

# Proposed Rules

Federal Register

Vol. 71, No. 9

Friday, January 13, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 56 and 70

[Docket No. PY-02-003]

RIN 0581-AC25

#### Updating Administrative Requirements for Voluntary Shell Egg, Poultry, and Rabbit Grading

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) proposes to amend administrative requirements in the regulations governing the voluntary shell egg, poultry, and rabbit grading programs. The amendments would update the administrative requirements and make minor, nonsubstantive changes for clarity and uniformity of style. This would improve operational efficiency of the grading programs by making the administrative requirements more accurate, clear, consistent, and easier to use.

**DATES:** Comments must be received on or before February 13, 2006.

**ADDRESSES:** Send written comments to David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0259, Room 3944-South, 1400 Independence Avenue, SW., Washington, DC 20250-0259. Also, comments may be faxed to (202) 690-0941 or by Internet to <http://www.regulations.gov>.

State that your comments refer to Docket No. PY-02-003 and note the date and page number of this issue of the **Federal Register**.

Comments may be inspected at the above location between 8 a.m. and 4:30 p.m. Eastern Time, Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Charles Johnson, Chief, Grading Branch, (202) 720-3271.

#### SUPPLEMENTARY INFORMATION:

##### Background and Proposed Changes

Voluntary shell egg, poultry, and rabbit grading programs are provided for under the Agricultural Marketing Act of 1946, as amended, and are offered on a fee-for-service basis. The programs operate under the regulations in 7 CFR part 56 (Voluntary Grading of Shell Eggs) and 7 CFR part 70 (Voluntary Grading of Poultry Products and Rabbit Products).

Supervisory personnel at national, regional, and State levels are responsible for overall operation of these grading programs and implementation of the regulations. Historically, graders were licensed in either shell egg grading or poultry grading, some also in rabbit grading, and they would use only one of the regulations. Today, graders are increasingly cross-utilized for both shell egg and poultry grading, and use both 7 CFR parts 56 and 70.

Both regulations have been in effect since the 1950s and have been amended from time to time as requirements have changed.

While each regulation has its own commodity-specific requirements, both regulations have the same or similar administrative requirements. A recent review of the administrative requirements identified general editorial or housekeeping changes that were needed. These changes would enable program staff at all levels to implement the administrative requirements of both regulations consistently, uniformly, easily, and fairly. The amendments would not change how the administrative requirements are administered, how the commodity-specific requirements are implemented, or the responsibilities of program users.

The amendments would make the administrative requirements more accurate, easier to implement, and easier to follow. For example:

- References to the official U.S. Standards, Grades, and Weight Classes for Shell Eggs and the official U.S. Classes, Standards, and Grades for Poultry and Rabbits would be updated to reflect that they are no longer in the Code of Federal Regulations.
- Punctuation, grammar, capitalization, abbreviations, legal phrases, terms, format, and style would be updated

- for consistency with current regulatory documents, the U.S. Government Printing Office Style Manual, and the **Federal Register Document Drafting Handbook**. Also, gender-specific pronouns would be changed to gender-neutral pronouns consistent with current writing style.
- Sections would be redesignated to make requirements easier to locate in the regulations.
- Sections about nondiscrimination and political activity for Federal employees would be updated to reflect current requirements.
- The displays of control numbers assigned to information collection requirements by the Office of Management and Budget would be reformatted and Agency names would be changed to their letter symbols to save space and to avoid the repetitive use of certain numbers and words.
- “Poultry Division” would be changed to “Poultry Programs” to conform with organizational changes.
- “Telegraph” would be changed to “electronic means” to reflect current technology.
- A definition for the term “Agricultural Marketing Service or AMS” would be added for consistency with other Agency regulations.
- Duplicate sections would be removed.
- Inconsistencies in the wording of headings and sections common to both regulations would be harmonized, where feasible and practical, to assist program staff at all levels.
- Administrative requirements that have historically been implemented in both grading programs, but are found in only one of the regulations, would be added to the regulation where they are not specified.

#### Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with

this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

#### Effect on Small Entities

The purpose of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA) (13 CFR 121.201) defines small entities that produce and process poultry as those whose annual number of employees is less than 500 and defines small entities that produce and process chicken eggs as those whose annual receipts are less than \$9,000,000. Approximately 625,500 egg laying hens are needed to produce enough eggs to gross \$9,000,000.

There are about 376 users of Poultry Programs' grading services. These official plants can pack eggs, poultry, and rabbits in packages bearing the USDA grade shield when AMS graders are present to certify that the products meet the grade requirements as labeled. Many of these users are small entities under the criteria established by the SBA. These entities are under no obligation to use grading services as authorized under the Agricultural Marketing Act of 1946.

Pursuant to requirements set forth in the RFA, the AMS has considered the economic impact of this rule on small entities. This rule is editorial and housekeeping in nature. It would affect administrative requirements by updating language and references that are outdated. It would harmonize the administrative content of both regulations. It would not change how the administrative requirements are administered, how commodity-specific requirements are implemented, or the responsibilities of program users. Accordingly, AMS has determined that provisions of this rule would not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has previously approved the information collection and recordkeeping requirements included in this rule, and there are no new requirements. The assigned OMB control numbers are 0581-0127 and 0581-0128.

