

Updated Questions and Answers
Food Safety and Inspection Service (FSIS)
Labeling Compliance Policy Guide on Poultry Food Product Dating

Purpose of the Compliance Guide

The intent of this guidance is to convey current practices and clarify the requirements of the regulations with regard to the appropriate use of pack dates and slaughter dates on poultry food products because of an increasing number of requests for clarification. This guidance provides a summary on the date of slaughter and date of packing required in Title 9 of the Code of Federal Regulations (9 CFR), Section 381.126(a) and (b). Additionally, there are questions and answers at the end of the Notice to help clarify the issue. The product dating requirements are first and foremost related to the quality of the product and not an issue regarding food safety. Slaughter dates, pack dates, and date codes were originally intended for use by retailers for inventory control and for determining other dates voluntarily provided on consumer package labeling, e.g., “sell by” and “use by” dating, in compliance with 9 CFR 381.129(c)(2) of the regulations. Lastly, in order to consolidate all poultry product dating information in one location, the Constituent Update that was published in 1999 regarding the options available for compliance with 9 CFR 381.126 requirements has been updated and included in this Notice, in addition to the 2002 FSIS web guidance document entitled “Changing Dates on Labeling.”

Current Regulatory Requirements

Title 9 CFR Section 381.126(a) requires that either the immediate container or the shipping container of all poultry food products be marked by code or otherwise with the date of packing. The date of packing is the date when the finished product is packed into the immediate container, i.e., consumer package. Historically, the slaughter date, process date, and pack date were generally the same date since most poultry was slaughtered, processed, and packaged on the same day. In today’s market, we recognize that products are often subjected to additional processing and may be slaughtered and further processed over a period of time. Thus, the “pack date” (date product is packaged) may not be the same as the slaughter or processing date. Although the pack date is related to product quality rather than product safety, it may not be misleading. In addition, the pack date is not used to convey the date that consumer packaged products are placed in the shipping container nor is the pack date used to convey a date when finished packaged products are simply removed from the package and repackaged into a new container. To simply unwrap and rewrap products for the purposes of including a new pack date would be false and misleading and, thus, would misbrand the product under the Poultry Products Inspection Act (PPIA). In contrast, if products are packaged, stored, then **further processed and repackaged**, a new pack date is acceptable on the repackaged product.

Section 381.126(b) of the regulations requires the immediate containers of “dressed poultry” to be marked with a lot number which shall be the number of the day of the year on which the poultry was slaughtered or a coded number. “Dressed poultry,” for the application of this section of the regulations, means slaughtered, defeathered, eviscerated whole birds with the head and feet removed, i.e., a ready-to-cook whole bird. Further processed poultry, e.g., cut-up, marinated, breaded, etc., products are not considered to be dressed poultry and fall under section 381.126(a) not (b) of this regulation.

Packing Dates on Poultry Labeling

(Revised Policy Previously Conveyed in FSIS Constituents Update Dated 12/17/99)

Since 1972, FSIS has required poultry products to include a date of packing, either as a calendar date or a code (9 CFR Section 381.126(a)). FSIS has permitted the use of a sell-by or use-by date in lieu of the required date of packing.

Several years ago, an issue regarding the appropriate application of the Federal poultry products inspection regulations on "date of packing" (9 CFR 381.126(a)) arose. The circumstances involved a processor who packages poultry food products in consumer-ready film-wrapped packages that are in refrigerated storage awaiting shipment to customers when orders are received. At the time an order is received, a price label and sell-by date are applied to the consumer packages, which are then placed in master shippers to which box end labeling, including a "pack date," is applied. The pack date that has been applied, however, has been the date the consumer packages are placed in the shipper, not the original pack date on which the poultry was placed in the consumer packaging.

As stated above, the application of the date the consumer packages are placed in the shipper does not meet the intent of the "pack date" that is required by Federal regulations. The regulations state that the pack date can be applied to the shipper or immediate containers of poultry food products using either a code or the actual calendar date of packing. The date of packing, however, must be the original date the poultry is placed in the consumer packaging (immediate container); the use of any other calendar date will mislead consumers.

