

(5) Career appointment under 5 U.S.C. 3304(c) ("Ramspeck appointments") but appointments must be effective no later than December 19, 1997. A temporary appointment under this section does not provide competitive status and does not extend or terminate an individual's eligibility for career appointment under 5 U.S.C. 3304(c);

(6) Appointment under 31 U.S.C. 732(g) for current and former employees of the General Accounting Office;

(7) Appointment under Pub. L. 101-474 for current and former employees of the Administrative Office of the U.S. Courts;

(8) Reappointment on the basis of being a former temporary employee of the agency who was originally appointed from a certificate of eligibles or under the provisions of part 333 of this chapter. An agency may not reappoint a former temporary employee if the individual has already served the maximum time allowed in § 316.401 or if the position has been filled under temporary appointment for the maximum time allowed in § 316.401. Reappointment must be to the same position or another position appropriate for temporary appointment with the same qualification requirements;

(9) Reappointment on the basis of being a former temporary who was originally appointed from a certificate of eligibles or under the provisions of part 333 of this chapter and who sustained a compensable injury while serving on the temporary appointment. Reappointment must be to the same position or another position appropriate for temporary appointment with the same qualification requirements. If the compensable injury disqualifies the former individual from performing such a position, reappointment may be to any position for which the individual is qualified.

(c) An individual who receives a valid temporary appointment will be eligible for an extension in accordance with § 316.401 even if his or her eligibility for noncompetitive appointment expires or is lost during the authorized period of temporary employment.

8. In § 316.702 paragraph (d) is revised to read as follows:

§ 316.702 Excepted positions brought into the competitive service.

* * * * *

(d) An employee who was serving under an excepted appointment with a definite time limit longer than 1 year may be retained under a term appointment. The term appointment is subject to all conditions and time limits applicable to term appointments.

Subpart H—[Removed]

9. Subpart H consisting of § 316.801 is removed and reserved.

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 319 and 381

[Docket No. 95-051A]

RIN 0583-AC01

Meat and Poultry Standards of Identity and Composition

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reviewing the standards of identity and composition established over the years for meat and poultry food products. These standards define particular products or product categories in terms of specified meat or poultry contents or other characteristics. As part of its regulatory review initiatives, the Agency is considering whether to modify or eliminate specific standards, or to modify its overall regulatory approach to standardized meat and poultry products. Because of new technologies, changing lifestyles, changed consumer expectations, and the information now available to consumers through ingredient and nutrition labeling, the relevance and general usefulness of standards are in question.

FSIS recognizes that some of the current standards may impede innovation, or slow the introduction into the marketplace of products with reductions in certain constituents of health concern to some people. The Agency is soliciting information from the public on what direction further reform of food standards should take, including suggestions on whether to alter, or eliminate entirely, the regulations on standardized meat and poultry products. The Agency would like to know how product definitions and standards, if needed, can provide consumer protection, while at the same time granting the flexibility necessary for timely development and marketing of meat and poultry products that meet consumer needs. This review responds in part to President Clinton's memorandum to heads of departments and agencies, titled 'Regulatory

Reinvention Initiative,' dated March 4, 1995.

DATES: Comments must be received on or before November 25, 1996.

ADDRESSES: Please send an original and two copies of written comments to Docket Clerk, Room 4352 South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Copies of reports and handbooks cited in this notice are available for review in the FSIS Docket Room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Post, Chief, Food Standards and Ingredients Branch, Product Assessment Division, Regulatory Programs, at (202) 254-2588.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) prohibit the preparation for, and the sale or transportation, in commerce, of meat and poultry products that are adulterated or misbranded (21 U.S.C. 610; 21 U.S.C. 458).

These prohibitions apply to interstate and foreign commerce. They also apply to commerce solely within designated states by establishments that operate solely within a designated state. A state is designated if it does not have or is not effectively enforcing requirements at least equal to Title I and IV of the FMIA, and specified provisions of the PPIA. Once a state is designated, the inspection requirements of the FMIA and PPIA apply to establishments that slaughter livestock and poultry and/or prepare or process meat and/or poultry products therefrom, solely for distribution within the state.

A meat or poultry product may be considered misbranded if it falsely purports to be or falsely represents itself to be a food for which a standard of identity or composition has been prescribed by regulation, or if its label fails to bear the name of the food specified in the standard and, if required, the common or usual names of optional ingredients, except for certain specified optional ingredients (21 U.S.C. 601(n)(7); 21 U.S.C. 453(h)(7)).

