



United States
Department of
Agriculture

Food Safety
and Inspection
Service

Washington, D.C.
20250

SEP 21 2011

Mr. Mark Dopp
Senior Vice President
Regulatory Affairs and General Counsel
American Meat Institute
1150 Connecticut Avenue, NW.
Washington, D.C. 20036

Dear Mr. Dopp:

This letter is in response to your August 12, 2011, letter requesting information that the Food Safety and Inspection Service (FSIS) relied upon in drafting its proposed rule, "Common or Usual Name for Raw Meat and Poultry Products Containing Added Solutions" (76 FR 44855). In addition, you requested a 60-day extension of the comment period for the proposed rule. FSIS agrees that the proposal is important to many meat and poultry companies. To provide more time for constructive comment, the Agency will announce in a Federal Register notice a reopening of the comment period for 60 days, beginning when the notice publishes. The notice will announce that FSIS has posted on its Web site with the proposed rule, examples of labels in the marketplace that we have concerns about. News of the Agency's intent to provide the additional time to comment will appear in the Constituent Update on September 23, 2011. Through the Constituent Update, we will also make clear that we will accept comments received after September 26, 2011, the closing date of the original comment period, and the date of the reopening notice.

In response to your request for information, data, and evidence on which the Agency based the proposed amendments, the available data and information can be found in the Truthful Labeling Coalition's (TLC) petition and attachments that, as you indicated in your letter, are publically available. The petition and its attachments are currently available in the FSIS Docket Room and on the FSIS Web site:

- The TLC petition and attachments:
http://www.fsis.usda.gov/PDF/Petition_Truthful_Labeling_Coalition.pdf
- The Sorensen Associates "Enhanced" Chicken Consumer Research Study (Attachment E):
http://www.fsis.usda.gov/PDF/Petition_Truthful_Labeling_Coalition_Attachments.pdf

Responses to the specific points you raised in your letter are enclosed.

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Regarding your request for specific labels in the marketplace that FSIS has concerns about, examples of product labels are included in the Sorensen Associates Consumer Research Study and "Attachment B" of the TLC petition (links provided above). However, to provide further examples, the Agency has now posted additional representative samples of marketplace labels on its Web site with the proposed rule at http://www.fsis.usda.gov/PDF/2010-0012_Examples.pdf.

If you have any further questions, please contact Ms. Rosalyn Murphy-Jenkins, Labeling and Program Delivery Division Director, at (301) 504-0878.

Sincerely,


for Alfred V. Almanza
Administrator

Enclosure

Responses to AMI's Specific Points

1. Specific labels in the marketplace that FSIS has concerns about.

The proposed rule states that the Agency, through label review, “has found that it is common for product labels to contain product names in bold fonts with strong contrasting backgrounds, with the qualifying statement on added solution printed in tall, narrow, or slanted fonts at the smallest height permitted, and on background of poor color contrast.” (76 FR 44857)

This statement is based on information provided by the Labeling and Program Delivery Division (LPDD). FSIS has posted a representative sample of marketplace labels on its Web site at http://www.fsis.usda.gov/PDF/2010-0012_Examples.pdf to provide further specific examples. Examples of product labels are also included in the Sorensen Associates Consumer Research Study and “Attachment B” of the Truthful Labeling Coalition’s (TLC) petition, which are available on the FSIS Web site, as well.

- The Sorensen Associates “Enhanced” Chicken Consumer Research Study (Attachment E):
http://www.fsis.usda.gov/PDF/Petition_Truthful_Labeling_Coalition_Attachments.pdf
- The TLC petition and attachments:
http://www.fsis.usda.gov/PDF/Petition_Truthful_Labeling_Coalition.pdf

2. Information indicating that consumers are currently unable to distinguish between enhanced and non-enhanced products.

The proposed rule states that, “without adequate information, consumers likely cannot distinguish between single-ingredient raw meat and poultry products versus similar raw meat and poultry products containing added solutions that do not meet a standard of identity.” (76 FR 44857)

This statement was based on the publically available data submitted with the TLC petition (link provided above) that shows that consumers are not aware if chicken with added solution contains additives and whether fresh chicken contains broth solutions:

“Most users of enhanced chicken are not aware that it contains additives (unaided), until specifically directed to look at the label (aided). Even after looking at the label, nearly one out of five enhanced chicken buyers don’t realize that the chicken contains additives.” (Sorensen Associates Consumer Research Report, page 10)

“Overall, approximately 45% of consumers express surprise that some fresh chicken brands contain additives.” (Sorensen Associates Consumer Research Report, page 11)

“Whether Fresh Chicken Purchased Has Broth Solutions - One-half of respondents believe fresh chicken does not include broth solutions, while one in five think it does. However, one-third of respondents were not sure.” (Russell Research Report, TLC petition, Attachment F)

3. Data, information, or evidence confirming that the changes in the proposed rule, including the single font size, color and style requirement, will improve consumer understanding and awareness.