After discussions with the company and the National Chicken Council, it was resolved that, perhaps, misinterpretation of the pack date provisions has occurred within industry. Understanding that the immediate containers, i.e., consumer package, *or* the shipping containers of poultry food products, must be marked with the original pack date, there are actually four options available to poultry processors to comply with the packing date provisions, one of which *must* be used. These options are:

- a code is applied that represents the original pack date of the poultry food product in the consumer package, or
- the original pack date of the poultry food product is applied to the consumer package or the shipping container accompanied by an explanatory statement, e.g., "packing date" (per 9 CFR 381.129 (c) (2)), or
- the original pack date of the poultry food product is applied to the consumer package or the shipping container along with a date representing when the

consumer packages are placed in shippers. In this case, each date must be accompanied by an explanatory statement in accordance with 9 CFR 381.129 (c) (2), e.g., "packing date," and "date put in shipping container," or

- the use of a calendar date, e.g., "sell-by," "use-by," etc. (per 9 CFR 381.129 (c) (2)), in lieu of the original pack date of the poultry food product is applied to the consumer package or the shipping container.

Changing Dates on Labeling

An issue that has recently been raised is the legality of changing calendar dates, e.g., sell-by dates, use-by dates, etc., that appear on meat or poultry products.

Poultry products are required to include a date of packing, either as a calendar date or a code. A food retailer may not modify a "packing/pack" date on a product packaged under Federal inspection. Additionally, FSIS has permitted the use of a sell-by or use-by date in lieu of the required date of packing. Therefore, since the pack date/code is mandatory, and a sell-by or use-by date may be used in lieu of the pack date/code, retailers may not modify a sell-by or use-by date on poultry products packaged under Federal inspection.

FSIS has no regulations requiring calendar dating on red meat products. However, if a federally inspected establishment has voluntarily placed a calendar date on red meat products, such a date cannot be removed or changed by a retailer. There are likely a number of factors that manufacturers have considered about safety in preparing products and the inclusion of a calendar date that a retailer may not be aware of. Moreover, similar to other labeling features applied at Federally inspected establishments, they should not be removed or modified unless returned and repackaged/reprocessed under Federal inspection.

On the other hand, if a food retailer places a calendar date on red meat or poultry products, the retailer may change that date on products that remain wholesome, provided that the change in the date is identified on the label, e.g., "original sell-by date" and "new sell-by date." A local jurisdiction (e.g., a State authority) may, however, have a requirement against changing these dates at the retail level. Lastly, if a product has an expired date and the food remains wholesome, the product may continue to be offered for sale.

Poultry Product Dating -- Frequently Asked Questions

1. Question: What is the general rule about pack dates on poultry food products produced in a federally inspected facility?

Answer: FSIS requires all immediate containers or shipping containers of poultry food products to be clearly and permanently marked by code or otherwise with the date of packing. If a calendar date is used, it must be accompanied by a statement explaining the meaning of the date. The calendar date must include the month of the year and the day of the month for all products and also the year in

the case of products hermetically sealed, dried, or frozen products, for example, “packed on May 22, 2005.” For further information, see the regulations at 9 CFR 381.126 (b) and 381.129 (c) (1).

2. Question: What are the definitions of “consumer packaging,” “immediate container,” and “shipping container” in reference to poultry product pack dates?

Answer: "Consumer package" is defined in 9 CFR 381.1. A consumer package means any container in which a poultry product is enclosed for the purpose of display and sale to household consumers. Therefore, the consumer package is synonymous with "immediate container." The immediate container (9 CFR 381.1) includes any consumer package; or any other container in which poultry products, not consumer packaged, are packed. Furthermore, immediate containers are required by 381.116 to bear all required features applicable in Subpart N of 9 CFR, Part 381, in other words, an immediate container is a fully labeled package. In some cases, the immediate container is also the shipping container. 9 CFR 381.116, states that the labeling requirements in that part apply to shipping containers; that is, when the shippers are also the immediate container. However, a true shipper is only required to include the inspection legend, plant number, and a handling statement, if the product is perishable. A true shipping container would always contain fully labeled product inside; thus, there is not a requirement for shippers to be fully labeled.

3. Question: Does the date of pack “label requirement” apply to fresh, raw product only, OR does it apply to frozen, thawed, partially cooked, or cooked product?

Answer: Section 381.126(a) of the regulations applies to all poultry food products not covered by other sections of this regulation. These products require a pack date. Dressed poultry and canned poultry are covered by other paragraphs in that section of the regulations -- 381.126 (b) and (c), respectively. Dressed poultry requires the slaughter date, and canned poultry requires the date of canning or a code to represent the date of canning.

