



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54, 56, 62, 70, 90 and 91

[Doc. No. AMS-SC-18-0062; SC18-062-1 FR]

**Amendments to Quality Systems Verification Programs and
Conforming Changes**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises regulations for Quality Systems Verification Programs (QSVP). The revisions clarify that all voluntary, user-fee services under this part are applicable to all commodities covered by the Agricultural Marketing Act of 1946 (Act), as amended. Further, the revisions broaden the scope of services defined in part 62 to include all current and future AMS voluntary, user-fee audit verification and accreditation programs and services. Finally, the revisions harmonize administrative procedures governing these services and make conforming changes to other agency regulations.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Executive Orders 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rulemaking has been determined to be not significant for purposes of Executive Order 12866 or Executive Order 13563. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Additionally, because this final 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).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect. The Act prohibits States or political subdivisions of a State from imposing any requirement that is in addition to, or inconsistent with, any requirement of the Act. There are no civil justice implications associated with this final rule.

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.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women and persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs,

parental status, or protected genetic information. This rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this final rule does not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This final rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a federal statute to preempt State law only when the statute contains an express preemption provision. There are no federalism implications associated with this final rule.

Background and Revisions

The Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), hereinafter referred to as the "Act," directs and authorizes the Secretary of Agriculture to facilitate the efficient and competitive marketing of agricultural products. AMS programs support a strategic marketing perspective that adapts product and marketing decisions to consumer demands, changing domestic and international marketing practices, and new technology. Under this directive, AMS provides impartial verification services that ensure agricultural products meet specified

requirements, such as USDA grade standards, a feeding regime, or a production system. Services also include audit verification programs, laboratory approval and accreditation programs, and audit activities based on government-to-government agreements with international trading partners regarding specific foreign market requirements. These services are voluntary, with users paying for the cost of the requested service.

Currently, AMS voluntary, user-fee audit verification and accreditation programs and services are collectively regulated by: 7 CFR Part 51 - FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS); 7 CFR Part 52 - PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS; 7 CFR Part 56 - VOLUNTARY GRADING OF SHELL EGGS; 7 CFR Part 58 - GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS; 7 CFR Part 62 - LIVESTOCK, MEAT, AND OTHER AGRICULTURAL COMMODITIES (QUALITY SYSTEMS VERIFICATION PROGRAMS); 7 CFR Part 70 - VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS; 7 CFR Part 75 - PROVISIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS; and 7 CFR Chapter I, Subchapter E - COMMODITY LABORATORY TESTING PROGRAMS, parts

90 and 91. Each part of the CFR is applicable to a different group of agricultural commodities and its products. This final rule incorporates the commodities and program services for audit verification and accreditation programs currently regulated by the aforementioned parts of the CFR into a single regulatory reference, 7 CFR part 62.

This rule expands the definition of "product" in 7 CFR part 62, which currently references livestock, meat, seed and feedstuffs, to include all commodities covered under the Act. Additionally, this final rule clarifies the scope of existing and future voluntary, fee-for-service audit verification and accreditation programs offered by AMS and houses all such programs under one part.

With these changes, AMS maintains uniformity, transparency, and efficiency of service delivery of the QSVP and other AMS voluntary, user-fee audit verification and accreditation programs. Without these changes, AMS would be required to maintain similar or duplicate programs in each commodity area that carries out comparable functions.

This final rule implements other administrative changes. For example, the title of part 62, "LIVESTOCK, MEAT, AND OTHER AGRICULTURAL COMMODITIES (QUALITY SYSTEMS VERIFICATION PROGRAMS)", is changed to "AGRICULTURAL

MARKETING SERVICE AUDIT VERIFICATION AND ACCREDITATION PROGRAMS (AVAAP).” Additional changes to the part’s terminology reflect the broader scope of commodities and program services, and better coordinate administrative service provisions within AMS. Lastly, conforming changes to parts 54, 56, 70, 90 and 91 remove duplicative or conflicting language and update terminology.

Final Regulatory Flexibility Analysis

The purpose of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) is to fit regulatory actions to the scale of businesses subject to such actions so small businesses will not be unduly or disproportionately burdened. The U.S. Small Business Administration’s Table of Small Business Size Standards matched to the North American Industry Classification System 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 has determined that this action will not have a significant impact on a substantial number of small entities, as defined by the RFA, because the services are voluntary, are provided on a fee-for-service basis, and are

not subject to scalability based on the business size. Nonetheless, this analysis is provided.