FSIS has prescribed by regulation 60 meat and poultry standards of identity and composition (9 CFR §§ 319 and 381, Subpart P, for meat and poultry products, respectively), under its statutory authorities set forth in 21 U.S.C. 607(c) and 457(b). These sections permit the Secretary of Agriculture, whenever the Secretary determines such action is necessary for the protection of the public, to prescribe definitions and

standards of identity or composition for meat and poultry products. The Agency enforces the regulations concerning the standards through prior labeling approval, in-plant inspection, and compliance monitoring of products in commercial channels. Further, numerous informal standards for meat and poultry products are contained in the FSIS Standards and Labeling Policy Book.

The standards have been established to prescribe: (1) Minimum meat or poultry contents; (2) maximum fat and water contents; (3) methods of processing, cooking, and preparation; (4) permitted safe and suitable ingredients; and/or (5) expected or characterizing ingredients. Generally speaking, a standard of identity is like a recipe, requiring the presence of certain expected ingredients in a food product and/or mandating the way the product is formulated and prepared. A standard of composition generally specifies the minimum or maximum amount of ingredients in a product.

Standards of Identity and Composition and Regulatory Reform

FSIS has begun a comprehensive review of its regulatory procedures and requirements, including those for standards of identity and composition, to determine whether any are still needed and, if so, which ought to be modified or streamlined. This review is an integral part of the FSIS initiative to improve the safety of meat and poultry products by modernizing the Agency's system of food safety regulation. This review expands upon the page-by-page review of FSIS's regulations carried out earlier this year under the President's Reinvention of Government Initiative. This initiative directed departments and agencies to conduct a page-by-page review of all of their regulations and to eliminate or revise those that were outdated or otherwise in need of reform. For ones that FSIS determines need simplification or modification, FSIS is examining how it can make these regulations easier to understand and use, while still maintaining the protection they provide for consumers.

History of the Standards

From its early years, USDA has been concerned with food purity and compositional integrity. Beginning in the 1880's, Departmental scientists undertook systematic studies of food adulteration with a view toward its prevention, and published their results in numerous bulletins. By 1906, when the Meat Inspection Act and the Food and Drugs Act were passed, the Department had published, in circulars,

about 200 standards of purity for food products, including meat and meat products.

The 1906 Meat Inspection Act and regulations subsequently enacted thereunder, prohibited the marketing of meat products that were misbranded or adulterated. Early inspection program directives and regulations listed permissible ingredients and coloring agents for meat products that corresponded to lists prepared by the Department's Bureau of Chemistry (predecessor of the Food and Drug Administration [FDA]). To assure that labels were truthful and not misleading, the directives listed basic requirements for products that were to bear a certain name. Thus, "potted" or "deviled" ham could be so named only if the product were made of ham or ham trimmings; if other pork was used, the mixture was required to be called "pork meats" or "potted meats." A product called "pork sausage" could be made only from pork. "Leaf lard" had to be made only from the leaf fat of hogs.

The meat inspection regulations published in 1914 and 1922 prescribed product composition standards for products containing more than one ingredient. Thus, a pork sausage with beef added could be called a "pork sausage" only if it contained at least 50-percent pork and had to be labeled "pork sausage, beef added." The meat portion of veal loaf had to be 100-percent veal. A 20-percent limit was imposed on the use of meat byproducts in products bearing a species name, such as "beef," "pork," or "veal," along with the requirement that the presence of the byproducts be indicated in the product name. Percentage limitations on the use of "cereals" in sausage products were also prescribed.

The Department maintained such requirements for meat products in the meat regulations with minor modifications through the 1920's and 1930's. As the mandatory meat inspection program grew, more policies and standards were established for assuring accurate and consistent product identity. During the 1940's the Department developed policies and standards to prevent economic deception, that is, to protect consumers from receiving meat products that did not meet their expectations, such as debased food products in which fillers had been substituted for more valuable constituents.

Under the Agricultural Marketing Act of 1946, the Agency also promulgated poultry standards to ensure that poultry products would meet the expectations of consumers. During this period, the policies applied to poultry products

were similar to those applied to meat products.

During the 1950's and 1960's, about a dozen prepared meat and poultry frozen dinners were marketed, all essentially similar and with simple formulations. Among the first regulatory standards of identity and composition for a "further-processed" poultry product, originating in the mid-1950's under the voluntary poultry inspection program, was the one specifying the minimum poultry meat content for poultry pies, such as "turkey pies."

Since standards for meat and poultry products have been developed over time in response to market trends, industry and consumer needs, and other developments, such as the advent of new methods of processing to yield traditional products, they are diverse in regard to their areas of coverage. Some standards define products or specify product characteristics and/or contents; others set forth methods of processing, preparation, and cooking. Not all of these elements are included in every standard.

