

§ 381.233

or part thereof or any condemned poultry product as specified in the notice, the Administrator may issue and file a complaint in accordance with the Uniform Rules of Practice. Effective upon service of the complaint, inspection service under the Act shall be withdrawn from such establishment as provided in section 18(b) of the Poultry Products Inspection Act (21 U.S.C. 467(b)), pending final determination in the proceeding.

§ 381.233 Withholding use of marking, labeling or containers from use under section 8 of the Poultry Products Inspection Act.

(a) In any situation in which the Administrator determines that any marking or labeling or size or form of any container in use or proposed for use with respect to any article subject to the Poultry Products Inspection Act is false or misleading in any particular, he shall notify, in writing, the person, firm, or corporation using or proposing to use such marking, labeling, or container, that such use shall be withheld unless the marking, labeling, or container is modified in such a manner as the Administrator may prescribe so that it would not be false or misleading.

(b) The written notification shall briefly set forth the reason for withholding the use of the marking, labeling, or container, and shall offer the respondent an opportunity to submit a written statement by way of answer to the notification and a right to request a hearing with respect to the merits or validity of the withholding action. The written notification shall be served in the manner prescribed in §1.147(b) of the Uniform Rules of Practice (7 CFR 1.147(B)).

(c) Effective upon service of the notification, the use of the marking, labeling, or container shall be withheld, if the Administrator so directs.

(d) If any person, firm, or corporation so notified fails to accept the determination of the Administrator and files an answer and requests a hearing, and the Administrator, after review of the answer, determines the initial determination to be correct, he shall file

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with the Hearing Clerk the notification, answer and request for hearing, which shall constitute the complaint and answer in the proceeding, which shall thereafter be governed by the Uniform Rules of Practice.

§ 381.234 Refusal or withdrawal of inspection service under the Poultry Products Inspection Act for failure to comply with requirements as to premises, facilities, equipment, or the operation thereof.

(a) In any situation in which the Administrator determines that the conditions of an establishment which is applying for inspection or receives inspection under the Poultry Products Inspection Act are such that there is a failure to comply with any requirements as to premises, facilities, equipment, or the operation thereof, as provided in section 7 of the Act (21 U.S.C. 456) and the regulations issued thereunder (9 CFR 381.1 et seq.), he shall refuse to render inspection at the establishment. The Administrator shall notify the applicant or operator of the establishment, orally or in writing, as promptly as circumstances permit, of such refusal and the reasons therefor, and the action which the Administrator deems necessary to eliminate such conditions. In the event of oral notification, written confirmation shall be given, as promptly as circumstances permit, to the applicant or operator of the establishment in the manner prescribed in §1.147(b) of the Uniform Rules of Practice (7 CFR 1.147(b)).

(b) If any applicant or operator of an establishment so notified fails to take the necessary action to eliminate the conditions within the period specified in the notice, the Administrator may issue a complaint in accordance with the Uniform Rules of Practice. Effective upon service of the complaint, inspection service shall be refused or withdrawn from such establishment as provided in sections 7 and 18(b) of the Act (21 U.S.C. 456 and 467(b)) pending final determination in the proceeding.