

**Agricultural Marketing Service, USDA**

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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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### Subpart A—Regulations

#### DEFINITIONS

##### § 54.1 Meaning of words.

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

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

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

*Animals.* Cattle, sheep, swine, or goats.

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

*Branch.* The Meat Grading Branch of the Division.

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

*Carcass Data Service.* The service established and conducted under the regulations to provide producers and other interested persons with data on carcass characteristics.

*Certification service.* The service established and conducted under the regulations for the determination and certification or other identification of the compliance of products with specifications.

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

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

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

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

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

*Department.* The United States Department of Agriculture.

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

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

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

*Federal Meat Inspection.* The meat inspection system conducted under the Federal Meat Inspection Act as amended by the Wholesome Meat Act (21 U.S.C. 601 *et seq.*) and the regulations thereunder (9 CFR chapter III, subchapter A).

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

*Grade.* (1) As a noun, this term means an important commercial subdivision of a product based on certain definite and preference determining factors,

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such as, but not limited to, conformation, finish, and quality in meats.

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

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

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

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

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

*Livestock.* Bovine, ovine, porcine.

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

*Meat by-products.* All edible parts (other than meat and prepared meats) intended for human food, derived from one or more animals, and including but not limited to such organs and parts as livers, kidneys, sweetbreads, brains, lungs, spleens, stomachs, tripe, lips, snouts, and ears.

*Meat food products.* Any articles intended for human food (other than

meat, prepared meats, and meat by-products) which are derived or prepared in whole or in substantial and definite part, from any portion of any animal, except such articles as organotherapeutic substances, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession.

*Office of grading.* The office of an official grader.

*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 products under the regulations.

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

*Prepared meats.* The products intended for human food which are obtained by subjecting meat to drying, curing, smoking, cooking, grinding, seasoning, or flavoring, or to any combination of such procedures, and to which no considerable quantity of any substance other than meat or meat by-products has been added.

*Processing.* Drying, curing, smoking, cooking, seasoning, or flavoring or any combination of such processes, with or without fabricating.

*Products.* Meats, prepared meats, meat by-products, or meat food products.

*Quality.* A combination of the inherent properties of a product which determines its relative degree of excellence.

*Quality grade.* A designation based on those characteristics of meat which predict the palatability characteristics of the lean.

*Quality Systems Certification Program.* A multifaceted program allowing all aspects of the livestock industry to have quality systems, or processes within quality systems, verified by AMS agent(s) to effectuate use of such quality systems to meet contractual requirements, or as a marketing tool.

*Service.* Grading service or acceptance service.

*Shipping container.* The receptacle or covering in which one or more immediate containers of products are packed for transportation.

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

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

*The 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).

*The regulations.* The regulations in this subpart.

*Yield grade.* A designation which reflects the estimated yield of retail cuts that may be obtained from a beef, lamb, yearling mutton, or mutton carcass.

[42 FR 53921, Oct. 4, 1977, as amended at 45 FR 51762, Aug. 5, 1980. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 61 FR 11505, Mar. 21, 1996; 63 FR 72102, Dec. 31, 1998]

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

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

(a) *Official certificate* means any form of certification, either written or printed, used under the regulations to cer-

tify with respect to the inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

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

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

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

#### ADMINISTRATION

### **§ 54.3 Authority.**

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

#### SERVICE

### **§ 54.4 Kind of service.**

(a) Grading service under the regulations shall consist of the determination and certification and other identification, upon request by the applicant, of the class, grade, or other quality of products under applicable standards. Class, grade, and other quality may be determined under said standards for

meat of cattle, sheep, or swine in carcass form only, except upon approval by the Director upon his determination of good cause and provided that the meat can be identified in conformance with the standards.

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

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

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

[63 FR 72102, Dec. 31, 1998, as amended at 70 FR 58971, Oct. 11, 2005]

#### § 54.5 Availability of service.

Service under these regulations may be made available with respect to products shipped or received in interstate commerce, and with respect to the products not so shipped or received if the Director or Chief determines that the furnishing of service for such products would facilitate the marketing, distribution, processing, or utilization of agricultural products through commercial channels. Also, such service may be made available under a cooperative agreement. Service under these regulations shall be provided without discrimination as to race, color, sex, creed, or national origin. Service will be furnished for products only if they were derived from animals slaughtered

in federally inspected establishments or operated under State meat inspection in a State other than one designated in 9 CFR 331.2. Service under these regulations will be furnished for imported meat only if it is marked so that the name of the country of origin appears on most of the major retail cuts. The mark of foreign origin shall be imprinted by roller brand or handstamp and shall be applied so that the imprint is at least 2 inches from the backbone of lamb, 3 inches from the backbone of veal and calf, and 4 inches from the backbone of beef carcasses. The mark of foreign origin shall be repeated parallel to the backbone of the carcass so as to appear on each round, rump, full loin, rib, and chuck of each bovine and ovine carcass in letters at least one-fourth of an inch high, with no more than three-fourths of an inch space between impressions. Imprints of each such brand shall be submitted to the Chief for the determination of compliance with these regulations prior to use of the brand on meats offered for Federal grading. It shall be the responsibility of the applicant to notify the meat grade performing the service whenever imported meat is offered for grading.

#### § 54.6 How to obtain service.

(a) *Application.* Any person may apply to the Director or Chief for service under the regulations with respect to products in which the applicant is financially interested. The application shall be made on a form approved by the Director. In any case in which the service is intended to be furnished at an establishment not operated by the applicant, the application shall be approved by the operator of such establishment and such approval shall constitute an authorization for any employees of the Department to enter the establishment for the purpose of performing their functions under the regulations. The application shall state:

(1) The name and address of the establishment at which service is desired; (2) the name and post office address of the applicant; (3) the financial interest of the applicant in the products, except where application is made by an official of a Government agency in his official capacity; and (4) the signature of

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the applicant (or the signature and title of his representative). The application shall indicate the legal status of the applicant as an individual, partnership, corporation, or other form of legal entity. Any change in such status, at any time while service is being received, shall be promptly reported to the Director or Chief by the person receiving the service.