Product Definitions, Contents, and Characteristics

Some standards define meat or poultry terms. For example, the standards for kinds and classes and cuts of raw poultry (§ 381.170) identify a Rock Cornish game hen or Cornish game hen as "a young immature chicken (usually 5 to 6 weeks of age) weighing not more than 2 pounds ready-to-cook weight, which was prepared from a Cornish chicken or the progeny of a Cornish chicken crossed with another breed of chicken."

Other standards require that certain products contain specific amounts and/or types of meat or poultry. For example, the standards for poultry dishes and specialty items in § 381.167 of the regulations require specific, minimum poultry content, calculated on a ready-to-eat basis, for certain products: "Turkey a la King," for example, must contain 20 percent turkey meat, "Chicken Tetrazzini" must contain 15 percent chicken meat, and "Chicken Stew" must contain 12 percent chicken meat. There are similar standards for some meat products. For example, the regulations in § 319.304 require that meat stews, such as "Beef Stew," contain no less than 25% meat of the species named on the label, computed on the weight of the fresh meat. Product identified as "Corned Beef" must, among other requirements, be prepared from beef briskets, navels, clods, middle ribs, rounds, rumps, or similar cuts (§ 319.100).

The use of safe and suitable ingredients, such as those additives specifically classified as extenders, binders, emulsifiers, coloring agents, antioxidants, flavoring agents, and tenderizing agents are frequently referenced in standards for meat or poultry products. The use of additives in meat and poultry products is essentially controlled by the regulations for standards, e.g., §§ 319 and 381 Subpart P, and those that directly address the use of safe and suitable ingredients, e.g., §§ 318.7 and 381.147.

Some meat and poultry standards specifically reference these safe and suitable ingredient regulations when identifying what can and cannot be included in a specific standardized product. For example, standards for cured meat or cured poultry products contain provisions for allowable curing ingredients that have been declared safe and suitable at restricted levels (§ 318.7 and 381.147). A product identified as "Breakfast Sausage" (§ 319.143) can only contain certain kinds of meat ingredients, and has limits on added water, fat content of the finished product, and binders or extenders that are to be added in accordance with § 318.7(c)(4). The kinds of binders and extenders allowed in meat and poultry products and their use restrictions can be found in the Tables of Approved Substances (§§ 318.7(c)(4) and 381.147(f)(4)) under "Class of Substance, Binders and Extenders." Many other standards also reference the Tables of Approved Substances in regard to use of certain ingredients in the standardized product.

When appropriate, characterizing ingredients are also included as part of a product standard. For example, the regulations in § 319.145 require that a product identified as "Italian Sausage" contain salt, pepper, and either fennel or anise, or a combination of fennel and anise. The standard also requires that "Italian Sausage" contain at least 85-percent meat, or a combination of meat and fat, with the total fat content constituting not more than 35-percent of the finished product, as well as optional ingredients.

Methods of Processing, Preparation, and Cookery

Some standards include processing, preparation, or cooking criteria, some of which are relevant to ensuring product safety. For instance, the standard for "Country Ham" and "Dry Cured Ham" products (§ 319.106) specifies not only the kind of anatomical pork cut that is to be used as the starting material, but also requires the dry application of salt or salt and optional curing agents. It also

specifies the length of time required for the salt penetration, the finished product weight, and the internal salt content or water activity level that must be met. All of these requirements help ensure product safety and shelf-stability. The presence and quantity of curing agents and salt, for example, and limits on water activity, help inhibit microbial growth.

Other standards specify cooking or processing requirements that were developed to ensure that consumer expectations about the nature of a product are met. For example, "Barbecued Chicken" (§ 381.165) must be cooked in dry heat and basted with a seasoned sauce. The standard for "Barbecued Beef" (§ 319.80) requires dry heat cooking by burning hardwood or hot coals therefrom, and a finished product with a brown crust and a yield of not more than 70 percent of the weight of the fresh uncooked meat.

Mechanically Separated (Species)

Most meat product and poultry food product standards identify a finished product, such as a "Turkey Ham" or "Chili with Meat." However, the standard for mechanically separated species (MS(S)), such as that in § 319.6 for mechanically separated beef or pork, is somewhat different because it defines a meat ingredient that can be used with some restrictions in formulating other meat products. MS(S) is an ingredient that can be used in certain standardized meat food products, such as hot dogs, frankfurters, bologna (§ 319.180), meat stews (§ 319.304), spaghetti with meatballs (§ 319.306), pizza (§ 319.600), and tamales (§ 319.305). The level of its use, which is restricted, is specifically cited as part of its food product standard.

