

§ 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 Effective upon service of the complaint, inspection service under the Act shall be withdrawn from such establishment as provided in section 18(b) of the Poultry Products Inspection Act (21 U.S.C. 467(b)), pending final determination in the proceeding.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.

RULES APPLICABLE TO THE SUSPENSION OF THE ASSIGNMENT OF INSPECTORS FOR THREATS TO FORCIBLY ASSAULT OR FORCIBLE ASSAULT, INTIMIDATION OR INTERFERENCE WITH ANY INSPECTION SERVICE EMPLOYEE

§ 381.235 Notification to operator of establishment of incident.

In any situation in which a supervisor of an inspection service employee determines that the operator of any official establishment or any subsidiary therein, or any officer, employee, or agent of any such operator or any subsidiary therein, acting within the scope of his office, employment, or agency, has threatened to forcibly assault or has forcibly assaulted, intimidated or interfered with any inspection service employee, under his supervision, in or on account of the performance of the employee's official duties under the Poultry Products Inspection Act, he shall notify the operator of the establishment, orally or in writing, of the incident in accordance with § 381.29 of the regulations in this subchapter (9 CFR 381.29).

§ 381.236 Procedure upon failure of operator of establishment to take action required by § 381.29 of the regulations.

(a) If any operator of an establishment, notified pursuant to § 381.235 (9 CFR 381.235), fails to promptly take any of the actions specified in § 381.29 of the regulations (9 CFR 381.29), the Administrator may suspend the assignment of inspectors at that establishment, in whole or in part, as the Administrator determines necessary to avoid impairment of the effective conduct of inspection service, by notifying the operator of the establishment, orally or in writing, of such suspension. In the event of oral notification, a written confirmation shall be given as promptly as circumstances permit to the operator of the establishment. The written notification or confirmation shall be served upon the operator of the establishment in the manner prescribed in § 1.147(b) of the Uniform Rules of Practice (7 CFR 1.147(b)).

(b) The written notification or confirmation, specified in paragraph (a) of this section, which shall constitute the

complaint in the proceeding, shall briefly set forth the reason for the suspension of the assignment of inspectors, including allegations of fact which constitute a basis for the action. The complaint shall offer the respondent the opportunity to submit a specific written statement by way of answer and the right to request a hearing with respect to the merits or validity of the suspension action, and shall state the time within which answer by the respondent must be made, which shall not be less than 10 days after service of the complaint. At any time prior to the close of the hearing, the complaint may be amended; but, in case of an amendment adding new provisions, the hearing shall, on the request of the respondent, be adjourned for a period not exceeding 15 days, if the judge determines that such an adjournment is necessary to avoid prejudice to the respondent.

(c) A copy of the complaint served upon the respondent shall be filed with the Hearing Clerk who shall assign the matter a docket number.

(d) After the complaint is served upon the respondent, as provided in paragraphs (a) and (b) of this section, the proceeding shall thereafter be conducted in accordance with rules of practice which shall be adopted for the proceeding.

Subpart X—Canning and Canned Products

SOURCE: 51 FR 45634, Dec. 19, 1986, unless otherwise noted.

§ 381.300 Definitions.

(a) *Abnormal container.* A container with any sign of swelling or product leakage or any evidence that the contents of the unopened container may be spoiled.

(b) *Acidified low acid product.* A canned product which has been formulated or treated so that every component of the finished product has a pH of 4.6 or lower within 24 hours after the completion of the thermal process unless data are available from the establishment's processing authority demonstrating that a longer time period is safe.