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

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

(2) *Commitment.* If desired, the applicant may request to enter into an agreement with the Agricultural Marketing Service for the furnishing of service on a weekly commitment basis, whereby the applicant agrees to pay for 8 hours of service per day, 5 days per week, Monday through Friday, excluding Federal legal holidays occurring Monday through Friday on which no grading and certification services are performed, as provided in § 54.27(b), and the Agricultural Marketing Service agrees to make an official grader available to perform such service for the applicant. However, the Agricultural Marketing Service reserves the right to use any grader assigned to a plant under such a commitment to perform service for other applicants when, in the opinion of the Chief, the grader is not needed to perform service for the commitment applicant. An applicant who terminates a commitment, and within 1 year after cancellation is granted a new commitment at his request, shall pay for the moving costs actually incurred by the Agricultural Marketing Service to cover the transfer of the grader who will service the applicant's new commitment. If more

than one applicant is involved in the reapplication for a canceled meat grading and certification commitment requiring the transfer of the grader, the moving costs will be prorated among the applicants according to each applicant's committed portion of the grader's services. However, the moving costs will be charged only to those applicants who were parties to the previously canceled commitment. An applicant may, for periods of 3 months or less, enter into an agreement by memorandum with the Agricultural Marketing Service for the furnishing of service on a weekly basis. In the latter case, transfer of graders would not be involved and charges will be made in accordance with § 54.27.

[42 FR 53921, Oct. 4, 1977. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 47 FR 44704, Oct. 12, 1982]

### § 54.7 Order of furnishing service.

Service under the regulations shall be furnished to applicants in the order in which requests therefor are received, insofar as consistent with good management, efficiency and economy. Precedence will be given, when necessary, to requests made by any government agency or any regular user of the service, and to requests for appeal service under § 54.20.

### § 54.8 When request for service deemed made.

A request for service under the regulations shall be deemed to be made when received by an office of grading. Records showing the date and time of the request shall be made and kept in such office. However, in the case of the Carcass Data Service, the purchase of official USDA eartags shall constitute a request for such service and the requisition form used to purchase the eartags shall be kept in the designated office of record.

### § 54.9 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 §§ 54.27

and 54.28, of any expenses already incurred by the Agricultural Marketing Service in connection therewith.

**§ 54.10 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 office of grading or other employee receiving the application or request under § 54.6.

**§ 54.11 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 wilfully 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, or device for making any such mark or identification;

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

(vi) Has knowingly obtained or retained possession of any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark, identification, or device, or of any such official device, or of any prod-

uct bearing any such falsely made, issued, altered, forged, or counterfeited mark or identification, or of any carcass or wholesale or retail cut bearing any designation specified in paragraph (a)(1)(vii) of this section which has not been federally graded or derived from a carcass graded as being of the indicated grade;

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

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

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

(x) Has in any manner not specified in this paragraph violated subsection 203(h) of the AMA: *Provided*, That paragraph (a)(1)(vi) of this section shall not be deemed to be violated if the person in possession of any item mentioned therein notifies the Director or Chief without such delay that he has possession of such item and, in the case of an official device, surrenders it to the Chief, and, in the case of any other item, surrenders it to the Director or Chief or destroys it or brings it into compliance with the regulations by obliterating or removing the violative features under supervision of the Director or Chief: *And provided further*, That paragraphs (a)(1) (ii) through (ix) of this section shall not be deemed to be violated by any act committed by any

person prior to the making of an application of service under the regulations by the principal person. An application or a request for service may be rejected or the benefits of the service may be otherwise denied to, or withdrawn from, any person who operates an establishment for which he has made application for service if, with the knowledge of such operator, any other person conducting any operations in such establishment has committed any of the offenses specified in paragraphs (a)(1) (i) through (x) of this section after such application was made. Moreover, an application or a request for service made in the name of a person otherwise eligible for service under the regulations may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, such a person (A) in case the service is or would be performed at an establishment operated (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 product in which any corporation, partnership, or other person within paragraph (a)(1)(x)(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 office of grading, 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) in case the application or request relates to products which are not eligible for service under §54.5 or which are unclean or are in an unclean establishment; (4) 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 (5) 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 53921, Oct. 4, 1977. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 50 FR 14366, Apr. 12, 1985; 52 FR 35683, Sept. 23, 1987; 60 FR 8464, Feb. 14, 1995]

#### **§54.12 Financial interest of official grader.**

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

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

(a) The applicant shall cause products, with respect to which service is requested, to be made easily accessible for examination and to be so placed, with adequate illuminating facilities, as to disclose their class, grade, other quality, and compliance. Supervisors of grading and other employees of the Department responsible for maintaining uniformity and accuracy of service under the regulations shall have access

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to all parts of establishments covered by approved applications for service under the regulations, for the purpose of examining all products in the establishments which have been or are to be graded or examined for compliance with specifications or which bear any marks of grade or compliance.

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

Branch was unable to provide grading service in a timely manner and that the meat can be identified in conformance with the standards.

[42 FR 53921, Oct. 4, 1977, as amended at 45 FR 51762, Aug. 5, 1980. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 63 FR 72102, Dec. 31, 1998]

### § 54.14 Official certificates.

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

(b) Applicant Charges Certificate Form LS-5-5 (Figure 2) will be used to reduce paperwork for applicants assigned multiple graders. Assigned graders will complete one Form LS-5-5. Each grader will enter their code letters and signature in the appropriate location(s) to indicate certificate completion.



