



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

[No. AMS-LP-16-0080]

Amendments to the Regulations Governing Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule informs the public that the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is amending its regulations to update a number of outdated administrative and organizational references, clarify agency action as it relates to the withdrawal or denial of service, update the official shields and grademarks associated with the grading service, and make reference to the use of instrument grading equipment as a means of determining official grades on beef and lamb carcasses.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 13771, and Regulatory Flexibility Act

This rulemaking does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866 and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Administrator of AMS considered the economic effect of this action on small entities and determined that this final rule does not have a significant economic impact on a substantial number of small business entities, because the user-fee services that are subject to the requirements of this regulation are not subject to scalability based on the business size. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

Currently, approximately 235 applicants subscribe to AMS's voluntary, user fee services. The U.S. Small Business Administration's Table of Small Business Size Standards matched to the North American Industry Classification System (NAICS) Codes identifies small business size by average annual receipts or by the average number of employees at a firm. This information can be found at 13 CFR parts 121.104, 121.106, and 121.201.

AMS requires that all applicants for service provide information about their company for the purpose of processing bills. Information collected from an applicant

includes company name, address, billing address, and similar information. AMS does not collect information about the size of the business. However, based on working knowledge of these operations, AMS estimates that roughly 72 percent of current applicants may be classified as small entities. It is not anticipated that this action will impose additional costs to applicants, regardless of size. Current applicants will not be required to provide any additional information to receive service. The effects of this final rule are not expected to be disproportionately greater or lesser for small applicants than for large applicants.

AMS is committed to complying with the E-Government Act of 2002 [44 U.S.C. § 101] to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes. Accordingly, AMS developed options for companies requesting service to do so electronically.

The USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

Congressional Review Act

Pursuant to the Congressional Review Act [5 U.S.C. § 801 et seq.], the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. § 804(2).

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The

review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12988

This final rule has been reviewed under Executive Order (E.O.) 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect. The E.O. prohibits states or political subdivisions of a state to impose any requirement that is in addition to, or inconsistent with, any requirement of the E.O. There are no civil justice implications associated with this final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], this final rule will not change the information collection and recordkeeping requirements previously approved and would not impose additional reporting or recordkeeping burden on users of these voluntary services.

The information collection and recordkeeping requirements of this part have been approved by OMB under 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581-0128.

In September 2014, three separate OMB collections—OMB 0581-0127, OMB 0581-0124, and OMB 0581-0128—were merged, such that the current OMB 0581-0128 pertains to Regulations for Voluntary Grading, Certification, and Standards and includes 7 CFR parts 54, 56, 62, and 70.

Background and Revisions

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*), herein after referred to as the “Act,” directs and authorizes the Secretary of Agriculture to facilitate

the competitive and efficient marketing of agricultural products. AMS programs support a strategic marketing perspective that adapts product and marketing decisions to consumer demands and changes in domestic and international marketing practices and incorporates emerging technology. AMS provides impartial grading and certification services that ensure agricultural products meet specified requirements. These services are voluntary, with users paying for the cost of the requested service. AMS grading services verify that product meets USDA grade standards (e.g., USDA Choice) and certify that products meet requirements defined by the company or another third-party. Product characteristics such as manner of cut, color, and other quality attributes can be directly examined by an AMS employee or an authorized agent to determine if product requirements have been met. The product can be identified as “USDA Prime,” “USDA Choice,” “USDA Select,” “USDA Certified,” “USDA Accepted as Specified,” or “USDA Further Processing Certification Program.”

Administrative and Organizational Revisions

In 2012, an organizational merger within AMS combined the Livestock and Seed Program and Poultry Programs into the Livestock, Poultry, and Seed (LPS) Program. Subsequently, the LPS Program created the Quality Assessment Division (QAD) to oversee services carried out by the Audit Services Branch, Grading Services Branch, Standardization Branch, and the Business Operations Branch. The Grading Services Branch administers grading and certification services that were performed by the former Meat Grading and Certification Branch of the former Livestock and Seed Program and the former Grading Branch of Poultry Programs. In 2018, another organizational change caused the LPS Program to be renamed the Livestock and Poultry Program.

Meat grading and certification activities are carried out under 7 CFR 54, while poultry and shell egg grading and certification activities are carried out under 7 CFR 70 and 7 CFR 56, respectively.

Through this rulemaking, AMS will update a number of administrative and organizational references to reflect the current terminology and structure of AMS. These amendments include amending § 54.1 to change the LPS Program to the Livestock and Poultry Program. Certain terms and definitions will be added to, updated in, or deleted from § 54.1 to reflect the current organizational structure within the Agency. The term and definition for *Livestock* will be removed from the regulation because the use of this definition was fundamentally the same as the definition of *Animals*. The term and definitions for *Contract verification service* will be removed from § 54.1 because this service is no longer provided, and a conforming change will be made to § 54.4 *Kind of service*. The definition for *Animals* will be revised to add “bison,” as the Agency certifies bison; *Chief* will be revised to identify the Grading Services Branch Chief; *Division* will be revised to identify QAD and appropriately reflect its level within the organization; *Meat by-products* will be revised to exclude brain derived from ruminant animals, which is no longer allowed per food safety regulations; and the term *Standards* will be replaced with *Official standards*, and its definition will be revised for consistency within the regulation. The terms *Yield grade* and *Appeal service* and their respective definitions will be added to identify the different types of grading service offered under the regulations. The terms *Program* and *Deputy Administrator* and their respective definitions will be added to appropriately recognize the office and leadership within the current organizational structure of the Agency.

