

statement of substandard fill for those canned oysters failing to meet that standard remain unaffected by this interpretation.

Subpart B—Requirements for Specific Standardized Fish and Shellfish

§ 161.130 Oysters.

(a) Oysters, raw oysters, shucked oysters, are the class of foods each of which is obtained by shucking shell oysters and preparing them in accordance with the procedure prescribed in paragraph (b) of this section. The name of each such food is the name specified in the applicable definition and standard of identity prescribed in §§161.131 to 161.140, inclusive.

(b) If water, or salt water containing less than 0.75 percent salt, is used in any vessel into which the oysters are shucked the combined volume of oysters and liquid when such oysters are emptied from such vessel is not less than four times the volume of such water or salt water. Any liquid accumulated with the oysters is removed. The oysters are washed, by blowing or otherwise, in water or salt water, or both. The total time that the oysters are in contact with water or salt water after leaving the shucker, including the time of washing, rinsing, and any other contact with water or salt water is not more than 30 minutes. In computing the time of contact with water or salt water, the length of time that oysters are in contact with water or salt water that is agitated by blowing or otherwise, shall be calculated at twice its actual length. Any period of time that oysters are in contact with salt water containing not less than 0.75 percent salt before contact with oysters, shall not be included in computing the time that the oysters are in contact with water or salt water. Before packing into the containers for shipment or other delivery for consumption the oysters are thoroughly drained and are packed without any added substance.

(c) For the purposes of this section:

(1) *Shell oysters* means live oysters of any of the species, *Ostrea virginica*, *Ostrea gigas*, *Ostrea lurida*, in the shell, which, after removal from their beds,

have not been floated or otherwise held under conditions which result in the addition of water.

(2) *Thoroughly drained* means one of the following:

(i) The oysters are drained on a strainer or skimmer which has an area of not less than 300 square inches per gallon of oysters, drained, and has perforations of at least ¼ of an inch in diameter and not more than 1¼ inches apart, or perforations of equivalent areas and distribution. The oysters are distributed evenly over the draining surface of the skimmer and drained for not less than 5 minutes; or

(ii) The oysters are drained by any method other than that prescribed by paragraph (c)(2)(i) of this section whereby liquid from the oysters is removed so that when the oysters are tested within 15 minutes after packing by draining a representative gallon of oysters on a skimmer of the dimensions and in the manner described in paragraph (c)(2)(i) of this section for 2 minutes, not more than 5 percent of liquid by weight is removed by such draining.

§ 161.136 Olympia oysters.

Olympia oysters, raw Olympia oysters, shucked Olympia oysters, are of the species *Ostrea lurida* and conform to the definition and standard of identity prescribed for oysters in §161.130.

§ 161.145 Canned oysters.

(a) *Identity*. (1) Canned oysters is the food prepared from one or any mixture of two or all of the forms of oysters specified in paragraph (a)(2) of this section, and a packing medium of water, or the watery liquid draining from oysters before or during processing, or a mixture of such liquid and water. The food may be seasoned with salt. It is sealed in containers and so processed by heat as to prevent spoilage.

(2) The forms of oysters referred to in paragraph (a)(1) of this section are prepared from oysters which have been removed from their shells and washed and which may be steamed while in the shell or steamed or blanched or both after removal therefrom, and are as follows:

(i) Whole oysters with such broken pieces of oysters as normally occur in

removing oysters from their shells, washing, and packing.

(ii) Pieces of oysters obtained by segregating pieces of oysters broken in shucking, washing, or packing whole oysters.

(iii) Cut oysters obtained by cutting whole oysters.

(3)(i) When the form of oysters specified in paragraph (a)(2)(i) of this section is used, the name of the food is “Oysters” or “Cove oysters”, if of the species *Ostrea virginica*; “Oysters” or “Pacific oysters”, if of the species *Ostrea gigas*; “Oysters” or “Olympia oysters”, if of the species *Ostrea lurida*.

(ii) When the form of oysters specified in paragraph (a)(2)(ii) of this section is used, the name of the food is “Pieces of _____”, the blank being filled in with the name “Oysters” or “Cove oysters”, if of the species *Ostrea virginica*; “Oysters” or “Pacific oysters”, if of the species *Ostrea gigas*; “Oysters” or “Olympia oysters”, if of the species *Ostrea lurida*.

(iii) When the form of oysters specified in paragraph (a)(2)(iii) of this section is used, the name of the food is “Cut _____”, the blank being filled in with the name “Oysters” or “Cove oysters”, if of the species *Ostrea virginica*; “Oysters” or “Pacific oysters”, if of the species *Ostrea gigas*; “Oysters” or “Olympia oysters”, if of the species *Ostrea lurida*.

(iv) In case a mixture of two or all such forms of oysters is used, the name is a combination of the names specified in this paragraph (a)(3) of the forms of oysters used, arranged in order of their predominance by weight.

(4) *Label declaration.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

(b) [Reserved]

(c) *Fill of container.* (1) The standard of fill of container for canned oysters is a fill such that the drained weight of oysters taken from each container is not less than 59 percent of the water capacity of the container.

(2) Water capacity of containers is determined by the general method provided in § 130.12(a) of this chapter.

(3) Drained weight is determined by the following method: Keep the un-

opened canned oyster container at a temperature of not less than 68° or more than 95 °Fahrenheit for at least 12 hours immediately preceding the determination. After opening, tilt the container so as to distribute its contents evenly over the meshes of a circular sieve which has been previously weighed. The diameter of the sieve is 8 inches if the quantity of the contents of the container is less than 3 pounds, and 12 inches if such quantity is 3 pounds or more. The bottom of the sieve is woven-wire cloth that complies with the specifications for such cloth set forth under “2.38 mm (No. 8)” in “Official Methods of Analysis of the Association of Official Analytical Chemists,” 13th Ed. (1980), Table 1, “Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series),” under the heading “Definitions of Terms and Explanatory Notes,” which is incorporated by reference. Copies may be obtained from the AOAC INTERNATIONAL, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877, or may be examined at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Without shifting the material on the sieve, so incline the sieve as to facilitate drainage. Two minutes from the time drainage begins, weigh the sieve and the drained oysters. The weight so found, less the weight of the sieve, shall be considered to be the drained weight of the oysters.

(4) If canned oysters fall below the standard of fill of container prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard fill specified in § 130.14(b) of this chapter in the manner and form therein specified, followed by the statement, “A can of this size should contain _____ oz. of oysters. This can contains only _____ oz.”, the blanks being filled in with the applicable figures.

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