#### List of Subjects

##### 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

##### 7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 56 and 70 are proposed to be amended as follows:

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

1. The authority citation for part 56 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

##### § 56.1 [Amended]

2. Section 56.1 is amended by:

A. Revising the introductory text.

B. Adding *Acceptable*.

C. Amending *Act* by adding the words “, as amended” immediately following the number “1087”.

D. Amending *Administrator* by removing the words “Agricultural Marketing Service of the Department” and adding the word “AMS” in their place and removing the word “his” and adding the words “the Administrator’s” in its place.

E. Revising *Applicant*.

F. Amending *Department* by adding the word “(USDA)” immediately following the word “Agriculture”.

G. Revising *Grader*.

H. Amending *Grading* or *grading service* by removing the word “Service” and adding the word “AMS” in its place.

I. Amending *Grading certificate* by removing the words “and this” and adding the words “and the regulations in this” in their place.

J. Amending *Holiday* or *legal holiday* by removing the words “shall mean” and adding the word “means” in their place.

K. Adding *Identify*.

L. Revising *Official plant*.

M. Amending *Origin grading* by removing the word “is” and adding the word “means” in its place.

N. Revising *Regulations*.

O. Amending *Sampling* by adding the words “or certification” following the word “grading.”

P. Amending *Secretary* by removing the word “his” and adding the words “the Secretary’s” in its place.

Q. Removing *Service*.

R. Adding *Shell egg grading service*.

S. Adding *State supervisor* or *Federal-State supervisor*.

T. Adding *United States Standards for Quality of Individual Shell Eggs*.

The revisions and additions read as follows:

##### § 56.1 Meaning of words and terms defined.

For the purpose of the regulations in this part, words in the singular shall be deemed to import the plural and vice versa, as the case may demand. Unless the context otherwise requires, the terms shall have the following meaning:  
*Acceptable* means suitable for the purpose intended by the AMS.

\* \* \* \* \*

*Applicant* means any interested person who requests any grading service.

\* \* \* \* \*

*Grader* means any Federal or State employee or the employee of a local jurisdiction or cooperating agency to whom a license has been issued by the Secretary to investigate and certify in accordance with the regulations in this part, the class, quality, quantity, or condition of products.

\* \* \* \* \*

*Identify* means to apply official identification to products or the containers thereof.

\* \* \* \* \*

*Official plant* or *official establishment* means one or more buildings or parts thereof comprising a single plant in which the facilities and methods of operation therein have been approved by the Administrator as suitable and adequate for grading service and in which grading is carried on in accordance with the regulations in this part.

\* \* \* \* \*

*Regulations* means the provisions in this entire part and such United States standards, grades, and weight classes as may be in effect at the time grading is performed.

\* \* \* \* \*

*Shell egg grading service* means the personnel who are actively engaged in the administration, application, and direction of shell egg grading programs and services pursuant to the regulations in this part.

\* \* \* \* \*

*State supervisor* or *Federal-State supervisor* means any authorized and designated individual who is in charge of the shell egg grading service in a State.

*United States Standards for Quality of Individual Shell Eggs* means the official U.S. standards contained in the U.S. Standards, Grades, and Weight Classes for Shell Eggs (AMS 56).

\* \* \* \* \*

3. The undesignated center heading preceding § 56.3 is revised to read as follows:

**General**

**§ 56.3 [Amended]**

- 4. Section 56.3 is amended by:
  - A. Removing paragraph (b).
  - B. Removing paragraph designation “(a).”
  - C. Removing the words “Agricultural Marketing Service” and adding the word “AMS”.
- 5. The undesignated center heading preceding § 56.4 is removed.

**§ 56.4 [Amended]**

- 6. In § 56.4, paragraph (a) is amended by adding the words “for Shell Eggs” immediately following the words “and Weight classes” and removing the words “as contained in subpart C of this part.”
- 7. The section heading for § 56.5 is revised to read as follows:

**§ 56.5 Accessibility of product.**

- \* \* \* \* \*
- 8. Section 56.6 is amended by removing the word “applicable” and adding the word “responsible” in its place and adding the words “in accordance with instructions issued by the Administrator” following the word “rendered”.
- 9. A new § 56.7 is added to read as follows:

**§ 56.7 Nondiscrimination.**

The conduct of all services and the licensing of graders under these regulations shall be accomplished without discrimination as to race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status.

10. Section 56.9 is revised to read as follows:

**§ 56.9 OMB control number.**

(a) *Purpose.* The collecting of information requirements in this part have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581–0128.

(b) *Display.* Sections where information collection requirements are identified and described:

56.3(a)	56.25	56.52(b)(3)(ii)
56.4(a)	56.26	56.53
56.10(a)	56.30	56.54(b)(1)
56.11	56.31(a)	56.54(b)(3)(ii)
56.12	56.35(b)	56.56(a)
56.17(b)	56.35(c)	56.57
56.18	56.35(d)	56.58
56.21(a)	56.37	56.60
56.21(b)	56.52(a)(1)	56.62
56.21(c)	56.52(a)(4)	56.76(f)(7)

- 56.23
- 56.24
- 56.52(b)(1)
- 56.76(h)
- 11. The undesignated center heading preceding § 56.10 is revised to read as follows:

**Licensed and Authorized Graders**

- 12. Section 56.10 is revised to read as follows:

**§ 56.10 Who may be licensed and authorized.**

(a) Any person who is a Federal or State employee, the employee of a local jurisdiction, or the employee of a cooperating agency possessing proper qualifications as determined by an examination for competency and who is to perform grading service under this part, may be licensed by the Secretary as a grader.

(b) All licenses issued by the Secretary shall be countersigned by the officer in charge of the shell egg grading service of the AMS or any other designated officer.

