

may be granted by the Food Labeling Division. Temporary approvals may be granted for a period not to exceed 180 calendar days under the following conditions:

- (i) The proposed labeling would not misrepresent the product;
- (ii) The use of the labeling would not present any potential health, safety, or dietary problems to the consumer;
- (iii) Denial of the request would create undue economic hardship; and
- (iv) An unfair competitive advantage would not result from the granting of the temporary approval.

(2) Extensions of temporary approvals may also be granted by the Food Labeling Division, provided that the applicant demonstrates that new circumstances, meeting the above criteria, have developed since the original temporary approval was granted.

[60 FR 67456, Dec. 29, 1995]

EFFECTIVE DATE NOTE: At 78 FR 66838, Nov. 7, 2013, § 381.132 was removed and reserved, effective Jan. 6, 2014.

§ 381.133 Generically approved labeling.

(a)(1) An official establishment or an establishment certified under a foreign inspection system, in accordance with subpart T of this part, is authorized to use generically approved labeling, as defined in paragraph (b) of this section, without such labeling being submitted for approval to the Food Safety and Inspection Service in Washington or the field, provided the labeling is in accord with this section and shows all mandatory features in a prominent manner as required in subpart N of this part, and is not otherwise false or misleading in any particular.

(2) The Food Safety and Inspection Service shall select samples of generically approved labeling from the records maintained by official establishments and establishments certified under foreign inspection systems, in accordance with subpart T of this part, as required in § 381.132, to determine compliance with labeling requirements. Any finding of false or misleading labeling shall institute the proceedings prescribed in § 381.233.

(b) Generically approved labeling is labeling which complies with the following:

(1) Labeling for a product which has a product standard as specified in subpart 381 of this subchapter or the Standards and Labeling Policy Book and which does not contain any special claims, such as quality claims, nutrient content claims, health claims, negative claims, geographical origin claims (except as provided by paragraph (b)(9)(xxviii) of this section), or guarantees, or which is not a domestic product labeled in a foreign language;

(2) Labeling for single-ingredient products (such as chicken legs or turkey breasts) which does not contain any special claims, such as quality claims, nutrient content claims, health claims, negative claims, geographical origin claims (except as provided by paragraph (b)(9)(xxviii) of this section), or guarantees, or which is not a domestic product labeled with a foreign language;

(3) Labeling for containers of products sold under contract specifications to Federal Government agencies, when such product is not offered for sale to the general public, provided that the contract specifications include specific requirements with respect to labeling, and are made available to the inspector-in-charge;

(4) Labeling for shipping containers which contain fully labeled immediate containers, provided such labeling complies with § 381.127;

(5) Labeling for products not intended for human food, provided they comply with §§ 381.152(c) and 381.193, and labeling for poultry heads and feet for export for processing as human food if they comply with § 381.190(b);

(6) Poultry inspection legends, which comply with subpart M of this part;

(7) Inserts, tags, liners, pasters, and like devices containing printed or graphic matter and for use on, or to be placed within containers, and coverings of products, provided such devices contain no reference to product and bear no misleading feature;

(8) Labeling for consumer test products not intended for sale; and

(9) Labeling which was previously approved by the Food Labeling Division as sketch labeling, and the final labeling was prepared without modification or with the following modifications:

(i) All features of the labeling are proportionately enlarged or reduced, provided that all minimum size requirements specified in applicable regulations are met and the labeling is legible;

(ii) The substitution of any unit of measurement with its abbreviation or the substitution of any abbreviation with its unit of measurement, e.g., “lb.” for “pound,” or “oz.” for “ounce,” or of the word “pound” for “lb.” or “ounce” for “oz.”;

(iii) A master or stock label has been approved from which the name and address of the distributor are omitted and such name and address are applied before being used (in such case, the words “prepared for” or similar statement must be shown together with the blank space reserved for the insertion of the name and address when such labels are offered for approval);

(iv) Wrappers or other covers bearing pictorial designs, emblematic designs or illustrations, e.g., floral arrangements, illustrations of animals, fireworks, etc. are used with approved labeling (the use of such designs will not make necessary the application of labeling not otherwise required);

(v) A change in the language or the arrangement of directions pertaining to the opening of containers or the serving of the product;

(vi) The addition, deletion, or amendment of a dated or undated coupon, a cents-off statement, cooking instructions, packer product code information, or UPC product code information;

(vii) Any change in the name or address of the packer, manufacturer or distributor that appears in the signature line;

(viii) Any change in the net weight, provided that the size of the net weight statement complies with §381.121;

(ix) The addition, deletion, or amendment of recipe suggestions for the product;

(x) Any change in punctuation;

(xi) Newly assigned or revised establishment numbers for a particular establishment for which use of the labeling has been approved by the Food Labeling Division, Regulatory Programs;

