

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

PART 53—LIVESTOCK (GRADING, CERTIFICATION, AND STANDARDS)

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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.

Act. The Agricultural Marketing Act of 1946 (Title II of the act of Congress approved August 14, 1946, 60 Stat. 1087, as amended by Pub. L. 272, 84th Cong., 69 Stat. 553, 7 U.S.C. 1621-1627).

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.

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. Livestock, Poultry, Grain and Seed Division.

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

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

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

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 livestock under standards.

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

Livestock. Cattle, sheep, swine, or goats.

Official grader. An employee of the Department or other person authorized by the Department to determine and certify or otherwise identify the class, grade, other quality, or compliance of livestock under the regulations.

Person. Any individual, partnership, corporation, or other legal entity, or Government agency.

Regulations. The regulations in this subpart.

Service. Grading service or acceptance service.

Specifications. Description with respect to the class, grade, other quality, quantity or condition of livestock approved by the Administrator, and available for use by the industry regardless of the origin of the descriptions.

Standards. The standards of the Department contained in Official United

States Standards for Grades of: Carcass Beef; Veal and Calf Carcasses; Lamb, Yearling Mutton, and Mutton Carcasses; and, Pork Carcasses.

Supervisor. An official person designated by the Director or Chief to supervise and maintain uniformity and accuracy of service under the regulations.

[42 FR 53902, Oct. 4, 1977, as amended at 63 FR 72101, Dec. 31, 1998]

§ 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,

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grade, quality, size, quantity, or condition of the livestock (including the compliance of livestock with applicable specifications), or to maintain the identity of livestock for which service is provided under the regulations.

ADMINISTRATION

§ 53.3 Authority.

The Director is charged with the administration of the regulations and the Act insofar as they relate to livestock.

SERVICE

§ 53.4 Kind of service.

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 livestock under applicable standards. Class, grade and other quality may be determined under said standards for livestock. Acceptance service under the regulations shall consist of the determination of the conformity of livestock to specifications approved by the Director or Chief and the certification and other identification of such livestock in accordance with specifications, upon request by the applicant.

[42 FR 53902, Oct. 4, 1977, as amended at 63 FR 72101, Dec. 31, 1998]

§ 53.5 Availability of service.

Service under these regulations may be made available with respect to livestock shipped or received in interstate commerce, and with respect to the livestock not so shipped or received if the Director or Chief determines that the furnishing of service for such livestock 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.

§ 53.8 How to obtain service.

(a) *Application.* Any person may apply to the Director or Chief for service under the regulations with respect to livestock in which the applicant is fi-

nancially interested. The application shall be made on a form approved by the Director.

(b) *Notice of eligibility for service.* The applicant for service 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 livestock for which the service is to be furnished under such application. Such requests shall be made at a market news office either directly or through any employee of the Agricultural Marketing Service who may be designated for such purposes.

§ 53.9 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.

§ 53.10 When request for service deemed made.

A request for service under the regulations shall be deemed to be made when received by a market news office. Records showing the date and time of the request shall be made and kept in such office.

§ 53.11 Withdrawal of application or request for service.

An application or a request for service under the regulations may be withdrawn by the applicant at any time before the application is approved or prior to performance of service, upon payment, in accordance with §§ 53.18 and 53.19, of any expenses already incurred by the Agricultural Marketing Service in connection therewith.

§ 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)(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 delay that he has possession of such item and, surrenders it to the Director or Chief or destroys it or brings it into compliance with the regulations by obliterating or removing the viola-

tive features under supervision of the Director or Chief: *And provided, further*, 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 (1) 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 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

the concurrence of the Director or Chief: (1) For administrative reasons such as the nonavailability of personnel to perform the service; (2) for the failure to pay for service; (3) for other noncompliance with the conditions on which service is available as provided in the regulations, except matters covered by paragraph (a) of this section; or (4) in case the person is a partnership, corporation, or other person from whom the benefits of the service are currently being withheld under paragraph (a) of this section. Notice of such denial or withdrawal, and the reasons therefor, shall promptly be given to the person involved.

(c) *Filing of records.* The final orders in formal proceedings under paragraph (a) of this section to deny or withdraw the service under the regulations (except orders required for good cause to be held confidential and not cited as precedents) and other records in such proceedings (except those required for good cause to be held confidential) shall be filed with the Hearing Clerk and shall be available for inspection by persons having a proper interest therein.

[42 FR 53902, Oct. 4, 1977, as amended at 60 FR 8464, Feb. 14, 1995]

§ 53.14 Financial interest of official grader.

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

§ 53.15 Accessibility to livestock.

(a) The applicant shall cause livestock, 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 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 livestock in the establishments which have been or are to be graded or exam-

ined 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

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 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.

(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 of the charge for such item of expense.

[42 FR 53902, Oct. 4, 1977, as amended at 47 FR 54927, Dec. 7, 1982; 48 FR 16874, Apr. 20, 1983]

§ 53.19 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, U.S.D.A., 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

§ 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.

§ 53.21 Errors in service.

When an official grader, supervisor, 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 livestock, he shall report the matter to his immediate supervisor. The supervisor will investigate

the matter and, if he deems advisable, will report it to the owner or his agent. The supervisor shall take appropriate action to correct errors found in the determination or identification of class, grade or other quality or compliance of livestock if the livestock is 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 shall take adequate measures to prevent the recurrence of such errors.

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