(c) Any person who is employed at any official plant and possesses proper qualifications, as determined by the Administrator, may be authorized to candle and grade eggs on the basis of the “U.S. Standards for Quality of Individual Shell Eggs,” with respect to eggs purchased from producers or eggs to be packaged with official identification. In addition, such authorization may be granted to any qualified person to act as a “quality assurance inspector” in the packaging and grade labeling of products. No person to whom such authorization is granted shall have authority to issue any grading certificates, grading memoranda, or other official documents; and all eggs which are graded by any such person shall thereafter be check graded by a grader.

- 13. Section 56.11 is revised to read as follows:

**§ 56.11 Financial interest of graders.**

Graders shall not render service on any product in which they are financially interested.

- 14. Section 56.12 is revised to read as follows:

**§ 56.12 Suspension of license; revocation.**

Pending final action by the Secretary, any person authorized to countersign a license to perform grading service may, whenever such action is deemed necessary to assure that any grading service is properly performed, suspend any license to perform grading service issued pursuant to this part, by giving notice of such suspension or revocation to the respective licensee, accompanied by a statement of the reasons therefor.

Within 7 days after the receipt of the aforesaid notice and statement of reasons, the licensee may file an appeal in writing with the Secretary, supported by any argument or evidence that the licensee may wish to offer as to why their license should not be further suspended or revoked. After the expiration of the aforesaid 7-day period and consideration of such argument and evidence, the Secretary will take such action as deemed appropriate with respect to such suspension or revocation. When no appeal is filed within the prescribed 7 days, the license to perform grading service is revoked.

- 15. Section 56.13 is revised to read as follows:

**§ 56.13 Cancellation of license.**

Upon termination of the services of a licensed grader, the licensee shall surrender their license immediately for cancellation.

**§ 56.14 [Amended]**

- 16. Section 56.14 is amended by removing the word “he” and adding the words “the licensee” in its place.

- 17. Section 56.15 is revised to read as follows:

**§ 56.15 Political activity.**

Federal graders may participate in certain political activities, including management of and participation in political campaigns, in accordance with AMS policy. Graders are subject to these rules while they are on leave with or without pay, including furlough; however the rules do not apply to cooperative employees not under Federal supervision and intermittent employees on the days they perform no service. Willful violations of the political activity rules will constitute grounds for removal from the AMS.

- 18. Section 56.16 is revised to read as follows:

**§ 56.16 Identification.**

Each grader shall have in their possession at all times, and present upon request while on duty, the means of identification furnished to them by the Department.

- 19. A new § 56.19 is added to read as follows:

**§ 56.19 Prerequisites to grading.**

Grading of products shall be rendered pursuant to the regulations in this part and under such conditions and in accordance with such methods as may be prescribed or approved by the Administrator.

- 20. The undesignated center heading preceding § 56.20 is revised to read as follows:

**Application for Grading Service**

\* \* \* \* \*

21. Section 56.20 is revised to read as follows:

**§ 56.20 Who may obtain grading service.**

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

22. Section 56.22 is revised to read as follows:

**§ 56.22 Filing of application.**

An application for grading service shall be regarded as filed only when made pursuant to the regulations in this part.

23. In § 56.24, the section heading and paragraph (e) are revised to read as follows:

**§ 56.24 Rejection of application.**

\* \* \* (e) whenever the applicant, after an initial survey has been made in accordance with the regulations, fails to bring the grading facilities and equipment into compliance with the regulations within a reasonable period of time;

\* \* \* \* \*

24. The section heading for § 56.25 is revised and the word "Service" is removed and the word "AMS" is added in its place to read as follows:

**§ 56.25 Withdrawal of application.**

\* \* \* \* \*

**§ 56.27 [Amended]**

25. In § 56.27, immediately following the word "practicable" the words "and subject to the availability of qualified graders" are added.

26. Section 56.29 is added to read as follows:

**§ 56.29 Suspension or withdrawal of plant approval for correctable cause.**

(a) Any plant approval given pursuant to the regulations in this part may be suspended by the Administrator for:

- (1) Failure to maintain grading facilities and equipment in a satisfactory state of repair, sanitation, or cleanliness;
- (2) The use of operating procedures which are not in accordance with the regulations in this part; or
- (3) Alterations of grading facilities or equipment which have not been approved in accordance with the regulations in this part.

(b) Whenever it is feasible to do so, written notice in advance of a suspension shall be given to the person concerned and shall specify a reasonable period of time in which

corrective action must be taken. If advance written notice is not given, the suspension action shall be promptly confirmed in writing and the reasons therefor shall be stated, except in instances where the person has already corrected the deficiency. Such service, after appropriate corrective action is taken, will be restored immediately, or as soon thereafter as a grader can be made available. During such period of suspension, grading service shall not be rendered. However, the other provisions of the regulations pertaining to providing grading service on a resident basis will remain in effect unless such service is terminated in accordance with the provisions of this part.

(c) If the grading facilities or methods of operation are not brought into compliance within a reasonable period of time as specified by the Administrator, the Administrator shall initiate withdrawal action pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings (7 CFR part 1, subpart H), and the operator shall be afforded an opportunity for an oral hearing upon written request in accordance with such Rules of Practice, with respect to the merits or validity of the withdrawal action, but any suspension shall continue in effect pending the outcome of such hearing unless otherwise ordered by the Administrator. Upon withdrawal of grading service in an official plant, the plant approval shall also become terminated and all labels, seals, tags, or packaging material bearing official identification shall, under the supervision of a person designated by the AMS, either be destroyed or the official identification completely obliterated or sealed in a manner acceptable to the AMS.