Since this regulation has not received significant revisions for some time, AMS is revising it to make it consistent with The Plain Writing Act of 2010 [P.L. 111-274]. To accomplish this, AMS is focusing on appropriate pronoun use, omitting unnecessary words, and writing short sentences.

To reflect organizational changes and for consistency with other changes to this regulation, AMS will amend § 54.4 *Kind of service*, § 54.6 *How to obtain service*, § 54.7 *Order of furnishing service*, § 54.8 *When request for service deemed made*, § 54.9 *Withdrawal of application or request for service*, and § 54.10 *Authority of agent*.

AMS will also amend § 54.5 *Availability of service* by removing language that states service will be provided without discrimination, as this is a duplicative statement of a requirement that is mandated through Departmental regulations, not by AMS.

AMS will amend § 54.6 *How to obtain service* by increasing the length of time between cancellation of commitment service and reapplication for commitment service from 1 to 2 years and clarifying that the applicant is responsible for reimbursing relocation costs incurred by the Agency to transfer the grader.

AMS will remove the reference to the Medium grade for lamb, yearling lamb, mutton, and pork carcasses in § 54.11(a)(1)(vii). The official standards for grades of lamb and mutton carcasses were amended in October 1940 (Amendment No. 1 to S.R.A. 123) to change the grade designations Medium and Common to Commercial and Utility, respectively. In April 1968, the official standards for pork carcasses were revised and the former Medium and Cull grades were combined and renamed U.S. Utility. Removing the reference to Medium in § 54.11(a)(1)(vii) aligns the regulatory language with the language contained within the official standards.

Clarify Agency Action on Denial or Withdrawal of Service

AMS will create a stair-stepped approach regarding denial or withdrawal of Grading Services Branch services. As written, § 54.11 requires AMS to go before an administrative law judge to hear a case for an applicant accused of misconduct before any action can be taken; the process and actions currently identified in this part limit AMS's ability to effectively manage its services, including denying, withdrawing, or suspending services in a timely manner when warranted for reasons of misconduct. Therefore, AMS is clarifying that it shall rely first on the Supplemental Rules of Practice in 7 CFR 50 and then, if necessary, use 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 when denying, withdrawing, or suspending services to applicants. An applicant will still have an opportunity for a hearing before an administrative law judge before any permanent action occurs.

Other Amendments to the Regulation

The regulations outlined in this part are intended to describe to the public how AMS provides grading and certification services and the related processes, not provide instruction to employees or repeat requirements covered by another Federal regulation. Accordingly, AMS will remove and reserve for future use § 54.12 *Financial interest of official grader*. USDA graders and other employees are required to meet and maintain Departmental ethics requirements; therefore, AMS has determined that it is unnecessary to maintain this administrative item in this regulation. AMS will remove and reserve § 54.14 *Official certificates*, which removes the Agricultural Products Certificate Form LS-5-3 and the Applicant Charges Certificate Form LS-5-5. These forms were

discontinued in 2009, and the information they contained is now entered into a database. If an applicant requires an official certificate from USDA, an official memorandum is issued containing the pertinent information.

In 2001, vision-based instrument technology was approved for use in the official determination of the size of the ribeye area. In 2007, it was approved for yield grade determination, and in 2009, it was approved for marbling assessment. Although this technology has been used as an aid in the application of official USDA beef grades since 2001, the current regulations make no mention of it. AMS considers the use of instrument technology to be an important option for determining degrees of marbling in meat carcasses and yield and, therefore, is adding a reference to it in § 54.15.

AMS will appropriately identify and reference figures within § 54.17. Currently, multiple figures in that section contain the same label, Figure 1, which makes it difficult to accurately reference any one particular figure. AMS will remove the Carcass Data Service orange ear tag from § 54.17, because the Agency no longer prints or maintains them and instead allows cattle enrolled in the Carcass Data Service to be identified through other approved methods. AMS will appropriately identify and reference in § 54.17 the USDA Further Processing Certification Program shield used to identify product produced under the USDA Further Processing Certification Program. Additionally, AMS will amend language within this section to accurately identify the USDA Hold tag that is now used in place of the USDA Product Control tag. The tag is now red in color as opposed to orange.

Within § 54.19, AMS will remove the heading APPEAL SERVICE, rename § 54.19 as *Appeal of a grading service decision*, reassign amended language from §§ 54.20

through 54.26 under § 54.19 (a) through (h), and subsequently reserve §§ 54.21 through 54.26.

