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NOTE: Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

SOURCE: 37 FR 22363, Oct. 19, 1972, unless otherwise noted. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981.

DEFINITIONS

§ 58.1 Meaning of words.

For the purpose of the regulations in this subpart, words in the singular form shall be deemed to import the plural and vice versa, as the case may demand. Unless the context otherwise requires, the following terms shall have the following meaning:

Act means the applicable provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087, as amended; 7 U.S.C. 1621-1627) or any other act of Congress conferring like authority.

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

Agricultural Marketing Service or *AMS* means the Agricultural Marketing Service of the Department.

Applicant means any interested party who has applied for inspection or grading service.

Approved laboratory means a laboratory in which the facilities and equipment used for official testing have been adequate to perform the necessary official tests in accordance with this part.

Approved plant means one or more adjacent buildings, or parts thereof, comprising a single plant at one location in which the facilities and methods of operation therein have been surveyed and approved by the Administrator as suitable and adequate for inspection or grading service in accordance with this part.

Area Supervisor means any employee of the Branch in charge of dairy inspection or grading service in a designated geographical area.

Branch means the Dairy Inspection Branch of the Poultry and Dairy Quality Division.

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

Class means any subdivision of a product based on essential physical characteristics that differentiate between major groups of the same kind or method of processing.

Condition of container means the degree of acceptability of the container with respect to freedom from defects which affect its serviceability, including appearance as well as usability, of the container for its intended purpose.

Condition of product or *condition* is an expression of the extent to which a product is free from defects which affect its usability, including but not limited to, the state of preservation, cleanliness, soundness, wholesomeness, or fitness for human food.

Continuous resident service or *resident service* is inspection or grading service performed at a dairy manufacturing plant or grading station by an inspector or grader assigned to the plant or station on a continuous, year-round, resident basis.

Department or *USDA* means the U.S. Department of Agriculture.

Director means the Director of the Poultry and Dairy Quality Division, or any other officer or employee of the Division to whom authority has heretofore been delegated or to whom authority may hereafter be delegated, to act in his stead.

Division means the Poultry and Dairy Quality Division of the Agricultural Marketing Service.

Inspection or grading service or *service* means in accordance with this part, the act of (a) drawing samples of any product; (b) determining the class, grade, quality, composition, size, quantity, or condition of any product by examining each unit or representative samples; (c) determining condition of product containers; (d) identifying any

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product or packaging material by means of official identification; (e) regrading or appeal grading of a previously graded product; (f) inspecting dairy plant facilities, equipment, and operations; such as, processing, manufacturing, packaging, repackaging, and quality control; (g) supervision of packaging inspected or graded product; (h) reinspection or appeal inspection; and (i) issuing an inspection or grading certificate or sampling, inspection, or other report related to any of the foregoing.

Inspector or grader means any Federal or State employee to whom a license has been issued by the Administrator to perform one or more types of inspection or grading services.

Inspection or grading office means the office of any inspector or grader.

Interested party means any person financially interested in a transaction involving any inspection or grading service.

Licensed plant employee means an employee of an approved plant to whom a license is issued by the Administrator to supervise packaging of officially inspected or graded product, perform laboratory tests, or perform other duties as assigned by the Administrator. A licensed plant employee is not authorized to issue any inspection or grading certificate.

Product means butter, cheese (whether natural or processed), milk, cream, milk products (whether dried, frozen, evaporated, stabilized, or condensed), ice cream, dry whey, dry buttermilk, and any other food product, which is prepared or manufactured in whole or in part from any of the aforesaid products, as the Administrator may hereafter designate.

Person means any individual, partnership, association, business, trust, corporation, or any organized group of persons, whether incorporated or not.

Plant survey means an appraisal of the plant to determine extent to which facilities, equipment, method of operation, and raw material being received are in accordance with the provisions of this part. The survey shall be used to determine suitability of the plant for inspection or grading service.

Quality means the inherent properties of any product which determine its relative degree of excellence.

