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will be 150 percent of the grader's base salary rate.

(iii) For work performed on a holiday which is within the established tour of duty approved for a plant, the added charge will be the same as the grader's base rate.

(iv) For work performed between 6 p.m. and 6 a.m., night differential charges (for regular, overtime, or holiday hours worked during this period) will be at the applicable rates established plus 10 percent of the base rate.

(v) For work performed on Sunday, Sunday differential charges (for regular, overtime, or holiday hours worked on Sunday) will be at the applicable rates established plus 25 percent of the base rate.

(vi) For all hours of work performed in a plant without an approved tour of duty, the charge will be one of the applicable hourly rates in § 56.46.

(3) A charge at the hourly rates specified in § 56.46, plus actual travel expenses incurred by AMS for intermediate surveys to firms without grading service in effect.

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by \$0.051, except that the minimum charge per billing period shall be \$260 and the maximum charge shall be \$2,875. The minimum charge also applies where an approved application is in effect and no product is handled.

(b) *Other provisions.* (1) The applicant shall designate in writing the employees of the applicant who will be required and authorized to furnish each grader with such information as may be necessary for the performance of the grading service.

(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The grading service shall be provided at the designated plant and shall be continued until the service is suspended, withdrawn, or terminated by: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 speci-

fying 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.

[34 FR 8232, May 28, 1969]

EDITORIAL NOTE: For FEDERAL REGISTER citations to § 56.52, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 56.53 Fees or charges for grading service performed under cooperative agreement.

Fees or charges to be made to an applicant for grading service which differ from those listed in §§ 56.45 through 56.54 shall be provided for by a cooperative agreement.

[36 FR 7894, Apr. 28, 1971. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981]

§ 56.54 Charges for continuous grading performed on a nonresident basis.

Fees to be charged and collected for grading service on a nonresident grading basis, shall be those provided in this section. The fees to be charged for any appeal grading shall be as provided in § 56.47.

(a) *Charges.* The charges for the grading of shell eggs shall be paid by the applicant for the service and shall include items listed in this section as are applicable. Payment for the full cost of the grading service rendered to the applicant shall be made by the applicant to the AMS. Such full costs shall comprise such of the items listed in this section as are due and included in the bill or bills covering the period or periods during which the grading service was rendered. Bills will be rendered by the 10th day following the end of the billing period in which the service was rendered and are payable upon receipt.

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(1) A charge for the salary and other costs, as specified in this paragraph, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by AMS to perform grading service for other than the applicant. Base salary rates will be determined on a national average for all official plants operating in States under a Federal Trust Fund Agreement where Federal graders, State graders, or a combination of Federal and State graders are used, by averaging the salary rates paid to each Federal or State grader assigned to such plants. Charges to plants are as follows:

(i) For all regular hours of work scheduled and approved as an established tour of duty for a plant, the regular rate charge will be made. The regular rate charge will be determined by adding an amount to the base salary rate to cover the costs to AMS for such items as the Employer's Tax imposed under the U.S. Internal Revenue Code (26 U.S.C.) for Old Age and Survivor's Benefits under the Social Security System, retirement benefits, group life insurance, severance pay, sick leave, annual leave, additional salary and travel costs for relief grading service, accident payments, certain moving costs, and related servicing costs.

(ii) All hours worked by an assigned grader or another grader in excess of the approved tour of duty, or worked on a nonscheduled workday, or actually worked on a holiday in excess of the tour of duty, will be considered as overtime. The charge for such overtime will be 150 percent of the grader's base salary rate.

(iii) For work performed on a holiday which is within the established tour of duty approved for a plant, the added charge will be the same as the grader's base rate.

(iv) For work performed between 6 p.m. and 6 a.m., night differential charges (for regular, overtime, or holiday hours worked during this period) will be at the applicable rates established plus 10 percent of the base rate.

(v) For work performed on Sunday, Sunday differential charges (for regular, overtime, or holiday hours worked on Sunday) will be at the appli-

cable rates established plus 25 percent of the base rate.

(vi) For all hours of work performed in a plant without an approved tour of duty, the charge will be one of the applicable hourly rates in § 56.46.

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of \$260 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

(b) *Other provisions.* (1) The applicant shall designate in writing the employees of the applicant who will be required and authorized to furnish each grader with such information as may be necessary for the performance of the grading service.

(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 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

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Aids section of the printed volume and on GPO Access.

GRADING CERTIFICATES

§ 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.

[71 FR 42010, July 24, 2006]

§ 56.56 Issuance.

(a) *Resident grading basis.* Certificates will be issued only upon request therefor by the applicant or the AMS. When requested, a grader shall issue a certificate covering product graded by such grader. 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 the grader's 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 both the agent's name and the grader's name, e.g., "John Doe by Mary Roe."

[71 FR 42010, July 24, 2006]

§ 56.57 Disposition.

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 the applicant's designee. Other copies shall be

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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; 71 FR 42010, July 24, 2006]

§ 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 electronically transmitted to the applicant, or to the applicant's designee, at the applicant's expense.

[69 FR 76376, Dec. 21, 2004]

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.