

Agricultural Marketing Service, USDA

Pt. 70

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.

§61.104 Sampling and certification of samples and grades.

The drawing, preparation, and certification of samples of cottonseed, 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 his representatives.

[22 FR 10948, Dec. 28, 1957, as amended at 58 FR 42413, Aug. 9, 1993]

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.

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.

§ 70.1

- 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.

FEEES 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.
- 70.75 Travel expenses and other charges.
- 70.76 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]

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

SOURCE: 41 FR 23681, June 11, 1976, unless otherwise noted. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981.

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.

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 products.

Grading or grading service means: (a) 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; (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.

§ 70.2

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 poultry also means any cut-up or disjointed portion of poultry or other parts of poultry as defined in 9 CFR part 381 that are 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 condi-

7 CFR Ch. I (1-1-03 Edition)

tion 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.

[41 FR 23681, June 11, 1976; 41 FR 24693, June 18, 1976. Redesignated at 42 FR 32514, June 27, 1977, as amended at 43 FR 60138, Dec. 26, 1978. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 47 FR 46071, Oct. 15, 1982; 47 FR 54421, Dec. 3, 1982; 51 FR 17280, May 9, 1986; 60 FR 6639, Feb. 2, 1995; 63 FR 40628, July 30, 1998]

§ 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 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 meaning 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 grade-mark 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

Agricultural Marketing Service, USDA

§ 70.6

any product, stating that the product was graded or indicating the appropriate U.S. Grade or condition of the product, or for maintaining the identity of products graded under this part, including but not limited to, those marks set forth in §70.51.

(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.

§ 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.*

7 CFR section where identified and described	Current OMB control No.
70.3	0581-0127
70.10	0581-0127
70.17	0581-0127
70.18	0581-0127
70.20(a)	0581-0127
70.21	0581-0127
70.31(a)	0581-0127
70.31(b)	0581-0127
70.33	0581-0127
70.34	0581-0127
70.35	0581-0127
70.36	0581-0127
70.38(c)	0581-0127
70.38(d)	0581-0127
70.40	0581-0127
70.50	0581-0127
70.61	0581-0127
70.62	0581-0127
70.73	0581-0127
70.76(b)(1)	0581-0127
70.76(b)(3)(ii)	0581-0127
70.77(a)(1)	0581-0127
70.77(a)(4)	0581-0127
70.77(b)(1)	0581-0127
70.77(b)(3)(ii)	0581-0127
70.91(a)	0581-0127
70.91(c)	0581-0127
70.92	0581-0127
70.100	0581-0127
70.102	0581-0127
70.210(e)	0581-0127
70.310(e)	0581-0127

[48 FR 56566, Dec. 22, 1983, as amended at 51 FR 26224, July 22, 1986]

§ 70.10

7 CFR Ch. I (1-1-03 Edition)

BASIS OF SERVICE

§ 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 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.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 51 FR 17280, May 9, 1986; 60 FR 6640, Feb. 2, 1995]

§ 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.

Agricultural Marketing Service, USDA

§ 70.25

§ 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.

[48 FR 20683, May 9, 1983]

PERFORMANCE OF SERVICES

§ 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 checked 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,

§ 70.30

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.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 48 FR 20683, May 9, 1983]

APPLICATION FOR GRADING SERVICE

§ 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

7 CFR Ch. I (1-1-03 Edition)

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. An 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. 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.

§ 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

§ 70.40

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.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, as amended at 43 FR 60139, Dec. 26, 1978. Redesignated at 46 FR 63203, Dec. 31, 1981]

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.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, as amended at 43 FR 60139, Dec. 26, 1978. Redesignated at 46 FR 63203, Dec. 31, 1981]

§ 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,

7 CFR Ch. I (1-1-03 Edition)

label, seal, or identification in the labeling or advertising of any product.

[41 FR 23681, June 11, 1976; 41 FR 24693, June 18, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981]

§ 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 70 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.