All applicants for audit services provide information about their companies for processing payment invoices. Information collected from an applicant includes company name, business name if different from company name, Federal Tax Identification Number, billing address, contact information of the accounts payable department, and the name of the person filing the application. The Federal Tax Identification Number is required by the Federal Debt Collection Procedure Act of 1990 (28 U.S.C. 3101 et seq.). All entities doing business with the Federal Government are required to provide the Federal Tax Identification Number before an account can be set up.

AMS does not collect information about the size of a business that applies for a service. However, based on working knowledge of the USDA personnel assigned to provide service to these operations, AMS estimates the following based on the number of its employees:

Livestock and Poultry Program

Approximately 950 livestock and poultry industry applicants subscribe to AMS' voluntary, fee-for-service program and will be subject to the requirements of this

regulation. Roughly 25 percent of those applicants may be classified as small entities.

Dairy Program

Approximately 550 dairy industry applicants subscribe to AMS' voluntary, fee-for-service program and will be subject to the requirements of this regulation. Roughly 10 percent of those applicants may be classified as small entities.

Fruit, Vegetable and Specialty Crop Program

Approximately 4,300 fruit, vegetable, and specialty crop industry applicants subscribe to AMS' voluntary, fee-for-service audit verification and accreditation programs and will be subject to the requirements of this regulation. Roughly 33 percent of those applicants may be classified as small entities.

Laboratory Approval and Accreditation Programs

Approximately 84 agricultural laboratory applicants subscribe to AMS's voluntary, fee-for-service testing and will be subject to the requirements of this regulation. Roughly 80 percent of those applicants may be classified as small entities.

Accredited Seed Programs

Approximately 24 agricultural seed applicants subscribe to AMS' voluntary, fee-for-service program and

will be subject to the requirements of this regulation. Roughly 80 percent of those 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 rule are not expected to be disproportionately greater or lesser for small applicants than for larger applicants. As described above, these programs are voluntary, fee-for-service activities.

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.

USDA has not identified any relevant federal rules that duplicate, overlap, or conflict with this rulemaking.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this final rule will not change the current information collection and recordkeeping requirements previously approved but will increase the number of respondents upon completion of the rulemaking

process.

USDA has considered the reporting and recordkeeping burden on applicants for the AMS services that will be impacted by this action. Currently, applicants are required to complete an application for service and submit additional documentation. Recordkeeping requirements on each applicant will remain the same, though the overall burden will increase due to an increase in applications received.

Since this action expands the scope of covered commodities, which will increase the number of respondents, the already approved OMB Control Numbers 0581-0128, 0581-0283, 0581-0125 and 0581-0251 will be revised to reflect the increase in the reporting and recordkeeping burden. Therefore, AMS has submitted a Justification for Change to OMB to reflect burden of increase in the number of respondents affected by the amendments to Part 62.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act 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.

A proposed rule concerning this action was published in the Federal Register on February 19, 2020, (85 FR 9399). The rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending April 20, 2020, was provided to allow interested persons to respond to the proposal. A total of four comments were received.

Two comments received questioned whether AMS would make additional changes to authorize third-party entities to conduct process verification program verifications and provide laboratory audit and accreditation services. Given that this rulemaking is limited in scope to incorporating existing and future voluntary, fee-for-service audit verification and accreditation programs offered by AMS into a single regulatory reference, 7 CFR part 62, AMS has determined that the comments fall outside the scope of this action.

A third comment questioned this rule's usage of the word "safety" as it relates to "consumption or biological levels" of concern as opposed to administrative or management aspects of a production process. In response to

the comment, AMS clarifies that QSVPs are voluntary, user-fee programs designed to provide impartial verification services that ensure agricultural products meet specified requirements, such as USDA grade standards, a feeding regime, or a production system. Services also include audit verification programs, laboratory approval and accreditation programs, and audit activities based on government-to-government agreements with international trading partners regarding specific foreign market requirements. These services are focused, for the most part, on certifying that a given process adheres to a prescribed set of administrative and process management criteria.