Figure 2. Applicant charges.

U. S. DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE

**APPLICANT CHARGES**

This certificate is receivable by all officers and all courts of the United States as prima facie evidence of the truth of the statements therein contained. (This certificate does not excuse failure to comply with any of the regulatory laws enforced by the U.S. Department of Agriculture.)  
The conduct of all services and the financing of grading personnel under the regulations governing such services shall be accomplished without discrimination as to race, color, religion, sex, or national origin.



WEEK BEGINNING DATE: CY MONTH DAY

DOCUMENT NO: C-0012007-1

APPLICANT INFORMATION NO. 4 4

NAME, CITY, STATE

	SUNDAY		MONDAY		TUESDAY		WEDNESDAY		THURSDAY		FRIDAY		SATURDAY		TOTAL	
	GRAD	CERT	GRAD	CERT	GRAD	CERT	GRAD	CERT	GRAD	CERT	GRAD	CERT	GRAD	CERT	GRAD	CERT
1																
BASE																
PREMIUM																
HOLIDAY																
LAB FEE	\$		\$		\$		\$		\$		\$		\$		\$	
PER DIEM	\$		\$		\$		\$		\$		\$		\$		\$	
MILES																
TOTAL OTHER	\$		\$		\$		\$		\$		\$		\$		\$	
GRADERS EQUIPMENT CODE					<input type="checkbox"/> COMMITMENT <input type="checkbox"/> NONCOMMITMENT		SIGNATURE									
2																
BASE																
PREMIUM																
HOLIDAY																
LAB FEE	\$		\$		\$		\$		\$		\$		\$		\$	
PER DIEM	\$		\$		\$		\$		\$		\$		\$		\$	
MILES																
TOTAL OTHER	\$		\$		\$		\$		\$		\$		\$		\$	
GRADERS EQUIPMENT CODE					<input type="checkbox"/> COMMITMENT <input type="checkbox"/> NONCOMMITMENT		SIGNATURE									
3																
BASE																
PREMIUM																
HOLIDAY																
LAB FEE	\$		\$		\$		\$		\$		\$		\$		\$	
PER DIEM	\$		\$		\$		\$		\$		\$		\$		\$	
MILES																
TOTAL OTHER	\$		\$		\$		\$		\$		\$		\$		\$	
GRADERS EQUIPMENT CODE					<input type="checkbox"/> COMMITMENT <input type="checkbox"/> NONCOMMITMENT		SIGNATURE									
4																
BASE																
PREMIUM																
HOLIDAY																
LAB FEE	\$		\$		\$		\$		\$		\$		\$		\$	
PER DIEM	\$		\$		\$		\$		\$		\$		\$		\$	
MILES																
TOTAL OTHER	\$		\$		\$		\$		\$		\$		\$		\$	
GRADERS EQUIPMENT CODE					<input type="checkbox"/> COMMITMENT <input type="checkbox"/> NONCOMMITMENT		SIGNATURE									
5																
BASE																
PREMIUM																
HOLIDAY																
LAB FEE	\$		\$		\$		\$		\$		\$		\$		\$	
PER DIEM	\$		\$		\$		\$		\$		\$		\$		\$	
MILES																
TOTAL OTHER	\$		\$		\$		\$		\$		\$		\$		\$	
GRADERS EQUIPMENT CODE					<input type="checkbox"/> COMMITMENT <input type="checkbox"/> NONCOMMITMENT		SIGNATURE									

LS 6.5 (02-93)

(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

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financially interested in the products involved with the concurrence of the applicant and upon payment of fees, as provided in § 54.27.

[42 FR 53921, Oct. 4, 1977. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 51 FR 590, Jan. 7, 1986; 61 FR 11506, Mar. 21, 1996]

**§ 54.15 Advance information concerning service rendered.**

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

**§ 54.16 Marking of products.**

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

[42 FR 53921, Oct. 4, 1977. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 63 FR 72102, Dec. 31, 1998]

**§ 54.17 Official identifications.**

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



Figure 1.

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



Figure 2.

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



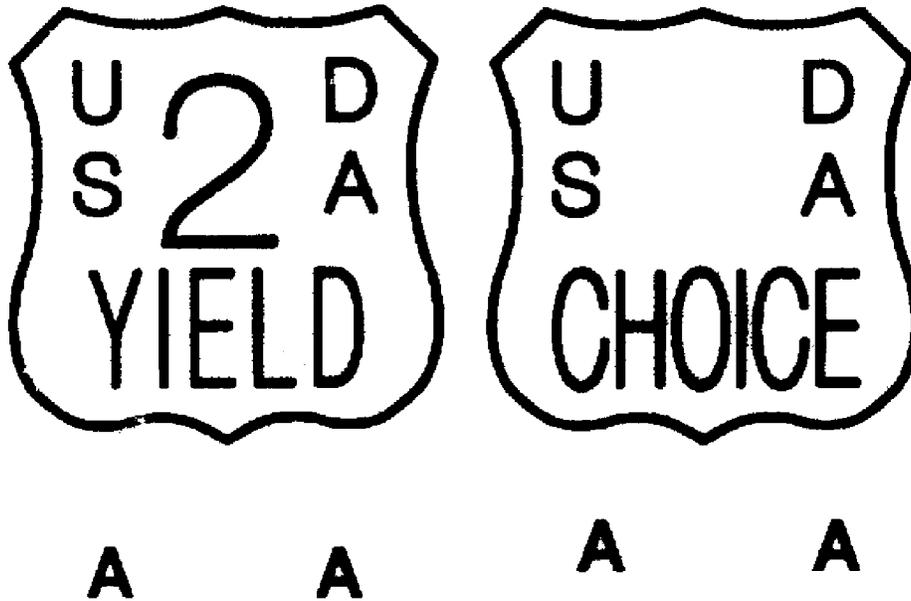
**Figure 1.**

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



**Figure 1.**

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



**Figure 1.**

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

**Figure 1.**

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



**Figure 1.**

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



Figure 1.



