

Agricultural Marketing Service, USDA

§ 56.27

service rendered a corporation for its general benefit.

[42 FR 2970, Jan. 14, 1977. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, and amended at 69 FR 76375, Dec. 21, 2004; 71 FR 42009, July 24, 2006]

§ 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.

[71 FR 42009, July 24, 2006]

§ 56.23 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.

[28 FR 6342, June 20, 1963. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981]

§ 56.24 Rejection of application

(a) An application for grading service may be rejected by the Administrator:

(1) Whenever the applicant fails to meet the requirements of the regulations prescribing the conditions under which the service is made available;

(2) Whenever the product is owned by or located on the premises of a person currently denied the benefits of the Act;

(3) Where any individual holding office or a responsible position with or having a substantial financial interest or share in 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;

(4) Where the Administrator determines that the application is an attempt on the part of a person currently denied the benefits of the Act to obtain grading services;

(5) 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;

(6) Notwithstanding any prior approval whenever, before inauguration of service, the applicant fails to fulfill commitments concerning the inauguration of the service;

(7) 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

(8) When it appears to the Administrator that prior commitments of the Department necessitate rejection of the application.

(b) Each such applicant shall be promptly notified by registered mail of the reasons for the rejection. A written petition for reconsideration of such rejection may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after the receipt of notice of the rejection. Such petition shall state specifically the errors alleged to have been made by the Administrator in rejecting the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant by registered mail of the reasons for the rejection thereof.

[71 FR 42009, July 24, 2006]

§ 56.25 Withdrawal of Application.

An application for 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 the AMS in connection with such application.

[71 FR 42009, July 24, 2006]

§ 56.26 Authority of applicant.

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

[20 FR 671, Feb. 1, 1955. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981]

§ 56.27 Order of service.

Grading service shall be performed, insofar as practicable and subject to the availability of qualified graders, in the order in which applications therefore are made except that precedence

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may be given to any application for an appeal grading.

[20 FR 671, Feb. 1, 1955; 20 FR 757, Feb. 4, 1955, as amended at 42 FR 2970, Jan. 14, 1977. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981 and amended at 71 FR 42009, July 24, 2006]

§ 56.28 Types of grading service.

(a) *Noncontinuous grading service.* This type of service is performed when an applicant requests grading of a particular lot of shell eggs. Requests are made not on a regular basis. Charges or fees are based on the time, travel, and expenses needed to perform the work. This service also may be called the fee grading service. Shell eggs graded under fee grading service are not eligible to be identified with the official grademarks shown in § 56.36.

(b) *Continuous grading service on a resident basis and continuous grading service on a nonresident basis.* Service on a resident basis has a scheduled tour of duty, while service on a nonresident basis has a nonscheduled tour of duty. Both of these services are performed when an applicant requests that a USDA licensed grader be stationed in the applicant's processing plant and grade shell eggs in accordance with U.S. Standards. The applicant agrees to comply with the facility, operating, and sanitary requirements of resident service. The charges for resident grading services are based on the hours of the regular tour of duty and the volume of shell eggs received into the plant, while nonscheduled service is based on the cumulative time required to perform the work and an administrative service charge. Shell eggs graded under resident grading service are only eligible to be identified with the official grademarks shown in § 56.36 when processed and graded under the supervision of a grader or quality assurance inspector as provided in § 56.39.

(c) *Temporary grading service.* This type of service is performed when an applicant requests resident grading on a fee basis. The applicant must meet all of the facility, operating, and sanitary requirements of resident service. Charges or fees are based on the time and expenses needed to perform the work. Shell eggs graded under tem-

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porary grading service are only eligible to be identified with the official grademarks when they are processed and graded under the supervision of a grader or quality assurance inspector as provided in § 56.39.

[69 FR 76375, Dec. 21, 2004]

§ 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