(d) In any case where grading service is withdrawn under this section, the person concerned may thereafter apply for grading service as provided in §§ 56.20 through 56.29 of these regulations.

27. The undesignated center heading preceding § 56.30 is removed.

**§ 56.30 [Redesignated as § 56.33]**

28. Section 56.30 is redesignated as § 56.33.

29. A new § 56.30 is added to read as follows:

**§ 56.30 Application for grading service in official plants; approval.**

Any person desiring to process and pack products in a plant under grading service must receive approval of such plant and facilities as an official plant prior to the rendition of such service. An application for grading service to be

rendered in an official plant shall be approved according to the following procedure: When application has been filed for grading service, as aforesaid, the State supervisor or the supervisor's assistant shall examine the grading office, facilities, and equipment and specify any facility or equipment modifications needed for the service. When the plant survey has been completed and approved in accordance with the regulations in this part, service may be installed.

30. The undesignated center heading preceding § 56.31 is revised to read as follows:

**Reports**

\* \* \* \* \*

**§ 56.31 [Redesignated as § 56.68]**

31. Section 56.31 is redesignated as § 56.68.

32. A new § 56.31 is added to read as follows:

**§ 56.31. Report of grading work.**

Reports of grading work performed within official plants shall be forwarded to the Administrator by the grader in a manner as may be specified by the Administrator.

**§ 56.32 [Redesignated as § 56.38]**

33. Section 56.32 is redesignated as § 56.38.

34. A new § 56.32 is added to read as follows:

**§ 56.32 Information to be furnished to graders.**

The applicant for grading service shall furnish to the grader rendering such service such information as may be required for the purposes of this part.

**§ 56.35 [Amended]**

35. In § 56.35, paragraph (c) is amended by removing the words "with the labeling on" and adding the words "on the labeling of" in their place.

36. The section heading for § 56.36 is revised to read as follows:

**§ 56.36 Form of grademark and information required.**

\* \* \* \* \*

37. The section heading for § 56.45 is revised to read as follows:

**§ 56.45 Payment of fees and charges.**

\* \* \* \* \*

**§ 56.45 [Amended]**

38. In § 56.45, paragraph (b) is amended by removing the word "Service" and adding the word "AMS" in its place.

**§ 56.46 [Amended]**

39. In § 56.46, paragraph (c) the word “Supervisor” is revised to read “supervisor.”

**§ 56.49 [Amended]**

40. In § 56.49, the first sentence is amended by removing the word “service” the first time it appears and adding the word “AMS” in its place.

41. The section heading for § 56.52 is revised to read as follows:

**§ 56.52 Charges for continuous grading performed on a resident basis.**

\* \* \* \* \*

**§ 56.52 [Amended]**

42. Section 56.52 is amended by removing the words “Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as “the AMS”)” in paragraph (a) and adding the word “AMS” in their place.

**§ 56.54 [Amended]**

43. In § 56.54, paragraph (a) is amended by removing the words “Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as “AMS”)” and adding the word “AMS” in its place and removing the words “part 55 or” in paragraph (b)(5).

44. Section 56.55 is revised to read as follows:

**§ 56.55 Forms.**

Grading certificates and sampling report forms (including appeal grading certificates and regrading certificates) shall be issued on forms approved by the Administrator.

45. The section heading for § 56.56 is revised to read as follows:

**§ 56.56 Issuance.**

\* \* \* \* \*

**§ 56.56 [Amended]**

46. Section 56.56 is amended by:

A. Revising the word “Service” to read “AMS” in paragraph (a) the first sentence.

B. Revising the word “him” to read “such grader” in paragraph (a) second sentence.

C. Revising the word “his” to read “their” and the word “him” to read “such grader” in paragraph (b) first sentence.

D. Revising the words “National Supervisor” to read “national supervisor” in paragraph (b) second sentence.

E. Revising the words “both his own” to read “the applicant’s designee” in paragraph (b) last sentence.

47. The section heading for § 56.57 is revised to read as follows:

**§ 56.57 Disposition.**

\* \* \* \* \*

**§ 56.57 [Amended]**

48. In § 56.57, the words “person designated by him” are removed and the words “the applicant’s designee” are added in their place.

**§ 56.61 [Amended]**

49. In § 56.61, paragraph (b) is amended by adding the words “determination of the” following the words “with the” and adding the words “with the regional director” following the word “request”

50. § 56.64, paragraph (a) is revised to read as follows:

**§ 56.64 Who shall perform the appeal.**

(a) An appeal grading or review of a decision requested under § 56.61(a) shall be made by the grader’s immediate supervisor, or by one or more licensed graders assigned by the immediate supervisor.

\* \* \* \* \*

51. A new undesignated center heading is added following § 56.66 to read as follows:

**Denial of Service****§ 56.66 [Amended]**

52. In § 56.66, the word “grade mark” is revised to read “grademark”

53. Newly designated § 56.68 is revised to read as follows:

**§ 56.68 Debarment.**

The acts or practices set forth in §§ 56.69 through 56.74, 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 all benefits of the act for a specified period. The Rules of Practice Governing Formal Adjudicatory Proceedings (7 CFR part 1, subpart H) shall be applicable to such debarment action.