Figure 2.



Figure 3.

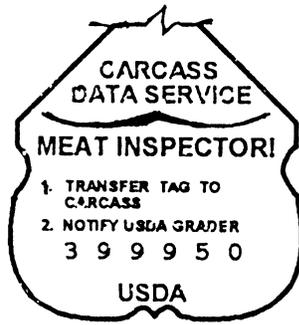
NOTE: The letters "RWX", and "UF" shown in figures 1, and 2 are examples, respectively, of the code identification letters of the official grader performing the service.

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



Figure 1.

(j) A shield-shaped ear tag enclosing the letters "USDA", the words "Carcass Data Service," as shown below (Figure 1), and a serial number constitutes a form of official identification under the regulations for livestock and carcasses. Other information may appear on the backside of the ear tag at the option of the purchasers.



(k)(1) One device used by USDA graders is a rectangular, serially numbered, orange tag on which a shield encloses the letters "USDA" and the words "Product Control" as shown in Figure 1, constitutes a form of official identification under the regulations for meat and meat products.

Figure 1.

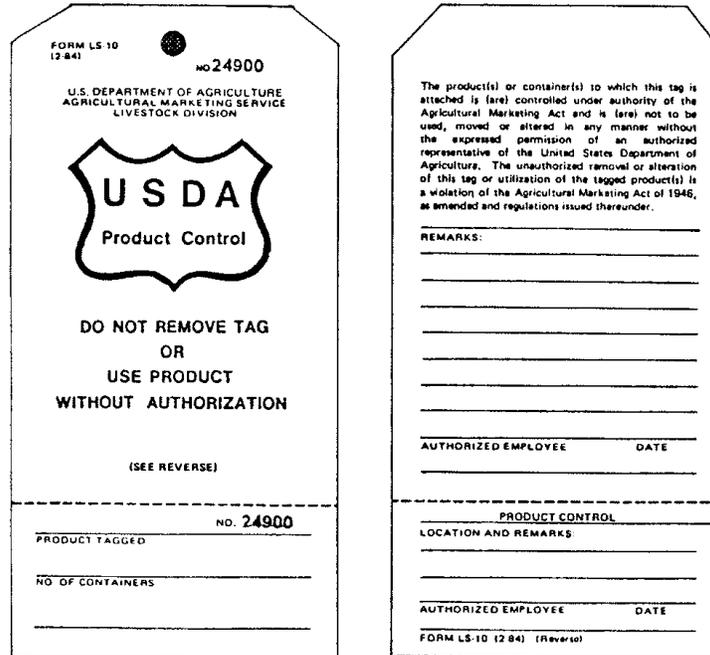


Figure 1. Form LS-10. USDA Product Control.

(2) Official graders and supervisors of grading may use "Product Control" tags or other methods and devices as approved by the Administrator for the identification and control of meat and

meat products which are not in compliance with the regulations or are held pending the results of an examination. Any such meat or meat product so identified shall not be used, moved, or

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altered in any manner; nor shall official control identification be removed, without the express permission of an authorized representative of the USDA.

[42 FR 53921, Oct. 4, 1977, as amended at 45 FR 51762, Aug. 5, 1980. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 50 FR 14367, Apr. 12, 1985; 52 FR 35683, Sept. 23, 1987; 61 FR 11509, Mar. 21, 1996]

### § 54.18 Custody of identification devices.

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

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

#### APPEAL SERVICE

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

(a) Appeal service is a redetermination of the class, grade, other quality, or compliance of product when the applicant for the appeal service formally challenges the correctness of the original determination. Only a person who has title to, or is a party to a contract for the sale of, a product may request appeal service with respect to such product and if the original determination of class, grade, other quality or compliance is found on appeal to have been in error all incorrect marks of

class, grade, other quality and compliance will be removed from the product, and if the person having title to the product so requests, correct marks as determined on the appeal will be applied to the product. Examination requested to determine the class, grade, other quality, or compliance of a product which has been altered or has undergone a material change since the original service, or examination of product requested for the purpose of obtaining an up-to-date certificate and not involving any question as to the correctness of the original service for the product involved shall be considered equivalent to original service and not appeal service.

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

[42 FR 53921, Oct. 4, 1977, as amended at 45 FR 51762, Aug. 5, 1980. Redesignated at 46 FR 63203, Dec. 31, 1981]

### § 54.20 Request for appeal service.

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

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request may require that it be confirmed in writing. Requests for appeal service received through an official grader or an office of grading shall be transmitted promptly to the Chief for instructions.

#### **§ 54.21 When request for appeal service may be withdrawn.**

A request for appeal service may be withdrawn by the applicant at any time before the appeal service has been performed, upon payment of any expenses already incurred under the regulations by the Branch in connection therewith.

#### **§ 54.22 Denial or withdrawal of appeal service.**

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

#### **§ 54.23 Who shall perform appeal service.**

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

#### **§ 54.24 Appeal certificates.**

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

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#### **§ 54.25 Superseded certificates.**

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

#### **§ 54.26 Application of other regulations to appeal service.**

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

#### **CHARGES FOR SERVICE**

#### **§ 54.27 Fees and other charges for service.**

Fees and other charges equal as nearly as may be to the cost of the services rendered shall be assessed and collected from applicants in accordance with the following provisions unless otherwise provided in the cooperative agreement under which the services are furnished, or as provided in § 54.6.

