time to time establish fees and charges for examination, sampling, classification, grading, analysis, and certification of naval stores as he may deem fair and reasonable, and commensurate with the cost of the service rendered. Such fees and charges may be announced to the trade in such manner as the Administrator considers practicable.

§ 160.67 Fees under cooperative agreements.

Fees and charges for any inspection and grading service covered by the terms of any cooperative agreement with any interested person may be established by and incorporated into such agreement.

§ 160.68 Collection of fees.

Beginning October 1, 1981, all fees and charges assessed to interested parties for services rendered under the Naval Stores Act shall be collected by the Director, Tobacco Division, Agricultural Marketing Service, to cover insofar as practicable, all costs of providing such services. Such fees shall be credited to the Division in accordance with fiscal regulations of the Department.

§ 160.69 Expenses to be borne by person requesting service.

All expenses incurred by the United States in connection with the sampling, analysis, classification, or grading of naval stores on request, not otherwise provided for by suitable regulation, shall be borne by the person making the request.

§ 160.70 Rendition of claims.

As soon as practicable after the end of each month, or sooner if deemed advisable, there shall be mailed to each interested person at whose request any services have been performed, a claim for payment of moneys due the United States for the services rendered or for the loan or repair of any standards.

§ 160.71 Delinquent claims.

Any claim remaining unpaid after 30 days from the date of its rendition shall be considered as delinquent, and notice thereof shall be brought to the attention of the interested person. After a claim becomes delinquent, the Administrator shall suspend or deny inspection and related services to any interested party who has failed to make timely payment of the fees and charges assessed, as well as any claims which have been rendered, and shall take such action as may be necessary to collect any amounts due. A deposit in advance sufficient to cover the fees and expenses for any subsequent service may be required of any person failing to pay his claim after issuance of such notice of delinquency.

§ 160.73 Availability of standards.

(a) Standards available on loan. Duplicates of the United States Standards provided by the Department for classifying and grading rosin in commerce, shall remain the property of the Department, and may be loaned, but not sold, to such interested persons as may be approved by the Administrator. Any interested person desiring the loan of duplicates of the United States Standards for rosin shall submit to the Administrator a form application, properly signed, which will show his interest in naval stores and his eligibility to receive and use such duplicates, in accordance with the provisions in this part. Standards so loaned shall be returned promptly on request.

(b) Standards available for purchase. Duplicate cubes for rosin standard...
§ 160.74 Loan of standards without security.

Duplicates of the United States Standards for rosin may be loaned without deposit of security, insofar as the supply in the possession of the Department will permit, to:

(a) Any State, County, or Municipal official duly authorized to inspect and grade rosin, who is actually engaged in inspection and grading work, and who shall have been approved by the Administrator to act as custodian of such standards.

(b) Any bona fide dealer or distributor of rosin who shall have been approved by the Administrator to act as depositary for such standards, and who shall maintain and operate a regular naval stores yard which is available to and is regularly used by other persons for the purpose of having rosin inspected, graded, stored, or sold thereon: Provided, however. That a person whose principal use of such standards is the grading of rosin of his own production shall not be deemed to come within the scope of this paragraph, but shall be required to post the security provided for in §160.75: And provided, further. That no person shall receive more than two sets of duplicates under this paragraph.

(c) Any trade organization or institution of higher learning having a direct relationship to the production or marketing of naval stores other than by reason of the private interests or operations of its individual members, when in the opinion of the Administrator such standards are necessary to the normal functioning of the organization or institution.

§ 160.75 Loan of standards under security deposit.

Duplicates of the United States Standards for rosin may be loaned to interested persons other than those specified in §160.74, on deposit with the Department of security in the sum of $100, by remittance payable to the Treasurer of the United States.

§ 160.76 Annual charge for use of standards.

The cost of providing duplicates of the United States Standards for rosin, and of maintaining such duplicates in accurate and proper condition for use in grading rosin, and of keeping necessary records thereof, shall be borne by the interested persons to whom the duplicates have been issued under §160.74 (a) or (b) or §160.75, and shall be defrayed by an annual charge of $20.00 for each set of duplicates, payable at the end of each Government fiscal year, or on surrender of the duplicates, computed pro-rata for the number of quarters of the fiscal year during which the duplicates were held: Provided, That when any set of standards issued on loan shall need servicing more often than once in any fiscal year, in order to maintain them in accurate condition for grading, and the need for such extra servicing is deemed by the Administrator to be the result of improper handling and use of the standards by the interested person or his agent, such person shall pay an additional amount of $30.00 for each such additional servicing, plus the cost of any parts or components of the standards replaced in such servicing, and any postage charges incurred by the Department in connection therewith.

§ 160.77 Reporting on use of standards.

Each person to whom any duplicates of the United States Standards for rosin have been loaned under any provision in this part shall, from time to time, submit such reports on the use and condition thereof as may be required by the Administrator.

§ 160.78 Loss or damage of standards.

In case any duplicates become damaged or are missing, the person to whom they were loaned shall promptly inform the Administrator in writing, stating what damage or loss was sustained and how the same occurred. The cost of making necessary repairs to
§ 160.79 Request for additional standards.

Any person to whom any duplicates have been loaned without security deposit, who shall request and be granted the loan of additional duplicates to replace the original ones, shall be required to deposit the security provided for in §160.75 prior to the loan of such additional duplicates. If the set of duplicates first loaned to such person, or any part thereof, is recovered, it shall be returned for inspection or repair. The cost of any repairs or replacements shall be paid, whereupon such original set may be returned to such person, and he shall surrender the second set, on receipt of which the security posted therefor shall be returned.

§ 160.80 Denial of loan of additional standards.

It shall be deemed impracticable under the act to loan additional duplicates to any person who has permitted duplicates previously loaned to him, without security, to become lost, damaged, or destroyed, if in the opinion of the Administrator, such loss, damage, or destruction resulted from any failure on the part of the interested person or his agent to take suitable precaution to prevent the loss, damage, or destruction, or when the available supply of duplicates is deemed insufficient to warrant the loan of additional duplicates to such person.

§ 160.81 Surrender of standards.

On the death of any person, or the dissolution or reorganization of any partnership, firm, or corporation, holding any duplicates of the United States Standards for rosin, they shall be promptly returned to the Administrator by the holder thereof.

§ 160.82 Return of security.

The security deposit received from any person to whom duplicates of the United States Standards for rosin have been loaned will be held in the special deposit account of the Department, and the same will be returned to the person from whom received, or his legal representative, on surrender of the duplicates secured thereby: Provided, That before refund is made the cost of any repairs or replacement shall be deducted.

§ 160.83 Miscellaneous receipts.

All moneys received or withheld to cover the cost of repairs, or of replacing any missing parts of duplicates, or as rental for duplicates, shall be paid into the United States Treasury as Miscellaneous Receipts.

SALES AND SHIPMENTS

§ 160.84 Identification of shipments.

The invoice or contract of sale of any naval stores in commerce shall identify and describe the article in accordance with the classification and the standard of kind and grade provided by the act or established by the Administrator.

§ 160.85 Sale of mixed turpentine not lawful.

Since no standard has been provided for a mixture of two or more kinds of spirits of turpentine, the sale in commerce of any such mixture is prohibited under any designation.

§ 160.86 Prohibited use of United States Standards.

It shall be deemed unlawful under any condition to sell, under or by reference to any United States Standard for naval stores, as provided by the act and defined in the regulations in this part, any article which fails to conform with such standard in all respects: Provided, That the phrase “under or by reference to United States Standards” as it appears in the act and the regulations in this part, shall include the use of any words, letters, brands, labels, or marks constituting any of the United States Standards for naval stores on any container of naval stores, on anything attached to or supplied therewith on delivery, or on any inspection, sale, or shipping record or invoice, in describing the kind, classification, or grade of the naval stores covered thereby.
§ 160.87 Prohibited use of word "turpentine" or derivatives thereof.

It shall be deemed unlawful to use in commerce the word "turpentine" or a compound, derivative or imitation thereof, or any word or combination of words which are a part of a United States Standard for any kind of spirits of turpentine, to describe in any manner a mixture of spirits of turpentine with any other oil or solvent.

§ 160.88 Permitted use of words "turpentine" and "rosin."

The use of the word "turpentine" or the word "rosin" is not prohibited in the name of an article made, prepared, or processed from spirits of turpentine or rosin, or to indicate the process whereby such article was made or prepared: Provided, That this section shall not apply to any article covered by § 160.87.

§ 160.89 Medicinal preparations.

A compound or mixture containing spirits of turpentine or rosin, or both, with other drugs, when sold for medicinal purposes, is not subject to the provisions of the Naval Stores Act or of the provisions in this part.

LABELING, ADVERTISING AND PACKING

§ 160.90 False, misleading, or deceitful practices.

No label or other means or practice used in connection with the sale of naval stores in commerce or of anything offered as such shall be false, misleading, or deceitful in any manner.

§ 160.91 Meaning of words "pine" and "pine tree."

The words "pine" or "pine tree," when used to designate the source of spirits of turpentine, shall be deemed to mean a living, growing plant of the genus Pinus, family Pinaceae, unless the words "wood of" are used in connection therewith. The terms "oleoresin of the southern pine" or "oleoresin from the southern pine" shall be deemed to mean the gum or oleoresin exuded by such living, growing trees, the source of gum spirits of turpentine.

§ 160.92 Meaning of word "gallon."

The word "gallon," when used on or impressed into any container of spirits of turpentine, or when used in an invoice referring to spirits of turpentine in containers of 10 gallons content or less, shall mean a United States standard gallon of 231 cubic inches of turpentine, regardless of any other definitive terms used therewith: Provided, That this shall not apply to the meaning of the words "imperial gallon", when placed on containers intended for foreign shipment. For the purpose of these regulations a measured gallon of turpentine, or any indicated multiple or fractional part thereof, shall be such quantity when measured at a temperature of not more than 75 °Fahrenheit, and a weighed gallon shall be construed to mean 7.2 pounds of turpentine.

§ 160.93 Powdered rosin.

The classification and grade of any rosin sold in commerce in a powdered or finely broken condition shall be stated in the invoice or contract of sale in accordance with the kind and grade of the rosin before it was powdered or broken. For the purpose of preventing coalescence there may be incorporated in such article a limited and necessary quantity of inert, nonresinous foreign material: Provided, That the nature and quantity of such inert material shall be stated on the label.

§ 160.94 Spirits of turpentine for medicinal use.

Spirits of turpentine so packed, described, labeled, or sold as to indicate that it is offered as a medicament shall nevertheless be subject to the requirements of the Naval Stores Act and of the provisions in this part, as well as any requirements under any other statute.

PROCEEDINGS IN CASE OF VIOLATION

§ 160.95 Proceedings prior to reporting violations of the act.

Whenever it shall appear to the Administrator that any violation of the act should be reported to the United States Department of Justice for appropriate action, he shall serve notice in writing upon the person apparently responsible for the alleged violation.
§ 160.96
and shall give such person an opportunity to show in duplicate to the Administrator within 20 days after the receipt of such notice why the alleged violation should not be reported to the Department of Justice. The person so notified may within the period stated apply for an opportunity to present his views in person, or by his attorney. If the Administrator deems the request appropriate he will designate a time and place for hearing the applicant.

§ 160.96 Report of violations for prosecution.
In the event of failure of the person notified of an apparent violation of the act to submit to the Administrator a written answer as provided in §160.95, or if, after such person has filed his answer or in addition, been given an opportunity to present his views orally, no sufficient reason has been shown why the alleged violation should not be reported for prosecution, the General Counsel of the Department, acting for and on behalf of the Administrator, shall report the alleged violation to the Department of Justice for appropriate action.

§ 160.97 Publication.
Composite data regarding inspections, analyses, classifications, and grading of naval stores made under any provision of the act or the provisions in this part may be published from time to time in such mediums as the Administrator may designate for the purpose.

SPECIFIC FEES PAYABLE FOR SERVICES RENDERED

§ 160.201 Fees generally for field inspection and certification of naval stores and drum containers of rosin.
Except as provided in §160.204, the following fees shall be paid to the United States for the field inspection and certification of naval stores and drum containers of rosin, not conducted under a cooperative agreement and where laboratory analysis or testing is not required:
(a) Inspections by licensed inspectors at eligible processing plants.
(1) Rosin (grading and incidental certification as to class, condition and weight).
(i) In drums (see Note 1) per drum—$1.24.
(ii) In 100 pound bags (see Note 1) per bag—$.23.
(iii) In tank cars, per car—$67.50.
(iv) In tank trucks, per truck—$34.00.
(2) Turpentine (Grading and incidental certification as to class, condition and volume).
(i) In 55 gallon drums, per drum—$2.25.
(ii) In tank cars or trucks, per unit of 100 gallons—$1.41.
(iii) In bulk for delivery to tank steamer, per unit of 100 gallons—$2.25.
(b) Inspections by regularly employed, salaried Federal inspectors.
(1) Rosin.
(i) Grading and weighing at concentration and storage yards, per drum—$4.05.
(ii) Irregular inspection and grading at distillation or processing plants, up to 400 drums, per drum—$3.60; all over 400 drums, per drum—$2.25.
(iii) Weighing at concentration and storage yards, subsequent to grading, per drum—$2.25.
(iv) Examination of the external or internal appearance and condition of filled rosin drums, and of the rosin contained therein—See Note 2 and §160.204.
(v) Re-certification under L.S. Certificate of rosin moving in commerce, per drum—$.23.
(2) Turpentine (inspection and certification as to kind, condition, volume, etc.).
(i) In drums of 55 gallons, per drum—$3.38.
(ii) In tank cars or trucks, per unit of 100 gallons—$2.81.
(iii) For bulk delivery to tank steamer, per unit of 100 gallons—$2.25.
Note 1: When the number of drums and bags inspected and certified at any plant during any calendar month is equivalent to a total of 2,400 or more drums (counting five bags as equivalent to one drum), the fee shall be computed at the rate of $1.01 per drum and $.18 per bag certified. For quantities less than the equivalent of 2,400 drums, the fee shall be computed at the prescribed rate of $1.24 per drum and $.23 per bag.
Note 2: The inspection or related examination of containers of rosin and their contents under Section B(1)(iv) shall be performed only after the inspector or the Chief of the Marketing Programs Branch has been advised regarding the location, nature, scope, and purpose of the service desired, and the
§ 160.202 Fees generally for laboratory analysis and testing.

Except as provided in §160.204, the following fees shall be paid to the United States for laboratory analysis and testing of naval stores, when not performed in the conduct of a cooperative agreement with respect to such products:

(a) **Rosin and turpentine.** (See Note 3).

(1) Comprehensive analysis to determine purity, specification compliance, or other chemical and physical properties related thereto:
   (i) Single Sample—$40.00.
   (ii) Two or more samples analyzed at same time per sample—$35.00.

(2) Limited testing to determine kind, grade, or other factors related to quality of utility.
   (i) Single Sample:
      (A) Rosin—$14.00.
      (B) Turpentine—$10.00.
   (ii) Two or more samples tested at same time:
      (A) Rosin—per sample—$10.00.
      (B) Turpentine—per sample—$8.00.

NOTE 3: The analysis and testing of rosin involves many different types of laboratory procedures, requiring variable time for performance, and including other cost factors. The charge for such analysis and testing will depend on the type and extent of the work required to supply the information desired by the interested person requesting the service. When it appears that the charges indicated in this section will not defray the costs of making the tests required, the interested person shall be informed before any work is performed and will be supplied with a cost estimate of the actual charges to be made. See also §160.204.

[47 FR 3345, Jan. 25, 1982]

§ 160.203 Fees for inspection and certification of other naval stores material.

Whenever it shall be deemed practical and in the interest of the naval stores trade to sample, inspect, analyze and certify any naval stores material other than spirits of turpentine or rosin, at the request of an interested person, the fees for such inspection shall be the same as the fees prescribed for spirits of turpentine.

[17 FR 189, Jan. 8, 1952]

§ 160.204 Fees for extra cost and hourly rate service.

The fees specified in §§160.201 and 160.202 apply to the routine field inspection and usual laboratory work incident to the certification of commodities covered by those sections. Should additional work be required to provide special information desired by the person requesting service, or should it be necessary for an inspector to make a special trip or to deviate from his regular schedule of travel, or should the fees prescribed in §§160.201 and 160.202 otherwise be insufficient to defray the cost to the Government for rendering such service, then the person requesting the service shall pay, in lieu of the prescribed fees, an amount computed by the Department as sufficient to defray the total cost thereof, including allowances for time spent in collecting and preparing samples obtaining identification records, traveling, performing laboratory tests or other necessary work, and also any expense incurred for authorized transportation and subsistence of the inspector or analyst while in travel status. The charge for time so spent shall be computed at the rate of $17.80 per hour for laboratory and field inspection work. The overtime rate for services performed outside the inspector’s regularly scheduled tour of duty shall be $21.30. The rate of $26.70 shall be charged for work performed on Sundays or holidays.

[47 FR 3345, Jan. 25, 1982]

§ 160.205 Permit fees for eligible processing plants under licensed inspection.

Initial permit fee—$20.00.

Annual renewal permit fee—$20.00.

NOTE: The renewal permit fee shall be reduced to $10 per year when the inspection fees paid by the eligible processing plant aggregate $200 or more during the preceding fiscal year ended September 30, and shall be waived when such fees aggregate $400 or more during such fiscal year. Such reduced permit fee shall apply only in case the eligible processing plant has made use of the licensed inspection service.

[47 FR 3346, Jan. 25, 1982]
SUBCHAPTERS G–H [RESERVED]
SUBCHAPTER K—FEDERAL SEED ACT

PART 201—FEDERAL SEED ACT REGULATIONS

RULES AND REGULATIONS OF THE SECRETARY OF AGRICULTURE

DEFINITIONS

Sec.
201.1 Meaning of words.
201.2 Terms defined.

ADMINISTRATION

201.3 Administrator.

RECORDS FOR AGRICULTURAL AND VEGETABLE SEEDS

201.4 Maintenance and accessibility.
201.5 Origin.
201.6 Germination.
201.7 Purity (including variety).
201.7a Treated seed.

LABELING AGRICULTURAL SEEDS

201.8 Contents of the label.
201.9 Kind.
201.10 Variety.
201.11 Hybrid.
201.12 Name of kind and variety.
201.12a Lawn and turf seed mixtures.
201.13 Lot number or other identification.
201.14 Origin.
201.15 Weed seeds.
201.16 Noxious-weed seeds.
201.17 Noxious-weed seeds in the District of Columbia.
201.18 Other agricultural seeds (crop seeds).
201.19 Inert matter.
201.20 Germination.
201.21 Hard seed.
201.22 Date of test.
201.23 Name of shipper or consignee.
201.24 Code designation.
201.24a Inoculated seed.

LABELING VEGETABLE SEEDS

201.25 Contents of the label.
201.26 Kind, variety, and hybrid.
201.27 Name of shipper or consignee.
201.28 Code designation.
201.29 Germination of vegetable seed in containers of 1 pound or less.
201.29a Germination of vegetable seed in containers of more than 1 pound.
201.30 Hard seed.
201.30a Date of test.
201.30b Lot number or other lot identification of vegetable seed in containers of more than 1 pound.

201.31 Germination standards for vegetable seeds in interstate commerce.

LABELING IN GENERAL

201.31a Labeling treated seed.
201.32 Screenings.
201.33 Seed in bulk or large quantities; seed for cleaning or processing.
201.34 Kind, variety, and type; treatment substances; designation as hybrid.
201.35 Blank spaces.
201.36 The words “free” and “none.”

MODIFYING STATEMENTS

201.36a Disclaimers and nonwarranties.

ADVERTISING

201.36b Name of kind and variety; designation as hybrid.
201.36c Hermetically-sealed containers.

INSPECTION

201.37 Authorization.
201.38 Importations.

SAMPLING IN THE ADMINISTRATION OF THE ACT

201.39 General procedure.
201.40 Bulk.
201.41 Bags.
201.42 Small containers.
201.43 Size of sample.
201.44 Forwarding samples.

PURITY ANALYSIS IN THE ADMINISTRATION OF THE ACT

201.45 Obtaining the working sample.
201.46 Weight of working sample.
201.47 Separation.
201.47a Seed unit.
201.47b Working samples.
201.48 Kind or variety considered pure seed.
201.49 Other crop seed.
201.50 Weed seed.
201.51 Inert matter.
201.51a Special procedures for purity analysis.
201.51b Purity procedures for coated seed.
201.52 Noxious-weed seeds.

GERMINATION TESTS IN THE ADMINISTRATION OF THE ACT

201.53 Source of seeds for germination.
201.54 Number of seeds for germination.
201.55 Retests.
201.55a Moisture and aeration of substratum.
201.56 Interpretation.
201.56-1 Goosefoot family, Chenopodiaceae and Carpetweed family Aizoaceae.
Agricultural Marketing Service, USDA § 201.2

201.56–2 Sunflower family, Asteraceae (Compositae).
201.56–3 Mustard family, Brassicaceae (Cruciferae).
201.56–4 Cucurbit family (Cucurbitaceae).
201.56–5 Grass family, Poaceae (Gramineae).
201.56–6 Legume or pea family, Fabaceae (Leguminosae).
201.56–7 Lily family, Liliaceae.
201.56–8 Flax family, Linaceae.
201.56–9 Mallow family, Malvaceae.
201.56–10 Spurge family, Euphorbiaceae.
201.56–11 Knotweed family, Polygonaceae.
201.56 Miscellaneous plant families.
201.57 Hard seeds.
201.57a Dormant seeds.
201.58 Substrata, temperature, duration of test, and certain other specific directions for testing for germination and hard seed.

EXAMINATIONS IN THE ADMINISTRATION OF THE ACT

201.58a Indistinguishable seeds.
201.58b Origin.
201.58c Detection of captan, mercury, or thiram on seed.
201.58d Fungal endophyte test.

TOLERANCES

201.59 Application.
201.60 Purity percentages.
201.61 Fluorescence percentages in ryegrasses.
201.62 Tests for determination of percentages of kind, variety, type, hybrid, or offtype.
201.63 Germination.
201.64 Pure live seed.
201.65 Noxious weed seeds in interstate commerce.
201.66 [Reserved]

CERTIFIED SEED

201.67 Seed certifying agency standards and procedures.
201.68 Eligibility requirements for certification of varieties.
201.69 Classes of certified seed.
201.70 Limitations of generations for certified seed.
201.71 Establishing the source of all classes of certified seed.
201.72 Production of all classes of certified seed.
201.73 Processors and processing of all classes of certified seed.
201.74 Labeling of all classes of certified seed.
201.75 Interagency certification.
201.76 Minimum Land, Isolation, Field, and Seed Standards.

ADDITIONAL REQUIREMENTS FOR THE CERTIFICATION OF PLANT MATERIALS OF CERTAIN CROPS

201.77 Length of stand requirements.
201.78 Pollen control for hybrids.


NOTE: Approved by the Office of Management and Budget under OMB control number 0581–0026 (47 FR 746, Jan. 7, 1982)

RULES AND REGULATIONS OF THE SECRETARY OF AGRICULTURE

DEFINITIONS

§ 201.1 Meaning of words.

Words in the regulations in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

[5 FR 28, Jan. 4, 1940]

§ 201.2 Terms defined.

When used in the regulations in this part the terms as defined in section 101 of the Act, unless modified in this section as provided in the Act, shall apply with equal force and effect. In addition, as used in §§201.1 through 201.159:

(a) The Act. The term “Act” means the FSA approved August 9, 1939 (53 Stat. 1275; 7 U.S.C. 1551–1611 as amended);

(b) Person. The term “person” includes a partnership, corporation, company, society, association, receiver, or trustee;

(c) Secretary. The term “Secretary” means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead;

(d) Hearing Clerk. The term “Hearing Clerk” means the Hearing Clerk, United States Department of Agriculture, Washington, DC;

(e) Respondent. The term “respondent” means a person against whom a complaint is issued;

(f) Examiner. The term “examiner” means an employee of the Department of Agriculture, designated by the Secretary to conduct hearings under the Act, and §§201.1 through 201.159;

(g) Federal Register. The term “Federal Register” means the publication provided by the Act of July 26,
§ 201.2

1935 (49 Stat. 500), and acts supplemental thereto and amendatory thereof;

(h) Agricultural seeds. The term “agricultural seeds” means the following kinds of grass, forage, and field crop seeds, that are used for seeding purposes in the United States:

- Agrotiricum—Agrotiricum Ciferri and Giacom.
- Alfalfa—Medicago sativa L.
- Alfilaria—Erodium cicutarium (L.) L’Her.
- Alyceclover—Alysicarpus vulgaris (L.) DC.
- Bahiagrass—Paspalum notatum Fluegge
- Barredclover—Medicago truncatula Gaertn.
- Bean, adzuki—Vigna angularis (Wildd.) Ohwi and Ohashi
- Bean, field—Phaseolus vulgaris L.
- Bean, mung—Vigna radiata (L.) Wilczek
- Beet, field—Beta vulgaris L. subsp. vulgaris
- Beet, sugar—Beta vulgaris L. subsp. vulgaris Beggrowd, Floridiana—Desmodium tortuosum (Sw.) DC.
- Bentgrass, colonial—Agrostis capillaris L.
- Bentgrass, creeping—Agrostis stolonifera L.
- Bermedgrass—Cynodon dactylon (L.) Pers.
- Bermudagrass—Cynodon dactylon (L.) Pers. var. dactylon
- Bermudagrass, giant—Cynodon dactylon (L.) Pers. var. Aridus Harlan and de Wet
- Bluegrass, annual—Poa annua L.
- Bluegrass, bulbous—Poa bulbosa L.
- Bluegrass, Canada—Poa compressa L.
- Bluegrass, glaucantha—Poa glauca Vahl
- Bluegrass, Kentucky—Poa pratensis L.
- Bluegrass, Nevada—Poa secunda J.S. Presl
- Bluegrass, rough—Poa trivialis L.
- Bluegrass, Texas—Poa arachnioides Torr.
- Bluegrass, wood—Poa nurvalis L.
- Bluejoint—Calamagrostis canadensis (Michx.) P. Beauv.
- Bluestem, big—Andropogon gerardii Vitm.
- Bluestem, little—Schizachyrium scoparium (Michx.) Nash
- Bluestem, sand—Andropogon hallii Hack.
- Bluestem, yellow—Bothriochloa ischaemum (L.) Keng
- Bottlebrush—squirreltail—Elymus elymoides (Raf.) Swezey
- Broome, field—Bromus arvensis L.
- Brome, meadow—Bromus bioebiersteinii Roem. and Schult.
- Brome, mountain—Bromus marginatus Steud.
- Brome, smooth—Bromus inermis Leyss.
- Brom clover—Medicago trispora (L.) Moench
- Buckwheat—Fagopyrum esculentum Moench
- Buffalo grass—Buchloe dactyloides (Nutt.) Engelm.
- Buffelgrass—Cenchrus ciliaris L.
- Burclover, California—Medicago polymorpha L.
- Burclover, spotted—Medicago arabica (L.) Huds.
- Burnet, little—Sanguisorba minor Scop.
- Buttonclover—Medicago orbicularis (L.) Bartal.
- Canarygrass—Phalaris canariensis L.
- Canarygrass, reed—Phalaris arundinacea L.
- Carpetgrass—Arphonis fissilisus (Raddi) Kuhlm.
- Castorbean—Ricinus communis L.
- Celosia, soft—Bromus hordeaceus L.
- Chickpea—Cicer arietinum L.
- Clover, alsike—Trifolium hybridum L.
- Clover, arrowleaf—Trifolium vesiculosum Savi
- Clover, berseem—Trifolium alexandrinum L.
- Clover, cluster—Trifolium glomeratum L.
- Clover, crimson—Trifolium incarnatum L.
- Clover, Kenya—Trifolium semipaludosum Freesen.
- Clover, ladino—Trifolium repens L.
- Clover, lappa—Trifolium lappaceum L.
- Clover, large hop—Trifolium campestris L.
- Clover, PersIan—Trifolium resupinatum L.
- Clover, red or Red clover, mammoth—Trifolium pratense L.
- Clover, red, medium—Trifolium pratense L.
- Clover, rose—Trifolium hirtum All.
- Clover, small hop or suckling—Trifolium dubium Sibth.
- Clover, strawberry—Trifolium fragiferum L.
- Clover, sub or subterranean—Trifolium subterraneum L.
- Clover, white—Trifolium repens L. (also see Clover, ladino)
- Clover—also see Alyceclover, Burclover, Buttonclover, Sourclover, Sweetclover
- Corn, field—Zea mays L.
- Corn, pop—Zea mays L.
- Cotton—Gossypium spp.
- Cowpea—Vigna unguiculata (L.) Walp. subsp. unguiculata
- Creamp—Creape abyssinica E.R. Fries
- Crested dogtail—Cynosurus cristatus L.
- Crotalaria, lance—Crotalaria lanceolata E. Mey.
- Crotalaria, showy—Crotalaria spectabilis Roth
- Crotalaria, slenderleaf—Crotalaria brevidens Benth. var. intermedia (Kotschy) Polh.
- Crotalaria, striped or smooth—Crotalaria pallida Ait.
- Crotalaria, sunn—Crotalaria juncea L.
- Crownvetch—Coronilla varia L.
- Dallisgrass—Paspalum dilatatum Poir.
- Didichondra—Didichondra repens Forst. and Forst. f.
- Dropsedeed, sand—Sporobulus cryptandrus (Torr.) A. Gray
- Emmer—Triticum dicoccum Schrank
- Fescue, chewings—Festuca rubra L. subsp. commutata Gaud.
- Fescue, hair—Festuca tenuifolia Sibth.
- Fescue, hard—Festuca brevila Tracey
- Fescue, meadow—Festuca pratensis Huds.
- Fescue, red—Festuca rubra L. subsp. rubra
- Fescue, sheep—Festuca ovina L. var. ovina
- Fescue, tall—Festuca arundinacea Schreb.
Agricultural Marketing Service, USDA

§ 201.2

Flatpea—Lathyrus sylvestris L.
Flax—Linum usitatissimum L.
Foxtail, creeping—Alopecurus arundinaceus Poir.
Foxtail, meadow—Alopecurus pratensis L.
Galletagrass—Hilaria jamesii (Torr.) Benth.
Grama, blue—Bouteloua gracilis (Kunth) Steud.
Grama, side-oats—Bouteloua curtipendula (Michx.) Torr.
Guar—Cyamopsis tetragonoloba (L.) Taub.
Guineagrass—Panicum maximum Jacq. var. maximum
Hardinggrass—Phalaris stimoptera Hack.
Indiangrass, yellow—Sorghastrum nutans (L.) Nash
Indigo, hairy—Indigofera hirsuta L.
Japanese lawngrass—Zoysia japonica Steud.
Johnsongrass—Sorghum halepense (L.) Pers.
Kenaf—Hibiscus cannabinus L.
Kochia, forage—Kochia prostrata (L.) Schrad.
Kudzu—Pueraria montana (L.) Merr. var. lobata (Willd.) Maesen and S. Almeida
Lentil—Lens culinaris Medik.
Lespedeza, Korean—Kummerowia stipulacea (Maxim.) Makino
Lespedeza, sericea or Chinese—Lespedeza cuneata (Dum.-Cours.) G. Don
Lespedeza, Siberian—Lespedeza juncea (L. f.) Pers.
Lespedeza, striate—Kummerowia striata (Thunb.) Schindler
Leveragrass, sand—Eragrostis trichodes (Nutt.) Wood
Leveragrass, weeping—Eragrostis curvula (Schrad.) Nees
Lupine, blue—Lupinus angustifolius L.
Lupine, white—Lupinus albus L.
Lupine, yellow—Lupinus luteus L.
Manilaagrass—Zoysia matrella (L.) Merr.
Medic, black—Medicago lupulina L.
Milkvetch or cicer milkvetch—Astragalus cicer L.
Millet, brownnape—Brachiaria ramosa (L.) Stapf
Millet, foxtail—Setaria italica (L.) Beauv.
Millet, Japanese—Echinochloa frumentacea Link
Millet, pearl—Pennisetum glaucum (L.) R. Br.
Millet, proso—Panicum miliaceum L.
Molassesgrass—Melinis minutiflora Beauv.
Mustard, black—Brassica nigra (L.) Koch
Mustard, India—Brassica juncea (L.) Czern. and Coss.
Mustard, white—Sinapis alba L.
Napiergrass—Pennisetum purpureum Schumach.
Needlegrass, green—Stipa viridula Trin.
Oat—Avena byzantina C. Koch, A. sativa L., A. rudis L.
Oatgrass, tall—Arrhenatherum elatius (L.) J. S. Presl and K. B. Presl
Orchardgrass—Dactylis glomerata L.
Panicgrass, blue—Panicum antidotale Retz.
Panicgrass, green—Panicum maximum Jacq. var. trichoglume Robyns
Pea, field—Pisum sativum L.
Peanut—Arachis hypogaea L.
Poa trivialis—(see Bluegrass, rough)
Rape, annual—Brassica napus L. var. annua Koch
Rape, bird—Brassica rapa L. subsp. rapa
Rape, turnip—Brassica rapa L. subsp. silvestris (Lam.) Janchen
Rape, winter—Brassica napus L. var. biennis (Schubl. and Mart.) Reichb.
Redtop—Agrostis gigantea Roth
Rescuegrass—Bromus catharticus Vahl
Rhodesgrass—Chloris gayana Kunth
Rice—Oryza sativa L.
Ricegrass, Indian—Oryzopsis hymenoides (Roem. and Schult.) Ricker
Roughpea—Lathyrus hirsutus L.
Rye—Secale cereale L.
Rye, mountain—Secale strictum (K.B. Presl) K.B. Presl subsp. strictum
Rye, annual or Italian—Lolium multiflorum Lam.
Rye, intermediate—Lolium x hybridum Housekn.
Rye, perennial—Lolium perenne L.
Ryegrass, Wimmen—Lolium rigidum Gaud.
Safflower—Carthamus tinctorius L.
Sagewort, Louisiana—Artemisia ludoviciana Nutt.
Sainfoin—Onobrychis vicifolia Scop.
Saltbush, fourwing—Atriplex canescens (Pursh) Nutt.
Sesame—Sesaminum indicum L.
Sesbania—Sesbania exaltata (Raf.) A.W. Hill
Smilo—Piptatherum milaceum (L.) Coss.
Sorghum—Sorghum bicolor (L.) Moench
Sorghum, alburn—Sorghum x alburnum L. Parodi
Sorghum-sudangrass—Sorghum x drummondii (Steud.) Millsp. and Chase
Soybean—Glycine max (L.) Merr.
Spelt—Triticum spelta L.
Sudangrass—Sorghum x drummondii (Steud.) Millsp. and Chase
Soybean—Glycine max (L.) Merr.
Soybean—Glycine max (L.) Merr.
Soyclover—Melilotus indicus (L.) All.
Sunflower—Helianthus annuus L.
Sweetclover—Melilotus albus Medik.
Sweetclover, yellow—Melilotus officinalis Lam.
Sweet vernalgrass—Anthoxanthum odoratum Lam.
Sweetvetch, northern—Hedysarum boreale Nutt.
Switchgrass—Panicum virgatum L.
Timothy—Phleum pratense L.
Timothy, turf—Phleum bertolonii DC.
Tobacco—Nicotiana tabacum L.
Trefoil, big—Lotus uliginosus Schck.
Trefoil, birdsfoot—Lotus corniculatus L.
Triticale—x Triticosecale Wittm. (Secale x Triticum)
**Vegetable seeds: may be generally known and sold under the name of vegetable seeds:**

- Asparagusbean or yard-long bean
- Artichoke
- Asparagus officinalis
- Asparagus bean
- Bean, garden
- Bean, lima
- Bean, runner or scarlet runner
- Bean, scarlet
- Broadbean—Brassica oleracea L. subsp. vulgaris
- Broadbean—Brassica oleracea L. var. botrytis L.
- Brussels sprouts—Brassica oleracea L. var. gemmifera DC.
- Burdock, great—Arctium lappa L.
- Cabbage—Brassica oleracea L. var. capitata L.
- Cabbage, Chinese—Brassica rapa L. subsp. pekinensis (Lour.) Hanelt
- Cabbage, trombuda—Brassica oleracea L. var. costata DC.
- Cantaloupe—(see Melon)
- Cardoon—Cynara cardunculus L. subsp. cardunculus
- Carrot—Daucus carota L. subsp. sativus (Hoffm.) Arcang.
- Cauliflower—Brassica oleracea L. var. botrytis L.
- Celeriac—Apium graveolens L. var. rapaceum (Mill.) Gaud.
- Celery—Apium graveolens L. var. dulce (Mill.) Pers.
- Chard, Swiss—Beta vulgaris L. subsp. cicla (L.) Koch
- Chicory—Cichorium intybus L.
- Chives—Allium schoenoprasum L.
- Citron—Citrus x microcarpa (Thunb.) Matsum. and Nakai var. citroides (Bailey) Mansf.
- Collsards—Brassica oleracea L. var. acephala DC.
- Corn, sweet—Zea mays L.
- Cornsalad—Arctium lappa L.
- Cress, garden—Lepidium sativum L.
- Cress, upland—Barbarea verna (Mill.) Asch.
- Cress, water—Rorippa nasturtium-aquaticum (L.) Hayek
- Cucumber—Cucumis sativus L.
- Dandelion—Taraxacum officinale Wigg.
- Dill—Anethum graveolens L.
- Eggplant—Solanum melongena L.
- Endive—Cichorium endivia L.
- Favabeans (see Broadbean)
- Ginger—Zingiber officinale Roscoe
- Gherkin, West India—Cucumis anguria L.
- Kale—Brassica oleracea L. var. acephala DC.
- Kale, Chinese—Brassica oleracea L. var. albohabra (Bailey) Musil
- Kale, Siberian—Brassica napus L. var. pabularia (DC.) Rechb.
- Kohlrabi—Brassica oleracea L. var. gongylodes L.
- Leek—Allium porrum L.
- Lettuce—Lactuca sativa L.
- Melon—Cucumis melo L.
- Musk—(see Melon).
- Mustard, spinach—Brassica peregrina (Bailey) Bailey
- Okra—Abelmoschus esculentus (L.) Moench
- Onion—Allium cepa L.
- Onion, Welsh—Allium fistulosum L.
- Pak-choi—Brassica rapa L. subsp. chinensis (L.) Hanelt
- Parsley—Petroselinum crispum (Mill.) A.W. Hill

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**Wildrye**—Ehrharta calycina J.E. Smith

**Velvetbean**—Mucuna pruriens (L.) DC. var. utilis (Wight) Burck

**Velvetgrass**—Holcus lanatus L.

**Vetch**—common—Vicia sativa L. subsp. sativa

**Wheat**—common—Triticum aestivum L.

**Wheatgrass**—(Agropyron) Gaertn.

**Wheatgrass**—crested—Agropyron cristatum (L.) Gaertn.

**Wheatgrass**—streambank—Elymus lanceolatus (Scrlnb. and J.G. Smith) Gould subsp. lanceolatus

**Wheatgrass**—tall—Elytrigia intermedia (Host) Nevski

**Wheatgrass**—western—Elymus canadensis (Rydb.) A. Love

**Wheat**—Russian—Elymus canadensis (Rydb.) A. Love

**Wheatgrass**—Elymus canadensis (Rydb.) A. Love

**Zoysia japonica**—(see Japanese lawngrass)

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**Zoysia maretella**—(see Manilagrass)

1. **Vegetable seeds.** The term “vegetable seeds” means the seeds of the following kinds that are or may be grown in gardens or on truck farms and are or may be generally known and sold under the name of vegetable seeds:

- Artichoke—Cynara cardunculus L. subsp. cardunculus
- Asparagus—Asparagus officinalis BAKER
- Asparagus bean or yard-long bean—Vigna unguiculata (L.) Walp. subsp. sesquipedalis (L.) Verde.
- Bean, garden—Phaseolus vulgaris L.
- Bean, lima—Phaseolus lunatus L.
- Bean, runner or scarlet runner—Phaseolus coccineus L.
Agricultural Marketing Service, USDA

§ 201.2

Parsnip—Pastinaca sativa L.
Pea—Pisum sativum L.
Pepper—Capsicum spp.
Pe-tsai—(see Chinese cabbage).
Pumpkin—Cucurbita pepo L., C. moschata (Duchesne) Poiret, and C. maxima Duchesne
Radish—Raphanus sativus L.
Rhubarb—Rheum rhabarbarum L.
Rutabaga—Brassica napus L. var. napobrassica (L.) Reichb.
Sage—Salvia officinalis L.
Salsify—Tragopogon porrifolius L.
Savory, summer—Satureja hortensis L.
Sorrel—Rumex acetosa L.
Southern pea—(see Cowpea)
Soybean—Glycine max (L.) Merr.
Spinach—Spinacia oleracea L.
Spinach, New Zealand—Tetragonia tetragonioides (Pall.) Ktze.
Squash—Cucurbita pepo L., C. moschata (Duchesne) Poiret, and C. maxima Duchesne
Tomato, husk—Physalis pubescens L.
Turnip—Brassica rapa L. subspp. rapa
Watermelon—Citrullus lanatus (Thunb.) Matsum. and Nakai var. lanatus

(j) Regulations. The term “regulations” means the rules and regulations promulgated by the Secretary of Agriculture and the joint rules and regulations promulgated by the Secretary of the Treasury and the Secretary of Agriculture under the Act.

(k) Joint regulations. The term “joint regulations” means the joint rules and regulations promulgated by the Secretary of the Treasury and the Secretary of Agriculture.

(l) Complete record. (1) The term “complete record” means information which relates to the origin, treatment, germination, and purity (including variety) of each lot of agricultural seed transported or delivered for transportation in interstate commerce, or which relates to the treatment, germination, and variety of each lot of vegetable seed transported or delivered for transportation in interstate commerce. Such information includes seed samples and records of declarations, labels, purchases, sales, cleaning, bulking, treatment, handling, storage, analyses, tests, and examinations.

(2) The complete record kept by each person for each treatment substance or lot of seed consists of the information pertaining to his own transactions and the information received from others pertaining to their transactions with respect to each treatment substance or lot of seed.

(m) Declaration. The term “declaration” means a written statement of a grower, shipper, processor, dealer, or importer giving for any lot of seed the kind, variety, type, origin, or the use for which the seed is intended.

(n) Declaration of origin. The term “declaration of origin” means a declaration of a grower or country shipper in the United States stating for each lot of agricultural seed (1) kind of seed, (2) lot number or other identification, (3) State where seed was grown and the county where grown if to be labeled showing the origin as a portion of a State, (4) quantity of seed, (5) date shipped or delivered, (6) to whom sold, shipped, or delivered, and (7) the signature and address of the grower or country shipper issuing the declaration. If the declaration is issued by a grower and the identity of the person delivering the seed is unknown to the receiver, the motor vehicle license number or other identification of the delivering agency should be entered on the declaration by the receiver. If a country shipper’s declaration includes seed shipped or delivered to him by another country shipper, it shall give for each lot the other country shipper’s lot number as included in the other country shipper’s declaration of origin.

(o) Declaration of kind, variety, or type. The term “declaration of kind, variety, or type” means a declaration of a grower stating for each lot of seed (1) the name of the kind, variety, or type stated in accordance with §§201.9 through 201.12, (2) lot number or other identification, (3) place where seed was grown, (4) quantity of seed, (5) date shipped or delivered, (6) to whom sold, shipped or delivered, and (7) the signature and address of the grower issuing the declaration.

(p) Mixture. The term “mixture” means seeds consisting of more than one kind or variety, each present in excess of 5 percent of the whole.

(q) Coated Seed. The term “coated seed” means any seed unit covered with any substance that changes the size, shape, or weight of the original seed. Seeds coated with ingredients such as, but not limited to, rhizobia, dyes, and pesticides are excluded.

(r) Grower. The term “grower” means any person who produces directly or
through a growing contract, or is a seed-crop sharer in seed which is sold, offered for sale, transported, or offered for transportation.

(s) Country shipper. The term “country shipper” means any person located in a producing area who purchases seed locally for shipment to seed dealers or to other country shippers.

(t) Dealer. The term “dealer” means any person who cleans, processes, sells, offers for sale, transports, or delivers for transportation seeds in interstate commerce.

(u) Consumer. The term “consumer” means any person who purchases or otherwise obtains seed for sowing but not for resale.

(v) Lot of seed. The term “lot of seed” means a definite quantity of seed identified by a lot number, every portion or bag of which is uniform, within permitted tolerances, for the factors which appear in the labeling.

(w) Purity. The term “purity” means the name or names of the kind, type, or variety and the percentage or percentages thereof; the percentage of other agricultural seed or crop seed; the percentage of weed seeds, including noxious weed seeds; the percentage of inert matter; and the names of the noxious weed seeds and the rate of occurrence of each.

(x) Inoculant. The term “inoculant” means a commercial preparation containing nitrogen-fixing bacteria applied to seed.

(y) Hybrid. The term “hybrid” applied to kinds or varieties of seed means the first generation seed of a cross produced by controlling the pollination and by combining (1) two or more inbred lines; (2) one inbred or a single cross with an open pollinated variety; or (3) two selected clones, seed lines, varieties, or species. “Controlling the pollination” means to use a method of hybridization which will produce pure seed which is at least 75 percent hybrid seed. Hybrid designations shall be treated as variety names.

(z) Processing. For the purpose of section 203 (b)(2)(C) of the act the term “processing” means cleaning, scarifying, or blending to obtain uniform quality, and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or variety without cleaning, or the preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.

(aa) Agricultural Marketing Service means the Agricultural Marketing Service, United States Department of Agriculture.

(bb) Breeder seed. Breeder seed is a class of certified seed directly controlled by the originating or sponsoring plant breeding institution, or person, or designee thereof, and is the source for the production of seed of the other classes of certified seed.

(cc) Foundation seed. Foundation seed is a class of certified seed which is the progeny of Breeder or Foundation seed and is produced and handled under procedures established by the certifying agency, in accordance with this part, for producing the Foundation class of seed, for the purpose of maintaining genetic purity and identity.

(dd) Registered seed. Registered seed is a class of certified seed which is the progeny of Breeder or Foundation seed and is produced and handled under procedures established by the certifying agency, in accordance with this part, for producing the Registered class of seed, for the purpose of maintaining genetic purity and identity.

(ee) Certified seed. Certified seed is a class of certified seed which is the progeny of Breeder or Foundation, or Registered seed, except as provided in §201.70, and is produced and handled under procedures established by the certifying agency, in accordance with this part, for producing the Certified class of seed, for the purpose of maintaining genetic purity and identity.

(ff) Off-type. The term “off-type” means a plant or seed which deviates in one or more characteristics from that which has been described in accordance with §201.68(c) as being usual for the strain or variety.

(gg) Inbred line. The term “inbred line” means a relatively true-breeding strain resulting from at least five successive generations of controlled self-
fertilization or of backcrossing to a recurrent parent with selection, or its equivalent, for specific characteristics.

(hh) Single cross. The term “single cross” means the first generation hybrid between two inbred lines.

(ii) Foundation single cross. The term “foundation single cross” means a single cross used in the production of a double cross, a three-way, or a top cross.

(jj) Double cross. The term “double cross” means the first generation hybrid between two single crosses.

(kk) Top cross. The term “top cross” means the first generation hybrid of a cross between an inbred line and an open-pollinated variety or the first-generation hybrid between a single cross and an open-pollinated variety.

(ll) Three-way cross. The term “three-way cross” means a first generation hybrid between a single cross and an inbred line.

(mm) Open-pollination. The term “open-pollination” means pollination that occurs naturally as opposed to controlled pollination, such as by detasselling, cytoplasmic male sterility, self-incompatibility or similar processes.

[5 FR 28, Jan. 4, 1940]

EDITORIAL NOTE: For Federal Register citations affecting §201.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

ADMINISTRATION

§ 201.3 Administrator.

The Administrator of the Agricultural Marketing Service may perform such duties as the Secretary require in enforcing the provisions of the act and of the regulations in this part.


RECORDS FOR AGRICULTURAL AND VEGETABLE SEEDS

§ 201.4 Maintenance and accessibility.

(a) Each person transporting or delivering for transportation in interstate commerce agricultural or vegetable seed subject to the act shall keep for a period of 3 years a complete record of each lot of such seed so transported or delivered, including a sample representing each lot of such seed, except that any seed sample may be discarded 1 year after the entire lot represented by such sample has been disposed of by such person.

(b) Each sample of agricultural seed retained shall be at least the weight required for a noxious-weed seed examination as set forth in §201.46 and each sample of vegetable seed retained shall consist of at least 400 seeds. The record shall be kept in such manner as to permit comparison with the records required to be kept by other persons for the same lot of seed so that the origin, treatment, germination, and purity (including variety) of agricultural seed and the treatment, germination and variety of vegetable seed may be traced from the grower to the ultimate consumer and so that the lot of seed may be correctly labeled. The record shall be accessible for inspection by the authorized agents of the Secretary for purposes of the effective administration of the act at any time during customary business hours.


§ 201.5 Origin.

(a) The complete record for any lot of seed of alfalfa, red clover, white clover, or field corn, except hybrid seed corn, shall include a declaration of origin, or information traceable to a declaration of origin or evidence showing that a declaration of origin could not be obtained.

(b) Each country shipper shall retain a copy of each declaration which he issues and shall attach thereto a detailed record showing the names and addresses of growers or country shippers from whom the seed was purchased, the quantity of seed purchased from each, and the date on which it was delivered to him.

[5 FR 30, Jan. 4, 1940, as amended at 20 FR 7929, Oct. 21, 1955]

§ 201.6 Germination.

The complete record shall include the records of all laboratory tests for germination and hard seed for each lot of seed offered for transportation in
whole or in part. The record shall show the kind of seed, lot number, date of test, percentage of germination and hard seeds, and such other information as may be necessary to show the method used.

[5 FR 30, Jan. 4, 1940]

§ 201.7 Purity (including variety).

The complete record for any lot of seed shall include (a) records of analyses, tests, and examinations including statements of weed seeds, noxious weed seeds, inert matter, other agricultural seeds, and of any determinations of kind, variety, or type and a description of the methods used; and (b) for seeds indistinguishable by seed characteristics, records necessary to disclose the kind, variety, or type, including a grower’s declaration of kind, variety, or type or an invoice, or other document establishing the kind, variety, or type to be that stated, and a representative sample of the seed. The grower’s declaration shall be obtained and kept by the person procuring the seed from the grower. A copy of the grower’s declaration and a sample of the seed shall be retained by the grower.


§ 201.7a Treated seed.

The complete record for any lot consisting of or containing treated seed shall include records necessary to disclose the name of any substance or substances used in the treatment of such seed, including a label or invoice or other document received from any person establishing the name of any substance or substances used in the treatment to be as stated, and a representative sample of the treated seed.

[32 FR 12778, Sept. 6, 1967]

LABELING AGRICULTURAL SEEDS

§ 201.8 Contents of the label.

The label shall contain the required information in any form that is clearly legible and complies with the regulations in this part. The information may be on a tag attached securely to the container, or may be printed in a conspicuous manner on a side or the top of the container. The label may contain information in addition to that required by the act, provided such information is not misleading.

[5 FR 30, Jan. 4, 1940, as amended at 24 FR 3952, May 15, 1959]

§ 201.9 Kind.

