

### § 362.3

### 9 CFR Ch. III (1–1–06 Edition)

processing of poultry and the processing of poultry products. All provisions of Part 381 and §§416.1 through 416.6 of this chapter shall apply to the slaughter of poultry, and the preparation, labeling, and certification of the poultry and poultry products processed under this poultry inspection service except for the following provisions: the definitions of “Act,” “animal food manufacturer,” “Inspection Service,” “inspector,” “Inspector in Charge,” “poultry,” “poultry product,” “poultry food product,” “poultry products broker,” “renderer,” and “U.S. Refused Entry” in §§381.1 (b), 381.3 (a), 381.6, 381.10, 381.13–381.17, 381.21, 381.29, 381.39–381.42, 381.175 (a)(2), 381.175 (a)(3), 381.179, 381.185–381.187, 381.192, and 381.195–381.225.

(b) *Export certification service.* At the request of any person intending to export any slaughtered poultry or poultry product, inspectors may make certification regarding products for human food purposes, to be exported, as meeting conditions or standards that are not imposed or are in addition to those imposed by the regulations in this chapter and the laws under which such regulations were issued.

(c) *Identification Service.* (1) Poultry or other product that is federally inspected and passed at an official establishment, or upon importation, under the Poultry Products Inspection Act, is officially marked to identify it as federally inspected and passed. In order to facilitate the division of such poultry or other product into smaller portions or its combination into larger units and still maintain its identify as product which has been federally inspected and passed and so marked, inspectors may supervise the handling and weighing of the product and mark such portions and units with the official mark of inspection when they determine that identify has been maintained.

(2) At the time service is furnished, product must be sound, wholesome, and fit for human food. The service will be available only on premises other than those of an official establishment. The sanitation of the place or area where service is furnished must comply with provisions of §§416.1 through 416.6 of this chapter.

(3) The mark of inspection shall be applied only under the immediate supervision of an inspector.

(4) This service does not cover further cutting and processing of products. These activities must take place at an official establishment.

(5) The registration and record-keeping requirements enumerated in Part 381, subpart Q, of this chapter shall apply to persons requesting voluntary identification service under this paragraph (c).

[66 FR 22905, May 7, 2001]

#### § 362.3 Application for service.

Any person who desires to receive service under the regulations in this part for poultry or other product eligible therefor under such regulations may make application for service to the Administrator, upon an application form which will be furnished by the Administrator upon request to the Meat and Poultry Inspection Program, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. The application must include all the information called for by that form. In case of change of name, ownership, management, or location, a new application shall be made.

(Approved by the Office of Management and Budget under control number 0583–0036)

[41 FR 23715, June 11, 1976, as amended at 47 FR 746, Jan. 7, 1982]

#### § 362.4 Denial or withdrawal of service.

(a) *For disciplinary reasons—*(1) *Bases for denial or withdrawal.* An application or request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person who, or whose employee or agent in the scope of his employment or agency, (i) has willfully made any misrepresentation or has committed any other fraudulent or deceptive practice in connection with any application or request for service under the regulations in this chapter; (ii) has given or attempted to give, as a loan or for any other purpose, any money, favor, or other thing of value, to any employee of the Department authorized to perform any function under the regulations in this chapter; (iii) has

interfered with or obstructed, or attempted to interfere with or to obstruct, any employee of the Department in the performance of his duties under the regulations in this chapter by intimidation, threats, assaults, abuse, or any other improper means; (iv) has knowingly falsely made, issued, altered, forged, or counterfeited any official certificate, memorandum, mark, or other identification, or device for making any such mark or identification authorized or issued under this chapter; (v) has knowingly uttered, published, or used as true any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark, identification, or device; (vi) has knowingly obtained or retained possession of any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark, identification, or device, or of any carcass or poultry or product bearing any such falsely made, issued, altered, forged or counterfeited certificate, memorandum, mark, or identification; (vii) has knowingly represented that any carcass, poultry, or product has been officially inspected and passed (by an authorized inspector) under this chapter, when it had not in fact been so inspected; (viii) has, within the previous ten years, been convicted of any felony or more than one misdemeanor under any law based upon the acquiring, handling, or distributing of adulterated, mislabeled, or deceptively packaged food, or fraud in connection with transactions in food, or any felony indicating a lack of the integrity needed for the conduct of operations affecting the public health; (ix) has in any manner not specified in this paragraph violated subsection 203(h) of the Act:

*Provided*, That paragraph (a)(1)(vi) of this section shall not be deemed to be violated if the person in possession of any item mentioned therein notifies the inspector without delay that he has possession of such item and, in the case of an official device, surrenders it to the inspector, and, in the case of any other item, surrenders it to the inspector or destroys it or brings it into compliance with the regulations by obliterating or removing the violative features under supervision of the inspec-

tor; *And provided further*, That an application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from any person who operates an establishment for which he has made application for service if, with the knowledge of such operator, any other person conducting any operations in such establishment has committed any of the offenses specified in paragraphs (a)(1) (i) through (ix) of this section after such application was made. Moreover, an application or a request for service made in the name of a person otherwise eligible for service under the regulations may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, such a person (a) in case the service is or would be performed at an establishment operated (1) by a corporation, partnership, or other person from whom the benefits of the service are currently being withheld under this chapter, or (2) by a corporation, partnership, or other person having an officer, director, partner, or substantial investor from whom the benefits of service under this chapter are currently being withheld and who has any authority with respect to the establishment where service is or would be performed, or (b) in case the service is or would be performed with respect to any poultry or product in which any corporation, partnership, or other person within (a)(1) of this section has a contract or other financial interest.