(a) *Fees for Service on Noncommitment Basis (Hourly Rates)*. Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15-minute period, including official grader's travel and certificate(s) preparation time in connection with the performance of service. A minimum charge of one-half hour shall be made for service pursuant to each request notwithstanding that the time required to perform service may be less than 30 minutes. The base hourly rate for noncommitment applicants shall be \$71 per hour for 8 hours or less of work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on legal holidays; \$78 per hour for work performed in excess of 8 hours per

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day for each assigned official grader and for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time Saturday or Sunday, except on Federal legal holidays; and \$122 per hour for all work performed on Federal legal holidays.

(b) *Fees for Service on Commitment Basis.* Minimum fees for service performed under a commitment agreement or an agreement by memorandum shall be on the basis of 8 hours per day, Monday through Friday, excluding Federal legal holidays occurring Monday through Friday on which no grading and certification services are performed. The base hourly rate for service performed under such agreements shall be \$61 per hour for 8 consecutive hours or less of work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays; \$78 per hour for work performed in excess of 8 hours per day for each assigned official grader and for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time Saturday or Sunday, except on Federal legal holidays; and \$122 per hour for all work performed on Federal legal holidays. The Agency reserves the right under such a commitment agreement or agreement by memorandum to use any grader assigned to the plant on a commitment basis to perform service for other applicants, as provided in §54.6(c), crediting the commitment applicant with the number of hours charged to the other applicant, provided the allowable credit hours plus hours actually worked for the applicants do not exceed 8 hours on any day, Monday through Friday, excluding legal holidays.

(c) *Travel charges.* When service is requested at a place so distant from an official grader's headquarters, or place of prior assignment on a circuitous routing that a total of one-half hour or more is required for the grader to travel to such place and back to the headquarters, or to the next place of assignment on a circuitous routing, the charge for such service shall include a mileage charge administratively determined by the Chief, and travel tolls, if applicable, for such travel prorated against all the applicants furnished the

service involved on an equitable basis, or where the travel is made by public transportation (including hired vehicles), a fee equal to the actual cost thereof. However, the applicant will not be charged a new mileage rate without notification before the service is rendered.

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

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

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

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(g) *Other charges.* When costs, other than costs specified in paragraphs (a), (b), (c), (d), (e), and (f) 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 53921, Oct. 4, 1977. Redesignated at 46 FR 63203, Dec. 31, 1981]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 54.27, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 54.28 Payment of fees and other charges.

Fees and other charges for service shall be paid in accordance with the following provisions unless otherwise provided in the cooperative agreement under which the service is furnished. Upon receipt of billing for fees and other charges for service the applicant shall remit by check, draft, or money order, made payable to the Agricultural Marketing Service, USDA, payment for the service in accordance with directions on the billing, and such fees and charges shall be paid in advance if required by the official grader or other authorized official.

#### MISCELLANEOUS

### § 54.29 Identification.

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

### § 54.30 Errors in service.

When an official grader, supervisor of grading, or other responsible employee of the Branch has evidence of misgrading, or of incorrect certification or other incorrect determination or identification as to the class, grade, other quality, or compliance of a product, he shall report the matter to his immediate supervisor. The super-

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

### § 54.31 Uniforms.

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

[45 FR 19214, Mar. 25, 1980. Redesignated at 46 FR 63203, Dec. 31, 1981]

## Subpart B [Reserved]

## Subpart C—Regulations Governing the Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products

SOURCE: 66 FR 1198, Jan. 5, 2001, unless otherwise noted.

### § 54.1001 Meaning of words.

For the purposes of the regulations in this subpart, words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand.

### § 54.1002 Terms defined.

*Act.* The Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*).

*Administrator.* The Administrator of the Agricultural Marketing Service (AMS), United States Department of Agriculture, or the representative to

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whom authority has been delegated to act in the stead of the Administrator.

*Agricultural Marketing Service (AMS).* The Agricultural Marketing Service of the United States Department of Agriculture.

*Applicant.* Any person who applies for service under the regulations in this subpart.

*Branch.* The Dairy Grading Branch, Dairy Programs, Agricultural Marketing Service.

*Chief.* The Chief of the Dairy Grading Branch, Dairy Programs, Agricultural Marketing Service, or the representative to whom authority has been delegated to act in the stead of the Chief.

*Compliance.* Conformity of a processing system, piece of processing equipment, or a utensil to identified standards.

*Department.* The United States Department of Agriculture.

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

*Design Review Specialist.* An employee of the Branch who determines and certifies or otherwise evaluates the compliance of equipment or utensils under the regulations.

*Design Evaluation and Certification Service.* The service established and conducted under the regulations for the evaluation and certification or other identification of the compliance of equipment or utensils used for the slaughter, processing or packaging of livestock and poultry products (Referred to hereinafter as "equipment" or "utensils") with sanitary specifications or standards.

*Fabricator.* Commercial entity engaged in the manufacture or assembly of equipment or utensils.

*Financially interested person.* Any person having a financial interest in the equipment or utensils involved, including but not limited to the designer, fabricator, or user of the equipment or utensils.

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

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

*Processing.* Cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes the packaging, canning, jarring, or otherwise enclosing in a container.

*Program.* The Dairy Programs of the Agricultural Marketing Service.

*Standards.* The most recent version of standards for equipment and utensils formulated by the NSF/3-A Joint Committee on Food Processing Equipment (Referred to hereinafter as "NSF/3-A").

*The regulations.* The regulations in this Subpart.