The name of each kind of seed present in excess of 5 percent shall be shown on the label and need not be accompanied by the word “kind.” When two or more kinds of seed are named on the label, the name of each kind shall be accompanied by the percentage of each. When only one kind of seed is present in excess of 5 percent and no variety name or type designation is shown, the percentage of that kind may be shown as “pure seed” and such percentage shall apply only to seed of the kind named.

[5 FR 30, Jan. 4, 1940]

§ 201.10 Variety.

(a) The following kinds of agricultural seeds are generally labeled as to variety and shall be labeled to show the variety name or the words “Variety Not Stated.”

Alfalfa; Bahiagrass; Barley; Bean, field; Beet, field; Brome, smooth; Bromocorn; Clover, crimson; Clover, red; Clover, white; Corn, field; Corn, pop; Cotton; Cowpea; Crambe; Fescue, tall; Flax; Lespedeza, striate; Millet, foxtail; Millet, pearl; Oat; Pea, field; Peanout; Rice; Rye; Safflower; Sorghum; Sorghum-sudangrass; Soybean; Sudangrass; Sunflower; Tobacco; Trefoil, birdsfoot; Triticale; Wheat, common; Wheat, durum.

(b) If the name of the variety is given, the name may be associated with the name of the kind with or without the words “kind and variety.” The percentage in such case, which may be shown as “pure seed,” shall apply only to seed of the variety named, except for the labeling of hybrids as provided in §201.11a. If separate percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term “hybrid” shall be clearly associated with the respective percentages. When two or more varieties are present in excess of 5 percent and are named on the label, the name of each
variety shall be accompanied by the percentage of each.

§ 201.11 Type.

(a) When type is designated, such designation may be associated with the name of the kind but shall in all cases be clearly associated with the word "type." The percentage, which may be shown as "pure seed", shall apply only to the type designated. If separate percentages for the kind and the type are shown, such percentages shall be clearly associated with the name of the kind and the name of the type.

(b) If the type designation does not include a variety name, it shall include a name descriptive of a group of varieties of similar character and the pure seed shall be at least 90 percent of one or more varieties all of which conform to the type designation.

(c) If the name of a variety is used as a part of the type designation, the seed shall be of that variety and may contain: (1) An admixture of seed of other indistinguishable varieties of the same kind and of similar character; or, (2) an admixture of indistinguishable seeds having genetic characteristics dissimilar to the variety named by reason of cross-fertilization with other varieties. In either case, at least 90 percent of the pure seed shall be of the variety named or upon growth shall produce plants having characteristics similar to the variety named.

§ 201.14 Origin.

(a) Alfalfa, red clover, white clover, and field corn (except hybrid seed corn) shall be labeled to show: (1) The origin, if known; or (2) if the origin is not known, the statement "origin unknown."

(b) Whenever such seed originates in more than one State, the name of each State and the percentage of seed originating in each State shall be given in the order of its predominance. Whenever such seed originates in a portion of a State, it shall be permissible to label such seed as originating in such portion of a State.
§ 201.15
(c) Reasonable precautions to insure that the origin of seed is known shall include the maintaining of a record as described in §201.5. The examination of the seed and any pertinent facts may be taken into consideration in determining whether reasonable precautions have been taken to insure the origin to be that which is represented.

(5 FR 31, Jan. 4, 1940, as amended at 20 FR 7929, Oct. 21, 1955; 32 FR 12779, Sept. 6, 1967)

§ 201.15weed seeds.
The percentage of weed seeds shall include seeds of plants considered weeds in the State into which the seed is offered for transportation or transported and shall include noxious weed seeds.

(5 FR 31, Jan. 4, 1940)

§ 201.16 noxious-weed seeds.
(a) Except for those kinds of noxious-weed seeds shown in paragraph (b) of this section, the names of the kinds of noxious-weed seeds and the rate of occurrence of each shall be expressed in the label in accordance with, and the rate of occurrence shall not exceed the rate permitted by, the law and regulations of the state into which the seed is offered for transportation or is transported. If in the course of such transportation, or thereafter, the seed is diverted to another State of destination, the person or persons responsible for such diversion shall cause the seed to be relabeled with respect to the noxious-weed seed content, if necessary to conform to the laws and regulations of the State into which the seed is diverted.

(b) Seeds or bulblets of the following plants shall be considered noxious-weed seeds in agricultural and vegetable seeds transported or delivered for transportation in interstate commerce. Noxious-weed seeds include the following species on which no tolerance will be applied:

Aeginetia spp.

Ageratina adenophora (Spreng.) King and H.E. Robins.

Alectra spp.

Alternanthera sessilis (L.) DC.

Asphodelus fistulosus L.

Avena sterilis L. (including Avena ludoviciana Dur.)

Acoila pinnata R. Br.

Asperula alata (Aubl.) DC.

Carthamus ozyantha M. Bieb.

Chrysogonum aciculatum (Retz.) Trin.

Commelina benghalensis L.

Cyperus vulgaris Cass.

Digitaria abysinica Stapf. (=D. scalarum (Schweinf.) Chiov.)

Digitaria celtina (Poir.) Beauv.

Drymaria arenarioides Roem. and Schult.

Eichornia azurea (Sw.) Kunth

Emex australis Steinh.

Emex spinosa (L.) Camp.

Galea officinalis L.

Heracleum mantegazzianum Sommier & Levier

Hydrilla verticillata (L. f.) Royle

Hydrophilus polyperma T. Anders.

Imperata brasiliensis Trin.

Imperata cylindrica (L.) Raeusch.

Ipomoea aquatica Forsk.

Ipomoea triloba L.

Ischaemum rugosum Salish.

Lagarosiphon major (Ridley) Moss

Leptochloa chinensis (L.) Nees

Linnophila sessiliflora (Vahl) Blume

Lycium ferocissimum Miers

Melaleuca quinquenervia (Cav.) Blake

Melastoma malabathricum L.

Mikania cordata (Burm. f.) B.L. Robins.

Mikania micrantha H.B.K.

Mimosa invisa Mart.

Mimosa pigra L. var. pigra

Monochoria hastata (L.) Sloms-Laub

Opuntia aurantiaca Lindl.

Orbaches spp.

Oryza longistaminata A. Cheval. and Roehr.

Oryza punctata Steud.

Paspalum scrobiculatum L.

Prosopis alapatae R.A. Philipp.

Oryza rufipogon Griff.

Ottelia alismoides (L.) Pers.

Pennisetum clandestinum Chiov.

Pennisetum macrourum Trin.

Pennisetum pedicellatum Trin.

Pennisetum polyschistachion (L.) Schult.

Prosopis alapatae R.A. Philipp.

Prosopis argentina Burkart

Prosopis articulata S. Watson

Prosopis burkarti Munoz

Prosopis caldenia Burkart

Prosopis calingastana Burkart

Prosopis campestris Griebe.

Prosopis castillanensis Burkart

Prosopis denudans Benth.

Prosopis elata (Burkart) Burkart

Prosopis farcta (Russell) Mackride

Prosopis fiebrigii Harms

Prosopis hassleri Harms

308
Prosopis humilis Hook. and Arn.
Prosopis kuntzei Harms
Prosopis pallida (Willd.) H.B.K.
Prosopis palmeri S. Watson
Prosopis reptans Benth. var. reptans
Prosopis rojasiana Burkart
Prosopis ruizlealii Burkart
Prosopis ruscifolia Griseb.
Prosopis sericantha Hook. and Arn.
Prosopis strombulifera (Lam.) Benth.
Prosopis torquata (Lagasca) DC.
Rottboellia cochinchinensis (Lour.) Clayton (=R. exaltata (L.) L.f.)
Rubus fruticosus L. (complex)
Rubus moluccanus L.
Saccharum spontaneum L.
Sagittaria sagittifolia L.
Salsola vermiculata L.
Salvinia auriculata Aubl.
Salvinia biloaba Baddi
Salvinia herzogii de la Sota
Salvinia molesta D.S. Mitchell
Setaria palide-fusca (Schumach.) Stapf and Hubb.
Solaniun torem 8w.
Solanum viarum Dunal
Sparaganium erectum L.
Tridax procumbens L.
Urochloa panicoides Beauv.

§ 201.22 Date of test.
(a) The label shall show the month and year in which the germination test was completed. No more than 5 calendar months shall have elapsed between the last day of the month in which the germination test was completed and the date of transportation or delivery for transportation in interstate commerce, except for seed in hermetically sealed containers as provided in §201.36c in which case no more than 24 calendar months shall have elapsed between the last day of the month in which the germination test was completed prior to packaging and the date of transportation or delivery for transportation in interstate commerce.
(b) In the case of a seed mixture, it is only necessary to state the calendar...
§ 201.23 Name of shipper or consignee.

The full name and address of either the shipper or consignee shall appear upon the label. If the name and address of the shipper are not shown upon the label, a code designation identifying the shipper shall be shown.

[5 FR 31, Jan. 4, 1940]

§ 201.24 Code designation.

The code designation used in lieu of the full name and address of the person who transports or delivers seed for transportation in interstate commerce shall be approved by the Administrator of the Agricultural Marketing Service or such other person as may be designated by him for the purpose. When used, the code designation shall appear on the label in a clear and legible manner.


§ 201.24a Inoculated seed.

Seed claimed to be inoculated shall be labeled to show the month and year beyond which the inoculant on the seed is no longer claimed to be effective by a statement such as, “Inoculant not claimed to be effective after____ (Month and year).”

[32 FR 12779, Sept. 6, 1967]

LABELING VEGETABLE SEEDS

§ 201.25 Contents of the label.

Vegetable seed in packets and in larger containers shall be labeled with the required information in any form that is clearly legible. Any tag used shall be securely attached to the container. The label may contain information in addition to that required by the act, provided such information is not misleading.

[5 FR 31, Jan. 4, 1940]

§ 201.26 Kind, variety, and hybrid.

The label shall bear the name of each kind and variety present as determined in accordance with §201.34. The name shall not have affixed thereto words or terms that create a misleading impression as to the history or characteristics of kind or variety. If two or more kinds or varieties are present, the percentage of each shall be shown. If any one kind or variety named on the label is “hybrid” seed, it shall be so designated on the label. If two or more kinds or varieties are named on the label, each that is hybrid shall be shown as “hybrid” on the label. Any kind or variety that is less than 95 percent but more than 75 percent hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show (a) the percentage that is hybrid seed or (b) a statement such as “Contains from 75 percent to 95 percent hybrid seed.” No one kind or variety of seed shall be labeled as hybrid if it contains less than 75 percent hybrid seed.


§ 201.27 Name of shipper or consignee.

The full name and address of either the shipper, or consignee, shall appear upon the label except that if the name and address of the shipper are not shown, a code designation identifying the shipper shall be shown.

[5 FR 31, Jan. 4, 1940]
§ 201.28 Code designation.

The code designation used in lieu of the full name and address of the person who transports or delivers seed for transportation in interstate commerce shall be approved by the Administrator of the Agricultural Marketing Service or such other person as may be designated by him for the purpose. When used, the code designation shall appear on the label in a clear and legible manner.


§ 201.29 Germination of vegetable seed in containers of 1 pound or less.

Vegetable seeds in containers of 1 pound or less which have a germination equal to or better than the standard set forth in § 201.31 need not be labeled to show the percentage of germination and date of test. Each variety of vegetable seed which has a germination percentage less than the standard set forth in § 201.31 shall have the words “Below Standard” clearly shown in a conspicuous place on the label or on the face of the container in type no smaller than 8 points. Each variety which germinates less than the standard shall also be labeled to show the percentage of germination and the percentage of hard seed (if any).

[32 FR 12779, Sept. 6, 1967]

§ 201.29a Germination of vegetable seed in containers of more than 1 pound.

Each variety of vegetable seeds in containers of more than 1 pound shall be labeled to show the percentage of germination and the percentage of hard seed (if any).

[32 FR 12779, Sept. 6, 1967]

§ 201.30 Hard seed.

The label shall show the percentage of hard seed, if any is present, for any seed required to be labeled as to the percentage of germination, and the percentage of hard seed shall not be included as part of the germination percentage.

[32 FR 12779, Sept. 6, 1967]

§ 201.31 Germination standards for vegetable seeds in interstate commerce.

The following germination standards for vegetable seeds in interstate commerce, which shall be construed to include hard seed, are determined and established under section 403(c) of the act:

<table>
<thead>
<tr>
<th>Seed</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Artichoke</td>
<td>60</td>
</tr>
<tr>
<td>Asparagus</td>
<td>70</td>
</tr>
<tr>
<td>Asparagus bean</td>
<td>75</td>
</tr>
<tr>
<td>Bean, garden</td>
<td>70</td>
</tr>
<tr>
<td>Bean, lima</td>
<td>70</td>
</tr>
<tr>
<td>Bean, runner</td>
<td>75</td>
</tr>
<tr>
<td>Beet</td>
<td>65</td>
</tr>
<tr>
<td>Broadbean</td>
<td>75</td>
</tr>
<tr>
<td>Broccoli</td>
<td>75</td>
</tr>
<tr>
<td>Brussels sprouts</td>
<td>70</td>
</tr>
<tr>
<td>Burdock, great</td>
<td>60</td>
</tr>
<tr>
<td>Cabbage</td>
<td>75</td>
</tr>
<tr>
<td>Cabbage, tronchuda</td>
<td>70</td>
</tr>
<tr>
<td>Cardoon</td>
<td>60</td>
</tr>
<tr>
<td>Carrot</td>
<td>55</td>
</tr>
<tr>
<td>Cauliflower</td>
<td>75</td>
</tr>
<tr>
<td>Celeriac</td>
<td>55</td>
</tr>
<tr>
<td>Celery</td>
<td>55</td>
</tr>
<tr>
<td>Chard, Swiss</td>
<td>65</td>
</tr>
</tbody>
</table>
§ 201.31a Labeling treated seed.

(a) Contents of label. Any agricultural seed or any mixture thereof or any vegetable seed or any mixture thereof, for seeding purposes, that has been treated shall be labeled in type no smaller than 8 point to indicate that the seed has been treated and to show the name of any substance or a description of any process (other than application of a substance) used in such treatment, in accordance with this section; for example,

<table>
<thead>
<tr>
<th>Substance</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chicory</td>
<td>75</td>
</tr>
<tr>
<td>Chinese cabbage</td>
<td>60</td>
</tr>
<tr>
<td>Chives</td>
<td>50</td>
</tr>
<tr>
<td>Citron</td>
<td>65</td>
</tr>
<tr>
<td>Collards</td>
<td>80</td>
</tr>
<tr>
<td>Corn, sweet</td>
<td>75</td>
</tr>
<tr>
<td>Cornsalad</td>
<td>70</td>
</tr>
<tr>
<td>Cowpea</td>
<td>75</td>
</tr>
<tr>
<td>Cress, garden</td>
<td>75</td>
</tr>
<tr>
<td>Cress, upland</td>
<td>60</td>
</tr>
<tr>
<td>Cress, water</td>
<td>40</td>
</tr>
<tr>
<td>Cucumber</td>
<td>80</td>
</tr>
<tr>
<td>Dandelion</td>
<td>60</td>
</tr>
<tr>
<td>Dill</td>
<td>60</td>
</tr>
<tr>
<td>Eggplant</td>
<td>60</td>
</tr>
<tr>
<td>Endive</td>
<td>70</td>
</tr>
<tr>
<td>Kale</td>
<td>75</td>
</tr>
<tr>
<td>Kale, Chinese</td>
<td>75</td>
</tr>
<tr>
<td>Kale, Siberian</td>
<td>75</td>
</tr>
<tr>
<td>Kohlrabi</td>
<td>75</td>
</tr>
<tr>
<td>Leek</td>
<td>60</td>
</tr>
<tr>
<td>Lettuce</td>
<td>80</td>
</tr>
<tr>
<td>Melon</td>
<td>75</td>
</tr>
<tr>
<td>Mustard, India</td>
<td>75</td>
</tr>
<tr>
<td>Mustard, spinach</td>
<td>75</td>
</tr>
<tr>
<td>Okra</td>
<td>50</td>
</tr>
<tr>
<td>Onion</td>
<td>70</td>
</tr>
<tr>
<td>Onion, Welsh</td>
<td>70</td>
</tr>
<tr>
<td>Pak-choi</td>
<td>75</td>
</tr>
<tr>
<td>Parsley</td>
<td>60</td>
</tr>
<tr>
<td>Parsnip</td>
<td>60</td>
</tr>
<tr>
<td>Pea</td>
<td>60</td>
</tr>
<tr>
<td>Pepper</td>
<td>65</td>
</tr>
<tr>
<td>Pumpkin</td>
<td>75</td>
</tr>
<tr>
<td>Radish</td>
<td>75</td>
</tr>
<tr>
<td>Rhubarb</td>
<td>60</td>
</tr>
<tr>
<td>Rutabaga</td>
<td>75</td>
</tr>
<tr>
<td>Sage</td>
<td>60</td>
</tr>
<tr>
<td>Salad</td>
<td>75</td>
</tr>
<tr>
<td>Savory, summer</td>
<td>55</td>
</tr>
<tr>
<td>Sorrel</td>
<td>65</td>
</tr>
<tr>
<td>Soybean</td>
<td>75</td>
</tr>
<tr>
<td>Spinach</td>
<td>60</td>
</tr>
<tr>
<td>Spinach, New Zealand</td>
<td>40</td>
</tr>
<tr>
<td>Squash</td>
<td>75</td>
</tr>
<tr>
<td>Tomato</td>
<td>75</td>
</tr>
<tr>
<td>Tomato, husk</td>
<td>50</td>
</tr>
<tr>
<td>Turnip</td>
<td>80</td>
</tr>
<tr>
<td>Watermelon</td>
<td>70</td>
</tr>
</tbody>
</table>

Treated with ____________ (name of substance or process) or ____________ (name of substance or process) treated.

If the substance used in such treatment in the amount remaining with the seed is harmful to humans or other vertebrate animals, the seed shall also bear a label containing additional statements as required by paragraphs (c) and (d) of this section. The label shall contain the required information in any form that is clearly legible and complies with the regulations in this part. The information may be on the tag bearing the analysis information or on a separate tag, or it may be printed in a conspicuous manner on a side or top of the container.

(b) Name of substance. The name of any substance as required by paragraph (a) of this section shall be the commonly accepted coined, chemical (generic), or abbreviated chemical name. Commonly accepted coined names are free for general use by the public, are not private trade-marks, and are commonly recognized as names of particular substances; such as thiram, captan, lindane, and dichlone. Examples of commonly accepted chemical (generic) names are: blue-stone, calcium carbonate, cuprous oxide, zinc hydroxide, hexachlorobenzene, and ethyl mercury acetate. The terms “mercury” or “mercurial” may be used in labeling all types of mercurials. Examples of commonly accepted abbreviated chemical names are: BHC (1, 2, 3, 4, 5, 6-Hexachlorocyclohexane) and DDT (dichloro diphenyl trichloroethane).

(c) Mercurials and similarly toxic substances. (1) Seed treated with a mercurial or similarly toxic substance, if any amount remains with the seed, shall be labeled to show a representation of a skull and crossbones at least twice the size of the type used for information required to be on the label under paragraph (a) and shall also include in red letters on a background of distinctly contrasting color a statement worded substantially as follows: “This seed has been treated with Poison,” “Treated with Poison,” “Poison treated,” or “Poison”. The word “Poison” shall appear in type no less than 8 point.

(2) Mercurials and similarly toxic substances include the following:
Agricultural Marketing Service, USDA § 201.33

Aldrin, technical
Demeton
dieldrin
p-Dimethylaminobenzenediazo sodium sulfonate
endrin
ethion
Heptachlor
Mercurials, all types
parathion
phorate
toxaphene
O-Diethyl-O-(isopropyl-4-methyl-6-pyrimidyl) thiophosphate
O, O-Diethyl-S-2(ethylthio) ethyl phosphorodithioate

Any amount of such substances remaining with the seed is considered harmful within the meaning of this section.

(d) Other harmful substances. If a substance, other than one which would be classified as a mercurial or similarly toxic substance under paragraph (c) of this section, is used in the treatment of seed, and the amount remaining with the seed is harmful to humans or other vertebrate animals, the seed shall be labeled with an appropriate caution statement in type no smaller than 8 point worded substantially as follows: “Do not use for food,” “Do not use for feed,” “Do not use for oil purposes,” or “Do not use for food, feed, or oil purposes.” Any amount of any substance, not within paragraph (c) of this section, used in the treatment of the seed, which remains with the seed is considered harmful within the meaning of this section when the seed is in containers of more than 4 ounces, except that the following substances shall not be deemed harmful when present at a rate less than the number of parts per million indicated:

- Allethrin—2 p.p.m.
- Malathion—8 p.p.m.
- Methoxychlor—2 p.p.m.
- Piperonyl butoxide—8 p.p.m. on oat and sorghum and 20 p.p.m. on all other seeds.
- Pyrethrins—1 p.p.m. on oat and sorghum and 5 p.p.m. on all other seeds.


§ 201.32 Screenings.

Screenings shipped in interstate commerce, if in containers, shall be labeled in a legible manner with letters not smaller than 18 point type and, if in bulk, shall be invoiced with the words, “Screenings for processing—not for seeding.”

[5 FR 31, Jan. 4, 1940]
§ 201.34 Kind, variety, and type; treatment substances; designation as hybrid.

(a) *Indistinguishable seed and treatment substances.* Reasonable precautions to insure that the kind, variety, or type of indistinguishable agricultural or vegetable seeds and names of any treatment substance are properly stated shall include the maintaining of the records described in §201.7 or §201.7a. The examination of the seed and any pertinent facts may be taken into consideration in determining whether reasonable precautions have been taken to insure the kind, variety, or type of seed or any treatment substance on the seed is that which is shown. Reasonable precautions in labeling ryegrass seed as to kind shall include making or obtaining the results of a fluorescence test unless (1) the shortness of the time interval between receipt of the seed lot and the shipment of the seed in interstate commerce, or (2) dormancy of the seeds in the lot, or (3) other circumstances beyond the control of the shipper prevent such action before the shipment is made. Reasonable precautions in labeling ryegrass seed as to kind shall also include keeping separate each lot labeled on the basis of a separate grower’s declaration, invoice, or other documents.

(b) *Name of kind.* The name of each kind of agricultural or vegetable seed is the name listed in §201.2 (h) or (i), respectively, except that a name which has become synonymous through broad general usage may be substituted therefor, provided the name does not apply to more than one kind and is not misleading.

(c) *Hybrid designation.* Seed shall not be designated in labeling as “hybrid” seed unless it comes within the definition of “hybrid” in §201.2(y).

(d) *Name of variety.* The name of each variety of agricultural or vegetable seed is the name determined in accordance with the following considerations:

(1) The variety name shall represent a subdivision of a kind, which is characterized by growth, plant, fruit, seed, or other characters by which it can be differentiated from other sorts of the same kind.

(2) Except as otherwise provided in this section, the name of a new variety shall be the name given by the originator or discoverer of the variety, except that in the event the originator or discoverer of a new unnamed variety, at the time seed of the variety is first introduced into channels of commerce of the United States for sale to the public, cannot or chooses not to name the variety, the name of the variety shall be the first name under which the seed is introduced into such commerce. However, if the variety name so provided is in a language not using the Roman alphabet, the variety shall be given a name by the person authorized under this paragraph to name the variety, in a language using the Roman alphabet.

(3) The variety name shall not be misleading. The same variety name shall not be assigned to more than one variety of the same kind of seed.

(4) The status under the Federal Seed Act of a variety name is not modified by the registration of such name as a trademark.

(5) Names of varieties which through broad general usage prior to July 28, 1956 were recognized variety names, except for hybrid seed corn, shall be considered variety names without regard to the principles stated in paragraph (d)(2) of this section.

(6) The variety name for any variety of hybrid seed corn first introduced into commercial channels in the United States for sale prior to October 20, 1951, shall be the name assigned in accordance with paragraphs (d)(1) through (4) of this section.

(e) [Reserved]

[20 FR 7928, Oct. 21, 1955]

EDITORIAL NOTE: For Federal Register citations affecting §201.34, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

is in bulk, or on a label if the seed is in containers, regardless of the quantity.

[24 FR 3953, May 15, 1959]
§ 201.35 Blank spaces.
Blank spaces on the label shall be deemed to imply the word “None,” when such interpretation is reasonable.
[5 FR 32, Jan. 4, 1940]

§ 201.36 The words “free” and “none.”
The words “free” and “none” shall be construed to mean that none were found in a test complying with the methods set forth in §§ 201.45–201.52.
[5 FR 32, Jan. 4, 1940]

MODIFYING STATEMENTS

§ 201.36a Disclaimers and nonwarranties.
A disclaimer, nonwarranty, or limited warranty used in any invoice or other labeling, or advertisement shall not directly or indirectly deny or modify any information required by the act or the regulations in this part.
[15 FR 2394, Apr. 28, 1950]

ADVERTISING

§ 201.36b Name of kind and variety; designation as hybrid.

(a) The representation of the name of a kind or kind and variety of seed in any advertisement subject to the act shall be confined to the name of the kind or kind and variety determined in accordance with §201.34. The name shall not have associated therewith words or terms that create a misleading impression as to the history or characteristics of the kind or kind and variety. Descriptive terms and firm names may be used in kind or variety names provided the descriptive terms or firm names are a part of the name or variety of seed; for example, Stringless Green Pod, Detroit Dark Red, Black Seeded Simpson and Henderson Bush Lima. Seed shall not be designated as hybrid seed in any advertisement subject to the act unless it comes within the definition of “hybrid” in §201.2(y).

(b) Terms descriptive as to color, shape, size, habit of growth, disease-resistance, or other characteristics of the kind or variety may be associated with the name of the kind or variety provided it is done in a manner which clearly indicates the descriptive term is not a part of the name of the kind or variety; for example, Oshkosh pepper (yellow), Copenhagen Market (round head) cabbage, and Kentucky Wonder (pole) garden bean.

(c) Terms descriptive of quality or origin and terms descriptive of the basis for representations made may be associated with the name of the kind or variety: Provided, That the terms are clearly identified as being other than part of the name of the kind or variety; for example, Fancy quality redtop, Idaho origin alfalfa, and Grower’s affidavit of variety Atlas sorghum.

(d) Terms descriptive of the manner or method of production or processing the seed (for example, certified, registered, delinted, scarified, treated, and hulled), may be associated with the name of the kind or variety of seed, providing such terms are not misleading.

(e) Brand names and terms taken from trademarks may be associated with the name of the kind or variety of seed as an indication of source: Provided, That the terms are clearly identified as being other than a part of the name of the kind or variety; for example, Ox Brand Golden Cross sweet corn.

Seed shall not be advertised under a trademark or brand name in any manner that may create the impression that the trademark or brand name is a variety name. If seed advertised under a trademark or brand name is a mixture of varieties and if the variety names are not stated in the advertising, a description similar to a varietal description or a comparison with a named variety shall not be used if it creates the impression that the seed is of a single variety.

§ 201.36c Hermetically-sealed containers.
The 5-month limitation on the date of test in §§201.22 and 201.30a shall not apply when the following conditions have been met:

(a) The seed was packaged within 9 months after harvest;

(b) The container used does not allow water vapor penetration through any wall, including the seals, greater than 0.05 grams of water per 24 hours per 100
§ 201.37 Authorization.

When authorized by the Administrator of the Agriculture Marketing Service, or by such other person as may be designated for the purpose, Federal employees and qualified State officials, for the purposes of the act, may draw samples of, secure information and inspect records pertaining to, and otherwise inspect seeds and screenings subject to the act.

§ 201.38 Importations.

Prior to release into the commerce of the United States, imported seed and screenings shall be inspected as provided in §§361.1 of this title.

§ 201.39 General procedure.

(a) In order to secure a representative sample, equal portions shall be taken from evenly distributed parts of the quantity of seed or screenings to be sampled. Access shall be had to all parts of that quantity. When more than one trierful of seed is drawn from a bag, different paths shall be followed. When more than one handful is taken from a bag, the handfuls shall be taken from well-separated points.

(b) For free-flowing seed in bags or bulk, a probe or trier shall be used. For small free-flowing seed in bags a probe or trier long enough to sample all portions of the bag should be used.

(c) Non-free-flowing seed, such as certain grass seed, uncleared seed, or screenings, difficult to sample with a probe or trier, shall be sampled by
thrusting the hand into the bulk and withdrawing representative portions. The hand is inserted in an open position and the fingers are held closely together while the hand is being inserted and the portion withdrawn.

(d) As the seed or screenings are sampled, each portion shall be examined. If there appears to be a lack of uniformity, the portions shall not be combined into a composite sample but shall be retained as separate samples or combined to form individual-container samples to determine such lack of uniformity as may exist.

(e) When the portions appear to be uniform, they shall be combined to form a composite sample.

§ 201.40 Bulk.

Bulk seeds or screenings shall be sampled by inserting a long probe or thrusting the hand into the bulk as circumstances require in at least seven uniformly distributed parts of the quantity being sampled. At least as many trierfuls or handfuls shall be taken as the minimum which would be required for the same quantity of seed or screenings in bags of a size customarily used for such seed or screenings.

§ 201.41 Bags.

(a) For lots of six bags or less, each bag shall be sampled. A total of at least five trierfuls shall be taken.

(b) For lots of more than six bags, five bags plus at least 10 percent of the number of bags in the lot shall be sampled. (Round off numbers with decimals to the nearest whole number, raising 0.5 to the next whole number.) Regardless of the lot size it is not necessary that more than 30 bags be sampled.

(c) Samples shall be drawn from unopened bags except under circumstances where the identity of the seed has been preserved.

§ 201.42 Small containers.

In sampling seed in small containers that it is not practical to sample as required in § 201.41, a portion of one unopened container or one or more entire unopened containers may be taken to supply a minimum size sample, as required in § 201.43.

§ 201.43 Size of sample.

The following are minimum sizes of samples of agricultural seed, vegetable seed and screenings to be submitted for analysis, test, or examination:

(a) Two ounces (57 grams) of grass seed not otherwise mentioned, white or alsike clover, or seeds not larger than these.

(b) Five ounces (142 grams) of red or crimson clover, alfalfa, lespedeza, ryegrass, bromegrass, millet, flax, rape, or seeds of similar size.

(c) One pound (454 grams) of sudangrass, proso millet, hemp, or seeds of similar size.

(d) Two pounds (907 grams) of cereals, sorghum, vetch, or seeds of similar or larger size.

(e) Two quarts (2.2 liters) of screenings.

(f) Vegetable seed samples shall consist of at least 400 seeds.

(g) Coated seed for a purity analysis shall consist of at least 7,500 seed units. Coated seed for noxious-weed seed examination shall consist of at least 30,000 seed units. Coated seed for germination test only shall consist of at least 1,000 seed units.

§ 201.44 Forwarding samples.

Before being forwarded for analysis, test, or examination, the containers of samples shall be properly sealed and identified in such manner as may be prescribed by AMS. Samples of coated seed shall be forwarded in firmly packed crush-proof and moisture-proof containers.

§ 201.45 Obtaining the working sample.

(a) The working sample on which the actual analysis is made shall be taken from the submitted sample in such a manner that it will be representative.

(b) The sample shall be repeatedly divided to the weight to be used for the working sample. Some form of efficient mechanical divider should be used. To avoid damaging large seeds and coated seeds, a divider should be used which will prevent the seeds from falling great distances onto hard surfaces. In case the proper mechanical divider cannot be used or is not available, the sample shall be thoroughly mixed and placed in a pile and the pile shall be repeatedly divided into halves until a sample of the desired weight remains.


§ 201.46 Weight of working sample.

(a) Unmixed seed. The working samples for purity analysis and noxiousweed seed examination of unmixed seed shall be at least the weights set forth in table 1.

(b) Mixtures consisting of one predominant kind of seed or a group of kinds of similar size. The weights of the purity and noxious-weed seed working samples in this category shall be determined by the kind or group of kinds which compromise more than 50 percent of the sample.

(c) Mixtures consisting of two or more kinds or groups of kinds of different sizes, none of which comprise over 50 percent of the sample. The weights of the purity working samples in this category shall be the weighted averages (to the nearest half gram) of the weights listed in table 1 for each of the kinds which comprise the sample determined by the following method: (1) Multiply the percentage of each component in the mixture (rounded off to the nearest whole number) by the sample sizes specified in column 2, table 1, (2) add all these products, (3) total the percentages of all components of the mixtures, and (4) divide the sum in paragraph (c)(2) of this section by the total in paragraph (c)(3) of this section. If the approximate percentage of the components of a mixture are not known they may be estimated. The weight of the noxiousweed seed working sample shall be determined by multiplying the weight of the purity working sample by 10 or by calculating the weighted average in the same manner described above for the purity working sample.

(d) Coated seed.

(1) Unmixed coated seed. Due to variation in the weight of coating materials, the size or weight of the working sample shall be determined separately for each lot. The weight of the working sample shall be determined by weighing 100 completely coated units and calculating the weight of 2,500 coated units for the purity analysis and 25,000 coated units for the noxious-weed seed examination.

(2) Mixtures of coated seed. The working weight shall be determined in the following manner:

(i) Calculate the weight of the working sample to be used for the mixture under consideration as though the sample were not coated by following paragraph (b) or (c) of this section.

(ii) Determine the amount of coating material on 100 coated units by weighing the coated units. Remove the coating material using the methods described in §§201.51b (c) and (d). Calculate the percentage of coating material using the following formulas:

\[
\text{Weight of coating material} = \frac{\text{weight of 100 coated units}}{\text{weight of 100 decoated units}};
\]

\[
\text{The percentage of coating material} = \frac{\text{weight of the coating material divided by the weight of 100 coated units}}{100}\%.
\]

(iii) The weight of the working sample shall be the product of the weight calculated in paragraph (d)(2)(i) of this section multiplied by 100 percent, divided by 100 percent minus the percentage of coating material calculated in paragraph (d)(2)(ii) of this section.
# Table 1—Weight of Working Sample

<table>
<thead>
<tr>
<th>Name of Seed</th>
<th>Minimum weight for purity analysis (grams)</th>
<th>Minimum weight for noxious-weed seed examination (grams)</th>
<th>Approximate number of seeds per gram</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Agricultural Seed</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agrotium</td>
<td>65</td>
<td>500</td>
<td>39</td>
</tr>
<tr>
<td>Alfalfa</td>
<td>5</td>
<td>50</td>
<td>500</td>
</tr>
<tr>
<td>Alfaline</td>
<td>5</td>
<td>50</td>
<td>440</td>
</tr>
<tr>
<td>Alfaclover</td>
<td>5</td>
<td>50</td>
<td>665</td>
</tr>
<tr>
<td>Bahiagrass:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Var. Pensacola</td>
<td>5</td>
<td>50</td>
<td>500</td>
</tr>
<tr>
<td>All other vars</td>
<td>7</td>
<td>50</td>
<td>365</td>
</tr>
<tr>
<td>Barley</td>
<td>100</td>
<td>500</td>
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### TABLE 1—WEIGHT OF WORKING SAMPLE—Continued

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1 Rhizomatosus derivatives of a johnsongrass x sorghum cross or a johnsongrass x sudangrass cross.


### § 201.47 Separation.

(a) The working sample shall be weighed in grams to four significant figures and shall then be separated into four parts: (1) Kind or variety to be considered pure seed, (2) other crop seed, (3) weed seed, and (4) inert matter. The components shall be weighed in grams to the same number of decimal places as the working sample. The percentage of each part shall be determined to two decimal places.
§ 201.47a Seed unit.

The seed unit is the structure usually regarded as a seed in planting practices and in commercial channels. The seed unit may consist of one or more of the following structures:

(a) True seeds;

(b) For the grass family:

(1) Caryopses and single florets;

(2) Multiple florets and spikelets in tall oatgrass (Arrhenatherum elatius), oat (Avena spp.), gramas (Bouteloua spp.), rhodesgrass (Chloris gayana), barley (Hordeum vulgare), and bluegrass (Poa spp.);

(3) Entire spikelets in bahiagrass, bentgrasses, dallisgrass, guineagrass, browntop millet, foxtail millet, proso millet, panicgrass, redtop, rice, switchgrass, and vaseygrass. Entire spikelets which may have attached rachis segments, pedicels, and sterile spikelets in big bluestem, little bluestem, sand bluestem, yellow bluestem, bottlebrush-squirreltail, broomcorn, yellow indiangrass, johnsongrass, sorghum, sorghum-sudangrass, sorghum alnum, sorghgrass, and sudangrass;

(4) Spikelet groups:

(i) Spikelet groups that disarticulate as a unit in galletagrass;

(ii) Spikelet groups that disarticulate as units with attached rachis segments and internodes in bluestems, side-oats grama, and yellow indiangrass;

(5) Spikelets in bluegrass and fescue:

(a) True spikelets in bluegrass (Poa pratensis), meadow fescue (Festuca pratensis), tall fescue (Festuca arundinacea), and red fescue (Festuca rubra);

(b) False spikelets in creeping bentgrass (Agrostis stolonifera), smooth bentgrass (Agrostis canina), and velvet bentgrass (Agrostis canina var. argentea);

(c) Spikelets in Kentucky bluegrass (Poa pratensis var. pratensis), Canada bluegrass (Poa pratensis var. pellita), rough bluegrass (Poa annua), and Kentucky bluegrass (Poa pratensis var. pratensis).
Agricultural Marketing Service, USDA

§ 201.48

(5) Fascicles of buffelgrass (Cenchrus ciliaris) consisting of bristles and spikelets;
(6) Burs of buffalograss (Buchloe dactyloides);
(7) Bulblets of bulbous bluegrass (Poa bulbosa);
(8) Multiple units as defined in §201.51a(b)(1).

(c) Dry indehiscent fruits in the following plant families: Buckwheat (Polygonaceae), sunflower (Compositae), geranium (Geraniaceae), goosefoot (Chenopodiaceae), and valerian (Valerianaceae);

(d) One- and two-seeded pods of small-seeded legumes (Leguminosae), burs of the burclovers (Medicago arabica, M. polymorpha), and pods of peanuts (Arachis hypogaea). (This does not preclude the shelling of small-seeded legumes for purposes of identification.) Pods of legumes normally containing more than two seeds, when occurring incidentally in the working sample, should be hulled if the kind is hulled when marketed;

(e) Fruits or half fruits in the carrot family (Umbelliferae);

(f) Nutlets in the following plant families: Borage (Boraginaceae), mint (Labiatae), and vervain (Verbenaceae);

(g) “Seed balls” or portions thereof in multigerm beets, and fruits with accessory structures such as occur in other Chenopodiaceae and New Zealand spinach. For forage kochia refer to §201.48(j) and §201.51(a)(7).


§ 201.47b Working samples.

The purity working sample is the sample on which the purity analysis is made. The noxious-weed seed working sample is the sample on which the noxious-weed seed examination is made.

[20 FR 7830, Oct. 21, 1955]

§ 201.48 Kind or variety considered pure seed.

The pure seed shall include all seeds of each kind or each kind and variety under consideration present in excess of 5 percent of the whole. Seeds of kinds or kinds and varieties present to the extent of 5 percent or less of the whole may be considered pure seed if shown on the label as components of a mixture in amounts of 5 percent or less. The following shall be included with the pure seed:

(a) Immature or shriveled seeds and seeds that are cracked or injured. For seeds of legumes (Leguminosae) and crucifers ( Cruciferae) with the seed coats entirely removed refer to §201.51(a)(1);

(b) Pieces of seeds which are larger than one-half of the original size. For separated cotyledons of legume seeds refer to §201.51(a)(2);

(c) Insect-damaged seeds, provided that the damage is entirely internal, or that the opening in the seed coat is not sufficiently large so as to allow the size of the remaining mass of tissue to be readily determined. Weevil-infested vetch seeds, irrespective of the amount of insect damage, are to be considered pure seed, unless they are broken pieces one-half or less than the original size. For classification of broken pieces of seed units one-half or less than the original size, refer to §201.51(a)(2).


§ 201.48(h) When nema-tode galls and fungal bodies have replaced the caryopsis in seed units.

Species in which determination of endosperm development is not necessary are listed in paragraphs (g) (1) and (2) of this section. Refer to §§201.48(h) and 201.51(a)(5) when nematode galls and fungal bodies have replaced the caryopsis in seed units. The
following procedures apply to determine pure seed in the grass families listed below:

(1) Intact burs of buffalograss (Buchloe dactyloides) shall be considered pure seed whether or not a caryopsis is present. Refer to §201.51(a)(6) for burs which are visibly empty.

(2) The Uniform Blowing Procedure described in §201.51a(a) shall be used to determine classification of florets into pure seed or inert matter for Kentucky bluegrass, Canada bluegrass, rough bluegrass, Pensacola variety of bahiagrass, side-oats grama, blue grama, and orchardgrass.

(3) Special purity procedures for smooth brome, chewings fescue, red fescue, orchardgrass, fairway crested wheatgrass, standard crested wheatgrass, intermediate wheatgrass, pubescent wheatgrass, tall wheatgrass, and western wheatgrass are listed in §201.51a(b).

(4) For methods of determining pure seed percentages of annual and perennial ryegrass, refer to §§201.58(b)(10) and 201.58a(a).

(h) Seed units with nematode galls, fungal bodies (i.e. ergot, other sclerotia, and smut) and spongy or corky caryopses that are entirely enclosed within the seed unit. Refer to §201.51(c)(1) for inert matter classification.

(i) Seed units of forage kochia that are retained on a 1 mm opening square-hole sieve, when shaken for 30 seconds. For inert matter, refer to §201.51(a)(7).

(2) Multiple Unit Procedure in §201.51a(b) for kinds listed in §201.48(g)(3) may be disregarded. If disregarded, all multiple units and single units (as defined in §201.51a(b)) for these kinds found in the working sample shall be manually separated into single florets. Each floret containing a caryopsis with some degree of endosperm development, which can be detected either by slight pressure or examination over light, is considered other crop seed. Empty florets and glumes, if present, are considered inert matter. Refer to §201.51(a)(4).

(b) [Reserved]


§ 201.50 Weed seed.

Seeds (including bulblets or tubers) of plants shall be considered weed seeds when recognized as weed seeds by the law or rules and regulations of the State into which the seed is offered for transportation or transported; or by the law or rules and regulations of Puerto Rico, Guam, or District of Columbia in which sold, or found by the Secretary of Agriculture to be detrimental to the agricultural interests of the United States, or any part thereof. Damaged weed seeds and immature seedlike structures, as described in §201.51(b), shall be considered inert matter. Weed seeds, as defined above in this section, requiring further separation into weed seed and inert matter components are as follows:

(a) The individual seeds are to be removed from fruiting structures such as pods and heads. The seeds are classified as weed seed and the remaining component is inert matter.
fruited structures classified as inert matter.

(b) Wild onion and wild garlic (Allium spp.) bulblets that have any part of the husk remaining and are not damaged at the basal end are considered weed seeds regardless of size. Bulblets that are completely devoid of husk, and are not damaged at the basal end, and are retained by a 1/13-th inch (1.9 mm) round-hole sieve are considered weed seeds. For wild onion and wild garlic (Allium spp.) bulblets classed as inert matter, refer to §201.50(c).

§201.51a Special procedures for purity analysis.

(a) The Uniform Blowing Procedure shall be used for the separation of pure seed and inert matter in the following: Kentucky bluegrass, Canada bluegrass, rough bluegrass, Pensacola variety of bahiagrass, orchardgrass, blue grama, and side-oats grama.

(b) When kinds listed in this section appear in mixtures they shall be separated from other kinds before using the Uniform Blowing Procedure.

(c) To determine the blowing point for these procedures, individual calibration samples for Kentucky bluegrass, orchardgrass, and Pensacola variety of bahiagrass shall be used. The calibration sample for Kentucky bluegrass shall be used for Canada bluegrass, rough bluegrass, blue grama, and side-oats grama.

(d) The blowing point for Canada bluegrass shall be the same as the blowing point determined for Kentucky bluegrass.

(e) The blowing point for rough bluegrass shall be a factor of 0.82 (82 percent) of the blowing point determined for Kentucky bluegrass. The 0.82 factor is restricted to the General-type seed blower.

(f) The blowing point for blue grama shall be a factor of 1.157 of the blowing point determined for Kentucky bluegrass. Before blowing, extraneous material that will interfere with the blowing process shall be removed. The sample to be blown shall be divided into four approximately equal parts and each blown separately. The 1.157 factor is restricted to the General-type seed blower.

(g) The blowing point for side-oats grama shall be a factor of 1.480 of the blowing point determined for Kentucky bluegrass. Before blowing, extraneous material that will interfere with the blowing process shall be removed. The sample to be blown shall be divided into four approximately equal parts and each part blown separately. The 1.480 factor is restricted to the General-type seed blower.

(h) Calibration samples and instructions are available on loan through the Seed Regulatory and Testing Branch, LS, AMS, Building 306, Room 213, Beltsville, Maryland 20705.

(i) The calibration samples shall be used to establish a blowing point prior to proceeding with the separation of pure seed and inert matter for these kinds. After completing the blowing procedure, remove all weed and other crop seeds from the light portion and add these to the weed or other crop separation, as appropriate. The remainder of the light portion shall be considered pure seed.

(j) With orchardgrass, after the blowing, proceed with the multiple unit procedure.
§ 201.51b Purity procedures for coated seed.

(a) The working sample for coated seed is obtained as described in §201.46(d)(1) and (2), and weighed in grams to four significant figures.

(b) Any loose coating material shall be sieved, weighed, and included with the inert matter component.

(c) Coating material is removed from the seed by washing with water or other solvents such as, but not limited to, dilute sodium hydroxide (NaOH). Use of fine mesh sieves is recommended for this procedure, and stirring or shaking the coated units may be necessary to obtain de-coated seed.

(d) Spread de-coated seed on blotters or filter paper in a shallow container. Air dry overnight at room temperature.

(e) Separation of component parts:
   (1) Kind or variety considered pure seed.
   (ii) A multiple unit is a seed unit that includes one or more structures as follows (the length of the awn shall be disregarded when determining the length of a fertile floret or an attached structure):
      (i) An attached sterile or fertile floret that extends to or beyond the tip of a fertile floret;
      (ii) A fertile floret with basally attached glume, glumes, or basally attached sterile florets of any length;
      (iii) A fertile floret with two or more attached sterile and/or fertile florets of any length.

(2) Procedure for determination of multiple units:
   (i) For the single kind: determine the percentage of single units present, based on the total weight of single units and multiple units. Apply the appropriate factor, as determined from the following table, to the weight of the multiple units and add that portion of the multiple unit weight to the weight of the single units. The remaining multiple unit weight shall be added to the weight of the inert matter.
   (ii) For mixtures that include one or more of the kinds in the following table, determine the percentage of single units, based on the total weight of single units and multiple units, for each kind. Apply the appropriate factor as determined from the following table, to the weight of multiple units of each kind.

   ![Table of Factors to Apply to Multiple Units](table.png)

   a The factors represent the percentages of the multiple unit weights which are considered pure seed. The remaining percentage is regarded as inert matter.
   b Includes both standard crested wheatgrass and fairway crested wheatgrass.
   c Dashes in table indicate that no factors are available at the levels shown.

[59 FR 64498, Dec. 14, 1994]
§ 201.52
(2) Other crop seed.
(3) Inert matter.
(4) Weed seed.
(f) The de-coated seed shall be separated into four components in accordance with §§201.48 through 201.51. §§201.51a (a) and (b) shall not be followed. The weight of the coating material is determined by subtracting the sum of the weights of the other four components from the original weight of the working sample. The percentage of coating material shall be included with the inert matter percentage. Calculate percentages of all components based on the original weight of the working sample (see paragraph (a) of this section).

[59 FR 64499, Dec. 14, 1994]

§ 201.52 Noxious-weed seeds.

(a) The determination of the number of seeds, bulblets, or tubers of individual noxious weeds present per unit weight should be made on at least the minimum quantities listed in §201.46 Table 1: Provided, That if the following indicated numbers of a single kind of seed, bulblet, or tuber are found in the pure seed analysis (or noxious-weed seed examination of a like amount) the occurrence of that kind in the remainder of the bulk examined for noxious-weed seeds need not be noted: ½-gram purity working sample, 16 or more seeds; 1-gram purity working sample, 23 or more seeds; 2-gram purity working sample or larger, 30 or more seeds. The seeds per unit weight shall be based on the number of single seeds. The number of individual seeds shall be determined in burs of sandbur (Cenchrus spp.) and cocklebur (Xanthium spp.); in capsules of dodder (Cuscuta spp.); in berries of groundcherry, horse-nettle, and nightshade (Solanaceae); and in the fruits of other noxious weeds that contain more than one seed. Refer to §§201.50 and 201.51(b)(4) for the classification of weed seeds and inert matter, respectively.

(b) A noxious-weed seed examination of coated seed samples shall be made by examining approximately 25,000 units obtained in accordance with §201.46(d) and which have been de-coated by the method described in §201.51b(c).

[59 FR 64499, Dec. 14, 1994]

GERMINATION TESTS IN THE ADMINISTRATION OF THE ACT

§ 201.53 Source of seeds for germination.

(a) When both purity and germination tests are required, seeds for germination shall be taken from the separation of the kind, variety, or type considered pure seed and shall be counted without discrimination as to size or appearance.

(b) When only a germination test is required and the pure seed is estimated or determined to be at least 98 percent, the pure seed for the germination test may be taken indiscriminately from a representative portion of the bulk.

(c) When only a germination test is required and the pure seed is found to be less than 98 percent, the seed for the test shall be obtained by separating the sample into two components as follows: (1) Pure seed and (2) other crop seed, weed seed, and inert matter. In making this separation at least ¼ of the quantity required for a regular purity analysis shall be used. The whole sample must be well mixed and divided in such a manner as to get a completely representative subsample.

[10 FR 9952, Aug. 11, 1945, as amended at 20 FR 7931, Oct. 21, 1955]

§ 201.54 Number of seeds for germination.

At least 400 seeds shall be tested for germination; except that in mixtures, 200 seeds of each of those kinds present to the extent of 15 percent or less may be used in lieu of 400, in which case an additional 2 percent is to be added to the regular germination tolerances. The seeds shall be tested in replicate tests of 100 seeds or less.

[59 FR 64500, Dec. 14, 1994]

§ 201.55 Retests.

Retests shall be made as follows:

(a) When the range of 100-seed replicates of a given test exceeds the maximum tolerated range in the table appearing in this section.
Agricultural Marketing Service, USDA  § 201.55

TABLE OF MAXIMUM TOLERATED RANGES BETWEEN 100-SEED REPLICATES FOR USE IN CONNECTION WITH § 201.55(A)

<table>
<thead>
<tr>
<th>Average percent germinations</th>
<th>Maximum allowed between replicates</th>
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(b) When at the time of the prescribed final count there are indications, such as presence of firm ungerminated seeds, that a satisfactory germination has not been obtained;

(c) When there is evidence that the results may not be reliable due to improper test conditions, errors in seedling evaluation, the presence of fungi or bacteria, or inaccuracies in counting or recording results;

(d) When a sample shows seedling injury or abnormality as a result of chemical treatment, of exposure to chemicals, or of toxicity from any source. (Retest shall be made in soil or a mixture of soil and sand);

(e) When no two satisfactory tests are within tolerance.
§ 201.55a

NOTE TO § 201.55: To find the maximum tolerated range, compute the average percentage of all 100 seed replicates of a given test, rounding off the result to the nearest whole number. The germination is found in the first two columns of the table. When the differences between highest and lowest replicates do not exceed the corresponding values found in the “4 replicates” column, no additional testing is required. However, if the differences exceed the values in the “4 replicates” column, retesting is necessary.