AMS will rename § 54.20 *Exemptions*. The amendments will identify the requirements within the regulation where exemptions are most commonly provided and identify an option for exemptions as seen fit by the Director. It also will require the Director to approve all exemptions to this regulation. AMS will make conforming changes to §§ 54.4 *Kind of service*, 54.5 *Availability of service*, and 54.13 *Accessibility and refrigeration of products; access to establishments*.

Together, amendments to §§ 54.5 *Availability of service*, 54.13 *Accessibility and refrigeration of products; access to establishments*, and § 54.20 *Exemptions* clarify the grading of meat in less-than-carcass form, and further, that the grading of imported carcasses is allowable only under an exemption approved by the Director. For clarity, the requirements for grading of imported carcasses are addressed within §§ 54.20.

AMS will remove and reserve § 54.30 *Errors in service*. AMS proposed that the subject covered in this § 54.30 is most appropriately covered under a policy or procedure rather than a regulation.

Lastly, AMS will replace the title and language of § 54.31 *Uniforms* with the title *OMB Control Number*. AMS believes the subject of uniforms is more appropriate under a policy rather than a regulation. AMS will add language under this section that clearly identifies the OMB control number, OMB 0581-0128, assigned to this regulation in accordance with the Paperwork Reduction Act.

Summary of Comments

A proposed rule to amend the Regulations Governing Meats, Prepared Meats, and

Meat Products (Grading, Certification, and Standards) was published in the *Federal Register* (84 FR 1641) on February 5, 2019. Comments on the proposed rule were solicited from interested parties until April 8, 2019. AMS received 12 comments: 8 from consumers, 1 from an industry company, and 3 from industry trade organizations. One of the 12 comments was outside the scope of the regulations.

Three consumer commenters supported all the amendments as beneficial for consumers and producers of meat products, while two consumer commenters were supportive of the amendments with the exception of 54.13(d), which requires that applicants for grading service make products, records, and equipment accessible so that graders may perform their duties effectively. This includes offering product for grading or certification that is, at a minimum, 90 percent acceptable. The two commenters suggested that this number should be increased to 100 percent. In response, AMS will maintain the requirement as written in the proposed rule, as 90 percent reflects a practical and achievable goal that effectively limits ineligible product from being offered for grading and certification.

The 3 industry commenters and 1 company commenter generally supported the changes in the proposed rule, with a few exceptions.

One commenter pointed out that the definition in § 54.1 for “Institutional Meat Purchase Specifications” should be amended to include quotation marks to designate “IMPS” as an acronym and the definition of “meat by-products” should be consistent with that used by the Food Safety and Inspection Service. In response to these suggestions, the Agency is revising the proposed language for the definitions of “Institutional Meat Purchase Specifications” and “meat by-products.”

One commenter suggested that AMS provide background on the change to the reimbursement requirements in § 54.6 from 1 year to 2 years, stating that AMS did not provide justification or an impact analysis for this change. AMS proposed this change, requiring that the applicant be responsible for the cost of relocating a grader should it cancel its commitment service and then reinstate it within 2 years, in light of the significant expense and disruption to the Agency of relocating a grader multiple times within a short period of time, based on previous experience. Expanding this requirement to a 2-year timeframe will help AMS continue to provide consistent service and a stable work environment for AMS employees. Therefore, AMS will maintain the requirement as amended in the proposed rule.

Regarding § 54.11, one commenter recommended revising language in the preamble of the final rule to show the distinct order of AMS procedures when denying, withdrawing, or suspending service that “reflects agency practice and does not represent a tangible change.” AMS agrees and has added clarifying language to the preamble.

One commenter suggested a revision in 54.13(a) that would replace the word “any” with “covered” or a similar phrase to clarify the regulatory intent when talking about marks of grade or compliance. AMS has determined not to make this change. By referencing “any marks” the Agency continues to accept defined marks that are recognized within the industry and have replaced official stamps for some methods of identification. One example is an ink brush stroke on the hock to identify a carcass meeting the Angus breed phenotypic specification; this practice reduces the amount of ink on the carcass round and therefore reduces trim and waste within the packing sector.

One industry commenter supported the reference to instrument grading in section

in § 54.15 and urged USDA to ensure consistency of instrument grading calibration.

One industry commenter supported the proposed changes to the marketing grade terms (e.g., Prime, Choice, Select) to indicate the level of quality, while two consumer commenters opposed the changes, suggesting “terms such as level 1, level 2, and level 3 may make the quality grade meanings clearer to consumers.” In response to these comments, AMS will keep the proposed changes so that marketing grade terms remain consistent with the past as the terms are widely known and recognized by the industry, consumers, and foreign trading partners.

Several comments were received regarding the proposed changes to § 54.5 and § 54.20 with respect to grading of imported carcasses. One commenter asked for clarification on whether, as a result of the proposed changes, the eligibility of imported product would change significantly. The answer is no. The regulations and AMS procedures allow the Agency to grant exemptions to grade imported product in carcass form, enabling AMS to use all parts of the official standards to determine the appropriate grade. AMS is clarifying that exemptions have always been required for the official grading of imported carcasses since § 54.5 requires that carcasses come from animals slaughtered in establishments that are federally inspected or operated under state meat inspection. In the final rule, this requirement is maintained under § 54.5 and language is added to clarify that the grading of imported carcasses is allowed only under an exemption approved by the Director.