### **§ 54.1003 Designation of official certificates, memoranda, marks, and other identifications, for purposes of the Agricultural Marketing Act.**

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended provides criminal penalties for various specified offenses relating to official certificates, memoranda, and marks or other 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 subpart, the terms listed in paragraphs (a) through (c) of this section shall have the respective meanings specified:

(a) "Official certificate" means any form of certification, either written or printed, used under the regulations to certify with respect to the evaluation, review, condition, or acceptance of equipment or utensils (including the compliance of equipment or utensils with applicable standards).

(b) "Official memorandum" means any initial record of findings made by an authorized employee of the Dairy Grading Branch in the process of determining compliance, evaluating, or reviewing equipment or utensils pursuant to the regulations, any processing or in plant-operation report made by

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an authorized Dairy Grading Branch employee in connection with determining compliance, evaluating, or reviewing equipment or utensils under the regulations, and any report made by an authorized employee of the Dairy Grading Branch of any other services performed pursuant to the regulations.

(c) "Official mark" or "other official identification" means any form of mark or other identification, including those prescribed in § 54.1018; used under the regulations in marking any equipment or utensils or displayed as an indication that the equipment or utensils has been evaluated by AMS (including the compliance of the equipment or utensils with applicable standards).

#### § 54.1004 Administration and implementation.

The Administrator designates the administration and implementation of the Certification of Sanitary Design and Fabrication of Equipment Used in the Processing of Livestock and Poultry Products service to the Dairy Grading Branch, Dairy Programs, Agricultural Marketing Service. The Chief is charged with the administration, under the general supervision and direction of the Deputy Administrator, of the regulations and the Act insofar as they relate to equipment or utensils used to process livestock and poultry products.

#### § 54.1005 Basis of service.

(a) Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products service shall be performed in accordance with the provisions of this subpart, the instructions and guidelines issued or approved by the Chief and the applicable standards developed by the NSF/3-A.

(b) Copies of standards developed by NSF/3-A that AMS will inspect and certify to are available, for a nominal fee, from NSF International at [www.nsf.org](http://www.nsf.org) or contact Techstreet, 310 Miller Avenue, Ann Arbor, MI 48103; Phone (800) 699-9277. Copies of all other instructions and guidelines can be obtained from, and copies of standards developed by NSF/3-A may be inspected at, the U.S. Department of Agriculture, Agricultural Marketing Service, Dairy

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Programs, Dairy Grading Branch; Room 2746-S; 1400 Independence Ave., SW., Washington, DC 20250-6456.

(c) All services provided in accordance with the regulations shall be rendered without discrimination on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status.

#### § 54.1006 Kind of service.

Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products service under the regulations shall consist of the evaluation, certification and/or identification, upon request by the applicant, of the adherence of the design and fabrication of equipment and utensils to sanitary principles and criteria under applicable standards identified in this subpart. Equipment or utensils having an identical design, materials of construction, and fabrication, except for scaling up or down in size, may be submitted for evaluation as a model line or series. Determination as to equipment or utensils compliance with standards for materials of fabrication or method of fabrication may be based upon information received from the fabricator.

#### § 54.1007 Availability of service.

Service under these regulations may be made available to the designers, fabricators, users, or other interested person or party, of the equipment or utensils. Subject to the provisions of this subpart, services shall be performed only when a qualified design review specialist is available, and when the location of the equipment or utensils, evaluation facilities and conditions, as determined by the Chief, are suitable for conducting such service.

#### § 54.1008 How to obtain service.

(a) *Application.* Any person may apply to the Chief for service under the regulations with respect to equipment or utensils in which the applicant is financially interested. The application shall be made on a form approved by the Chief. In any case in which the service is intended to be furnished at an establishment not operated by the

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applicant, the applicant shall be responsible for obtaining approval for accessibility of the equipment or utensil from the operator of such establishment and such approval shall constitute an authorization for any employees of the Department to enter the establishment for the purpose of performing their functions under the regulations. The application shall state:

- (1) The name and address of the establishment at which service is desired;
  - (2) The name and post office address of the applicant;
  - (3) Identification of the party that will be responsible for payment of all services rendered in response to the request;
  - (4) The type of equipment or utensil presented for evaluation;
  - (5) The date(s) on which service is requested to be performed; and
  - (6) The signature of the applicant (or the signature and title of the applicant's representative) and date of the request.
- (b) *Notice of eligibility for service.* The applicant for service will be notified whether the applicant's application is approved.

### § 54.1009 Order of furnishing service.

Service under the regulations shall be furnished to applicants, insofar as practicable and subject to the availability of a qualified design review specialist, 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 and to requests for appeal service under § 54.1021.

### § 54.1010 When request for service deemed made.

A request for service under the regulations shall be deemed to be made when received by the Branch. Records showing the date and time of the request shall be maintained.

### § 54.1011 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. The applicant shall be responsible for payment, in accordance with § 54.1028 and § 54.1029, of any expenses already incurred by the Agricultural Marketing Service in connection therewith.

### § 54.1012 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 Deputy Administrator or Chief or other employee receiving the application or request under § 54.1008.

### § 54.1013 When an application may be rejected.

(a) An application or a request for service may be denied by the design review specialist, with the concurrence of the Deputy Administrator or Chief when:

- (1) For administrative reasons such as the non-availability of personnel to perform the service;
- (2) The application or request relates to equipment or utensils which are not eligible for service under § 54.1006;
- (3) The applicant fails to meet either the application requirements prescribed in this subpart or the conditions for receiving such service;
- (4) The equipment or utensil is owned by, or located on the premises of, a person currently denied the benefits of the Act;
- (5) The applicant has substantial financial ties to a person who is currently denied the benefits of the Act, or who has been adjudged, in an administrative or judicial proceeding, responsible in any way for a current denial of benefits of the Act to any other person.
- (6) The applicant is currently denied services under the Act.
- (7) Any fees billed to the applicant are not paid within 30 days; or
- (8) The applicant has failed to comply with the Act or this subpart or with the instructions or guidelines issued hereunder.