A fourth comment was received from a person seeking home refinance assistance. This comment also falls outside the scope of this rulemaking action.

According to consideration given to all comments received as described above, no changes will be made to the rule as proposed.

After consideration of all relevant material presented, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products

7 CFR Part 56

Grading of shell eggs, Inspections, Marketing practices, Standards.

7 CFR Part 62

Inspections, Marketing practices, Quality Systems Verification, Standards.

7 CFR Part 70

Inspections, Marketing practices, Standards, Voluntary grading of poultry products and rabbit products.

7 CFR Part 90

Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements

For the reasons set forth in the preamble, 7 CFR parts 54, 56, 62, 70, 90 and 91 are amended as follows:

1. The authority citation for 7 CFR parts 54, 56, 62, 70, 90 and 91 continues to read as follows:

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

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING,

CERTIFICATION, AND STANDARDS)

§ 54.17 [Amended]

2. Amend § 54.17 by removing and reserving paragraph (i).

PART 56 - VOLUNTARY GRADING OF SHELL EGGS

§ 56.1 [Amended]

3. Amend § 56.1 by removing the term "Auditing services."

4. Amend § 56.46 by:

- a. Revising paragraph (a);
- b. Revising paragraphs (b) (1) (i) through (iii); and
- c. Removing paragraph (d).

The revisions read as follows:

§ 56.46 Charges for service on an unscheduled basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on an unscheduled basis shall be based on the applicable formulas specified in this section. For each calendar year or crop year, AMS will calculate the rate for grading services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS grading program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living

increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS grading program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS grading program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b) (1) * * *

(i) *Benefits rate.* The total AMS grading program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health

insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) *Operating rate*. The total AMS grading program operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate*. Total AMS grading program allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

* * * * *

5. Revise part 62 to read as follows:

PART 62 - AGRICULTURAL MARKETING SERVICE AUDIT VERIFICATION AND ACCREDITATION PROGRAMS (AVAAP).

Sec.

Subpart A- Definitions

62.000 Meaning of terms.

Subpart B-Administration.

62.100 Administrator.

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Subpart D-Administrative Provisions.

62.201 Availability of service.

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- 62.211 Appeals.
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Subpart E—Fees.

- 62.300 Fees and other costs of service.
- 62.301 Payment of fees and other charges.

Subpart F—OMB control number.

§62.400 OMB control number assigned pursuant to the
Paperwork Reduction Act.

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

Subpart A—Definitions

§ 62.000 Meaning of terms.

Words used in this subpart in the singular form shall be deemed to impart 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:

Accreditation. The action or process of officially recognizing an entity as being qualified to perform a specific activity(ies).

Act. The Agricultural Marketing Act of 1946, as

amended (AMA) (7 U.S.C. 1621-1627).

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

Agricultural Marketing Service. The Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture.

Applicant. Any individual, commodity board, trade association, marketing order or agreement administrative body and its program signatories, or business with a financial interest in audit verification and accreditation services who has applied for service under this part.

Assessment. A systematic review of the adequacy and implementation of a documented program or system.

Audit. A systematic, independent, and documented process for obtaining evidence and evaluating it objectively to determine the extent to which criteria are fulfilled.

Auditor. Person authorized by AMS to conduct official audits or assessments.

Conformance. The condition or fact of an applicant meeting the requirements of a standard,

contract, specification, or other documented service requirements.

Export certificate. An official paper or electronic document issued as part of an export certification program, which describes and attests to attributes of consignments of commodities or food destined for international trade.

Nonconformance. The condition or fact of an applicant not meeting the requirements of a standard, contract, specification, or other documented service program requirements.

Official mark of conformance. Any form of mark or other identification used under the regulations to show the conformance of products with applicable service requirements, or to maintain the identity of products for which service is provided under the regulations.

Products. All agricultural commodities and services within the scope of Agricultural Marketing Act of 1946. This includes the processes involving the production, handling, processing, packaging, and transportation of these products, agricultural product data storage, and product traceability and identification.

Program. Any and all individual auditing or accrediting procedures, systems, or instructions developed and administered under the services authorized under

§62.200.

Service. The AMS auditing and accreditation functions authorized under the Act and the provisions of this part.

Service documentation. All requirements, guidelines, manuals, forms, and supporting documentation needed to effectuate the administration and operation of services authorized under this part.