The proposed rule states that the Agency selected the alternative of proposing to require that the common or usual name of the product include an accurate description of the raw meat or poultry component, the percentage of added solution, and the common or usual names of the ingredients in the solution, with all of the print in a single font size, color, and style on a single-color contrasting background, because it is likely to improve consumer awareness and understanding that the product contains added solution. The proposed rule further states that the Agency believes proposing to require the percentage of the solution and the ingredients of the solution as part of the common or usual name is information consumers need to make informed purchasing decisions. (76 FR 44862)

These statements were based on information provided by LPDD's experience and expertise in reviewing labels and developing labeling policies, and the following publically available data submitted with the TLC petition (link provided above):

“The wording of the label, “Contains up to 15% water, salt, and sodium phosphates” is considered by natural and enhanced chicken buyers to most accurately communicate additive ingredients in chicken.” (Sorensen Associates Consumer Research Report, page 16)

“Labeling that features additive ingredient statements in highly visible, large lettering is strongly preferred by all consumers.” (Sorensen Associates Consumer Research Report, page 19)

In addition, FSIS stated in the proposed rule that it would like to receive any consumer research information that evaluates whether the proposed product name requirements would better inform consumers and affect their purchasing habits. (76 FR 44858)

4. Data, information, or evidence confirming that the changes in the proposed rule will not adversely affect market demand relative to other products.

The proposed rule states that the proposed action “is **not likely** (emphasis added) to result in a market demand shift, relative to other products, because this proposed action is **unlikely** (emphasis added) to influence consumers' preference for meat and poultry in general.” (FR 76 44863)

The above statement is the FSIS' assessment of the impact the proposed action will have on market demand and consumers' preference for meat and poultry products in general. The intent of the proposed action is to make clearer product content information available to consumers of meat and poultry products with added solutions. The Agency is soliciting comments on any potential costs, including adverse effects that might result from finalizing this proposal.

5. Data, information, or evidence confirming that the changes in the proposed rule will reduce sodium intake among consumers.

The proposed rule states that “This rule **may also** (emphasis added) help consumers reduce their sodium intake because the new product names will better alert consumers to the fact that the products contain added solutions.” (76 FR 44863)

This statement emphasizes the Agency’s intent to provide consumers with prominent label information to ensure that they are aware of the added solution and the ingredients in the solution. The following publically available data, submitted with the TLC petition (link provided above), indicates that consumers may not be aware that fresh product may contain added solutions:

“Whether Fresh Chicken Purchased Has Broth Solutions - One-half of respondents believe fresh chicken does not include broth solutions, while one in five think it does. However, one-third of respondents were not sure.” (Russell Research Report, TLC petition, Attachment F)

6. Data, information, or evidence that the nutrition facts panel is not being reviewed by health-conscious consumers and that the changes in the proposed rule will influence more healthful food choices.

In the proposed rule, the Agency stated that “The prominence and design of the label on the front of the package **may** (emphasis added) increase the likelihood that consumers review the nutrition facts panel, including information on sodium content, and make more healthful food choices.” (76 FR 44863)

This statement represents the Agency’s intent to provide consumers prominent label information concerning ingredients in the added solution. The following publically available data, submitted with the TLC petition (link provided above), indicates that consumers may not be aware that fresh product may contain added solutions:

“Whether Fresh Chicken Purchased Has Broth Solutions - One-half of respondents believe fresh chicken does not include broth solutions, while one in five think it does. However, one-third of respondents were not sure.” (Russell Research Report, TLC petition, Attachment F)

7. Data, information, or evidence confirming that consumers are adding salt at home to enhanced products because they are unaware of the added solution disclosed on current labels.

In the proposed rule, the Agency stated, “Furthermore, as noted in the TLC petition, the presence of added solutions affects the product’s nutrition profile because there may be a significant difference in sodium content between a single-ingredient raw product and a similar-looking product that contains added solution. The effect of excess sodium **may be** (emphasis added) compounded if consumers unknowingly purchase a product with added solution, believe it to be

a single-ingredient product, and add salt during preparation or prior to consumption.” (76 FR 44858)

Also, as discussed in the proposed rule, TLC submitted a comparison between the sodium content in 4 ounces of a raw single-ingredient poultry product (45 milligrams) with 4 ounces of a poultry product with added solution (370 milligrams), more than an eightfold increase. The petition argued that many consumers do not realize the significant differences in sodium content between these products. (76 FR 44857)

The Agency believes that it is reasonable to presume that if consumers are not aware that fresh products may include solutions (as indicated by the Russell Research Report, referenced above), and, therefore, are unaware that the solutions may contain added sodium, they may add salt during preparation.

8. Data to support FSIS estimate that “the proportion of products containing added solutions is about 39 percent of all raw meat and poultry products sold.”

In the proposed rule, FSIS estimated that the proportion of products containing added solutions is about 39 percent of all raw meat and poultry products sold. Based on FSIS’ label review process estimates, the following percentages reflect meat and poultry that contain added solutions:

- 30 percent of the 49.2 billion pounds of poultry consumed by households (14.8 billion pounds)
- 15 percent of the 27.3 billion pounds of beef consumed by households (4.1 billion pounds)
- 90 percent of the 21 billion pounds of pork consumed by household (18.9 billion pounds)

As a result, approximately 37.8 billion pounds, or about 39 percent of the 97.5 billion pounds of meat and poultry products consumed by households in the United States contain added solutions (76 FR 44862). The data and explanation of how the 39 percent was estimated is included in the proposal (above).

The label estimates were provided by LPDD and, as noted above, are based on reviewing approximately 60,000 labels per year. In addition, TLC’s petition stated that it estimated that “approximately 30% of the product marketed to consumers in supermarkets and other retail outlets today as fresh chicken is, in fact, such “enhanced” product.” The Agency is requesting comments on these estimates.