Current Concerns and Need for Review

The meat and poultry food product standards have provided a framework for identifying products and helping to ensure that products meet consumer expectations regarding product composition and characteristics. In certain instances, standards also have helped to ensure product safety. For example, the FSIS policy guide in the Standards and Labeling Policy Book for dry, fermented sausages prescribes moisture/protein ratios (MPR) that limit moisture content in these products, which, in turn, inhibits microbial growth.

Some manufacturers have complained that standards are too restrictive, stifle innovation, and prevent market acceptability of products, because they restrict the use of commonly understood product names familiar to consumers.

Some manufacturers believe that the nutrition and ingredient information provided in labeling is adequate to enable consumers to distinguish among meat and poultry products and make informed choices.

Many proponents of standards reform contend that a product name has little relevance in today's market, which is becoming more and more diverse, with the increased manufacturing of new and nontraditional products. Because of changing market trends and public perceptions, some food manufacturers also believe that prescriptive standards of identity and composition impede the introduction of new, innovative, and possibly less expensive, products.

For example, food manufacturers have pointed out that restaurants market meatless pizzas consisting of a bread-type product topped with fruit or vegetables, olive oil, and seasonings. However, if an FSIS inspected establishment wants to prepare and market a nontraditional pizza that includes a meat topping of sausage but not cheese, it would be in conflict with FSIS's established standards for pizza products containing meat. The standard for "pizza with sausage" (§ 319.600(b)), for instance, requires that a product identified as "Sausage Pizza" be a bread-based meat food product with tomato sauce, cheese, and meat topping containing not less than 12 percent cooked sausage or 10 percent dry sausage (pepperoni).

Consumer expectations regarding the nutritional composition of foods have also changed in recent years. Health-conscious consumers looking for convenience and nutritional quality in their food purchases have come to play a decisive role in the marketplace. A growing body of scientific evidence that links dietary intake to health supports the concerns of these consumers, who demand products based upon traditional recipes which have been modified to have lower amounts of constituents with negative health implications, such as saturated fat and cholesterol. Meat and poultry food processors have striven to meet this demand by formulating products that resemble traditional products but that contain less fat and associated cholesterol.

In some circumstances, current standards inhibit the marketing of products lower in such constituents, because of limits on the types of ingredients permitted. FSIS has attempted to ease some of the restrictions posed by the existing standards by developing labeling approaches to identify the differences between traditional products and the

newer versions. Consequently, some products currently bear health-related nutrient content claims on their labels, such as, "low-fat" and "reduced fat."

Consumers' nutritional and health concerns indicate a need to review the basis for traditional standards of identity and composition, to question the justification for the establishment of new prescriptive standards, and to consider the elimination or modification of these standards. In fact, the public health rationale for doing so is underscored by a 1990 report by the Institute of Medicine, National Academy of Sciences (NAS). The report, "Nutrition Labeling: Issues and Directions for the 1990's," argues for reexamining and changing any system "that significantly impedes the marketing of reduced-, low-, and non- or no-fat substitutes."

To begin to address this concern, FSIS has proposed in a separate document, "Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term (60 FR 67474)," to establish a general standard of identity for modified meat and poultry food products that would facilitate the development and marketing of, among other things, reduced fat substitutes for products currently subject to an FSIS standard of identity. The general standard of identity proposed would require that a modified meat or poultry product: (1) Not be nutritionally inferior to the traditional standardized food that it resembles and for which it substitutes, (2) possess performance characteristics that are generally similar to the traditional standardized food, (3) contain the same amount of any mandatory ingredient (i.e., meat or poultry) that is required to be in the traditional standardized food, and (4) not contain an ingredient that is prohibited in the traditional standardized food. The proposed standard (§§ 319.10 and 381.172, as proposed) also would allow safe and suitable ingredients, not specifically provided for in the standard or in excess of that provided for in the traditional food, in order that the product's makeup is consistent with the nutrient content claim made about the product.

In light of current budget constraints and the need to address high priority food safety concerns and redeploy Agency resources, FSIS is examining whether any of the Agency's approaches to regulating meat and poultry products for economic adulteration and mislabeling should be changed. Thus, FSIS is examining whether the current approach to promote fair competition

and prevent misbranding and economic adulteration through developing and enforcing meat and poultry product standards continues to be appropriate.