54. Sections 56.69 through 56.74 are added to read as follows:

**§ 56.69 Misrepresentation, deceptive, or fraudulent act or practice.**

Any willful misrepresentation or any deceptive or fraudulent act or practice found to be made or committed by any person in connection with:

(a) The making or filing of an application for any grading service, appeal, or regrading service;

(b) The making of the product accessible for sampling or grading;

(c) The making, issuing, or using or attempting to issue or use any grading certificate, symbol, stamp, label, seal, or identification authorized pursuant to the regulations in this part;

(d) The use of the terms “United States” or “U.S.” in conjunction with the grade of the product;

(e) The use of any of the aforesaid terms or any official stamp, symbol, label, seal, or identification in the labeling or advertising of any product.

**§ 56.70 Use of facsimile forms.**

Using or attempting to use a form which simulates in whole or in part any certificate, symbol, stamp, label, seal or identification authorized to be issued or used under the regulations in this part.

**§ 56.71 Willful violation of the regulations.**

Any willful violation of the regulations in this part or the act.

**§ 56.72 Interfering with a grader or employee of the AMS.**

Any interference with or obstruction or any attempted interference or obstruction of or assault upon any graders, licensees, or employees of the AMS in the performance of their duties. The giving or offering, directly or indirectly, of any money, loan, gift, or anything of value to an employee of the AMS or the making or offering of any contribution to or in any way supplementing the salary, compensation or expenses of an employee of the AMS or the offering or entering into a private contract or agreement with an employee of the AMS for any services to be rendered while employed by the AMS.

**§ 56.73 Misleading labeling.**

The use of the terms “Government Graded”, “Federal-State Graded”, or terms of similar import in the labeling or advertising of any product without stating in the label or advertisement the U.S. grade of the product as determined by an authorized grader.

**§ 56.74 Miscellaneous.**

The existence of any of the conditions set forth in § 56.24 constituting the basis for the rejection of an application for grading service.

**PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCT**

55. The authority citation for part 70 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

56. The undesignated center heading preceding § 70.1 is revised to read as follows:

**Definitions****§ 70.1 [Amended]**

57. Section 70.1 is amended by:

A. Revising the section heading and the introductory text.

B. Amending *Acceptable* by removing the words “and acceptable to the Service” and adding the words “by the AMS” in their place.

C. Amending *Administrator* by removing the words “Agricultural Marketing Service of the Department” and the word “AMS” in their place and removing the word “his” and adding the words “the Administrator’s” in its place.

D. Adding *Agricultural Marketing Service*.

E. Revising *Chief of the Grading Branch*.

F. Amending *Class* by adding the words “or species” after the word “kind”.

G. Amending *Department* by adding the word “(USDA)” after the word “Agriculture”.

H. Amending *Grading certificate* by removing the words “pursuant to the regulations” and adding the words “pursuant to the Act and the regulations”.

I. Amending *Holiday* or *Legal Holiday* by removing the words “Legal Holiday,” and adding the words “legal holiday” in their place and by removing the words “shall mean” and adding the word “means” in their place.

J. Adding *Interested party*.

K. Revising *National supervisor*;

L. Adding *Sampling*;

M. Amending *Secretary* by removing the word “his” and adding the words “the Secretary’s” in its place.

N. Removing *Service*.

O. Adding *United States Classes, Standards, and Grades for Poultry*.

P. Adding *United States Classes, Standards, and Grades for Rabbits*.

The revisions and additions read as follows:

**§ 70.1 Meaning of words and terms defined.**

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

\* \* \* \* \*

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

\* \* \* \* \*

*Chief of the Grading Branch* means Chief of the Grading Branch, Poultry Programs, AMS.

\* \* \* \* \*

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

\* \* \* \* \*

*National supervisor* means the officer in charge of the poultry grading service

of the AMS, and other employees of the Department as may be designated by the national supervisor.

\* \* \* \* \*

*Sampling* means the act of taking samples of any product for grading or certification.

\* \* \* \* \*

*United States Classes, Standards, and Grades for Poultry (AMS 70.200 et seq.)* means the official U.S. classes, standards, and grades for poultry that are maintained by and available from Poultry Programs, AMS.

*United States Classes, Standards, and Grades for Rabbits (AMS 70.300 et seq.)* means the official U.S. classes, standards, and grades for rabbits that are maintained by and available from Poultry Programs, AMS.

**§ 70.2 [Amended]**

58. In § 70.2, paragraph (c) is amended by revising the word “Grade” to read “grade”.

59. An undesignated center heading is added preceding § 70.3 to read as follows:

**General**

60. Section 70.3 is revised to read as follows:

**§ 70.3 Administration.**

The Administrator shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in the enforcement or administration of the provisions of the act and the regulations in this part. The Administrator is authorized to waive for limited periods any particular provisions of the regulations in this part to permit experimentation so that new procedures, equipment, grading, and processing, techniques may be tested to facilitate definite improvements and at the same time to determine full compliance with the spirit and intent of the regulations in this part. The AMS and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this part.

61. Section 70.5 is revised to read as follows:

**§ 70.5 Nondiscrimination.**

The conduct of all services and the licensing of graders under these regulations shall be accomplished without regard to race, color, national origin, religion, age, sex, disability, political beliefs, sexual orientation, or marital or family status.

62. Section 70.6 is revised to read as follows:

**§ 70.6 OMB control number.**

(a) *Purpose.* The collecting of information requirements in this part have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581–0127.

