

## § 56.55

## 7 CFR Ch. I (1-1-02 Edition)

(2) AMS will provide, as available, an adequate number of graders to perform the grading service. The number of graders required will be determined by AMS based on the expected demand for service.

(3) The grading service shall be provided at designated locations and shall be continued until the service is suspended, withdrawn, or terminated by:

(i) Mutual consent;

(ii) Thirty (30) days' written notice, by either the applicant or AMS specifying the date of suspension, withdrawal, or termination;

(iii) One (1) day's written notice by AMS to the applicant if the applicant fails to honor any invoice within thirty (30) days after date of invoice covering the cost of the grading service; or

(iv) Action taken by AMS pursuant to the provisions of § 56.31.

(4) Graders will be required to confine their activities to those duties necessary in the rendering of grading service and such closely related activities as may be approved by AMS: *Provided*, That in no instance may the graders assume the duties of management.

(5) When similar nonresident grading services are furnished to the same applicant under part 55 or part 70 of this chapter, the charges listed in this section shall not be repeated.

[35 FR 19327, Dec. 22, 1970]

EDITORIAL NOTE: For FEDERAL REGISTER citations to § 56.54, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### GRADING CERTIFICATES

#### § 56.55 Grading certificates and sampling report forms.

Grading certificates and sampling report forms shall be issued on forms approved by the Administrator.

[20 FR 673, Feb. 1, 1955. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981]

#### § 56.56 Grading certificate issuance.

(a) *Resident grading basis.* Certificates will be issued only upon request therefor by the applicant or the Service. When requested, a grader shall issue a certificate covering product graded by him. In addition, a grader may issue a

grading certificate covering product graded in whole or in part by another grader when the grader has knowledge that the product is eligible for certification based on personal examination of the product or official grading records.

(b) *Other than resident grading.* Each grader shall, in person or by his authorized agent, issue a grading certificate covering each product graded by him. 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 both his own and the grader's name, e.g., "John Doe by Richard Roe."

[36 FR 9841, May 29, 1971, as amended at 36 FR 10937, June 5, 1971. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981]

#### § 56.57 Disposition of grading certificates.

The original and a copy of each grading certificate, issued pursuant to § 56.56, and not to exceed two additional copies thereof if requested by the applicant prior to issuance, shall, immediately upon issuance, be delivered or mailed to the applicant or person designated by him. Other copies shall be filed and retained in accordance with the disposition schedule for grading program records.

[36 FR 9842, May 29, 1971. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 47 FR 46070, Oct. 15, 1982; 47 FR 54421, Dec. 3, 1982]

#### § 56.58 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 telegraphed to him, or

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to any person designated by him, at his expense.

[20 FR 673, Feb. 1, 1955. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981]

### APPEAL OF A GRADING OR DECISION

SOURCE: Sections 56.60 through 56.66 appear at 35 FR 9918, June 17, 1970, unless otherwise noted. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981.

#### **§ 56.60 Who may request an appeal grading or review of a grader's decision.**

An appeal grading may be requested by any interested party who is dissatisfied with the determination by a grader of the class, quality, quantity, or condition of any product as evidenced by the USDA grademark and accompanying label, or as stated on a grading certificate and a review may be requested by the operator of an official plant with respect to a grader's decision or on any other matter related to grading in the official plant.

#### **§ 56.61 Where to file an appeal.**

(a) *Appeal from resident grader's grading or decision in an official plant.* Any interested party who is not satisfied with the determination of the class, quality, quantity, or condition of product which was graded by a grader in an official plant and has not left such plant, and the operator of any official plant who is not satisfied with a decision by a grader on any other matter related to grading in such plant may request an appeal grading or review of the decision by the grader by filing such request with the grader's immediate supervisor.

(b) *All other appeal requests.* Any interested party who is not satisfied with the class, quality, quantity, or condition of product which has left the official plant where it was graded or which was graded other than in an official plant may request an appeal grading by filing such request in the area where the product is located or with the Chief of the Grading Branch.

#### **§ 56.62 How to file an appeal.**

Any request for an appeal grading or review of a grader's decision may be

made orally or in writing. If made orally, written confirmation may be required. The applicant shall clearly state the reasons for requesting the appeal service and a description of the product, or the decision which is questioned. If such appeal request is based on the results stated on an official certificate, the original and all available copies of the certificate shall be returned to the appeal grader assigned to make the appeal grading.

#### **§ 56.63 When an application for an appeal grading may be refused.**

When it appears to the official with whom an appeal request is filed that the reasons given in the request are frivolous or not substantial, or that the quality or condition of the product has undergone a material change since the original grading, or that the original lot has changed in some manner, or the Act or the regulations in this part have not been complied with, the applicant's request for the appeal grading may be refused. In such case, the applicant shall be promptly notified of the reason(s) for such refusal.

#### **§ 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 a licensed grader assigned by the immediate supervisor other than the grader whose grading or decision is being appealed.

(b) Appeal gradings requested under § 56.61(b) shall be performed by a grader other than the grader who originally graded the product.

(c) Whenever practical, an appeal grading shall be conducted jointly by two graders. The assignment of the grader(s) who will make the appeal grading requested under § 56.61(b) shall be made by the regional director or the Chief of the Grading Branch.

[35 FR 9918, June 17, 1970, as amended at 40 FR 20056, May 8, 1975. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981]

#### **§ 56.65 Procedures for appeal gradings.**

(a) When all of the originally graded and identified samples are available, the appeal sample shall consist of such