

**§ 410.406 Records of training expenses.**

Agencies shall retain, in such form and manner as the agency head considers appropriate, a record of payments made for travel, tuition, fees and other necessary training expenses for a reasonable period of time.

**Subpart E—Accepting Contributions, Awards, and Payments From Non-Government Organizations****§ 410.501 Scope.**

(a) Section 4111 of title 5, United States Code, describes conditions for employee acceptance of contributions, awards, and payments made in connection with non-Government sponsored training or meetings which an employee attends while on duty when the agency pays the training or meeting attendance expenses, in whole or in part.

(b) This subpart does not limit the authority of an agency head to establish procedures on the acceptance of contributions, awards, and payments in connection with any training and meetings that are outside the scope of this subpart in accordance with laws and regulations governing Government ethics and governing acceptance of travel reimbursements from non-Federal sources.

**§ 410.502 Authority of the head of an agency.**

(a) In writing, the head of an agency may authorize an agency employee to accept a contribution or award (in cash or in kind) incident to training or to accept payment (in cash or in kind) of travel, subsistence, and other expenses incident to attendance at meetings if

(1) The conditions specified in section 4111 of title 5, United States Code, are met; and

(2) In the judgment of the agency head, the following two conditions are met:

(i) The contribution, award, or payment is not a reward for services to the organization prior to the training or meeting; and

(ii) Acceptance of the contribution, award, or payment:

(A) Would not reflect unfavorably on the employee's ability to carry out official duties in a fair and objective manner;

(B) Would not compromise the honesty and integrity of Government programs or of Government employees and their official actions or decisions;

(C) Would be compatible with the Ethics in Government Act of 1978, as amended; and

(D) Would otherwise be proper and ethical for the employee concerned

given the circumstances of the particular case.

(b) Delegation of authority. An agency head may delegate authority to authorize the acceptance of contributions, awards, and payments under this section. The designated official must ensure that—

(1) The policies of the agency head are reflected in each decision; and

(2) The circumstances of each case are fully evaluated under conditions set forth in § 410.502(a).

(c) Acceptance of contributions, awards, and payments. An employee may accept a contribution, award, or payment (whether made in cash or in kind) that falls within the scope of this section only when he or she has specific written authorization.

(d) When more than one non-Government organization participates in making a single contribution, award, or payment, the "organization" referred to in this subsection is the one that:

(1) Selects the recipient; and

(2) Administers the funds from which the contribution, award, or payment is made.

**§ 410.503 Records.**

An agency shall maintain, in such form and manner as the agency head considers appropriate, the following records in connection with each contribution, awards, or payment made and accepted under authority of this section: The recipient's name; the organization's name; the amount and nature of the contribution, award, or payment and the purpose for which it is to be used; and a copy of the written authorization required by § 410.502(a).

**Subpart F—Evaluating Training****§ 410.601 Responsibility of the head of an agency.**

Under provisions of chapter 41 of title 5, United States Code, and Executive Order 11348, the agency head shall evaluate training to determine how well it meets short and long-range program needs by occupations, organizations, or other appropriate groups. The agency head may conduct the evaluation in the manner and frequency he or she considers appropriate.

**§ 410.602 Records.**

An agency head shall retain records of these evaluations in such form and manner as he or she considers appropriate.

**Subpart G—Reports****§ 410.701 Reports.**

Each agency shall maintain records of its training plans, expenditures and

activities as required in § 410.302(d), § 410.312, § 410.406, § 410.503, and § 410.602 and report its plans, expenditures and activities to the Office of Personnel Management at such times and in such form as the Office prescribes.