4. Question: What is the definition of a pack date?

Answer: The pack date is the date that a product is packaged.

5. Question: How can the pack date be expressed?

Answer: Understanding that the immediate containers or the shipping containers of poultry food products must be marked with the original pack date, there are actually four options available for poultry processors to comply with the pack date provisions, one of which must be used. These options are:

- a code is applied that represents the original pack date of the poultry food product in the consumer package, or

- the original pack date of the poultry food product is applied to the consumer package or the shipping container accompanied by an explanatory statement, e.g., "packing date" (per 9 CFR 381.129 (c) (2)), or
- the original pack date of the poultry food product is applied to the consumer package or the shipping container along with a date representing when the consumer packages are placed in shippers. In this case, each date must be accompanied by an explanatory statement in accordance with 9 CFR 381.129 (c) (2), e.g., "packing date," and "date put in shipping container," or
- the use of a calendar date, e.g., "sell-by," "use-by," etc., (per 9 CFR 381.129 (c) (2)) in lieu of the original pack date of the poultry food product is applied to the consumer package or the shipping container.

6. Question: Can a "sell-by" or "use-by" date be used in lieu of the "required date of packing"?

Answer: Yes, in accordance with longstanding FSIS policy, "sell-by" or "use-by" dating can be used in lieu of pack dates on poultry food products.

7. Question: How does the "sell-by" or "use-by" date correspond with the pack date?

Answer: There is no single, numerical correlation between the pack date and other dates placed on labeling. Manufacturers must determine these dates based on the length of time that their product will remain wholesome.

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8. Question: Can a pack date on a poultry product be changed?

Answer: No. The pack date for a poultry food product packaged under Federal inspection can not change unless the poultry product is further prepared or processed, e.g., chopped, smoked, ground, etc. and repackaged. The date that the product is further processed and packaged could then be used as the new pack date. For the purpose of this policy, freezing the product can be considered to be a further preparation or process. Therefore, a new pack date can be applied to refrigerated poultry food products if they are frozen and repackaged or repackaged and frozen. It is not sufficient to simply freeze product, it must be repackaged as well to change the pack date. Similarly, if a frozen poultry food product is thawed and repackaged, a new pack date can be applied to the product. In this situation, thawed and repackaged product would include the use of the handling statement, "Previously handled frozen; for your protection keep refrigerated or refreeze." This is needed to ensure that the labeling of such product is not misleading to consumers.

9. Question: Can retail stores change the sell by/use by dates that a Federal facility applied to labeling?

Answer: No. Because a pack date is required for a poultry food product, and a sell-by/use-by date can be used in lieu of the pack date, a retailer cannot change the date applied by the Federal plant unless the poultry product is further processed, e.g., chopped, smoked, ground, and then repackaged.

10. Question: Can the time of day be placed under the pack dates of labels?

Answer: **FSIS** would not take issue if the time of day is placed on the labels under the pack date as long as the pack date complies with FSIS regulations.

11. Question: Does the requirement for pack dates depend on who is receiving the product (consumer vs. HRI)?

Answer: No. According to 9 CFR 381.126(a), a pack date is required on either the immediate container or shipping container of all poultry food products.

12. Question: Can raw product that is slaughtered on a particular day and then stored until further processed on a subsequent day be labeled with a “date of pack” corresponding to the date it was “further processed,” e.g., deboned, marinated, cut-up, etc.?

Answer: If the product has been further processed, e.g., cut-up, deboned, etc., and then packaged, it is acceptable to use the date of the packaging as the pack date required by 381.126(a).

13. Question: How is product that is slaughtered at one establishment and processed, e.g., cut-up, at a receiving establishment to be labeled (relative to “date of pack”)?

Answer: When the birds are processed and packaged at a second plant, the date of packaging is the acceptable pack date.

14. Question: What is the general rule about slaughter dates on poultry food products produced in a federally inspected facility?