Regulations means the provisions of this subpart.

Sampling report means a statement issued by an inspector or grader identifying samples taken by him for inspection or grading service.

Supervisor of packaging means an employee of the Department or other person licensed by the Administrator to supervise the packaging and official identification of product or any repackaging of bulk product.

(60 Stat. 1087, 7 U.S.C. 1621 *et seq.*; 84 Stat. 1620, 21 U.S.C. 1031 *et seq.*)

[37 FR 22363, Oct. 19, 1972, as amended at 38 FR 4381, Feb. 14, 1973. Redesignated at 42 FR 32514, June 27, 1977, as amended at 43 FR 60138, Dec. 26, 1978. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 54 FR 15167, Apr. 17, 1989]

§ 58.2 Designation of official certificates, memoranda, marks, identifications, and devices for purpose of the Agricultural Marketing Act.

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

(a) *Official certificate* means any form of certification, either written or printed (including that prescribed in § 58.18) used under the regulations in this subpart to certify with respect to the inspection of dairy processing plants and the inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products and packaging material with applicable specifications).

(b) *Official memorandum* means any initial record of findings made by an

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authorized person in the process of inspecting, grading, determining compliance, or sampling pursuant to the regulations in this subpart, any processing or plant-operation report made by an authorized person in connection with inspecting, grading, determining compliance, or sampling under the regulations in this subpart, and any report made by an authorized person of services performed pursuant to the regulations in this subpart.

(c) *Official identification or other official marks* means any form of identification or mark (including, but not limited to, those in §§ 58.49 through 58.51) approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product certifying the inspection, class, grade, quality, size, quantity, or condition of the products (including the compliance of products with applicable specifications) or to maintain the identity of the product for which service is provided under the regulations in this subpart.

(d) *Official device* means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Administrator for the purpose of applying any official mark or other identification to any product or the packaging material thereof.

ADMINISTRATION

§ 58.3 Authority.

The Administrator shall perform such duties as may be required in the enforcement and administration of the provisions of the Act and this part.

INSPECTION OR GRADING SERVICE

§ 58.4 Basis of service.

Inspection or grading service shall be performed in accordance with the provisions of this part, the instructions and procedures issued or approved by the Administrator, U.S. standards for grades, Federal specifications, and specifications as defined in a specific purchase contract. All services provided in accordance with these regulations shall be rendered without dis-

crimination on the basis of race, color, creed, or national origin.

[39 FR 986, Jan. 4, 1974. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981]

§ 58.5 Where service is offered.

Subject to the provisions of this part, inspection or grading service may be performed when a qualified inspector or grader is available, and when the facilities and conditions are satisfactory for the conduct of the service.

§ 58.6 Supervision of service.

All inspection or grading service shall be subject to supervision by a supervisory inspector or grader, Area Supervisor, or by the Chief, or such other person of the Branch as may be designated by the Chief. Whenever there is evidence that inspection or grading service has been incorrectly performed, a supervisor shall immediately make a reinspection or regrading, and he shall supersede the previous inspection or grading certificate or report with a new certificate or report showing the corrected information.

§ 58.7 Who may obtain service.

An application for inspection or grading service may be made by any interested person, including, but not limited to, the United States, any State, county, municipality, or common carrier, or any authorized agent of the foregoing.

§ 58.8 How to make application.

(a) *On a fee basis.* An application for inspection or grading service may be made in any inspection or grading office or with any inspector or grader. Such application may be made orally (in person or by telephone), in writing, or by telegraph. If made orally, written confirmation may be required.

(b) *On a continuous basis.* Application for inspection or grading service on a continuous basis as provided in § 58.45 shall be made in writing on application forms as approved by the Administrator and filed with the Administrator.

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§ 58.9 Form of application.

Each application for inspection or grading service shall include such information as may be required by the Administrator in regard to the type of service; kind of products and place of manufacture, processing, or packaging; and location where service is desired.

§ 58.10 Filing of application.