§ 201.55a Moisture and aeration of substratum.

(a) The substratum must be moist enough to supply the needed moisture to the seeds at all times. Excessive moisture which will restrict aeration of the seeds should be avoided. Except as provided for those kinds of seeds requiring high moisture levels of the germination media, the substrata should never be so wet that a film of water is formed around the seeds. For most kinds of seeds blotters or other paper substrata should not be so wet that by pressing, a film of water forms around the finger.

(b) The following formula may be used as a guide in the preparation of sand for germination tests:

\[ \frac{118.3 \text{ cc. (1 gill) sand/its weight in grams}}{20.2 - 8.0} = \text{the number of cc. of water to add to each 100 grams of air-dry sand}. \]

(c) The amount of water provided by this formula is satisfactory for seeds the size of clovers and will have to be modified slightly, depending on the kind of seed being tested and the kind of sand used. For example, slightly more moisture should be added when the larger seeds are to be tested.

(d) In preparing soil tests water should be added to the soil until it can be formed into a ball when squeezed in the palm of the hand but will break freely when pressed between two fingers. After the soil has been moistened it should be rubbed through a sieve and put in the seed containers without packing.

(e) The addition of water subsequent to placing the seed in test will depend on the evaporation from the substrata in the germination chambers. Since the rate of evaporation will depend upon the relative humidity of the air, it is desirable to keep water in the germination chambers or to provide other means of supplying a relative humidity of approximately 95 percent. Germination tests should be observed at frequent intervals to insure an adequate moisture supply of the substrata at all times.

[20 FR 7931, Oct. 21, 1955]

§ 201.56 Interpretation.

(a) A seed shall be considered to have germinated when it has developed those essential structures which, for the kind of seed under consideration, are indicative of its ability to produce a normal plant under favorable conditions. In general, the following are considered to be essential structures necessary for the continued development of the seedling (although some structures may not be visible in all kinds at the time of seedling evaluation). Seedlings possessing these essential structures are referred to as normal seedlings: Root system (consisting of primary, secondary, seminal, or adventitious roots); hypocotyl; epicotyl; cotyledon(s); terminal bud; primary leaves; and coleoptile and mesocotyl (in the grass family). Abnormal seedlings consist of those with defects to these structures, as described in the abnormal seedling descriptions, and are judged to be incapable of continued growth. The seedling descriptions assume that test conditions were adequate to allow proper assessment of the essential seedling structures.

(b) Sand and/or soil tests may be used as a guide in determining the classification of questionable seedlings and the evaluation of germination tests made on approved artificial media. This is intended to provide a method of checking the reliability of tests made on artificial substrata when there may be doubt as to the proper evaluation of such tests.

(c) Seedlings infected with fungi or bacteria should be regarded as normal if all essential structures are present. A seedling that has been seriously damaged by bacteria or fungi from any source other than the specific seed should be regarded as normal if it is determined that all essential structures...
were present before the injury or damage occurred. Germination counts should be made on samples where contamination and decay are present at approximately 2-day intervals between the usual first count and the final count. During the progress of the germination test, seeds which are obviously dead and moldy and which may be a source of contamination of healthy seeds should be removed at each count and the number of such dead seeds should be recorded. When symptoms of certain diseases develop which can be readily recognized and identified, their presence should be noted.

(d) Seed units containing more than one seed or embryo, such as New Zealand spinach seed, Beta seed, double fruits of the carrot family (Umbelliferae), multiple seeds of burnet, and seed units of grasses consisting of multiple florets, shall be tested as a single seed and shall be regarded as having germinated if they produce one or more normal seedlings.

(e) Standard guides for seedling interpretation shall include the following descriptions for specific kinds and groups. The “General Description” for each group of crop kinds describes a seedling without defects. While such a seedling is clearly normal, seedlings with some defects may also be classified as normal, provided the defects do not impair the functioning of the structure. The “Abnormal seedling description” is to be followed when judging the severity of defects.


Kinds of seed: Beet, Swiss chard, fourwing saltbush, spinach, New Zealand spinach, and forage kochia.

(a) General description.

(1) Germination habit: Epigeal dicot.

(2) Food reserves: Leaf-like cotyledons and perisperm.

(3) Shoot system: The hypocotyl elongates carrying the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period.

(4) Root system: A primary root; secondary roots may develop within the test period.

(5) Seedling: Frequent counts should be made on multigerm beet since the growing seedlings will separate from the cluster making it difficult to identify the source. Any cluster which produces at least one normal seedling is classified as normal; only one normal seedling per cluster is to be counted (see §201.56(d)). Toxic substances from the clusters of beet and Swiss chard may cause discoloring of the hypocotyl and/or root. Seedlings which are slightly discolored are to be classified as normal; however, if there is excessive discoloration, retest by the method in §201.58(b)(3).

(b) Abnormal seedling description.

(1) Cotyledons:

(i) Less than half of the original cotyledon tissue remaining attached.

(ii) Less than half of the original cotyledon tissue free of necrosis or decay.

(2) Epicotyl:

(i) Missing. (May be assumed to be present if cotyledons are intact.)

(ii) [Reserved]

(3) Hypocotyl:

(i) Deep open cracks extending into the conducting tissue.

(ii) Malformed, such as markedly shortened, curled, or thickened.

(iii) Watery.

(4) Root:

(i) None.

(ii) Weak, stubby, or missing primary root with weak secondary or adventitious roots.

(iii) For discolored roots of beet and Swiss chard, see §201.58(b)(3).

(5) Seedling:

(i) One or more essential structures impaired as a result of decay from primary infection. (For discolored seedlings of beet and Swiss chard, see §201.58(b)(3).)

(ii) Albino.


Kinds of seed: Artichoke, cardoon, chicory, dandelion, endive, great burdock, lettuce, safflower, salsify, Louisiana sagewort, and sunflower.

(a) Lettuce.

(1) General description.
§ 201.56–3

(i) Germination habit: Epigeal dicot.
(ii) Food reserves: Cotyledons which expand and become thin, leaf-like, and photosynthetic. The cotyledons of some varieties develop elongated petioles.
(iii) Shoot system: The hypocotyl elongates and carries the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period.
(iv) Root system: A long primary root.
(v) Seedling: The interpretations of lettuce seedlings are made only at the end of the test period.

2) Abnormal seedling description.

(i) Cotyledons:
(A) Less than half of the original cotyledon tissue remaining attached.
(B) Less than half of the original cotyledon tissue free of necrosis or decay.
(Delete attached seed coat for evaluation of cotyledons. Physiological necrosis is manifested by discolored areas on the cotyledons and should not be confused with natural pigmentation of some lettuce varieties.)
(ii) Epicotyl:
(A) Missing. (May be assumed to be present if cotyledons are intact.)
(B) Any degree of necrosis or decay.
(iii) Hypocotyl:
(A) Deep open cracks extending into the conducting tissue.
(B) Severely twisted or grainy.
(C) Watery.
(iv) Root:
(A) Stubby or missing primary root. (Secondary roots will not compensate for a defective primary root.)
(B) Primary root tip blunt, swollen, or discolored. (Toxic materials in the substratum may cause short, blunt roots; see §201.58(a)(9).)
(C) Primary root with splits or lesions.
(v) Seedling:
(A) Swollen cotyledons associated with extremely short or vestigial hypocotyl and root.
(B) One or more essential structures impaired as a result of decay from primary infection.
(C) Albino.

(b) Other kinds in the sunflower family: Artichoke, cardoon, chicory, dandelion, endive, great burdock, salsify, Louisiana sagewort, and sunflower.

(1) General description.
(i) Germination habit: Epigeal dicot.
(ii) Food reserves: Cotyledons which expand and become thin, leaf-like, and photosynthetic.
(iii) Shoot system: The hypocotyl elongates and carries the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period.
(iv) Root system: A long primary root with secondary roots usually developing within the test period.
(v) Seedling: The interpretations of lettuce seedlings are made only at the end of the test period.

(2) Abnormal seedling description.

(i) Cotyledons:
(A) Less than half of the original cotyledon tissue remaining attached.
(B) Less than half of the original cotyledon tissue free of necrosis or decay.
(Delete attached seed coat for evaluation of cotyledons.)
(ii) Epicotyl:
(A) Missing. (May be assumed to be present if cotyledons are intact.)
(B) [Reserved]
(iii) Hypocotyl:
(A) Deep open cracks extending into the conducting tissue.
(B) Malformed, such as markedly shortened, curled, or thickened.
(C) Watery.
(iv) Root:
(A) None.
(B) Weak, stubby, or missing primary root with weak secondary or adventitious roots. (Seedlings with roots bound within tough seed coats should be left in the test until the final count to allow for development.)
(v) Seedling:
(A) One or more essential structures impaired as a result of decay from primary infection.
(B) Albino.

§ 201.56–3 Mustard family, Brassicaceae (Cruciferae).

Kinds of seed: Broccoli, brussels sprouts, cabbage, Chinese cabbage, cauliflower, collards, garden cress, upland cress, water cress, kale, Chinese kale, Siberian kale, kohlrabi, mustard, pakchoi, radish, rape, rutabaga, and turnip.

(a) General description.
(1) Germination habit: Epigeal dicot.
(2) Food reserves: Cotyledons which expand and become thin, leaf-like and photosynthetic. In *Brassica*, *Sinapis*, and *Raphanus*, the cotyledons are bilobed and folded, with the outer cotyledon being larger than the inner.
(3) Shoot system: The hypocotyl elongates and carries the cotyledons above the soil surface; the epicotyl usually does not show any development within the test period.
(4) Root system: A long primary root.
(b) Abnormal seedling description.
(1) Cotyledons:
(i) Decayed at point of attachment.
(ii) Less than half of the original cotyledon tissue remaining attached.
(2) Epicotyl:
(i) Missing. (May be assumed to be present if the cotyledons are intact.)
(ii) [Reserved]
(3) Hypocotyl:
(i) Deep open cracks extending into the conducting tissue.
(ii) Malformed, such as markedly shortened, curled, or thickened.
(3) Root:
(i) Weak, stubby, or missing primary root. (Secondary roots will not compensate for a defective root.)
(ii) [Reserved]
(5) Seedling:
(i) One or more essential structures impaired as a result of decay from primary infection.
(ii) Albino.
[59 FR 64501, Dec. 14, 1994]

§ 201.56–4 Cucurbit family, (Cucurbitaceae).

Kinds of seed: Citron, cucumber, West India gherkin, melon, pumpkin, squash, and watermelon.
(a) General description.
(1) Germination habit: Epigeal dicot.
(2) Food reserves: Cotyledons which are large and fleshy; they expand, become photosynthetic, and usually persist beyond the seedling stage.
(3) Shoot system: The hypocotyl elongates and the cotyledons are pulled free of the seed coat, which often adheres to a peg-like appendage at the base of the hypocotyl. The epicotyl usually does not show any development within the test period.
(4) Root system: A long primary root with numerous secondary roots.
(b) Abnormal seedling description.
(1) Cotyledons:
(i) Less than half of the original cotyledon tissue remaining attached.
(ii) Less than half of the original cotyledon tissue free of necrosis or decay. (Remove any attached seed coats at the end of the test period for evaluation of cotyledons.)
(2) Epicotyl:
(i) Missing. (May be assumed to be present if the cotyledons are intact.)
(ii) [Reserved]
(3) Hypocotyl:
(i) Deep open cracks extending into the conducting tissue.
(ii) Malformed, such as markedly shortened, curled, or thickened.
(4) Root:
(i) None.
(ii) Weak, stubby, or missing primary root, with less than two strong secondary or adventitious roots.
(5) Seedling:
(i) One or more essential structures impaired as a result of decay from primary infection.
(ii) Albino.
[59 FR 64501, Dec. 14, 1994]
coleoptile elongates and pushes through the soil surface; the mesocotyl may elongate depending on the variety and light intensity, but may not be discernible. Splitting of the coleoptile occurs naturally as a result of growth and emergence of the leaves.

(iv) Root system: A primary root and seminal roots. The primary root is not readily distinguishable from the seminal roots; therefore, all roots arising from the seed are referred to as seminal roots.

(2) Abnormal seedling description.
(i) Shoot:
(A) Missing.
(B) No leaf.
(C) Leaf extending less than halfway up into the coleoptile.
(D) Leaf extensively shredded or split.
(E) Spindly or watery.
(F) Grainy, spirally twisted, shredded, and weak.
(G) Deep open cracks in the mesocotyl.

(ii) Root:
(A) Less than one strong seminal root.
(B) [Reserved]

(iii) Seedling:
(A) Decayed at point of attachment to the scutellum.
(B) One or more essential structures impaired as a result of decay from primary infection.
(C) Albino.
(D) Endosperm obviously detached from the root-shoot axis (e.g. kernel lifted away by the growing shoot).
(E) Thickened and shortened roots and/or shoots.

(b) Rice.

(i) General description.
(ii) Germination habit: Hypogaeal monocot.

(ii) Food reserves: Endosperm. The scutellum is a modified cotyledon which is in direct contact with the endosperm. During germination the scutellum remains inside the seed to absorb nutrients from the endosperm and transfer them to the growing seedling.

(iii) Shoot system: The shoot consists of the coleoptile, leaves enclosed in the coleoptile, and the mesocotyl. The coleoptile elongates and pushes through the soil or water surface; the mesocotyl may elongate depending on the variety and environmental conditions. Splitting of the coleoptile occurs naturally as a result of growth and emergence of the leaves.

(iv) Root system: Strong primary root and seminal roots. Adventitious roots may start to develop from the mesocotyl or coleoptilar node within the test period. If the mesocotyl elongates, the adventitious roots will be carried above the grain.

(2) Abnormal seedling description.
(i) Shoot:
(A) Missing.
(B) No leaf.
(C) Leaf extending less than halfway up into the coleoptile.
(D) Leaf extensively shredded or split.
(E) Spindly or watery.
(F) Deep open cracks in the mesocotyl.

(ii) Root:
(A) None.
(B) Weak primary root with insufficient seminal or adventitious roots.

(iii) Seedling:
(A) Decayed at point of attachment to the scutellum.
(B) One or more essential structures impaired as a result of decay from primary infection.
(C) Albino.

(c) Corn.

(i) General description.
(ii) Germination habit: Hypogaeal monocot.

(ii) Food reserves: Endosperm. The scutellum is a modified cotyledon which is in direct contact with the endosperm. During germination the scutellum remains inside the seed to absorb nutrients from the endosperm and transfer them to the growing seedling.

(iii) Shoot system: The shoot consists of the coleoptile, leaves enclosed in the coleoptile, and the mesocotyl. The coleoptile elongates and pushes through the soil or water surface. The mesocotyl elongates and pushes through the soil or water surface. The mesocotyl usually elongates. Splitting of the coleoptile occurs naturally as a result of growth and emergence of the leaves. A twisted and curled shoot bound by a tough seed coat may be considered normal, provided the shoot is not decayed.
Agricultural Marketing Service, USDA
§201.56–5

(iv) Root system: Strong primary root and seminal roots. Adventitious roots may start to develop from the mesocotyl or coleoptilar node within the test period.

(2) Abnormal seedling description.

(i) Shoot:
(A) Missing.
(B) Thickened and shortened.
(C) No leaf.
(D) Leaf extending less than halfway up into the coleoptile.
(E) Leaf extensively shredded or split.
(F) Spindly or watery.
(G) Deep open cracks in the mesocotyl.

(ii) Root:
(A) None.
(B) Damaged or weak primary root with less than two strong secondary roots.

(iii) Seedling:
(A) Decayed at point of attachment to the scutellum.
(B) One or more essential structures impaired as a result of decay from primary infection.
(C) Albino.

(d) Johnsongrass, sorghum, sorgrass, sorghum almum, sudangrass, and sorghum-sudangrass.

(1) General description.

(i) Germination habit: Hypogeal monocot.

(ii) Food reserves: Endosperm. The scutellum is a modified cotyledon which is in direct contact with the endosperm. During germination the scutellum remains inside the seed to absorb nutrients from the endosperm and transfer them to the growing seedling.

(iii) Shoot system: The shoot consists of the coleoptile, leaves enclosed in the coleoptile, and the mesocotyl. The coleoptile elongates and pushes through the soil surface; the mesocotyl usually elongates. Areas of natural, reddish pigmentation may develop on the mesocotyl and coleoptile. Splitting of the coleoptile occurs naturally as a result of growth and emergence of the leaves.

(iv) Root system: A long primary root, usually with secondary roots developing within the test period. Adventitious roots may start to develop from the mesocotyl or coleoptilar node within the test period. Areas of natural, reddish pigmentation may develop on the root.

(2) Abnormal seedling description.

(i) Shoot:
(A) Missing.
(B) Thickened and shortened.
(C) No leaf.
(D) Leaf extending less than halfway up into the coleoptile.
(E) Leaf extensively shredded or split.
(F) Spindly or watery.
(G) Deep open cracks in the mesocotyl.

(ii) Root:
(A) None.

(e) Grasses and millets.

(1) General description.

(i) Germination habit: Hypogeal monocot.

(ii) Food reserves: Endosperm. The scutellum is a modified cotyledon which is in direct contact with the endosperm. During germination the scutellum remains inside the seed to absorb nutrients from the endosperm and transfer them to the growing seedling.

(iii) Shoot system: The shoot consists of the coleoptile, leaves enclosed in the coleoptile, and the mesocotyl. The coleoptile elongates and pushes through the soil surface. The mesocotyl may or may not elongate significantly, depending on the kind. Splitting of the coleoptile occurs naturally as a result of growth and emergence of the leaves.

(iv) Root system: A long primary root. Secondary or adventitious roots may develop within the test period. In certain kinds (e.g. bermudagrass) the primary root may not be readily visible because it is coiled inside the tightly fitting lemma and palea. At the time of evaluation, the glumes should be removed and the root observed. Such seedlings are classified as normal if the
§ 201.56–6

primary root has developed. For Kentucky bluegrass, a primary root ¹⁄₁₆ inch (1.6 mm) or more in length is classified as normal.

(2) Abnormal seedling description.
   (i) Shoot:
      (A) Missing.
      (B) Short, thick, and grainy.
      (C) No leaf.
      (D) Leaf extending less than halfway up into the coleoptile.
      (E) Leaf extensively shredded or split.
      (F) Spindly or watery.
      (G) Deep open cracks in the mesocotyl.
   (ii) Root:
      (A) Missing or defective primary root even if other roots are present.
      (B) Spindly, stubby, or watery primary root.
   (iii) Seedling:
      (A) Decayed at point of attachment to the scutellum.
      (B) One or more essential structures impaired as a result of decay from primary infection.
      (C) Albino.
      (D) Yellow (when grown in light).
      (E) Endosperm obviously detached from the root-shoot axis (e.g. kernel lifted away by the growing shoot).


§ 201.56–6 Legume or pea family, Fabaceae (Leguminosae).

Kinds of seed: Alfalfa, alycceclover, asparagusbean, beans (Phaseolus spp.), Florida beggarweed, black medic, broadbean, burclovers, buttonclover, chickpea, clovers (Trifolium spp.), cowpea, crotalaria, crowvetch, guar, hairy indigo, kudzu, lentil, lespezeas, lupines, northern sweetvetch, peas, peanut, roughpea, sainfoin, sesbania, sourclover, soybean, sweetclovers, trefolls, velvetbean, and vetches.

(a) Field bean, garden bean, lima bean, mung bean, asparagusbean, and cowpea.
   (i) General description.
      (i) Germination habit: Epigeal dicot.
      (ii) Food reserves: Cotyledons which are large and fleshy.
   (iii) Shoot system: The hypocotyl elongates and carries the cotyledons above the soil surface. The epicotyl elongates, causing the terminal bud to emerge from between the cotyledons; the primary leaves expand rapidly.
   (iv) Root system: A long primary root with secondary roots.
   (2) Abnormal seedling description.
      (i) Cotyledons:
         (A) For garden bean (Phaseolus vulgaris in part), remove any attached seed coats at the end of the test period for evaluation of cotyledons:
            (I) Less than half of the original cotyledon tissue remaining attached.
            (2) Less than half of the original cotyledon tissue free of necrosis or decay.
            (B) All other kinds:
               (I) Both missing and the seedling generally weak.
      (2) [Reserved]
      (ii) Epicotyl:
         (A) Missing.
         (B) Deep open cracks.
         (C) Malformed, such as markedly curled or thickenened.
         (D) Less than one primary leaf.
      (iii) Hypocotyl:
         (A) Deep open cracks extending into the conducting tissue. (A healed break, sometimes referred to as a "knee," is considered normal.)
         (B) Malformed, such as markedly shortened, curled, or thickened. (Hypocotyl collar rot is the breakdown of hypocotyl tissue initially characterized by a watery appearance and collapse of the hypocotyl below the cotyledonary node. The area later becomes discolored, shrivelled, and necrotic. The condition is caused by insufficient calcium available to the
Agricultural Marketing Service, USDA

§ 201.56–6

Seedling. If hypocotyl collar rot is observed on seedlings of garden bean, the sample involved shall be retested in accordance with §201.58(b)(12).)

(iv) Root:
(A) None.
(B) Weak, stubby, or missing primary root with weak secondary or adventitious roots. (A root bound within a tough seed coat is considered normal.)

(v) Seedling:
(A) One or more essential structures impaired as the result of decay from primary infection. (Secondary infection is common in towel and blotter tests. Some pathogens, such as Fusarium, Phomopsis, and Rhizoctonia, can spread through the substratum and infect seedlings some distance away from the primary source. Seedlings with secondary infection are to be classified as normal. A retest in sand or soil may be advisable.)
(B) Albino.

(b) Adzuki bean, broadbean, chickpea, field pea, lentil, pea, roughpea, runner bean, velvetbean, and vetches.

(i) General description.
(ii) Food reserves: Cotyledons which are large and fleshy, and remain enclosed within the seed coat beneath the soil surface. They are usually not photosynthetic.
(iii) Shoot system: The epicotyl elongates and carries the cotyledons and primary leaves above the soil surface. The stem bears one or more scale leaves and, prior to emergence, is arched near the apex, causing the terminal bud to be pulled through the soil; after emergence, the stem straightens. For practical purposes, the hypocotyl is not discernible and is not an evaluation factor. Buds in the axils of each cotyledon and scale leaf usually remain dormant unless the terminal bud is seriously damaged. In this case, one or more axillary buds may start to develop into a shoot. If the axillary shoot is well-developed, it may be considered normal.

(iv) Root system: A long primary root with secondary roots.

(ii) Food reserves: Cotyledons, which are large and fleshy; they expand and become photosynthetic.
(iii) Shoot system: The hypocotyl elongates and carries the cotyledons above the soil surface. The primary leaves usually increase in size and the epicotyl may elongate within the test period.

(iv) Root system: A long primary root with secondary roots.

(2) Abnormal seedling description.

(i) Cotyledons:
(A) Less than half of the original tissue remaining attached.
(B) Less than half of the original tissue free of necrosis or decay.
(ii) Epicotyl:
(A) Missing.
(B) Less than one primary leaf.
(C) Malformed such as markedly shortened, curled, or thickened.

(D) Severely damaged (e.g. terminal bud missing or damaged) with only a weak shoot developing from the axil of a cotyledon or scale leaf.
(E) Two weak and spindly shoots.
(F) Deep open cracks extending into the conducting tissue.
(iii) Root:
(A) None.
(B) Weak, stubby, or missing primary root with weak secondary roots.

(iv) Seedlings:
(A) One or more essential structures impaired as a result of decay from primary infection. (Secondary infection is common in towel and blotter tests. Some pathogens can spread through the substratum and infect seedlings some distance away from the primary source. Seedlings with secondary infection are classified as normal. A retest in sand or soil may be advisable.)
(B) Albino.

(c) Soybean and lupine.

(1) General description.

(i) Germination habit: Epigeal dicot.

(ii) Food reserves: Cotyledons, which are large and fleshy; they expand and become photosynthetic.
(iii) Shoot system: The hypocotyl elongates and carries the cotyledons above the soil surface. The primary leaves usually increase in size and the epicotyl may elongate within the test period.

(iv) Root system: A long primary root with secondary roots.

(ii) Food reserves: Cotyledons, which are large and fleshy; they expand and become photosynthetic.
(iii) Shoot system: The hypocotyl elongates and carries the cotyledons above the soil surface. The primary leaves usually increase in size and the epicotyl may elongate within the test period.

(iv) Root system: A long primary root with secondary roots.

(ii) Food reserves: Cotyledons, which are large and fleshy; they expand and become photosynthetic.
(iii) Shoot system: The hypocotyl elongates and carries the cotyledons above the soil surface. The primary leaves usually increase in size and the epicotyl may elongate within the test period.

(iv) Root system: A long primary root with secondary roots.

(2) Abnormal seedling description.

(i) Cotyledons:
(A) Less than half of the original cotyledon tissue remaining attached.
(B) Less than half of the original cotyledon tissue free of necrosis or decay.
(ii) Epicotyl:
(A) Missing.
(B) Less than one primary leaf.

(C) Deep open cracks.

(D) Terminal bud damaged, missing, or decayed. (If a few seedlings with partial decay of the epicotyl are found,
§ 201.56–6

they may be classified as normal, provided the hypocotyl and root are normal. The epicotyl on such seedlings usually does not decay when grown in a fairly dry environment and is exposed to light. A retest, preferably in soil or sand, will aid in interpretation of such seedlings.

(iii) Hypocotyl:
(A) Deep open cracks extending into the conducting tissue. (Adventitious roots may occur at the site of injury, particularly on the hypocotyl and near the base of the cotyledons. The seedling is classified as normal if the injury is healed over and other essential structures are normal.)
(B) Malformed, such as markedly shortened, curled, or thickened. (Hypocotyl development is slow until the roots start functioning. Caution should be exercised to ensure slow seedlings are not classified as abnormal. Hypocotyl stunting or curling also may be caused by seedling orientation or constriction on or in the substratum.)
(iv) Root:
(A) None.
(B) Weak, stubby, or missing primary root with weak secondary or adventitious roots. (Roots of seedlings on “Kimpak” with insufficient moisture may not become established and hypocotyl elongation may appear to be abnormal. There may be curling of the root and hypocotyl. When a number of seedlings are observed with this condition, the sample should be retested.)
(v) Seedlings:
(A) One or more essential structures impaired as a result of primary infection. (Secondary infection is common in towel and blotter tests. Some pathogens, such as *Fusarium*, *Phomopsis*, and *Rhizoctonia*, can spread through the substratum and infect seedlings some distance away from the primary source. Seedlings with secondary infection are to be classified as normal. A retest in sand or soil may be advisable.)
(B) Albino.
(d) Peanut.
(i) General description.
(1) Germination habit: Epigeal dicot.
(2) Food reserves: Cotyledons, which are large and fleshy.
(3) Shoot system: The cotyledons are carried to the soil surface by the hypocotyl which is very thick, narrowing abruptly at the root. Elongation of the hypocotyl stops when the epicotyl is exposed to light at the soil surface. The primary leaves are compound and usually expand during the test period.
(iv) Root system: A long primary root with secondary roots. Adventitious roots develop from the base of the hypocotyl if the primary root is damaged.
(ii) Epicotyl:
(A) Missing.
(B) Less than one primary leaf.
(C) Deep open cracks.
(D) Terminal bud damaged, missing, or decayed.
(iii) Hypocotyl:
(A) Deep open cracks extending into the conducting tissue.
(B) Malformed, such as markedly shortened or curled. (Hypocotyls remain somewhat thickened and may appear to be stunted. Light, depth of planting, and substratum moisture all contribute to the length of the hypocotyl. Hypocotyl stunting or curling may be caused by seedling orientation or constriction in the substratum. Seedlings planted in a soil test with the radicle too close to the surface may send roots above the soil and appear to exhibit negative geotropism and a distorted, U-shaped hypocotyl.
(iv) Root:
(A) None.
(B) Weak, stubby, or missing primary root with weak secondary or adventitious roots.
(v) Seedling:
(A) One or more essential structures impaired as a result of primary infection.
(B) Albino.
(e) Alfalfa, alyceclover, Florida beggarweed, black medic, burclovers, buttonclover, milkvetch, clovers, crotalarias, crotalaria, crownvetch, guar, hairy indigo, kudzu, lespedezas, northern
sweetvetch, sainfoin, sesbania, sourclover, sweetclovers, and trefoils.

(1) General description.
(i) Germination habit: Epigeal dicot.
(ii) Food reserve: Cotyledons, which are small and fleshy; they expand and become photosynthetic. The cotyledons of sub clover develop elongated petioles.
(iii) Shoot system: The hypocotyl elongates and carries the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period.
(iv) Root system: A long, tapering primary root, usually with root hairs. Secondary roots may or may not develop within the test period, depending on the kind.

(2) Abnormal seedling description.
(i) Cotyledons:
(A) Less than half of the original cotyledon tissue remaining attached.
(B) Cotyledons free of necrosis or decay.

(ii) Epicotyl:
(A) Less than half of the original cotyledon tissue free of necrosis or decay.
(B) Epicotyl missing. (May be assumed to be present if both cotyledons are intact.)

(iii) Hypocotyl:
(A) Deep open cracks extending into the conducting tissue.
(B) Malformed, such as markedly shortened, curled, or thickened. (Seedlings of sainfoin which have been constricted by growing through the netting of the pod, but which are otherwise normal, are classified as normal.)
(C) Weak and watery.

(iv) Root:
(A) None.
(B) Primary root stubby. (The roots of sweetclovers may be stubby when grown on artificial substrata due to the presence of coumarin in the seed; since this condition usually does not occur in soil, such seedlings are classified as normal. Roots may appear stubby as a result of being bound by the seed coat; such seedlings are classified as normal. Crownvetch produces phytotoxic effects similar to sweetclovers.)

(C) Split extending into the hypocotyl.

(v) Seedling:
(A) One or more essential structures impaired as a result of decay from primary infection.
(B) Albino.

§ 201.56–7

Lily family, Liliaceae.

Kinds of seed: Asparagus, chives, leek, onion, and Welsh onion.

(a) Asparagus.
(1) General description.
(i) Germination habit: Hypogeal monocot.
(ii) Food reserve: Endosperm which is hard, semi-transparent, and non-starchy; minor reserves in the cotyledon. The endosperm surrounds the entire embryo.
(iii) Cotyledon: A single cylindrical cotyledon; following germination, all but the basal end remains embedded in the endosperm to absorb nutrients.

(iv) Shoot system: The epicotyl elongates and carries the terminal bud above the soil surface. The epicotyl may bear several small scale leaves. A short hypocotyl is barely distinguishable, joining the root to the basal end of the cotyledon. More than one shoot may arise simultaneously, and the seedling may be considered normal if at least one shoot is well-developed and has a terminal growing point, provided other essential structures are normal.

(v) Root system: A long slender primary root.

(2) Abnormal seedling description.
(i) Cotyledon:
(A) Detached from seedling.
(B) Deep open cracks at basal end.
(ii) Epicotyl:
(A) Missing. (May be assumed to be present if both cotyledons are intact.)
(B) [Reserved]

(iii) Hypocotyl:
(A) Deep open cracks extending into the conducting tissue.
(B) Malformed, such as markedly shortened, curled, or thickened.
(C) Weak and watery.

(iv) Root:
(A) None.
(B) Primary root stubby. (The roots of sweetclovers may be stubby when grown on artificial substrata due to the presence of coumarin in the seed; since this condition usually does not occur...
§ 201.56–8

(F) Watery.
(iii) Hypocotyl:
(A) Deep open cracks.
(B) [Reserved]
(iv) Root:
(A) No primary root.
(B) Stubby primary root with weak secondary roots.
(v) Seedling:
(A) One or more essential structures impaired as a result of decay from primary infection.
(B) Albino.
(b) Chives, leek, onion, Welsh onion.
(1) General description.
(i) Germination habit: Epigeal monocot.
(ii) Food reserves: Endosperm which is hard, semi-transparent, and non-starchy; minor reserves in the cotyledon.
(iii) Cotyledon: A single cylindrical cotyledon. The cotyledon emerges with the seed coat and endosperm attached to the tip. A sharp bend known as the “knee” forms; continued elongation of the cotyledon on each side of this knee pushes it above the soil surface. The cotyledon tip is pulled from the soil and straightens except for a slight kink which remains at the site of the knee.
(iv) Shoot system: The first foliage leaf emerges through a slit near the base of the cotyledon, but this does not usually occur during the test period. The hypocotyl is a very short transitional zone between the primary root and the cotyledon, and is not distinguishable for purposes of seedling evaluation.
(v) Root system: A long slender primary root with adventitious roots developing from the hypocotyl. The primary root does not develop secondary roots.
(2) Abnormal seedling description.
(i) Cotyledons:
(A) Short and thick.
(B) Without a definite bend or “knee”.
(C) Spindly or watery.
(ii) Epicotyl:
(A) Not observed during the test period.
(B) [Reserved]
(iii) Hypocotyl:
(A) Not evaluated.
(B) [Reserved]
(iv) Root:
(A) No primary root.
(B) Short, weak, or stubby primary root.
(v) Seedling:
(A) One or more essential structures impaired as a result of decay from primary infection.
(B) Albino.

§ 201.56–8 Flax family, Linaceae.

Kind of seed: Flax.
(a) General description.
(1) Germination habit: Epigeal dicot. (Due to the mucilaginous nature of the seed coat, seedlings germinated on blotters may adhere to the blotter and appear to be negatively geotropic.)
(2) Food reserves: Cotyledons which expand and become photosynthetic.
(3) Shoot system: The hypocotyl elongates carrying the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period.
(4) Root system: A primary root, with secondary roots usually developing within the test period.
(b) Abnormal seedling description.
(1) Cotyledons:
(i) Less than half of the original cotyledon tissue remaining attached.
(ii) Less than half of the original cotyledon tissue free of necrosis or decay.
(2) Epicotyl:
(i) Missing. (May be assumed to be present if cotyledons are intact.)
(ii) [Reserved]
(3) Hypocotyl:
(i) Deep open cracks extending into the conducting tissue.
(ii) Malformed, such as markedly shortened, curled, or thickened.
(4) Root:
(i) None.
(ii) Weak, stubby, or missing primary root with weak secondary or adventitious roots.
(5) Seedling:
(i) One or more essential structures impaired as a result of decay from primary infection.
(ii) Albino.

[59 FR 64504, Dec. 14, 1994]

[59 FR 64505 Dec. 14, 1994]
§ 201.56–9 Mallow family, Malvaceae.

Kinds of seed: Cotton, kenaf, and okra.

(a) General description.

(1) Germination habit: Epigeal dicot.

(2) Food reserve: Cotyledons, which are convoluted in the seed; they expand and become thin, leaf-like, and photosynthetic.

(3) Shoot system: The hypocotyl elongates carrying the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period. Areas of yellowish pigmentation may develop on the hypocotyl in cotton.

(4) Root system: A primary root, with secondary roots usually developing within the test period. Areas of yellowish pigmentation may develop on the root in cotton.

(b) Abnormal seedling description.

(1) Cotyledons:

(i) Less than half of the original cotyledon tissue remaining attached.

(ii) Less than half of the original cotyledon tissue free of necrosis or decay.

(2) Epicotyl:

(i) Missing.

(ii) [Reserved]

(3) Hypocotyl:

(i) Deep open cracks or grainy lesions extending into the conducting tissue.

(ii) Malformed, such as markedly shortened, curled, or thickened.

(4) Root:

(i) None.

(ii) Weak, stubby, or missing primary root with weak secondary or adventitious roots.

(5) Seedling:

(i) One or more essential structures impaired as a result of decay from primary infection. (A cotton seedling with yellowish areas on the root or hypocotyl is classified as normal, provided the cotyledons are free of infection.)

(ii) Albino.

[59 FR 64505 Dec. 14, 1994]

§ 201.56–10 Spurge family, Euphorbiaceae.

Kind of seed: Castorbean.

(a) General description.

(1) Germination habit: Epigeal dicot.

(2) Food reserves: Cotyledons, which are thin and leaf-like; endosperm (fleshy food-storage organs) usually persisting in the laboratory test.

(3) Shoot system: The hypocotyl elongates, carrying the cotyledons, endosperm, and epicotyl above the soil surface.

(4) Root system: A primary root, with secondary roots usually developing within the test period.

(b) Abnormal seedling description.

(1) Cotyledons:

(i) Less than half of the original cotyledon tissue remaining attached.

(ii) Less than half of the original cotyledon tissue free of necrosis or decay.

(2) Endosperm:

(i) Missing.

(ii) [Reserved]

(3) Epicotyl:

(i) Missing.

(ii) Damaged or missing terminal bud.

(4) Hypocotyl:

(i) Deep open cracks extending into the conducting tissue.

(ii) Malformed, such as markedly shortened, curled, or thickened.

(5) Root:

(i) None.

(ii) Weak, stubby, or missing primary root with weak secondary or adventitious roots.

(6) Seedling:

(i) One or more essential structures impaired as a result of decay from primary infection.

(ii) Albino.

[59 FR 64505 Dec. 14, 1994]

§ 201.56–11 Knotweed family, Polygonaceae.

Kinds of seed: Buckwheat, rhubarb, and sorrel.

(a) General description.

(1) Germination habit: Epigeal dicot.

(2) Food reserves: Cotyledons, starchy endosperm.

(3) Shoot system: The hypocotyl elongates carrying the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period.

(4) Root system: A primary root, with secondary roots developing within the test period for some kinds.

(b) Abnormal seedling description.
§ 201.56–12 Miscellaneous plant families.

Kinds of seed by family:

Carrot family, Apiaceae (Umbelliferae)—carrot, celery, celeriac, dill, parsley, parsnip;

Hemp family, Cannabaceae—hemp;

Dichondra family, Dichondraceae—dichondra;

Geranium family, Geraniaceae—alflaria;

Mint family, Lamiaceae (Labiatae)—sage, summer savory; benne family, Pedaliaceae—sesame;

Rose family, Rosaceae—little burnet;

Nightshade family, Solanaceae—eggplant, tomato, husk tomato, pepper, tobacco; and

Valerian family, Valerianaceae—cornsalad.

(a) General description.

(1) Germination habit: Epigeal dicot.

(2) Food reserves: Cotyledons; endosperm may or may not be present, depending on the kind.

(3) Shoot system: The hypocotyl elongates, carrying the cotyledons above the soil surface. The epicotyl usually does not show any development within the test period.

(4) Root system: A primary root; secondary roots may or may not develop within the test period, depending on the kind.

(b) Abnormal seedling description.

(1) Cotyledons:

(i) Less than half of the original cotyledon tissue remaining attached.

(ii) Less than half of the original cotyledon tissue free of necrosis or decay.

(2) Epicotyl:

(i) Missing. (May be assumed to be present if cotyledons are intact.)

(ii) [Reserved]

(3) Hypocotyl:

(i) Deep open cracks or grainy lesions extending into the conducting tissue.

(ii) Malformed, such as markedly shortened, curled, or thickened.

(iii) Watery.

(4) Root:

(i) None.

(ii) Weak, stubby, or missing primary root with weak secondary or adventitious roots.

(5) Seedling:

(i) One or more essential structures impaired as a result of decay from primary infection.

(ii) Albino.

[59 FR 64506, Dec. 14, 1994]

§ 201.57 Hard seeds.

Seeds which remain hard at the end of the prescribed test because they have not absorbed water, due to an impermeable seed coat, are to be counted as “hard seed.” If at the end of the germination period provided for legumes, okra, cotton and dichondra in these rules and regulations there are still present swollen seeds or seeds of these kinds which have just started to germinate, all seeds or seedlings except the above-stated shall be removed and the test continued for 5 additional days and the normal seedlings included in the percentage of germination. For flatpea, continue the swollen seed in test for 14 days when germinating at 15–25 °C or for 10 days when germinating at 20 °C.


§ 201.57a Dormant seeds.

Dormant seeds are viable seeds, other than hard seeds, which fail to germinate when provided the specified
germination conditions for the kind of seed in question.

(a) Viability of ungerminated seeds shall be determined by any of the following methods or combinations of methods: a cutting test, tetrazolium test, scarification, or application of germination promoting chemicals.

(b) The percentage of dormant seed, if present, shall be determined in addition to the percentage of germination for the following kinds: Bahiagrass, basin wildrye, big bluestem, little bluestem, sand bluestem, yellow bluestem, bottlebrush-squirreltail, buffalograss, buffelgrass, galletagrass, forage kochia, blue grama, side-oats grama, Indian ricegrass, johnsongrass, sand lovegrass, weeping lovegrass, mountain rye, sand dropseed, milo, switchgrass, veldtgrass, western wheatgrass, and yellow indiangrass.

(c) For green needlegrass, if the test result of method 2 is less than the result of method 1, subtract the result of method 2 from method 1 and report the difference as the percentage of dormant seed. Refer to §201.58(b)(7).


§ 201.58 Substrata, temperature, duration of test, and certain other specific directions for testing for germination and hard seed.

Specific germination requirements are set forth in table 2 to which the following paragraphs (a), (b), and (c) are applicable.

(a) Definitions and explanations applicable to table 2—(1) Duration of tests. The following deviations are permitted from the specified duration of tests: Any test may be terminated prior to the number of days listed under “Final count” if the maximum germination of the sample has then been determined. The number of days stated for the first count is approximate and a deviation of 1 to 3 days is permitted. If at the time of the prescribed test period the seedlings are not sufficiently developed for positive evaluation, it is possible to extend the time of the test period two additional days. (Also, see paragraph (a)(5) of this section and 201.57.)

(2) Light. Cool white fluorescent light shall be 75 to 125 foot-candles (750–1,250 lux). (The light intensity for nondormant seed and during seedling development may be as low as 25 foot-candles to enable the essential structures to be evaluated with greater certainty.) The seeds shall be illuminated for at least 6 hours every 24 hours except when transferred to a low temperature germinator during the weekend. When seeds are germinated at alternating temperatures they shall be illuminated during high temperature periods. Seeds for which light is prescribed shall be germinated on top of the substratum except for ryegrass fluorescence tests.

(3) Moisture-on-dry-side. This term means that the moistened substratum should be pressed against a dry absorbent surface such as a dry paper towel or blotter to remove excess moisture. The moisture content thus obtained should be maintained throughout the germination test period.

(4) Potassium nitrate (KNO₃). These terms mean a two-tenths (0.2) percent solution of potassium nitrate (KNO₃) shall be used in moistening the substratum. Such solution is prepared by dissolving 2 grams of KNO₃ in 1,000 ml. of distilled water. The grade of the potassium nitrate shall meet A.C.S. specifications.

(5) Prechill. The term “prechill” means a cold, moist treatment applied to seeds to overcome dormancy prior to the germination test. The prechill method varies among kinds, but is usually performed by holding imbibed seeds at a low temperature for a specified period of time. The prechill period is not included in the duration of tests given in table 2, unless otherwise specified.

(6) Predry. The term “predry” means to place the seed in a shallow layer at a temperature of 35 ° to 40 °C for a period of 5 to 7 days, with provisions for circulation of the air.

(7) Substrata (Kinds). The symbols used for substrata are:

- B= between blotters
- TB= top of blotters
- T= paper toweling, used either as folded towel tests or as roll towel tests in horizontal or vertical position
- S= sand or soil where soil is an artificial planting mix of shredded peat moss, vermiculite, and perlite
§ 201.58

TS= top of sand or soil
P= covered Petri dishes: with two layers of blotters; with one layer of absorbent cotton; with five layers of paper toweling; with three thicknesses of filter paper; or with sand or soil
C= creped cellulose paper wadding (0.3-inch thick Kimpak or equivalent) covered with a single thickness of blotter through which holes are punched for the seed that are pressed for about one-half their thickness into the paper wadding
TC= on top of creped cellulose paper without a blotter
RB= blotters with raised covers, prepared by folding up the edges of the blotter to form a good support for the upper fold which serves as a cover, preventing the top from making direct contact with the seeds.

(8) Temperature. A single numeral indicates a constant temperature. Two numerals separated by a dash indicate an alternation of temperature, the test to be held at the first temperature for approximately 16 hours and at the second temperature for approximately 8 hours per day. The temperature shall be determined at the substratum level and shall be as uniform as possible throughout the germination chamber. (A sharp alternation of temperature, such as obtained by hand transfer, may be beneficial in breaking dormancy.) If tests are not subjected to alternating temperatures over weekends and on holidays, they are to be held at the first-mentioned temperature during this time. In cases where two temperatures are indicated (separated by a semicolon) the first temperature shall be regarded as the regular method and the second as an alternate method.

(9) Paper substrata must be free of chemicals toxic to germinating seed and seedling growth. If root injury occurs from toxicity of a paper substratum or from the use of potassium nitrate, retests shall be made on soil or on a substratum moistened with water.

(10) Ethephon. This term means a 29 parts per million (0.0029 percent) solution of ethephon ([2-chloroethyl] phosphonic acid) which shall be used to moisten the substratum. This solution is prepared by mixing 0.6 ml of a stock solution with 5,000 ml of distilled water. The stock solution contains 24 grams of active material per 100 ml of propylene glycol or two pounds of active material per gallon. A solution which is five times this concentration (5 x 29 ppm) may be used for extremely dormant seeds, provided seeds are transferred to substratum moistened with water after 1 to 3 days.

(11) Ethylene. This term means that five (5) ml of ethylene gas per cubic foot (176.57 ml/m³) of germinator space is injected into a germinator in which peanut seeds in moist rolled towels have been placed. Following injection of the ethylene, the germinator is kept closed until the first count (5 days). If the germinator door is opened for the purpose of checking or rewetting the samples, another injection of ethylene at the same rate shall be made.

(b) Special procedures and alternate methods for germination referred to in table 2—(1) Alyceclover; swollen seeds. At the conclusion of the 21-day test period, carefully pierce the seed coat with a sharp instrument and continue the test for 5 additional days. Alternate method: The swollen seeds may be placed at 20 °C for 48 hours and then at 35 °C for 3 additional days.

(2) Bahiagrass; removal of glumes. On all varieties except Pensacola, remove the enclosing structures (glumes, lemma, and palea) from the caryopsis with the aid of a sharp scalpel. If the seed is fresh or dormant, lightly scratch the surface of the caryopsis.

(3) Beet, Swiss chard; preparation of seed for test. Before the seeds are placed on the germination substratum, they shall be soaked in water for 2 hours, using at least 250 ml of water per 100 seeds, then washed in running water and the excess water blotted off. The temperature of the soaking and washing water should be no lower than 20 °C. Samples producing excessive discoloration of the hypocotyl or root should be retested in soil or by washing in running water for 3 hours and testing on “Kimpak,” keeping the seed covered with slightly moist blotters. Sugar beets may require 16 hours soaking in water at 25 °C, followed by rinsing and then drying for 2 hours at room temperature.
Dormant seeds: Presoak 24 to 48 hours in 40°C water. For deeply dormant seeds, presoak 24 hours in 1,000 p.p.m. ethylene chlorohydrin or 5 percent solution of sodium hypochlorite (Clorox at bottle strength).

(10) Ryegrass; fluorescence test. The germination test for fluorescence of ryegrass shall be conducted in light [not to exceed 100 foot candles (1,076 lux)] with white filter paper as the substratum. The white filter paper should be nontoxic to the roots of ryegrass and of a texture that will resist penetration of ryegrass roots. Distilled or deionized water shall be used to moisten the filter paper. The test shall be conducted in a manner that will prevent the contact of roots of different seedlings. Roots of some seedlings produce fluorescent lines on white filter paper when viewed under ultraviolet light. First counts shall not be made before the eighth day; at that time remove only normal fluorescent seedlings. Evaluation of fluorescence shall be made under F15T8–BLB or comparable ultraviolet tubes in an area where light from other sources is excluded. If there are over 75 percent normal fluorescent seedlings present at the time of the first count, break the contact of the roots of the nonfluorescent seedlings from the substratum and reread the fluorescence at the time of the final count. At the final count, lift each remaining seedling, observing the path of each root since sometimes faint fluorescence will show on the substratum as the root is lifted. Abnormal seedlings and dead seeds are not evaluated for fluorescence. See §201.58a(a).

(11) *Trifolium, Medicago, Melilotus,* and *Vicia faba; temperature requirements.* A temperature of 18°C is desirable for *Trifolium* spp., *Medicago* spp., *Melilotus* spp., and *Vicia faba.*

(12) *Garden bean; use of calcium nitrate.* If hypocotyl collar rot is observed on seedlings, the sample involved shall be retested using a 0.3 to 0.6 percent solution of calcium nitrate (Ca(NO₃)₂) to moisten the substratum.

(13) *Fourwing Saltbush (Atriplex canescens); preparation of seed for test.* DE-wing seeds and soak for 2 hours in 3 liters of water after which rince with approximately 3 liters of distilled water. Remove excess water, air dry for
§ 201.58

7 days at room temperature, then test for germination as indicated in Table 2.

(c) Procedures for coated seed:

(1) Germination tests on coated seed shall be conducted in accordance with methods in paragraphs (a) and (b) of this section. However, kinds for which soaking or washing is specified in paragraph (b) shall not be soaked or washed in the case of coated seed.

(i) Coated seed units shall be placed on the substratum in the condition in which they are received without rinsing, soaking, or any other pretreatment.

(ii) Coated seed units in mixtures which are color coded or can otherwise be separated by kinds shall be germinated as separate kinds without removing the coating material.

(iii) Coated seed units in mixtures which cannot be separated by kinds without removing the coating material shall be de-coated and germinated as separate kinds. The coating material shall be removed in a manner that will not affect the germination capacity of the seeds.

(2) The moisture level of the substratum is important. It may depend on the water-absorbing capacity of the coating material. A retest may be necessary before satisfactory germination of the sample is achieved.