(2) *Procedure*. An application or request for service may be rejected, or benefits of the service may be otherwise denied to or withdrawn by the Secretary, as provided by this paragraph, after notice and opportunity for hearing before a proper official of the Department. The Administrator may reject an application or request for service or deny or withdraw service under this paragraph without hearing, pending final determination of the matter, when he determines that the public interest so requires. The operator or applicant of such plant shall be notified of the Administrator's decision to reject the application or request for service or to deny or withdraw such service, and the reasons

therefor, in writing, in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)), or orally. The Administrator's decision to reject an application or request for service or to deny or withdraw the benefits of service under the Act shall be effective upon such oral or written notification, whichever is earlier, to the operator or applicant of such plant. If such notification is oral, the Administrator shall confirm such decision, and the reasons therefor, in writing, as promptly as circumstances permit, and such written confirmation shall be served upon the operator or applicant of such plant in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)).

(b) *For correctable cause—(1) Basis for denial or withdrawal.* An application or request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person whose establishment does not meet the requirements as to premises, facilities, and equipment, and the operation thereof, prescribed in the regulations to prevent the distribution of adulterated poultry or poultry products, or who has not received approval of labeling and containers to be used at the establishment as required by the regulations.

(2) *Procedure.* An application or request for service may be rejected, or benefits of the service may be otherwise denied to or withdrawn by the Secretary, as provided by this paragraph, after notice and opportunity for hearing before a proper official of the Department. The Administrator may reject an application or request for service or deny or withdraw service under this paragraph without hearing, pending final determination of the matter, when he determines that the public interest so requires. The operator or applicant of such plant shall be notified of the Administrator's decision to reject the application or request for service or to deny or withdraw such service, and the reasons therefor, in writing, in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)), or orally. The Administrator's decision to reject an application or request for service or to deny or withdraw the benefits of service under the Act shall be effective

upon such oral or written notification, whichever is earlier, to the operator or applicant of such plant. If such notification is oral, the Administrator shall confirm such decision, and the reasons therefor, in writing, as promptly as circumstances permit, and such written confirmation shall be served upon the operator or applicant of such plant in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)).

(c) *For miscellaneous reasons.* An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person, without a hearing, by the official in charge of the appropriate regional office, with the concurrence of the Regional Director (1) for administrative reasons such as the nonavailability of personnel to perform the service; (2) for the failure to pay for service; (3) in case the application or request relates to birds or products which are not eligible for service under this part 362; or (4) in case the person is a partnership, corporation, or other person from whom the benefits of the service are currently being withheld under paragraph (a) of this section. Notice of such rejection, denial, or withdrawal, and the reasons therefor, shall promptly be given to the person involved. The operator or applicant of such plant shall be notified of such decisions to reject an application or request for service or to deny or withdraw the benefits of the service, and the reasons therefor, in writing, in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)), or orally. Such decision shall be effective upon such oral or written notification, whichever is earlier, to the operator or applicant of such plant. If such notification is oral, the person making such decision shall confirm such decision, and the reasons therefor, in writing, as promptly as circumstances permit, and such written confirmation shall be served upon the operator or applicant of such plant in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)).

(d) *Scope and applicability of rules of practice.* The rules of practice of the Department of Agriculture in subpart H of part I, subtitle A, title 7 of the Code of Federal Regulations, are the

rules of practice applicable to adjudicatory, administrative proceedings under the regulations in this part (9 CFR part 362).

[41 FR 23715, June 11, 1976, as amended at 43 FR 11148, Mar. 17, 1978]

#### **§ 362.5 Fees and charges.**

(a) Fees and charges for service under the regulations in this part shall be paid by the applicant for the service in accordance with this section, and, if required by the Administrator, the fees and charges shall be paid in advance.

(b) The fees and charges provided for in this section shall be paid by check, draft, or money order payable to the Treasurer of the United States and shall be remitted promptly to the Administrator upon furnishing to the applicant a statement as to the amount due.

(c) The fees to be charged and collected for service under the regulations in this part shall be at the rates specified in §§ 391.2, 391.3, and 391.4 respectively for base time; for overtime including Saturdays, Sundays, and holidays; and for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the services and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

(d) Charges may also be made to cover the cost of travel and other expenses incurred by the Service in connection with the furnishing of the service.

[41 FR 23715, June 11, 1976, as amended at 53 FR 13398, Apr. 22, 1988; 54 FR 6390, Feb. 10, 1989]

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