An application for inspection or grading service shall be regarded as filed only when made pursuant to this subpart.

§ 58.11 Approval of application.

An application for inspection or grading service may be approved when (a) a qualified inspector or grader is available, (b) facilities and conditions are satisfactory for the conduct of the service, and (c) the product has been manufactured or processed in a plant approved for inspection or grading service in accordance with the provisions of this part and instructions issued thereunder.

§ 58.12 When application may be rejected.

An application for inspection or grading service may be rejected by the Administrator (a) when the applicant fails to meet the requirements of the regulations in this subpart prescribing the conditions under which the service is made available; (b) when the product is owned by, or located on the premises of, a person currently denied the benefits of the Act; (c) when an individual holding office or a responsible position with or having a substantial financial interest or share with the applicant is currently denied the benefits of the Act or was responsible in whole or in part for the current denial of the benefits of the Act to any person; (d) when the application is an attempt on the part of a person currently denied the benefits of the Act to obtain inspection or grading service; (e) when the product was produced from unwholesome raw material or was produced under insanitary or otherwise unsatisfactory conditions; (f) when the product is of illegal composition or is lacking satisfactory keeping quality; (g) when the product has been produced in a plant which has not been surveyed and approved for inspection

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or grading service; (h) when fees billed are not paid within 30 days; or (i) when there is noncompliance with the Act or this part or instructions issued hereunder. When an application is rejected, the applicant shall be notified in writing by the Area Supervisor or his designated representative, the reason or reasons for the rejection.

[37 FR 22363, Oct. 19, 1972, as amended at 53 FR 20278, June 3, 1988]

§ 58.13 When application may be withdrawn.

An application for inspection or grading service may be withdrawn by the applicant at any time before the service is performed upon payment, by the applicant, of all expenses incurred by AMS in connection with such application.

§ 58.14 Authority of applicant.

Proof of the authority of any person applying for any inspection or grading service may be required in the discretion of the Administrator.

§ 58.15 Accessibility and condition of product.

Each lot of product for which inspection or grading service is requested shall be so conditioned and placed as to permit selection of representative samples and proper determination of the class, grade, quality, quantity, or condition of such product. In addition, if sample packages are furnished by the applicant, such samples shall be representative of the lot to be inspected or graded and additional samples shall be made available for verification. The room or area where the service is to be performed shall be clean and sanitary, free from foreign odors, and shall be provided with adequate lighting, ventilation, and temperature control.

§ 58.16 Disposition of samples.

Any sample of product used for inspection or grading may be returned to the applicant at his request and at his expense if such request was made at the time of the application for the service. In the event the aforesaid request was not made at the time of application for the service, the sample of product may be destroyed, disposed of

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to a charitable organization, or disposed of by any other method prescribed by the Administrator.

§ 58.17 Order of service.

Inspection or grading service shall be performed, insofar as practicable and subject to the availability of qualified inspectors or graders, in the order in which applications are made except that precedence may be given to any application for an appeal inspection or grading.

§ 58.18 Inspection or grading certificates, memoranda, or reports.

Inspection or grading certificates and sampling, plant survey, and other memoranda or reports shall be issued on forms approved by the Administrator.

§ 58.19 Issuance of inspection or grading certificates.

An inspection or grading certificate shall be issued to cover a product inspected or graded in accordance with Instructions issued by the Administrator and shall be signed by an inspector or grader. This does not preclude an inspector or grader from granting a power of attorney to another person to sign in his stead, if such grant of power of attorney has been approved by the Administrator: *Provided*, That in all cases any such certificate shall be prepared in accordance with the facts set forth in the official memorandum defined in § 58.2(b): And provided further, that whenever a certificate is signed by a person under a power of attorney the certificate should so indicate. The signature of the holder of the power shall appear in conjunction with the name of the grader or inspector who personally graded or inspected the product.

[39 FR 986, Jan. 4, 1974. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981]

§ 58.20 Disposition of inspection or grading certificates or reports.