Two commenters supported the general guidance in § 54.20 allowing additional flexibility under exemptions granted by the Agency. One commenter opposed the proposed amendment to § 54.5 that service “may be furnished” instead of “will be

furnished” for imported meat, suggesting instead that the phrase be changed to “shall be provided.” Another commenter recommended a change to the proposed language in § 54.20 authorizing the Director to issue exemptions, requesting that “shall issue” be added. After consideration, AMS will proceed with language of the proposed rule in § 54.5 and § 54.20 with minor changes. The Agency believes that maintaining flexibility in the process by which the Director may approve or deny exemptions is necessary to enhance commerce while ensuring decisions are for good cause and based upon the supporting documentation provided by the applicant. Changing the word “will” to “may” supports the Agency’s due diligence to ensure minimal impact upon the industry should an exemption be granted and to deny requests if determined otherwise.

One commenter supported the language in § 54.20 that provides an exemption allowing for the grading of meat in other-than-carcass form “if the class, grade, and other quality attributes may be determined under the applicable standards.” This commenter suggested that as long as an establishment can demonstrate that products presented for grading are of the proper class and maturity, and the grade can be determined based on the quality attributes of the meat, there is no need to limit grading services to whole carcasses. The commenter referenced an exemption that AMS granted in 2017 for the grading of ribs and loins imported from Mexico. The commenter also asked AMS to clarify, in the final rule or in guidance, what criteria must be satisfied to demonstrate an animal’s class when meat is presented for grading in other-than-carcass form.

In response, AMS maintains that the official standards are written in terms of carcasses and sides, and thus the grading of product in less-than-carcass form is generally contrary to the standards. AMS maintains the flexibility to grant exemptions for product

presented in other-than-carcaass form, but these exemptions are typically for religious reasons where a whole carcaass has been presented for grading as quarters instead of sides. In contrast, AMS maintains that subprimal parts, such as ribs and loins, present insufficient criteria by which a grader may make an adequate class or quality determination. Therefore, AMS will maintain the proposed language in § 54.20 with one clarifying change: references to “meat from imported animals” and “imported meat” are changed to “imported carcasses” for clarity and accuracy.

Coinciding with the publication of this final rule, AMS will be amending its procedures (QAD Procedure 504 Import Grading) accordingly.

One industry commenter opposed any reciprocity of official standards and services of USDA beef grades outside the U.S. and also opposed other countries utilizing USDA’s system and associated terms. While AMS considers this comment to be outside the scope of this rulemaking, we recognize the industry’s concerns.

List of Subjects

7 CFR 54

Food grades and standards, Food labeling, Meat and meat products, Poultry and poultry products.

For the reasons set forth in the preamble, AMS amends 7 CFR part 54 as follows:

PART 54 –MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for 7 CFR 54 continues to read as follows:

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

2. Amend § 54.1 by:

A. Revising the section heading.

B. Revising the definitions of “*Administrator*,” “*Animals*,” “*Branch*,” “*Chief*,” “*Director*,” “*Division*,” “*Institutional Meat Purchase Specifications*,” “*Meat by-products*”, and “*Service*”.

C. Adding in alphabetical order the definitions “*Appeal service*,” “*Deputy Administrator*,” “*Official standards*,” and “*Program*”.

D. Removing the definitions for “*Contract verification service*,” “*Livestock*,” “*Standards*”.

The revisions and additions read as follows:

§ 54.1 Meaning of words and terms defined.

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Administrator. The Administrator of the Agricultural Marketing Service (AMS), or any officer or employee of the AMS to whom authority has been or may be delegated to act in the Administrator’s stead.

* * * * *

Animals. Bison, cattle, goats, sheep, swine, or other species identified by the Administrator.

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Appeal service. 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.

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Branch. The Grading Services Branch of the Division.

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Chief. The Chief of the Grading Services Branch, or any officer or employee of the Branch to whom authority has been or may be delegated to act in the Chief’s stead.

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Deputy Administrator. The Deputy Administrator of the Program, or any other officer or employee of the Program to whom authority has been or may be delegated to act in the Deputy Administrator’s stead.

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

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Division. The Quality Assessment Division of the Livestock and Poultry Program.

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Institutional Meat Purchase Specifications. Specifications describing various meat cuts, meat products, and meat food products derived from species covered in the definition of *Animals* above, commonly abbreviated “IMPS,” and intended for use by any meat procuring activity. For labeling purposes, only product certified by the Grading Services Branch may contain the letters “IMPS” on the product label.

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Meat by-products. Any part capable of use as human food, other than meat, which has been derived from one or more cattle, sheep, swine, or goats.

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Official standards. Official standards refer to the United States Standards for Grades of Carcass Beef; the United States Standards for Grades of Veal and Calf

Carcasses; the United States Standards for Grades of Lamb, Yearling Mutton, and Mutton Carcasses; and/or the United States Standards for Grades of Pork Carcasses.

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Program. The Livestock and Poultry Program of the Agricultural Marketing Service.