Many of the standards are based on industry standards and were originally suggested by, and in many cases are still supported by, industry. Such standards not only reflect consumer expectations, but also serve to promote fair competition among manufacturers producing similar products. The FMIA, in fact, states that regulation of meat products is important, since "... * * * mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally (21 U.S.C. 602)." The PPIA also contains a similar provision which recognizes that unwholesome, adulterated, or misbranded poultry products destroy markets for wholesome, not adulterated, and properly marked, labeled, and packaged poultry products (21 U.S.C. 451).

FSIS is undertaking this comprehensive review of all of its existing product standards to determine whether in their present form they continue to play a useful role in serving the needs of industry and consumers. FSIS is exploring whether alternative approaches could be more effective in ensuring that consumers are adequately informed about the products they are purchasing and receive what they believe they are paying for, while ensuring fair competition. Any alternative approach or combination of approaches chosen would of course have to comply with the statutory mandates of the FMIA and PPIA with respect to misbranding (false or misleading labeling) and economic adulteration, provide industry greater flexibility to innovate, and expand consumer choices in the marketplace.

Issues for Public Comment

As part of its comprehensive standards review, FSIS is soliciting comments on the following issues, as well as any other comments that would assist the Agency in fulfilling its mission to protect the interest of consumers by helping to ensure that meat and poultry products are correctly labeled and are not adulterated. FSIS requests comments from any interested parties such as food manufacturers and distributors, including importers and exporters, individuals and consumer groups, academia, State and local governments, and the international community.

1. Utility of the System

a. In general, how do consumers and the regulated industry view the Agency's role in developing food standards? How would major changes in standards of identity affect consumers, producers, and manufacturers?

b. As discussed above, there are different types of standards. Are some more meaningful or useful than others? Could the objectives of meat and poultry standards, designed to ensure that products are correctly labeled and not economically adulterated, as well as help ensure fair competition and market stability for wholesome, properly labeled products, be accomplished by other more effective means? If so, how could they be accomplished within the limits of current and anticipated FSIS resources?

c. Do standards of identity for meat and poultry products actually protect the integrity of the food supply? Are there any data that indicate consumers are aware of or rely upon the current standards? If so, do consumers find the current system of standards meaningful and understandable? Would alteration of the standards significantly affect consumers' ideas about the integrity of meat and poultry products?

d. Does the industry need compositional standards for the orderly marketing of foods? Are food standards needed to control the composition of fabricated foods such as hot dogs, bologna, pepperoni, and potted meats? Depending on the extent of any standards reform, what market impact would result if manufacturers were allowed to decrease the amounts of meat or poultry used in products?

e. As previously discussed, some standards contain processing and other requirements relevant to food safety. Could food safety objectives be achieved by other means?

f. Are food standards an effective means of ensuring that only safe and suitable additives and ingredients are used in the formulation of products?

2. Flexibility

If FSIS continues to maintain a system of standards of identity and composition, how could current and future standards be made more flexible, to accommodate the needs of industry in a changing market, without compromising the Agency's efforts to ensure that meat and poultry products are neither misbranded nor economically adulterated?

3. Product Identity

a. Food standards of identity are a means of defining the composition of a

food that is marketed under a designated common or usual name. What criteria should be used for determining when a food standard is appropriate? Should evidence of the existence of consumer confusion or dissatisfaction be required as a precondition before FSIS undertakes a standards setting process?

b. How should FSIS address differences between the standards of identity established for similar meat and poultry products, such as those established for ham and turkey ham products, which allow for different levels of moisture content? What purpose do such differences serve and how do they affect consumers, producers, and processors? Also, FSIS requires establishments to indicate through labeling the presence of meat byproducts in all processed meat products. Should FSIS require disclosure of the presence of detached skin, even in natural proportions, in the ingredients statement of processed poultry products?

c. Consumers desire both product consistency and variety among products. Given this, how would revision or elimination of the standards of identity affect consumers? For which products or characteristics is consistency, or standardization, most important to consumers?

d. If there were no meat or poultry product standards, what criteria could be used to define "imitation" products?

e. If there were no standards, how would consumers, industry, and FSIS judge when a product is identified, by labeling, in a misleading way?

4. Federal Preemption: Impact on State Jurisdiction

a. FSIS specifically requests comments on the preemption aspects of Federal standards of identity. If Federal standards of identity were discontinued and the preemptive provisions of the FMIA and the PPIA for labeling were amended, would the States establish their own compositional requirements in the absence of a Federal meat and poultry standards program? Would a diverse, multi-State food standards program be desirable? What would be the costs and benefits?

b. If it is not deemed to be in the interest of the public to retain Federal food standards for meat and poultry products, what changes should be considered in the FMIA and PPIA? Comments should be supported by data where possible relating to the economics of production and marketing of commodities currently covered by food standards, including the costs and

benefits to consumers, industry, and international trade.