(3) Phytotoxic symptoms may be evident when germinating coated seeds in paper substrata. In such cases a retest in sand or soil may be necessary.
<table>
<thead>
<tr>
<th>Name of seed</th>
<th>Substrata</th>
<th>Temperature (*°C)</th>
<th>First count days</th>
<th>Final count days</th>
<th>Specific requirements</th>
<th>Additional directions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agrontricum</td>
<td>B, T, S</td>
<td>20-35</td>
<td>7</td>
<td></td>
<td></td>
<td>Prechill at 5 or 10 °C for 5 days.</td>
</tr>
<tr>
<td>Alfalfa</td>
<td>B, T, S</td>
<td>20</td>
<td>7</td>
<td></td>
<td></td>
<td>Prechill 5 days at 5 or 10 °C or predry.</td>
</tr>
<tr>
<td>Alyssodover</td>
<td>B, T</td>
<td>35</td>
<td>14</td>
<td></td>
<td></td>
<td>Prechill all samples at 5–10 °C for 5 days.</td>
</tr>
<tr>
<td>Bahiagrass</td>
<td>Var. Pensacola</td>
<td>P, S</td>
<td>20-35</td>
<td>7</td>
<td>21</td>
<td>Light; see §201.57a</td>
</tr>
<tr>
<td></td>
<td>All other vars</td>
<td>P</td>
<td>30-35</td>
<td>3</td>
<td>21</td>
<td>Light; remove glumes; see §201.57a</td>
</tr>
<tr>
<td></td>
<td>B, T, S</td>
<td>20-15</td>
<td>4</td>
<td>14</td>
<td></td>
<td>Prechill 5 days at 5 or 10 °C or predry.</td>
</tr>
<tr>
<td>Barcellover</td>
<td>B, T</td>
<td>20</td>
<td>4</td>
<td>14</td>
<td></td>
<td>Prechill 5 days at 5 or 10 °C or predry.</td>
</tr>
<tr>
<td>Bean:</td>
<td>Adzuki</td>
<td>B, T, S, TC</td>
<td>20-30</td>
<td>5</td>
<td>10</td>
<td>Prechill all samples at 5–10 °C for 5 days.</td>
</tr>
<tr>
<td></td>
<td>Field</td>
<td>B, T, S, TC</td>
<td>20-30</td>
<td>5</td>
<td>10</td>
<td>Prechill all samples at 5–10 °C for 5 days.</td>
</tr>
<tr>
<td></td>
<td>Mung</td>
<td>B, T, S</td>
<td>20-30</td>
<td>3</td>
<td>17</td>
<td>Prechill all samples at 5–10 °C for 5 days.</td>
</tr>
<tr>
<td></td>
<td>Beet, field</td>
<td>B, T, S</td>
<td>20-30</td>
<td>3</td>
<td>14</td>
<td>Prechill all samples at 5–10 °C for 5 days.</td>
</tr>
<tr>
<td></td>
<td>Beet, sugar</td>
<td>B, T, S</td>
<td>20-30</td>
<td>3</td>
<td>10</td>
<td>Prechill all samples at 5–10 °C for 5 days.</td>
</tr>
<tr>
<td></td>
<td>Beggarweed, Florida</td>
<td>B, T</td>
<td>30</td>
<td>5</td>
<td>28</td>
<td>Prechill all samples at 5–10 °C for 5 days.</td>
</tr>
<tr>
<td>Bentgrass:</td>
<td>Colonial</td>
<td>P</td>
<td>15-30; 10-30; 15-25</td>
<td>7</td>
<td>21</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td></td>
<td>Creeping</td>
<td>P</td>
<td>15-30; 10-30; 15-25</td>
<td>7</td>
<td>21</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td></td>
<td>Velvet</td>
<td>P</td>
<td>15-25; 20-30</td>
<td>7</td>
<td>21</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td></td>
<td>Bermudagrass</td>
<td>P</td>
<td>20-35</td>
<td>21</td>
<td>21</td>
<td>Light; KNO_3; see §201.57a</td>
</tr>
<tr>
<td></td>
<td>Bermudagrass, giant</td>
<td>P</td>
<td>20-35</td>
<td>21</td>
<td>21</td>
<td>Light; KNO_3; see §201.57a</td>
</tr>
<tr>
<td>Bluegrass:</td>
<td>Annual</td>
<td>P</td>
<td>20-30</td>
<td>7</td>
<td>21</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td></td>
<td>Bulbous</td>
<td>P, S</td>
<td>10</td>
<td>10</td>
<td>35</td>
<td>KNO_3, or soil.</td>
</tr>
<tr>
<td></td>
<td>Canada</td>
<td>P</td>
<td>15-25; 15-30</td>
<td>10</td>
<td>28</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td></td>
<td>Glaucantha</td>
<td>P</td>
<td>15-25; 15-30</td>
<td>10</td>
<td>28</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td></td>
<td>Kentucky</td>
<td>P</td>
<td>15-25; 15-30</td>
<td>10</td>
<td>28</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td></td>
<td>Nevada</td>
<td>P</td>
<td>20-30</td>
<td>7</td>
<td>21</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td></td>
<td>Rough</td>
<td>P</td>
<td>20-30</td>
<td>7</td>
<td>21</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td></td>
<td>Texas</td>
<td>P</td>
<td>20-30</td>
<td>7</td>
<td>21</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td></td>
<td>Wood</td>
<td>P</td>
<td>20-30</td>
<td>7</td>
<td>21</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td>Bluemint:</td>
<td>Big</td>
<td>P, TS</td>
<td>20-30</td>
<td>7</td>
<td>14</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td></td>
<td>Little</td>
<td>P, TS</td>
<td>20-30</td>
<td>7</td>
<td>14</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td></td>
<td>Sand</td>
<td>P, TS</td>
<td>20-30</td>
<td>7</td>
<td>14</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td></td>
<td>Yellow</td>
<td>P, TS</td>
<td>20-30</td>
<td>5</td>
<td>14</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td></td>
<td>Bottlebrush-squirreltail</td>
<td>P, B</td>
<td>20, 15</td>
<td>10</td>
<td>14</td>
<td>Light; KNO_3 for 7 days.</td>
</tr>
<tr>
<td>Name of seed</td>
<td>Substrata</td>
<td>Temperature (°C)</td>
<td>First count days</td>
<td>Final count days</td>
<td>Specific requirements</td>
<td>Additional directions</td>
</tr>
<tr>
<td>--------------</td>
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<tr>
<td><strong>Brome:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Field</td>
<td>P, TB</td>
<td>15-25; 20-30</td>
<td>6 14</td>
<td></td>
<td>Light</td>
<td>Prechill at 10 °C for 5 days.</td>
</tr>
<tr>
<td>Meadow</td>
<td>B, T, TB</td>
<td>20-30</td>
<td>6 14</td>
<td></td>
<td>Light</td>
<td></td>
</tr>
<tr>
<td>Mountain</td>
<td>P</td>
<td>20-30</td>
<td>6 14</td>
<td></td>
<td>Light</td>
<td></td>
</tr>
<tr>
<td>Smooth</td>
<td>P, B, TB</td>
<td>20-30</td>
<td>6 14</td>
<td></td>
<td>Light</td>
<td></td>
</tr>
<tr>
<td>Broomcorn</td>
<td>B, T, S</td>
<td>20-30</td>
<td>3 10</td>
<td></td>
<td>Light</td>
<td>Prechill at 5 or 10 °C for 5 days, then test at 30 °C for 9 additional days.</td>
</tr>
<tr>
<td>Buckwheat</td>
<td>B, T</td>
<td>20-30</td>
<td>3 6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buffalograss: (Burs)</td>
<td>P, TB, TS</td>
<td>20-35</td>
<td>7 14</td>
<td></td>
<td>Light; KNO₃</td>
<td>Prechill at 5 °C for 2 weeks; See § 201.57a.</td>
</tr>
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<td></td>
<td>C.</td>
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</tr>
<tr>
<td>Buffelgrass</td>
<td>S</td>
<td>30</td>
<td>7 28</td>
<td></td>
<td>Light; press fascicles into well-packed soil and prechill at 5 °C for 7 days.</td>
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<tr>
<td>Burclover, California</td>
<td>B, T</td>
<td>20</td>
<td>4 14</td>
<td></td>
<td>Remove seeds from bur; see ¶(b)(11).</td>
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<tr>
<td>Burclover, spotted</td>
<td>B, T</td>
<td>20</td>
<td>4 14</td>
<td></td>
<td>Remove seeds from bur; see ¶(b)(11).</td>
<td></td>
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<tr>
<td>Burnet, litter</td>
<td>B, T</td>
<td>15</td>
<td>5 14</td>
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<tr>
<td>Buttonclover</td>
<td>B, T</td>
<td>20</td>
<td>4 10</td>
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<td>See ¶(b)(11)</td>
<td>15 °C.</td>
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<tr>
<td>Canarygrass</td>
<td>B, T</td>
<td>20-30</td>
<td>3 7</td>
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<td>Light; KNO₃</td>
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<tr>
<td>Canarygrass, reed</td>
<td>P</td>
<td>20-30</td>
<td>5 21</td>
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<td>Light; KNO₃</td>
<td></td>
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<tr>
<td>Carpetgrass</td>
<td>P</td>
<td>20-35</td>
<td>10 21</td>
<td></td>
<td>Light</td>
<td>KNO₃.</td>
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<tr>
<td>Castorbean</td>
<td>T, S</td>
<td>20-30</td>
<td>7 14</td>
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<td>Remove caruncle if mold interferes with test.</td>
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<tr>
<td>Chess, soft</td>
<td>P</td>
<td>20-30</td>
<td>7 14</td>
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<td>Light</td>
<td>Prechill at 5 or 10 °C for 7 days.</td>
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<tr>
<td>Chickpea</td>
<td>T, S</td>
<td>20-30</td>
<td>3 17</td>
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<td>Clover</td>
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<tr>
<td>Aboke</td>
<td>B, T, S</td>
<td>20</td>
<td>3 17</td>
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<td>See ¶(b)(11)</td>
<td>15 °C.</td>
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<tr>
<td>Arowleaf</td>
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<td>20; 15</td>
<td>4 14</td>
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<td>See ¶(b)(11)</td>
<td>15 °C.</td>
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<tr>
<td>Berseem</td>
<td>B, T, S</td>
<td>20</td>
<td>3 17</td>
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<td>See ¶(b)(11)</td>
<td>15 °C.</td>
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<tr>
<td>Cluster</td>
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<td>4 10</td>
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<td>See ¶(b)(11)</td>
<td>15 °C.</td>
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<tr>
<td>Crimson</td>
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<td>4 17</td>
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<td>See ¶(b)(11)</td>
<td>15 °C.</td>
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<tr>
<td>Kenya</td>
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<td>20</td>
<td>3 17</td>
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<td>See ¶(b)(11)</td>
<td>15 °C.</td>
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<tr>
<td>Lappo</td>
<td>B, T</td>
<td>20</td>
<td>3 17</td>
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<td>See ¶(b)(11)</td>
<td>15 °C.</td>
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<tr>
<td>Large hop</td>
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<td>4 14</td>
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<td>See ¶(b)(11)</td>
<td>15 °C.</td>
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<td>Persian</td>
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<td>3 17</td>
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<td>See ¶(b)(11)</td>
<td>15 °C.</td>
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<td>Red</td>
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<td>4 17</td>
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<td>See ¶(b)(11)</td>
<td>15 °C.</td>
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<td>Rose</td>
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<td>4 10</td>
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<td>See ¶(b)(11)</td>
<td>15 °C.</td>
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<tr>
<td>Small hop</td>
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<td>20</td>
<td>4 17</td>
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<td>See ¶(b)(11)</td>
<td>15 °C.</td>
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<tr>
<td>Strawberry</td>
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<td>20</td>
<td>3 17</td>
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<td>See ¶(b)(11)</td>
<td>15 °C.</td>
</tr>
<tr>
<td>Sub</td>
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<td>20</td>
<td>4 17</td>
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<td>See ¶(b)(11)</td>
<td>15 °C.</td>
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<tr>
<td>White</td>
<td>B, T, S</td>
<td>20</td>
<td>3 17</td>
<td></td>
<td>See ¶(b)(11)</td>
<td>15 °C.</td>
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</tbody>
</table>
Com:

Field B, T, S, TC 20–30; 25 4 7
Pop B, T, S, TC 20–30; 25 4 7
Cotton B, T, S 20–30; 30 4 12 7
Cowpea B, T, S 20–30 5 18
Crambe T, B 20–25 4 7
Crested dogtail P 20–30 10 21 Light; KNO3

Crotalaria:

Lance B, T, S 20–30 4 10
Slenderleaf B, T, S 20–30 4 10
Sunn B, T, S 20–30 4 10

Dallisgrass P 20–30 7 21 Light; KNO3

Dithranal 20–30 7 21 Light; KNO3

Drop seed, sand P 20–35 5 14 Light; KNO3

Fescue:

Chewings P 15–25 7 21 Light and KNO3; optional

Hair P 10–25 7 28 KNO3

Hard P 15–25 7 21 Light and KNO3; optional

Meadow P 15–25; 20–30 5 14 Light and KNO3; optional

Red P 15–25 7 21 Light and KNO3; optional

Sheep P 15–25 7 21 Light and KNO3; optional

Tall P 15–25; 20–30 5 14 Light and KNO3; optional

Flathead P 15–25; 20 14 126
Flax B, T, S 20–30 3 7

Foxtail, creeping P 15–30 7 21 Light; KNO3

Foxtail, meadow P 20–30 7 14 Light

Galletgrass P, B 20; 25; 20–30 4 10

Grass:

Blue P, TB 20–30 7 21 Light

Giel P 15–30 7 14 Light

Guar B, T, S 20–30; 30–30 5 14 Light

Guineagrass P 15–25 10 28 Light; KNO3; optional

Hardinggrass P 10–30 7 28 Light

Alternate method P 15–25 7 14 Light; presoak at 15 °C for 24 hrs

Hemp P 20–30 3 7

Indiangrass, yellow P, TS 20–30 7 14 Light; KNO3

Indigo P 20–30 5 14

Japanese lawngrass P 35–20 10 28 Light; KNO3

Johnsongrass P 20–35 7 35 Light; KNO3

Kufif T, B 20–30 4 8

Kochia, forage T, B 20 P 4 14

Kudzu B, T 20–30 5 14

Lentil B, T 20 5 10

Lespedeza B, T, S 20–35 5 14

Test by alternate method; see § (b)(5).

Prechill at 5 ° or 10 °C for 3 days.

Prechill at 5 °C for 4 weeks; see § 201.57a.

Prechill at 5 or 10 °C for 5 days or predry.

Prechill at 5 or 10 °C for 5 days.

Prechill at 5 or 10 °C for 5 days and test for 21 days.

See § 201.57a

See § 201.57a

See § 201.57a

See § 201.57a

See § 201.57a
<table>
<thead>
<tr>
<th>Name of seed</th>
<th>Substrata</th>
<th>Temperature (°C)</th>
<th>First count days</th>
<th>Final count days</th>
<th>Specific requirements</th>
<th>Additional directions</th>
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<tr>
<td>Sericea</td>
<td>B, T, S</td>
<td>20–35</td>
<td>7</td>
<td>12</td>
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<td>Siberian</td>
<td>B, T, S</td>
<td>20–35</td>
<td>7</td>
<td>12</td>
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<tr>
<td>Striate</td>
<td>B, T, S</td>
<td>20–35</td>
<td>7</td>
<td>14</td>
<td>Light; KNO₃</td>
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<tr>
<td>Lovegrass, sand</td>
<td>P</td>
<td>20–30</td>
<td>5</td>
<td>14</td>
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<tr>
<td>Lovegrass, weeping</td>
<td>P</td>
<td>20–35</td>
<td>5</td>
<td>14</td>
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<td>Lupine</td>
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<tr>
<td>Blue</td>
<td>B, T, S</td>
<td>20–35</td>
<td>7</td>
<td>10</td>
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<tr>
<td>White</td>
<td>B, T</td>
<td>20–35</td>
<td>3</td>
<td>10</td>
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<td>Yellow</td>
<td>B, T</td>
<td>20–35</td>
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<td>10</td>
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<td>Manilagrass</td>
<td>P</td>
<td>35–20</td>
<td>7</td>
<td>28</td>
<td>Light; KNO₃</td>
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<td>Medic, black</td>
<td>B, T, S</td>
<td>20–35</td>
<td>4</td>
<td>10</td>
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<td>See § (b)(11)</td>
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<tr>
<td>Milkvetch</td>
<td>B, T</td>
<td>20–35</td>
<td>6</td>
<td>14</td>
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<tr>
<td>Alternate method</td>
<td>B, TB, T</td>
<td>15–25</td>
<td>10</td>
<td>21</td>
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<td>Millet</td>
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<td>Browntop</td>
<td>B, P, T</td>
<td>20–30; 30</td>
<td>4</td>
<td>14</td>
<td>Light and KNO₃ optional</td>
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<tr>
<td>Alternate method</td>
<td>B, P, T</td>
<td>5–35</td>
<td>4</td>
<td>14</td>
<td>Light; KNO₃</td>
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<tr>
<td>Foxtail</td>
<td>B, T</td>
<td>15–30; 20–30</td>
<td>4</td>
<td>10</td>
<td>Light; KNO₃</td>
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<tr>
<td>Japanese</td>
<td>B, T</td>
<td>20–30</td>
<td>4</td>
<td>10</td>
<td>Light; KNO₃</td>
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<tr>
<td>Pearl</td>
<td>B, T</td>
<td>20–30</td>
<td>3</td>
<td>7</td>
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<td>Proso</td>
<td>B, T</td>
<td>20–30</td>
<td>3</td>
<td>7</td>
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<tr>
<td>Molassesgrass</td>
<td>P</td>
<td>20–30</td>
<td>7</td>
<td>21</td>
<td>Light; KNO₃</td>
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<td>Mustard</td>
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<tr>
<td>Black</td>
<td>P</td>
<td>20–30</td>
<td>3</td>
<td>7</td>
<td>Light; KNO₃</td>
<td></td>
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<tr>
<td>India</td>
<td>P</td>
<td>20–30</td>
<td>3</td>
<td>7</td>
<td>Light; KNO₃</td>
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<tr>
<td>White</td>
<td>P</td>
<td>20–30</td>
<td>3</td>
<td>5</td>
<td>Light; KNO₃</td>
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<tr>
<td>Napiersgrass</td>
<td>B, T</td>
<td>20–30</td>
<td>3</td>
<td>10</td>
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<td>Needlegrass, green</td>
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<tr>
<td>Method 1</td>
<td>P</td>
<td>15–30</td>
<td>7</td>
<td>14</td>
<td>H₂SO₄, GA, and thiram; dark; see § (b)(7).</td>
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<tr>
<td>Method 2</td>
<td>P</td>
<td>15–30</td>
<td>7</td>
<td>14</td>
<td>KNO₃; dark; see (b)(7)</td>
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<tr>
<td>Oat</td>
<td>B, T, S</td>
<td>20–15</td>
<td>5</td>
<td>10</td>
<td>Prechill at 10 °C for 3 days.</td>
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<tr>
<td>Oatgrass, tall</td>
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<td>20–30</td>
<td>6</td>
<td>14</td>
<td>Light; KNO₃</td>
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<tr>
<td>Orchardgrass</td>
<td>P, TS</td>
<td>15–25</td>
<td>7</td>
<td>21</td>
<td>Light; germination more rapid on soil.</td>
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<tr>
<td>Panicgrass, blue</td>
<td>P, TS</td>
<td>20–30</td>
<td>7</td>
<td>28</td>
<td>Light; KNO₃</td>
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<tr>
<td>Panicgrass, green</td>
<td>P</td>
<td>15–30</td>
<td>10</td>
<td>28</td>
<td>Light; KNO₃</td>
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<tr>
<td>Pea, field</td>
<td>B, T, S</td>
<td>20–30</td>
<td>3</td>
<td>18</td>
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<tr>
<td>Peanut</td>
<td>B, T, S</td>
<td>20–30; 25</td>
<td>5</td>
<td>10</td>
<td>Remove shells</td>
<td>Ethephon or ethylene; see § (a) (10) and (11).</td>
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<td>Rape</td>
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<tr>
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<td>B, T</td>
<td>20–30</td>
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<td>7</td>
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<td>Bird</td>
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<td>10</td>
<td>Light; KNO₃</td>
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<td>Tump</td>
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<td>3</td>
<td>7</td>
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<td>Crop</td>
<td>Temp</td>
<td>Presoak</td>
<td>Treatment</td>
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<tr>
<td>Winter</td>
<td>30-30</td>
<td>5</td>
<td>Light; KNO$_3$</td>
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<tr>
<td>Redtop</td>
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<td>5</td>
<td>KNO$_3$; prechill at 5°C for 4 weeks and test for 21 additional days; see §201.57a.</td>
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<td>Rescuegrass</td>
<td>10-30</td>
<td>7</td>
<td>Prechill at 5°C for 4 weeks; see §201.57a.</td>
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<td>Phdegrass</td>
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<td>Prechill at 5°C for 4 weeks; see §201.57a.</td>
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<td>Rice</td>
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<td>See (b)(9) for alternate method.</td>
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<td>Ricegrass, Indian</td>
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<td>Light optional; see §201.57a.</td>
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<tr>
<td>Alternate method</td>
<td>5-15; 15; 15-25</td>
<td>7</td>
<td>Light; KNO$_3$ and prechill at 5°C for 5 days and test at 15-25°C an additional 4 days.</td>
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<tr>
<td>Roughpea</td>
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<td>7</td>
<td>Light; KNO$_3$; if still dormant rechill for 3 days and continue test at 15-25°C an additional 4 days.</td>
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<td>Rye</td>
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<tr>
<td>Annual</td>
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<td>Light optional; see §201.57a.</td>
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<tr>
<td>Intermediate</td>
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<td>Wimmera</td>
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<td>Safflower</td>
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<td>Light at 15°C</td>
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<td>Sagewort, Louisiana</td>
<td>15-25</td>
<td>7</td>
<td>Light at 15°C</td>
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<tr>
<td>Salbine</td>
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<td>Light at 15°C</td>
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<td>Alternate method</td>
<td>15</td>
<td>21</td>
<td>Light at 15°C</td>
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<tr>
<td>Sesame</td>
<td>20-30</td>
<td>6</td>
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<td>5</td>
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<td>Sorghum</td>
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<td>5</td>
<td>Light at 15°C</td>
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<td>Sorghum-sudangrass</td>
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<td>Light at 15°C</td>
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<td>5</td>
<td>Light at 15°C</td>
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<td>Spell</td>
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<td>Light at 15°C</td>
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<td>Light at 15°C</td>
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<td>Sweetclover:</td>
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<td>Light at 15°C</td>
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<td>Sweet vernilgrass</td>
<td>20-30</td>
<td>6</td>
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<td>15-25; 20</td>
<td>14</td>
<td>Light at 15°C</td>
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### Table 2—Germination Requirements for Indicated Kinds—Continued

<table>
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<tr>
<th>Name of seed</th>
<th>Substrata</th>
<th>Temperature (° C)</th>
<th>First count days</th>
<th>Final count days</th>
<th>Specific requirements</th>
<th>Additional directions</th>
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<tr>
<td>Switchgrass</td>
<td>P, TS</td>
<td>15–30</td>
<td>7</td>
<td>14</td>
<td>Light; KNO&lt;sub&gt;3&lt;/sub&gt;</td>
<td>Prechill at 5 °C for 2 weeks; see § 201.57a.</td>
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<tr>
<td>Timothy</td>
<td>P, TB</td>
<td>15–25; 20–30</td>
<td>5</td>
<td>10</td>
<td>Light; see § (a)(8)</td>
<td>KNO&lt;sub&gt;3&lt;/sub&gt; and prechill at 5 or 10 °C for 5 days.</td>
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<td>Timothy, turf</td>
<td>P, TB</td>
<td>15–25; 20–30</td>
<td>5</td>
<td>10</td>
<td>Light</td>
<td>KNO&lt;sub&gt;3&lt;/sub&gt; and prechill at 5 or 10 °C for 5 days.</td>
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<td>7</td>
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</tr>
<tr>
<td>Trevil</td>
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<td>20</td>
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<td>112</td>
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<td>KNO&lt;sub&gt;3&lt;/sub&gt;. See § 201.57a.</td>
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<td>7</td>
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</tr>
<tr>
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<td>3</td>
<td>14</td>
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<td>Prechill at 5 or 10 °C for 5 days, or predry.</td>
</tr>
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<td>20–30</td>
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<tr>
<td>Common</td>
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<td>5</td>
<td>110</td>
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<tr>
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<tr>
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<td>7</td>
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<td>Light and KNO&lt;sub&gt;3&lt;/sub&gt; optional</td>
<td>KNO&lt;sub&gt;3&lt;/sub&gt; and prechill at 5 or 10 °C for 7 days.</td>
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<tr>
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<td>14</td>
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<td>KNO&lt;sub&gt;3&lt;/sub&gt; and prechill at 5 or 10 °C for 7 days.</td>
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<td>KNO&lt;sub&gt;3&lt;/sub&gt; and prechill at 5 or 10 °C for 7 days.</td>
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<td>KNO&lt;sub&gt;3&lt;/sub&gt; and prechill at 5 or 10 °C for 7 days.</td>
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<td>5</td>
<td>28</td>
<td>Light</td>
<td>KNO&lt;sub&gt;3&lt;/sub&gt; and prechill at 5 or 10 °C for 7 days.</td>
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<tr>
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<td>Light</td>
<td>KNO&lt;sub&gt;3&lt;/sub&gt; and prechill at 5 or 10 °C for 7 days.</td>
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<td>KNO&lt;sub&gt;3&lt;/sub&gt; and prechill at 5 or 10 °C for 7 days.</td>
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<td>3</td>
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<td>Broad bean</td>
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<td>14</td>
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<tr>
<td>Kohlrabi</td>
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<tr>
<td>Lettuce</td>
<td>P</td>
<td>20</td>
<td>None</td>
<td>7</td>
<td>Light</td>
<td></td>
</tr>
<tr>
<td>Lettuce</td>
<td>P</td>
<td>20</td>
<td>None</td>
<td>7</td>
<td>Light</td>
<td></td>
</tr>
<tr>
<td>Lettuce</td>
<td>P</td>
<td>20</td>
<td>None</td>
<td>7</td>
<td>Light</td>
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</tr>
<tr>
<td>Lettuce</td>
<td>P</td>
<td>20</td>
<td>None</td>
<td>7</td>
<td>Light</td>
<td></td>
</tr>
<tr>
<td>Lettuce</td>
<td>P</td>
<td>20</td>
<td>None</td>
<td>7</td>
<td>Light</td>
<td></td>
</tr>
<tr>
<td>Lettuce</td>
<td>P</td>
<td>20</td>
<td>None</td>
<td>7</td>
<td>Light</td>
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</tbody>
</table>
### Table 2—Germination Requirements for Indicated Kinds—Continued

<table>
<thead>
<tr>
<th>Name of seed</th>
<th>Substrata</th>
<th>Temperature (°C)</th>
<th>First count days</th>
<th>Final count days</th>
<th>Specific requirements</th>
<th>Fresh and dormant seed</th>
<th>Additional directions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Melon</td>
<td>B, T, S</td>
<td>20–30</td>
<td>4</td>
<td>10</td>
<td>Keep substratum on dry side;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mustard, India</td>
<td>P</td>
<td>20–30</td>
<td>3</td>
<td>7</td>
<td>Light</td>
<td>Prechill at 10 °C for 7 days and test for 5 additional days; KNO₃.</td>
<td></td>
</tr>
<tr>
<td>Mustard, spinach</td>
<td>B, T</td>
<td>20–30</td>
<td>3</td>
<td>7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Okra</td>
<td>B, T</td>
<td>20–30</td>
<td>4</td>
<td>11</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Onion</td>
<td>B, T</td>
<td>20</td>
<td>6</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alternate method</td>
<td>S</td>
<td>20</td>
<td>6</td>
<td>12</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Onion, Welsh</td>
<td>B, T</td>
<td>20</td>
<td>6</td>
<td>10</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Pak-choi</td>
<td>B, T</td>
<td>20–30</td>
<td>3</td>
<td>7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parsley</td>
<td>B, T, TS</td>
<td>20–30</td>
<td>11</td>
<td>28</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parsnip</td>
<td>B, T, TS</td>
<td>20–30</td>
<td>6</td>
<td>28</td>
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<td></td>
</tr>
<tr>
<td>Pea</td>
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<td>20</td>
<td>5</td>
<td>18</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pepper</td>
<td>TB, RB, T</td>
<td>20–30</td>
<td>6</td>
<td>14</td>
<td>Keep substratum on dry side;</td>
<td>Light and KNO₃.</td>
<td></td>
</tr>
<tr>
<td>Pumpkin</td>
<td>B, T, S</td>
<td>20–30</td>
<td>4</td>
<td>7</td>
<td>Keep substratum on dry side;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Radish</td>
<td>B, T</td>
<td>20</td>
<td>4</td>
<td>6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rhubarb</td>
<td>TB, TS</td>
<td>20–30</td>
<td>7</td>
<td>21</td>
<td>Light</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rutabaga</td>
<td>B, T</td>
<td>20–30</td>
<td>3</td>
<td>14</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sage</td>
<td>B, T, S</td>
<td>20–30</td>
<td>5</td>
<td>14</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salsify</td>
<td>B, T</td>
<td>15</td>
<td>5</td>
<td>10</td>
<td>Prechill at 10 °C for 3 days.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Savory, summer</td>
<td>B, T</td>
<td>20–30</td>
<td>5</td>
<td>21</td>
<td>Test at 15 °C.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sorrel</td>
<td>P, TB, TS</td>
<td>20–30</td>
<td>3</td>
<td>14</td>
<td>Light</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Soybean</td>
<td>B, T, S, TC</td>
<td>20–30; 25</td>
<td>5</td>
<td>18</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spinach</td>
<td>TB, T</td>
<td>15;10</td>
<td>7</td>
<td>21</td>
<td>Keep substratum on dry side;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spinach, New Zealand</td>
<td>T</td>
<td>15; 20</td>
<td>5</td>
<td>21</td>
<td>Soak fruits overnight (16 hrs), air dry 7 hrs; plant in very wet towels; do not rewater unless later counts exhibit drying out.</td>
<td>On 21st day scrape fruits and test for 7 additional days.</td>
<td></td>
</tr>
<tr>
<td>Alternate method</td>
<td>B, T</td>
<td>15</td>
<td>5</td>
<td>21</td>
<td>Remove pulp from basal end of fruit.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Squash</td>
<td>B, T, S</td>
<td>20–30</td>
<td>4</td>
<td>7</td>
<td>Keep substratum on dry side;</td>
<td>Light; KNO₃.</td>
<td></td>
</tr>
<tr>
<td>Tomato</td>
<td>B, P, RB, T</td>
<td>20–30</td>
<td>5</td>
<td>14</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tomato, husk</td>
<td>P, TB</td>
<td>20–30</td>
<td>7</td>
<td>28</td>
<td>Light; KNO₃.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tumip</td>
<td>B, T</td>
<td>20–30</td>
<td>3</td>
<td>14</td>
<td>Keep substratum on dry side;</td>
<td>Test at 30 °C.</td>
<td></td>
</tr>
<tr>
<td>Watermelon</td>
<td>B, T, S</td>
<td>20–30; 25</td>
<td>4</td>
<td>14</td>
<td>Keep substratum on dry side;</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Hard seeds may be present. (See §201.57)
2. Rhizomalous derivatives of a johnsongrass sorghum cross or a johnsongrass sudangrass cross.
§ 201.58a Indistinguishable seeds.

When the identification of the kind, variety, or type of seed or determination that seed is hybrid is not possible by seed characteristics, identification may be based upon the seedling, growing plant or mature plant characteristics according to such authentic information as is available.

(a) Ryegrass. In determining the pure seed percentage of perennial ryegrass and annual ryegrass, 400 seeds shall be grown on white filter paper and the number of fluorescent seedlings determined under ultraviolet light at the end of the germination period (see §201.58(b)(10)).

(1) Fluorescence results are to be determined as test fluorescence level (TFL) to two decimal places as follows:

\[
\text{\% TFL} = \frac{\text{Number of normal fluorescent seedlings}}{\text{Total number of normal seedlings}} \times 100
\]

(2) The percentage of perennial ryegrass is calculated as follows:

\[
\text{\% Perennial ryegrass} = \frac{\% \text{VFL (annual)} - \% \text{TFL}}{\% \text{VFL (annual)} - \% \text{VFL (perennial)}} \times \text{\% Pure ryegrass}
\]

where VFL=Variety fluorescence level.

(3) Using results from the above formula, the percentage of annual ryegrass is calculated as follows:

\[
\text{\% Annual Ryegrass} = \frac{\% \text{Pure Ryegrass} - \% \text{Perennial Ryegrass}}{\% \text{VFL (annual)} - \% \text{VFL (perennial)}}
\]

(4) If the test fluorescence level (TFL) of a perennial ryegrass is equal to or less than the variety fluorescence level (VFL) described for the variety, all pure ryegrass is considered to be perennial ryegrass and the formula is not applied.

(5) If the test fluorescence level (TFL) of an annual ryegrass is equal to or greater than the variety fluorescence level (VFL) described for the variety, all pure ryegrass is considered to be annual ryegrass and the formula is not applied.

(6) A list of variety fluorescence level (VFL) descriptions for perennial ryegrass varieties which are more than 0 percent fluorescent and annual ryegrass varieties which are less than 100 percent fluorescent is maintained and published by the National Grass Variety Review Board of the Association of Official Seed Certifying Agencies (AOSCA). If the variety being tested is not stated or the fluorescence level has not been described, the fluorescence level shall be considered to be 0 percent for perennial ryegrass and 100 percent for annual ryegrass. Both VFL (annual) and VFL (perennial) values must always be entered in the formula. If a perennial ryegrass variety is being tested, the VFL (annual) value is 100 percent. If an annual ryegrass variety is being tested, the VFL (perennial) value is 0 percent. For blends the fluorescence level shall be interpolated according to the portion of each variety claimed to be present.

(b) Sweetclover. To determine the presence of yellow sweetclover in samples of white sweetclover, at least 400 seeds shall be subjected to the chemical test as follows:

(1) Preparation of test solution: Add 3 grams of cupric sulfate (CuSO₄) to 30 ml of household ammonia (NH₄ OH, approximately 4.8 percent) in a stoppered bottle to form tetraamminecopper sulfate ([Cu(NH₄)₄]SO₄) solution used for
§ 201.58b Origin.

The presence of incidental weed seeds, foreign matter, or any other existing circumstances shall be considered in determining the origin of seed.


§ 201.58c Detection of captan, mercury, or thiram on seed.

The bioassay method may be used according to the procedure given in Association of Official Seed Analysts, Handbook No. 26, “Microbiological Assay of Fungicide-treated Seeds”, May 1964.

[38 FR 12733, May 15, 1973]
§ 201.58d Fungal endophyte test.
A fungal endophyte test may be used to determine the amount of fungal endophyte (Acrotrichum spp.) in certain grasses.
(a) Method of preparation of aniline blue stain for use in testing grass seed and plant material for the presence of fungal endophyte:
(1) Prepare a 1 percent aqueous aniline blue solution by dissolving 1 gram aniline blue in 100 ml distilled water.
(2) Prepare the endophyte staining solution of one part of 1 percent aniline blue solution with 2 parts of 85 percent lactic acid (C$_3$H$_6$O$_3$).
(3) Use stain as-is or dilute with water if staining is too dark.
(b) Procedure for determining levels of fungal endophyte in grass seed:
(1) Take a sub-sample of seed (1 gram is sufficient) from the pure seed portion of the kind under consideration.
(2) Digest seed at room temperature for 12–16 hours in a 5 percent sodium hydroxide (NaOH) solution or other temperature/time combination resulting in adequate seed softening.
(3) Rinse thoroughly in running tap water.
(4) De-glume seeds and place on a microscope slide in a drop of endophyte staining solution. Slightly crush the seeds. Use caution to prevent carryover hyphae of fungal endophyte from one seed to another.
(5) Place coverglass on seed and apply gentle pressure.
(6) Examine with compound microscope at 100–400x magnification, scoring a seed as positive if any identifiable hyphae are present.
(7) Various sample sizes may be used for this test. Precision changes with sample size; therefore, the test results must include the sample size tested.
(c) Procedure for determining levels of fungal endophyte in seedlings from seed samples suspected to contain fungal endophyte:
(1) Select seeds at random and germinate.
(2) Examine seedlings from the sample germinated after growing for a minimum of 48 days.
(3) Remove the outermost sheath from the seedling. Tissue should have no obvious discoloration from saprophytes and should have as little chlorophyll as possible.
(4) Isolate a longitudinal section of leaf sheath approximately 3–5 mm in width.
(5) Place the section on a microscope slide with the epidermis side down.
(6) Stain immediately with the endophyte staining solution as prepared in paragraph (a) (2) and (3) of this section. Allow dye to remain at least 15 seconds but no more than one minute.
(7) Blot off the excess dye with tissue paper. Sections should remain on the slide, but may adhere to the tissue paper; if so, remove and place in proper position on the slide.
(8) Place a coverglass on the sections and flood with water.
(9) Proceed with evaluation as described in paragraph (b) (6) and (7) of this section.
[59 FR 64515, Dec. 14, 1994]

§ 201.59 Application.
Tolerances shall be recognized between the percentages or rates of occurrence found by analysis, test, or examination in the administration of the act and percentages or rates of occurrence required or stated as required by the act. Tolerances for purity percentages and germination percentages provided for in §§201.60 and 201.63 shall be determined from the mean of (a) the results being compared, or (b) the result found by test and the figures shown on a label, or (c) the result found by test and a standard. All other tolerances, including tolerances for pure-live seed and fluorescence, and tolerances for purity based on 10 to 1,000 seeds, seedlings, or plants shall be determined from the result or results found in the administration of the Act.

§ 201.60 Purity percentages.
(a)(1) The tolerance for a given percentage of the purity components is the same whether for pure seed, other crop seed, weed seed, or inert matter. Wider tolerances are provided when 33 percent or more of the sample is composed of seed plus empty florets and/or
empty spikelets of the following chaffy kinds: bentgrasses, bermudagrasses, bluegrasses, bluestems, bottlebrush-squirrelltail, brones, buffalograss, buffelgrass, carpetgrass, soft chess, dallgrass, fescues, foxtails, galletagrass, guineagrass, gramas, molassesgrass, tall oatgrass, orchardgrass, redtop, rescuesgrass, rhodesgrass, Indian ricegrass, ryegrasses, sweet vernalgrass, vaseygrass, veldgrass, wheatgrasses, wildryes, and yellow indiangrass. The wider tolerances do not apply to seed devoid of hulls.

(2) To determine the tolerance for any purity percentage found in the administration of the act, the percentage found is averaged (i) with that claimed or shown on a label or (ii) with a specified standard. The tolerance is found from this average. If more than one test is made, all except any test obviously in error shall be averaged and the result treated as a single percentage.

(b) The tolerances found in columns C and D for the respective purity percentages shown in columns A and B of table No. 3 shall be used for (1) unmixed seed and (2) mixtures in which the particle-weight ratio is 1:1 to 1.49:1, inclusive. Tolerances for intermediate percentages not shown in table 3 shall be obtained by interpolation.

### Table 3—Tolerances for Any Component of A Purity Analysis for (1) Unmixed Seed or (2) Mixed Seed in Which the Particle Weight Ratio Is 1:1 to 1.49:1, Inclusive—Continued

<table>
<thead>
<tr>
<th>Average analysis (A)</th>
<th>(B)</th>
<th>Nonchaffy seeds (C)</th>
<th>Chaffy seeds (D)</th>
</tr>
</thead>
<tbody>
<tr>
<td>97.75–97.99 ..........</td>
<td>2.00–2.24</td>
<td>.87</td>
<td>1.01</td>
</tr>
<tr>
<td>97.50–97.74 ..........</td>
<td>2.25–2.49</td>
<td>.92</td>
<td>1.07</td>
</tr>
<tr>
<td>97.25–97.49 ..........</td>
<td>2.50–2.74</td>
<td>.96</td>
<td>1.12</td>
</tr>
<tr>
<td>97.00–97.24 ..........</td>
<td>2.75–2.99</td>
<td>1.00</td>
<td>1.17</td>
</tr>
<tr>
<td>96.50–96.99 ..........</td>
<td>3.00–3.49</td>
<td>1.06</td>
<td>1.24</td>
</tr>
<tr>
<td>96.00–96.49 ..........</td>
<td>3.50–3.99</td>
<td>1.14</td>
<td>1.34</td>
</tr>
<tr>
<td>95.50–95.95 ..........</td>
<td>4.00–4.49</td>
<td>1.21</td>
<td>1.41</td>
</tr>
<tr>
<td>95.00–95.49 ..........</td>
<td>4.50–4.99</td>
<td>1.27</td>
<td>1.49</td>
</tr>
<tr>
<td>94.50–94.94 ..........</td>
<td>5.00–5.49</td>
<td>1.36</td>
<td>1.60</td>
</tr>
<tr>
<td>93.00–93.93 ..........</td>
<td>6.00–6.99</td>
<td>1.47</td>
<td>1.73</td>
</tr>
<tr>
<td>92.00–92.92 ..........</td>
<td>7.00–7.99</td>
<td>1.58</td>
<td>1.85</td>
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<tr>
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<td>1.67</td>
<td>1.96</td>
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<td>2.01</td>
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<tr>
<td>84.00–85.99 ..........</td>
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<tr>
<td>82.00–83.99 ..........</td>
<td>16.00–17.99</td>
<td>2.24</td>
<td>2.64</td>
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<tr>
<td>80.00–81.99 ..........</td>
<td>18.00–19.99</td>
<td>2.35</td>
<td>2.76</td>
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<tr>
<td>78.00–79.99 ..........</td>
<td>20.00–21.99</td>
<td>2.44</td>
<td>2.86</td>
</tr>
<tr>
<td>76.00–77.99 ..........</td>
<td>22.00–23.99</td>
<td>2.52</td>
<td>2.96</td>
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<tr>
<td>74.00–75.99 ..........</td>
<td>24.00–25.99</td>
<td>2.59</td>
<td>3.04</td>
</tr>
<tr>
<td>72.00–73.99 ..........</td>
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<td>3.12</td>
</tr>
<tr>
<td>70.00–71.99 ..........</td>
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<td>2.71</td>
<td>3.19</td>
</tr>
<tr>
<td>65.00–69.99 ..........</td>
<td>30.00–34.99</td>
<td>2.80</td>
<td>3.29</td>
</tr>
<tr>
<td>60.00–64.99 ..........</td>
<td>35.00–39.99</td>
<td>2.89</td>
<td>3.40</td>
</tr>
<tr>
<td>50.00–59.99 ..........</td>
<td>40.00–49.99</td>
<td>2.96</td>
<td>3.48</td>
</tr>
</tbody>
</table>

(c) Tolerances calculated by the following formula shall be used for either chaffy or nonchaffy mixtures when the average particle-weight ratio is 1.5:1 to 20:1 and beyond:

The symbols used in the formula are as follows:

- T = tolerance being calculated.
- A = percent which the weight of the component with the heavier average particle-weight is of the weight of both components.
- B = percent which the weight of the component with the lighter average particle-weight is of the weight of both components.
- H = average particle-weight for the component with the heavier average particle-weight.
- L = average particle-weight for the component with the lighter average particle-weight.
- R = ratio of the average particle-weight for the component with the heavier average particle-weight to the average particle-weight for the component with the lighter average particle-weight.
\[ T = \frac{100 R[(100 A / R)/(B+A/R) - T1]}{[(100 B)/(B+A/R) + T1]} + R[(100 A / R)/(B+A/R) - T1] \]

T1 = regular tolerance for the kind of seed (chaffy or nonchaffy) and for 
(100B)/(B+A/R).

In determining the values for A and B in the formula, the sample shall be 
regarded as composed of two parts:
(1) The kind, type, or variety under 
consideration, and 
(2) All other components. Values for 
H and L shall be obtained from the last 
column of Table 1, §201.46, or by labora-
tory tests for inert matter, weed seeds, 
or crop seeds where such values are not 
able to be obtained from Table 1. In computing 
tolerances for nonchaffy kinds the values 
for T1 are taken from column C of 
Table 3, and for chaffy kinds the values 
for T1 are taken from column D of 
Table 3.

[26 FR 10036, Oct. 26, 1961, as amended at 59 

§201.61 Fluorescence percentages in 
ryegrasses.

Tolerances for 400-seed fluorescence 
tests shall be those set forth in the fol-
lowing table plus one-half the regular 
pure-seed tolerance determined in ac-
cordance with §201.60. When only 200 
seeds of a component in a mixture are 
tested, an additional 2 percent shall be 
added to the fluorescence tolerance.

<table>
<thead>
<tr>
<th>PERCENT FOUND FLUORESCENCE TOLERANCE</th>
<th>Continu</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>100</td>
<td>1.0</td>
</tr>
<tr>
<td>99</td>
<td>1.6</td>
</tr>
<tr>
<td>97</td>
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<td>96</td>
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<tr>
<td>94</td>
<td>2.9</td>
</tr>
<tr>
<td>93</td>
<td>3.2</td>
</tr>
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<td>92</td>
<td>3.4</td>
</tr>
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<td>91</td>
<td>3.6</td>
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<td>90</td>
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</tr>
<tr>
<td>89</td>
<td>4.0</td>
</tr>
<tr>
<td>88</td>
<td>4.1</td>
</tr>
<tr>
<td>87</td>
<td>4.3</td>
</tr>
<tr>
<td>86</td>
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<td>84</td>
<td>4.8</td>
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<td>83</td>
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<td>81</td>
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<td>80</td>
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</tr>
<tr>
<td>79</td>
<td>5.4</td>
</tr>
<tr>
<td>78</td>
<td>5.5</td>
</tr>
</tbody>
</table>

361
§ 201.62 Tests for determination of percentages of kind, variety, type, hybrid, or offtype.

Tolerances for tests for determination of percentages of kind, variety, type, hybrid, or offtype shall be those set forth in the following table, added to one-half the required pure seed tolerances determined in accordance with § 201.60, except that one-half the pure seed tolerance will not be applied in determining tolerances for hybrids labeled on the basis of the percentage of pure seed which is hybrid.

TABLE 4—TOLERANCES FOR PURITY TESTS, WHEN RESULTS ARE BASED ON 10 TO 1,000 SEEDS, SEEDLINGS, OR PLANTS USED IN A TEST

<table>
<thead>
<tr>
<th>Seed, seeding, or plant count percent</th>
<th>Number of seeds, seedlings, or plants in tests</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>10</td>
</tr>
<tr>
<td>100 or 0</td>
<td>0</td>
</tr>
<tr>
<td>98 or 2</td>
<td>10.3</td>
</tr>
<tr>
<td>96 or 4</td>
<td>14.4</td>
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<tr>
<td>94 or 6</td>
<td>17.5</td>
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<tr>
<td>92 or 8</td>
<td>20.0</td>
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<tr>
<td>90 or 10</td>
<td>22.1</td>
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<tr>
<td>88 or 12</td>
<td>24.0</td>
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<tr>
<td>86 or 14</td>
<td>25.7</td>
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<tr>
<td>84 or 16</td>
<td>26.9</td>
</tr>
<tr>
<td>82 or 18</td>
<td>28.2</td>
</tr>
<tr>
<td>80 or 20</td>
<td>29.5</td>
</tr>
<tr>
<td>78 or 22</td>
<td>30.5</td>
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<tr>
<td>76 or 24</td>
<td>31.4</td>
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<tr>
<td>74 or 26</td>
<td>32.3</td>
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<tr>
<td>72 or 28</td>
<td>33.0</td>
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<tr>
<td>70 or 30</td>
<td>33.7</td>
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<tr>
<td>68 or 32</td>
<td>34.3</td>
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<td>66 or 34</td>
<td>35.0</td>
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<tr>
<td>64 or 36</td>
<td>35.4</td>
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<tr>
<td>62 or 38</td>
<td>35.5</td>
</tr>
<tr>
<td>60 or 40</td>
<td>36.1</td>
</tr>
<tr>
<td>58 or 42</td>
<td>36.2</td>
</tr>
<tr>
<td>56 or 44</td>
<td>36.5</td>
</tr>
<tr>
<td>54 or 46</td>
<td>36.8</td>
</tr>
<tr>
<td>52 or 48</td>
<td>36.8</td>
</tr>
<tr>
<td>50</td>
<td>36.8</td>
</tr>
</tbody>
</table>

§ 201.63 Germination.

The following tolerances are applicable to the percentage of germination and also to the sum of the germination plus the hard seed when 400 or more seeds are tested.

<table>
<thead>
<tr>
<th>Mean (See § 201.59)</th>
<th>Tolerance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 60</td>
<td>10</td>
</tr>
<tr>
<td>96 or over</td>
<td>5</td>
</tr>
<tr>
<td>90 or over but less than 96</td>
<td>6</td>
</tr>
<tr>
<td>80 or over but less than 90</td>
<td>7</td>
</tr>
<tr>
<td>70 or over but less than 80</td>
<td>8</td>
</tr>
<tr>
<td>60 or over but less than 70</td>
<td>9</td>
</tr>
</tbody>
</table>

When only 200 seeds of a component in a mixture are tested 2 percent shall be added to the above germination tolerances.

§ 201.64 Pure live seed.

The tolerance for pure live seed shall be determined by applying the respective tolerances to the germination plus the hard seed and the pure seed.


§ 201.65 Noxious weed seeds in interstate commerce.

Tolerances for rates of occurrence of noxious-weed seeds shall be recognized and shall be applied to the number of noxious-weed seeds found by analysis in the quantity of seed specified for noxious-weed seed determination in § 201.46, except as provided in §201.16(b). Applicable tolerances are calculated by the formula, \( Y = X + 1 + 1.96 \sqrt{X} \), where \( X \) is the number of seeds represented by the label or test and \( Y \) is the maximum number within tolerance. Some tolerances are listed in the table. The number found as represented by the label or test (Column X) will be considered within tolerance if not more than the corresponding number in Column Y are found by analysis in the administration of the Act. For numbers of seeds greater than those in the table and in case of additional or more extensive analyses, a tolerance based on a degree of certainty of 5 percent (\( P=0.05 \)) will be recognized.

<table>
<thead>
<tr>
<th>Number represented by the label or test (X)</th>
<th>Maximum number within tolerances (Y)</th>
<th>Number labeled or represented (X)</th>
<th>Maximum number within tolerances (Y)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>2</td>
<td>16</td>
<td>24</td>
</tr>
<tr>
<td>1</td>
<td>4</td>
<td>17</td>
<td>25</td>
</tr>
<tr>
<td>2</td>
<td>6</td>
<td>18</td>
<td>27</td>
</tr>
<tr>
<td>3</td>
<td>8</td>
<td>19</td>
<td>28</td>
</tr>
<tr>
<td>4</td>
<td>9</td>
<td>20</td>
<td>29</td>
</tr>
<tr>
<td>5</td>
<td>11</td>
<td>21</td>
<td>30</td>
</tr>
<tr>
<td>6</td>
<td>12</td>
<td>22</td>
<td>32</td>
</tr>
<tr>
<td>7</td>
<td>13</td>
<td>23</td>
<td>33</td>
</tr>
<tr>
<td>8</td>
<td>14</td>
<td>24</td>
<td>34</td>
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<tr>
<td>9</td>
<td>16</td>
<td>25</td>
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<td>10</td>
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<td>11</td>
<td>18</td>
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<td>12</td>
<td>20</td>
<td>28</td>
<td>39</td>
</tr>
<tr>
<td>13</td>
<td>21</td>
<td>29</td>
<td>41</td>
</tr>
<tr>
<td>14</td>
<td>22</td>
<td>30</td>
<td>42</td>
</tr>
</tbody>
</table>

\(^1\)Rates per pound or ounce must be converted to the equivalent number of seeds found in §201.46, Table 1, Minimum weight for noxious-weed seed examination (grams).

§ 201.67 Seed certifying agency standards and procedures.

In order to qualify as a seed certifying agency for purposes of section 101(a)(25) of the Federal Seed Act (7 U.S.C. 1551(a)(25)) an agency must enforce standards and procedures, as conditions for its certification of seed, that meet or exceed the standards and procedures specified in §201.68 through 201.78.

[38 FR 25662, Sept. 14, 1973; 60 FR 57146, Nov. 14, 1995]

§ 201.68 Eligibility requirements for certification of varieties.

The certifying agency shall require the originator, developer, or owner of the variety, or agent thereof, to make the following available when eligibility for certification is requested:

(a) The name of the variety.