Answer: Slaughter dates are only required on dressed poultry. As specified by 9 CFR 381.126(b), “dressed poultry” is to be marked with a lot number which shall be the number of the day of the year on which the poultry was slaughtered or a coded number. “Dressed poultry,” for the application of this section of the regulations, is slaughtered, defeathered, eviscerated whole birds with the head and feet removed, i.e., a ready-to-cook whole bird. “Dressed poultry” would also include slaughtered, defeathered, whole birds slaughtered under various religious or other exemptions, e.g., Chinese Buddhist exempt poultry that requires the head and the feet remain on eviscerated poultry. Prepared or processed poultry, e.g.,

cut-up, marinated, breaded, etc., products are not considered to be dressed poultry and fall under subsection (a) not (b) of this regulation.

15. Question: Can the slaughter date and the pack date be the same?

Answer: Yes, if the birds are slaughtered, processed, and packaged in immediate containers on the same day.

16. Question: Does the slaughter date have to be on the immediate container of all poultry?

Answer: A slaughter date is only required by 9 CFR 381.126(b) on the immediate containers of “dressed” poultry.

17. Question: What is the definition of “dressed poultry?” Does it include ALL raw poultry (whole birds, cut-up parts, giblets, deboned product, marinated product, necks, paws, etc.)?

Answer: “Dressed poultry,” for the application of this section of the regulations, is slaughtered, defeathered, eviscerated whole birds with the head and feet removed, i.e., a ready-to-cook whole bird. Prepared or processed poultry, e.g., cut-up, marinated, breaded, etc., products are not considered to be dressed poultry and would be governed under subsection (a) not (b) of 381.126.

18. Question: Frozen dressed poultry (e.g., frozen whole turkeys) are slaughtered on various dates and placed in consumer ready packages prior to being placed in frozen storage. When needed, the establishment removes frozen whole turkeys from frozen storage for shipment. Prior to shipment, the frozen whole turkeys have a price label applied that bears a code. The establishment has documentation to show that the code can be used to identify birds’ date of slaughter. Does this practice comply with the date of packing labeling requirements described in 9 CFR 381.126(b)?

Answer: In this case, 9 CFR 381.126(b) specifies that the immediate container for dressed poultry shall bear the number of the day of the year on which the poultry was slaughtered *or* a coded number. An "explanatory statement" statement as described in 9 CFR 381.126(a) is only required when a calendar date is used. 9 CFR 381.12(c) requires that the Inspector be informed as to the meaning of any coded number that is used.

In this case, the code can be linked to the slaughter date through an establishment’s documentation and recordkeeping. Therefore, the code is in compliance with the requirements of 9 CFR 381.126 (b) because it can be linked to the date of slaughter. If the birds are commingled in frozen storage, and the actual slaughter date of each bird cannot be determined, the coded number would have to be linked to the oldest date of slaughter.

19. Question: What is a code date?

Answer: A code or code date should be information that has meaning to the manufacturing or packing plant for tracking purposes of a product, specifically, a means of identification of product slaughtered, prepared, processed, or packaged on a certain date in the case of a recall. If the code links to a production date, that is sufficient; that is actually the purpose of the code to identify the date of production or a lot from a specific date. However, codes should not have meaning that is misleading to a consumer. If a plant is using "codes" that appear to be dates, it should revise its coding system or apply the proper use of calendar dating in accordance with 9 CFR 381.129(c). For example, we believe that "051305" and "May1305" do not represent codes but calendar dates that should be identified properly. A Julian date of "13305" (133rd day of the year 2005) would be considered to be an acceptable code since most consumers would not immediately associate such numbers with a calendar date.

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20. Question: Can a "use-by" or "sell-by" date be used in lieu of the slaughter date required on "dressed" poultry as described in 9 CFR 381.126(b). "Dressed poultry," for the application of this section of the regulations, means slaughtered, defeathered, eviscerated whole birds with the head and feet removed, i.e., a ready-to-cook whole bird.

Answer: No, a "use-by" or "sell-by" date may not be used in lieu of the slaughter date. However, the regulations do permit the use of a code to identify the slaughter date.

21. Question: If a plant operates a shift that begins late in the evening and runs past midnight, can the end of the shift, i.e., the next day's date be used as the slaughter or pack date for the entire shift?

Answer: No, it is misleading to use a later date for a slaughter or pack date. Product slaughtered or packed until midnight would have to use the accurate date of slaughter or pack. However, we would permit product slaughtered or packed after midnight to include the date the shift started if a company cannot change dating equipment in the middle of a shift.

For additional information about poultry food product dating and labeling, contact the Labeling and Program Delivery Division at 301-504-0878 or 0879.