The original of any inspection or grading certificate or report issued pursuant to § 58.19, and not to exceed four copies thereof, shall immediately upon issuance be delivered or mailed to the applicant or person designated by him. One copy shall be filed in the in-

spection and grading office serving the area in which the service was performed and all other copies shall be filed in such manner as the Administrator may approve. Additional copies of any such certificate or report may be supplied to any interested party as provided in § 58.41.

§ 58.21 Advance information.

Upon request of an applicant, all or part of the contents of any inspection or grading certificate or report issued to such applicant may be telephoned or telegraphed to him, or to any person designed by him, at applicant's expense.

APPEAL INSPECTION OR GRADING AND REINSTATEMENT OF REGRADING

§ 58.22 When appeal inspection or grading may be requested.

(a) An application for an appeal inspection or grading may be made by any interested party who is dissatisfied with any determination stated in any inspection or grading certificate or report if the identity of the samples or the product has not been lost; or the conditions under which inspection service was performed have not changed. Such application for appeal inspection or grading shall be made within 2 days following the day on which the service was performed. Upon approval by the Administrator, the time within which an application for an appeal grading may be made may be extended.

(b) An appeal inspection shall be limited to a review of the sampling procedure and in analysis of the official sample used, when, as a result of the original inspection, the commodity was found to be contaminated with filthy, putrid, and decomposed material. If it is determined that the sampling procedures were improper, a new sample shall be obtained.

§ 58.23 How to obtain appeal inspection or grading.

Appeal inspection or grading may be obtained by filing a request therefore, (a) with the Administrator, (b) with the inspector or grader who issued the inspection or grading certificate or report with respect to which the appeal

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service is requested, or (c) with the supervisor of such inspector or grader. The application for appeal inspection or grading shall state the reasons therefore, and may be accompanied by a copy of the aforesaid inspection or grading certificate or report or any other information the applicant may have secured regarding the product or the service from which the appeal is requested. Such application may be made orally (in person or by telephone), in writing, or by telegraph. If made orally, written confirmation may be required.

§ 58.24 Record of filing time.

A record showing the date and hour when each such application for appeal inspection or grading is received shall be maintained in such manner as the Administrator may prescribe.

§ 58.25 When an application for appeal inspection or grading may be refused.

The Administrator may refuse an application for an appeal inspection or grading when (a) the quality or condition of the products has undergone a material change since the time of original service, (b) the identical products inspected or graded cannot be made accessible for reinspection or regrading, (c) the conditions under which inspection service was performed have changed, (d) it appears that the reasons for an appeal inspection or grading are frivolous or not substantial, or (e) the Act or this part have not been complied with. The applicant shall be promptly notified of the reason for such refusal.

§ 58.26 When an application for an appeal inspection or grading may be withdrawn.

An application for appeal inspection or grading may be withdrawn by the applicant at any time before the appeal inspection or grading is made upon payment, by the applicant, of all expenses incurred by AMS in connection with such application.

§ 58.27 Order in which appeal inspections or gradings are performed.

Appeal inspections or gradings shall be performed, insofar as practicable, in

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the order in which applications therefor are received; and any such application may be given precedence pursuant to § 58.17.

§ 58.28 Who shall make appeal inspections or gradings.

An appeal inspection or grading of any product or service shall be made by any inspector or grader (other than the one from whose service the appeal is made) designated for this purpose by the Administrator; and, whenever practical, such appeal inspection or grading shall be conducted jointly by two such inspectors or graders.

§ 58.29 Appeal inspection or grading certificate or report.

Immediately after an appeal inspection or grading has been completed, an appeal inspection or grading certificate or report shall be issued showing the results of the inspection or grading. Such certificate or report shall thereupon supersede the previous certificate or report and will be effective retroactive to the date of the previous certificate or report. Each appeal certificate or report shall clearly set forth the number and the date of the previous certificate or report which it supersedes. The provisions of §§ 58.18 through 58.21 shall, whenever applicable, also apply to appeal certificates or reports except that copies shall be furnished each interested party of record.