Service. Services offered by the Grading Services Branch such as Grading Service, Certification Service, and Carcass Data Service.

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Yield grade. The indicated yield of closely trimmed (1/2 inch fat or less), boneless retail cuts expected to be derived from the major wholesale cuts (round, sirloin, short loin, rib, and square-cut chuck) of a carcass.

3. Revise § 54.4 to read as follows:

§ 54.4 Kind of service.

(a) Grading Service consists of the determination, certification, and identification of the class, grade, or other quality attributes of products under applicable official standards.

(b) Certification Service consists of the determination, certification, and identification of products to an approved specification. Determination of 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) Carcass Data Service consists of the evaluation of carcass characteristics of animals identified with an approved ear tag to applicable official standards or

specifications, and the recording and transmitting of the associated data to the applicant or a party designated by the applicant.

4. Revise § 54.5 to read as follows:

§ 54.5 Availability of service.

Service under these regulations may be made available to products shipped or received in interstate commerce. It also may be made available to the products not shipped or received if the Director or Chief determines that the furnishing of service for such products will facilitate the marketing, distribution, processing, or utilization of agricultural products through commercial channels. Service will be furnished for products only if they were derived from animals slaughtered in federally inspected establishments or establishments operated under state meat inspection in a state other than one designated in 9 CFR 331.2. Service may be furnished for imported carcasses only if an exemption to do so is granted by the Director as described in § 54.20.

5. Revise § 54.6 to read as follows:

§ 54.6 How to obtain service.

(a) *Application.* Any person may apply for service with respect to products in which he or she has a financial interest by completing the required application for service. 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 employee of the Department to enter the establishment for the purpose of performing his or her functions under the regulations. The application shall include:

(1) Name and address of the establishment at which service is desired;

(2) Name and mailing address of the applicant;

(3) Financial interest of the applicant in the products, except where application is made by a representative of a Government agency in the representative's official capacity;

(4) Signature of the applicant (or the signature and title of the applicant's representative);

(5) Indication of the legal status of the applicant as an individual, partnership, corporation, or other form of legal entity; and

(6) The legal designation of the applicant's business as a small or large business, as defined by the U.S. Small Business Administration's North American Industry Classification System (NAICS) Codes.

(b) *Notice of eligibility for service.* The applicant will be notified whether the application is approved or denied.

(c) *Request by applicant for service:* (1) *Noncommitment.* Upon notification of the approval of an application for service, the applicant may, from time-to-time as desired, make oral or written requests for service to be furnished with respect to specific products. Such requests shall be made at an office for grading, either directly or through an AMS employee.

(2) *Commitment.* If desired, the applicant may request to enter into an agreement with AMS to furnish service on a weekly commitment basis, where 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, and AMS agrees to make an official grader available to provide service for the applicant. However, AMS reserves the right to use any official grader assigned to a commitment applicant to perform service for other applicants when, in the opinion of the Chief, the official grader is not needed to perform service for the commitment applicant. In those instances, the applicant will not be charged for the work of the grader assigned to his or her facility.

(3) If an applicant who terminates commitment grading service requests service again within a 2-year period from the date of the initial termination, the applicant will be responsible for all relocation costs associated with the grader assigned to fulfill the new service agreement. If more than one applicant is involved, expenses will be prorated according to each applicant's committed portion of the official grader's services.

6. Revise § 54.7 to read as follows:

§ 54.7 Order of furnishing service.

Service shall be furnished to applicants in the order in which requests are received. Preference 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 § 54.19.

7. Revise § 54.8 to read as follows:

§ 54.8 When request for service deemed made.

A request for service is considered made when received by the designated office as identified on the Application for Service form. Records showing the date and time of the request shall be made and maintained in the designated office.

8. Revise § 54.9 to read as follows:

§ 54.9 Withdrawal of application or request for service.

An application or a request for service may be withdrawn by the applicant at any time before the application is approved or prior to performance of service. In accordance with §§ 54.27 and 54.28, any expenses already incurred by AMS in connection with the review of an application or fulfilling a request for service are the responsibility of the applicant.

9. Revise § 54.10 to read as follows:

§ 54.10 Authority of agent.

Proof that any person making an application or a request for service on behalf of any other person has the authority to do so may be required at the discretion of the Director or Chief.

10. Amend § 54.11 by revising the section heading, paragraph (a)(1) introductory text, and paragraphs (a)(1)(i) through (iii), (vii), (x), and (a)(2) to read as follows:

§ 54.11 Denial, conditional withdrawal, or suspension of service.