(b) A statement concerning the variety’s origin and the breeding procedure used in its development.

(c) A detailed description of the morphological, physiological, and other characteristics of the plants and seed that distinguish it from other varieties.

(d) Evidence supporting the identity of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety.

(e) A statement delineating the geographic area or areas of adaptation of the variety.

(f) A statement on the plans and procedures for the maintenance of seed classes, including the number of generations through which the variety may be multiplied.

(g) A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified.

(h) Any additional restrictions on the variety, specified by the breeder, with
§ 201.69 Classes of certified seed.

(a) Classes of certified seed are as follows:

(1) Breeder.
(2) Foundation.
(3) Registered.
(4) Certified.

[38 FR 25662, Sept. 14, 1973]

§ 201.70 Limitations of generations for certified seed.

The number of generations through which a variety may be multiplied shall be limited to that specified by the originating breeder or owner and shall not exceed two generations beyond the Foundation seed class with the following exceptions which may be made with the permission of the originating or sponsoring plant breeder, institution, or his designee:

(a) Recertification of the Certified class may be permitted when no Foundation seed is being maintained.

(b) The production of an additional generation of the Certified class may be permitted on a 1-year basis only, when an emergency is declared by any official seed certifying agency stating that the Foundation and Registered seed supplies are not adequate to plant the needed Certified acreage of the variety. The additional generation of Certified seed to meet the emergency need is ineligible for recertification.


§ 201.71 Establishing the source of all classes of certified seed.

The certifying agency shall have evidence of the class and source of seed used to plant each crop being considered for certification.

[38 FR 25662, Sept. 14, 1973]

§ 201.72 Production of all classes of certified seed.

(a) Each certifying agency shall determine that genetic purity and identity are maintained at all stages of certification including seeding, harvesting, processing, and labeling of the seed.

(b) The unit of certification shall be a clearly defined field or fields.

(c) One or more field inspections shall be made (1) previous to the time a seed crop of any class of certified seed is to be harvested, and (2) when genetic purity and identity can best be determined. The field shall be in suitable condition to permit an adequate inspection to determine genetic purity and identity.

(d) A certification sample shall be drawn in a manner approved by the certifying agency from each cleaned lot of seed eligible for certification. Evidence that any lot of seed has not been protected from contamination which might affect genetic purity, or is not properly identified, shall be cause for possible rejection of certification.

[38 FR 25662, Sept. 14, 1973]

§ 201.73 Processors and processing of all classes of certified seed.

The following requirements must be met by processors of all classes of certified seed:

(a) Facilities shall be available to perform processing without introducing admixtures.

(b) Identity of the seed must be maintained at all times.

(c) Records of all operations relating to certification shall be complete and adequate to account for all incoming seed and final disposition of seed.

(d) Processors shall permit inspection by the certifying agency of all records pertaining to all classes of certified seed.

(e) Processors shall designate an individual who shall be responsible to the certifying agency for performing such duties as may be required by the certifying agency.

(f) Seed lots of the same variety and class may be blended and the class retained. If lots of different classes are blended, the lowest class shall be applied to the resultant blend. Such
§ 201.74 Labeling of all classes of certified seed.

(a) All classes of certified seed when offered for sale shall have an official certification label affixed to each container clearly identifying the certifying agency, the lot number or other identification, the variety name (if certified as to variety), and the kind and class of seed. Except that for seed mixtures and seed in containers of 5 pounds or less, the certification labels need not bear the name of the kind or kind and variety of each component, provided the name of each kind or kind and variety is shown on the analysis label.

(b) In the case of seed sold in bulk, the invoice or accompanying document shall identify the certifying agency, the crop kind, variety (if certified as to variety), class of seed, and the lot number or other identification.

(c) The official certification label may be printed directly on the container when an accounting of the containers is required by the certifying agency.

(d) Labels other than those printed on the containers shall be attached to containers in a manner that prevents removal and reattachment without tampering being obvious.

§ 201.75 Interagency certification.

Interagency certification may be accomplished by participation of more than one official certifying agency in performing the services required to certify a lot of seed.

(a) The certifying agency issuing labels for all classes of certified seed shall require the seed on which the labels are used to meet standards at least equal to the minimum genetic standards for the seed in question as specified in Table 5 of this part.

(b) Seed to be recognized for interagency certification must be received in containers carrying official certification labels, or if shipped for processing, evidence of its eligibility from another official certifying agency, together with the following information:

1. Variety (if certified as to variety) and kind;
2. Quantity of seed (pounds or bushels);
3. Class of certified seed;
4. Inspection or lot number traceable to the previous certifying agency’s records.

(c) Each label used in interagency certification shall be serially numbered or carry the certification identity number and clearly identify the certifying agencies involved, the variety (if certified as to variety), and the kind and class of seed. Except that for seed mixtures and seed in containers of 5 pounds or less, the certification labels need not bear the name of the kind or kind and variety of each component, provided the name of each kind or kind and variety is shown on the analysis label.

§ 201.76 Minimum Land, Isolation, Field, and Seed Standards.

In the following Table 5 the figures in the “Land” column indicate the number of years that must elapse between the destruction of a stand of a kind and establishment of a stand of a specified class of a variety of the same kind. A certification agency may grant a variance in the land cropping history in specific circumstances where cultural practices have been proven adequate to maintain genetic purity. The figures in the “Isolation” column indicate the distance in feet from any contaminating source. The figures in the “Field” column indicate the minimum number of plants or heads in which one plant or head of another variety is permitted. The figure in the “Seed” column indicate the maximum percentage of seed of other varieties or off-types permitted in the cleaned seed.
<table>
<thead>
<tr>
<th>Crop</th>
<th>Foundation</th>
<th>Registered</th>
<th>Certified</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Land</td>
<td>Isolation</td>
<td>Field Seed</td>
</tr>
<tr>
<td>Alfalfa:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non hybrid</td>
<td>1,4 (182.88m)</td>
<td>660 1.00</td>
<td>44 0.1</td>
</tr>
<tr>
<td>Hybrid</td>
<td>1,4 (402.34m)</td>
<td>1,000 0.1</td>
<td>1,000 0.1</td>
</tr>
<tr>
<td>Barley:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non hybrid</td>
<td>7,1 (201.17m)</td>
<td>2,000 0.05</td>
<td>7 1 23 0.1</td>
</tr>
<tr>
<td>Hybrid</td>
<td>30,1 (201.17m)</td>
<td>3,000 0.05</td>
<td>30,1 23, 22 260</td>
</tr>
<tr>
<td>Hybrid (Chemically assisted)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bean:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Field and garden</td>
<td>7,1 (182.88m)</td>
<td>2,000 0.05</td>
<td>7,1 23 0.1</td>
</tr>
<tr>
<td>Mung</td>
<td>7,1 (182.88m)</td>
<td>1,000 0.1</td>
<td>7,1 23 0.1</td>
</tr>
<tr>
<td>Broad bean</td>
<td>7,1 (201.17m)</td>
<td>2,000 0.05</td>
<td>7,1 23 0.1</td>
</tr>
<tr>
<td>Buckwheat</td>
<td>7,1 (201.17m)</td>
<td>3,000 0.05</td>
<td>7,1 23 0.1</td>
</tr>
<tr>
<td>Clover all kinds</td>
<td>1,5 (201.17m)</td>
<td>1,000 0.1</td>
<td>1,5 23, 24 600</td>
</tr>
<tr>
<td>Corn:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foundation back cross</td>
<td>0 (182.88m)</td>
<td>1,000 0.1</td>
<td>1,000 0.1</td>
</tr>
<tr>
<td>Imbred</td>
<td>0 (201.17m)</td>
<td>1,000 0.1</td>
<td>1,000 0.1</td>
</tr>
<tr>
<td>Foundation single cross</td>
<td>0 (201.17m)</td>
<td>1,000 0.1</td>
<td>1,000 0.1</td>
</tr>
<tr>
<td>Hybrid</td>
<td>0 (201.17m)</td>
<td>1,000 0.1</td>
<td>1,000 0.1</td>
</tr>
<tr>
<td>Open-pollinated</td>
<td>0 (201.17m)</td>
<td>1,000 0.1</td>
<td>1,000 0.1</td>
</tr>
<tr>
<td>Sweet</td>
<td>0 (201.17m)</td>
<td>1,000 0.1</td>
<td>1,000 0.1</td>
</tr>
<tr>
<td>Cotton</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hybrid (Chemically assisted)</td>
<td>0 (182.88m)</td>
<td>10,000 0.03</td>
<td>0 180</td>
</tr>
<tr>
<td>Cowpea</td>
<td>7,1 (201.17m)</td>
<td>2,000 0.1</td>
<td>7,1 23 0.1</td>
</tr>
<tr>
<td>Crambe</td>
<td>7,1 (201.17m)</td>
<td>2,000 0.05</td>
<td>7,1 23 0.1</td>
</tr>
<tr>
<td>Crownvetch</td>
<td>15 (182.88m)</td>
<td>1,000 0.1</td>
<td>15 23, 24 600</td>
</tr>
<tr>
<td>Crop</td>
<td>Seed Description</td>
<td>Seed Weight (lbs)</td>
<td>Seed Size (in. lbs)</td>
</tr>
<tr>
<td>--------------</td>
<td>------------------</td>
<td>-------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>Flatpea</td>
<td>Flat</td>
<td>1.00</td>
<td>0.1</td>
</tr>
<tr>
<td>Cross-pollinated</td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Strains at least 80 percent apomictic and highly self-fertile species</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lespedeza</td>
<td>Lespedeza</td>
<td>1.00</td>
<td>0.1</td>
</tr>
<tr>
<td>Millet:</td>
<td>Millet</td>
<td>1.00</td>
<td>0.1</td>
</tr>
<tr>
<td>Cross-pollinated</td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Self-pollinated</td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Rye</td>
<td>Rye</td>
<td>1.00</td>
<td>0.1</td>
</tr>
<tr>
<td>Cross-pollinated</td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Self-pollinated</td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Sorghum:</td>
<td>Sorghum</td>
<td>1.00</td>
<td>0.1</td>
</tr>
<tr>
<td>Hybrid seedstock</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Commercial hybrid</td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Soybean</td>
<td>Soybean</td>
<td>1.00</td>
<td>0.1</td>
</tr>
<tr>
<td>Sunflower</td>
<td>Sunflower</td>
<td>1.00</td>
<td>0.1</td>
</tr>
<tr>
<td>Crop</td>
<td>Foundation</td>
<td>Registered</td>
<td>Certified</td>
</tr>
<tr>
<td>-------------</td>
<td>------------</td>
<td>------------</td>
<td>-----------</td>
</tr>
<tr>
<td></td>
<td>Land</td>
<td>Isolation</td>
<td>Field</td>
</tr>
<tr>
<td>Tomato</td>
<td>1</td>
<td>660 (152.07m)</td>
<td>1.00</td>
</tr>
<tr>
<td>Tobacco:</td>
<td>1</td>
<td>660 (152.07m)</td>
<td>1.00</td>
</tr>
<tr>
<td>Nonhybrid</td>
<td>1</td>
<td>44 (13.41m)</td>
<td>200</td>
</tr>
<tr>
<td>Hybrid</td>
<td>1</td>
<td>44 (13.41m)</td>
<td>200</td>
</tr>
</tbody>
</table>

1. The land must be free of volunteer plants of the crop kind during the year immediately prior to establishment and no manure or other contaminating material shall be applied the year previous to seeding or during the establishment and productive life of the stand.
2. At least 2 years must elapse between destruction of indistinguishable varieties or varieties of dissimilar adaptation and establishment of the stand for the production of the Certified class of seed.
3. Isolation distance for certified seed production shall be at least 500 feet (152.07m) from varieties of dissimilar adaptation.
4. Isolation between classes of the same variety may be reduced to 25 percent of the distance otherwise required.
5. This distance applies when fields are 5 acres (2ha) or larger in area. For smaller fields, the distances are 900 feet (274.32m) and 450 feet (137.16m) for the Foundation and Registered classes, respectively.
6. Fields of less than 5 acres (2ha) require 300 feet (91.44m).
7. Requirement is waived if the previous crop was grown from certified seed of the same variety.
8. Requirement is waived if the previous crop was of the same variety and of a certified class equal or superior to that of the crop seeded.
9. No isolation is required for the production of hand-pollinated seed.
10. Where the contaminant is of the same color and texture, the isolation distance may be modified by (1) adequate natural barriers or (2) differential maturity dates, provided there are no receptive silks in the seed parent at the time the contaminant is shedding pollen. In addition, dent sterile popcorn requires no isolation from dent corn.
Minimum Numbers of Border Rows Required

<table>
<thead>
<tr>
<th>Field size, up to 20 acres (8ha)</th>
<th>Field size, 20 acres (8ha) or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>Field size, up to 20 acres (8ha)</td>
<td>0</td>
</tr>
<tr>
<td>2 (0.8ha)</td>
<td>0</td>
</tr>
<tr>
<td>4 (1.6ha)</td>
<td>2 (0.8ha)</td>
</tr>
<tr>
<td>6 (2.4ha)</td>
<td>3 (1.2ha)</td>
</tr>
<tr>
<td>8 (3.2ha)</td>
<td>4 (1.6ha)</td>
</tr>
<tr>
<td>10 (4.0ha)</td>
<td>5 (2.0ha)</td>
</tr>
<tr>
<td>12 (4.8ha)</td>
<td>6 (2.4ha)</td>
</tr>
<tr>
<td>14 (5.6ha)</td>
<td>7 (2.8ha)</td>
</tr>
<tr>
<td>16 (6.4ha)</td>
<td>8 (3.2ha)</td>
</tr>
<tr>
<td>Not permitted</td>
<td>10 (4.0ha)</td>
</tr>
</tbody>
</table>

13 Refers to off-type plants in the pollen parent that have shed pollen or to the off-type plants in the see parent at the time of the last inspection.
14 The required minimum isolation distance for sweet corn is 660 feet (201.17m) from the contaminating source, plus four border rows when the field to be inspected is 10 acres (4.0ha) or less in size. This distance may be decreased by 15 feet (4.57m) for each increment of 4 acres (1.6ha) in the size of the field to a maximum of 40 acres (16ha) and further decreased 40 feet (12.19m) for each additional border row to a maximum of 16 rows. These border rows are for pollen-shedding purposes only.
15 Refers to off-type ears. Ears with off-colored or different textured kernels are limited to 0.5 percent, or a total of 25 off-colored or different textured kernels per 1,000 ears.
16 The Merion variety of Kentucky bluegrass is allowed 3 percent.
17 All cross-pollinating varieties must be 400 feet (121.92m) from any contaminating source.
18 Isolation between diploids and tetraploids shall be at least 15 feet (4.57m).
19 Minimum isolation shall be at least 100 feet (30.48m) if the cotton plants in the contaminating source differ by easily observable morphological characteristics from the field to be inspected. Isolation distance between upland and Egyptian types shall be at least 1,320 feet (402.34m), 1,320 feet (402.34m), and 660 feet (192.88m) for Foundation, Registered, and Certified classes, respectively.
20 These distances apply when there is no border removal. Border removal applies only to fields of 5 acres (2ha) or more. Removal of a 9-foot (2.7m) border (after flowering) decreases the required distance for Foundation, Registered, and Certified seed classes to 600 feet (182.88m), 225 feet (68.58m), and 100 feet (30.48m), respectively, for cross-pollinated species, and to 30 feet (9.14m), 15 feet (4.57m), and 15 feet (4.57m), respectively, for apomictic and self-pollinated species. Removal of a 15 foot (4.57m) border (after flowering) allows a further decrease to 450 feet (136.16m), 150 feet (45.72m), and 75 feet (22.86m), respectively, for cross-pollinated species.
21 Isolation distances between 2 fields of the same kind may be reduced to a distance adequate to prevent mechanical mixture, if the sum of percentages of plants in bloom in both fields does not exceed 5 percent at a time when more than 1 percent of the plants in either field are in bloom.
22 Refers to bulbs.
23 Distance adequate to prevent mechanical mixture is necessary.
24 Required isolation between classes of the same variety is 30 feet (3.05m).
25 The minimum distance may be reduced by 50 percent if different classes of the same variety are involved.
26 The minimum distance may be reduced by 50 percent if the field is adequately protected by natural or artificial barriers.
27 These ratios are for definite other varieties. The ratios for doubtful other varieties are:

<table>
<thead>
<tr>
<th>Millet</th>
<th>Foundation</th>
<th>Registered</th>
<th>Certified</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sorghum:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nonhybrid</td>
<td>1:10,000</td>
<td>1:5,000</td>
<td>1:2,500</td>
</tr>
<tr>
<td>Hybrid</td>
<td>1:20,000</td>
<td>1:10,000</td>
<td>1:1,000</td>
</tr>
<tr>
<td>Okra</td>
<td>1:20,000</td>
<td>NA</td>
<td>1:1,000</td>
</tr>
</tbody>
</table>

28 Whiteheart fruits may not exceed 1 per 100, 40, and 20 for Foundation, Registered, and Certified classes, respectively. Citron or hard rind is not permitted in Foundation or Registered classes and may not exceed 1 per 1,000 fruits in the Certified class.
29 This distance applies if the contaminating source does not genetically differ in height from the pollinator parent or has a different chromosome number. If the contaminating source does (genetically) differ and has the same chromosome number the distance shall be 596 feet (301.76m). The minimum isolation from grass sorghum or broomcorn with the same chromosome number shall be 1,320 feet (402.34m).
30 Requirement is waived for the production of pollinator lines if the previous crop was grown from a certified class of seed of the same variety. Sterile lines and crossing blocks must be on land free of contaminating plants.
§ 31 If the contaminating source is similar to the hybrid in all important characteristics, the isolation may be reduced by 66 feet (20.12 m) for each pair of border rows of the pollinator parent down to a minimum of 330 feet (100.59 m). These rows must be located directly opposite or diagonally to the contaminating source. The pollinator border rows must be shedding pollen during the entire time 5 percent or more of the seed parent flowers are receptive.

§ 32 An unplanted strip at least 2 feet (0.61 m) in width shall separate male sterile plants and pollinator plants in inter-planted blocks.

§ 33 Unless the preceding crop was another kind or unless the preceding soybean crop was planted with a class of certified seed of the same variety, or unless the preceding soybean crop and the variety being planted have an identifiable character difference, in which case, no time need elapse.

§ 34 May include not more than 0.04 percent purple or white seeds.

§ 35 Standards apply equally to seed parents and pollen parents which may include up to 1:1,000 plants each of the wild-type branching, purple, or white-seeded plants.

§ 36 A new plant bed must be used each year unless the bed is properly treated with a soil sterilant prior to seeding.

§ 37 This distance is applied between varieties of the same type and may be waived if four border rows of each variety are allowed to bloom and set seed between the two varieties but are not harvested for seed. Isolation between varieties of different types shall be 1,320 feet (402.34 m) except if protected by bagging or by topping all plants in the contaminating source before bloom.

§ 38 When male sterile and male fertile plants of the same type are planted adjacent in a field, this requirement may be waived; provided, four border rows of male sterile plants are allowed to bloom and set seeds. The seed from these border rows shall not be harvested as part of the certified lot of seed produced by the male sterile plants. When plants are of different types, the distance shall be 1,320 feet (402.34 m) except if protected by bagging or by topping all plants in the contaminating source before bloom.

§ 39 Isolation between varieties or non-certified fields of the same variety shall be 100 feet (30.48 m) if aerial seeded and 50 feet (15.24 m) if ground broadcast, and 10 feet (3.05 m) is ground drilled.

§ 40 Isolation between millets of different genera shall be 6 feet (1.83 m).

§ 41 Does not apply to Helianthus annuus, H. pluriflorus, or H. agrestis.

§ 42 The ratio of male sterile (A) strains and pollen (B or C) strains shall not exceed 2:1.

§ 43 Parent lines (A and B) in a crossing block, or seed and pollen lines in a hybrid seed production field, shall be separated by at least 6 feet (1.83 m) and shall be managed and harvested in a manner to prevent mixing.

§ 44 Distance between fields of certified classes of the same variety may be reduced to 10 feet (3.05 m) regardless of the class or size of the fields.

§ 45 An isolation distance of 5,280 feet (1609.36 m) is required between oil and non-oil sunflower types and between either type and other volunteers or wild types.

§ 46 Detasseling, cutting, or pulling of the cytoplasmic male-sterile seed parent is permitted.

§ 47 All varieties of perennial ryegrass seed are allowed 3.0 percent.

§ 48 This distance applies to fields over 5 acres (2.0 ha). For alfalfa fields of 5 acres (2.0 ha) or less that produce the Foundation and Registered seed classes, the minimum distance from a different variety or a field of the same variety that does not meet the varietal purity requirements for certification shall be 600 feet (182.88 m) and 300 feet (91.44 m), respectively.

§ 49 There must be at least 10 feet (3.05 m) or a distance adequate to prevent mechanical mixture between a field of another variety (or non-certified area within the same field) and the area being certified. The 165 feet (50.29 m) isolation requirement is waived is the area of the ‘isolation zone’ is less than 10 percent of the cultivated area eligible for the Certified class. The “isolation zone” is that area calculated by multiplying the length of the common border(s) with other varieties of alfalfa by the average width of the field (being certified) falling within the 165 feet (50.29 m) isolation. Areas within the isolation zone nearest the contamination source shall not be certified.

§ 50 Seed of Critana thickspike wheatgrass may contain up to 30 percent slender wheatgrass types.

§ 51 Crossing blocks must be planted on land free of volunteer contaminating plants.

§ 52 This distance applies to the seed parent when the contaminating source is wheat of another market class. If the contaminating source is the same market class as the seed parent, the distance may be modified by the planting of pollen parent border according to the following table:

<table>
<thead>
<tr>
<th>Minimum distance from contaminant</th>
<th>Pollen (parent border)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feet</td>
<td>Meters</td>
</tr>
<tr>
<td>330</td>
<td>100.59</td>
</tr>
<tr>
<td>275</td>
<td>83.82</td>
</tr>
<tr>
<td>215</td>
<td>65.53</td>
</tr>
<tr>
<td>160</td>
<td>48.77</td>
</tr>
<tr>
<td>100</td>
<td>30.48</td>
</tr>
</tbody>
</table>

§ 53 Interplanted blocks of seed parent and pollinator shall be separated by an unplanted strip a minimum of one foot (0.31 m) in width and be clearly identifiable.

§ 54 If Foundation or Registered the ratio shall be 1:3000 (Foundation) and 1:2000 (Registered).

§ 55 Does not include seed of the female parent.

Pre-Control Test Standards: If field inspection shows one or more of the following, the applicant may request that seed certification be based on the results of a pre-certification grow-out test approved by the certification agency: a. inadequate isolation; b. too few male parent plants shedding pollen when female plants are receptive; c. excess off-types not to include wild types. In such cases, at least 2,000 plants must be observed and meet the following standards before seed can be certified from fields with problems listed above:
[FOR NON-OIL TYPES, SEED WHICH CONTAINS NOT MORE THAN 15 PERCENT STERILE PLANTS MAY BE CERTIFIED. IF IT CONTAINS 85 PERCENT-95 PERCENT HYBRID PLANTS, THE PERCENTAGE OF HYBRID SHALL BE SHOWN ON THE CERTIFICATION LABEL]

<table>
<thead>
<tr>
<th>Factor</th>
<th>Hybrid (percent)</th>
<th>Inbred (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sterile Plants</td>
<td>5.0</td>
<td>5.0</td>
</tr>
<tr>
<td>Sterile or Fertile Plants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Morphological Variants</td>
<td>0.5</td>
<td>0.5</td>
</tr>
<tr>
<td>Wild Types</td>
<td>0.2</td>
<td>0.2</td>
</tr>
<tr>
<td>Total (including above types)</td>
<td>5.0</td>
<td>5.0</td>
</tr>
</tbody>
</table>

57 Application to establish the pedigree must be made within one year of seeding. The crop will remain under supervision of the certifying agency as long as the field is eligible for certification.

58 These distances apply when there is no border removal. Varieties that are 95 percent or more apomictic, as defined by the originating breeder, shall have the isolation distance reduced to a mechanical separation only. Varieties less than 95 percent apomictic and all other cross pollinating species that have an "isolation zone" of less than 10 percent of the entire field, no isolation is required. (Isolation zone is calculated by multiplying the length of the common border with other varieties of grass by the average width of the certified field falling within the isolation distance required.)

59 Indicates metric equivalent in meters.

§ 201.77 Length of stand requirements.

(a) Alfalfa. Limitations on the age of stand and certified seed classes through which a given variety may be multiplied both inside and outside its region of adaptation shall be specified by the originator or his designee. Certified seed production outside the region of adaptation shall not exceed 6 years if not otherwise specified by the originator, or his designee.

(b) Red clover. Only two seed crops are permitted of all certified seed classes.

(c) White and alsike clover. Only two successive seed crops are permitted following the year of establishment for Foundation and Registered classes, but 2 additional years are permitted if the field is reclassified to the next lower class. Four successive seed crops following seeding are permitted if the first and succeeding crops are of the Certified class, provided the stand of perennial plants is maintained.

(d) Sainfoin. All certified seed classes are eligible to produce five successive seed crops following seeding.

[38 FR 25664, Sept. 14, 1973]

§ 201.78 Pollen control for hybrids.

(a) Wheat and barley. Shedders in the seed parent, at any one inspection, are limited to 1:200 heads for Foundation A Line and 1:100 heads for Registered A Line, except that when the A Line is increased outside the area of the anticipated A x R production in order to utilize self-fertility produced by environmental effects, only isolation and genetic purity standards will be in effect. (An A Line is a cytoplasmic male sterile female line used to produce hybrid seed. An R Line is a pollinator line used to pollinate an A Line and to restore fertility in the resulting hybrid seed.)

(b) Corn. When 5 percent or more of the seed parent plants have receptive silks, shedding tassels in the seed parent plants shall be limited to 1 percent at any one inspection, or a total of 2 percent at any three inspections on different dates. Shedding tassels are those which have 2 inches or more of the central stem or branches, or any combination thereof, shedding pollen.

(c) Sorghum. Shedders in the seed parent, at any one inspection, are limited to 13,000 plants for Foundation class and 1:1,500 plants for Certified class.

(d) Sunflowers. Seed parents flowering and shedding pollen before the male parents are shedding pollen must be removed. At least 50 percent of the male plants must be producing pollen when the seed parent is in full bloom.

(e) Hybrid alfalfa. When at least 75 percent of the plants are in bloom and there is no more than 15 percent seed set, 200 plants shall be examined to determine the pollen production index (PPI). Each plant is rated as 1, 2, 3 or 4 with “1” representing no pollen, “2” representing a trace of pollen, “3” representing substantially less than normal pollen, and “4” representing normal pollen. The rating is weighted as 0, 0.1, 0.6 or 1.0, respectively. The total number of plants of each rating is multiplied by the weighted rating and the values are totaled. The total is divided by the number of plants rated and multiplied by 100 to determine the PPI. The maximum PPI allowed is 14 for the Foundation class, and 6 for 95 percent hybrid seed, and 42 for 75 percent hybrid seed of the Certified class.

should be admitted into the United States.

202.44 Proceedings under section 305(b) to determine whether foreign alfalfa or red clover seed is not adapted for general agricultural use in the United States.


SOURCE: 36 FR 1314, Jan. 27, 1971, unless otherwise noted.

Subpart A—General

§ 202.1 Meaning of words.

As used in this part, words in the singular form shall be deemed to import the plural, and vice versa, as the case may require.

§ 202.2 Definitions.

For the purposes of this part, the following terms shall be construed, respectively, to mean:


(b) Complaint means any formal complaint and notice of hearing or other document by virtue of which a proceeding under the Act is instituted.

(c) Complainant means the party upon whose complaint the proceeding is instituted.

(d) Decision and Order includes the Secretary’s findings, conclusions, order, and rulings on motions, exceptions, statements of objections, and proposed findings, conclusions and orders submitted by the parties not theretofore ruled upon.

(e) Director means the Director of the Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, or any officer or employee of the Department to whom authority is delegated to act in his stead.


(g) Administrative Law Judge Recommended Decision means the Administrative Law Judge’s report to the Secretary consisting of the proposed: (1) Findings of facts and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis for conclusions and (2) order.

(h) The term hearing means that part of a proceeding which involves the submission of evidence and means either an oral or written hearing.

(i) Hearing Clerk means the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250.

(j) The term person includes any individual, partnership, corporation, company, society, association, receiver, or trustee.

(k) The term regulations means the regulations promulgated pursuant to the Act (7 CFR part 201).

(l) Respondent means the party proceeded against.

(m) Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead, including the Judicial Officer.

§ 202.3 Institution of proceedings.

Any person having information of any violation of the Act or of any of the regulations promulgated thereunder may file with the Director an application requesting the institution of such proceedings as may be authorized under the Act. Such application shall be in writing, signed by or on behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation and the name and address of the applicant and the party complained of. If, after investigation of the matters complained of in the application or after investigation made on his own motion, the Director has reason to believe that any person has violated or is violating any of the provisions of the Act or the regulations made and promulgated thereunder, he may institute such proceedings as may be authorized by the Act.

§ 202.4 Status of applicant.

The person filing an application shall not be a party to any proceeding which may be instituted under the Act, unless he be permitted by the Secretary or by the Administrative Law Judge to intervene therein. The Director shall
§ 202.40

not be required to divulge the name of the applicant and such person will have no legal status in the proceeding which may be instituted, except where allowed to intervene or as such person may be called as a witness. At any time after the institution of the proceeding, and before it has been submitted to the Secretary for final consideration, the Secretary or the Administrator, may upon petition in writing and upon good cause shown, permit any person to intervene.

Subpart B [Reserved]

Subpart C—Rules Applicable to Other Proceedings

§ 202.40 Proceedings prior to reporting for criminal prosecution.

The Director shall, before any violation of this act is reported to any U.S. attorney for institution of a criminal proceeding, notify the person against whom such proceeding is contemplated that action is contemplated, inform him regarding the facts involved, and afford him an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding. Notice shall be served upon such person in the manner provided in § 202.27 of this part. If the person desires to explain the transaction or otherwise to present his views, he shall file with the Director, within 20 days after the service of the notice, an answer, in duplicate, signed by him or by his attorney, or shall request, within the 20 days, an opportunity to express his views orally. The request shall be embodied in a writing signed by the person or by his attorney or agent. Such opportunity to present his views orally shall be afforded at a time and place to be designated by the Director and it shall be given within a time not to exceed 10 days after the date of the filing of the request thereof.

§ 202.41 Notice and hearing prior to promulgation of rules and regulations.

Prior to the promulgation of any rule or regulation contemplated by section 402 of the Act (7 U.S.C. 1592), notice shall be given by publication in the Federal Register of intention to promulgate such rule or regulation and of the time and place of a public hearing to be held with reference thereto. Such hearings shall be conducted by the Director or by such employee or employees of the Department of Agriculture as may be designated to preside thereat, except that hearings with respect to rules or regulations contemplated by section 402(b) of the Act relating to title III of the Act (Foreign Commerce), shall be conducted by the Secretary of the Treasury and the Secretary of Agriculture, acting jointly or separately, or by such employee or employees of the Department of Agriculture or the Department of the Treasury as may be designated to preside thereat. The presiding officer shall conduct the hearing in an orderly and informal manner, according to such procedure as he may announce at the commencement of the hearing. Any rule or regulation promulgated under section 402 of the Act shall become effective on the date fixed in the promulgation, which date shall be not less than 30 days after publication in the Federal Register. Any rule or regulation may be amended or revoked in the same manner as is provided for its promulgation.

§ 202.42 Publication of judgments, settlements, and orders.

After judgment or settlement, or the issuance of a cease and desist order, in any case or proceeding arising under this Act, notice thereof containing any information pertinent to the judgment or settlement or the issuance of the cease and desist order, shall be given by issuing a press release or by such other media as the Administrator of the Agricultural Marketing Service may designate from time to time.

§ 202.43 Proceedings under section 302(a) to show cause why seed or screenings should be admitted into the United States.

When seed or screenings have been refused admission into the United States under the Act or the joint regulations promulgated thereunder, the owner or consignee of such seed or screenings may submit a request to the Director for a hearing in which he may show cause, if any he have, why such
Agricultural Marketing Service, USDA

§ 202.44 Proceedings under section 305(b) to determine whether foreign alfalfa or red clover seed is not adapted for general agricultural use in the United States.

The public hearings which shall be held from time to time for the purpose of determining whether seed of alfalfa or red clover from any foreign country or region is not adapted for general agricultural use in the United States shall be conducted by the Director, or by a presiding officer duly designated by him, and it shall be governed by such rules of procedure as the presiding officer shall announce at the opening of each hearing. The Administrator of the Agricultural Marketing Service shall, within a reasonable time after the close of the public hearing, make and publish his determination as to whether the said seed is adapted for general agricultural use in the United States. Publication of the determination shall be made in the Federal Register, and through such other media as the said Administrator may deem appropriate.
SUBCHAPTER L—REQUIREMENTS RELATING TO PURCHASES [RESERVED]

SUBCHAPTER M—ORGANIC FOODS PRODUCTION ACT PROVISIONS

PART 205—NATIONAL ORGANIC PROGRAM

Subpart A—Definitions

Sec.
205.1 Meaning of words.
205.2 Terms defined.

Subpart B—Applicability

205.100 What has to be certified.
205.101 Exemptions and exclusions from certification.
205.102 Use of the term, “organic.”
205.103 Recordkeeping by certified operators.
205.104 [Reserved]
205.105 Allowed and prohibited substances, methods, and ingredients in organic production and handling.
205.106–205.199 [Reserved]

Subpart C—Organic Production and Handling Requirements

205.200 General.
205.201 Organic production and handling system plan.
205.202 Land requirements.
205.203 Soil fertility and crop nutrient management practice standard.
205.204 Seeds and planting stock practice standard.
205.205 Crop rotation practice standard.
205.206 Crop pest, weed, and disease management practice standard.
205.207 Wild-crop harvesting practice standard.
205.208–205.235 [Reserved]
205.236 Origin of livestock.
205.237 Livestock feed.
205.238 Livestock health care practice standard.
205.239 Livestock living conditions.
205.240–205.269 [Reserved]
205.270 Organic handling requirements.
205.271 Facility pest management practice standard.
205.272 Commingling and contact with prohibited substance prevention practice standard.
205.273–205.289 [Reserved]
205.290 Temporary variances.
205.291–205.299 [Reserved]

Subpart D—Labels, Labeling, and Market Information

205.300 Use of the term, “organic.”
205.301 Product composition.
205.302 Calculating the percentage of organically produced ingredients.
205.303 Packaged products labeled “100 percent organic” or “organic.”
205.304 Packaged products labeled “made with organic (specified ingredients or food group(s)).”
205.305 Multingredient packaged products with less than 70 percent organically produced ingredients.
205.306 Labeling of livestock feed.
205.307 Labeling of nonretail containers used for only shipping or storage of raw or processed agricultural products labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).”
205.308 Agricultural products in other than packaged form at the point of retail sale that are sold, labeled, or represented as “100 percent organic” or “organic.”
205.309 Agricultural products in other than packaged form at the point of retail sale that are sold, labeled, or represented as “made with organic (specified ingredients or food group(s)).”
205.310 Agricultural products produced on an exempt or excluded operation.
205.311 USDA Seal.
205.312–205.399 [Reserved]

Subpart E—Certification

205.400 General requirements for certification.
205.401 Application for certification.
205.402 Review of application.
205.403 On-site inspections.
205.404 Granting certification.
205.405 Denial of certification.
205.406 Continuation of certification.
205.407–205.499 [Reserved]

Subpart F—Accreditation of Certifying Agents

205.500 Areas and duration of accreditation.
205.501 General requirements for accreditation.
205.502 Applying for accreditation.
205.503 Applicant information.
205.504 Evidence of expertise and ability.
205.505 Statement of agreement.
205.506 Granting accreditation.
Agricultural Marketing Service, USDA

§ 205.507 Denial of accreditation.
§ 205.508 Site evaluations.
§ 205.509 Annual report, recordkeeping, and renewal of accreditation.

Subpart G—Administrative

THE NATIONAL LIST OF ALLOWED AND PROHIBITED SUBSTANCES

§ 205.600 Evaluation criteria for allowed and prohibited substances, methods, and ingredients.
§ 205.601 Synthetic substances allowed for use in organic crop production.
§ 205.602 Nonsynthetic substances prohibited for use in organic crop production.
§ 205.603 Synthetic substances allowed for use in organic livestock production.
§ 205.604 Nonsynthetic substances prohibited for use in organic livestock production.
§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)).”
§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)).”

§ 205.607 Amending the National List.
§ 205.608–205.619 [Reserved]

STATE ORGANIC PROGRAMS

§ 205.620 Requirements of State organic programs.
§ 205.621 Submission and determination of proposed State organic programs and amendments to approved State organic programs.
§ 205.622 Review of approved State organic programs.
§ 205.623–205.639 [Reserved]

FEES

§ 205.640 Fees and other charges for accreditation.
§ 205.641 Payment of fees and other charges.
§ 205.642 Fees and other charges for certification.
§ 205.643–205.649 [Reserved]

COMPLIANCE

§ 205.650 General.
§ 205.651 Investigation of certified operations.
§ 205.652 Noncompliance procedure for certified operations.
§ 205.653 Mediation.
§ 205.654 [Reserved]
§ 205.655 Noncompliance procedure for certifying agents.
§ 205.656–205.667 [Reserved]
§ 205.668 Noncompliance procedures under State Organic Programs.

§ 205.699 [Reserved]

INSPECTION AND TESTING, REPORTING, AND EXCLUSION FROM SALE

§ 205.670 Inspection and testing of agricultural product to be sold or labeled “organic.”
§ 205.671 Exclusion from organic sale.
§ 205.672 Emergency pest or disease treatment.
§ 205.673–205.679 [Reserved]

ADVERSE ACTION APPEAL PROCESS

§ 205.680 General.
§ 205.681 Appeals.
§ 205.682–205.689 [Reserved]

MISCELLANEOUS

§ 205.690 OMB control number.
§ 205.691–205.699 [Reserved]


SOURCE: 65 FR 80637, Dec. 21, 2000, unless otherwise noted.

EFFECTIVE DATE NOTE: At 65 FR 80637, Dec. 21, 2000, subchapter M consisting of parts 205 through 209 was added, effective Feb. 20, 2001.

Subpart A—Definitions

§ 205.1 Meaning of words.

For the purpose 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.

§ 205.2 Terms defined.

Accreditation. A determination made by the Secretary that authorizes a private, foreign, or State entity to conduct certification activities as a certifying agent under this part.


Action level. The limit at or above which the Food and Drug Administration will take legal action against a product to remove it from the market. Action levels are based on unavoidability of the poisonous or deleterious substances and do not represent permissible levels of contamination where it is avoidable.

Administrator. The Administrator for the Agricultural Marketing Service, United States Department of Agriculture, or the representative to whom authority has been delegated to act in the stead of the Administrator.
§ 205.2 Agricultural inputs. All substances or materials used in the production or handling of organic agricultural products.

Agricultural product. Any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock, that is marketed in the United States for human or livestock consumption.

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

Allowed synthetic. A substance that is included on the National List of synthetic substances allowed for use in organic production or handling.

Animal drug. Any drug as defined in section 201 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 321), that is intended for use in livestock, including any drug intended for use in livestock feed but not including such livestock feed.

Annual seedling. A plant grown from seed that will complete its life cycle or produce a harvestable yield within the same crop year or season in which it was planted.

Area of operation. The types of operations: crops, livestock, wild-crop harvesting or handling, or any combination thereof that a certifying agent may be accredited to certify under this part.

Audit trail. Documentation that is sufficient to determine the source, transfer of ownership, and transportation of any agricultural product labeled as “100 percent organic,” the organic ingredients of any agricultural product labeled as “organic” or “made with organic (specified ingredients)” or the organic ingredients of any agricultural product containing less than 70 percent organic ingredients identified as organic in an ingredients statement.

Biodegradable. Subject to biological decomposition into simpler biochemical or chemical components.

Biologics. All viruses, serums, toxins, and analogous products of natural or synthetic origin, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components of microorganisms intended for use in the diagnosis, treatment, or prevention of diseases of animals.

Breeder stock. Female livestock whose offspring may be incorporated into an organic operation at the time of their birth.

Buffer zone. An area located between a certified production operation or portion of a production operation and an adjacent land area that is not maintained under organic management. A buffer zone must be sufficient in size or other features (e.g., windbreaks or a diversion ditch) to prevent the possibility of unintended contact by prohibited substances applied to adjacent land areas with an area that is part of a certified operation.

Bulk. The presentation to consumers at retail sale of an agricultural product in unpackaged, loose form, enabling the consumer to determine the individual pieces, amount, or volume of the product purchased.

Certification or certified. A determination made by a certifying agent that a production or handling operation is in compliance with the Act and the regulations in this part, which is documented by a certificate of organic operation.

Certified operation. A crop or livestock production, wild-crop harvesting or handling operation, or portion of such operation that is certified by an accredited certifying agent as utilizing a system of organic production or handling as described by the Act and the regulations in this part.

Certifying agent. Any entity accredited by the Secretary as a certifying agent for the purpose of certifying a production or handling operation as a certified production or handling operation.

Certifying agent’s operation. All sites, facilities, personnel, and records used by a certifying agent to conduct certification activities under the Act and the regulations in this part.

Claims. Oral, written, implied, or symbolic representations, statements, or advertising or other forms of communication presented to the public or buyers of agricultural products that relate to the organic certification process or the term, “100 percent organic,” “organic,” or “made with organic (specified ingredients)” or food
§ 205.2

Crop year. That normal growing season for a crop as determined by the Secretary.

Cultivation. Digging up or cutting the soil to prepare a seed bed; control weeds; aerate the soil; or work organic matter, crop residues, or fertilizers into the soil.

Cultural methods. Methods used to enhance crop health and prevent weed, pest, or disease problems without the use of substances; examples include the selection of appropriate varieties and planting sites; proper timing and density of plantings; irrigation; and extending a growing season by manipulating the microclimate with greenhouses, cold frames, or wind breaks.

Detectable residue. The amount or presence of chemical residue or sample component that can be reliably observed or found in the sample matrix by current approved analytical methodology.

Disease vectors. Plants or animals that harbor or transmit disease organisms or pathogens which may attack crops or livestock.

Drift. The physical movement of prohibited substances from the intended target site onto an organic operation or portion thereof.

Emergency pest or disease treatment program. A mandatory program authorized by a Federal, State, or local agency for the purpose of controlling or eradicating a pest or disease.

Employee. Any person providing paid or volunteer services for a certifying agent.

Excluded methods. A variety of methods used to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production. Such methods include cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology (including gene deletion, gene doubling, introducing a foreign gene, and changing the positions of genes when achieved by recombinant DNA technology). Such methods do not include the use of traditional breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture.
Feed. Edible materials which are consumed by livestock for their nutritional value. Feed may be concentrates (grains) or roughages (hay, silage, fodder). The term, “feed,” encompasses all agricultural commodities, including pasture ingested by livestock for nutritional purposes.

Feed additive. A substance added to feed in micro quantities to fulfill a specific nutritional need; i.e., essential nutrients in the form of amino acids, vitamins, and minerals.

Feed supplement. A combination of feed nutrients added to livestock feed to improve the nutrient balance or performance of the total ration and intended to be:

1. Diluted with other feeds when fed to livestock;
2. Offered free choice with other parts of the ration if separately available; or
3. Further diluted and mixed to produce a complete feed.

Fertilizer. A single or blended substance containing one or more recognized plant nutrient(s) which is used primarily for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.

Field. An area of land identified as a discrete unit within a production operation.

Forage. Vegetative material in a fresh, dried, or ensiled state (pasture, hay, or silage), which is fed to livestock.

Governmental entity. Any domestic government, tribal government, or foreign governmental subdivision providing certification services.

Handle. To sell, process, or package agricultural products, except such term shall not include the sale, transportation, or delivery of crops or livestock by the producer thereof to a handler.

Handler. Any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products that receives or otherwise acquires agricultural products and processes, packages, or stores such products.

Immediate family. The spouse, minor children, or blood relatives who reside in the immediate household of a certifying agent or an employee, inspector, contractor, or other personnel of the certifying agent. For the purpose of this part, the interest of a spouse, minor child, or blood relative who is a resident of the immediate household of a certifying agent or an employee, inspector, contractor, or other personnel of the certifying agent shall be considered to be an interest of the certifying agent or an employee, inspector, contractor, or other personnel of the certifying agent.

Inert ingredient. Any substance (or group of substances with similar chemical structures if designated by the Environmental Protection Agency) other than an active ingredient which is intentionally included in any pesticide product (40 CFR 152.3(m)).

Information panel. That part of the label of a packaged product that is immediately contiguous to and to the right of the principal display panel as observed by an individual facing the principal display panel, unless another section of the label is designated as the information panel because of package size or other package attributes (e.g., irregular shape with one usable surface).

Ingredient. Any substance used in the preparation of an agricultural product that is still present in the final commercial product as consumed.

Ingredients statement. The list of ingredients contained in a product shown in their common and usual names in the descending order of predominance.

Inspection. The act of examining and evaluating the production or handling operation of an applicant for certification or certified operation to determine compliance with the Act and the regulations in this part.

Inspector. Any person retained or used by a certifying agent to conduct inspections of certification applicants or certified production or handling operations.
Label. A display of written, printed, or graphic material on the immediate container of an agricultural product or any such material affixed to a bulk container containing an agricultural product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

Labeling. All written, printed, or graphic material accompanying an agricultural product at any time or written, printed, or graphic material about the agricultural product displayed at retail stores about the product.

Livestock. Any cattle, sheep, goat, swine, poultry, or equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other nonplant life, except such term shall not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products.

Lot. Any number of containers which contain an agricultural product of the same kind located in the same conveyance, warehouse, or packing house and which are available for inspection at the same time.

Manure. Feces, urine, other excrement, and bedding produced by livestock that has not been composted.

Market information. Any written, printed, audiovisual, or graphic information, including advertising, pamphlets, flyers, catalogues, posters, and signs, distributed, broadcast, or made available outside of retail outlets that are used to assist in the sale or promotion of a product.

Mulch. Any nonsynthetic material, such as wood chips, leaves, or straw, or any synthetic material included on the National List for such use, such as newspaper or plastic that serves to suppress weed growth, moderate soil temperature, or conserve soil moisture.

Narrow range oils. Petroleum derivatives, predominately of paraffinic and naphthenic fractions with 50 percent boiling point (10 mm Hg) between 415 °F and 440 °F.

National List. A list of allowed and prohibited substances as provided for in the Act.

National Organic Program (NOP). The program authorized by the Act for the purpose of implementing its provisions.

National Organic Standards Board (NOSB). A board established by the Secretary under 7 U.S.C. 6518 to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of the National Organic Program.

Natural resources of the operation. The physical, hydrological, and biological features of a production operation, including soil, water, wetlands, woodlands, and wildlife.

Nonagricultural substance. A substance that is not a product of agriculture, such as a mineral or a bacterial culture, that is used as an ingredient in an agricultural product. For the purposes of this part, a nonagricultural ingredient also includes any substance, such as gums, citric acid, or pectin, that is extracted from, isolated from, or a fraction of an agricultural product so that the identity of the agricultural product is unrecognizable in the extract, isolate, or fraction.

Nonsynthetic (natural). A substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic process as defined in section 6502(21) of the Act (7 U.S.C. 6502(21)). For the purposes of this part, nonsynthetic is used as a synonym for natural as the term is used in the Act.

Nonretail container. Any container used for shipping or storage of an agricultural product that is not used in the retail display or sale of the product.

Nontoxic. Not known to cause any adverse physiological effects in animals, plants, humans, or the environment.

Organic. A labeling term that refers to an agricultural product produced in accordance with the Act and the regulations in this part.

Organic matter. The remains, residues, or waste products of any organism.

Organic production. A production system that is managed in accordance with the Act and regulations in this
§ 205.2

part to respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity.

Organic system plan. A plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in the Act and the regulations in subpart C of this part.

Pasture. Land used for livestock grazing that is managed to provide feed value and maintain or improve soil, water, and vegetative resources.

Peer review panel. A panel of individuals who have expertise in organic production and handling methods and certification procedures and who are appointed by the Administrator to assist in evaluating applicants for accreditation.

Person. An individual, partnership, corporation, association, cooperative, or other entity.

Pesticide. Any substance which alone, in chemical combination, or in any formulation with one or more substances is defined as a pesticide in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u) et seq).

Petition. A request to amend the National List that is submitted by any person in accordance with this part.

Planting stock. Any plant or plant tissue other than annual seedlings but including rhizomes, shoots, leaf or stem cuttings, roots, or tubers, used in plant production or propagation.

Practice standard. The guidelines and requirements through which a production or handling operation implements a required component of its production or handling organic system plan. A practice standard includes a series of allowed and prohibited actions, materials, and conditions to establish a minimum level performance for planning, conducting, and maintaining a function, such as livestock health care or facility pest management, essential to an organic operation.

Principal display panel. That part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for sale.

Private entity. Any domestic or foreign nongovernmental for-profit or not-for-profit organization providing certification services.

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

Processing aid. (1) Substance that is added to a food during the processing of such food but is removed in some manner from the food before it is packaged in its finished form;

(2) a substance that is added to a food during processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; and

(3) a substance that is added to a food for its technical or functional effect in the processing but is present in the finished food at insignificant levels and does not have any technical or functional effect in that food.

Producer. A person who engages in the business of growing or producing food, fiber, feed, and other agricultural-based consumer products.

Production lot number/identifier. Identification of a product based on the production sequence of the product showing the date, time, and place of production used for quality control purposes.

Prohibited substance. A substance the use of which in any aspect of organic production or handling is prohibited or not provided for in the Act or the regulations of this part.

Records. Any information in written, visual, or electronic form that documents the activities undertaken by a producer, handler, or certifying agent to comply with the Act and regulations in this part.

Residue testing. An official or validated analytical procedure that detects, identifies, and measures the presence of chemical substances, their metabolites, or degradations products
in or on raw or processed agricultural products.

Responsibly connected. Any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant or a recipient of certification or accreditation.

Retail food establishment. A restaurant; delicatessen; bakery; grocery store; or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar, or other eat-in or carry-out service of processed or prepared raw and ready-to-eat-food.

Routine use of parasiticide. The regular, planned, or periodic use of parasiticides.

Secretary. The Secretary of Agriculture or a representative to whom authority has been delegated to act in the Secretary’s stead.

Sewage sludge. A solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes but is not limited to: domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

Slaughter stock. Any animal that is intended to be slaughtered for consumption by humans or other animals.

Soil and water quality. Observable indicators of the physical, chemical, or biological condition of soil and water, including the presence of environmental contaminants.

Split operation. An operation that produces or handles both organic and non-organic agricultural products.

State. Any of the several States of the United States of America, its territories, the District of Columbia, and the Commonwealth of Puerto Rico.

State certifying agent. A certifying agent accredited by the Secretary under the National Organic Program and operated by the State for the purposes of certifying organic production and handling operations in the State.

State organic program (SOP). A State program that meets the requirements of section 6506 of the Act, is approved by the Secretary, and is designed to ensure that a product that is sold or labeled as organically produced under the Act is produced and handled using organic methods.