§ 58.30 Application for reinspection or regrading.

An application for the reinspection or regrading of any previously inspected or graded product may be made at any time by any interested party; and such application shall clearly indicate the reasons for requesting the reinspection or regrading. The provisions of the regulations in this subpart relative to inspection or grading service shall apply to reinspection or regrading service.

§ 58.31 Reinspection or regrading certificate or report.

Immediately after a reinspection or regrading has been completed, a reinspection or a regrading certificate or report shall be issued showing the results of such reinspection or regrading;

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and such certificate or report shall thereupon supersede, as of the time of issuance, the inspection or grading certificate or report previously issued. Each reinspection or regrading certificate or report shall clearly set forth the number and date of the inspection or grading certificate or report that it supersedes. The provisions of §§ 58.18 through 58.21 shall, whenever applicable, also apply to reinspection or regrading certificates or reports except that copies shall be furnished each interested party of record.

§ 58.32 Superseded certificates or reports.

When any inspection or grading certificate or report is superseded in accordance with this part, such certificate or report shall become null and void and, after the effective time of the supersedure, shall no longer represent the class, grade, quality, quantity, or condition described therein. If the original and all copies of such superseded certificate or report are not returned to the inspector or grader issuing the reinspection or regrading or appeal inspection or grading certificate or report, the inspector or grader shall notify such persons as he considers necessary to prevent fraudulent use of the superseded certificate or report.

LICENSING OF INSPECTORS OR GRADERS

§ 58.33 Who may be licensed.

Any person possessing proper qualifications, as determined by an examination for competency, held at such time and in such manner as may be prescribed by the Administrator, may be licensed to perform specified inspection or grading service. Each license issued shall be signed by the Administrator.

[53 FR 20278, June 3, 1988]

§ 58.34 Suspension or revocation of license.

For good cause and in instances of willful wrongdoing, the Administrator may suspend any license issued under the regulations in this subpart by giving notice of such suspension to the respective individual involved, accompanied by a statement of reasons therefor. Within 10 days after receipt of the

aforesaid notice and statement of reasons by such individual, he may file an appeal in writing with the Administrator supported by any argument or evidence that he may wish to offer as to why his license should not be suspended or revoked. In conjunction therewith, he may request and, in such event, shall be accorded an oral hearing. After consideration of such argument and evidence, the Administrator will take such action as warranted with respect to such suspension or revocation. When no appeal is filed within the prescribed 10 days, the license is revoked.

§ 58.35 Surrender of license.

Each license which is suspended or revoked shall be surrendered promptly by the licensee to his supervisor. Upon termination of the services of a licensee, the license shall be surrendered promptly by the licensee to his supervisor.

§ 58.36 Identification.

Each licensee shall have his license card in his possession at all times while performing any function under the regulations in this subpart and shall identify himself by such card upon request.

§ 58.37 Financial interest of licensees.

No licensee shall render service on any product in which he is financially interested.

FEEs AND CHARGES

§ 58.38 Payment of fees and charges.

(a) Fees and charges for any inspection or grading service shall be paid by the interested party, making the application for such service, in accordance with the applicable provisions of this section and §§ 58.39 through 58.46 and, if so required by the inspector or grader, such fees and charges shall be paid in advance.

(b) Fees and charges for any inspection or grading service performed by any inspector or grader who is a salaried employee of the Department shall, unless otherwise required pursuant to paragraph (c) of this section, be paid by the interested party making application for such inspection or grading

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service by check, draft, or money order payable to the Agricultural Marketing Service and remitted promptly to the office indicated on the bill.

(c) Fees and charges for any inspection or grading service under a cooperative agreement with any State or person shall be paid in accordance with the terms of the cooperative agreement by the interested party making application for the service.

§ 58.39 Fees for holiday or other nonworktime.

If an applicant requests that inspection or grading service be performed on a holiday, Saturday, or Sunday or in excess of each 8-hour shift Monday through Friday, the applicant shall be charged for such service at a rate determined using the formulas in § 58.43.