USDA. The U.S. Department of Agriculture.

Subpart B—Administration

§62.100 Administrator.

The Administrator is charged with the administration of official assessments conducted according to the regulations in this part and approved program procedures.

Subpart C—Audit and Accreditation Services.

§ 62.200 Services.

Services shall be based upon the authorities under the Act and applicable standards prescribed by USDA, the laws of the State where the particular product was produced, specifications of any governmental agency, voluntary audit program requirements in effect under federal marketing orders and/or agreements, written buyer and seller contract specifications, service documentation, or any written specification by an applicant. Services are administered through voluntary, fee-for-service, audit-based programs by

AMS auditor(s) and other USDA officials under this part. Services authorized under this part, and programs administered under such, shall include:

(a) *Quality Systems Verification Programs*. Quality Systems Verification Programs (QSVP) assess an applicant's business (quality) management system of program documentation and program processes regarding quality of products. Such programs include, but are not limited to:

(1) *Food Safety Management Systems*. A formalized system of documents, processes, procedures, and responsibilities for preventing foodborne illnesses.

(i) *Good Agricultural Practices (GAP)*. A formalized system of documents, processes, and procedures used by primary producers to minimize the risk of contamination during the production, harvesting, and handling of crops.

(ii) *GroupGAP*. A quality management system approach to GAP certification undertaken by a group of producers.

(iii) *Good Manufacturing Practices*. A formalized system of documents, processes, and procedures used to ensure that products are consistently produced and controlled according to quality standards and regulatory requirements.

(2) *Export Certification Program*. A formalized system of documents, processes, and procedures used to validate

that a given product meets the specific requirements of a foreign country, in addition to applicable Federal requirements.

(3) *USDA Process Verified Program (PVP)*. A comprehensive quality management system verification program whereby applicants establish their own standards to describe products or processes.

(4) *USDA Quality Assessment Program*. A quality management system verification service that is designed to aid in the marketing of products that have undergone specific processes and is limited in scope to those specific items associated with the product or process.

(i) *Export Verification Programs*. A formalized system of documents, processes and procedures used to validate specific requirements of a foreign country are being met, in addition to applicable Federal requirements.

(ii) [Reserved].

(5) *USDA Accredited Seed Program*. A specialized quality management system verification service for the seed industry that offers applicants a way to market their product using industry-recognized processes, rules, and standards.

(b) *Audit Verification Programs*. Audit verification programs assess an applicant's documentation of its

business management system with regard to the production or handling of products. Such programs include, but are not limited to:

(1) *Food Defense Verification Program*. A service that evaluates operators of food establishments that maintain documented and operational food defense measures to minimize the risk of tampering or other malicious criminal actions against the food under their control.

(2) *Domestic Origin Verification*. A service that evaluates a farm's and/or a facility's ability to maintain processes, procedures, and records to demonstrate products are grown in the United States of America, its territories, or possessions.

(3) *Plant System Audit*. A service that evaluates the ability of operators of food establishments to implement a sanitation program and/or requirement outlined in good manufacturing practices regulations.

(4) *Audits performed for other government agencies*. A service that provides quality-based audit services to, and performs audits for, other government agencies, such as the Department of Defense or the U.S. Aid Agency for International Development, under the Economy Act (31 U.S.C. 1535).

(5) *Export Audit Programs*. An audit intended to ensure

that information submitted for an export certificate request is complete, accurate, and in compliance with the export certification program. In some cases, these requirements may include compliance with country-specific attestations or product requirements.

(6) *Child Nutrition Labeling Program.* An audit intended to ensure manufacturers properly apply and document effective procedures to monitor and control the production of their Child Nutrition products.

(c) *Accreditation Programs.* Accreditation programs include voluntary, user-fee accreditation services performed by a USDA evaluator or accreditation body to conduct assessments of applicant programs, services, facilities or equipment, and their ability to achieve planned results. Such programs include, but are not limited to:

(1) *USDA ISO Guide 17065 Program.* A service that assesses certification bodies to determine conformance to the International Organization for Standardization (ISO) Guide 17065. These assessments are available to U.S. and international certification bodies operating a third-party certification system that perform conformity assessment activities.