(a) * * *

(1) *Basis 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 individual's 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;

(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;

(iii) Has interfered with or obstructed, or attempted to interfere with or to obstruct, any employee of the Department in the performance of his or her duties under the regulations by intimidation, threats, assaults, abuse, or any other improper means;

* * * * *

(vii) Has applied the designation “US” or “USDA” and “Prime,” “Choice,” “Select,” “Good,” “Standard,” “Commercial,” “Utility,” “Cutter,” “Canner,” “Cull,” “No. 1,” “No. 2,” “No. 3,” “No. 4,” “Yield Grade 1,” “Yield Grade 2,” “Yield Grade 3,” “Yield Grade 4,” “Yield Grade 5,” and “USDA Accepted as Specified,” by stamp or text enclosed within a shield, or brand directly on any carcass, wholesale cut, or retail cut of any carcass, or has applied the aforementioned designations including “USDA Certified,” and “USDA Further Processing Certification Program” on the marketing material associated with any such product as part of a grade designation or product specification;

* * * * *

(x) 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 the person 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 that 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 (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 with 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 initially conducted in accordance with the Supplemental Rules of Practice in part 50 of this chapter. Any

issue unable to be resolved under part 50 of this chapter shall be resolved or handled 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.

* * * * *

§ 54.12 [Removed and Reserved]

11. Remove and reserve § 54.12.
12. Revise § 54.13 to read as follows:

§ 54.13 Accessibility and refrigeration of products; access to establishments; suitable work environment; and access to records.

(a) The applicant shall make products easily accessible for examination, with appropriate and adequate illuminating facilities, in order to disclose their class, grade, other quality characteristics, and compliance with official standards or other contractual requirements for which service is being provided. Supervisors of grading and other employees of the Department responsible for maintaining uniformity and accuracy of service shall have access to all parts of establishments covered by approved applications for service under the regulations, for the purpose of examining all products in the establishments that 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 be furnished only for meat that an official 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. Meat that is presented in a frozen condition is not 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 will be graded only after the hide is removed and only in the establishment where such removal occurs).

(c) Applicants are responsible for providing a work environment where official graders are not subjected to physical and/or verbal abuse, or other elements that could have a negative effect on providing an unbiased, third-party evaluation. Applicants shall designate primary company representatives to discuss grade placements and certification determinations with official graders.

(d) Applicants will make products and related records (approved labeling, technical proposals, quality plans, specifications, end product data schedules, grade volume information, etc.) easily accessible and provide assistance and any equipment necessary to accomplish the requested services. Equipment may include storage lockers/cabinets, branding ink, certified scales, food blenders, processors, grinders, sampling containers, sanitation equipment, thermometers, adequate lighting, weight tags, display monitors, video equipment for monitoring live animal schedules, etc. When offering product for grading or certification, applicants must ensure a minimum of 90 percent acceptable product.

(e) Applicants will provide a metal cabinet(s) or locker(s) for the secure storage of official meat grading equipment and identification devices for each official meat grader assigned to their establishment. Such cabinet(s) or locker(s) must be capable of being locked with a Government-owned lock and be located in an easily accessible and secure location within the applicant's establishment.

§ 54.14 [Removed and Reserved]

13. Remove and reserve § 54.14.

14. Revise § 54.15 to read as follows:

§ 54.15 Instrument grading.

(a) Applicants may use USDA-approved technologies to augment the official USDA grading process for approved species presented for official grading. This voluntary program may be utilized by a plant at its discretion but must comply with QAD procedures to be recognized and relied upon by the official grader in conducting official duties.

(b) Applicants have the option to augment quality and yield grading services through the use of vision-based instrument technology. Instrument grading may be used as an option for determining degrees of marbling and yield factors for meat carcasses. AMS approves the grading instrument itself and its use within individual applicant facilities. Applicants may contact grading supervision to initiate the process for in-plant approval. The process for instrument grading approval at an applicant's facility is dictated through internal procedures. Final determination of quality and yield grades is made by the official grader.

15. Revise § 54.16 to read as follows:

§ 54.16 Marking of products.

All products examined for class and grade under the official standards, or the immediate containers and the shipping containers, shall be stamped, branded, or otherwise marked with an appropriate official identification. Except as otherwise directed by the Director, such markings will not be required when an applicant desires

only an official memorandum. The marking of products, or their containers, as required by this section shall be done by official graders or under their immediate supervision.

16. Revise § 54.17 to read as follows:

§ 54.17 Official identifications.

(a) A shield enclosing the letters “USDA” and identification letters assigned to the grader performing the service, as shown in Figure 1 to paragraph (a) of this section, constitutes a form of official identification under the regulations for preliminary grade of carcasses. This form of official identification may also be used to determine the final quality grade of carcasses; one stamp equates to “USDA Select” or “USDA Good”; two stamps placed together vertically equates to “USDA Choice”; and three stamps placed together vertically equates to “USDA Prime.”



Figure 1 to Paragraph (a). Preliminary Grademark.

(b) A shield enclosing the letters “USDA,” as shown in Figure 2 to paragraph (b) of this section, with the appropriate quality grade designation “Prime,” “Choice,” “Select,” “Good,” “Standard,” “Commercial,” “Utility,” “Cutter,” “Canner,” or “Cull,” as provided in the United States Standards for Grades of Carcass Beef, the United States Standards for Grades of Veal and Calf Carcasses, and the United States Standards for

Grades of 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, under said standards, of steer, heifer, and cow beef, veal, calf, lamb, yearling mutton, and mutton. The identification letters assigned to the grader performing the service will appear underneath and outside of the shield.

