

## Agricultural Marketing Service, USDA

## § 54.1032

of equipment, portion of a piece of equipment or utensil.

### § 54.1026 Superseded reports.

The appeal report shall supersede the original report which, thereupon, shall become null and void for all or a portion of the report pertaining to the appeal service and shall not thereafter be deemed to show the compliance of the equipment or utensils described therein. However, the fees charged for the original service shall not be remitted to the applicant who filed the appeal.

### § 54.1027 Application of other regulations to appeal service.

The regulations in this subpart shall apply to appeal service except insofar as they are inapplicable.

### § 54.1028 Fees and other charges for service.

Fees and other charges equal as nearly as may be to the cost of the services rendered shall be assessed and collected from applicants in accordance with the provisions for Fees and Charges set forth in 7 CFR part 58, Subpart A, Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products, sections §§ 58.38, 58.39, 58.41, 58.42, and 58.43, as appropriate.

### § 54.1029 Payment of fees and other charges.

Fees and other charges for service shall be paid upon receipt of billing for fees and other charges for service. The applicant shall remit by check, draft, or money order, made payable to the Agricultural Marketing Service, USDA, payment for the service in accordance with directions on the billing, and such fees and charges shall be paid in advance if required by the official design review specialist or other authorized official.

### § 54.1030 Identification.

All official design review specialists and supervisors shall have their Agricultural Marketing Service identification cards in their possession at all times while they are performing any function under the regulations and shall identify themselves by such cards upon request.

### § 54.1031 Errors in service.

When a design review specialist, supervisor, or other responsible employee of the Branch has evidence of inaccurate evaluation, or of incorrect certification or other incorrect determination or identification as to the compliance of a piece of equipment or utensil, such person shall report the matter to the Chief. The Chief will investigate the matter and, if deemed advisable, will report any material errors to the owner or the owner's agent. The Chief shall take appropriate action to correct errors found in the determination of compliance of equipment or utensils, and the Chief shall take adequate measures to prevent the recurrence of such errors.

### § 54.1032 Denial or withdrawal of service.

(a)(1) *Bases for denial or withdrawal.* 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, or whose employee or agent in the scope of the person's employment or agency:

(i) Has wilfully made any misrepresentation or has committed any other fraudulent or deceptive practice in connection with any application or request for service under the regulations;

(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;

(iii) Has interfered with or obstructed, or attempted to interfere with or to obstruct, any employee of the Department in the performance of duties under the regulations 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;

(v) Has knowingly uttered, published, or used as true any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark or identification;

(vi) Has knowingly obtained or retained possession of any such falsely

made, issued, altered, forged, or counterfeited certificate, memorandum, mark or identification, or of any equipment or utensil bearing any such falsely made, issued, altered, forged, or counterfeited mark or identification;

(vii) Has applied the designation “USDA Accepted Equipment”, “AMS Accepted Equipment”, “USDA Approved Equipment”, “AMS Approved Equipment”, “Approved By USDA”, “Approved By AMS”, “Accepted By USDA”, “Accepted By AMS”, “USDA Approved”, “USDA Accepted”, “AMS Approved”, “AMS Accepted”, or any other variation of wording which states or implies official sanction by the United States Department of Agriculture by stamp, or brand directly on any equipment or utensil, or used as part of any promotional materials which has not been inspected and deemed in compliance with this subpart; or,

(viii) Has in any manner not specified in this paragraph violated subsection 203(h) of the AMA: *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 Deputy Administrator or Chief without such delay that such person has possession of such item and, in the case of an official identification, surrenders it to the Chief, and, in the case of any other item, surrenders it to the Deputy Administrator or Chief or destroys it or brings it into compliance with the regulations by obliterating or removing the violative features under supervision of the Deputy Administrator or Chief: *And provided further*, That paragraphs (a)(1) (ii) through (vii) of this section shall not be deemed to be violated by any act committed by any person prior to the making of an application of service under the regulations by the principal person. 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 such person 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 (vii) 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 paragraph; or

(2) By a corporation, partnership, or other person having an officer, director, partner, or substantial investor from whom the benefits of the service 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 product in which any corporation, partnership, or other person within paragraph (a)(1)(viii)(A)(1) of this section has a contract or other financial interest.

(2) *Procedure*. All cases arising under this paragraph shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in 7 CFR §§1.130 through 1.151 and the Supplemental Rules of Practice in part 50, 7 CFR §50.1 *et seq.*

(b) *Filing of records*. The final orders in formal proceedings under paragraph (a) of this section to deny or withdraw the service under the regulations (except orders required for good cause to be held confidential and not cited as precedents) and other records in such proceedings (except those required for good cause to be held confidential) shall be filed with the Hearing Clerk and shall be available for inspection by persons having a proper interest therein.

#### § 54.1033 Confidential treatment.

Every design review specialist providing service under these regulations shall keep confidential all information secured and not disclose such information to any person except an authorized representative of the Department.