[79 FR 67323, Nov. 13, 2014]

§ 58.40 Fees for appeal inspection or grading.

The fees to be charged for any appeal inspection or grading shall be double the fees specified on the inspection or grading certificate from which the appeal is taken: *Provided*, That the fee for any appeal grading requested by any agency of the U.S. Government shall be the same as set forth in the certificate from which the appeal is taken. If the result of any appeal inspection or grading discloses that a material error was made in the inspection or grading appealed from, no fee shall be required.

§ 58.41 Fees for additional copies of certificates.

Additional copies of any inspection or grading certificates (including take-off certificates), other than those provided for in § 58.20 may be supplied to any interested party upon payment of a fee based on time required to prepare such copies at the hourly rate specified in § 58.43.

[54 FR 15167, Apr. 17, 1989]

§ 58.42 Travel expenses and other charges.

Charges shall be made to cover the cost of travel and other expenses incurred by AMS in connection with the

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performance of any inspection or grading service.

[53 FR 20278, June 3, 1988]

§ 58.43 Fees for inspection, grading, sampling, and certification.

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

(1) *Regular rate*. The total AMS grading, certification, or inspection 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, certification, or inspection 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, certification, or inspection 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) For each calendar year, based on previous fiscal year/historical actual costs, AMS will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(1) *Benefits rate*. The total AMS grading, certification, or inspection program direct benefits costs divided by the total hours (regular, overtime, and

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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.

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

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

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

[79 FR 67323, Nov. 13, 2014]

§ 58.45 Fees for continuous resident services.

Charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be calculated using the formulas in § 58.43.

[79 FR 67323, Nov. 13, 2014]

§ 58.46 Fees for service performed under cooperative agreement.

The fees to be charged and collected for any service performed under cooperative agreement shall be those provided for by such agreement.

MARKING, BRANDING, AND IDENTIFYING PRODUCT

§ 58.49 Authority to use official identification.

Whenever the Administrator determines that the granting of authority to any person to package any product, inspected or graded pursuant to this part, and to use official identification, pursuant to §§ 58.49 through 58.57, will not be inconsistent with the Act and this part, he may authorize such use of official identification. Any application for such authority shall be submitted to the Administrator in such form as he may require.

§ 58.50 Approval and form of official identification.

(a) Any package label or packaging material which bears any official identification shall be used only in such manner as the Administrator may prescribe, and such official identification shall be of such form and contain such information as the Administrator may require. No label or packaging material bearing official identification shall be used unless finished copies or samples thereof have been approved by the Administrator.

(b) Inspection or grade mark permitted to be used to officially identify packages containing dairy products which are inspected or graded pursuant to this part shall be contained in a shield in the form and design indicated in Figures 1, 2, and 3 of this section or such other form, design, or wording as may be approved by the Administrator.



FIGURE 1.



FIGURE 2.



FIGURE 3.

The official identification illustrated in Figure 1 is designed for use on graded product packed under USDA inspection. Figure 2 is designed for graded

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product processed and packed under USDA inspection. Figure 3 is designated for inspected product (when U.S. standards for grades are not established) processed and packed under USDA quality control service. The official identification shall be printed on the package label, on the carton or on the wrapper and, preferably, on one of the main panels of the carton or wrapper. The shield identification shall be not less than 3/4 inch by 3/4 inch in size, and preferably 1 inch by 1 inch on 1-pound cartons or wrappers. Consideration will be given by the Administrator of a smaller shield on special packages where the size of the label does not permit use of the 3/4 inch by 3/4 inch shield.

(c) Official identification under this subpart shall be limited to U.S. Grade B or higher or to an equivalent standard of quality for U.S. name grades or numerical score grades when U.S. standards for grades of a product have not been established.

(d) A sketch, proof, or photocopy of each proposed label or packaging material bearing official identification shall be submitted to the Chief of the Dairy Inspection Branch, Poultry and Dairy Quality Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, for review and tentative approval prior to acquisition of a supply of material.