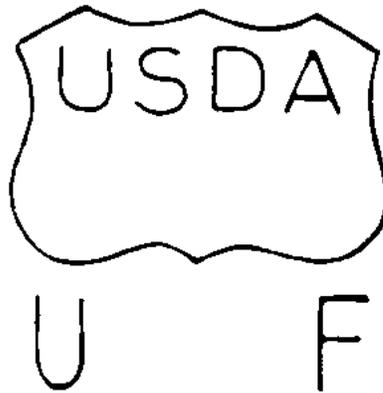


Figure 2 to paragraph (b). Official Quality Grademark and/or Official Class Designation Mark.

(c) A shield enclosing the letters “USDA” and the words “Yield Grade,” as in Figure 3 to paragraph (c) of this section, with the appropriate yield grade designation “1,” “2,” “3,” “4,” or “5” as provided in the United States Standards for Grades of Carcass Beef and the 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

identification letters assigned to the grader performing the service will appear underneath and outside of the shield.



Figure 3 to paragraph (c). Official Yield Grademark.

(d) For combined quality and 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,” and with the appropriate quality grade designation of “Prime,” “Choice,” “Select,” “Good,” “Standard,” “Commercial,” “Utility,” “Cutter,” “Canner,” or “Cull,” as shown in Figure 4 to paragraph (d) of this section, constitutes a form of official identification under the regulations to show the quality and yield grade under said standards. The identification letters assigned to the grader performing the service will appear underneath and outside of the shield.



Figure 4 to paragraph (d). Official Combined Quality and Yield Grademark.

(e) Under the regulations, for yield grade identification purposes only, a shield enclosing the letters “US” on one side and “DA” on the other, and with the appropriate yield grade designation number “1,” “2,” “3,” “4,” or “5,” as shown in Figure 5 to paragraph (e) of this section, constitutes a form of official identification under the regulations to show the yield grade under said standards. The identification letters assigned to the grader performing the service will appear underneath and outside of the shield.



Figure 5 to paragraph (e). Official Yield Grade Identification Mark.

(f) 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,” “Select,” “Good,” “Standard,” “Commercial,” “Utility,” “Cutter,” “Canner,” or “Cull,” as shown in Figure 6 to paragraph (f) of this section, constitutes a form of official identification under the regulations to show the yield grade under said standards. The identification letters assigned to the grader performing the service will appear underneath and outside of the shield.

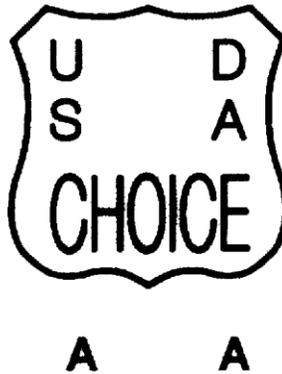


Figure 6 to paragraph (f). Official Quality Grade Identification Mark.

(g) As shown in Figure 7 to paragraph (g) of this section, a shield enclosing the letters “USDA” with the appropriate grade designation “1,” “2,” “3,” “4,” or “Utility,” 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 7 to paragraph (g). Official Grade Designation for Pork Carcasses

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



Figure 8 to paragraph (h). USDA Product Control Mark.



Figure 9 to paragraph (h). USDA Accepted As Specified Mark.

(i) Figure 10 to paragraph (i) of this section, constitutes official identification to show quality system certification.



Figure 10 to paragraph (i). USDA Process Verified Shield.

(j) Figure 11 to paragraph (j) of this section, constitutes official identification to show that products produced under USDA AMS supervision that meet specified requirements may carry the “USDA Certified” statement and/or “USDA Certified” shield, so long as each is used in direct association with a clear description of the standard or other requirement(s) to which the product claims to be certified.

(1) The “USDA Certified” shield must replicate the form and design of the example in Figure 11 and must be printed legibly and conspicuously:

(i) On a white background, with the term “USDA” in white overlaying a blue upper third of the shield and the term “Certified” in black overlaying a white middle third of the shield, with no terms in the red lower third of the shield; or

(ii) On a white or transparent background with a black trimmed shield, with the term “USDA” in white overlaying a black upper third of the shield and the term “Certified” in black overlaying the white or transparent remaining two-thirds of the shield.

(2) Use of the “USDA Certified” statement and the “USDA Certified” shield shall be approved in writing by the Director prior to use by an applicant.



Figure 11 to paragraph (j). USDA Certified Mark.

(k) Figure 12 to paragraph (k) of this section, constitutes official identification to show product or services produced under an approved USDA Further Processing Certification Program (FPCP):

(1) Products produced under an approved USDA FPCP may use the “USDA Further Processing Certification Program” statement and the “USDA Further Processing Certification Program” shield; and

(2) The USDA Further Processing Certification Program shield must replicate the form and design of the example in Figure 12 to paragraph (k) of this section and must be printed legibly and conspicuously:

(i) On a white background, with the term “USDA” in white overlaying a blue upper third of the shield and the terms “USDA Further Processing Certification Program” in black overlaying a white middle third of the shield, with no terms in the red lower third of the shield; or

(ii) On a white or transparent background with a black trimmed shield, with the term “USDA” in white overlaying a black upper third of the shield and the terms “USDA Further Processing Certification Program” in black overlaying the white or transparent remaining two-thirds of the shield.