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**DEPARTMENT OF AGRICULTURE****Food Safety and Inspection Service****9 CFR Part 381**

[Docket No. 94-022F-2]

RIN 0583-AC24

**Use of the Term "Fresh" on the Labeling of Raw Poultry Products**

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the poultry product inspection regulations to prohibit the use of the term "fresh" on the labeling of raw poultry products whose internal temperature has ever been below 26°F. Raw poultry products whose internal temperature has ever been below 26°F, but is above 0°F, are not required to bear any specific, descriptive labeling terms, including "hard chilled" or "previously hard chilled." These products may contain optional, descriptive labeling, provided the optional, descriptive labeling does not cause the raw poultry products to be misbranded. Products whose internal temperature has ever been at or below 0°F will continue to be labeled with the term "frozen." The rule also establishes a temperature tolerance below the 26°F standard for labeling product as "fresh."

FSIS is taking this action in response to legislation enacted by the United States Congress directing FSIS to issue a revised final rule about the labeling of raw poultry products.

**EFFECTIVE DATE:** Effective upon December 17, 1996 9 CFR 381.129(b)(6) is stayed through December 16, 1997. The amendatory changes in this rule will be effective December 17, 1997.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Edwards, Director, Facilities, Equipment, Labeling & Compounds Review Division; (202) 418-8900.

**SUPPLEMENTARY INFORMATION:**

Background

On January 17, 1995, FSIS published a proposed rule in the Federal Register

(60 FR 3454) to amend the poultry products inspection regulations to prohibit the use of the term "fresh" on the labels of raw poultry products whose internal temperature has ever been below 26°F. The proposal would have required that poultry products whose internal temperature had ever been below 26°F, but above 0°F, be labeled with the descriptive term "previously frozen." Raw poultry products whose internal temperature had ever been at or below 0°F would have had to be labeled with the descriptive term "frozen" or "previously frozen," except when such labeling would have duplicated or conflicted with the products' special handling instructions.

FSIS sought comments on a variety of issues raised in the proposal, including alternative descriptive terms and the use of the term "fresh" in brand names, company names, sensory modifiers, etc., on the labels of raw poultry products. FSIS received more than 26,000 comments in response to the proposal. The comments expressed widely diverse opinions about a variety of issues, such as the meaning of the term "fresh" as applied to poultry, safety issues, including a temperature threshold, descriptive labeling and alternate terms, and the relabeling of product and relabeling options. FSIS modified the proposed rule in response to the comments and, on August 25, 1995, published a final rule in the Federal Register (60 FR 44396).

As proposed, the final rule amended the poultry products inspection regulations to prohibit the use of the term "fresh" on raw poultry product labels if the internal temperature of the poultry product had ever been below 26°F. However, rather than requiring that poultry products whose internal temperature has ever been below 26°F, but above 0°F, be labeled with the descriptive term "previously frozen," the final rule required that those products be labeled with the descriptive term "hard chilled" or "previously hard chilled." The final rule also added requirements for the handling and relabeling of misbranded raw poultry products. The final rule's intent was to require clear, descriptive labeling on raw poultry products so that consumers would know if raw poultry products have ever been held at temperatures where the flesh becomes hard-to-the-touch, i.e., an internal temperature below 26°F.

The final rule was to become effective on August 26, 1996. However, on October 21, 1995, Congress passed the Agriculture, Rural Development, Food and Drug Administration, and Related

Agencies Appropriations Act, 1996, Public Law 104-37, 109 Stat. 299 (1995). Section 726 of that Act prevented FSIS's "Use of the Term 'Fresh' on the Labeling of Raw Poultry Products" final rule from taking effect and prohibited FSIS from using any funds appropriated or otherwise made available by the Act to develop compliance guidelines, implement, or enforce the final rule.

On August 8, 1996, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997, Public Law 104-80, 110 Stat. 1569 (1996) (1996 Appropriations Act) was signed. Section 732(b) of this Act, entitled "Labeling of Raw Poultry Products," instructed the Secretary of Agriculture to issue, within 90 days, a revised final rule related to the labeling of raw poultry products which would replace certain, specified provisions of FSIS's original August 25, 1995, "Use of the Term 'Fresh' on the Labeling of Raw Poultry Products" final rule with provisions stipulated by Congress.

