

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]

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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.