(2) *Laboratory Approval Programs.* Laboratories are

approved, or accredited, to perform testing services in support of domestic and international trade. At the request of industry, other Federal Agencies, or foreign governments, USDA administers programs to verify that the analysis of food and agricultural products meets country and customer-specific requirements and that the testing of marketed products is conducted by qualified and approved laboratories.

Subpart D—Administrative Provisions.

§ 62.201 Availability of service.

Services under this part are available to applicants, including international and domestic government agencies, private agricultural businesses, and any financially interested person.

§ 62.202 How to apply for service.

Applicants may apply for services authorized under this part by contacting the Administrator's office and requesting specific service or program information at USDA, AMS, 1400 Independence Avenue, SW., Room 3069-S, Washington, DC 20250-0294; by fax to: (202)720-5115, or e-mail to: AMSAdministratorOffice@usda.gov. Applicants may also visit: <https://www.ams.usda.gov>.

§ 62.203 How to withdraw application for service.

An application for service may be withdrawn, all or in

part, by the applicant at any time; *Provided*, That the applicant notifies the USDA service office in writing of its desire to withdraw the application for service and pays any expenses USDA has incurred in connection with such application.

§ 62.204 Authority to request service.

Any person requesting service may be required to prove his/her financial interest in the product or service at the discretion of USDA.

§ 62.205 [Reserved]

§ 62.206 Access to program documents and activities.

(a) The applicant shall make its products, records, and documentation available and easily accessible for assessment, with respect to the requested service. Auditors and other USDA officials responsible for maintaining uniformity and accuracy of service authorized under this part shall have access to all areas of facilities covered by approved applications for service under the regulations, during normal business hours or during periods of production, for the purpose of evaluating products or processes. This includes products in facilities which have been or are to be examined for program conformance or which bear any USDA official marks of conformance. This further includes any facilities or operations that are part of an

approved program.

(b) Documentation and records relating to an applicant's program must be retained as prescribed under each service program authorized under this part.

§ 62.207 Official assessment.

Official assessment of an applicant's program shall include:

(a) *Documentation assessment.* Auditors and other USDA officials shall review the applicant's program documentation and issue the finding of the review to the applicant.

(b) *Program assessment.* Auditors and USDA officials shall conduct an onsite assessment of the applicant's program to ensure provisions of the applicant's program documentation have been implemented and conform to program procedures.

(c) *Program determination.* Applicants determined to meet or not meet program procedures or requirements shall be notified of their approval or disapproval.

(d) *Corrective and/or preventative actions.* Applicants may be required to implement corrective and/or preventative actions upon completion of an assessment. After implementation of the corrective and/or preventative actions, the applicant may request another assessment.

§ 62.208 Publication of assessment status.

Approved programs shall be posted for public reference on: <https://www.ams.usda.gov>. Such postings shall include:

- (a) Program name and contact information;
- (b) Products or services covered under the scope of approval;
- (c) Effective dates of approval;
- (d) Control numbers of official assessments, as appropriate; and
- (e) Any other information deemed necessary by the Administrator.

§ 62.209 [Reserved]

§ 62.210 Denial, suspension, cancellation or rejection of service.

(a) *Denial of services.* Services authorized under this part may be denied if an applicant fails to meet or conform to a program's requirements including, but not limited to, a failure to:

- (1) Adequately address any program requirement resulting in a nonconformance for the program.
- (2) Demonstrate capability to meet any program requirement, thereby resulting in a major nonconformance.
- (3) Present truthful and accurate information to any auditor or other USDA official; or

(4) Allow any auditor or other USDA official access to facilities and records within the scope of the program.

(b) *Suspension of services.* Services may be suspended if the applicant fails to meet or conform to a program's requirements including, but not limited to, a failure to:

(1) Adequately address any program's requirement, thereby resulting in a major nonconformance;

(2) Demonstrate capability to meet any program requirement, thereby resulting in a major nonconformance;

(3) Follow and maintain its approved program or procedures;

(4) Provide corrections and take corrective actions as applicable in the timeframe specified;

(5) Submit significant changes to an approved program and seek approval from USDA prior to implementation of the significant changes to the program;

(6) Allow any auditor or other USDA official access to facilities and records within the scope of the approved program;

(7) Accurately represent the eligibility of agricultural products or services distributed under an approved program;

(8) Remit payment for services;

(9) Abstain from any fraudulent or deceptive practice

in connection with any application or request for service;
or

(10) Allow any auditor or other USDA official to perform his or her duties under the provisions of this part or program requirements established under one of the authorized services of this part.

