



February 19, 2004

Ann M. Veneman, USDA Secretary
 U.S. Department of Agriculture, Suite 200
 1400 Independence Ave., SW
 Washington, D.C. 20250

FSIS, Labeling and Consumer Protection Policy for
 Net Weight Declarations on Fresh Meat Products in Marinade Solutions

Dear Secretary Veneman:

As President of the California Agricultural Commissioners and Sealers Association (CACASA), I am writing to convey our Association's serious concerns regarding a policy interpretation made in late October 2003 by your Food Safety and Inspection Services' Labeling and Consumer Protection staff. They have issued a policy governing net weight declarations on packages of fresh meat products sold in marinade solutions that is a radical departure from basic precepts of weights and measures, and inconsistent with existing standards for wet tare as described in NIST Handbook 133, to which both USDA and California weights and measures officials have heretofore adhered.

We respectfully request that you review your staff's recent interpretations of policies relating to proper determination of net weight and labeling of fresh meat products in marinade solutions because we believe the policy, if left to stand as stated, will dramatically alter the competitive forces in the marketplace and degrade the integrity of the institutions of weights and measures.

The new policy interpretation by the Labeling and Consumer Protection staff, for fresh meat products in marinade solution, states:

It is legal to sell fresh meat products in marinade solution, if those products are properly labeled.

Proper labeling means complying with standard labeling requirements including identification of products with wording such as "Beef containing _____% solution, in solution." The percent solution addresses the percentage of solution absorbed by the meat block. The words "in solution" adequately addresses [sic] the rest of the solution.

In the example above, this wording could be used as long as beef comprises 51% or more of the net weight of the package. The net weight includes all solution (emphasis added). If beef comprises 49% or less of the net weight, then the wording above could no longer be used. For example, it would have to state "Solution with up to 49% beef."

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(A Notice from CDFA Division of Measurement Standards, QC-03-5, describing the USDA policy, is attached for reference.)

Compare the above statement with one made just a few weeks prior by Dr. Robert Post, Director of Labeling and Consumer Protection, in his letter of response to Mr. Roger Macy, CDFA Division of Measurement Standards. Mr. Macy had requested guidance from USDA on the appropriate allowance for moisture loss (free liquid in the package) for fresh meat products in marinade. Using NIST Handbook 133 as his reference, Dr. Post said in part, “. . . *it would be appropriate to apply the standard for moisture loss allowance specified for packages of fresh poultry (i.e., 3 percent) to the fresh meat products injected with a solution.*”

These two interpretations of policy stand in stark contrast to each other. The former, by Labeling and Consumer Protection staff, makes no references to any particular documents and creates a new environment where all free liquid in the package becomes net weight – none of it tare – thereby rendering the term “net weight” essentially meaningless. Having redefined the term to mean the combined weight of the meat product and free liquid, the actual weight of the meat product is obscured. As a consequence, the consumer is deprived of information adequate to make value comparisons. Additionally, it creates an inequity between fresh poultry products, which are limited to a 3 percent weight allowance for which any liquid in the package beyond 3 percent would be counted as tare, and meat products in marinade, which have no limits on any kind on the amount of free liquid. This creates an unfair competitive advantage to packers of meat products. It is entirely possible, under this policy, that the packer need not even weigh the meat product. The packer would really only have to estimate whether the weight of the meat was going to be more or less than the weight of added liquid and then label the package as prescribed in this policy. In fact, the policy gives an example of this very scenario: “Solution with up to 49% beef.”

The latter opinion by Dr. Post, however, uses an existing allowance for poultry, as defined in Handbook 133, and makes a reasonable extension of that tolerance to beef products. Dr. Post’s recommendation does not obliterate the distinction between net weight and tare weight, thus preserving the integrity of the term “net weight”; it suggests a reasonable allowance of 3 percent for beef products, thereby avoiding an inequity between fresh poultry and fresh meat products; it does not deprive the consumer of meaningful information necessary to make value comparisons; and it preserves the requirement for packers to accurately weigh, identify and label their products.

In California, counting all the free liquid in a package except where there are specific allowances, as part of the net weight and charging the customer as if it were product would constitute a violation of one or more California Business and Professions Code sections relating to accuracy of net weight statements and which protect the consumer and marketplace from misrepresentation, deception and fraud.

We have already received complaints from consumers about packages of fresh meat in marinade

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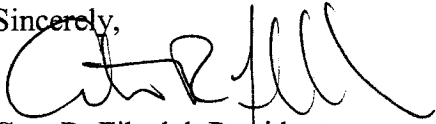
solution, where the free liquid was included as part of the net weight and charged to the customer as if it were product (e.g. in some packages free liquid represented more than 30% of the weight for which the customer was charged). The sealer conducted an investigation and referred the matter to his District Attorney's Consumer Fraud unit for review. Under the latest interpretation of USDA policy, however, it would be virtually impossible to act effectively on a complaint like this one and many other legitimate consumer complaints, ensure fairness to the consumer or enforce statutes that secure equal competition in the industry.

There now exists a great deal of confusion between agencies and genuine concern about the impact your department's recent interpretations of policy will have on weights and measures regulation. On one hand there are USDA and our own CDFA Meat and Poultry Inspection branch which must follow the newly-interpreted policy from Labeling and Consumer Protection staff, and on the other hand the County Sealers, represented by our Association, and CDFA's Division of Measurement Standards which find the policy contradictory and virtually impossible to apply. The appearance is that there are now a number of regulatory agencies at odds with each other.

Our respective agencies have historically shared a common goal: to give the best protection possible to both business and consumer through the proper application of packaging, labeling and measurement laws, thus insuring the safety and integrity of the food supply and the marketplace. We, as an Association, do not want to see this partnership in conflict and we are committed to resolving these issues without compromising the basic principles of weights and measures.

We respectfully ask for your assistance and request that you review Labeling and Consumer Protection staff's recent interpretations of policies relating to proper determination of net weight and labeling of fresh meat products in marinade solutions in light of the policy's potential for dramatically altering the competitive forces in the marketplace and degrading the integrity of the institutions of weights and measures. Our Association's members stand prepared to assist you and your department in whatever way we can. Thank you for giving your consideration and attention to our request.

Sincerely,



Cato R. Fiksdal, President

California Agricultural Commissioners and Sealers Association

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cc: A. G. Kawamura, Secretary -- CDFA
Michael Cleary, Director -- CDFA, DMS
Dr. Dennis Thompson, Chief -- CDFA, MPI
Dr. Robert Post, Director -- USDA, FSIS, OPPDE
All County Sealers
California District Attorney Association -- Consumer Protection Committee