(e) The firm packaging the product shall furnish to the Chief four copies of the printed labels and packaging materials bearing official identification for final approval prior to use.

(60 Stat. 1087, 7 U.S.C. 1621 *et seq.*; 84 Stat. 1620, 21 U.S.C. 1031 *et seq.*)

[37 FR 22363, Oct. 19, 1972, as amended at 39 FR 987, Jan. 4, 1974. Redesignated at 42 FR 32514, June 27, 1977, as amended at 43 FR 60138, Dec. 26, 1978. Redesignated at 46 FR 63203, Dec. 31, 1981]

§58.51 Information required on official identification.

Each official identification shall conspicuously indicate the U.S. grade of the product it identifies, if there be a grade, or such other appropriate terminology as may be approved by the Administrator. Also, it shall include the appropriate phrase: "Officially graded," "Officially Inspected," or "Fed-

eral-State graded." When required by the Administrator, the package label, carton, or wrapper bearing official identification for dairy products shall be stamped or perforated with the date packed and the certificate number or a code number to indicate lot and date packed. Such coding shall be made available to and approved by the Administrator.

§58.52 Time limit for packaging inspected or graded products with official identification.

Any lot of butter which is graded for packaging with official grade identification shall be packaged within 10 days immediately following the date of grading, and any lot of natural cheese or dry milk shall be packaged within 30 days immediately following date of grading provided the product is properly stored during the 10- or 30-day period. Time limit for packaging other inspected or graded products shall be as approved by the Administrator. If inspected or graded product is moved to another location, a reinspection or regrading shall be required.

PREREQUISITES TO PACKAGING PRODUCTS WITH OFFICIAL IDENTIFICATION

§58.53 Supervisor of packaging required.

The official identification of any inspected or graded product, as provided in §§58.50 through 58.52, this section, and §§58.54 through 58.57, shall be done only under the supervision of a supervisor of packaging. The authority to use official identification may be granted by the Administrator only to applicants who utilize the services of a supervisor of packaging in accordance with this subpart. The supervisor of packaging shall have jurisdiction over the use and handling of all packaging material bearing any official identification.

§58.54 Packing and packaging room and equipment.

Each applicant who is granted authority to package any product with official identification and who operates, for such purpose, a packaging room shall maintain the room and the equipment therein in accordance with this part.

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§ 58.55 Facilities for keeping quality samples.

Each applicant granted authority, as aforesaid, to package product with official identification shall provide and maintain suitable equipment for the purpose of incubating samples of product.

§ 58.56 Incubation of product samples.

(a) Samples of product may be taken from any lot of product which is submitted for inspection or grading and packaging with official identification, or sample may be taken after packaging for the purpose of determining in accordance with provisions of this part if such product possesses satisfactory keeping quality.

(b) Samples of product may be taken for keeping quality tests in accordance with provisions of this part from any lot of product submitted for inspection or grading. Issuance of the inspection or grading certificate may be withheld pending completion of the tests.

§ 58.57 Product not eligible for packaging with official identification.

(a) When a lot of inspected or graded product shows unsatisfactory keeping quality, other lots from the same manufacturing plant shall not be packaged with official identification. Packaging with official identification may be resumed only when it is determined that product from such plant possesses satisfactory keeping quality.

(b) Any manufacturing or processing plant supplying product, directly or indirectly, for packaging with official identification shall be surveyed and approved for inspection or grading service.

VIOLATIONS

§ 58.58 Debarment of service.

(a) The following acts or practices, or the causing thereof, may be deemed sufficient cause for the debarment, by the Administrator, of any person, including any agents, officers, subsidiaries, or affiliates of such person, from any or all benefits of the Act for a specified period. The rules of practice governing withdrawal of inspection and grading services in formal adjudicatory proceedings instituted by the Sec-

retary (7 CFR, part 1, subpart H) shall be applicable to such debarment action.