State organic program’s governing State official. The chief executive official of a State or, in the case of a State that provides for the statewide election of an official to be responsible solely for the administration of the agricultural operations of the State, such official who administers a State organic certification program.

Synthetic. A substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

Tolerance. The maximum legal level of a pesticide chemical residue in or on a raw or processed agricultural commodity or processed food.

Transplant. A seedling which has been removed from its original place of production, transported, and replanted.

Unavoidable residual environmental contamination (UREC). Background levels of naturally occurring or synthetic chemicals that are present in the soil or present in organically produced agricultural products that are below established tolerances.

Wild crop. Any plant or portion of a plant that is collected or harvested from a site that is not maintained under cultivation or other agricultural management.

Subpart B—Applicability

§ 205.100 What has to be certified.

(a) Except for operations exempt or excluded in § 205.101, each production or handling operation or specified portion of a production or handling operation that produces or handles crops, livestock, livestock products, or other agricultural products that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or...
§ 205.101 Exemptions and exclusions from certification.

(a) Exemptions. (1) A production or handling operation that sells agricultural products as “organic” but whose gross agricultural income from organic sales totals $5,000 or less annually is exempt from certification under subpart E of this part and from submitting an organic system plan for acceptance or approval under §205.201 but must comply with the applicable organic production and handling requirements of subpart C of this part and the labeling requirements of §205.310. The products from such operations shall not be used as ingredients identified as organic in processed products produced by another handling operation.

(2) A handling operation that is a retail food establishment or portion of a retail food establishment that handles organically produced agricultural products but does not process them is exempt from the requirements in this part.

(3) A handling operation or portion of a handling operation that only handles agricultural products that contain less than 70 percent organic ingredients by total weight of the finished product (excluding water and salt) is exempt from the requirements in this part, except:

(i) The provisions for prevention of contact of organic products with prohibited substances set forth in §205.272 with respect to any organically produced ingredients used in an agricultural product;

(ii) The labeling provisions of §§205.305 and 205.310; and

(iii) The recordkeeping provisions in paragraph (c) of this section.

(b) Exclusions. (1) A handling operation or portion of a handling operation that only identifies organic ingredients on the information panel is exempt from the requirements in this part, except:

(i) The provisions for prevention of contact of organic products with prohibited substances set forth in §205.272 with respect to any organically produced ingredients used in an agricultural product;

(ii) The labeling provisions of §§205.305 and 205.310; and

(iii) The recordkeeping provisions in paragraph (c) of this section.

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(i) The provisions for prevention of contact of organic products with prohibited substances set forth in §205.272 with respect to any organically produced ingredients used in an agricultural product;

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(ii) The labeling provisions of §§205.305 and 205.310; and

(iii) The recordkeeping provisions in paragraph (c) of this section.

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(i) The provisions for prevention of contact of organic products with prohibited substances set forth in §205.272 with respect to any organically produced ingredients used in an agricultural product;

(ii) The labeling provisions of §§205.305 and 205.310; and

(iii) The recordkeeping provisions in paragraph (c) of this section.

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(i) The provisions for prevention of contact of organic products with prohibited substances set forth in §205.272 with respect to any organically produced ingredients used in an agricultural product;

(ii) The labeling provisions of §§205.305 and 205.310; and

(iii) The recordkeeping provisions in paragraph (c) of this section.

(b) Exclusions. (1) A handling operation or portion of a handling operation that only identifies organic ingredients on the information panel is exempt from the requirements in this part, except:

(i) The provisions for prevention of contact of organic products with prohibited substances set forth in §205.272 with respect to any organically produced ingredients used in an agricultural product;

(ii) The labeling provisions of §§205.305 and 205.310; and

(iii) The recordkeeping provisions in paragraph (c) of this section.
Agricultural Marketing Service, USDA

§ 205.105 Allowed and prohibited substances, methods, and ingredients in organic production and handling.

To be sold or labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” the product must be produced and handled without the use of:

(a) Synthetic substances and ingredients, except as provided in §205.601 or §205.603;
(b) Nonsynthetic substances prohibited in §205.602 or §205.604;
(c) Nonagricultural substances used in or on processed products, except as otherwise provided in §205.605;
(d) Nonorganic agricultural substances used in or on processed products, except as otherwise provided in §205.606;
(e) Excluded methods, except for vaccines: Provided, That, the vaccines are approved in accordance with §205.600(a);
(f) Ionizing radiation, as described in Food and Drug Administration regulation, 21 CFR 179.26; and
(g) Sewage sludge.
§§ 205.106–205.199 [Reserved]

Subpart C—Organic Production and Handling Requirements

§ 205.200 General.

The producer or handler of a production or handling operation intending to sell, label, or represent agricultural products as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must comply with the applicable provisions of this subpart. Production practices implemented in accordance with this subpart must maintain or improve the natural resources of the operation, including soil and water quality.

§ 205.201 Organic production and handling system plan.

(a) The producer or handler of a production or handling operation, except as exempt or excluded under §205.101, intending to sell, label, or represent agricultural products as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent. An organic system plan must meet the requirements set forth in this section for organic production or handling. An organic production or handling system plan must include:

1. A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed;
2. A list of each substance to be used as a production or handling input, indicating its composition, source, location(s) where it will be used, and documentation of commercial availability, as applicable;
3. A description of the monitoring practices and procedures to be performed and maintained, including the frequency with which they will be performed, to verify that the plan is effectively implemented;
4. A description of the recordkeeping system implemented to comply with the requirements established in §205.103;
5. A description of the management practices and physical barriers established to prevent commingling of organic and nonorganic products on a split operation and to prevent contact of organic production and handling operations and products with prohibited substances; and
6. Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations.

(b) A producer may substitute a plan prepared to meet the requirements of another Federal, State, or local government regulatory program for the organic system plan: Provided, That, the submitted plan meets all the requirements of this subpart.

§ 205.202 Land requirements.

Any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as “organic,” must:

(a) Have been managed in accordance with the provisions of §§205.203 through 205.206;
(b) Have had no prohibited substances, as listed in §205.105, applied to it for a period of 3 years immediately preceding harvest of the crop; and
(c) Have distinct, defined boundaries and buffer zones such as runoff diversions to prevent the unintended application of a prohibited substance to the crop or contact with a prohibited substance applied to adjoining land that is not under organic management.

§ 205.203 Soil fertility and crop nutrient management practice standard.

(a) The producer must select and implement tillage and cultivation practices that maintain or improve the physical, chemical, and biological condition of soil and minimize soil erosion.
(b) The producer must manage crop nutrients and soil fertility through rotations, cover crops, and the application of plant and animal materials.
(c) The producer must manage plant and animal materials to maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, pathogenic organisms, heavy metals, or residues of prohibited substances. Animal and plant materials include:
(1) Raw animal manure, which must be composted unless it is:
   (i) Applied to land used for a crop not intended for human consumption;
   (ii) Incorporated into the soil not less than 120 days prior to the harvest of a product whose edible portion has direct contact with the soil surface or soil particles; or
   (iii) Incorporated into the soil not less than 90 days prior to the harvest of a product whose edible portion does not have direct contact with the soil surface or soil particles;
(2) Composted plant and animal materials produced through a process that:
   (i) Established an initial C:N ratio of between 25:1 and 40:1; and
   (ii) Maintained a temperature of between 131 °F and 170 °F for 3 days using an in-vessel or static aerated pile system; or
   (iii) Maintained a temperature of between 131 °F and 170 °F for 15 days using a windrow composting system, during which period, the materials must be turned a minimum of five times.
(3) Uncomposted plant materials.
(d) A producer may manage crop nutrients and soil fertility to maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, pathogenic organisms, heavy metals, or residues of prohibited substances by applying:
   (1) A crop nutrient or soil amendment included on the National List of synthetic substances allowed for use in organic crop production;
   (2) A mined substance of low solubility;
   (3) A mined substance of high solubility: Provided, That, the substance is used in compliance with the conditions established on the National List of nonsynthetic materials prohibited for crop production;
   (4) Ash obtained from the burning of a plant or animal material, except as prohibited in paragraph (e) of this section: Provided, That, the material burned has not been treated or combined with a prohibited substance or the ash is not included on the National List of nonsynthetic substances prohibited for use in organic crop production; and
   (5) A plant or animal material that has been chemically altered by a manufacturing process: Provided, That, the material is included on the National List of synthetic substances allowed for use in organic crop production established in §205.601.
(e) The producer must not use:
   (1) Any fertilizer or composted plant and animal material that contains a synthetic substance not included on the National List of synthetic substances allowed for use in organic crop production;
   (2) Sewage sludge (biosolids) as defined in 40 CFR part 503; and
   (3) Burning as a means of disposal for crop residues produced on the operation: Except, That, burning may be used to suppress the spread of disease or to stimulate seed germination.

§ 205.204 Seeds and planting stock practice standard.
(a) The producer must use organically grown seeds, annual seedlings, and planting stock: Except, That,
   (1) Nonorganically produced, untreated seeds and planting stock may be used to produce an organic crop when an equivalent organically produced variety is not commercially available: Except, That, organically produced seed must be used for the production of edible sprouts;
   (2) Nonorganically produced seeds and planting stock that have been treated with a substance included on the National List of synthetic substances allowed for use in organic crop production may be used to produce an organic crop when an equivalent organically produced or untreated variety is not commercially available;
   (3) Nonorganically produced annual seedlings may be used to produce an organic crop when a temporary variance has been granted in accordance with §205.290(a)(2);
   (4) Nonorganically produced planting stock to be used to produce a perennial crop may be sold, labeled, or represented as organically produced only after the planting stock has been maintained under a system of organic management for a period of no less than 1 year; and
   (5) Seeds, annual seedlings, and planting stock treated with prohibited
§ 205.205 Substances may be used to produce an organic crop when the application of the materials is a requirement of Federal or State phytosanitary regulations.

(b) [Reserved]

§ 205.205 Crop rotation practice standard.

The producer must implement a crop rotation including but not limited to sod, cover crops, green manure crops, and catch crops that provide the following functions that are applicable to the operation:

(a) Maintain or improve soil organic matter content;
(b) Provide for pest management in annual and perennial crops;
(c) Manage deficient or excess plant nutrients; and
(d) Provide erosion control.

§ 205.206 Crop pest, weed, and disease management practice standard.

(a) The producer must use management practices to prevent crop pests, weeds, and diseases including but not limited to:

(1) Crop rotation and soil and crop nutrient management practices, as provided for in §§205.203 and 205.205;
(2) Sanitation measures to remove disease vectors, weed seeds, and habitat for pest organisms; and
(3) Cultural practices that enhance crop health, including selection of plant species and varieties with regard to suitability to site-specific conditions and resistance to prevalent pests, weeds, and diseases.

(b) Pest problems may be controlled through mechanical or physical methods including but not limited to:

(1) Augmentation or introduction of predators or parasites of the pest species;
(2) Development of habitat for natural enemies of pests;
(3) Nonsynthetic controls such as lures, traps, and repellents.

(c) Weed problems may be controlled through:

(1) Mulching with fully biodegradable materials;
(2) Mowing;
(3) Livestock grazing;
(4) Hand weeding and mechanical cultivation;
(5) Flame, heat, or electrical means; or
(6) Plastic or other synthetic mulches: Provided, That, they are removed from the field at the end of the growing or harvest season.

(d) Disease problems may be controlled through:

(1) Management practices which suppress the spread of disease organisms; or
(2) Application of nonsynthetic biological, botanical, or mineral inputs.

(e) When the practices provided for in paragraphs (a) through (d) of this section are insufficient to prevent or control crop pests, weeds, and diseases, a biological or botanical substance or a substance included on the National List of synthetic substances allowed for use in organic crop production may be applied to prevent, suppress, or control pests, weeds, or diseases: Provided, That, the conditions for using the substance are documented in the organic system plan.

(f) The producer must not use lumber treated with arsenate or other prohibited materials for new installations or replacement purposes in contact with soil or livestock.

§ 205.207 Wild-crop harvesting practice standard.

(a) A wild crop that is intended to be sold, labeled, or represented as organic must be harvested from a designated area that has had no prohibited substance, as set forth in §205.105, applied to it for a period of 3 years immediately preceding the harvest of the wild crop.

(b) A wild crop must be harvested in a manner that ensures that such harvesting or gathering will not be destructive to the environment and will sustain the growth and production of the wild crop.

§§ 205.208—205.235 [Reserved]

§ 205.236 Origin of livestock.

(a) Livestock products that are to be sold, labeled, or represented as organic must be from livestock under continuous organic management from the last third of gestation or hatching: Except, That:
§ 205.238 Livestock health care practice standard.

(a) The producer must establish and maintain preventive livestock health care practices, including:

(1) Selection of species and types of livestock with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites;

(2) Provision of a feed ration sufficient to meet nutritional requirements, including vitamins, minerals, protein and/or amino acids, fatty acids, energy sources, and fiber (ruminants);

(3) Establishment of appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites;

(4) Provision of conditions which allow for exercise, freedom of movement, and reduction of stress appropriate to the species;

(5) Performance of physical alterations as needed to promote the animal’s welfare and in a manner that minimizes pain and stress; and

(6) Administration of vaccines and other veterinary biologics.

(b) When preventive practices and veterinary biologics are inadequate to
§ 205.239 Livestock living conditions.

(a) The producer of an organic livestock operation must establish and maintain livestock living conditions which accommodate the health and natural behavior of animals, including:

(1) Access to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight suitable to the species, its stage of production, the climate, and the environment;

(2) Access to pasture for ruminants;

(3) Appropriate clean, dry bedding. If the bedding is typically consumed by the animal species, it must comply with the feed requirements of §205.237;

(4) Shelter designed to allow for:

(i) Natural maintenance, comfort behaviors, and opportunity to exercise;

(ii) Temperature level, ventilation, and air circulation suitable to the species; and

(iii) Reduction of potential for livestock injury;

(b) The producer of an organic livestock operation may provide temporary confinement for an animal because of:

(1) Inclement weather;

(2) The animal’s stage of production;

(3) Conditions under which the health, safety, or well being of the animal could be jeopardized; or

(4) Risk to soil or water quality.

(c) The producer of an organic livestock operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms and optimizes recycling of nutrients.

§§ 205.240—205.269 [Reserved]

§ 205.270 Organic handling requirements.

(a) Mechanical or biological methods, including but not limited to cooking, baking, curing, heating, drying, mixing, grinding, chewing, separating, distilling, extracting, slaughtering, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, chilling, or otherwise manufacturing, and the packaging, canning, jarring, or otherwise enclosing food in a container may be used to process an organically produced agricultural product for the purpose of retarding spoilage or otherwise preparing the agricultural product for market.

(b) Nonagricultural substances allowed under §205.605 and nonorganically produced agricultural products allowed under §205.606 may be used:

(1) In or on a processed agricultural product intended to be sold, labeled, or represented as “organic,” pursuant to §205.301(b), if not commercially available in organic form.
(2) In or on a processed agricultural product intended to be sold, labeled, or represented as “made with organic (specified ingredients or food group(s)),” pursuant to §205.301(c).

(c) The handler of an organic handling operation must not use in or on agricultural products intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” or in or on any ingredients labeled as organic:

(1) Practices prohibited under paragraphs (e) and (f) of §205.105.

(2) A volatile synthetic solvent or other synthetic processing aid not allowed under §205.605: Except, That, non-organic ingredients in products labeled “made with organic (specified ingredients or food group(s))” are not subject to this requirement.

§ 205.271 Facility pest management practice standard.

(a) The producer or handler of an organic facility must use management practices to prevent pests, including but not limited to:

(1) Removal of pest habitat, food sources, and breeding areas;

(2) Prevention of access to handling facilities; and

(3) Management of environmental factors, such as temperature, light, humidity, atmosphere, and air circulation, to prevent pest reproduction.

(b) Pests may be controlled through:

(1) Mechanical or physical controls including but not limited to traps, light, or sound; or

(2) Lures and repellents using non-synthetic or synthetic substances consistent with the National List.

(c) If the practices provided for in paragraphs (a) and (b) of this section are not effective to prevent or control pests, a nonsynthetic or synthetic substance consistent with the National List may be applied:

Provided, That, the handler and certifying agent agree on the substance, method of application, and measures to be taken to prevent contact of the organically produced products or ingredients with the substance used.

(e) The handler of an organic handling operation who applies a nonsynthetic or synthetic substance to prevent or control pests must update the operation’s organic handling plan to reflect the use of such substances and methods of application. The updated organic plan must include a list of all measures taken to prevent contact of the organically produced products or ingredients with the substance used.

(f) Notwithstanding the practices provided for in paragraphs (a), (b), (c), and (d) of this section, a handler may otherwise use substances to prevent or control pests as required by Federal, State, or local laws and regulations: Provided, That, measures are taken to prevent contact of the organically produced products or ingredients with the substance used.

§ 205.272 Commingling and contact with prohibited substance prevention practice standard.

(a) The handler of an organic handling operation must implement measures necessary to prevent the commingling of organic and nonorganic products and protect organic products from contact with prohibited substances.

(b) The following are prohibited for use in the handling of any organically produced agricultural product or ingredient labeled in accordance with subpart D of this part:

(1) Packaging materials, and storage containers, or bins that contain a synthetic fungicide, preservative, or fumigant;

(2) The use or reuse of any bag or container that has been in contact with any substance in such a manner as to compromise the organic integrity of any organically produced product or ingredient placed in those containers, unless such reusable bag or container has been thoroughly cleaned and poses no risk of contact of the organically produced product or ingredient with the substance used.
§§ 205.273–205.289 [Reserved]

§ 205.290 Temporary variances.

(a) Temporary variances from the requirements in §§205.233 through 205.207, 205.236 through 205.239, and 205.270 through 205.272 may be established by the Administrator for the following reasons:

1. Natural disasters declared by the Secretary;
2. Damage caused by drought, wind, flood, excessive moisture, hail, tornado, earthquake, fire, or other business interruption; and
3. Practices used for the purpose of conducting research or trials of techniques, varieties, or ingredients used in organic production or handling.

(b) A State organic program’s governing State official or certifying agent may recommend in writing to the Administrator that a temporary variance from a standard set forth in subpart C of this part for organic production or handling.

(c) The Administrator will provide written notification to certifying agents upon establishment of a temporary variance applicable to the certifying agent’s certified production or handling operations and specify the period of time it shall remain in effect, subject to extension as the Administrator deems necessary.

(d) A certifying agent, upon notification from the Administrator of the establishment of a temporary variance, must notify each production or handling operation it certifies to which the temporary variance applies.

(e) Temporary variances will not be granted for any practice, material, or procedure prohibited under §205.105.

§§ 205.291–205.299 [Reserved]

Subpart D—Labels, Labeling, and Market Information

§ 205.300 Use of the term, “organic.”

(a) The term, “organic,” may only be used on labels and in labeling of raw or processed agricultural products, including ingredients, that have been produced and handled in accordance with the regulations in this part. The term, “organic,” may not be used in a product name to modify a nonorganic ingredient in the product.

(b) Products for export, produced and certified to foreign national organic standards or foreign contract buyer requirements, may be labeled in accordance with the organic labeling requirements of the receiving country or contract buyer: Provided, That, the shipping containers and shipping documents meet the labeling requirements specified in §205.307(c).

(c) Products produced in a foreign country and exported for sale in the United States must be certified pursuant to subpart E of this part and labeled pursuant to this subpart D.

(d) Livestock feeds produced in accordance with the requirements of this part must be labeled in accordance with the requirements of §205.306.

§ 205.301 Product composition.

(a) Products sold, labeled, or represented as “100 percent organic.” A raw or processed agricultural product sold, labeled, or represented as “100 percent organic” must contain (by weight or fluid volume, excluding water and salt) 100 percent organically produced ingredients. If labeled as organically produced, such product must be labeled pursuant to §205.303.

(b) Products sold, labeled, or represented as “organic.” A raw or processed agricultural product sold, labeled, or represented as “organic” must contain (by weight or fluid volume, excluding water and salt) not less than 95 percent organically produced raw or processed agricultural products. Any remaining product ingredients must be organically produced, unless not commercially available in organic form, or must be nonagricultural substances or nonorganically produced agricultural products produced consistent with the National List in subpart G of this part. If labeled as organically produced, such product must be labeled pursuant to §205.303.

(c) Products sold, labeled, or represented as “made with organic (specified ingredients or food group(s)).” Multi-ingredient agricultural product sold, labeled, or represented as “made with
organic (specified ingredients or food group(s))” must contain (by weight or fluid volume, excluding water and salt) at least 70 percent organically produced ingredients which are produced and handled pursuant to requirements in subpart C of this part. No ingredients may be produced using prohibited practices specified in paragraphs (f)(1), (2), and (3) of §205.301. Nonorganic ingredients may be produced without regard to paragraphs (f)(4), (5), (6), and (7) of §205.301. If labeled as containing organically produced ingredients or food groups, such product must be labeled pursuant to §205.304.

(d) Products with less than 70 percent organically produced ingredients. The organic ingredients in multiingredient agricultural product containing less than 70 percent organically produced ingredients (by weight or fluid volume, excluding water and salt) must be produced and handled pursuant to requirements in subpart C of this part. The nonorganic ingredients may be produced and handled without regard to the requirements of this part. Multi-ingredient agricultural product containing less than 70 percent organically produced ingredients may represent the organic nature of the product only as provided in §205.305.

(e) Livestock feed. (1) A raw or processed livestock feed product sold, labeled, or represented as “100 percent organic” must contain (by weight or fluid volume, excluding water and salt) not less than 100 percent organically produced raw or processed agricultural product.

(2) A raw or processed livestock feed product sold, labeled, or represented as “organic” must be produced in conformance with §205.237.

(f) All products labeled as “100 percent organic” or “organic” and all ingredients identified as “organic” in the ingredient statement of any product must not:

(1) Be produced using excluded methods, pursuant to §201.105(e) of this chapter;

(2) Be produced using sewage sludge, pursuant to §201.105(f) of this chapter;

(3) Be processed using ionizing radiation, pursuant to §201.105(g) of this chapter;

(4) Be processed using processing aids not approved on the National List of Allowed and Prohibited Substances in subpart G of this part: Except, That, products labeled as “100 percent organic,” if processed, must be processed using organically produced processing aids;

(5) Contain sulfites, nitrates, or nitrites added during the production or handling process, Except, that, wine containing added sulfites may be labeled “made with organic grapes”;

(6) Be produced using nonorganic ingredients when organic ingredients are available; or

(7) Include organic and nonorganic forms of the same ingredient.

§205.302 Calculating the percentage of organically produced ingredients.

(a) The percentage of all organically produced ingredients in an agricultural product sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” or that include organic ingredients must be calculated by:

(1) Dividing the total net weight (excluding water and salt) of combined organic ingredients at formulation by the total weight (excluding water and salt) of the finished product.

(2) Dividing the fluid volume of all organic ingredients (excluding water and salt) by the fluid volume of the finished product (excluding water and salt) if the product and ingredients are liquid. If the liquid product is identified on the principal display panel or information panel as being reconstituted from concentrates, the calculation should be made on the basis of single-strength concentrations of the ingredients and finished product.

(3) For products containing organically produced ingredients in both solid and liquid form, dividing the combined weight of the solid ingredients and the weight of the liquid ingredients (excluding water and salt) by the total weight (excluding water and salt) of the finished product.

(b) The percentage of all organically produced ingredients in an agricultural product must be rounded down to the nearest whole number.
§ 205.303 Packaged products labeled “100 percent organic” or “organic.”

(a) Agricultural products in packages described in §205.301(a) and (b) may display, on the principal display panel, information panel, and any other panel of the package and on any labeling or market information concerning the product, the following:

(1) The term, “100 percent organic” or “organic,” as applicable, to modify the name of the product;

(2) For products labeled “organic,” the percentage of organic ingredients in the product; (The size of the percentage statement must not exceed one-half the size of the largest type size on the panel on which the statement is displayed and must appear in its entirety in the same type size, style, and color without highlighting.)

(3) The term, “organic,” to identify the organic ingredients in multingredient products labeled “100 percent organic”;

(4) The USDA seal; and/or

(5) The seal, logo, or other identifying mark of the certifying agent which certified the production or handling operations producing the finished product and any other certifying agent which certified production or handling operations producing raw organic product or organic ingredients used in the finished product: Provided, That, the handler producing the finished product maintain records, pursuant to this part, verifying organic certification of the operations producing such ingredients, and: Provided further, That, such seals or marks are not individually displayed more prominently than the USDA seal.

(b) Agricultural products in packages described in §205.301(a) and (b) must:

(1) For products labeled “organic,” identify each organic ingredient in the ingredient statement with the word, “organic,” or with an asterisk or other reference mark which is defined below the ingredient statement to indicate the ingredient is organically produced. Water or salt included as ingredients cannot be identified as organic.

(2) On the information panel, below the information identifying the handler or distributor of the product and preceded by the statement, “Certified organic by * * *,” or similar phrase, identify the name of the certifying agent that certified the handler of the finished product and may display the business address, Internet address, or telephone number of the certifying agent in such label.

§ 205.304 Packaged products labeled “made with organic (specified ingredients or food group(s)).”

(a) Agricultural products in packages described in §205.301(c) may display on the principal display panel, information panel, and any other panel and on any labeling or market information concerning the product:

(1) The statement:

(i) “Made with organic (specified ingredients)”: Provided, That, the statement does not list more than three organically produced ingredients; or

(ii) “Made with organic (specified food groups)”: Provided, That, the statement does not list more than three of the following food groups: beans, fish, fruits, grains, herbs, meats, nuts, oils, poultry, seeds, spices, sweeteners, and vegetables or processed milk products; and, Provided further, That, all ingredients of each listed food group in the product must be organically produced; and

(iii) Which appears in letters that do not exceed one-half the size of the largest type size on the panel and which appears in its entirety in the same type size, style, and color without highlighting.

(2) The percentage of organic ingredients in the product. The size of the percentage statement must not exceed one-half the size of the largest type size on the panel on which the statement is displayed and must appear in its entirety in the same type size, style, and color without highlighting.

(3) The seal, logo, or other identifying mark of the certifying agent that certified the handler of the finished product.
(b) Agricultural products in packages described in §205.301(c) must:

(1) In the ingredient statement, identify each organic ingredient with the word, "organic," or with an asterisk or other reference mark which is defined below the ingredient statement to indicate the ingredient is organically produced. Water or salt included as ingredients cannot be identified as organic.

(2) On the information panel, below the information identifying the handler or distributor of the product and preceded by the statement, "Certified organic by * * *," or similar phrase, identify the name of the certifying agent that certified the handler of the finished product: Except, That, the business address, Internet address, or telephone number of the certifying agent may be included in such label.

(c) Agricultural products in packages described in §205.301(c) must not display the USDA seal.

§ 205.305 Multi-ingredient packaged products with less than 70 percent organically produced ingredients.

(a) An agricultural product with less than 70 percent organically produced ingredients may only identify the organic content of the product by:

(1) Identifying each organically produced ingredient in the ingredient statement with the word, "organic," or with an asterisk or other reference mark which is defined below the ingredient statement to indicate the ingredient is organically produced, and

(2) If the organically produced ingredients are identified in the ingredient statement, displaying the product’s percentage of organic contents on the information panel.

(b) Agricultural products with less than 70 percent organically produced ingredients must not display:

(1) The USDA seal; and

(2) Any certifying agent seal, logo, or other identifying mark which represents organic certification of a product or product ingredients.

§ 205.306 Labeling of livestock feed.

(a) Livestock feed products described in §205.301(e)(1) and (e)(2) may display on any package panel the following terms:

(1) The statement, “100 percent organic” or “organic,” as applicable, to modify the name of the feed product;

(2) The USDA seal;

(3) The seal, logo, or other identifying mark of the certifying agent which certified the production or handling operation producing the raw or processed organic ingredients used in the finished product. Provided, That, such seals or marks are not displayed more prominently than the USDA seal;

(4) The word, “organic,” or an asterisk or other reference mark which is defined on the package to identify ingredients that are organically produced. Water or salt included as ingredients cannot be identified as organic.

(b) Livestock feed products described in §205.301(e)(1) and (e)(2) must:

(1) On the information panel, below the information identifying the handler or distributor of the product and preceded by the statement, “Certified organic by * * *," or similar phrase, display the name of the certifying agent that certified the handler of the finished product. The business address, Internet address, or telephone number of the certifying agent may be included in such label.

(2) Comply with other Federal agency or State feed labeling requirements as applicable.

§ 205.307 Labeling of nonretail containers used for only shipping or storage of raw or processed agricultural products labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))."

(a) Nonretail containers used only to ship or store raw or processed agricultural product labeled as containing organic ingredients may display the following terms or marks:

(1) The name and contact information of the certifying agent which certified the handler which assembled the final product;

(2) Identification of the product as organic;

(3) Special handling instructions needed to maintain the organic integrity of the product;

(4) The USDA seal;

(5) The seal, logo, or other identifying mark of the certifying agent that certified the organic production or
§ 205.308 Agricultural products in other than packaged form at the point of retail sale that are sold, labeled, or represented as “100 percent organic” or “organic.”

(a) Agricultural products in other than packaged form may use the term, “100 percent organic” or “organic,” as applicable, to modify the name of the product in retail display, labeling, and display containers: Provided, That, the term, “organic,” is used to identify the organic ingredients listed in the ingredient statement.

(b) If the product is prepared in a certified facility, the retail display, labeling, and display containers may use:

(1) The USDA seal; and

(2) The seal, logo, or other identifying mark of the certifying agent that certified the production or handling operation producing the finished product and any other certifying agent which certified operations producing raw organic product or organic ingredients used in the finished product: Provided, That, such seals or marks are not individually displayed more prominently than the USDA seal.

§ 205.309 Agricultural products in other than packaged form at the point of retail sale that are sold, labeled, or represented as “made with organic (specified ingredients or food group(s)).”

(a) Agricultural products in other than packaged form containing between 70 and 95 percent organically produced ingredients may use the phrase, “made with organic (specified ingredients or food group(s)),” to modify the name of the product in retail display, labeling, and display containers.

(1) Such statement must not list more than three organic ingredients or food groups, and

(2) In any such display of the product’s ingredient statement, the organic ingredients are identified as “organic.”

(b) If prepared in a certified facility, such agricultural products labeled as “made with organic (specified ingredients or food group(s))” in retail displays, display containers, and market information may display the certifying agent’s seal, logo, or other identifying mark.

§ 205.310 Agricultural products produced on an exempt or excluded operation.

(a) An agricultural product organically produced or handled on an exempt or excluded operation must not:

(1) Display the USDA seal or any certifying agent’s seal or other identifying mark which represents the exempt or excluded operation as a certified organic operation, or

(2) Be represented as a certified organic product or certified organic ingredient to any buyer.

(b) An agricultural product organically produced or handled on an exempt or excluded operation may be identified as an organic product or organic ingredient in a multingredient product produced by the exempt or excluded operation. Such product or ingredient must not be identified or represented as “organic” in a product processed by others.

(c) Such product is subject to requirements specified in paragraph (a) of § 205.306, and paragraphs (f)(1) through (f)(7) of § 205.301.
§ 205.311 USDA Seal.

(a) The USDA seal described in paragraphs (b) and (c) of this section may be used only for raw or processed agricultural products described in paragraphs (a), (b), (e)(1), and (e)(2) of § 205.301.

(b) The USDA seal must replicate the form and design of the example in figure 1 and must be printed legibly and conspicuously:

(1) On a white background with a brown outer circle and with the term, “USDA,” in green overlaying a white upper semicircle and with the term, “organic,” in white overlaying the green lower half circle; or

(2) On a white or transparent background with black outer circle and black “USDA” on a white or transparent upper half of the circle with a contrasting white or transparent “organic” on the black lower half circle.

(3) The green or black lower half circle may have four light lines running from left to right and disappearing at the point on the right horizon to resemble a cultivated field.

Figure 1

§§ 205.312–205.399 [Reserved]

Subpart E—Certification

§ 205.400 General requirements for certification.

A person seeking to receive or maintain organic certification under the regulations in this part must:

(a) Comply with the Act and applicable organic production and handling regulations of this part;

(b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent as provided for in § 205.200;

(c) Permit on-site inspections with complete access to the production or handling operation, including noncertified production and handling areas, structures, and offices by the certifying agent as provided for in § 205.403;

(d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow authorized representatives of the Secretary, the applicable State organic program’s governing State official, and the certifying agent access to such records during normal business hours for review and copying to determine compliance with the Act and the regulations in this part, as provided for in § 205.104;

(e) Submit the applicable fees charged by the certifying agent; and

(f) Immediately notify the certifying agent concerning any:

(1) Application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation; and

(2) Change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and the regulations in this part.

§ 205.401 Application for certification.

A person seeking certification of a production or handling operation under this subpart must submit an application for certification to a certifying agent. The application must include the following information:

(a) An organic production or handling system plan, as required in § 205.200;

(b) The name of the person completing the application; the applicant’s business name, address, and telephone number; and, when the applicant is a corporation, the name, address, and telephone number of the person authorized to act on the applicant’s behalf;

(c) The name(s) of any organic certifying agent(s) to which application has previously been made; the year(s) of application; the outcome of the application(s) submission, including, when available, a copy of any notification of
§ 205.402 Review of application.

(a) Upon acceptance of an application for certification, a certifying agent must:

(1) Review the application to ensure completeness pursuant to §205.401;

(2) Determine by a review of the application materials whether the applicant appears to comply or may be able to comply with the applicable requirements of subpart C of this part;

(3) Verify that an applicant who previously applied to another certifying agent and received a notification of noncompliance or denial of certification, pursuant to §205.405, has submitted documentation to support the correction of any noncompliances identified in the notification of noncompliance or denial of certification, as required in §205.405(e); and

(4) Schedule an on-site inspection of the operation to determine whether the applicant qualifies for certification if the review of application materials reveals that the production or handling operation may be in compliance with the applicable requirements of subpart C of this part.

(b) The certifying agent shall within a reasonable time:

(1) Review the application materials received and communicate its findings to the applicant;

(2) Provide the applicant with a copy of the on-site inspection report, as approved by the certifying agent, for any on-site inspection performed; and

(3) Provide the applicant with a copy of the test results for any samples taken by an inspector.

(c) The applicant may withdraw its application at any time. An applicant who withdraws its application shall be liable for the costs of services provided up to the time of withdrawal of its application.

§ 205.403 On-site inspections.

(a) On-site inspections. (1) A certifying agent must conduct an initial on-site inspection of each production unit, facility, and site that produces or handles organic products and that is included in an operation for which certification is requested. An on-site inspection shall be conducted annually thereafter for each certified operation that produces or handles organic products for the purpose of determining whether to approve the request for certification or whether the certification of the operation should continue.

(2) (i) A certifying agent may conduct additional on-site inspections of applicants for certification and certified operations to determine compliance with the Act and the regulations in this part.

(ii) The Administrator or State organic program’s governing State official may require that additional inspections be performed by the certifying agent for the purpose of determining compliance with the Act and the regulations in this part.

(iii) Additional inspections may be announced or unannounced at the discretion of the certifying agent or as required by the Administrator or State organic program’s governing State official.

(b) Scheduling. (1) The initial on-site inspection must be conducted within a reasonable time following a determination that the applicant appears to comply or may be able to comply with the requirements of subpart C of this part: Except, That, the initial inspection may be delayed for up to 6 months to comply with the requirement that the inspection be conducted when the land, facilities, and activities that demonstrate compliance or capacity to comply can be observed.

(2) All on-site inspections must be conducted when an authorized representative of the operation who is knowledgeable about the operation is
§ 205.405 Denial of certification.

(a) When the certifying agent has reason to believe, based on a review of the information specified in §205.402 or §205.404, that an applicant for certification is not able to comply or is not in compliance with the requirements of this part, the certifying agent must provide a written notification of noncompliance to the applicant. When correction of a noncompliance is not possible, a notification of noncompliance and a notification of denial of certification may be combined in one notification. The notification of noncompliance shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

§ 205.404 Granting certification.

(a) Within a reasonable time after completion of the initial on-site inspection, a certifying agent must review the on-site inspection report, the results of any analyses for substances conducted, and any additional information requested from or supplied by the applicant. If the certifying agent determines that the organic system plan and all procedures and activities of the applicant’s operation are in compliance with the requirements of this part and that the applicant is able to conduct operations in accordance with the plan, the agent shall grant certification. The certification may include requirements for the correction of minor noncompliances within a specified time period as a condition of continued certification.

(b) The certifying agent must issue a certificate of organic operation which specifies the:

(1) Name and address of the certified operation;

(2) Effective date of certification;

(3) Categories of organic operation, including crops, wild crops, livestock, or processed products produced by the certified operation; and

(4) Name, address, and telephone number of the certifying agent.

(c) Once certified, a production or handling operation’s organic certification continues in effect until surrendered by the organic operation or suspended or revoked by the certifying agent, the State organic program’s governing State official, or the Administrator.

§ 205.405 Denial of certification.

(a) When the certifying agent has reason to believe, based on a review of the information specified in §205.402 or §205.404, that an applicant for certification is not able to comply or is not in compliance with the requirements of this part, the certifying agent must provide a written notification of noncompliance to the applicant. When correction of a noncompliance is not possible, a notification of noncompliance and a notification of denial of certification may be combined in one notification. The notification of noncompliance shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

§ 205.404 Granting certification.

(a) Within a reasonable time after completion of the initial on-site inspection, a certifying agent must review the on-site inspection report, the results of any analyses for substances conducted, and any additional information requested from or supplied by the applicant. If the certifying agent determines that the organic system plan and all procedures and activities of the applicant’s operation are in compliance with the requirements of this part and that the applicant is able to conduct operations in accordance with the plan, the agent shall grant certification. The certification may include requirements for the correction of minor noncompliances within a specified time period as a condition of continued certification.
§ 205.406 Continuation of certification.

(a) To continue certification, a certified operation must annually pay the certification fees and submit the following information, as applicable, to the certifying agent:

(1) An updated organic production or handling system plan which includes:
   (i) A summary statement, supported by documentation, detailing any deviations from, changes to, modifications to, or other amendments made to the previous year’s organic system plan during the previous year; and
   (ii) Any additions or deletions to the previous year’s organic system plan, intended to be undertaken in the coming year, detailed pursuant to §205.200;

(2) Any additions to or deletions from the information required pursuant to §205.401(b);
(3) An update on the correction of minor noncompliances previously identified by the certifying agent as requiring correction for continued certification; and

(4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.

(b) Following the receipt of the information specified in paragraph (a) of this section, the certifying agent shall within a reasonable time arrange and conduct an on-site inspection of the certified operation pursuant to §205.403: Except, That, when it is impossible for the certifying agent to conduct the annual on-site inspection following receipt of the certified operation's annual update of information, the certifying agent may allow continuation of certification and issue an updated certificate of organic operation on the basis of the information submitted and the most recent on-site inspection conducted during the previous 12 months: Provided, That, the annual on-site inspection, required pursuant to §205.403, is conducted within the first 6 months following the certified operation's scheduled date of annual update.

(c) If the certifying agent has reason to believe, based on the on-site inspection and a review of the information specified in §205.404, that a certified operation is not complying with the requirements of the Act and the regulations in this part, the certifying agent shall provide a written notification of noncompliance to the operation in accordance with §205.662.

(d) If the certifying agent determines that the certified operation is complying with the Act and the regulations in this part and that any of the information specified on the certificate of organic operation has changed, the certifying agent must issue an updated certificate of organic operation pursuant to §205.404(b).

Subpart F—Accreditation of Certifying Agents

§205.500 Areas and duration of accreditation.

(a) The Administrator shall accredit a qualified domestic or foreign applicant in the areas of crops, livestock, wild crops, or handling or any combination thereof to certify a domestic or foreign production or handling operation as a certified operation.

(b) Accreditation shall be for a period of 5 years from the date of approval of accreditation pursuant to §205.506.

(c) In lieu of accreditation under paragraph (a) of this section, USDA will accept a foreign certifying agent's accreditation to certify organic production or handling operations if:

(1) USDA determines, upon the request of a foreign government, that the standards under which the foreign government authority accredited the foreign certifying agent meet the requirements of this part; or

(2) The foreign government authority that accredited the foreign certifying agent acted under an equivalency agreement negotiated between the United States and the foreign government.

§205.501 General requirements for accreditation.

(a) A private or governmental entity accredited as a certifying agent under this subpart must:

(1) Have sufficient expertise in organic production or handling techniques to fully comply with and implement the terms and conditions of the organic certification program established under the Act and the regulations in this part;

(2) Demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart;

(3) Carry out the provisions of the Act and the regulations in this part,
including the provisions of §§205.402 through 205.406 and §205.670;

(4) Use a sufficient number of adequately trained personnel, including inspectors and certification review personnel, to comply with and implement the organic certification program established under the Act and the regulations in subpart E of this part;

(5) Ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, and decision-making responsibilities have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned.

(6) Conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services;

(7) Have an annual program review of its certification activities conducted by the certifying agent’s staff, an outside auditor, or a consultant who has expertise to conduct such reviews and implement measures to correct any noncompliances with the Act and the regulations in this part that are identified in the evaluation;

(8) Provide sufficient information to persons seeking certification to enable them to comply with the applicable requirements of the Act and the regulations in this part;

(9) Maintain all records pursuant to §205.510(b) and make all such records available for inspection and copying during normal business hours by authorized representatives of the Secretary and the applicable State organic program’s governing State official;

(10) Maintain strict confidentiality with respect to its clients under the applicable organic certification program and not disclose to third parties (with the exception of the Secretary or the applicable State organic program’s governing State official or their authorized representatives) any business-related information concerning any client obtained while implementing the regulations in this part, except as provided for in §205.504(b)(5);

(11) Prevent conflicts of interest by:

(i) Not certifying a production or handling operation if the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest in the production or handling operation, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;

(ii) Excluding any person, including contractors, with conflicts of interest from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production or handling operations for all entities in which such person has or has held a commercial interest, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;

(iii) Not permitting any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected: Except, That, a certifying agent that is a not-for-profit organization with an Internal Revenue Code tax exemption or, in the case of a foreign certifying agent, a comparable recognition of not-for-profit status from its government, may accept voluntary labor from certified operations;

(iv) Not giving advice or providing consultancy services, to certification applicants or certified operations, for overcoming identified barriers to certification;

(v) Requiring all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and all parties responsibly connected to the certifying agent to complete an annual conflict of interest disclosure report; and

(vi) Ensuring that the decision to certify an operation is made by a person different from those who conducted the review of documents and on-site inspection.
(12)(i) Reconsider a certified operation’s application for certification and, if necessary, perform a new on-site inspection when it is determined, within 12 months of certifying the operation, that any person participating in the certification process and covered under §205.501(a)(11)(ii) has or had a conflict of interest involving the applicant. All costs associated with a reconsideration of application, including on-site inspection costs, shall be borne by the certifying agent.

(ii) Refer a certified operation to a different accredited certifying agent for recertification and reimburse the operation for the cost of the recertification when it is determined that any person covered under §205.501(a)(11)(i) at the time of certification of the applicant had a conflict of interest involving the applicant.

(13) Accept the certification decisions made by another certifying agent accredited or accepted by USDA pursuant to §205.500;

(14) Refrain from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced;

(15) Submit to the Administrator a copy of:

(i) Any notice of denial of certification issued pursuant to §205.405, notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation sent pursuant to §205.662 simultaneously with its issuance; and

(ii) A list, on January 2 of each year, including the name, address, and telephone number of each operation granted certification during the preceding year;

(16) Charge applicants for certification and certified production and handling operations only those fees and charges for certification activities that it has filed with the Administrator;

(17) Pay and submit fees to AMS in accordance with §205.640;

(18) Provide the inspector, prior to each on-site inspection, with previous on-site inspection reports and notify the inspector of its decision regarding certification of the production or handling operation site inspected by the inspector and of any requirements for the correction of minor noncompliances;

(19) Accept all production or handling applications that fall within its area(s) of accreditation and certify all qualified applicants, to the extent of its administrative capacity to do so without regard to size or membership in any association or group; and

(20) Demonstrate its ability to comply with a State’s organic program to certify organic production or handling operations within the State.

(21) Comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary.

(b) A private or governmental entity accredited as a certifying agent under this subpart may establish a seal, logo, or other identifying mark to be used by production and handling operations certified by the certifying agent to indicate affiliation with the certifying agent: Provided, That, the certifying agent:

(1) Does not require use of its seal, logo, or other identifying mark on any product sold, labeled, or represented as organically produced as a condition of certification and

(2) Does not require compliance with any production or handling practices other than those provided for in the Act and the regulations in this part as a condition of use of its identifying mark: Provided, That, certifying agents certifying production or handling operations within a State with more restrictive requirements, approved by the Secretary, shall require compliance with such requirements as a condition of use of their identifying mark by such operations.

(c) A private entity accredited as a certifying agent must:

(1) Hold the Secretary harmless for any failure on the part of the certifying agent to carry out the provisions of the Act and the regulations in this part;

(2) Furnish reasonable security, in an amount and according to such terms as the Administrator may by regulation prescribe, for the purpose of protecting the rights of production and handling operations certified by such certifying agents.
§ 205.502 Applying for accreditation.

(a) A private or governmental entity seeking accreditation as a certifying agent under this subpart must submit an application for accreditation which contains the applicable information and documents set forth in §§ 205.503 through 205.505 and the fees required in § 205.640 to: Program Manager, USDA–AMS–TMP–NOP, Room 2945—South Building, P.O. Box 96456, Washington, DC 20090–6456.

(b) Following the receipt of the information and documents, the Administrator will determine, pursuant to § 205.506, whether the applicant for accreditation should be accredited as a certifying agent.

§ 205.503 Applicant information.

A private or governmental entity seeking accreditation as a certifying agent must submit the following information:

(a) The business name, primary office location, mailing address, name of the person(s) responsible for the certifying agent’s day-to-day operations, contact numbers (telephone, facsimile, and Internet address) of the applicant, and, for an applicant who is a private person, the entity’s taxpayer identification number;

(b) The name, office location, mailing address, and contact numbers (telephone, facsimile, and Internet address) for each of its organizational units, such as chapters or subsidiary offices, and the name of a contact person for each unit;

(c) Each area of operation (crops, wild crops, livestock, or handling) for which accreditation is requested and the estimated number of each type of operation anticipated to be certified annually by the applicant along with a copy of the applicant’s schedule of fees for all services to be provided under these regulations by the applicant;

(d) The type of entity the applicant is (e.g., government agricultural office, for-profit business, not-for-profit membership association) and for:

(1) A governmental entity, a copy of the official’s authority to conduct certification activities under the Act and the regulations in this part;

(2) A private entity, documentation showing the entity’s status and organizational purpose, such as articles of incorporation and by-laws or ownership or membership provisions, and its date of establishment; and

(e) A list of each State or foreign country in which the applicant currently certifies production and handling operations and a list of each State or foreign country in which the applicant intends to certify production or handling operations.

§ 205.504 Evidence of expertise and ability.

A private or governmental entity seeking accreditation as a certifying agent must submit the following documents and information to demonstrate its expertise in organic production or handling techniques: its ability to fully comply with and implement the organic certification program established in §§ 205.100 and 205.101, §§ 205.201 through 205.203, §§ 205.300 through 205.303, §§ 205.400 through 205.406, and §§ 205.661 and 205.662; and its ability to comply with the requirements for accreditation set forth in § 205.501:

(a) Personnel. (1) A copy of the applicant’s policies and procedures for training, evaluating, and supervising personnel;
(2) The name and position description of all personnel to be used in the certification operation, including administrative staff, certification inspectors, members of any certification review and evaluation committees, contractors, and all parties responsibly connected to the certifying agent; (3) A description of the qualifications, including experience, training, and education in agriculture, organic production, and organic handling; for:

(i) Each inspector to be used by the applicant and

(ii) Each person to be designated by the applicant to review or evaluate applications for certification; and

(4) A description of any training that the applicant has provided or intends to provide to personnel to ensure that they comply with and implement the requirements of the Act and the regulations in this part.

(b) Administrative policies and procedures. (1) A copy of the procedures to be used to evaluate certification applicants, make certification decisions, and issue certification certificates;

(2) A copy of the procedures to be used for reviewing and investigating certified operation compliance with the Act and the regulations in this part and the reporting of violations of the Act and the regulations in this part to the Administrator;

(3) A copy of the procedures to be used for complying with the record-keeping requirements set forth in §205.501(a)(9);

(4) A copy of the procedures to be used for maintaining the confidentiality of any business-related information as set forth in §205.501(a)(10);

(5) A copy of the procedures to be used, including any fees to be assessed, for making the following information available to any member of the public upon request:

(i) Certification certificates issued during the current and 3 preceding calendar years;

(ii) A list of producers and handlers whose operations it has certified, including for each the name of the operation, type(s) of operation, products produced, and the effective date of the certification, during the current and 3 preceding calendar years;

(iii) The results of laboratory analyses for residues of pesticides and other prohibited substances conducted during the current and 3 preceding calendar years; and

(iv) Other business information as permitted in writing by the producer or handler; and

(6) A copy of the procedures to be used for sampling and residue testing pursuant to §205.670.

(c) Conflicts of interest. (1) A copy of procedures intended to be implemented to prevent the occurrence of conflicts of interest, as described in §205.501(a)(11).

(2) For all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and all parties responsibly connected to the certifying agent, a conflict of interest disclosure report, identifying any food- or agriculture-related business interests, including business interests of immediate family members, that cause a conflict of interest.

(d) Current certification activities. An applicant who currently certifies production or handling operations must submit:

(1) A list of all production and handling operations currently certified by the applicant;

(2) Copies of at least 3 different inspection reports and certification evaluation documents for production or handling operations certified by the applicant during the previous year for each area of operation for which accreditation is requested; and

(3) The results of any accreditation process of the applicant’s operation by an accrediting body during the previous year for the purpose of evaluating its certification activities.

(e) Other information. Any other information the applicant believes may assist in the Administrator’s evaluation of the applicant’s expertise and ability.

§ 205.505 Statement of agreement.

(a) A private or governmental entity seeking accreditation under this subpart must sign and return a statement of agreement prepared by the Administrator which affirms that, if granted
accreditation as a certifying agent under this subpart, the applicant will carry out the provisions of the Act and the regulations in this part, including:

(1) Accept the certification decisions made by another certifying agent accredited or accepted by USDA pursuant to §205.500;

(2) Refrain from making false or misleading claims about its accreditation status, the USDA accreditation program for certifying agents, or the nature or qualities of products labeled as organically produced;

(3) Conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services;

(4) Have an annual internal program review conducted of its certification activities by certifying agent staff, an outside auditor, or a consultant who has the expertise to conduct such reviews and implement measures to correct any noncompliances with the Act and the regulations in this part;

(5) Pay and submit fees to AMS in accordance with §205.640; and

(6) Comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary.

(b) A private entity seeking accreditation as a certifying agent under this subpart must additionally agree to:

(1) Hold the Secretary harmless for any failure on the part of the certifying agent to carry out the provisions of the Act and the regulations in this part;

(2) Furnish reasonable security, in an amount and according to such terms as the Administrator may by regulation prescribe, for the purpose of protecting the rights of production and handling operations certified by such certifying agent under the Act and the regulations in this part; and

(3) Transfer to the Administrator and make available to the applicable State official all records or copies of records concerning the certifying agent’s certification activities in the event that the certifying agent dissolves or loses its accreditation; Provided, That such transfer shall not apply to a merger, sale, or other transfer of ownership of a certifying agent.