The law specifies that the revised final rule (1) maintain the requirement promulgated in FSIS's original final rule that the term "fresh" may only be used to describe raw poultry products whose internal core temperature has never fallen below 26°F and (2) delete the requirement in the original final rule that poultry products whose internal core temperature has ever been less than 26°F, but more than 0°F, be labeled "hard chilled" or "previously hard chilled." The law also declares that poultry products whose internal core temperature has ever been between 0°F and 26°F may not be required to bear any specific alternative labeling. The law does not alter the requirement that poultry products whose internal core temperature has ever been at or below 0°F be labeled "frozen" or "previously frozen."

To be in compliance with the law and this revised final rule, those raw poultry products that are labeled "fresh" but are found to have an internal temperature below 26°F will have to be correctly relabeled by having the "fresh" designation deleted from the package. The "fresh" designation may be deleted from packages of raw poultry products by any method consistent with the poultry products inspection regulations, including the use of pressure-sensitive stickers. Under 9 CFR 381.133(b)(9)(xxiv), the deletion of any claim, non-mandatory features, or non-mandatory information which was previously approved by FSIS is generically approved. FSIS Policy Memo 115, which currently requires the

temporary approval of pressure sensitive stickers before they may be used to cover any information on an approved label, is being amended to permit the generic approval of pressure sensitive stickers. Official establishments will be permitted to cover labels of packages of raw poultry products incorrectly labeled "fresh" with pressure sensitive stickers. The stickers must be the type which destroy the underlying label or package if removed or be self-destructive.

The 1997 Appropriations Act establishes a temperature tolerance from the 26°F labeling standard for "fresh." A temperature tolerance of 1°F is established for poultry products within an official processing establishment and 2°F for poultry products in commerce. FSIS has interpreted the temperature tolerance to mean that the temperature of individual packages of raw poultry products labeled "fresh" can vary as much as 1° below 26°F (i.e., 25°F) while such product is within an official establishment or 2° below 26°F (i.e., 24°F) after such product leaves an official establishment. The law exempts "wings, tenders, hearts, livers, gizzards, necks, and products that undergo special processing, such as sliced poultry products," from temperature testing.

Further, the law requires FSIS to issue a compliance directive for the enforcement of the labeling standards established by the revised final rule. The law requires the compliance directive to include provisions for measuring temperature at the center of the deepest muscle being tested and a sampling plan designed to "ensure that the average of individual temperatures within poultry product lots of each specific product type (such as whole birds, whole muscle leg products, and whole muscle breast products) meet the standards."

The compliance directive will include a sampling plan that ensures that the average temperature of poultry product lots of each specific product type (such as whole birds, whole muscle leg products, and whole muscle breast products) meet the 26°F standard for "fresh." The compliance directive will be used by FSIS to monitor establishment, processor, and retailer compliance with the labeling requirements in the revised final rule. Poultry products not in compliance with the requirements for "fresh" shall be handled and relabeled in accordance with the provisions of the August 25, 1995 final rule, as amended by this action. FSIS will publish the compliance directive no later than 60 days after publication of this revised final rule, as directed by Congress.

### Implementation Date

Based on its review of the comments submitted in response to the proposed rule, FSIS recognized that some poultry processors might need to make operational changes so they could continue to supply "fresh" poultry under the provisions of the original final rule. FSIS therefore decided to allot processors and handlers sufficient time to make any of these operational changes, which might have included establishing new policies and procedures needed to market "fresh" poultry, formulating methods for compliance with the rule, and exhausting label inventories to the extent possible. Recognizing that product safety was not a concern, FSIS established an implementation date for the original final rule of 12 months from the date of its promulgation. As noted above, however, Congress prevented that rule from taking effect.

The 1997 Appropriations Act states that "the Secretary of Agriculture shall issue a revised final rule related to the labeling of raw poultry products that \* \* \* in all other terms and conditions (including the period of time permitted for implementation) is substantively identical" to the final rule promulgated by FSIS on August 25, 1995. The law also stipulates that the revised final rule cannot be effective during fiscal year 1997.