(b) The Chief shall provide notice to an applicant whose application is rejected, and shall explain the reason(s) for the rejection. If such notification is made verbally, written confirmation may be provided.

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**§ 54.1014 Accessibility of equipment and utensils; access to establishments.**

(a) The applicant shall cause equipment and utensils to be made easily accessible for examination and to be so placed, with adequate illumination to facilitate evaluation for compliance. The applicant shall furnish or make available any necessary tools; such as boroscope, profilometer, disassembly tools, ladders, radius gauges, and the like; necessary to complete the evaluation.

(b) Supervisors of USDA design review specialists 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 equipment or utensils in the establishments which have been or are to be evaluated for compliance with standards or which bear any marks of compliance.

**§ 54.1015 Official reports, forms, and certificates.**

(a) *Report.* The design review specialist shall prepare, sign, and issue a narrative report covering the observations, comments and recommendations based on the evaluation for conformance with standards of equipment and utensils as provided for in § 54.1005 and indicate the fees and other charges incurred for the services rendered.

(b) *Forms.* Form DA-161 is the official certificate for equipment or utensils evaluated and is accepted under the regulations. Issuance of this certificate is optional at the request of the applicant.

(c) *Distribution.* The original report and official certificate (if requested) shall be delivered or mailed to the applicant or other persons designated by the applicant. Other copies shall be forwarded as required by agency, program, and branch instructions. Additional copies will be furnished to any person financially interested in the equipment or utensil involved with the concurrence of the applicant and upon payment of fees, as provided in § 54.1028 and § 54.1029.

**§ 54.1016 Advance information concerning service rendered.**

Upon request of any applicant, all or any part of the contents of any report issued to the applicant under the regulations, or other notification concerning the determination of compliance of equipment or utensils for such applicant may be transmitted by facsimile transmission to the applicant, or to any person designated by the applicant at the applicant's expense.

**§ 54.1017 Authority to use official identification.**

The Chief may authorize an applicant or any persons designated by the applicant to use the official identification symbol to mark equipment or utensils, or for display in descriptive or promotional materials providing the equipment or utensils is evaluated pursuant to this subpart and found to be in compliance.

**§ 54.1018 Form of official identification and approval for use.**

(a) The official identification symbol approved for use on equipment, utensils, or descriptive or promotional materials shall appear in the form and design shown in Figure 1.

(b) The official identification symbol on equipment or utensils shall be displayed by etching or the placement of a non-removable sticker located in close proximity to the equipment identification plate.

(c) The official identification symbol is recommended to be at least 3/4 inch by 3/4 inch in size. Symbols which are smaller in size will be considered provided they are sufficiently large to be identifiable and legible.

(d) The official identification symbol shall not be used in descriptive and promotional materials without prior approval by the Chief. The official identification symbol, if used, on the descriptive or promotional materials shall be printed as part of the text or format.

(e) An applicant shall submit to the Chief of the Dairy Grading Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, D.C. 20090-6456, an application, if one is not on file, requesting approval to use

the official identification symbol on officially accepted equipment and in descriptive or promotional materials.

Figure 1. Official identification symbol.



**§54.1019 Renewal of acceptance certification.**

The manufacturer of any equipment or utensil which has been issued a report or certification stating acceptance of compliance shall resubmit the design and fabrication details of any change in materials of construction,

design, or fabrication which may impair the cleanability or hygienic design of the equipment or utensil. If no change in materials of construction, design, or fabrication which may impair the cleanability or hygienic design of the equipment or utensil has occurred during the period of four years after the date of the most recent report

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stating acceptance of compliance or if no design or fabrication changes have been made, the applicant may submit a certificate of conformance signed by the chief engineering officer and the chief executive officer of the company stating that no design changes have been made to the specified equipment or utensil.

**§ 54.1020 Appeal service; marking equipment or utensils on appeal; requirements for appeal; certain determinations not appealable.**

(a) Appeal service is a re-evaluation of the compliance of a piece of equipment, portion of a piece of equipment, or utensil to design or fabrication criteria according to the standards prescribed by this subpart.

(b) Only the original applicant or their representative may request appeal service requesting a reevaluation of the original determination of the design and fabrication of the equipment or utensil for compliance with the standards specified in this subpart.

(c) Appeal service will not be furnished for:

(1) A piece of equipment, portion of a piece of equipment, or utensil which has been altered or has undergone a material change since the original service.

(2) For the purpose of obtaining an up-to-date report or certificate which does not involve a question as to the correctness of the original service for the piece of equipment, portion of a piece of equipment, or utensil.

**§ 54.1021 Request for appeal service.**

(a) Except as otherwise provided in § 54.1020, an applicant or their representative may request appeal service when the applicant or their representative disagree with the determination as to compliance with the standard of the piece of equipment, portion of a piece of equipment, or utensil as documented in the applicable report.

(b) A request for appeal service shall be filed with the Chief, directly or through the design review specialist who performed the original service. The request shall state the reasons for the disagreement with the original determination and may be accompanied by a copy of any previous certificate or

report, or any other information which the applicant may have received regarding the piece of equipment, portion of a piece of equipment, or utensil at the time of the original service. Such request may be made orally (including by telephone) or in writing (including by facsimile transmission). If made orally, the Dairy Grading Branch employee receiving the request may require that it be confirmed in writing.