[41 FR 23681, June 11, 1976; 41 FR 24694, June 18, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981]

§ 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 facie 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

7 CFR Ch. I (1-1-03 Edition)



Figure 1



Figure 4



Figure 2

Prepared From



Poultry

Figure 5



Figure 3

[63 FR 40628, July 30, 1998]

Agricultural Marketing Service, USDA

§ 70.71

§ 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.

[47 FR 46071, Oct. 15, 1982; 47 FR 54421, Dec. 3, 1982]

§ 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.

FEEES 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 \$57.68 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 \$66.64 per hour. Information on legal holidays is available from the Supervisor.

[67 FR 78666, Dec. 26, 2002]

§ 70.72

7 CFR Ch. I (1-1-03 Edition)

§ 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]

§ 70.75 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.

[42 FR 2971, Jan. 14, 1977. Redesignated at 42 FR 32514, June 27, 1977, as amended at 46 FR 9, Jan. 2, 1981. Redesignated at 46 FR 63203, Dec. 31, 1981]

§ 70.76 Charges for continuous poultry grading performed on a non-resident 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.

(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:

(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

Agricultural Marketing Service, USDA

§ 70.77

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.

(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 § 70.38 or § 70.40.

(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 56 of this chapter, the charges listed in this section shall not be repeated.

[41 FR 23681, June 11, 1976]

EDITORIAL NOTE: For Federal Register citations affecting § 70.76, see the List of CFR Sections Affected, which appears in the

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

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 § 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 \$0.00037, except that the minimum charge per billing period shall be \$260 and the maximum charge shall be \$2,675. 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 \$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 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.

Agricultural Marketing Service, USDA

§ 70.81

(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.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 51 FR 17280, May 9, 1986; 63 FR 40630, July 30, 1998]

[41 FR 23681, June 11, 1976]

EDITORIAL NOTE: For Federal Register citations affecting § 70.77, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 70.81 Ready-to-cook poultry and rabbits and specified poultry food products.

§ 70.78 Fees or charges for grading service performed under cooperative agreement.

(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.

Fees or charges to be made to an applicant for any grading service which differ from those listed in §§ 70.70 through 70.77, shall be provided for by a cooperative agreement.

(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 thereafter 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.

GRADING

§ 70.80 General.

(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.

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.

Containers in lot	Containers in sample
1-4	All.
5-50	4.
51-100	5.
101-200	6.
201-400	7.
401-600	8.
For each additional 100 containers, or fraction thereof, in excess of 600 containers.	Include one additional container.

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

§ 70.90

GRADING CERTIFICATES

§ 70.90 Forms.

Grading certificates (including appeal grading certificates and regrading certificates) shall be issued on forms approved by the Administrator.

§ 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.

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

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

§ 70.92 Advance information.

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

7 CFR Ch. I (1-1-03 Edition)

APPEAL OF A GRADING OR DECISION

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

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

§ 70.101 Where to file an appeal.

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

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

§ 70.102 How to file an appeal.

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

Agricultural Marketing Service, USDA

§ 70.110

copies of the certificate shall be returned to the appeal grader assigned to make the appeal grading.

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

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

§ 70.104 Who shall perform the appeal.

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

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

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

§ 70.105 Procedures for appeal gradings.

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

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

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

(d) Overwraps on frozen poultry or rabbits shall be removed from all birds

or rabbits in the sample prior to appeal grading for quality or to determine the class.

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

§ 70.106 Appeal grading certificates.

Immediately after an appeal grading is completed, an appeal certificate shall be issued to show that the original grading was sustained or was not sustained. Such certificate shall 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 grademark shall be changed or obliterated as necessary. When the appeal grader assigns a different class or quantity designation to the lot, the labeling shall be corrected.

SANITARY REQUIREMENTS, FACILITIES, AND OPERATING PROCEDURES

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

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

(b) With respect to grading services, there shall be a minimum of 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

distinguish one type of product from another.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 51 FR 17281, May 9, 1986; 63 FR 40630, July 30, 1998]

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.

LICENSING OF INSPECTORS

- 75.32 Who may become licensed inspector.
75.33 Suspension or revocation of license of inspector.

- 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.

AUTHORITY: 7 U.S.C. 1622 and 1624.

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.