(b) *Display.*

Sections where information collection requirements are identified and described:

70.3	70.36	70.76(b)(3)(ii)
70.4(a)	70.38(c)	70.77(a)(1)
70.5	70.38(d)	70.77(a)(4)
70.18	70.39	70.77(b)(1)
70.20(a)	70.40	70.77(b)(3)(ii)
70.22	70.50	70.91(a)
70.31(a)	70.61	70.91(c)
70.31(b)	70.62	70.92
70.34	70.73	70.101
70.35	70.76(b)(1)	70.102

63. A new § 70.8 is added to read as follows:

**§ 70.8 Other applicable regulations.**

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

64. The undesignated center heading preceding § 70.10 is removed.

65. The section heading for § 70.10 is revised to read as follows:

**§ 70.10 Basis of grading service.**

\* \* \* \* \*

66. Section 70.10 is amended by:

A. Designating the undesignated text as paragraph (a).

B. Revising the words “classes”, “standards” and “grades” to read “Classes”, “Standards” and “Grades”, respectively.

C. Removing the words “as contained in subparts B and C of this part” and adding the words “for Poultry and Rabbits” in their place.

67. Section 70.13 is revised to read as follows:

**§ 70.13 Ready-to-cook poultry and rabbits and specified poultry food products.**

(a) Ready-to-cook poultry or rabbit carcasses or parts or specified poultry food products may be graded only if they have been inspected and certified by the poultry inspection service of the Department, or inspected and passed by any other inspection system which is acceptable to the Department.

(b) Only when ready-to-cook poultry carcasses, parts, poultry food products, including those used in preparing raw poultry food products, have been graded on an individual basis by a grader or by an authorized person pursuant to § 70.20(c) and thereafter checkgraded by a grader, and when poultry food products have been prepared under the

supervision of a grader, when necessary the individual container, carcass, part, or poultry food product be identified with the appropriate official letter grademark. Checkgrading shall be accomplished in accordance with a statistical sampling plan prescribed by the Administrator. Grading with respect to quality factors for freezing defects and appearance of the finished products may be done on a sample basis in accordance with a plan prescribed by the Administrator.

(c) Only when ready-to-cook rabbit carcasses or parts have been graded on an individual basis by a grader or by an authorized person pursuant to § 70.20(c) and thereafter checkgraded by a grader, may the container or the individual carcass or part be identified with the appropriate official letter grademark. Checkgrading shall be accomplished in accordance with a statistical sampling plan prescribed by the Administrator. Grading with respect to quality factors for freezing defects and appearance of the finished products may be done on a sample basis in accordance with a plan prescribed by the Administrator.

#### § 70.14 [Amended]

68. In § 70.14, the words “U.S. Department of Agriculture” are removed and the word “Department” is added in their place.

69. Section 70.15 is revised to read as follows:

#### § 70.15 Equipment and facilities for graders.

Equipment and facilities to be furnished by the applicant for use of graders in performing service on a resident basis shall include, but not be limited to, the following:

(a)(1) An accurate metal stem thermometer.

(2) A drill with a steel bit to drill holes in frozen product for inserting the metal thermometer stem to determine temperature.

(3) Scales graduated in tenths of a pound or less for weighing carcasses, parts, or products individually in containers up to 100 pounds, and test weights for such scales.

(4) Scales graduated in one-pound graduation or less for weighing bulk containers of poultry and test weights for such scales.

(b) Furnished office space, a desk and file or storage cabinets (equipped with a satisfactory locking device), suitable for the security and storage of official supplies, and other facilities and equipment as may otherwise be required. Such space and equipment must meet the approval of the national supervisor.

70. The undesignated center heading preceding § 70.20 is revised to read as follows:

#### Licensed and Authorized Graders

71. The section heading for § 70.20 is revised to read as follows:

#### § 70.20 Who may be licensed and authorized.

\* \* \* \* \*

72. In § 70.20, “paragraph (b) the words “Agricultural Marketing Service” are removed and the word “AMS” is added in their place.

#### § 70.21 [Amended]

73. Section 70.21 is amended by:

A. Removing the words “he deems such action” and adding the words “such action is deemed” in their place.

B. Removing the words “he may wish to offer as to why his” and adding the words “the licensee may wish to offer as to why their” in their place.

C. Removing the words “he deems such action” and adding the words “such action is deemed” in their place.

74. Section 70.22 is revised to read as follows:

#### § 70.22 Surrender of license.

Each license which is suspended or revoked shall immediately be surrendered by the licensee to the office of grading servicing the area in which the license is located.

75. Section 70.23 is revised to read as follows:

#### § 70.23 Identification.

Each grader shall have in their possession at all times, and present upon request while on duty, the means of identification furnished to them by the Department.

76. Section 70.24 is revised to read as follows:

#### § 70.24 Financial interest of graders.

Graders shall not render service on any product in which they are financially interested.

77. Section 70.25 is revised to read as follows:

#### § 70.25 Political activity.

Federal graders may participate in certain political activities, including management and participation in political campaigns in accordance with AMS policy. Graders are subject to these rules while they are on leave with or without pay, including furlough; however, the rules do not apply to cooperative employees not under Federal supervision and intermittent employees on the days they perform no service. Willful violations of the political activity rules will constitute grounds for removal from the AMS.

78. A new § 70.26 is added to read as follows:

#### § 70.26 Cancellation of license.

Upon termination of the services of a licensed grader, the licensee shall surrender their license immediately for cancellation.