(3) Use of the “USDA Further Processing Certification Program” statement and the “USDA Further Processing Certification Program” shield shall be approved in writing by the Director prior to use by an applicant.

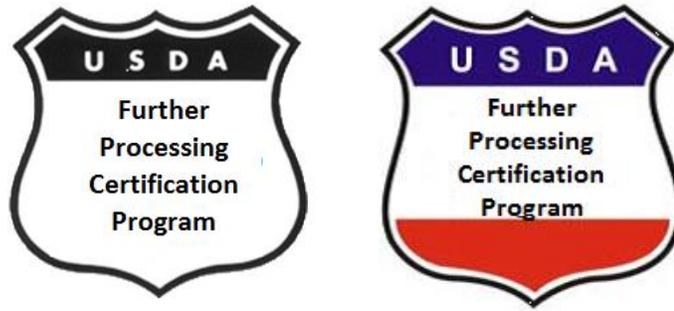


Figure 12 to paragraph (k). USDA Further Processing Certification Program Mark.

(1)(1) One device used by official graders is the LP-36 Form, a rectangular, serially numbered, red tag on which a shield encloses the words “USDA Hold.” This device constitutes a form of official identification under the regulations for meat and meat products.

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

17. Revise § 54.18 to read as follows:

§ 54.18 Custody of identification devices.

(a) All identification devices used in marking products or their containers, including those indicating compliance with approved specifications, shall be kept in the custody of the Branch, and accurate records shall be kept by the Branch of all such

devices. Such devices shall be distributed only to persons authorized by the Department, who will keep the devices in their possession or control at all times.

Subpart A - [Amended]

18. Remove undesignated center heading “Appeal Service”.

19. Revise § 54.19 to read as follows:

§ 54.19 Appeal of a grading service decision.

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.

(a) *Authority to request appeal service.* A request for appeal service with respect to any product may be made by any person who is financially interested in the product when that person disagrees with the original 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 official memorandum.

(b) *Requesting appeal service.* A request for appeal service shall be filed with the Chief. The request shall state the reasons for appeal and may be accompanied by a copy of any previous official report, or any other information that 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 e-mail). If made orally, the person receiving the request may require that it be confirmed in writing.

(c) *Determining original service from appeal service.* Examination requested to determine the class, grade, other quality, or compliance of a product that has been altered or has undergone a material change since the original service, or examination of product

requested for the purpose of obtaining an official memorandum 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.

(d) *Not eligible for appeal service.* Grade determinations cannot be appealed for any lot or product consisting of less than 10 similar units or carcasses. 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.

(e) *Withdrawal of appeal service.* A request for appeal service may be withdrawn by the applicant at any time before the appeal service has been performed; however, the applicant is responsible for payment of any expenses incurred by the Branch towards providing the appeal service prior to withdrawal.

(f) *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 appears that the person or product involved is not eligible for appeal service under § 54.19(a) and (b), 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).

(g) *Who performs appeal service.* Appeal service shall be performed by the National Meat Supervisor or his or her designee.

(h) *Appeal service report.* Immediately after appeal service has been performed for any products, a report shall be prepared and issued referring specifically to the original findings and stating the class, grade, other quality, or compliance of the products

as shown by the appeal service.

20. Revise § 54.20 to read as follows:

§ 54.20 Exemptions.

Any exemption to the regulations must be approved by the Director.

Exemptions may include but are not limited to:

(a) Grading the meat of animals in other than carcass form if the class, grade, and other quality attributes may be determined under the applicable official standards.

(b) Grading in an establishment other than where the animal was slaughtered or initially chilled if the class, grade, and other quality attributes can be determined under the applicable official standards, and if the identity of the carcasses can be maintained.

(c) If the Branch is unable to provide grading service in a timely manner and the meat can be identified in conformance with the official standards.

(d) Grading in the establishment other than where the hide is removed, provided the meat can be identified in conformance with the official standards.

(e) Grading imported carcasses, provided:

(1) The imported carcass is marked so that the name of the country of origin is conspicuous to the USDA grader. The mark of foreign origin shall be imprinted by roller brand, handstamp, tag, or other approved method.

(2) The imprints of the mark of foreign origin have been submitted to the Chief for the determination of compliance with these regulations prior to use on meats offered for Federal grading.

(3) The applicant notifies the official grader performing the service whenever imported carcasses are offered for grading.

(f) For good cause and provided that the meat can be identified in conformance with the official standards and procedures.

§§ 54.21 – 54.26 [Removed and reserved]

21. Remove and reserve §§ 54.21 through 54.26.

§ 54.30 [Removed and reserved]

22. Remove and reserve § 54.30.

23. Revise § 54.31 to read as follows:

§ 54.31 OMB control number.

The information collection and recordkeeping requirements of this part have been approved by OMB under 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581-0128.

Dated: September 6, 2019

Bruce Summers,
Administrator.

BILLING CODE 3410-02 P

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