§205.506 Granting accreditation.

(a) Accreditation will be granted when:

(1) The accreditation applicant has submitted the information required by §§205.503 through 205.505;

(2) The accreditation applicant pays the required fee in accordance with §205.640(c); and

(3) The Administrator determines that the applicant for accreditation meets the requirements for accreditation as stated in §205.501, as determined by a review of the information submitted in accordance with §§205.503 through 205.505 and, if necessary, a review of the information obtained from a site evaluation as provided for in §205.508.

(b) On making a determination to approve an application for accreditation, the Administrator will notify the applicant of the granting of accreditation in writing, stating:

(1) The area(s) for which accreditation is given;

(2) The effective date of the accreditation;

(3) Any terms and conditions for the correction of minor noncompliances; and

(4) For a certifying agent who is a private entity, the amount and type of security that must be established to protect the rights of production and handling operations certified by such certifying agent.

(c) The accreditation of a certifying agent shall continue in effect until such time as the certifying agent fails to renew accreditation as provided in §205.510(c), the certifying agent voluntarily ceases its certification activities, or accreditation is suspended or revoked pursuant to §205.665.

§205.507 Denial of accreditation.

(a) If the Program Manager has reason to believe, based on a review of the information specified in §§205.503
Agricultural Marketing Service, USDA

§ 205.509

through 205.505 or after a site evaluation as specified in §205.508, that an applicant for accreditation is not able to comply or is not in compliance with the requirements of the Act and the regulations in this part, the Program Manager shall provide a written notification of noncompliance to the applicant. Such notification shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(b) When each noncompliance has been resolved, the Program Manager will send the applicant a written notification of noncompliance resolution and proceed with further processing of the application.

(c) If an applicant fails to correct the noncompliances, fails to report the corrections by the date specified in the notification of noncompliance, fails to file a rebuttal of the notification of noncompliance by the date specified, or is unsuccessful in its rebuttal, the Program Manager will provide the applicant with written notification of accreditation denial. An applicant who has received written notification of accreditation denial may apply for accreditation again at any time in accordance with §205.502, or appeal the denial of accreditation in accordance with §205.681 by the date specified in the notification of accreditation denial.

(d) If the certifying agent was accredited prior to the site evaluation and the certifying agent fails to correct the noncompliances, fails to report the corrections by the date specified in the notification of noncompliance, or fails to file a rebuttal of the notification of noncompliance by the date specified, the Administrator will begin proceedings to suspend or revoke the certifying agent’s accreditation. A certifying agent who has had its accreditation suspended may at any time, unless otherwise stated in the notification of suspension, submit a request to the Secretary for reinstatement of its accreditation. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations in this part. A certifying agent whose accreditation is revoked will be ineligible for accreditation for a period of not less than 3 years following the date of such determination.

§ 205.508 Site evaluations.

(a) Site evaluations of accredited certifying agents shall be conducted for the purpose of examining the certifying agent’s operations and evaluating its compliance with the Act and the regulations of this part. Site evaluations shall include an on-site review of the certifying agent’s certification procedures, decisions, facilities, administrative and management systems, and production or handling operations certified by the certifying agent. Site evaluations shall be conducted by a representative(s) of the Administrator.

(b) An initial site evaluation of an accreditation applicant shall be conducted before or within a reasonable period of time after issuance of the applicant’s "notification of accreditation." A site evaluation shall be conducted after application for renewal of accreditation but prior to the issuance of a notice of renewal of accreditation. One or more site evaluations will be conducted during the period of accreditation to determine whether an accredited certifying agent is complying with the general requirements set forth in §205.501.

§ 205.509 Peer review panel.

The Administrator shall establish a peer review panel pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2 et seq.). The peer review panel shall be composed of not less than 3 members who shall annually evaluate the National Organic Program’s adherence to the accreditation procedures in this subpart F and ISO/IEC Guide 61, General requirements for assessment and accreditation of certification/registration bodies, and
the National Organic Program's accreditation decisions. This shall be accomplished through the review of accreditation procedures, document review and site evaluation reports, and accreditation decision documents or documentation. The peer review panel shall report its finding, in writing, to the National Organic Program's Program Manager.

§ 205.510 Annual report, recordkeeping, and renewal of accreditation.

(a) Annual report and fees. An accredited certifying agent must submit annually to the Administrator, on or before the anniversary date of the issuance of the notification of accreditation, the following reports and fees:

(1) A complete and accurate update of information submitted pursuant to §§205.503 and 205.504;

(2) Information supporting any changes being requested in the areas of accreditation described in §205.500;

(3) A description of the measures implemented in the previous year and any measures to be implemented in the coming year to satisfy any terms and conditions determined by the Administrator to be necessary, as specified in the most recent notification of accreditation or notice of renewal of accreditation;

(4) The results of the most recent performance evaluations and annual program review and a description of adjustments to the certifying agent's operation and procedures implemented or to be implemented in response to the performance evaluations and program review; and

(5) The fees required in §205.640(a).

(b) Recordkeeping. Certifying agents must maintain records according to the following schedule:

(1) Records obtained from applicants for certification and certified operations must be maintained for not less than 5 years beyond their receipt;

(2) Records created by the certifying agent regarding applicants for certification and certified operations must be maintained for not less than 10 years beyond their creation; and

(3) Records created or received by the certifying agent pursuant to the accreditation requirements of this subpart F, excluding any records covered by §§205.510(b)(2), must be maintained for not less than 5 years beyond their creation or receipt.

(c) Renewal of accreditation. (1) The Administrator shall send the accredited certifying agent a notice of pending expiration of accreditation approximately 1 year prior to the scheduled date of expiration.

(2) An accredited certifying agent's application for accreditation renewal must be received at least 6 months prior to the fifth anniversary of issuance of the notification of accreditation and each subsequent renewal of accreditation. The accreditation of certifying agents who make timely application for renewal of accreditation will not expire during the renewal process. The accreditation of certifying agents who fail to make timely application for renewal of accreditation will expire as scheduled unless renewed prior to the scheduled expiration date. Certifying agents with an expired accreditation must not perform certification activities under the Act and the regulations of this part.

(3) Following receipt of the information submitted by the certifying agent in accordance with paragraph (a) of this section and the results of a site evaluation, the Administrator will determine whether the certifying agent remains in compliance with the Act and the regulations of this part and should have its accreditation renewed.

(d) Notice of renewal of accreditation. Upon a determination that the certifying agent is in compliance with the Act and the regulations of this part, the Administrator will issue a notice of renewal of accreditation. The notice of renewal will specify any terms and conditions that must be addressed by the certifying agent and the time within which those terms and conditions must be satisfied.

(e) Noncompliance. Upon a determination that the certifying agent is not in compliance with the Act and the regulations of this part, the Administrator will initiate proceedings to suspend or revoke the certifying agent's accreditation.

(f) Amending accreditation. Amendment to scope of an accreditation may
be requested at any time. The application for amendment shall be sent to the Administrator and shall contain information applicable to the requested change in accreditation, a complete and accurate update of the information submitted pursuant to §§205.503 and 205.504, and the applicable fees required in §205.640.

§§205.511–205.599 [Reserved]

Subpart G—Administrative

THE NATIONAL LIST OF ALLOWED AND PROHIBITED SUBSTANCES

§ 205.600 Evaluation criteria for allowed and prohibited substances, methods, and ingredients.

The following criteria will be utilized in the evaluation of substances or ingredients for the organic production and handling sections of the National List:

(a) Synthetic and nonsynthetic substances considered for inclusion on or deletion from the National List of allowed and prohibited substances will be evaluated using the criteria specified in the Act (7 U.S.C. 6517 and 6518).

(b) In addition to the criteria set forth in the Act, any synthetic substance used as a processing aid or adjuvant will be evaluated against the following criteria:

(1) The substance cannot be produced from a natural source and there are no organic substitutes;

(2) The substance’s manufacture, use, and disposal do not have adverse effects on the environment and are done in a manner compatible with organic handling;

(3) The nutritional quality of the food is maintained when the substance is used, and the substance, itself, or its breakdown products do not have an adverse effect on human health as defined by applicable Federal regulations;

(4) The substance’s primary use is not as a preservative or to recreate or improve flavors, colors, textures, or nutritive value lost during processing, except where the replacement of nutrients is required by law;

(5) The substance is listed as generally recognized as safe (GRAS) by Food and Drug Administration (FDA) when used in accordance with FDA’s good manufacturing practices (GMP) and contains no residues of heavy metals or other contaminants in excess of tolerances set by FDA; and

(6) The substance is essential for the handling of organically produced agricultural products.

(c) Nonsynthetics used in organic processing will be evaluated using the criteria specified in the Act (7 U.S.C. 6517 and 6518).

§ 205.601 Synthetic substances allowed for use in organic crop production.

In accordance with restrictions specified in this section, the following synthetic substances may be used in organic crop production:

(a) As algicide, disinfectants, and sanitizer, including irrigation system cleaning systems.

(1) Alcohols.

(ii) Ethanol.

(ii) Isopropanol.

(2) Chlorine materials—Except, That, residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act.

(i) Calcium hypochlorite.

(ii) Chlorine dioxide.

(iii) Sodium hypochlorite.

(3) Hydrogen peroxide.

(4) Soap-based algicide/demisters.

(b) As herbicides, weed barriers, as applicable.

(1) Herbicides, soap-based—for use in farmstead maintenance (roadways, ditches, right of ways, building perimeters) and ornamental crops.

(2) Mulches.

(i) Newspaper or other recycled paper, without glossy or colored inks.

(ii) Plastic mulch and covers (petroleum-based other than polyvinyl chloride (PVC)).

(c) As compost feedstocks—Newspapers or other recycled paper, without glossy or colored inks.

(d) As animal repellents—Soaps, ammonium—for use as a large animal repellent only, no direct contact with soil or edible portion of crop.

(1) Ammonium carbonate—for use as bait in insect traps only, no direct contact with crop or soil.
§ 205.602 Nonsynthetic substances prohibited for use in organic crop production.

The following nonsynthetic substances may not be used in organic crop production:

(a) Ash from manure burning.
(b) Arsenic.
(c) Lead salts.
(d) Sodium fluoaluminate (mined).
(e) Strychnine.
(f) Tobacco dust (nicotine sulfate).
(g) Potassium chloride—unless derived from a mined source and applied in a manner that minimizes chloride accumulation in the soil.
(h) Sodium nitrate—unless use is restricted to no more than 20% of the crop's total nitrogen requirement.

(1) Boric acid—structural pest control, no direct contact with organic food or crops.
(2) Lime sulfur
(3) Oils, horticultural—narrow range oils as dormant, suffocating, and summer oils.
(4) Soaps, insecticidal.
(5) Elemental sulfur.
(6) Lime sulfur—includes calcium polysulfide.
(7) Oils, horticultural—narrow range oils as dormant, suffocating, and summer oils.
(8) Potassium bicarbonate.
(9) Streptomycin, for fire blight control in apples and pears only.
(10) Tetracycline (oxytetracycline calcium complex), for fire blight control only.
§ 205.603 Synthetic substances allowed for use in organic livestock production.

In accordance with restrictions specified in this section the following synthetic substances may be used in organic livestock production:

(a) As disinfectants, sanitizer, and medical treatments as applicable.

(1) Alcohols.

(i) Ethanol—disinfectant and sanitizer only, prohibited as a feed additive.

(ii) Isopropanol—disinfectant only.

(2) Aspirin—approved for health care use to reduce inflammation.

(3) Chlorine materials—disinfecting and sanitizing facilities and equipment. Residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act.

(i) Calcium hypochlorite.

(ii) Chlorine dioxide.

(iii) Sodium hypochlorite.

(4) Chlorohexidine—Allowed for surgical procedures conducted by a veterinarian. Allowed for use as a teat dip when alternative germicidal agents and/or physical barriers have lost their effectiveness.

(5) Electrolytes—without antibiotics.

(6) Glucose.

(7) Glycerin—Allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils.

(8) Iodine.

(9) Hydrogen peroxide.

(10) Magnesium sulfate.

(11) Oxytocin—use in postparturition therapeutic applications.

(12) Parasiticides—Ivermectin—prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder stock when organic system plan-approved preventive management does not prevent infestation. Milk or milk products from a treated animal cannot be labeled as organic and must not be used during the lactation period of breeding stock.

(13) Phosphoric acid—allowed as an equipment cleaner, Provided, That, no direct contact with organically managed livestock or land occurs.

(14) Biologics—Vaccines.

(b) As topical treatment, external parasiticide or local anesthetic as applicable.

(1) Iodine.

(2) Lidocaine—as a local anesthetic. Use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals.

(3) Lime, hydrated—(bordeaux mixes), not permitted to cauterize physical alterations or deodorize animal wastes.

(4) Mineral oil—for topical use and as a lubricant.

(5) Procaine—as a local anesthetic, use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals.

(6) Copper sulfate.

(c) As feed supplements—Milk replacers without antibiotics, as emergency use only, no nonmilk products or products from BST treated animals.

(1) Trace minerals, used for enrichment or fortification when FDA approved, including:

(i) Copper sulfate.

(ii) Magnesium sulfate.

(2) Vitamins, used for enrichment or fortification when FDA approved.

(e) As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or a synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances.

(f) EPA List 4—Inerts of Minimal Concern.

§ 205.604 Nonsynthetic substances prohibited for use in organic livestock production.

The following nonsynthetic substances may not be used in organic livestock production:

(a) Strychnine.

(b)–(z) [Reserved]

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§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s))”

The following nonagricultural substances may be used as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s))” only in accordance with any restrictions specified in this section.

(a) Nonsynthetics allowed:

(1) Acids.
   (i) Alginic.
   (ii) Citric—produced by microbial fermentation of carbohydrate substances.
   (iii) Lactic.

(2) Bentonite.

(3) Calcium carbonate.

(4) Calcium chloride.

(5) Colors, nonsynthetic sources only.

(6) Dairy cultures.

(7) Diatomaceous earth—food filtering aid only.

(8) Enzymes—must be derived from edible, nontoxic plants, nonpathogenic fungi, or nonpathogenic bacteria.

(9) Flavors, nonsynthetic sources only and must not be produced using synthetic solvents and carrier systems or any artificial preservative.

(10) Kaolin.

(11) Magnesium sulfate, nonsynthetic sources only.

(12) Nitrogen—oil-free grades.

(13) Oxygen—oil-free grades.

(14) Perlite—for use only as a filter aid in food processing.

(15) Potassium chloride.

(16) Potassium iodide.

(17) Sodium bicarbonate.

(18) Sodium carbonate.

(19) Waxes—nonsynthetic.
   (i) Carnauba wax.
   (ii) Wood resin.

(20) Yeast—nonsynthetic, growth on petrochemical substrate and sulfite waste liquor is prohibited.
   (i) Autolysate.
   (ii) Bakers.
   (iii) Brewers.
   (iv) Nutritional.
   (v) Smoked—nonsynthetic smoke flavoring process must be documented.

(b) Synthetics allowed:

(1) Alginates.

(2) Ammonium bicarbonate—for use only as a leavening agent.
Agricultural Marketing Service, USDA

§ 205.621

(a) Potassium iodide—for use only in agricultural products labeled “made with organic (specified ingredients or food group(s)),” prohibited in agricultural products labeled “organic.”

(b) Potassium phosphate—for use only in agricultural products labeled “made with organic (specified ingredients or food group(s)),” prohibited in agricultural products labeled “organic.”

(c) Silicon dioxide.

(d) Sodium citrate.

(e) Xanthan gum.

(c)-(z) [Reserved]

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)).”

The following nonorganically produced agricultural products may be used as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)).”

(a) Cornstarch (native)

(b) Gums—water extracted only (arabic, guar, locust bean, carob bean)

(c) Kelp—for use only as a thickener and dietary supplement

(d) Lecithin—unbleached

(e) Pectin (high-methoxy)

§ 205.607 Amending the National List.

(a) Any person may petition the National Organic Standard Board for the purpose of having a substance evaluated by the Board for recommendation to the Secretary for inclusion or deletion from the National List in accordance with the Act.

(b) A person petitioning for amendment of the National List should request a copy of the petition procedures from the USDA at the address in §205.607(c).

(c) A petition to amend the National List must be submitted to: Program Manager, USDA/AMS/TMP/NOP, Room 2945, South Building, P.O. Box 96456, Washington, DC 20090-6456.

§§ 205.608–205.619 [Reserved]

STATE ORGANIC PROGRAMS

§ 205.620 Requirements of State organic programs.

(a) A State may establish a State organic program for production and handling operations within the State which produce and handle organic agricultural products.

(b) A State organic program must meet the requirements for organic programs specified in the Act.

(c) A State organic program may contain more restrictive requirements because of environmental conditions or the necessity of specific production or handling practices particular to the State or region of the United States.

(d) A State organic program must assume enforcement obligations in the State for the requirements of this part and any more restrictive requirements approved by the Secretary.

(e) A State organic program and any amendments to such program must be approved by the Secretary prior to being implemented by the State.

§ 205.621 Submission and determination of proposed State organic programs and amendments to approved State organic programs.

(a) A State organic program’s governing State official must submit to the Secretary a proposed State organic program and any proposed amendments to such approved program.

(1) Such submission must contain supporting materials that include statutory authorities, program description, documentation of the environmental conditions or specific production and handling practices particular to the
§ 205.622 Review of approved State organic programs.

The Secretary will review a State organic program not less than once during each 5-year period following the date of the initial program approval. The Secretary will notify the State organic program’s governing State official of approval or disapproval of the program within 6 months after initiation of the review.

§§ 205.623–205.639 [Reserved]

FEES

§ 205.640 Fees and other charges for accreditation.

Fees and other charges equal as nearly as may be to the cost of the accreditation services rendered under the regulations, including initial accreditation, review of annual reports, and renewal of accreditation, shall be assessed and collected from applicants for initial accreditation and accredited certifying agents submitting annual reports or seeking renewal of accreditation in accordance with the following provisions:

(a) Fees-for-service. (1) Except as otherwise provided in this section, fees-for-service shall be based on the time required to render the service provided calculated to the nearest 15-minute period, including the review of applications and accompanying documents and information, evaluator travel, the conduct of on-site evaluations, review of annual reports and updated documents and information, and the time required to prepare reports and any other documents in connection with the performance of service. The hourly rate shall be the same as that charged by the Agricultural Marketing Service, through its Quality Systems Certification Program, to certification bodies requesting conformity assessment to the International Organization for Standardization “General Requirements for Bodies Operating Product Certification Systems” (ISO Guide 65).

(2) Applicants for initial accreditation and accredited certifying agents submitting annual reports or seeking renewal of accreditation during the first 18 months following the effective date of subpart F of this part shall receive service without incurring an hourly charge for service.

(3) Applicants for initial accreditation and renewal of accreditation must pay at the time of application, effective 18 months following February 20, 2001, a nonrefundable fee of $500.00 which shall be applied to the applicant’s fees-for-service account.

(b) Travel charges. When service is requested at a place so distant from the evaluator’s headquarters that a total of one-half hour or more is required for the evaluator(s) to travel to the next place of assignment on circuitous routing, the charge for such service shall include a mileage charge administratively determined by the U.S. Department of Agriculture and travel tolls, if applicable, or such travel prorated among all the applicants and certifying agents furnished the
§205.642 Fees and other charges for certification.

Fees charged by a certifying agent must be reasonable, and a certifying agent shall charge applicants for certification and certified production and handling operations only those fees and charges that it has filed with the Administrator. The certifying agent shall provide each applicant with an estimate of the total cost of certification and an estimate of the annual cost of updating the certification. The certifying agent may require applicants for certification to pay at the time of application a nonrefundable fee which shall be applied to the applicant’s fees-for-service account. The certifying agent may set the nonrefundable portion of certification fees; however, the nonrefundable portion of certification fees must be explained in the fee schedule submitted to the Administrator. The fee schedule must explain what fee amounts are nonrefundable and at what stage during the certification process fees become nonrefundable. The certifying agent shall provide all persons inquiring about the application process with a copy of its fee schedule.
§§ 205.643–205.649 [Reserved]

COMPLIANCE

§ 205.660 General.

(a) The National Organic Program’s Program Manager, on behalf of the Secretary, may inspect and review certified production and handling operations and accredited certifying agents for compliance with the Act or regulations in this part.

(b) The Program Manager may initiate suspension or revocation proceedings against a certified operation:

(1) When the Program Manager has reason to believe that a certified operation has violated or is not in compliance with the Act or regulations in this part; or

(2) When a certifying agent of a State organic program’s governing State official fails to take appropriate action to enforce the Act or regulations in this part.

(c) The Program Manager may initiate suspension or revocation of a certifying agent’s accreditation if the certifying agent fails to meet, conduct, or maintain accreditation requirements pursuant to the Act or this part.

(d) Each notification of noncompliance, rejection of mediation, noncompliance resolution, proposed suspension or revocation, and suspension or revocation issued pursuant to §205.662, §205.663, and §205.665 and each response to such notification must be sent to the recipient’s place of business via a delivery service which provides dated return receipts.

§ 205.661 Investigation of certified operations.

(a) A certifying agent may investigate complaints of noncompliance with the Act or regulations of this part concerning production and handling operations certified as organic by the certifying agent. A certifying agent must notify the Program Manager of all compliance proceedings and actions taken pursuant to this part.

(b) A State organic program’s governing State official may investigate complaints of noncompliance with the Act or regulations in this part concerning organic production or handling operations operating in the State.

§ 205.662 Noncompliance procedure for certified operations.

(a) Notification. When an inspection, review, or investigation of a certified operation by a certifying agent or a State organic program’s governing State official reveals any noncompliance with the Act or regulations in this part, a written notification of noncompliance shall be sent to the certified operation. Such notification shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the certified operation must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(b) Resolution. When a certified operation demonstrates that each noncompliance has been resolved, the certifying agent or the State organic program’s governing State official, as applicable, shall send the certified operation a written notification of noncompliance resolution.

(c) Proposed suspension or revocation. When rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, the certifying agent or State organic program’s governing State official shall send the certified operation a written notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the noncompliance. When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation of certification may be combined in one notification. The notification of proposed suspension or revocation of certification shall state:

(1) The reasons for the proposed suspension or revocation;

(2) The proposed effective date of such suspension or revocation;

(3) The impact of a suspension or revocation on future eligibility for certification; and

(4) The right to request mediation pursuant to §205.663 or to file an appeal pursuant to §205.681.
(d) **Willful violations.** Notwithstanding paragraph (a) of this section, if a certifying agent or State organic program’s governing State official has reason to believe that a certified operation has willfully violated the Act or regulations in this part, the certifying agent or State organic program’s governing State official shall send the certified operation a notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the noncompliance.

(e) **Suspension or revocation.** (1) If the certified operation fails to correct the noncompliance, to resolve the issue through rebuttal or mediation, or to file an appeal of the proposed suspension or revocation of certification, the certifying agent or State organic program’s governing State official shall send the certified operation a written notification of suspension or revocation.

(2) A certifying agent or State organic program’s governing State official must not send a notification of suspension or revocation to a certified operation that has requested mediation pursuant to §205.663 or filed an appeal pursuant to §205.681, while final resolution of either is pending.

(f) **Eligibility.** (1) A certified operation whose certification has been suspended under this section may at any time, unless otherwise stated in the notification of suspension, submit a request to the Secretary for reinstatement of its certification. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations in this part.

(2) A certified operation or a person responsibly connected with an operation whose certification has been revoked will be ineligible to receive certification for a period of 5 years following the date of such revocation, Except, That, the Secretary may, when in the best interest of the certification program, reduce or eliminate the period of ineligibility.

(g) **Violations of Act.** In addition to suspension or revocation, any certified operation that:

(1) Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than $10,000 per violation.

(2) Makes a false statement under the Act to the Secretary, a State organic program’s governing State official, or a certifying agent shall be subject to the provisions of section 1001 of title 18, United States Code.

§ 205.663 **Mediation.**

Any dispute with respect to denial of certification or proposed suspension or revocation of certification under this part may be mediated at the request of the applicant for certification or certified operation and with acceptance by the certifying agent. Mediation shall be requested in writing to the applicable certifying agent. If the certifying agent rejects the request for mediation, the certifying agent shall provide written notification to the applicant for certification or certified operation. The written notification shall advise the applicant for certification or certified operation of the right to request an appeal, pursuant to §205.681, within 30 days of the date of the written notification of rejection of the request for mediation. If mediation is accepted by the certifying agent, such mediation shall be conducted by a qualified mediator mutually agreed upon by the parties to the mediation. If a State organic program is in effect, the mediation procedures established in the State organic program, as approved by the Secretary, will be followed. The parties to the mediation shall have no more than 30 days to reach an agreement following a mediation session. If mediation is unsuccessful, the applicant for certification or certified operation shall have 30 days from termination of mediation to appeal the certifying agent’s decision pursuant to §205.681. Any agreement reached during or as a result of the mediation process shall be in compliance with the Act and the regulations in this part. The Secretary may review any mediated agreement for conformity to the Act and the regulations in this part and may reject any agreement or provision not in conformance.
§ 205.664 Noncompliance procedure for certifying agents.

(a) Notification. When an inspection, review, or investigation of an accredited certifying agent by the Program Manager reveals any noncompliance with the Act or regulations in this part, a written notification of noncompliance shall be sent to the certifying agent. Such notification shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the certifying agent must rebut or correct each noncompliance and submit supporting documentation of each correction when correction is possible.

(b) Resolution. When the certifying agent demonstrates that each noncompliance has been resolved, the Program Manager shall send the certifying agent a written notification of noncompliance resolution.

(c) Proposed suspension or revocation. When rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, the Program Manager shall send a written notification of proposed suspension or revocation of accreditation to the certifying agent. The notification of proposed suspension or revocation shall state whether the certifying agent’s accreditation or specified areas of accreditation are to be suspended or revoked. When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation may be combined in one notification. The notification of proposed suspension or revocation of accreditation shall state:

(1) The reasons for the proposed suspension or revocation;

(2) The proposed effective date of the suspension or revocation;

(3) The impact of a suspension or revocation on future eligibility for accreditation; and

(4) The right to file an appeal pursuant to § 205.681.

(d) Willful violations. Notwithstanding paragraph (a) of this section, if the Program Manager has reason to believe that a certifying agent has willfully violated the Act or regulations in this part, the Program Manager shall send a written notification of proposed suspension or revocation of accreditation to the certifying agent.

(e) Suspension or revocation. When the accredited certifying agent fails to file an appeal of the proposed suspension or revocation of accreditation, the Program Manager shall send a written notice of suspension or revocation of accreditation to the certifying agent.

(f) Cessation of certification activities. A certifying agent whose accreditation is suspended or revoked must:

(1) Cease all certification activities in each area of accreditation and in each State for which its accreditation is suspended or revoked.

(2) Transfer to the Secretary and make available to any applicable State organic program’s governing State official all records concerning its certification activities that were suspended or revoked.

(g) Eligibility. (1) A certifying agent whose accreditation is suspended by the Secretary under this section may at any time, unless otherwise stated in the notification of suspension, submit a request to the Secretary for reinstatement of its accreditation. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations in this part.

(2) A certifying agent whose accreditation is revoked by the Secretary shall be ineligible to be accredited as a certifying agent under the Act and the regulations in this part for a period of not less than 3 years following the date of such revocation.

§§ 205.666–205.667 [Reserved]

§ 205.668 Noncompliance procedures under State organic programs.

(a) A State organic program’s governing State official must promptly notify the Secretary of commencement of any noncompliance proceeding
Agricultural Marketing Service, USDA

§ 205.671

against a certified operation and forward to the Secretary a copy of each notice issued.

(b) A noncompliance proceeding, brought by a State organic program’s governing State official against a certified operation, shall be appealable pursuant to the appeal procedures of the State organic program. There shall be no subsequent rights of appeal to the Secretary. Final decisions of a State may be appealed to the United States District Court for the district in which such certified operation is located.

(c) A State organic program’s governing State official may review and investigate complaints of noncompliance with the Act or regulations concerning accreditation of certifying agents operating in the State. When such review or investigation reveals any noncompliance, the State organic program’s governing State official shall send a written report of noncompliance to the Program Manager. The report shall provide a description of each noncompliance and the facts upon which the noncompliance is based.

§ 205.669 [Reserved]

INSPECTION AND TESTING, REPORTING, AND EXCLUSION FROM SALE

§ 205.670 Inspection and testing of agricultural product to be sold or labeled “organic.”

(a) All agricultural products that are to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must be made accessible by certified organic production or handling operations for examination by the Administrator, the applicable State organic program’s governing State official, or the certifying agent.

(b) The Administrator, applicable State organic program’s governing State official, or the certifying agent may require preharvest or postharvest testing of any agricultural input used or agricultural product to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” when there is reason to believe that the agricultural input or product has come into contact with a prohibited substance or has been produced using excluded methods. Such tests must be conducted by the applicable State organic program’s governing State official or the certifying agent at the official’s or certifying agent’s own expense.

(c) The preharvest or postharvest tissue test sample collection pursuant to paragraph (b) of this section must be performed by an inspector representing the Administrator, applicable State organic program’s governing State official, or certifying agent. Sample integrity must be maintained throughout the chain of custody, and residue testing must be performed in an accredited laboratory. Chemical analysis must be made in accordance with the methods described in the most current edition of the Official Methods of Analysis of the AOAC International or other current applicable validated methodology determining the presence of contaminants in agricultural products.

(d) Results of all analyses and tests performed under this section:

(1) Must be promptly provided to the Administrator; except, that, where a State organic program exists, all test results and analyses shall be provided to the State organic program’s governing State official by the applicable certifying party that requested testing; and

(2) Will be available for public access, unless the testing is part of an ongoing compliance investigation.

(e) If test results indicate a specific agricultural product contains pesticide residues or environmental contaminants that exceed the Food and Drug Administration’s or the Environmental Protection Agency’s regulatory tolerances, the certifying agent must promptly report such data to the Federal health agency whose regulatory tolerance or action level has been exceeded.

§ 205.671 Exclusion from organic sale.

When residue testing detects prohibited substances at levels that are greater than 5 percent of the Environmental Protection Agency’s tolerance
for the specific residue detected or unavoidable residual environmental contamination, the agricultural product must not be sold, labeled, or represented as organically produced. The Administrator, the applicable State organic program’s governing State official, or the certifying agent may conduct an investigation of the certified operation to determine the cause of the prohibited substance.

§ 205.672 Emergency pest or disease treatment.

When a prohibited substance is applied to a certified operation due to a Federal or State emergency pest or disease treatment program and the certified operation otherwise meets the requirements of this part, the certification status of the operation shall not be affected as a result of the application of the prohibited substance: Provided, That:

(a) Any harvested crop or plant part to be harvested that has contact with a prohibited substance applied as the result of a Federal or State emergency pest or disease treatment program cannot be sold, labeled, or represented as organically produced; and

(b) Any livestock that are treated with a prohibited substance applied as the result of a Federal or State emergency pest or disease treatment program or product derived from such treated livestock cannot be sold, labeled, or represented as organically produced: Except, That:

(1) Milk or milk products may be sold, labeled, or represented as organically produced beginning 12 months following the last date that the dairy animal was treated with the prohibited substance; and

(2) The offspring of gestating mammalian breeder stock treated with a prohibited substance may be considered organic: Provided, That, the breeder stock was not in the last third of gestation on the date that the breeder stock was treated with the prohibited substance.

§§ 205.673–205.679 [Reserved]

ADVERSE ACTION APPEAL PROCESS

§ 205.680 General.

(a) Persons subject to the Act who believe they are adversely affected by a noncompliance decision of the National Organic Program’s Program Manager may appeal such decision to the Administrator.

(b) Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of a State organic program may appeal such decision to the State organic program’s governing State official who will initiate handling of the appeal pursuant to appeal procedures approved by the Secretary.

(c) Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of a certifying agent may appeal such decision to the Administrator, Except, That, when the person is subject to an approved State organic program, the appeal must be made to the State organic program.

(d) All written communications between parties involved in appeal proceedings must be sent to the recipient’s place of business by a delivery service which provides dated return receipts.

(e) All appeals shall be reviewed, heard, and decided by persons not involved with the decision being appealed.

§ 205.681 Appeals.

(a) Certification appeals. An applicant for certification may appeal a certifying agent’s notice of denial of certification, and a certified operation may appeal a certifying agent’s notification of proposed suspension or revocation of certification to the Administrator, Except, That, when the applicant or certified operation is subject to an approved State organic program the appeal must be made to the State organic program which will carry out the appeal pursuant to the State organic program’s appeal procedures approved by the Secretary.
Agricultural Marketing Service, USDA

§§ 205.691–205.699

(1) If the Administrator or State organic program sustains a certification applicant’s or certified operation’s appeal of a certifying agent’s decision, the applicant will be issued organic certification, or a certified operation will continue its certification, as applicable to the operation. The act of sustaining the appeal shall not be an adverse action subject to appeal by the affected certifying agent.

(2) If the Administrator or State organic program denies an appeal, a formal administrative proceeding will be initiated to deny, suspend, or revoke the certification. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture’s Uniform Rules of Practice or the State organic program’s rules of procedure.

(b) Accreditation appeals. An applicant for accreditation and an accredited certifying agent may appeal the Program Manager’s denial of accreditation or proposed suspension or revocation of accreditation to the Administrator.

(1) If the Administrator sustains an appeal, an applicant will be issued accreditation, or a certifying agent will continue its accreditation, as applicable to the operation.

(2) If the Administrator denies an appeal, a formal administrative proceeding to deny, suspend, or revoke the accreditation will be initiated. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture’s Uniform Rules of Practice, 7 CFR part 1, Subpart H.

(c) Filing period. An appeal of a non-compliance decision must be filed within the time period provided in the letter of notification or within 30 days from receipt of the notification, whichever occurs later. The appeal will be considered “filed” on the date received by the Administrator or by the State organic program. A decision to deny, suspend, or revoke certification or accreditation will become final and non-appealable unless the decision is appealed in a timely manner.

(d) Where and what to file. (1) Appeals to the Administrator must be filed in writing and addressed to Administrator, USDA–AMS, Room 3071–S, P.O. Box 96456, Washington, DC 20090–6456.

(2) Appeals to the State organic program must be filed in writing to the address and person identified in the letter of notification.

(3) All appeals must include a copy of the adverse decision and a statement of the appellant’s reasons for believing that the decision was not proper or made in accordance with applicable program regulations, policies, or procedures.

§§ 205.682–205.689 [Reserved]

MISCELLANEOUS

§ 205.690 OMB control number.

The control number assigned to the information collection requirements in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB number 0581–0181.

§§ 205.691–205.699 [Reserved]

PARTS 206–209 [Reserved]
FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Material Approved for Incorporation by Reference
Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected
Material Approved for Incorporation by Reference
(Revised as of January 1, 2001)

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

7 CFR (PARTS 53–209)
AGRICULTURAL MARKETING SERVICE, DEPARTMENT OF AGRICULTURE

Association of Official Seed Analysts
Secretary Treasurer, AOSA, c/o U.S. Department of Agriculture, Seed Standardization Branch, Rm. 213, Bldg. 306, Agricultural Research Center, Beltsville, MD 20705


Table of CFR Titles and Chapters
(Revised as of January 1, 2001)

**Title 1—General Provisions**

I Administrative Committee of the Federal Register (Parts 1—49)
II Office of the Federal Register (Parts 50—299)
IV Miscellaneous Agencies (Parts 400—500)

**Title 2—[Reserved]**

**Title 3—The President**

I Executive Office of the President (Parts 100—199)

**Title 4—Accounts**

I General Accounting Office (Parts 1—99)

**Title 5—Administrative Personnel**

I Office of Personnel Management (Parts 1—1199)
II Merit Systems Protection Board (Parts 1200—1299)
III Office of Management and Budget (Parts 1300—1399)
V The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI Federal Retirement Thrift Investment Board (Parts 1600—1699)
VII Advisory Commission on Intergovernmental Relations (Parts 1700—1799)
VIII Office of Special Counsel (Parts 1800—1899)
IX Appalachian Regional Commission (Parts 1900—1999)
XI Armed Forces Retirement Home (Part 2100)
XIV Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)
XV Office of Administration, Executive Office of the President (Parts 2500—2599)
XVI Office of Government Ethics (Parts 2600—2699)
XXI Department of the Treasury (Parts 3100—3199)
XXII Federal Deposit Insurance Corporation (Part 3201)
XXIII Department of Energy (Part 3301)
XXIV Federal Energy Regulatory Commission (Part 3401)
Title 5—Administrative Personnel—Continued

XXV Department of the Interior (Part 3501)
XXVI Department of Defense (Part 3601)
XXVIII Department of Justice (Part 3801)
XXIX Federal Communications Commission (Parts 3900—3999)
XXX Farm Credit System Insurance Corporation (Parts 4000—4099)
XXXI Farm Credit Administration (Parts 4100—4199)
XXXIII Overseas Private Investment Corporation (Part 4301)
XXXV Office of Personnel Management (Part 4501)
XL Interstate Commerce Commission (Part 5001)
XLI Commodity Futures Trading Commission (Part 5101)
XLII Department of Labor (Part 5201)
XLIII National Science Foundation (Part 5301)
XLV Department of Health and Human Services (Part 5501)
XLVI Federal Trade Commission (Part 5701)
XLVIII Nuclear Regulatory Commission (Part 5801)
L Department of Transportation (Part 6001)
LII Export-Import Bank of the United States (Part 6201)
LIII Department of Education (Parts 6300—6399)
LIV Environmental Protection Agency (Part 6401)
LVII General Services Administration (Part 6701)
LVIII Board of Governors of the Federal Reserve System (Part 6801)
LIX National Aeronautics and Space Administration (Part 6901)
LX United States Postal Service (Part 7001)
LXI National Labor Relations Board (Part 7101)
LXII Equal Employment Opportunity Commission (Part 7201)
LXIII Inter-American Foundation (Part 7301)
LXV Department of Housing and Urban Development (Part 7501)
LXVI National Archives and Records Administration (Part 7601)
LXIX Tennessee Valley Authority (Part 7901)
LXXI Consumer Product Safety Commission (Part 8101)
LXXIII Department of Agriculture (Part 8301)
LXXIV Federal Mine Safety and Health Review Commission (Part 8401)
LXXVI Federal Retirement Thrift Investment Board (Part 8601)
LXXVII Office of Management and Budget (Part 8701)

Title 6—[Reserved]

Title 7—Agriculture

SUBTITLE A—Office of the Secretary of Agriculture (Parts 0—26)
SUBTITLE B—Regulations of the Department of Agriculture
Title 7—Agriculture—Continued

I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

II Food and Nutrition Service, Department of Agriculture (Parts 210—299)

III Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

IV Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

V Agricultural Research Service, Department of Agriculture (Parts 500—599)

VI Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)

VII Farm Service Agency, Department of Agriculture (Parts 700—799)

VIII Grain Inspection, Packers and Stockyards Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

XIII Northeast Dairy Compact Commission (Parts 1300—1399)

XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

XV Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

XVI Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)

XVII Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

XVIII Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)

XXVI Office of Inspector General, Department of Agriculture (Parts 2600—2699)

XXVII Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)

XXVIII Office of Operations, Department of Agriculture (Parts 2800—2899)

XXIX Office of Energy, Department of Agriculture (Parts 2900—2999)

XXX Office of the Chief Financial Officer, Department of Agriculture (Parts 3000—3099)

XXXI Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)

XXXII Office of Procurement and Property Management, Department of Agriculture (Parts 3200—3299)
Title 7—Agriculture—Continued

XXXIII Office of Transportation, Department of Agriculture (Parts 3300–3399)

XXXIV Cooperative State Research, Education, and Extension Service, Department of Agriculture (Parts 3400–3499)

XXXV Rural Housing Service, Department of Agriculture (Parts 3500–3599)

XXXVI National Agricultural Statistics Service, Department of Agriculture (Parts 3600–3699)

XXXVII Economic Research Service, Department of Agriculture (Parts 3700–3799)

XXXVIII World Agricultural Outlook Board, Department of Agriculture (Parts 3800–3899)

XLI [Reserved]

XLII Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Parts 4200–4299)

Title 8—Aliens and Nationality

I Immigration and Naturalization Service, Department of Justice (Parts 1–599)

Title 9—Animals and Animal Products

I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1–199)

II Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), Department of Agriculture (Parts 200–299)

III Food Safety and Inspection Service, Department of Agriculture (Parts 300–599)

Title 10—Energy

I Nuclear Regulatory Commission (Parts 0–199)

II Department of Energy (Parts 200–699)

III Department of Energy (Parts 700–999)

X Department of Energy (General Provisions) (Parts 1000–1099)

XVII Defense Nuclear Facilities Safety Board (Parts 1700–1799)

XVIII Northeast Interstate Low-Level Radioactive Waste Commission (Part 1800)

Title 11—Federal Elections

I Federal Election Commission (Parts 1–9099)

Title 12—Banks and Banking

I Comptroller of the Currency, Department of the Treasury (Parts 1–199)
Title 12—Banks and Banking—Continued

II Federal Reserve System (Parts 200—299)
III Federal Deposit Insurance Corporation (Parts 300—399)
IV Export-Import Bank of the United States (Parts 400—499)
V Office of Thrift Supervision, Department of the Treasury (Parts 500—599)
VI Farm Credit Administration (Parts 600—699)
VII National Credit Union Administration (Parts 700—799)
VIII Federal Financing Bank (Parts 800—899)
IX Federal Housing Finance Board (Parts 900—999)
XI Federal Financial Institutions Examination Council (Parts 1100—1199)
XIV Farm Credit System Insurance Corporation (Parts 1400—1499)
XV Department of the Treasury (Parts 1500—1599)
XVII Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1700—1799)
XVIII Community Development Financial Institutions Fund, Department of the Treasury (Parts 1800—1899)

Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1—199)
III Economic Development Administration, Department of Commerce (Parts 300—399)
IV Emergency Steel Guarantee Loan Board (Parts 400—499)
V Emergency Oil and Gas Guaranteed Loan Board (Parts 500—599)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1—199)
II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)
III Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—499)
V National Aeronautics and Space Administration (Parts 1200—1299)

Title 15—Commerce and Foreign Trade

SUBTITLE A—OFFICE OF THE SECRETARY OF COMMERCE (PARTS 0—29)
SUBTITLE B—REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE
I Bureau of the Census, Department of Commerce (Parts 30—199)
II National Institute of Standards and Technology, Department of Commerce (Parts 200—299)
III International Trade Administration, Department of Commerce (Parts 300—399)
Title 15—Commerce and Foreign Trade—Continued

IV Foreign-Trade Zones Board, Department of Commerce (Parts 400—499)
VII Bureau of Export Administration, Department of Commerce (Parts 700—799)
VIII Bureau of Economic Analysis, Department of Commerce (Parts 800—899)
IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)
XI Technology Administration, Department of Commerce (Parts 1100—1199)
XIII East-West Foreign Trade Board (Parts 1300—1399)
XIV Minority Business Development Agency (Parts 1400—1499)

SUBTITLE C—Regulations Relating to Foreign Trade Agreements
XX Office of the United States Trade Representative (Parts 2000—2099)

SUBTITLE D—Regulations Relating to Telecommunications and Information
XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

I Federal Trade Commission (Parts 0—999)
II Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 1—199)
II Securities and Exchange Commission (Parts 200—399)
IV Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)
III Delaware River Basin Commission (Parts 400—499)
VI Water Resources Council (Parts 700—799)
VIII Susquehanna River Basin Commission (Parts 800—899)
XIII Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I United States Customs Service, Department of the Treasury (Parts 1—199)
II United States International Trade Commission (Parts 200—299)
III International Trade Administration, Department of Commerce (Parts 300—399)
Title 20—Employees' Benefits

I Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)
II Railroad Retirement Board (Parts 200—399)
III Social Security Administration (Parts 400—499)
IV Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)
V Employment and Training Administration, Department of Labor (Parts 600—699)
VI Employment Standards Administration, Department of Labor (Parts 700—799)
VII Benefits Review Board, Department of Labor (Parts 800—899)
VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)
IX Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)
II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)
III Office of National Drug Control Policy (Parts 1400—1499)

Title 22—Foreign Relations

I Department of State (Parts 1—199)
II Agency for International Development (Parts 200—299)
III Peace Corps (Parts 300—399)
IV International Joint Commission, United States and Canada (Parts 400—499)
V Broadcasting Board of Governors (Parts 500—599)
VI Overseas Private Investment Corporation (Parts 700—799)
IX Foreign Service Grievance Board Regulations (Parts 900—999)
X Inter-American Foundation (Parts 1000—1099)
XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)
XII United States International Development Cooperation Agency (Parts 1200—1299)
XIII Board for International Broadcasting (Parts 1300—1399)
XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)
XV African Development Foundation (Parts 1500—1599)
XVI Japan-United States Friendship Commission (Parts 1600—1699)
XVII United States Institute of Peace (Parts 1700—1799)
Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1—999)

II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (PARTS 0—99)

SUBTITLE B—REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

II Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

IV Office of Housing and Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development (Parts 400—499)

V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699) [Reserved]

VII Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs, Section 202 Direct Loan Program, Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons With Disabilities Program) (Parts 800—899)

IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)

XI Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)
Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)

III National Indian Gaming Commission, Department of the Interior (Parts 500—599)

IV Office of Navajo and Hopi Indian Relocation (Parts 700—799)

V Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)

VI Office of the Assistant Secretary-Indian Affairs, Department of the Interior (Parts 1000—1199)

VII Office of the Special Trustee for American Indians, Department of the Interior (Part 1200)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1—799)

Title 27—Alcohol, Tobacco Products and Firearms

I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Title 28—Judicial Administration

I Department of Justice (Parts 0—199)

III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)

V Bureau of Prisons, Department of Justice (Parts 500—599)

VI Offices of Independent Counsel, Department of Justice (Parts 600—699)

VII Office of Independent Counsel (Parts 700—799)

Title 29—Labor

Subtitle A—Office of the Secretary of Labor (Parts 0—99)

Subtitle B—Regulations Relating to Labor

I National Labor Relations Board (Parts 100—199)

II Office of Labor-Management Standards, Department of Labor (Parts 200—299)

III National Railroad Adjustment Board (Parts 300—399)

IV Office of Labor-Management Standards, Department of Labor (Parts 400—499)

V Wage and Hour Division, Department of Labor (Parts 500—899)

IX Construction Industry Collective Bargaining Commission (Parts 900—999)

X National Mediation Board (Parts 1200—1299)
Title 29—Labor—Continued

XII Federal Mediation and Conciliation Service (Parts 1400—1499)
XIV Equal Employment Opportunity Commission (Parts 1600—1699)
XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)
XX Occupational Safety and Health Review Commission (Parts 2200—2499)
XXV Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)
XXVII Federal Mine Safety and Health Review Commission (Parts 2700—2799)
XL Pension Benefit Guaranty Corporation (Parts 4000—4999)

Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1—199)
II Minerals Management Service, Department of the Interior (Parts 200—299)
III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300—399)
IV Geological Survey, Department of the Interior (Parts 400—499)
VI Bureau of Mines, Department of the Interior (Parts 600—699)
VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

Title 31—Money and Finance: Treasury

SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY (PARTS 0—50)

SUBTITLE B—REGULATIONS RELATING TO MONEY AND FINANCE

I Monetary Offices, Department of the Treasury (Parts 51—199)
II Fiscal Service, Department of the Treasury (Parts 200—399)
IV Secret Service, Department of the Treasury (Parts 400—499)
V Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)
VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)
VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)
VIII Office of International Investment, Department of the Treasury (Parts 800—899)
IX Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (Parts 900—999)

Title 32—National Defense

SUBTITLE A—DEPARTMENT OF DEFENSE

I Office of the Secretary of Defense (Parts 1—399)
Title 32—National Defense—Continued

V Department of the Army (Parts 400—699)
VI Department of the Navy (Parts 700—799)
VII Department of the Air Force (Parts 800—1099)

Subtitle B—Other Regulations Relating to National Defense

XII Defense Logistics Agency (Parts 1200—1299)
XVI Selective Service System (Parts 1600—1699)
XVIII National Counterintelligence Center (Parts 1800—1899)
XIX Central Intelligence Agency (Parts 1900—1999)
XX Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)
XXI National Security Council (Parts 2100—2199)
XXIV Office of Science and Technology Policy (Parts 2400—2499)
XXVII Office for Micronesian Status Negotiations (Parts 2700—2799)
XXVIII Office of the Vice President of the United States (Parts 2800—2899)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Transportation (Parts 1—199)
II Corps of Engineers, Department of the Army (Parts 200—399)
IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

Subtitle A—Office of the Secretary, Department of Education (Parts 1—99)
Subtitle B—Regulations of the Offices of the Department of Education

I Office for Civil Rights, Department of Education (Parts 100—199)
II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)
III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)
IV Office of Vocational and Adult Education, Department of Education (Parts 400—499)
V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)
VI Office of Postsecondary Education, Department of Education (Parts 600—699)
VII Office of Educational Research and Improvement, Department of Education (Parts 700—799)
XI National Institute for Literacy (Parts 1100—1199)
Subtitle C—Regulations Relating to Education

XII National Council on Disability (Parts 1200—1299)
## Title 35—Panama Canal

I Panama Canal Regulations (Parts 1—299)

## Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1—199)
II Forest Service, Department of Agriculture (Parts 200—299)
III Corps of Engineers, Department of the Army (Parts 300—399)
IV American Battle Monuments Commission (Parts 400—499)
V Smithsonian Institution (Parts 500—599)
VII Library of Congress (Parts 700—799)
VIII Advisory Council on Historic Preservation (Parts 800—899)
IX Pennsylvania Avenue Development Corporation (Parts 900—999)
X Presidio Trust (Parts 1000—1099)
XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)
XII National Archives and Records Administration (Parts 1200—1299)
XV Oklahoma City National Memorial Trust (Part 1501)

## Title 37—Patents, Trademarks, and Copyrights

I United States Patent and Trademark Office, Department of Commerce (Parts 1—199)
II Copyright Office, Library of Congress (Parts 200—299)
IV Assistant Secretary for Technology Policy, Department of Commerce (Parts 400—499)
V Under Secretary for Technology, Department of Commerce (Parts 500—599)

## Title 38—Pensions, Bonuses, and Veterans’ Relief

I Department of Veterans Affairs (Parts 0—99)

## Title 39—Postal Service

I United States Postal Service (Parts 1—999)
III Postal Rate Commission (Parts 3000—3099)

## Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1—799)
IV Environmental Protection Agency and Department of Justice (Parts 1400—1499)
V Council on Environmental Quality (Parts 1500—1599)
VI Chemical Safety and Hazard Investigation Board (Parts 1600—1699)
VII Environmental Protection Agency and Department of Defense; Uniform National Discharge Standards for Vessels of the Armed Forces (Parts 1700—1799)
Title 41—Public Contracts and Property Management

Subtitle B—Other Provisions Relating to Public Contracts

50 Public Contracts, Department of Labor (Parts 50–1—50–999)

51 Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51–1—51–99)

60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60–1—60–999)

61 Office of the Assistant Secretary for Veterans Employment and Training, Department of Labor (Parts 61–1—61–999)

Subtitle C—Federal Property Management Regulations System

101 Federal Property Management Regulations (Parts 101–1—101–99)

102 Federal Management Regulation (Parts 102–1—102–299)

105 General Services Administration (Parts 105–1—105–999)

109 Department of Energy Property Management Regulations (Parts 109–1—109–99)

114 Department of the Interior (Parts 114–1—114–99)

115 Environmental Protection Agency (Parts 115–1—115–99)

128 Department of Justice (Parts 128–1—128–99)

Subtitle D—Other Provisions Relating to Property Management [Reserved]

Subtitle E—Federal Information Resources Management Regulations System

201 Federal Information Resources Management Regulation (Parts 201–1—201–99) [Reserved]

Subtitle F—Federal Travel Regulation System

300 General (Parts 300–1—300–99)

301 Temporary Duty (TDY) Travel Allowances (Parts 301–1—301–99)

302 Relocation Allowances (Parts 302–1—302–99)

303 Payment of Expenses Connected with the Death of Certain Employees (Part 303–70)

304 Payment from a Non-Federal Source for Travel Expenses (Parts 304–1—304–99)

Title 42—Public Health

I Public Health Service, Department of Health and Human Services (Parts 1—199)

IV Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

V Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

Subtitle A—Office of the Secretary of the Interior (Parts 1—199)

Subtitle B—Regulations Relating to Public Lands

439
Title 43—Public Lands: Interior—Continued

I Bureau of Reclamation, Department of the Interior (Parts 200—499)

II Bureau of Land Management, Department of the Interior (Parts 1000—9999)

III Utah Reclamation Mitigation and Conservation Commission (Parts 10000—10005)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency (Parts 0—399)

IV Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH AND HUMAN SERVICES (PARTS 1—199)

SUBTITLE B—REGULATIONS RELATING TO PUBLIC WELFARE

II Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

III Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

IV Office of Refugee Resettlement, Administration for Children and Families Department of Health and Human Services (Parts 400—499)

V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)

VI National Science Foundation (Parts 600—699)

VII Commission on Civil Rights (Parts 700—799)

VIII Office of Personnel Management (Parts 800—899)

X Office of Community Services, Administration for Children and Families, Department of Health and Human Services (Parts 1000—1099)

XI National Foundation on the Arts and the Humanities (Parts 1100—1199)

XII Corporation for National and Community Service (Parts 1200—1299)

XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

XVI Legal Services Corporation (Parts 1600—1699)

XVII National Commission on Libraries and Information Science (Parts 1700—1799)

XVIII Harry S. Truman Scholarship Foundation (Parts 1800—1899)

XXI Commission on Fine Arts (Parts 2100—2199)

XXIII Arctic Research Commission (Part 2301)

XXIV James Madison Memorial Fellowship Foundation (Parts 2400—2499)
Title 45—Public Welfare—Continued

XXV Corporation for National and Community Service (Parts 2500—2599)

Title 46—Shipping

I Coast Guard, Department of Transportation (Parts 1—199)
II Maritime Administration, Department of Transportation (Parts 200—399)
III Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400—499)
IV Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I Federal Communications Commission (Parts 0—199)
II Office of Science and Technology Policy and National Security Council (Parts 200—299)
III National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

Title 48—Federal Acquisition Regulations System

1 Federal Acquisition Regulation (Parts 1—99)
2 Department of Defense (Parts 200—299)
3 Department of Health and Human Services (Parts 300—399)
4 Department of Agriculture (Parts 400—499)
5 General Services Administration (Parts 500—599)
6 Department of State (Parts 600—699)
7 United States Agency for International Development (Parts 700—799)
8 Department of Veterans Affairs (Parts 800—899)
9 Department of Energy (Parts 900—999)
10 Department of the Treasury (Parts 1000—1099)
12 Department of Transportation (Parts 1200—1299)
13 Department of Commerce (Parts 1300—1399)
14 Department of the Interior (Parts 1400—1499)
15 Environmental Protection Agency (Parts 1500—1599)
16 Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)
17 Office of Personnel Management (Parts 1700—1799)
18 National Aeronautics and Space Administration (Parts 1800—1899)
19 Broadcasting Board of Governors (Parts 1900—1999)
20 Nuclear Regulatory Commission (Parts 2000—2099)
21 Office of Personnel Management, Federal Employees Group Life Insurance Federal Acquisition Regulation (Parts 2100—2199)
23 Social Security Administration (Parts 2300—2399)
Title 48—Federal Acquisition Regulations System—Continued

24 Department of Housing and Urban Development (Parts 2400—2499)
25 National Science Foundation (Parts 2500—2599)
28 Department of Justice (Parts 2800—2899)
29 Department of Labor (Parts 2900—2999)
34 Department of Education Acquisition Regulation (Parts 3400—3499)
35 Panama Canal Commission (Parts 3500—3599)
34 Federal Emergency Management Agency (Parts 4400—4499)
44 Department of the Army Acquisition Regulations (Parts 5100—5199)
51 Department of the Navy Acquisition Regulations (Parts 5200—5299)
52 Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399)
53 Defense Logistics Agency, Department of Defense (Part 5452)
57 African Development Foundation (Parts 5700—5799)
61 General Services Administration Board of Contract Appeals (Parts 6100—6199)
63 Department of Transportation Board of Contract Appeals (Parts 6300—6399)
99 Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION (PARTS 1—99)

SUBTITLE B—OTHER REGULATIONS RELATING TO TRANSPORTATION

I Research and Special Programs Administration, Department of Transportation (Parts 100—199)

II Federal Railroad Administration, Department of Transportation (Parts 200—299)

III Federal Motor Carrier Safety Administration, Department of Transportation (Parts 300—399)

IV Coast Guard, Department of Transportation (Parts 400—499)

V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

VI Federal Transit Administration, Department of Transportation (Parts 600—699)

VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)

VIII National Transportation Safety Board (Parts 800—999)

X Surface Transportation Board, Department of Transportation (Parts 1000—1399)

XI Bureau of Transportation Statistics, Department of Transportation (Parts 1400—1499)
Title 50—Wildlife and Fisheries

Chap.