(c) *Cancellation of services.* Services may be cancelled, an application may be rejected, or program assessment may be terminated if the Administrator or his/her designee determines that a nonconformance has remained uncorrected beyond a reasonable amount of time.

(d) *Rejection of services.* Services may be rejected when it appears that to perform audit and accreditation services would not be in the best interests of the USDA. The applicant shall be promptly notified of the reason for such rejection.

§ 62.211 Appeals.

(a) *Appeals of adverse decisions.* Appeals of adverse decisions under this part may be made in writing to the AMS Administrator, Rm 3069-S, 1400 Independence Avenue, SW., Washington, DC 20250-0249 or to the director of the applicable service office. Appeals must be made within the timeframe specified by each program or within 30 calendar days of receipt of an adverse decision, whichever is

sooner.

(b) *Procedure for Appeals.* Actions under this subparagraph concerning appeals of adverse decisions to the Administrator shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth at 7 CFR 1.130 through 1.151 and the Administrative Procedures Governing Withdrawal of Inspection and Grading Services in 7 CFR part 50. The procedure for appeals is specified by each program and/or by an overarching USDA AMS administrative procedure.

§ 62.212 [Reserved]

§ 62.213 Official identification.

Some programs offered under this subpart allow for the use of official identification or marks of conformance. A program's specific documented procedure will indicate whether official marks of conformance apply.

(a) Products or services produced under a program authorized under this part may use an official identification mark of approval for that program, such as the "USDA Process Verified" statement and the "USDA Process Verified" shield. Use of program official identification must be in accordance with program requirements.

(b) Use of a program's official identification mark

must be approved in writing by USDA prior to use by an applicant.

(c) *USDA Process Verified Program shield.* Products or services produced under an approved USDA PVP may use the “USDA Process Verified” statement and the “USDA Process Verified Program” shield (Figure 1 to paragraph (c)), so long as each is used in direct association with a clear description of the process verified points approved by USDA.

Figure 1 to paragraph (c):



(1) The USDA Process Verified shield must replicate the form and design of the example in Figure 1 and must be printed legibly and conspicuously:

(i) On a white background with a gold trimmed shield, with the term “USDA” in white overlaying a blue upper third of the shield, the term “PROCESS” in black overlaying a white middle third of the shield, and term “VERIFIED” in white overlaying a 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, the term "PROCESS" in black overlaying a white middle third of the shield, and the term "VERIFIED" in white overlaying a black lower third of the shield.

§ 62.214 Voluntary participation.

Applying for services, or enrollment in any service program, is voluntary. Once an applicant receives a service or is accepted into a program, compliance with that service or program's terms is mandatory unless the applicant withdraws its application as provided in §62.203 or participation is denied, suspended, cancelled, or rejected subject to the terms of §62.210.

Subpart E—Fees.

§ 62.300 Fees and other costs of service.

(a) For each calendar year, AMS will calculate the rate for services per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS service program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel

expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS service program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS service program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b) (1) For each calendar year, based on previous fiscal year/historical actual costs, AMS will calculate the benefits rate, operating rate, and allowance for bad debt rate components of the regular, overtime, and holiday rates as follows:

(i) *Benefits rate.* The total AMS service program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by

the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) *Operating rate*. The total AMS service program operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate*. Total AMS service program allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(2) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on OMB's most recent Presidential Economic Assumptions.

(c) Applicants are responsible for paying actual travel costs incurred to provide services, including but not limited to: Mileage charges for use of privately owned vehicles, rental vehicles and gas, parking, tolls, and public transportation costs such as airfare, train, and taxi service.

(d) The applicant is responsible for paying per diem costs incurred to provide services away from the auditor's or USDA official's official duty station(s). Per diem costs

shall be calculated in accordance with existing travel regulations (41 CFR, subtitle F—Federal Travel Regulation System, chapter 301).

(e) When costs other than those costs specified in paragraphs (a) through (c) of this section are involved in providing the services, the applicant shall be responsible for these costs. The amount of these costs shall be determined administratively by AMS. However, the applicant will be notified of these costs before the service is rendered.