5. Impact on Domestic and International Trade

a. How are current FSIS standards related to international meat and poultry standards and what would be the economic impact of standards reform on product development in the United States and international markets?

b. Would there be significant costs for industry if Federal meat and poultry standards of identity were conformed to international standards for these products, where possible? Also, what would be the costs for industry if states were permitted to enforce any type of standard requirements that were different from Federal and international standards?

c. In recommending an alternative to the current system of standards of identity and common or usual name designation for food, commenters should take into account the impact of the alternative on FSIS's ability to participate in the development and harmonization of international standards.

The United States participates in the Codex Alimentarius Commission (Codex) and its food standards program. Codex is sponsored jointly by the United Nations' Food and Agriculture Organization (FAO) and World Health Organization (WHO). Its goal is to promote the health and economic interests of consumers, while encouraging fair international trade in food. All food standards adopted by Codex must be reviewed by the FDA (in consultation with FSIS when appropriate) and be accepted without change, accepted with change, or not accepted. Procedures regarding Codex standard adoption are codified in 21 CFR 130.6.

U.S. food standards provide an important point of reference when international standards are established. How effective would U.S. delegates be in debating the merits of specific provisions in Codex food standards if the Federal government had no comparable standards? How important is it to exporters and importers that the compositional provisions of the Federal meat and poultry standards be reflected in international standards such as those established by the Codex Alimentarius?

6. FSIS and FDA Uniformity and Standards Systems

The FMIA (section 7(c)(2)(21 U.S.C. 607(c)(2)) and the PPIA (section 8(b)(2)(21 U.S.C. 457(b)(2)) provide that the Secretary of Agriculture may

prescribe definitions and standards of identity or composition; that they not be inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act; and that inconsistencies between Federal and State standards be avoided, insofar as feasible. To what extent should FSIS harmonize its approach to standards reform with FDA?

On December 29, 1995, FDA published an Advance Notice of Public Rulemaking, "Food Standards of Identity, Quality and Fill of Container; Common or Usual Name Regulations; Request for Comment on Existing Regulations" (60 FR 67490). FSIS encourages commenters to read the FDA document because it provides useful background information on similar FDA standards' issues. A thorough understanding of both agencies' food standards programs will help commenters in providing comments that will facilitate uniform food standards reform. Commenters should submit separate comments to each agency.

7. Agency Budget Constraints and Regulatory Compliance

Current and anticipated budget constraints compel FSIS to alter the way it allocates resources. The Agency must give priority to programs affecting food safety and public health, while seeking means to continue meeting its responsibilities concerning issues of economic adulteration and misbranding. Thus, comments supporting continuance of the existing food standards program should discuss possible sources of new or additional resources for the program. Further, in light of budget constraints, how should the Agency verify compliance with the standards in the future? What should be the FSIS inspector's role in a modified or streamlined system of standards?

8. Policy Guides

The Agency has developed policy guides for standards which are identified in the Standards and Labeling Policy Book. The Standards and Labeling Policy Book serves, in part, to guide industry regarding product names, composition, characterizing ingredients, methods of preparation related to product names, and such. Do the policy guides as embodied in the Standards and Labeling Policy Book, serve a useful purpose? If these policy guides serve a useful purpose, do they need revision? If so, what revisions are necessary and what data are available to support revision?

9. Standards and Substitute, Modified Meat and Poultry Products

- a. To what extent do FSIS requirements for minimum meat and poultry content in the standards impede the development of reduced fat and other modified products that can assist consumers in meeting dietary needs?
- b. Is there any point at which consumers would feel that "substitute, modified foods," (i.e., standardized foods with a reduction in constituents of concern to consumers) are no longer similar to the standardized foods they are intended to resemble and are merely imitations of these foods? For further information about "substitute, modified foods" see FSIS's proposed rule, "Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term" (60 FR 67474).

10. Grandfather or Sunset Provisions

Is there a need to "grandfather" or "sunset" current regulatory requirements or policy guides?

11. Cost and Benefits to Consumers and Industry

The Agency is particularly interested in the cost/benefit aspects of food standards. It would appreciate receiving comments in response to the following questions: Do the benefits of standards to consumers and to the regulated industry outweigh the costs of such regulations?; What factors affect the benefits and costs of food standards?; How can FSIS best estimate the benefits and costs of particular standards?; Which standards are particularly beneficial or costly, and why?; and If the existing programs need to be restructured, how should this be accomplished, and how would such a change affect the costs and benefits to consumers?