(xii) The addition or deletion of open dating information;

(xiii) A change in the type of packaging material on which the label is printed;

(xiv) Brand name changes, provided that there are no design changes, the brand name does not use a term that connotes quality or other product characteristics, the brand name has no geographic significance, and the brand name does not affect the name of the product;

(xv) The deletion of the word “new” on new product labeling;

(xvi) The addition, deletion, or amendment of special handling statements, provided that the change is consistent with §381.125(a);

(xvii) The addition of safe handling instructions as required by §381.125(b);

(xviii) Changes reflecting a change in the quantity of an ingredient shown in the formula without a change in the order of predominance shown on the label, provided that the change in the quantity of ingredients complies with any minimum or maximum limits for the use of such ingredients prescribed in subpart P of this part and §424.21(c) of subchapter E;

(xix) Changes in the color of the labeling, provided that sufficient contrast and legibility remain;

(xx) A change in the product vignette, provided that the change does not affect mandatory labeling information or misrepresent the content of the package;

(xxi) The addition, deletion, or substitution of the official USDA poultry grade shield; (xxii) A change in the establishment number by a corporation or parent company for an establishment under its ownership;

(xxiii) Changes in nutrition labeling that only involve quantitative adjustments to the nutrition labeling information, except for services sizes, provided the nutrition labeling information maintains its accuracy and consistency;

(xxiv) Deletion of any claim, and the deletion of non-mandatory features or non-mandatory information;

(xxv) The addition or deletion of a direct translation of the English language into a foreign language for products marked “for export only”; and

(xxvi) The use of the descriptive term “fresh” in accordance with § 381.129(b)(6)(i) of this subchapter.

(xxvii) The use of the descriptive Term *frozen* as required by § 381.129(b)(6)(ii) of this subchapter.

(xxviii) A country of origin statement on any product label described in § 381.129(f) that complies with the requirements in that paragraph.

[60 FR 67457, Dec. 29, 1995, as amended at 61 FR 66201, Dec. 17, 1996; 73 FR 50703, Aug. 28, 2008; 76 FR 82079, Dec. 30, 2011]

EFFECTIVE DATE NOTE: At 78 FR 66838, Nov. 7, 2013, § 381.133 was removed and reserved, effective Jan. 6, 2014.

§ 381.134 Requirement of formulas.

Copies of each label submitted for approval, shall when the Administrator requires in any specific case, be accompanied by a statement showing, by their common or usual names, the kinds and percentages of the ingredients comprising the poultry product and by a statement indicating the method or preparation of the product with respect to which the label is to be used. Approximate percentages may be given in cases where the percentages of ingredients may vary from time to time, if the limits of variation are stated.

[37 FR 9706, May 16, 1972, as amended at 39 FR 4569, Feb. 5, 1974; 59 FR 45196, Sept. 1, 1994. Redesignated at 60 FR 67457, Dec. 29, 1995]

§ 381.136 Affixing of official identification.

(a) No official inspection legend or any abbreviation or other simulation thereof may be affixed to or placed on or caused to be affixed to or placed on any poultry product or container thereof, except by an inspector or under the supervision of an inspector or other person authorized by the Administrator, and no container bearing any such legend shall be filled except under such supervision.

(b) No official inspection legend shall be used on any poultry product or other article which does not qualify for such mark under the regulations.

§ 381.137 Evidence of labeling and devices approval.

No inspector shall authorize the use of any device bearing any official inspection legend unless he or she has on file evidence that such device has been approved in accordance with the provisions of this subpart.

[60 FR 67458, Dec. 29, 1995]

§ 381.138 Unauthorized use or disposition of approved labeling or devices.

(a) Labeling and devices approved for use pursuant to § 381.115 shall be used only for the purpose for which approved, and shall not be disposed of from the official establishment for which approved except with written approval of the Administrator. Any unauthorized use or disposition of approved labeling or devices bearing official inspection marks is prohibited and may result in cancellation of the approval.

(b) Labeling and containers bearing any official inspection marks, with or without the official establishment number, may be transported from one official establishment to any other official establishment, only if such shipments are made with the prior authorization of the inspector in charge at point of origin, who will notify the inspector in charge at destination concerning the date of shipment, quantity, and type of labeling material involved. Approved labeling and containers may be moved without restriction under this part between official establishments operated by the same person if such labeling and containers are approved for use at all such establishments. No such material shall be used at the establishment to which it is shipped unless such use conforms with the requirements of this subpart.

§ 381.139 Removal of official identifications.

(a) Every person who receives any poultry product in containers which bear any official inspection legend shall remove or deface such legend or destroy the containers upon removal of such articles from the containers.

(b) No person shall alter, detach, deface, or destroy any official identifications prescribed in subpart M that were applied pursuant to the regulations,