I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

III International Fishing and Related Activities (Parts 300—399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)

V Marine Mammal Commission (Parts 500—599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

CFR Index and Finding Aids

Subject/Agency Index
List of Agency Prepared Indexes
Parallel Tables of Statutory Authorities and Rules
List of CFR Titles, Chapters, Subchapters, and Parts
Alphabetical List of Agencies Appearing in the CFR
### Alphabetical List of Agencies Appearing in the CFR

(Revised as of January 1, 2001)

<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Committee of the Federal Register</td>
<td>1, I</td>
</tr>
<tr>
<td>Advanced Research Projects Agency</td>
<td>32, 1</td>
</tr>
<tr>
<td>Advisory Commission on Intergovernmental Relations</td>
<td>5, VII</td>
</tr>
<tr>
<td>Advisory Council on Historic Preservation</td>
<td>36, VIII</td>
</tr>
<tr>
<td>African Development Foundation</td>
<td>22, XV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 57</td>
</tr>
<tr>
<td>Agency for International Development, United States</td>
<td>22, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 7</td>
</tr>
<tr>
<td>Agricultural Marketing Service</td>
<td>7, I, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Agriculture Department</td>
<td>5, LXXIII</td>
</tr>
<tr>
<td>Agricultural Marketing Service</td>
<td>7, I, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III: 9, I</td>
</tr>
<tr>
<td>Chief Financial Officer, Office of</td>
<td>7, XXX</td>
</tr>
<tr>
<td>Commodity Credit Corporation</td>
<td>7, XIV</td>
</tr>
<tr>
<td>Cooperative State Research, Education, and Extension Service</td>
<td>7, XXXIV</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Energy, Office of</td>
<td>7, XXIX</td>
</tr>
<tr>
<td>Environmental Quality, Office of</td>
<td>7, XXXI</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>7, XVII, XVIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 4</td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation</td>
<td>7, IV</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>7, XXI</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>9, III</td>
</tr>
<tr>
<td>Foreign Agricultural Service</td>
<td>7, XV</td>
</tr>
<tr>
<td>Forest Service</td>
<td>36, II</td>
</tr>
<tr>
<td>Grain Inspection, Packers and Stockyards Administration</td>
<td>7, VIII: 9, II</td>
</tr>
<tr>
<td>Information Resources Management, Office of</td>
<td>7, XXVII</td>
</tr>
<tr>
<td>Inspector General, Office of</td>
<td>7, XXVI</td>
</tr>
<tr>
<td>National Agricultural Library</td>
<td>7, XLI</td>
</tr>
<tr>
<td>National Agricultural Statistics Service</td>
<td>7, XXXVI</td>
</tr>
<tr>
<td>Natural Resources Conservation Service</td>
<td>7, VI</td>
</tr>
<tr>
<td>Operations, Office of</td>
<td>7, XXVIII</td>
</tr>
<tr>
<td>Procurement and Property Management, Office of</td>
<td>7, XXXII</td>
</tr>
<tr>
<td>Rural Business-Cooperative Service</td>
<td>7, XVIII, XLII</td>
</tr>
<tr>
<td>Rural Development Administration</td>
<td>7, XLII</td>
</tr>
<tr>
<td>Rural Housing Service</td>
<td>7, XVIII, XXXV</td>
</tr>
<tr>
<td>Rural Telephone Bank</td>
<td>7, XVI</td>
</tr>
<tr>
<td>Rural Utilities Service</td>
<td>7, XVII, XVIII, XLII</td>
</tr>
<tr>
<td>Secretary of Agriculture, Office of</td>
<td>7, Subtitle A</td>
</tr>
<tr>
<td>Transportation, Office of</td>
<td>7, XXXIII</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXXVIII</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation Supplement</td>
<td>48, 53</td>
</tr>
<tr>
<td>Alcohol, Tobacco and Firearms, Bureau of</td>
<td>27, I</td>
</tr>
<tr>
<td>AMTRAK</td>
<td>49, VII</td>
</tr>
<tr>
<td>American Battle Monuments Commission</td>
<td>36, IV</td>
</tr>
<tr>
<td>American Indians, Office of the Special Trustee</td>
<td>25, VII</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III: 9, I</td>
</tr>
<tr>
<td>Appalachian Regional Commission</td>
<td>5, IX</td>
</tr>
<tr>
<td>Architectural and Transportation Barriers Compliance Board</td>
<td>36, XI</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Arctic Research Commission</td>
<td>45, XXIII</td>
</tr>
<tr>
<td>Armed Forces Retirement Home</td>
<td>5, XI</td>
</tr>
<tr>
<td>Army Department</td>
<td>32, V</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 51</td>
</tr>
<tr>
<td>Benefits Review Board</td>
<td>20, VII</td>
</tr>
<tr>
<td>Bilingual Education and Minority Languages Affairs, Office of</td>
<td>34, V</td>
</tr>
<tr>
<td>Blind or Severely Disabled, Committee for Purchase From</td>
<td>41, 51</td>
</tr>
<tr>
<td>People Who Are</td>
<td></td>
</tr>
<tr>
<td>Board for International Broadcasting</td>
<td>22, XIII</td>
</tr>
<tr>
<td>Broadcasting Board of Governors</td>
<td>22, V</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 19</td>
</tr>
<tr>
<td>Census Bureau</td>
<td>15, I</td>
</tr>
<tr>
<td>Central Intelligence Agency</td>
<td>32, XIX</td>
</tr>
<tr>
<td>Chief Financial Officer, Office of</td>
<td>7, XXX</td>
</tr>
<tr>
<td>Child Support Enforcement, Office of</td>
<td>45, III</td>
</tr>
<tr>
<td>Children and Families, Administration for</td>
<td>45, II, III, IV, X</td>
</tr>
<tr>
<td>Civil Rights, Commission on</td>
<td>45, VII</td>
</tr>
<tr>
<td>Civil Rights, Office for</td>
<td>34, I</td>
</tr>
<tr>
<td>Coast Guard</td>
<td>33, I; 46, I; 49, IV</td>
</tr>
<tr>
<td>Coast Guard (Great Lakes Pilotage)</td>
<td>46, III</td>
</tr>
<tr>
<td>Commerce Department</td>
<td>44, IV</td>
</tr>
<tr>
<td>Census Bureau</td>
<td>15, I</td>
</tr>
<tr>
<td>Economic Affairs, Under Secretary</td>
<td>37, V</td>
</tr>
<tr>
<td>Economic Analysis, Bureau of</td>
<td>15, VIII</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>13, III</td>
</tr>
<tr>
<td>Emergency Management and Assistance</td>
<td>44, IV</td>
</tr>
<tr>
<td>Export Administration, Bureau of</td>
<td>15, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 13</td>
</tr>
<tr>
<td>Fishery Conservation and Management</td>
<td>50, VI</td>
</tr>
<tr>
<td>Foreign-Trade Zones Board</td>
<td>15, IV</td>
</tr>
<tr>
<td>International Trade Administration</td>
<td>15, III; 19, III</td>
</tr>
<tr>
<td>National Institute of Standards and Technology</td>
<td>15, II</td>
</tr>
<tr>
<td>National Marine Fisheries Service</td>
<td>50, II, IV, VI</td>
</tr>
<tr>
<td>National Oceanic and Atmospheric Administration</td>
<td>15, IX; 50, II, III, IV, VI</td>
</tr>
<tr>
<td>National Telecommunications and Information Administration</td>
<td>15, XXIII; 47, III</td>
</tr>
<tr>
<td>National Weather Service</td>
<td>15, IX</td>
</tr>
<tr>
<td>Patent and Trademark Office, United States</td>
<td>37, I</td>
</tr>
<tr>
<td>Productivity, Technology and Innovation, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Secretary for Secretary of Commerce, Office of</td>
<td>15, Subtitle A</td>
</tr>
<tr>
<td>Technology, Under Secretary for</td>
<td>37, V</td>
</tr>
<tr>
<td>Technology Administration</td>
<td>15, XI</td>
</tr>
<tr>
<td>Technology Policy, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>14, III</td>
</tr>
<tr>
<td>Commodity Credit Corporation</td>
<td>7, XIV</td>
</tr>
<tr>
<td>Commodity Futures Trading Commission</td>
<td>5, XLI; 17, I</td>
</tr>
<tr>
<td>Community Planning and Development, Office of Assistant Secretary for</td>
<td>24, V, VI</td>
</tr>
<tr>
<td>Secretary for Community Services, Office of</td>
<td>45, X</td>
</tr>
<tr>
<td>Corporation of the Currency</td>
<td>12, I</td>
</tr>
<tr>
<td>Construction Industry Collective Bargaining Commission</td>
<td>29, IX</td>
</tr>
<tr>
<td>Consumer Product Safety Commission</td>
<td>5, LXXI; 16, II</td>
</tr>
<tr>
<td>Cooperative State Research, Education, and Extension</td>
<td>7, XXXIV</td>
</tr>
<tr>
<td>Copyright Office</td>
<td>37, II</td>
</tr>
<tr>
<td>Corporation for National and Community Service</td>
<td>45, XII, XXV</td>
</tr>
<tr>
<td>Cost Accounting Standards Board</td>
<td>48, 99</td>
</tr>
<tr>
<td>Council on Environmental Quality</td>
<td>40, V</td>
</tr>
<tr>
<td>Customs Service, United States</td>
<td>19, I</td>
</tr>
<tr>
<td>Defense Contract Audit Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Department</td>
<td>5, XXVI; 32, Subtitle A; 40, VII</td>
</tr>
<tr>
<td>Advanced Research Projects Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
<tr>
<td>Army Department</td>
<td>32, V; 33, II; 36, III, 48, 51</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, I, XII; 48, 54</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 2</td>
</tr>
<tr>
<td>National Imagery and Mapping Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Navy Department</td>
<td>32, VI; 48, 52</td>
</tr>
<tr>
<td>Secretary of Defense, Office of</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Contract Audit Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, XII; 48, 54</td>
</tr>
<tr>
<td>Defense Nuclear Facilities Safety Board</td>
<td>10, XVII</td>
</tr>
<tr>
<td>Delaware River Basin Commission</td>
<td>18, III</td>
</tr>
<tr>
<td>Drug Enforcement Administration</td>
<td>21, II</td>
</tr>
<tr>
<td>East-West Foreign Trade Board</td>
<td>15, XIII</td>
</tr>
<tr>
<td>Economic Affairs, Under Secretary</td>
<td>37, V</td>
</tr>
<tr>
<td>Economic Analysis, Bureau of</td>
<td>15, VIII</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>13, III</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Education, Department of</td>
<td>5, LIH</td>
</tr>
<tr>
<td>Bilingual Education and Minority Languages Affairs, Office of</td>
<td>34, V</td>
</tr>
<tr>
<td>Civil Rights, Office for</td>
<td>34, I</td>
</tr>
<tr>
<td>Educational Research and Improvement, Office of</td>
<td>34, VII</td>
</tr>
<tr>
<td>Elementary and Secondary Education, Office of</td>
<td>34, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 34</td>
</tr>
<tr>
<td>Postsecondary Education, Office of</td>
<td>34, VI</td>
</tr>
<tr>
<td>Secretary of Education, Office of</td>
<td>34, Subtitle A</td>
</tr>
<tr>
<td>Special Education and Rehabilitative Services, Office of</td>
<td>34, III</td>
</tr>
<tr>
<td>Vocational and Adult Education, Office of</td>
<td>34, IV</td>
</tr>
<tr>
<td>Educational Research and Improvement, Office of</td>
<td>34, VII</td>
</tr>
<tr>
<td>Elementary and Secondary Education, Office of</td>
<td>34, II</td>
</tr>
<tr>
<td>Emergency Oil and Gas Guaranteed Loan Board</td>
<td>13, V</td>
</tr>
<tr>
<td>Emergency Steel Guarantee Loan Board</td>
<td>13, IV</td>
</tr>
<tr>
<td>Employees' Compensation Appeals Board</td>
<td>20, IV</td>
</tr>
<tr>
<td>Employees Loyalty Board</td>
<td>5, V</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>20, V</td>
</tr>
<tr>
<td>Employment Standards Administration</td>
<td>20, VI</td>
</tr>
<tr>
<td>Endangered Species Committee</td>
<td>50, IV</td>
</tr>
<tr>
<td>Energy, Department of</td>
<td>5, XXXIII; 10, II, III, X</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 9</td>
</tr>
<tr>
<td>Federal Energy Regulatory Commission</td>
<td>5, XXXIV; 18, I</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 109</td>
</tr>
<tr>
<td>Energy, Office of</td>
<td>7, XXXIX</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Engraving and Printing, Bureau of</td>
<td>31, VI</td>
</tr>
<tr>
<td>Environmental Protection Agency</td>
<td>5, LIV; 40, I, IV, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 15</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 115</td>
</tr>
<tr>
<td>Environmental Quality, Office of</td>
<td>7, XXXI</td>
</tr>
<tr>
<td>Equal Employment Opportunity Commission</td>
<td>5, LXII; 29, XIV</td>
</tr>
<tr>
<td>Equal Opportunity, Office of Assistant Secretary for</td>
<td>24, I</td>
</tr>
<tr>
<td>Executive Office of the President</td>
<td>3, I</td>
</tr>
<tr>
<td>Administration, Office of</td>
<td>5, XV</td>
</tr>
<tr>
<td>Environmental Quality, Council on</td>
<td>48, 5</td>
</tr>
<tr>
<td>Management and Budget, Office of</td>
<td>25, III, LXXVII; 48, 99</td>
</tr>
<tr>
<td>National Drug Control Policy, Office of</td>
<td>21, III</td>
</tr>
<tr>
<td>National Security Council</td>
<td>32, XXI; 47, 2</td>
</tr>
<tr>
<td>Presidential Documents</td>
<td>3</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of</td>
<td>32, XXIV; 47, II</td>
</tr>
<tr>
<td>Trade Representative, Office of the United States</td>
<td>15, XX</td>
</tr>
<tr>
<td>Export Administration, Bureau of</td>
<td>15, VII</td>
</tr>
<tr>
<td>Export-Import Bank of the United States</td>
<td>5, LII; 12, IV</td>
</tr>
<tr>
<td>Family Assistance, Office of</td>
<td>45, II</td>
</tr>
<tr>
<td>Farm Credit Administration</td>
<td>5, XXXI; 12, VI</td>
</tr>
<tr>
<td>Farm Credit System Insurance Corporation</td>
<td>5, XXX; 12, XIV</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>7, VII, XVIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 1</td>
</tr>
</tbody>
</table>
Federal Aviation Administration 14, I
Commercial Space Transportation 14, III
Federal Claims Collection Standards 31, IX
Federal Communications Commission 5, XXIX; 47, I
Federal Contract Compliance Programs, Office of 41, 60
Federal Crop Insurance Corporation 7, IV
Federal Deposit Insurance Corporation 5, XXII; 12, III
Federal Election Commission 11, I
Federal Emergency Management Agency 44, I
Federal Acquisition Regulation 48, 44
Federal Employees Group Life Insurance Federal Acquisition Regulation 48, 21
Federal Employees Health Benefits Acquisition Regulation 48, 16
Federal Energy Regulatory Commission 12, XI
Federal Financial Institutions Examination Council 12, VIII
Federal Highway Administration 23, I, II
Federal Home Loan Mortgage Corporation 1, IV
Federal Home Loan Mortgage Corporation 1, IV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority 5, XIV; 22, XIV
Federal Labor Standards Administration 5, XIII
Federal Law Enforcement Training Center 31, VII
Federal Management Regulation 41, 102
Federal Maritime Commission 46, IV
Federal Mediation and Conciliation Service 29, XII
Federal Mine Safety and Health Review Commission 5, LXXVII; 29, XXVII
Federal Motor Carrier Safety Administration 49, III
Federal Prison Industries, Inc. 28, III
Federal Procurement Policy Office 48, 99
Federal Property Management Regulations 41, 101
Federal Railroad Administration 49, II
Federal Reserve Board of Governors 5, LVIII
Federal Retirement Thrift Investment Board 5, VI, LXXVI
Federal Service Impasses Panel 5, XIV
Federal Trade Commission 5, XLI; 16, I
Federal Transit Administration 49, VI
Federal Travel Regulation System 41, Subtitle F
Fine Arts, Commission on 36, II
Fish and Wildlife Service, United States 50, I, IV
Fishery Conservation and Management 50, VI
Food and Drug Administration 21, I
Food and Nutrition Service 7, II
Food Safety and Inspection Service 9, III
Foreign Agricultural Service 7, XV
Foreign Claims Settlement Commission of the United States 45, V
Foreign Service Grievance Board 22, IX
Foreign Service Impasse Disputes Panel 22, XIV
Foreign Service Labor Relations Board 22, XIV
Foreign-Trade Zones Board 15, IV
Forest Service 36, II
General Accounting Office 4, I
General Services Administration 5, LVIII; 41, 105
Contract Appeals, Board of 48, 61
Federal Acquisition Regulation 48, 5
Federal Management Regulation 41, 102
Federal Property Management Regulations 41, 101
Federal Travel Regulation System 41, Subtitle F
General 41, 300
Payment From a Non-Federal Source for Travel Expenses 41, 304
Payment of Expenses Connected With the Death of Certain Employees 41, 303

448
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relocation Allowances</td>
<td>41, 302</td>
</tr>
<tr>
<td>Temporary Duty (TDY) Travel Allowances</td>
<td>41, 301</td>
</tr>
<tr>
<td>Geological Survey</td>
<td>30, IV</td>
</tr>
<tr>
<td>Government Ethics, Office of</td>
<td>5, XVI</td>
</tr>
<tr>
<td>Government National Mortgage Association</td>
<td>24, III</td>
</tr>
<tr>
<td>Grain Inspection, Packers and Stockyards Administration</td>
<td>7, VIII: 9, II</td>
</tr>
<tr>
<td>Harry S. Truman Scholarship Foundation</td>
<td>45, XVIII</td>
</tr>
<tr>
<td>Health and Human Services, Department of</td>
<td>5, XLV; 45, Subtitle A</td>
</tr>
<tr>
<td>Child Support Enforcement, Office of</td>
<td>45, III</td>
</tr>
<tr>
<td>Children and Families, Administration for</td>
<td>45, II, III, IV, X</td>
</tr>
<tr>
<td>Community Services, Office of</td>
<td>45, X</td>
</tr>
<tr>
<td>Family Assistance, Office of</td>
<td>45, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 3</td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>21, I</td>
</tr>
<tr>
<td>Health Care Financing Administration</td>
<td>42, IV</td>
</tr>
<tr>
<td>Human Development Services, Office of</td>
<td>45, XIII</td>
</tr>
<tr>
<td>Indian Health Service</td>
<td>25, V</td>
</tr>
<tr>
<td>Inspector General (Health Care), Office of</td>
<td>42, V</td>
</tr>
<tr>
<td>Public Health Service</td>
<td>42, I</td>
</tr>
<tr>
<td>Refugee Resettlement, Office of</td>
<td>45, IV</td>
</tr>
<tr>
<td>Health Care Financing Administration</td>
<td>42, IV</td>
</tr>
<tr>
<td>Housing and Urban Development, Department of</td>
<td>5, LXV; 24, Subtitle B</td>
</tr>
<tr>
<td>Community Planning and Development, Office of Assistant</td>
<td>24, V, VI</td>
</tr>
<tr>
<td>Secretary for Equal Opportunity, Office of Assistant</td>
<td>24, I</td>
</tr>
<tr>
<td>Secretary for Federal Acquisition Regulation</td>
<td>48, 24</td>
</tr>
<tr>
<td>Government National Mortgage Association</td>
<td>24, III</td>
</tr>
<tr>
<td>Housing—Federal Housing Commissioner, Office of Assistant</td>
<td>24, II, VIII, X, XX</td>
</tr>
<tr>
<td>Secretary for Housing, Office of, and Multifamily</td>
<td>24, IV</td>
</tr>
<tr>
<td>Housing Assistance</td>
<td></td>
</tr>
<tr>
<td>Restructuring, Office of</td>
<td>24, XII</td>
</tr>
<tr>
<td>Inspector General, Office of</td>
<td>24, IX</td>
</tr>
<tr>
<td>Public and Indian Housing, Office of Assistant Secretary</td>
<td>24, Subtitle A, VII</td>
</tr>
<tr>
<td>Secretary, Office of</td>
<td>24, II, VIII, X, XX</td>
</tr>
<tr>
<td>Housing—Federal Housing Commissioner, Office of Assistant</td>
<td>24, II, VIII, X, XX</td>
</tr>
<tr>
<td>Secretary for Housing, Office of, and Multifamily Housing</td>
<td>24, IV</td>
</tr>
<tr>
<td>Assistance</td>
<td></td>
</tr>
<tr>
<td>Restructuring, Office of</td>
<td></td>
</tr>
<tr>
<td>Human Development Services, Office of</td>
<td>45, XIII</td>
</tr>
<tr>
<td>Immigration and Naturalization Service</td>
<td>8, I</td>
</tr>
<tr>
<td>Independent Counsel, Office of</td>
<td>28, VII</td>
</tr>
<tr>
<td>Indian Affairs, Bureau of</td>
<td>25, I, V</td>
</tr>
<tr>
<td>Indian Affairs, Office of the Assistant Secretary</td>
<td>25, VI</td>
</tr>
<tr>
<td>Indian Arts and Crafts Board</td>
<td>25, II</td>
</tr>
<tr>
<td>Indian Health Service</td>
<td>25, V</td>
</tr>
<tr>
<td>Information Resources Management, Office of</td>
<td>7, XXVII</td>
</tr>
<tr>
<td>Information Security Oversight Office, National Archives and Records Administration</td>
<td>32, XX</td>
</tr>
<tr>
<td>Inspector General</td>
<td>7, XXVI</td>
</tr>
<tr>
<td>Agriculture Department</td>
<td></td>
</tr>
<tr>
<td>Health and Human Services Department</td>
<td>42, V</td>
</tr>
<tr>
<td>Housing and Urban Development Department</td>
<td>24, XII</td>
</tr>
<tr>
<td>Institute of Peace, United States</td>
<td>22, XVII</td>
</tr>
<tr>
<td>Inter-American Foundation</td>
<td>5, LXIII; 22, X</td>
</tr>
<tr>
<td>Intergovernmental Relations, Advisory Commission on</td>
<td></td>
</tr>
<tr>
<td>Interior Department</td>
<td></td>
</tr>
<tr>
<td>American Indians, Office of the Special Trustee</td>
<td>25, VII</td>
</tr>
<tr>
<td>Endangered Species Committee</td>
<td>50, IV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 14</td>
</tr>
<tr>
<td>Federal Property Management Regulations System</td>
<td>41, 114</td>
</tr>
<tr>
<td>Fish and Wildlife Service, United States</td>
<td>50, I, IV</td>
</tr>
<tr>
<td>Geological Survey</td>
<td>30, IV</td>
</tr>
<tr>
<td>Indian Affairs, Bureau of</td>
<td>25, I, V</td>
</tr>
<tr>
<td>Indian Affairs, Office of the Assistant Secretary</td>
<td>25, VI</td>
</tr>
<tr>
<td>Indian Arts and Crafts Board</td>
<td>25, II</td>
</tr>
<tr>
<td>Land Management, Bureau of</td>
<td>43, II</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>--------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Minerals Management Service</td>
<td>30, II</td>
</tr>
<tr>
<td>Mines, Bureau of</td>
<td>30, VI</td>
</tr>
<tr>
<td>National Indian Gaming Commission</td>
<td>25, III</td>
</tr>
<tr>
<td>National Park Service</td>
<td>36, I</td>
</tr>
<tr>
<td>Reclamation, Bureau of</td>
<td>43, I</td>
</tr>
<tr>
<td>Secretary of the Interior, Office of</td>
<td>43, Subtitle A</td>
</tr>
<tr>
<td>Surface Mining and Reclamation Appeals, Board of</td>
<td>30, III</td>
</tr>
<tr>
<td>Surface Mining Reclamation and Enforcement, Office of</td>
<td>30, VII</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>26, I</td>
</tr>
<tr>
<td>International Boundary and Water Commission, United States and Mexico, United States Section</td>
<td>22, XI</td>
</tr>
<tr>
<td>International Development, United States Agency for</td>
<td>22, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 7</td>
</tr>
<tr>
<td>International Development Cooperation Agency, United States</td>
<td>22, XII</td>
</tr>
<tr>
<td>International Fishing and Related Activities</td>
<td>50, III</td>
</tr>
<tr>
<td>International Investment, Office of</td>
<td>31, VIII</td>
</tr>
<tr>
<td>International Joint Commission, United States and Canada</td>
<td>22, IV</td>
</tr>
<tr>
<td>International Organizations Employees Loyalty Board</td>
<td>5, V</td>
</tr>
<tr>
<td>International Trade Administration</td>
<td>15, III; 19, III</td>
</tr>
<tr>
<td>International Trade Commission, United States</td>
<td>19, II</td>
</tr>
<tr>
<td>Interstate Commerce Commission</td>
<td>5, XL</td>
</tr>
<tr>
<td>James Madison Memorial Fellowship Foundation</td>
<td>45, XXIV</td>
</tr>
<tr>
<td>Japan–United States Friendship Commission</td>
<td>22, XVI</td>
</tr>
<tr>
<td>Joint Board for the Enrollment of Actuaries</td>
<td>20, VIII</td>
</tr>
<tr>
<td>Justice Department</td>
<td>5, XXVIII; 28, I; 40, IV</td>
</tr>
<tr>
<td>Drug Enforcement Administration</td>
<td>21, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 28</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>31, IX</td>
</tr>
<tr>
<td>Federal Prison Industries, Inc.</td>
<td>28, III</td>
</tr>
<tr>
<td>Foreign Claims Settlement Commission of the United States</td>
<td>45, V</td>
</tr>
<tr>
<td>Immigration and Naturalization Service</td>
<td>8, I</td>
</tr>
<tr>
<td>Offices of Independent Counsel</td>
<td>28, VI</td>
</tr>
<tr>
<td>Prisons, Bureau of</td>
<td>28, V</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 128</td>
</tr>
<tr>
<td>Labor Department</td>
<td>5, XLH</td>
</tr>
<tr>
<td>Benefits Review Board</td>
<td>20, VII</td>
</tr>
<tr>
<td>Employees' Compensation Appeals Board</td>
<td>20, IV</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>20, V</td>
</tr>
<tr>
<td>Employment Standards Administration</td>
<td>20, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 29</td>
</tr>
<tr>
<td>Federal Contract Compliance Programs, Office of</td>
<td>41, 60</td>
</tr>
<tr>
<td>Federal Procurement Regulations System</td>
<td>41, 50</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, II, IV</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>30, I</td>
</tr>
<tr>
<td>Occupational Safety and Health Administration</td>
<td>29, XVII</td>
</tr>
<tr>
<td>Pension and Welfare Benefits Administration</td>
<td>29, XXV</td>
</tr>
<tr>
<td>Public Contracts</td>
<td>41, 50</td>
</tr>
<tr>
<td>Secretary of Labor, Office of</td>
<td>29, Subtitle A</td>
</tr>
<tr>
<td>Veterans’ Employment and Training, Office of the Assistant Secretary for</td>
<td>41, 61; 20, IX</td>
</tr>
<tr>
<td>Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Workers’ Compensation Programs, Office of</td>
<td>20, I</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, II, IV</td>
</tr>
<tr>
<td>Land Management, Bureau of</td>
<td>43, II</td>
</tr>
<tr>
<td>Legal Services Corporation</td>
<td>45, XVI</td>
</tr>
<tr>
<td>Library of Congress</td>
<td>36, VII</td>
</tr>
<tr>
<td>Copyright Office</td>
<td>37, II</td>
</tr>
<tr>
<td>Management and Budget, Office of</td>
<td>5, III, LXXVII; 48, 99</td>
</tr>
<tr>
<td>Marine Mammal Commission</td>
<td>50, V</td>
</tr>
<tr>
<td>Maritime Administration</td>
<td>46, II</td>
</tr>
<tr>
<td>Merit Systems Protection Board</td>
<td>5, II</td>
</tr>
<tr>
<td>Micronesian Status Negotiations, Office for</td>
<td>32, XXVII</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>30, I</td>
</tr>
<tr>
<td>Minerals Management Service</td>
<td>30, II</td>
</tr>
<tr>
<td>Mines, Bureau of</td>
<td>30, VI</td>
</tr>
</tbody>
</table>

450
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minority Business Development Agency</td>
<td>15, XIV</td>
</tr>
<tr>
<td>Miscellaneous Agencies</td>
<td>1, IV</td>
</tr>
<tr>
<td>Monetary Offices</td>
<td>31, I</td>
</tr>
<tr>
<td>National Aeronautics and Space Administration</td>
<td>5, LIX; 14, V</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 18</td>
</tr>
<tr>
<td>National Agricultural Library</td>
<td>7, XLII</td>
</tr>
<tr>
<td>National Agricultural Statistics Service</td>
<td>7, XXXVI</td>
</tr>
<tr>
<td>National and Community Service, Corporation for</td>
<td>45, XII, XXV</td>
</tr>
<tr>
<td>National Archives and Records Administration</td>
<td>5, LXVI; 96, XII</td>
</tr>
<tr>
<td>Information Security Oversight Office</td>
<td>32, XX</td>
</tr>
<tr>
<td>National Bureau of Standards</td>
<td>15, II</td>
</tr>
<tr>
<td>National Capital Planning Commission</td>
<td>1, IV</td>
</tr>
<tr>
<td>National Commission for Employment Policy</td>
<td>1, IV</td>
</tr>
<tr>
<td>National Commission on Libraries and Information Science</td>
<td>45, XVII</td>
</tr>
<tr>
<td>National Council on Disability</td>
<td>34, XII</td>
</tr>
<tr>
<td>National Counterintelligence Center</td>
<td>32, XVIII</td>
</tr>
<tr>
<td>National Credit Union Administration</td>
<td>12, VII</td>
</tr>
<tr>
<td>National Drug Control Policy, Office of</td>
<td>21, III</td>
</tr>
<tr>
<td>National Foundation on the Arts and the Humanities</td>
<td>45, XI</td>
</tr>
<tr>
<td>National Highway Traffic Safety Administration</td>
<td>23, II, III; 49, V</td>
</tr>
<tr>
<td>National Imagery and Mapping Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>National Indian Gaming Commission</td>
<td>25, III</td>
</tr>
<tr>
<td>National Institute for Literacy</td>
<td>34, XI</td>
</tr>
<tr>
<td>National Institute of Standards and Technology</td>
<td>15, II</td>
</tr>
<tr>
<td>National Labor Relations Board</td>
<td>5, LXI; 29, I</td>
</tr>
<tr>
<td>National Marine Fisheries Service</td>
<td>50, II, IV, VI</td>
</tr>
<tr>
<td>National Mediation Board</td>
<td>29, IX</td>
</tr>
<tr>
<td>National Oceanic and Atmospheric Administration</td>
<td>15, IX; 50, II, III, IV, VI</td>
</tr>
<tr>
<td>National Park Service</td>
<td>36, I</td>
</tr>
<tr>
<td>National Railroad Adjustment Board</td>
<td>29, III</td>
</tr>
<tr>
<td>National Railroad Passenger Corporation (AMTRAK)</td>
<td>49, VII</td>
</tr>
<tr>
<td>National Science Foundation</td>
<td>5, XLIII; 45, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 25</td>
</tr>
<tr>
<td>National Security Council</td>
<td>32, XXI</td>
</tr>
<tr>
<td>National Security Council and Office of Science and Technology Policy</td>
<td>47, II</td>
</tr>
<tr>
<td>National Telecommunications and Information Administration</td>
<td>15, XXIII; 47, III</td>
</tr>
<tr>
<td>National Transportation Safety Board</td>
<td>49, VIII</td>
</tr>
<tr>
<td>National Weather Service</td>
<td>15, IX</td>
</tr>
<tr>
<td>Natural Resources Conservation Service</td>
<td>7, VI</td>
</tr>
<tr>
<td>Navajo and Hopi Indian Relocation, Office of</td>
<td>25, IV</td>
</tr>
<tr>
<td>Navy Department</td>
<td>32, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 52</td>
</tr>
<tr>
<td>Neighborhood Reinvestment Corporation</td>
<td>24, XXV</td>
</tr>
<tr>
<td>Northeast Dairy Compact Commission</td>
<td>7, XIII</td>
</tr>
<tr>
<td>Northeast Interstate Low-Level Radioactive Waste Commission</td>
<td>10, XVIII</td>
</tr>
<tr>
<td>Nuclear Regulatory Commission</td>
<td>5, XLVIII; 10, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 20</td>
</tr>
<tr>
<td>Occupational Safety and Health Administration</td>
<td>29, XVII</td>
</tr>
<tr>
<td>Occupational Safety and Health Review Commission</td>
<td>29, XX</td>
</tr>
<tr>
<td>Offices of Independent Counsel</td>
<td>28, VI</td>
</tr>
<tr>
<td>Oklahoma City National Memorial Trust</td>
<td>36, XV</td>
</tr>
<tr>
<td>Operations Office</td>
<td>7, XXVIII</td>
</tr>
<tr>
<td>Overseas Private Investment Corporation</td>
<td>5, XXXIII; 22, VII</td>
</tr>
<tr>
<td>Panama Canal Commission</td>
<td>48, 35</td>
</tr>
<tr>
<td>Panama Canal Regulations</td>
<td>35, I</td>
</tr>
<tr>
<td>Patent and Trademark Office, United States</td>
<td>37, I</td>
</tr>
<tr>
<td>Payment From a Non-Federal Source for Travel Expenses</td>
<td>41, 304</td>
</tr>
<tr>
<td>Payment of Expenses Connected With the Death of Certain Employees</td>
<td>41, 303</td>
</tr>
<tr>
<td>Peace Corps</td>
<td>22, III</td>
</tr>
<tr>
<td>Pennsylvania Avenue Development Corporation</td>
<td>36, IX</td>
</tr>
<tr>
<td>Pension and Welfare Benefits Administration</td>
<td>29, XXV</td>
</tr>
<tr>
<td>Pension Benefit Guaranty Corporation</td>
<td>29, XI</td>
</tr>
<tr>
<td>Personnel Management, Office of</td>
<td>5, I, XXXV; 45, VIII</td>
</tr>
</tbody>
</table>

451
Agency

Federal Acquisition Regulation 48, 17
Federal Employees Group Life Insurance Federal Acquisition Regulation 48, 21
Federal Employees Health Benefits Acquisition Regulation 48, 16
Postal Rate Commission 5, XLVI; 39, III
Postal Service, United States 5, LX; 39, I
Postsecondary Education, Office of 34, VI
President’s Commission on White House Fellowships 1, IV
Presidential Documents 3
Presidio Trust 36, X
Prisons, Bureau of 28, V
Procurement and Property Management, Office of 7, XXXII
Productivity, Technology and Innovation, Assistant Secretary 37, IV
Secretary
Public Contracts, Department of Labor 41, 50
Public and Indian Housing, Office of Assistant Secretary for 34, VI
Public Health Service 42, I
Railroad Retirement Board 20, II
Reclamation, Bureau of 43, I
Refugee Resettlement, Office of 45, IV
Regional Action Planning Commissions 13, V
Relocation Allowances 41, 302
Research and Special Programs Administration 49, I
Rural Business-Cooperative Service 7, XVIII, XLII
Rural Development Administration 7, XLII
Rural Housing Service 7, XVIII, XXXV
Rural Telephone Bank 7, XVII
Rural Utilities Service 7, XVII, XVIII, XLII
Saint Lawrence Seaway Development Corporation 33, IV
Science and Technology Policy, Office of 32, XXIV
Science and Technology Policy, Office of, and National Security Council 5, VIII
Secret Service 31, IV
Securities and Exchange Commission 17, II
Selective Service System 32, XVI
Small Business Administration 13, I
Smithsonian Institution 36, V
Social Security Administration 20, III; 48, 23
Soldiers’ and Airmen’s Home, United States 5, XI
Special Counsel, Office of 5, VIII
Special Education and Rehabilitative Services, Office of 34, III
State Department 22, I
Federal Acquisition Regulation 48, 12
Surface Mining and Reclamation Appeals, Board of 30, III
Surface Mining Reclamation and Enforcement, Office of 30, VII
Surface Transportation Board 49, X
Susquehanna River Basin Commission 18, VIII
Technology Administration 15, XI
Technology Policy, Assistant Secretary for 37, IV
Technology, Under Secretary for 37, V
Tennessee Valley Authority 5, LXXIX; 18, XIII
Thrift Supervision Office, Department of the Treasury 12, V
Trade Representative, United States, Office of 15, XX
Transportation, Department of 5, I
Coast Guard 33, I; 46, I; 49, IV
Coast Guard (Great Lakes Pilotage) 46, III
Commercial Space Transportation 14, III
Contract Appeals, Board of 48, 63
Emergency Management and Assistance 44, IV
Federal Acquisition Regulation 48, 12
Federal Aviation Administration 14, I
Federal Highway Administration 23, 1, I
Federal Motor Carrier Safety Administration 49, III
Federal Railroad Administration 49, II
Federal Transit Administration 49, VI
Maritime Administration 46, II
National Highway Traffic Safety Administration 23, II, III; 49, V

452
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research and Special Programs Administration</td>
<td>49, I</td>
</tr>
<tr>
<td>Saint Lawrence Seaway Development Corporation</td>
<td>33, IV</td>
</tr>
<tr>
<td>Secretary of Transportation, Office of</td>
<td>14, II; 49, Subtitle A</td>
</tr>
<tr>
<td>Surface Transportation Board</td>
<td>49, X</td>
</tr>
<tr>
<td>Transportation Statistics Bureau</td>
<td>49, XI</td>
</tr>
<tr>
<td>Transportation, Office of</td>
<td>7, XXXIII</td>
</tr>
<tr>
<td>Transportation Statistics Bureau</td>
<td>49, XI</td>
</tr>
<tr>
<td>Travel Allowances, Temporary Duty (TDY)</td>
<td>41, 301</td>
</tr>
<tr>
<td>Treasury Department</td>
<td>5, XXI; 12, XV; 17, IV; 31, IX</td>
</tr>
<tr>
<td>Alcohol, Tobacco and Firearms, Bureau of</td>
<td>27, I</td>
</tr>
<tr>
<td>Community Development Financial Institutions Fund</td>
<td>12, XVIII</td>
</tr>
<tr>
<td>Comptroller of the Currency</td>
<td>12, I</td>
</tr>
<tr>
<td>Customs Service, United States</td>
<td>19, I</td>
</tr>
<tr>
<td>Engraving and Printing, Bureau of</td>
<td>31, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 10</td>
</tr>
<tr>
<td>Federal Law Enforcement Training Center</td>
<td>31, VII</td>
</tr>
<tr>
<td>Fiscal Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Foreign Assets Control, Office of</td>
<td>31, V</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>26, I</td>
</tr>
<tr>
<td>International Investment, Office of</td>
<td>31, VIII</td>
</tr>
<tr>
<td>Monetary Offices</td>
<td>31, I</td>
</tr>
<tr>
<td>Secret Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Secretary of the Treasury, Office of</td>
<td>31, Subtitle A</td>
</tr>
<tr>
<td>Thrift Supervision, Office of</td>
<td>12, V</td>
</tr>
<tr>
<td>Truman, Harry S. Scholarship Foundation</td>
<td>45, XVIII</td>
</tr>
<tr>
<td>United States and Canada, International Joint Commission</td>
<td>22, IV</td>
</tr>
<tr>
<td>United States and Mexico, International Boundary and Water Commission, United States Section</td>
<td>22, XI</td>
</tr>
<tr>
<td>Utah Reclamation Mitigation and Conservation Commission</td>
<td>43, III</td>
</tr>
<tr>
<td>Veterans Affairs Department</td>
<td>38, I</td>
</tr>
<tr>
<td>Veterans’ Employment and Training, Office of the Assistant Secretary for</td>
<td>41, 61; 20, IX</td>
</tr>
<tr>
<td>Vice President of the United States, Office of</td>
<td>32, XXVIII</td>
</tr>
<tr>
<td>Vocational and Adult Education, Office of</td>
<td>34, IV</td>
</tr>
<tr>
<td>Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Water Resources Council</td>
<td>18, VI</td>
</tr>
<tr>
<td>Workers’ Compensation Programs, Office of</td>
<td>20, I</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXXVIII</td>
</tr>
</tbody>
</table>
List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register since January 1, 1986, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.


<table>
<thead>
<tr>
<th>CFR</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 CFR</td>
<td>51 FR</td>
</tr>
</tbody>
</table>

Chapter I

| 54.14 (b) revised | 590 |
| 54.27 (a) and (b) revised; interim | 5146 |
| (a) and (b) revised | 21135 |
| 61.1–61.46 (Subpart A) Authority citation revised; section authority citations removed | 22064 |
| 61.43 Revised | 22064 |
| 61.44 Revised | 22064 |
| 61.45 Revised | 22064 |
| 61.46 Revised | 22064 |
| 68 Authority citation revised | 40122 |
| 68.42d Table 2 revised | 36996 |
| 68.607 Revised | 40122 |
| 70.1 Amended | 17280 |
| 70.6 (b) table revised (OMB numbers) | 26224 |
| 70.15 (c) and (d) revised | 17280 |
| 70.51 (a) and Figure 3 revised; (d) and Figure 4 removed | 17280 |
| 70.80 Introductory text revised; footnote removed | 17280 |
| 70.81 (b) revised | 17280 |
| 70.91 (b) revised | 17281 |
| 70.110 Heading and (a) revised | 17281 |
| 70.210 (e)(2) revised | 17281 |
| 70.220 (e) and (g) revised | 17281 |
| 70.221 (d), (e), and (g) revised | 17281 |
| (e) corrected | 18875 |
| (g) heading revised | 26224 |
| 70.222 (c) revised | 17282 |
| 70.230 Introductory text, (a), (b), and (e) revised | 17282 |
| 70.231 (b) and (c) revised; (d) and (e) added | 17282 |

Continued

| 7 CFR | 51 FR |

Chapter I—Continued

| 70.240 Revised | 17282 |
| 70.260 Undesignated center heading and section removed | 17282 |
| 70.270 Revised | 17282 |
| 70.271 Revised | 17282 |

1987

| 7 CFR | 52 FR |

Chapter I

| 53.203 (a) and (b)(3) amended | 35683 |
| 53.204 (c) heading, (1) and (2) amended | 35683 |
| 53.205 (c) heading, (1) and (2) amended | 35683 |
| 53.206 (a)(4), (b)(4), (c)(4) and (d)(4) amended | 35683 |
| 54.11 (a)(1)(vii) amended | 35683 |
| 54.17 (b) amended | 35683 |
| 54.104 (b), (n), (o) and (q) amended | 35683 |
| 54.106 (c) heading, (1) and (3) amended | 35683 |
| 54.107 (c) heading and text amended | 35683 |
| 55.510 (b), (c), and (d) revised | 13629 |
| 55.520 Revised | 13629 |
| (a) table corrected | 15802 |
| 55.560 (a)(3) revised | 13628 |
| 56.9 (b) revised (OMB numbers) | 23935 |
| 56.46 (b) and (c) revised | 13628 |
| 56.47 Revised | 13629 |
| 56.52 (a)(4) revised | 13629 |
| 56.54 (a)(2) revised | 13629 |
| 57 Removed; eff. 3–14–88 | 7818 |
### 7 CFR (1–1–01 Edition)

#### 7 CFR—Continued

<table>
<thead>
<tr>
<th>CFR</th>
<th>Page</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 CFR</td>
<td>51 FR</td>
<td>52 FR</td>
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#### 1988

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<th>CFR</th>
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<td>51 FR</td>
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## List of CFR Sections Affected

### 7 CFR—Continued

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### 7 CFR—Continued

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List of CFR Sections Affected

7 CFR—Continued

7 CFR—Continued

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7 CFR

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### List of CFR Sections Affected

**7 CFR—Continued**

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<thead>
<tr>
<th>CFR Section</th>
<th>Title</th>
<th>Page</th>
</tr>
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<tbody>
<tr>
<td>54.112—54.117</td>
<td>Undesignated center heading and sections removed; interim</td>
<td>62180</td>
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<td>54.121—54.127</td>
<td>Undesignated center heading and sections removed; interim</td>
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</tr>
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<td>54.230</td>
<td>Revisions</td>
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</tr>
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<td>54.231</td>
<td>Revised</td>
<td>62180</td>
</tr>
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<td>(c) revised</td>
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<td>54.235</td>
<td>Revised</td>
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<td>54.2425—54.2435</td>
<td>(Subpart G) Removed; interim</td>
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<td>54.2455—54.2463</td>
<td>(Subpart H) Removed; interim</td>
<td>62180</td>
</tr>
<tr>
<td>54.2475—54.2481</td>
<td>(Subpart J) Revised</td>
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<td>54.2501—54.2506</td>
<td>(Subpart K) Removed; interim</td>
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<td>54.2508—54.2509</td>
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**7 CFR—Continued**

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**7 CFR—Continued**

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<td>Policy statement</td>
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<td>Authority citation revised</td>
<td>8464, 17189</td>
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<td>Amended; interim</td>
<td>17189</td>
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<td>97.2</td>
<td>Amended; interim</td>
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</tr>
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### List of CFR Sections Affected

#### 7 CFR—Continued

<table>
<thead>
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<th>Page</th>
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#### 7 CFR

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<th>Page</th>
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### List of CFR Sections Affected

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465
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<th>Page</th>
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<td>Chapter I</td>
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