Therefore, FSIS is establishing an implementation date for all provisions of this revised final rule, as well as the provisions of the August 25, 1995 final rule which are not being amended by this revised final rule, of 12 months from the date of promulgation. This is the same period of time provided for implementation in the original final rule and the corresponding effective date will not fall during fiscal year 1997.

### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. (1) All state and local laws and regulations that are inconsistent with this rule are preempted; (2) this rule has no retroactive effect; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

### Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

In the preambles to the proposed (60 FR 3454) and final (60 FR 44396) rules, FSIS examined possible sources of costs

to consumers and the poultry industry if it adopted the proposed rule as a final rule. Except for the costs associated with relabeling raw poultry products that had originally been labeled "fresh" but must be relabeled to remove that designation (because the product's internal temperature has fallen below 26°F), all other costs and the assumptions upon which they were based remain the same in this revised final rule as they were in the original final rule. FSIS believes that the relabeling costs to the poultry industry will either remain the same or decrease from those estimated in the original final rule.

Under this revised final rule, those raw poultry products that are labeled "fresh" but are ever found to have had an internal temperature below 26°F will have to be correctly relabeled by having the "fresh" designation deleted from the package. However, they will not have to be relabeled with any specific alternative descriptive term (unless their temperature should fall to or below 0°F, at which point they will have to be relabeled with the descriptive term "frozen"). Raw poultry products with an internal temperature below 26°F that were never labeled "fresh" will not have to be relabeled.

FSIS believes that relabeling costs can be minimized considerably by the use of pressure sensitive stickers, rather than brand new labels containing optional, descriptive terms. The stickers may be used as needed and are generically approved. Stickers may also be used in those circumstances where label inventory stocks exceed a 1-year supply. This feature will be of interest to processors and retailers when relabeling of product becomes necessary, i.e., when the temperature of product labeled "fresh" falls below the permissible temperature tolerance. Though that product will no longer have to be relabeled "hard chilled," the "fresh" label will have to be covered or removed from the package under this revised final rule.

In the original final rule, FSIS stated that the new labeling strategy offers consumers a true purchasing option that accurately reflects their expressed expectations. FSIS believes that consumers will continue to benefit from improved consumer knowledge about poultry products under the provisions of this revised final rule. However, there may be some decrease in consumer benefits because the revised final rule will not require specific labeling on poultry products with temperatures between 0°F and 26°F.

The Administrator has determined that this revised final rule will not have

a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The small entities that might be affected by this revised final rule would be small processors of raw poultry (small establishments operating single-inspector processing lines). However, the economic impact of the revised final rule on these poultry processors should be minimal because they currently ship poultry in ice pack or dry ice pack containers. The internal temperature of products refrigerated by these methods does not generally fall below 26°F, and products handled in this manner which remain at or above 26°F may be labeled as "fresh" according to the regulations.

### Paperwork Requirements

This revised final rule specifies the regulations permitting the use of the term "fresh" on the labeling of raw poultry products. Paperwork requirements contained in this revised final rule have not changed significantly and are approved by the Office of Management and Budget under control number 0583-0102.

### List of Subjects in 9 CFR Part 381

Food Labeling, Poultry and poultry products.

For the reasons set forth in the preamble, 9 CFR part 381 is amended as follows:

### PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450, 21 U.S.C. 451-470; 7 CFR 2.18, 2.53.

2. Effective December 17, 1996 § 381.129(b)(6) is stayed effective stayed through December 16, 1997.

3. Effective December 17, 1997 § 381.129 is amended by revising paragraphs (b)(6)(i) and (ii), and by redesignating (b)(6)(iii) as (b)(6)(iv) and adding a new paragraph (b)(6)(iii) to read as follows:

#### § 381.129 False or misleading labeling or containers.

\* \* \* \* \*

(b) \* \* \*  
(6) (i) Raw poultry product whose internal temperature has ever been below 26°F may not bear a label declaration of "fresh." Raw poultry product bearing a label declaration of "fresh" but whose internal temperature has never been below 26°F is mislabeled. The "fresh" designation may be deleted from such product in accordance with § 381.133(b)(9)(xxiv).