79. Section 70.30 is revised to read as follows:

#### § 70.30 Who may obtain grading service.

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

#### § 70.31 [Amended]

80. In § 70.31, paragraph (a) is amended by removing the words “basis may” and the words “basis shall” in their place and removing the word “telegraph” and adding the words “any electronic means” in its place.

#### § 70.34 [Amended]

81. Section 70.34 is amended by removing the word “his” and adding the words “the supervisor’s” in its place.

#### § 70.35 [Amended]

82. Section 70.35 is amended by:

A. Removing the word “or” in paragraph (e).

B. Adding new paragraphs (g) and (h) to read as follows:

#### § 70.35 Rejection of application.

\* \* \* (g) when it appears that to perform the services specified in this part would not be to the best interests of the public welfare or of the Government; or (h) when it appears to the Administrator that prior commitments of the Department necessitate rejection of the application.

\* \* \* \* \*

83. In § 70.38, paragraph (c) is revised to read as follows:

#### § 70.38 Suspension or withdrawal of plant approval for correctable cause.

\* \* \* \* \*

(c) If the grading facilities or methods of operation are not brought into compliance within a reasonable period of time as specified by the Administrator, the Administrator shall initiate withdrawal action pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings and Grading Service (7 CFR part 1, subpart H), and the operator shall be afforded an opportunity for an oral hearing upon the operator’s written request in accordance with such Rules of Practice, with respect to the merits or validity of the withdrawal action, but any suspension

shall continue in effect pending the outcome of such hearing unless otherwise ordered by the Administrator. Upon withdrawal of grading service in an official plan, the plant approval shall also become terminated, and all labels, seals, tags, or packaging material bearing official identification shall, under the supervision of a person designated by the AMS, either be destroyed, or the official identification completely obliterated, or sealed in a manner acceptable to the AMS.

\* \* \* \* \*

84. A new § 70.39 is added to read as follows:

**§ 70.39 Form of application.**

Each application for grading or sampling a specified lot of any product shall include such information as may be required by the Administrator in regard to the product and the premises where such product is to be graded or sampled.

85. Section 70.40 is revised to read as follows:

**§ 70.40 Debarment.**

The acts or practices set forth in §§ 70.41 through 70.46, 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 all benefits of the act for a specified period. The Rules of Practice Governing Formal Adjudicatory Proceedings (7 CFR part 1, subpart H) shall be applicable to such debarment action.

86. The section heading for § 70.41 is revised to read as follows:

**§ 70.41 Misrepresentation, deceptive, or fraudulent act or practice.**

\* \* \* \* \*

**§ 70.41 [Amended]**

87. In § 70.41, paragraph (b) is amended by adding the words “sampling or” after the word “for” and adding the word “or” after the word “product”.

**§ 70.44 [Amended]**

88. In § 70.44, the word “his” is revised to read “their”.

89. A new § 70.56 is added to read as follows:

**§ 70.56 Grading requirements of poultry and rabbits identified with official identification.**

(a) Poultry and rabbit products to be identified with the grademarks illustrated in § 70.51 must be individually graded by a grader or by authorized personnel pursuant to

§ 70.20 and thereafter check graded by a grader.

(b) Poultry and rabbit products not graded in accordance with paragraph (a) of this section may be officially graded on a sample basis and the shipping containers may be identified with grademarks which contain the words “Sample Graded” and which are approved by the Administrator.

90. Section 70.60 is revised to read as follows:

**§ 70.60 Report of grading work.**

Reports of grading work performed within official plants shall be forwarded to the Administrator by the grader in a manner as may be specified by the Administrator.

91. Section 70.62 is revised to read as follows:

**§ 70.62 Report of violations.**

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

**§ 70.70 [Amended]**

92. In § 70.70, paragraph (b) is amended by removing the words “Agricultural Marketing Service” and adding the word “AMS” in their place.

**§ 70.71 [Amended]**

93. In § 70.71, the word “Supervisor” is revised to read “supervisor” in paragraph (c).

94. The section heading for § 70.72 is revised to read as follows:

**§ 70.72 Fees for appeal grading or review of a grader's decision.**

\* \* \* \* \*

**§ 70.72 [Amended]**

95. In § 70.72, the words “or examination” are removed each time they appear, and removing the words “will be borne” and adding the words “shall be borne” in their place.

**§ 70.76 [Amended]**

96. In § 70.76, paragraph (a) is amended by removing the words “the Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as “AMS”))” and adding the word “AMS” in their place.

**§ 70.77 [Amended]**

97. In § 70.77, paragraph (a) is amended by removing the words “Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as “AMS”))” and adding the word “AMS” in their place.

98. The undesignated center heading preceding § 70.80 is removed.

**§ 70.80 [Amended]**

99. The section heading for § 70.80 is removed and the undesignated text is designated as § 70.10, paragraph (b).

**§ 70.81 [Removed]**

100. Section 70.81 is removed.

**§ 70.90 [Amended]**

101. Section 70.90 is amended by adding the words “and sampling report forms” after the words “Grading certificates”.

**§ 70.92 [Removed]**

102. Section 70.92 is removed.

103. The section heading for § 70.91 is revised to read as follows:

**§ 70.91 Issuance.**

\* \* \* \* \*

**§ 70.91 [Amended]**

104. In § 70.91:

A. Paragraph (a) is amended by removing the word “him” and adding the words “such grader” in its place.

B. Paragraph (b) is revised.

C. Paragraph (c) is redesignated as § 70.92.

The revision reads as follows:

**§ 70.91 Issuance.**

\* \* \* \* \*

(b) *Other than resident grading.* Each grader shall, in person or by an authorized agent, issue a grading certificate covering each product graded by such grader. A grader's name may be signed on a grading certificate by a person other than the grader if such person has been designated as the authorized agent of such grader by the national supervisor: *Provided*, That the certificate is prepared from an official memorandum of grading signed by the grader: *And provided further*, That a notarized power of attorney authorizing such signature has been issued to such person by the grader and is on file in the office of grading. In such case, the authorized agent shall sign their own name and the grader's name, e.g., “John Doe by Richard Roe.”