(1) *Fraud or misrepresentation.* Any willful misrepresentation or deceptive or fraudulent practice or act found to be made or committed by any person in connection with:

(i) The making or filing of any application for any inspection or grading service, appeal reinspection, or regrading service;

(ii) The making of the product accessible for inspection or grading service;

(iii) The making, issuing, or using or attempting to issue or use any inspection or grading certificate issued pursuant to the regulations in this subpart or the use of any official stamp, label, or identification;

(iv) The use of the terms "United States," "U.S.," "Officially graded," "Officially Inspected," "Federal-State graded," or "Government graded," or terms of similar import in the labeling or advertising of any product without stating in conjunction therewith the official U.S. grade of the product; or

(v) The use of any of the aforesaid terms or an official stamp, label, or identification in the labeling or advertising of any product that has not been inspected or graded pursuant to this part.

(2) *Use of facsimile form.* Using or attempting to use a form which simulates in whole or in part any official identification for the purpose of purporting to evidence the U.S. grade of any product; or the unauthorized use of a facsimile form which simulates in whole or in part any official inspection or grading certificate, stamp, label, or other official inspection mark; and

(3) *Mislabeling.* The use of any words, numerals, letters, or facsimile form which simulates in whole or in part any identification purporting to be a grade when such product does not comply with any recognized standards in general use for such grade, and such activity may be deemed sufficient cause for debarring such person from any or all benefits of the Act.

(4) *Willful violation of the regulations in this subpart.* Willful violation of the provisions in this part or the Act, or the instructions or specifications issued thereunder.

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(5) *Interfering with an inspector or grader.* Any interference with or obstruction or any attempted interference or obstruction of any inspector or grader in the performance of his duties by intimidation, threat, bribery, assault, or other improper means.

(b) [Reserved]

(60 Stat. 1087, 7 U.S.C. 1621 *et seq.*; 84 Stat. 1620, 21 U.S.C. 1031 *et seq.*)

[37 FR 22363, Oct. 19, 1972. Redesignated at 42 FR 32514, June 27, 1977, as amended at 43 FR 60138, Dec. 26, 1978. Redesignated at 46 FR 63203, Dec. 31, 1981]

MISCELLANEOUS

§ 58.61 Political activity.

All inspectors or graders are forbidden during the period of their respective appointments or licenses to take an active part in political management or in political campaigns. Political activities in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including, but not being limited to, temporary and cooperative employees and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

§ 58.62 Report of violations.

Each inspector, grader, and supervisor of packaging shall report, in the manner prescribed by the Administrator, all violations and noncompliances under this part of which such inspector, grader, or supervisor of packaging has knowledge.

§ 58.63 Other applicable regulations.

Compliance with the provisions in this part shall not excuse failure to comply with any other Federal, or any State, or municipal applicable laws or regulations.

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

The following control number has been assigned to the information collection requirements in 7 CFR part 58,

7 CFR Ch. I (1-1-19 Edition)

subpart A, by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511.

7 CFR section where requirements are described	Current OMB control No.
58.8(a)(b)	0581-0126
58.9	0581-0126
58.14	0581-0126
58.23	0581-0126
58.30	0581-0126
58.33	0581-0126
58.49	0581-0126
58.50(d)(e)	0581-0126
58.51	0581-0126
58.122(b)	0581-0126

[49 FR 6881, Feb. 24, 1984]

Subpart B—General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service¹

SOURCE: 40 FR 47911, Oct. 10, 1975, unless otherwise noted. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981.

DEFINITIONS

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

The following control number has been assigned to the information collection requirements in 7 CFR part 58, subpart B, by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511.

7 CFR section where requirements are described	Current OMB control No.
58.139	0581-0110
58.148	0581-0110
58.441	0581-0110

[49 FR 6881, Feb. 24, 1984, as amended at 61 FR 67448, Dec. 23, 1996]

¹ Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, Environmental Protection Act, or applicable laws and regulations of any State or Municipality.