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rendered in an official plant shall be approved according to the following procedure: *Survey*. 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 additional facilities or equipment needed for the service. When the plant survey for poultry or rabbit grading has been completed and approved in accordance with the regulations in this part, service may be installed.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42013, July 24, 2006]

§ 70.35 Rejection of application.

(a) Any 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 service;

(5) Whenever the applicant, after an initial survey has been made in accordance with § 70.34, fails to bring the grading facilities and equipment into compliance with the regulations within a reasonable period of time; or

(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;

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(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 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 42013, July 24, 2006]

§ 70.36 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 42013, July 24, 2006]

§ 70.37 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 therefor are made, except that precedence may be given to any application for an appeal grading.

§ 70.38 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.

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(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 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 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 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 § 70.38, the person concerned may thereafter apply for

grading service as provided in §§ 70.30 through 70.37 of these regulations.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, as amended at 43 FR 60139, Dec. 26, 1978. Redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42013, July 24, 2006]

§ 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.

[71 FR 42013, July 24, 2006]

DENIAL OF SERVICE

§ 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.

[71 FR 42013, July 24, 2006]

§ 70.41 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 any 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,