Alternatives Considered

FSIS is considering adopting one or more of the following alternative approaches, should it continue meat and poultry standards in any form. FSIS believes that these approaches increase the flexibility of the meat and poultry product standards, while ensuring that meat and poultry products are identified in a non-misleading manner, and contain only safe and suitable ingredients.

1. Use of Percentage Declaration of Meat and/or Poultry Content in Conjunction with Standardized Names

One approach the Agency is considering would provide greater flexibility than currently allowed in the

formulation of standardized products required to contain a specified minimum amount of meat or poultry. FSIS could permit the use of a lesser amount of meat and/or poultry in these standardized products, provided the product's label contained a declaration of the percentage of the meat or poultry content in the product. For example, the standard of identity for meat stews, such as "Beef Stew" (§ 319.304), currently requires the product contain "not less than 25-percent of meat" of the species named on the label.

Under current FSIS regulations and policy guides, products containing less than the prescribed amount of meat or poultry for a standardized product may be marketed (1) under names that indicate that the product is an "imitation" of the standardized food; (2) under names that distinguish the product from the standardized product, e.g., using a descriptive name such as "gravy, vegetables, and beef," for a product that does not meet the "Beef Stew" standard; or (3) with labels that use a comparative, educational statement in addition to a standardized name to reflect the difference in meat or poultry contents, when the substitute product is nutritionally equivalent. For example, a pizza that contains only 5 percent sausage may be identified as "Pizza with Sausage" as long as a statement is included on the label that indicates the product "contains 5 percent sausage, whereas the standard for 'Pizza with Sausage' requires 12 percent sausage."

Under one alternative approach, a manufacturer might produce a "Beef Stew" containing a lesser amount of beef than prescribed in the standard, provided the principal display panel of the label bears, in conjunction with the name of the food, a declaration of the percentage of beef contained in the product, e.g., "Beef Stew, Contains 10% Beef." Another option would be to provide the percentage declaration in conjunction with the ingredient list on the label.

Key advantages of such alternatives are that they would expand the flexibility available to companies in formulating products bearing the standardized name while still providing the consumers with important information about the meat or poultry content of the product, that is both factual and non-misleading. Information about the percentage of meat or poultry in a product, in combination with the nutrition information and ingredient labeling provided on labels, would give consumers valuable information upon which they could rely in making a food choice.

In considering such alternatives, FSIS recognizes that there may be some products that contain such a small amount of meat or poultry that the use of a standardized name, even if used in conjunction with a statement that indicates the percentage of meat and poultry in the product, may not be justified. FSIS will be considering whether products that contain an insignificant amount of meat or poultry should be permitted to use as standardized name as part of its labeling. FSIS would like comments on this issue.

The Agency has reviewed numerous meat and poultry standards to identify categories that may be good candidates for this alternative declaration-of-percentage approach to product identity. Obviously, candidates include standards that contain a minimum meat, meat food product, meat byproduct, and/or poultry content requirement. Such standards, found in 9 CFR Part 319 and 381, Subpart P, include scrapple (§ 319.280); chili con carne (§ 319.300); chili con carne with beans (§ 319.301); hash (§ 319.302); corned beef hash (319.303); meat stews (319.304); tamales (§ 319.305); spaghetti with meatballs and sauce—spaghetti with meat and sauce, and similar products (§ 319.309); spaghetti sauce with meat (§ 319.307); beans with frankfurters in sauce, sauerkraut with wieners and juice, and similar products (§ 319.306); lima beans with ham in sauce, beans with ham in sauce, beans with bacon in sauce and similar products (§ 319.310) chow mein vegetables with meat, and chop suey vegetables with meat (§ 310.311); pork with barbecue sauce and beef with barbecue sauce (§ 319.312); tongue spread and similar products (§ 319.762); liver meat food products (§ 319.881); poultry dinners (frozen) and pies (§ 381.158); and "other poultry dishes and specialty items" (§ 381.167).

2. Develop a General Standard of Identity for All Meat and Poultry Food Products

The Agency could propose to establish a general standard of identity for the 60 meat and poultry products defined by standards in the current regulations. This general standard of identity approach would provide for deviations from current ingredient allowances and restrictions. The deviations would be highlighted in the ingredient statement of the product. This labeling requirement would inform consumers of the difference between the standardized products and the "modified" version of the product.