**§ 54.1022 When request for appeal service may be withdrawn.**

A request for appeal service may be withdrawn by the applicant at any time before the appeal service has been performed, upon payment of any expenses already incurred under the regulations by the Branch in connection therewith.

**§ 54.1023 Denial or withdrawal of appeal service.**

A request for appeal service may be rejected or such service may be otherwise denied to or withdrawn from any person in accordance with the procedure set forth in § 54.1013(a), if it appears that the person or product involved is not eligible for appeal service under § 54.1020, or that the identity of the piece of equipment, portion of a piece of equipment, or utensil has been lost; or for any of the causes set forth in § 54.1032.

**§ 54.1024 Who shall perform appeal service.**

Appeal service for equipment or utensils shall be performed by the Chief or a design review specialist designated by the Chief. No design review specialist may perform appeal service for any piece of equipment, portion of a piece of equipment or utensil for which the original design review specialist performed the initial evaluation service.

**§ 54.1025 Appeal reports.**

After appeal service has been performed for any piece of equipment, portion of a piece of equipment or utensils, an official report shall be prepared, signed, and issued referring specifically to the original report and stating the determination of the re-evaluation of compliance of the piece

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of equipment, portion of a piece of equipment or utensil.

### § 54.1026 Superseded reports.

The appeal report shall supersede the original report which, thereupon, shall become null and void for all or a portion of the report pertaining to the appeal service and shall not thereafter be deemed to show the compliance of the equipment or utensils described therein. However, the fees charged for the original service shall not be remitted to the applicant who filed the appeal.

### § 54.1027 Application of other regulations to appeal service.

The regulations in this subpart shall apply to appeal service except insofar as they are inapplicable.

### § 54.1028 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 provisions for Fees and Charges set forth in 7 CFR part 58, Subpart A, Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products, sections §§ 58.38, 58.39, 58.41, 58.42, and 58.43, as appropriate.

### § 54.1029 Payment of fees and other charges.

Fees and other charges for service shall be paid upon receipt of billing for fees and other charges for service. The applicant shall remit by check, draft, or money order, made payable to the Agricultural Marketing Service, USDA, payment for the service in accordance with directions on the billing, and such fees and charges shall be paid in advance if required by the official design review specialist or other authorized official.

### § 54.1030 Identification.

All official design review specialists 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.

### § 54.1031 Errors in service.

When a design review specialist, supervisor, or other responsible employee of the Branch has evidence of inaccurate evaluation, or of incorrect certification or other incorrect determination or identification as to the compliance of a piece of equipment or utensil, such person shall report the matter to the Chief. The Chief will investigate the matter and, if deemed advisable, will report any material errors to the owner or the owner's agent. The Chief shall take appropriate action to correct errors found in the determination of compliance of equipment or utensils, and the Chief shall take adequate measures to prevent the recurrence of such errors.

### § 54.1032 Denial or withdrawal of service.

(a)(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 the person's employment or agency:

(i) Has wilfully 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 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 or identification;

(vi) Has knowingly obtained or retained possession of any such falsely

made, issued, altered, forged, or counterfeited certificate, memorandum, mark or identification, or of any equipment or utensil bearing any such falsely made, issued, altered, forged, or counterfeited mark or identification;

(vii) Has applied the designation “USDA Accepted Equipment”, “AMS Accepted Equipment”, “USDA Approved Equipment”, “AMS Approved Equipment”, “Approved By USDA”, “Approved By AMS”, “Accepted By USDA”, “Accepted By AMS”, “USDA Approved”, “USDA Accepted”, “AMS Approved”, “AMS Accepted”, or any other variation of wording which states or implies official sanction by the United States Department of Agriculture by stamp, or brand directly on any equipment or utensil, or used as part of any promotional materials which has not been inspected and deemed in compliance with this subpart; or,

(viii) Has in any manner not specified in this paragraph violated subsection 203(h) of the AMA: *Provided*, That paragraph (a)(1)(vi) of this section shall not be deemed to be violated if the person in possession of any item mentioned therein notifies the Deputy Administrator or Chief without such delay that such person has possession of such item and, in the case of an official identification, surrenders it to the Chief, and, in the case of any other item, surrenders it to the Deputy Administrator or Chief or destroys it or brings it into compliance with the regulations by obliterating or removing the violative features under supervision of the Deputy Administrator or Chief: *And provided further*, That paragraphs (a)(1) (ii) through (vii) of this section shall not be deemed to be violated by any act committed by any person prior to the making of an application of service under the regulations by the principal person. An application or a request for service may be rejected or the benefits of the service may be otherwise denied to, or withdrawn from, any person who operates an establishment for which such person has made application for service if, with the knowledge of such operator, any other person conducting any operations in such establishment has committed any of the offenses specified in paragraphs (a)(1) (i)

through (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 product in which any corporation, partnership, or other person within paragraph (a)(1)(viii)(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 7 CFR §§1.130 through 1.151 and the Supplemental Rules of Practice in part 50, 7 CFR §50.1 *et seq.*

(b) *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.

#### § 54.1033 Confidential treatment.

Every design review specialist providing service under these regulations shall keep confidential all information secured and not disclose such information to any person except an authorized representative of the Department.

**§ 54.1034 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

The following control number has been assigned to the information collection requirements in 7 CFR part 54, subpart C, by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

7 CFR section where requirements are described	Current OMB control No.
54.1008(a) .....	0581-0126
54.1017 .....	0581-0126
54.1018(e) .....	0581-0126
54.1019 .....	0581-0126
54.1020 .....	0581-0126
54.1021 .....	0581-0126

**PART 56—VOLUNTARY GRADING OF SHELL EGGS**

**Subpart A—Grading of Shell Eggs**

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