The temperature of individual packages of raw poultry product within an official establishment may deviate below the 26°F standard by 1° (i.e., have a temperature of 25°F) and still be labeled "fresh." The temperature of individual packages of raw poultry product outside an official establishment may deviate below the 26°F standard by 2° (i.e., have a temperature of 24°F) and still be labeled "fresh." The average temperature of poultry product lots of each specific product type must be 26°F. Product described in this paragraph is not subject to the freezing procedures required in § 381.66(f)(2) of this subchapter.

(ii) Raw poultry product whose internal temperature has ever been at or below 0°F must be labeled with the descriptive term "frozen," except when such labeling duplicates or conflicts with the labeling requirements in § 381.125 of this subchapter. The word "previously" may be placed next to the term "frozen" on an optional basis. The descriptive term must be prominently displayed on the principal display panel of the label. If additional labeling containing the descriptive term is affixed to the label, it must be prominently affixed to the label. The additional labeling must be so conspicuous (as compared with other words, statements, designs, or devices in the labeling) that it is likely to be read and understood by the ordinary individual under customary conditions of purchase and use. Product described in this paragraph is subject to the freezing procedures required in § 381.66(f)(2) of this subchapter.

(iii) Raw poultry product whose internal temperature has ever been below 26°F, but is above 0°F, is not required to bear any specific descriptive term. Raw poultry product whose internal temperature has ever been below 26°F, but is above 0°F, may bear labeling with an optional, descriptive term, provided the optional, descriptive term does not cause the raw poultry product to become misbranded. If used,

an optional, descriptive term must be prominently displayed on the principal display panel of the label. If additional labeling containing the optional, descriptive term is affixed to the label, it must be prominently affixed on the label. The additional labeling must be so conspicuous (as compared with other words, statements, designs, or devices in the labeling) that it is likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(iv) \* \* \*

4. Effective December 17, 1997 § 381.133 is amended by revising paragraph (b)(9)(xxvi) and by adding a new paragraph (b)(9)(xxvii) to read as follows:

**§ 381.133 Generically approved labeling.**

(b) \* \* \*  
 (9) \* \* \*  
 (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.

Done at Washington, DC, on December 11, 1996.

Thomas J. Billy,  
*Administrator.*  
 [FR Doc. 96-31971 Filed 12-16-96; 8:45 am]  
**BILLING CODE 3410-DM-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 96-NM-249-AD; Amendment 39-9842; AD 96-25-01]

RIN 2120-AA64

**Airworthiness Directives; Boeing Model 747 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This action requires inspections to detect broken sealant common to the lower horizontal clevis of the inboard and outboard strut midspar fittings and of the fasteners, and various follow-on actions. This action also requires inspections to detect cracking, corrosion, and fracturing of the lower horizontal clevis, and replacement of discrepant parts with new or serviceable parts, or repair, if necessary. This action also provides for optional terminating action for the inspections. This amendment is prompted by reports of fatigue cracking, stress corrosion cracking, and fracturing of the horizontal clevis of the inboard midspar fitting of the number three strut. The actions specified in this AD are intended to detect and correct such cracking and fracturing, which could result in drooping of the strut at the strut-to-wing interface, and consequent separation of the engine and strut from the airplane.

**DATES:** Effective January 22, 1997.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of January 22, 1997.

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as follows:

Referenced publication and date	Approval date and <b>Federal Register</b> citation
Boeing Alert Service Bulletin 747-54A2157, January 12, 1995 .....	July 28, 1995 (60 FR 33333, June 28, 1995).
Boeing Alert Service Bulletin 747-54A2158, November 30, 1994 .....	July 28, 1995 (60 FR 33336, July 28, 1995).
Boeing Alert Service Bulletin 747-54A2159, November 3, 1994 .....	June 21, 1995 (60 FR 27008, May 22, 1995).

Comments for inclusion in the Rules Docket must be received on or before February 18, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103,

Attention: Rules Docket No. 96-NM-249-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at

the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tamara Dow, Aerospace Engineer,