For example, the current standard for "Chili Con Carne" (§ 319.300) requires

this product to contain no less than 40-percent meat computed on the weight of the fresh meat; allows the use of MS(S) in accordance with § 319.6; restricts head meat, cheek meat, and heart meat exclusive of the heart cap to no more than 25 percent of the meat ingredients under specific declaration on the label; and allows binders and extenders as provided in § 318.7(c)(4). Under a general standard of identity, a new, "modified" "Chili con carne" product might contain 40 percent cheek meat, as long as the ingredients statement highlighted this deviation. If the meat component were reduced from 40 percent to 20 percent, or if the product contained 40 percent textured vegetable protein as well as meat, these deviations also would need to be highlighted in the ingredients statement.

FSIS would like to receive comments on whether this approach could provide the flexibility desired by manufacturers, while protecting the integrity of the food supply by ensuring that consumers receive meat and poultry products labeled in an truthful and non-misleading manner.

3. Recommended Meat and Poultry Contents

Another approach would be to establish categories of meat or poultry products, and corresponding recommendations for expected meat and poultry contents. For example, FSIS could recommend that "Beef Burgundy" contain 50-percent beef, that "Beef Stroganoff" contain 30 percent cooked beef, and so forth. Under this approach, establishments could deviate from the recommended meat and poultry content. It would be expected that the difference be conveyed to the consumer through labeling. Recommended amounts of meat and poultry content in products would reflect consumer expectations, and, therefore, would serve as guidance for food manufacturers.

FSIS requests public comment on this alternative approach to establishing content standards, and would welcome other suggestions for establishing product categories, or determining what the meat and/or poultry content should be for the various categories. FSIS also requests comments on how other requirements in the current standards, such as those concerning additives, non-meat ingredients, or processing, would be affected by meat and poultry content recommendations for the various meat and poultry categories?

4. Private Certification of Food Products

Provided that amendments are made to the FMIA and PPIA, it may be

possible for private organizations to certify that meat and poultry products meet consumer expectations. These organizations would establish criteria for product content and characteristics associated with product names.

FSIS would like to receive comments on the issue of eliminating standards of identity and composition including comments in response to the following questions: Could national associations that promote or address marketing issues for specific products or commodities, such as the National Food Processors Association and the National Frozen Pizza Association, or other recognized authorities, such as culinary societies, schools, or institutes, establish meaningful meat or poultry product standards?; How would the fact that products met such standards be conveyed in labeling?; Would a labeling statement, such as "Meets standards established by the National Chili Society," have meaning in labeling?; How would the truthfulness or the accuracy for the statement be verified?; How would the credibility or authenticity of the certifying body be established?; Which characteristics of meat or poultry food products are most amenable to certification by private organizations rather than by local, State, or Federal government?; and Which factors render private certification impractical or inappropriate?

5. Elimination of the Standards of Identity and Composition

The FMIA and PPIA provide that USDA may promulgate definitions and standards of identity and composition for meat and poultry products whenever it determines such action is necessary for the protection of the public (21 U.S.C. 607(c), 457(b)). These Acts do not require, however, that USDA promulgate standards. Therefore, one option for the Agency is to eliminate regulations for standards of identity and composition and then to discontinue any programs related to the standards.

FSIS would like to receive comments on the issue of eliminating standards of identity and composition including comments in response to the following questions: In general, what would be the advantages and disadvantages to industry and consumers of eliminating the standards of identity and composition?; What would be the impact on domestic and foreign commerce, and food safety?; How would labeling requirements need to be revised if standards of identity were eliminated?; and In the absence of standards of identity, should labels specify percentages of ingredients?

Additionally, some standards include processing, preparation, or specific cooking requirements that are related to ensuring product safety and shelf-stability, such as the standard for "Country Ham" and "Dry Cured Ham" products (§ 319.106). FSIS would like comments on this issue including responses to the following questions: If such standards were eliminated, would remaining regulations be sufficient to assure the safety of these products?; and Should the safety provisions of these standards be included in other regulations?

Executive Order 12866

This advance notice of proposed rulemaking has been reviewed under Executive Order 12866. This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

FSIS is seeking the data necessary to assess how the regulatory changes discussed in this document might affect various sectors of the meat and poultry industries. Therefore, the Agency invites comment on potential effects, including economic costs or benefits.

Done, at Washington, D.C., on: September 3, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-194-AD]

RIN 2120-AA64

Airworthiness Directives; de Havilland, Inc., Model DHC-8-100 and -300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to de Havilland Model DHC-8-100 and -300 series airplanes. That proposal would have superseded a previously-issued AD that currently requires repetitive inspections to detect cracks of the upper drag strut trunnion fittings of the nose landing gear and to verify tightness of the fitting attachment bolts. It also would have required the