\* \* \* \* \*

**§ 70.92 [Amended]**

105. Newly designated § 70.92 is amended by adding a new section heading titled “Disposition.” and removing the paragraph designation (c).

106. Section 70.93 is revised to read as follows:

**§ 70.93 Advance information.**

Upon request of an applicant, all or part of the contents of any grading certificate issued to such applicant may be telephoned or transmitted by any electronic means to the applicant, or to



the applicant's designee, at the applicant's expense.

**§ 70.104 [Amended]**

107. In § 70.104, paragraph (a) is amended by removing the words "a licensed grader" and adding the words "one or more licensed graders" in their place and removing the words "other than the grader whose grading or decision is being appealed".

108. In § 70.105, paragraphs (a) and (b) are revised to read as follows:

**§ 70.105 Procedures for appeal gradings.**

(a) The appeal sample shall consist of product taken from the original sample container plus an equal number of containers selected at random.

(b) When the original samples are not available or have been altered, such as the removal of undergrades, the appeal sample size for the lot shall consist of double the samples required in § 70.80.

\* \* \* \* \*

Dated: January 9, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6-258 Filed 1-12-06; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 1000**

[Docket No. FR-4938-N-02]

**Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of meeting of negotiated rulemaking committee.

**SUMMARY:** This notice announces a two-day session of the negotiated rulemaking committee that developed HUD's February 25, 2005, proposed rule for public comment to revise the Indian Housing Block Grant (IHBG) program allocation formula. Through the IHBG program, HUD makes assistance available to eligible Indian tribes for affordable housing activities. The public comment period on the proposed rule closed on April 26, 2005. The purpose of the two-day session is to provide the negotiated rulemaking committee members with the opportunity to review and consider responses to the public comments received on the February 25, 2005, proposed rule.

**DATES:** The session will be held on Tuesday, January 31, 2006, and

Wednesday, February 1, 2006. On each day, the session will begin at approximately 8:30 am, and will adjourn at approximately 6 pm.

**ADDRESSES:** The sessions will take place at the Grand Hyatt Denver hotel, 1750 Welton Street, Denver, Colorado 80202; telephone: (303) 295-1234 (this is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:**

Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-5000, telephone, (202) 401-7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On February 25, 2005 (70 FR 9490), HUD published a proposed rule for public comment to make several revisions to the Indian Housing Block Grant (IHBG) program allocation formula authorized under section 302 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

Through the IHBG program, HUD makes assistance available to eligible Indian tribes for affordable housing activities. The amount of assistance made available to each Indian tribe is determined using an allocation formula (IHBG Formula) that was developed jointly by HUD and Indian tribes using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561-570). A regulatory description of the IHBG Formula is located in subpart D of the IHBG program regulations codified at 24 CFR part 1000.

HUD negotiated the February 25, 2005, proposed rule with active tribal participation and using the procedures of the Negotiated Rulemaking Act. The proposed regulatory changes reflect the consensus decisions reached by HUD and the tribal representatives on ways to improve and clarify the current regulations governing the IHBG Formula. Additional details regarding the proposed regulatory revisions are provided in the preamble to the February 25, 2005, proposed rule. The public comment period on the proposed rule closed on April 26, 2005.

This notice announces a two-day session of the negotiated rulemaking committee that developed the February 25, 2005, proposed rule. Since the negotiated rulemaking committee has

concluded its negotiations, the session will not involve the re-opening of negotiations on the consensus and nonconsensus items identified in the preamble to the February 25, 2005, proposed rule and thoroughly negotiated during the committee meetings that developed the proposed regulatory changes. Rather, the purpose of the two-day session is to provide the negotiated rulemaking committee members with the opportunity to review and consider responses to the public comments received on the February 25, 2005, proposed rule.

The two-day session will take place as described in the **DATES** and **ADDRESSES** section of this document. The session will be open to the public; however, public attendance may be limited to the space available. Members of the public may be allowed to make statements during the meeting to the extent time permits.

Dated: January 9, 2006.

**Rodger J. Boyd,**

*Deputy Assistant Secretary for Native American Programs.*

[FR Doc. E6-362 Filed 1-12-06; 8:45 am]

**BILLING CODE 4210-33-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[CGD05-05-041]

**Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, South Branch of the Elizabeth River, Chesapeake, VA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Coast Guard will hold a public meeting to provide a forum for citizens to provide oral comments relating to the drawbridge operation regulations for the Dominion Boulevard (US 17) Bridge; Atlantic Intracoastal Waterway, South Branch of the Elizabeth River, Chesapeake, VA. The meeting will be open to the public.

**DATES:** This public meeting will be held from 3 p.m. to 8 p.m. on March 1, 2006, at the Chesapeake Central Library in Chesapeake, VA. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before February 28, 2006.

**ADDRESSES:** The Coast Guard public meeting will be held at the Chesapeake Central Library, 298 Cedar Road,