

### § 381.137

(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

### 9 CFR Ch. III (1–1–23 Edition)

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, unless he is authorized to do so by an inspector or this section; and no person shall fail to use any such official identification when required by this part.

#### **§ 381.140 Relabeling poultry products.**

When it is claimed by the operator of an official establishment that some of its labeled poultry product, which has been transported to a location other than an official establishment, is in need of relabeling because the labeling has become mutilated or damaged, or for some other reason needs relabeling, the requests for relabeling the poultry product shall be sent to the Administrator and accompanied with a statement of the reasons therefor and the quantity of labeling required. Labeling material intended for relabeling inspected and passed product shall not be transported from an official establishment until permission has been received from the Administrator. The relabeling of inspected and passed product with official labels shall be done under the supervision of an inspector pursuant to the regulations in part 362 of this chapter. The establishment shall reimburse the Inspection Service for any cost involved in supervising the relabeling of such product as provided in said regulations.

#### **§§ 381.141–381.143 [Reserved]**

#### **§ 381.144 Packaging materials.**

(a) Edible products may not be packaged in a container which is composed in whole or in part of any poisonous or deleterious substances which may render the contents adulterated or injurious to health. All packaging materials must be safe for the intended use within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act, as amended (FFDCA).

(b) Packaging materials entering the official establishment must be accompanied or covered by a guaranty, or statement of assurance, from the packaging supplier under whose brand name

and firm name the material is marketed to the official establishment. The guaranty shall state that the material's intended use complies with the FFDCA and all applicable food additive regulations. The guaranty must identify the material, e.g., by the distinguishing brand name or code designation appearing on the packaging material shipping container; must specify the applicable conditions of use, including temperature limits and other pertinent limits specified under the FFDCA and food additive regulations; and must be signed by an authorized official of the supplying firm. The guaranty may be limited to a specific shipment of an article, in which case it may be part of or attached to the invoice covering such shipment, or it may be general and continuing, in which case, in its application to any article or other shipment of an article, it shall be considered to have been given at the date such article was shipped by the person who gives the guaranty. Guaranties consistent with the Food and Drug Administration's regulations regarding such guaranties (21 CFR 7.12 and 7.13) will be acceptable. The management of the establishment must maintain a file containing guaranties for all food contact packaging materials in the establishment. The file shall be made available to Program inspectors or other Department officials upon request. While in the official establishment, the identity of all packaging materials must be traceable to the applicable guaranty.

(c) The guaranty by the packaging supplier will be accepted by Program inspectors to establish that the use of material complies with the FFDCA and all applicable food additive regulations.

(d) The Department will monitor the use of packaging materials in official establishments to assure that the requirements of paragraph (a) of this section are met, and may question the basis for any guaranty described under paragraph (b) of this section. Official establishments and packaging suppliers providing written guaranties to those official establishments will be permitted an opportunity to provide information to designated Department officials as needed to verify the basis

for any such guaranty. The required information will include, but is not limited to, manufacturing firm's name, trade name or code designation for the material, complete chemical composition, and use. Selection of a material for review does not in itself affect a material's acceptability. Materials may continue to be used during the review period. However, if information requested from the supplier is not provided within the time indicated in the request—a minimum of 30 days—any applicable guaranty shall cease to be effective and approval to continue using the specified packaging material in official establishments may be denied. The Administrator may extend this time where reasonable grounds for extension are shown, as, for example, where data must be obtained from suppliers.

(e) The Administrator may disapprove for use in official establishments packaging materials whose use cannot be confirmed as complying with the FFDCA and applicable food additive regulations. Before approval to use a packaging material is finally denied by the Administrator, the affected official establishment and the supplier of the material shall be given notice and the opportunity to present their views to the Administrator. If the official establishment and the supplier do not accept the Administrator's determination, a hearing in accordance with applicable rules of practice will be held to resolve such dispute. Approval to use the materials pending the outcome of the presentation of views or hearing shall be denied if the Administrator determines that such use may present an imminent hazard to public health.

(f) Periodically, the Administrator will issue to inspectors a listing, by distinguishing brand name or code designation, of packaging materials that have been reviewed and that fail to meet the requirements of paragraph (a) of this section. Listed materials will not be permitted for use in official establishments. If a subsequent review of any material indicates that it meets the requirements of paragraph (a), the material will be deleted from the listing.

## § 381.145

## 9 CFR Ch. III (1–1–23 Edition)

(g) Nothing in this section shall affect the authority of Program inspectors to refuse a specific material if he/she determines the material may render products adulterated or injurious to health.

[49 FR 2236, Jan. 19, 1984]

### **Subpart O—Entry of Articles Into Official Establishments; Processing Inspection and Other Reinspections; Processing Requirements**

#### **§ 381.145 Poultry products and other articles entering or at official establishments; examination and other requirements.**

(a) No poultry product (including poultry broth for use in any poultry product in any official establishment) may be brought into any official establishment unless it has been processed in the United States only in an official establishment or imported from a foreign country eligible to export such poultry and poultry products to the United States under § 381.196(b), and inspected and passed, in accordance with the regulations; and unless the container of such product is marked so as to identify the product as so inspected and passed, in accordance with § 381.115 or § 381.205, except that poultry products inspected and passed and identified as such under the laws of an “at least equal” State or territory listed in § 381.187 may be brought into any official establishment solely for storage and distribution therefrom without repackaging, relabeling, or processing in such establishment. No carcass, part thereof, meat or meat food product of cattle, sheep, swine, goats, or equines may be brought into an official establishment unless it has been prepared in the United States only in an official meat packing establishment, or imported, and inspected and passed, in accordance with the Federal Meat Inspection Act, and the regulations under such Act (Subchapter A of this chapter) and is properly marked as so inspected and passed; or has been inspected and passed and is identified as such in accordance with the requirements of the law and regulations of a State not designated in § 331.2 of this

chapter; or is present in the official establishment by reason of an exemption allowed in the Federal Meat Inspection Act and the regulations under such Act (Subchapter A of this chapter) or the law and regulations of a State not so designated. However, such exempted articles may enter only under conditions approved by the Administrator in specific cases, including but not limited to, complete separation of inspected poultry products and processing and other operations with respect thereto from the exempted articles and operations with respect thereto, complete cleanup of facilities and equipment between processing of inspected poultry products and the exempted articles and no commingling of inspected and exempted articles in receiving, holding or storage areas.

(b) All poultry products and all carcasses, parts thereof, meat and meat food products of cattle, sheep, swine, goats, or equines which enter any official establishment shall be identified by the operator of the official establishment at the time of receipt at the official establishment. All poultry products, and all carcasses, parts thereof, meat and meat food products of such animals, which are processed or otherwise handled at any official establishment shall be subject to examination by an inspector at the official establishment in such manner and at such times as may be deemed necessary by the inspector in charge to assure compliance with the regulations. Upon such examination, if any such article or portion thereof is found to be adulterated, such article or portion shall, in the case of poultry products, be condemned and disposed of as prescribed in § 381.95, unless by reprocessing they may be made not adulterated, and shall, in the case of such other articles be disposed of according to applicable law.

Such examination may be accomplished through use of statistically sound sampling plans that assure a high level of confidence. The inspector in charge shall designate the type of plan and the program employee shall select the specific plan to be used in