§ 62.301 Payment of fees and other charges.

Fees and other charges for services shall be paid in accordance with each service or program's policy(ies) and documentation. The applicant shall remit payment by the date indicated on the invoice. Payment may be made by automated clearing house transactions; credit card, debit card, or direct debit via Pay.gov or PayPal; electronic funds transfer; check; or money order. Remittance must be to USDA, AMS and include the customer number (i.e., account number) from the invoice. Check or money orders must be mailed to the remit address indicated on the invoice. Wire transfers are exclusive to foreign customers. Fees and charges shall be paid in advance if required by the service or program's authorized USDA official. Failure to pay fees

can result in denial, suspension, or cancellation of service.

Subpart F—OMB Control Number.

§ 62.400 OMB control number assigned pursuant to the Paperwork Reduction Act.

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 Numbers: 0581-0125, 0581-0128, 0581-0251, and 0581-0283.

PART 70 – VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

§ 70.1 [Amended]

6. Amend § 70.1 by removing the definition of “Auditing services.”

§ 70.4 [Amended]

7. Amend § 70.4 by removing paragraph (c).

8. Revise § 70.71 to read as follows:

§ 70.71 Charges for services on an unscheduled basis.

Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on an unscheduled basis shall be based on the applicable formulas specified in this section.

(a) For each calendar year, AMS will calculate the rate for grading services, per hour per program employee

using the following formulas:

(1) *Regular rate.* The total AMS grading program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS grading program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5, plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS grading program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b) (1) For each calendar year, based on previous fiscal year/historical actual costs, AMS will calculate the

benefits rate, operating rate, and allowance for bad debt rate components of the regular, overtime and holiday rates as follows:

(i) *Benefits rate.* The total AMS grading program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) *Operating rate.* AMS' grading program total operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate.* Total AMS grading program allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(2) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on OMB's most recent Presidential Economic Assumptions.

(c) Fees for unscheduled grading services will be based on the time required to perform the services. The hourly charges will include the time actually required to

perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate. Charges to plants are as follows:

(1) The regular hourly rate will be charged for the first 8 hours worked per grader per day for all days except observed legal holidays.

(2) The overtime rate will be charged for hours worked in excess of 8 hours per grader per day for all days except observed legal holidays.

(3) The holiday hourly rate will be charged for hours worked on observed legal holidays.

PART 90 - [Removed and Reserved]

9. Remove and reserve part 90.

PART 91 - SERVICES AND GENERAL INFORMATION

10. Revise §91.1 to read as follows:

§91.1 General.

This part consolidates the procedural and administrative rules of the Science and Technology Program of the Agricultural Marketing Service for conducting the analytical testing and laboratory audit verification and accreditation services. It also contains the fees and charges applicable to such services.

11. Amend §91.2 by revising the definition of *applicant* to read as follows:

§ 91.2 Definitions.

* * * * *

Applicant. Any individual or business requesting services provided by the Science and Technology (S&T) programs.

* * * * *

12. Amend §91.4 by revising paragraph (c) to read as follows:

§91.4 Kinds of services.

* * * * *

(c) Agricultural Marketing Service Audit Verification and Accreditation Programs as described in 7 CFR 62.200.

* * * * *

13. Amend §91.5 by:

- a. Removing and reserving paragraph (a) (6); and
- b. Revising paragraph (a) (8).

The revision to read as follows:

§91.5 Where services are offered.

(a)* * *

(8) Laboratory Approval Service. The Laboratory Approval Service (LAS) provides technical, scientific, and quality assurance support services to Agency programs, other agencies within the USDA, and private entities. In addition, the LAS provides audit verification and approval

or accreditation services, including laboratory approval and accreditation programs of Federal and State government laboratories and private/commercial laboratories in support of domestic and international trade. The programs administered by LAS verify analyses of food and agricultural products showing that said food and products meet country or customer-specific requirements and that the testing of marketed products is conducted by qualified and approved laboratories. The LAS is located and can be reached by mail at: USDA, AMS, S&T, Laboratory Approval Service, 1400 Independence Ave., SW., South Building, Mail Stop 0272, Washington, DC 20250-0272.

* * * * *

Bruce Summers,

Administrator,

Agricultural Marketing Service.

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