

Agricultural Marketing Service, USDA

§ 56.62

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 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.

(b) *All other appeal requests.* Any interested party who is not satisfied with the determination of 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 with the regional director in the area where the product is located or with the Chief of the Grading Branch.

[35 FR 9918, June 17, 1970. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42010, July 24, 2006]

§ 56.62 How to file an appeal.

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

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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 one or more licensed graders assigned by the immediate supervisor.

(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; 71 FR 42010, July 24, 2006]

§ 56.65 Procedures for appeal gradings.

(a) The appeal sample shall consist of product taken from the original sample

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container plus an equal number of samples 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 § 56.4(b).

(c) Shell eggs shall not have been moved from the original place of grading and must have been maintained under adequate refrigeration and humidity conditions.

[35 FR 9918, June 17, 1970. 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; 69 FR 76376, Dec. 21, 2004; 71 FR 42010, July 24, 2006]

§ 56.66 Appeal grading certificates.

Immediately after an appeal grading is completed, an appeal certificate shall be issued to show that the original grading was sustained or was not sustained. Such certificate shall supersede any previously issued certificate for the product involved and shall clearly identify the number and date of the superseded certificate. The issuance of the appeal certificate may be withheld until any previously issued certificate and all copies have been returned when such action is deemed necessary to protect the interest of the Government. When the appeal grader assigns a different grade to the lot, the existing grademark shall be changed or obliterated as necessary. When the appeal grader assigns a different class or quantity designation to the lot, the labeling shall be corrected.

[35 FR 9918, June 17, 1970. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42010, July 24, 2006]

DENIAL OF SERVICE

§ 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