



THE VOICE OF FOOD RETAIL

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October 8, 2013

Docket Clerk,
Patriots Plaza 3
1400 Independence Avenue SW.
Mailstop 3782, Room 8–163B
Washington, DC 20250–3700.

RE: Descriptive Designation for Needle- or Blade-Tenderized (Mechanically Tenderized) Beef Products¹

Docket No. FSIS-2007-0017

On June 10, 2013, the U.S. Department of Agriculture’s Food Safety and Inspection Service (“FSIS” or “the Agency”) published in the *Federal Register* a proposed rule entitled “Descriptive Designation for Needle- or Blade-Tenderized (Mechanically Tenderized) Beef Products” (the “Proposed Rule”).² In conjunction with this proposed rule, FSIS also posted a compliance guideline to assist establishments in developing validated cooking instructions which would be required by the produced rule. On August 9, 2013, the comment period was extended to October 8, 2013.³ The Food Marketing Institute (“FMI”) appreciates the opportunity to comment on the proposed rule and related compliance guideline.

FMI is the national trade association that conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies – food retailers and wholesalers – in the United States and around the world. FMI’s members in the United States operate approximately 26,000 retail food stores and 14,000 pharmacies. Their combined annual sales volume of \$680 billion represents three-quarters of all retail food store sales in the United States. FMI’s retail membership is composed of large multi-store chains, regional firms, and independent supermarkets. Our international membership includes 200 companies from more than 50 countries. FMI’s associate members include the supplier partners of its retail and wholesale members.

Introduction

The proposed rule would require that labels for all raw or partially cooked retail and foodservice tenderized/injected beef products include (1) the descriptive designation

¹ 78 Federal Register 37589 (June 10, 2013).

² *Id.*

³ 78 Federal Register 48631 (August 9, 2013)

“mechanically tenderized” and an accurate description of the beef component as part of the product name in the same style, color and font size as the product name on a single-color contrasting background, and (2) validated cooking instructions. Moreover, all of this information must be included on the labels of any product that is repackaged at another official establishment or by a retailer.

While FMI fully supports this information being communicated to consumers, we are concerned with certain aspects of the proposed rule and their affect at the retail level.

The proposed rule and compliance guideline are a concern to retailers as follows:

1. FMI does not believe that the term “mechanically tenderized” should be considered “non-technical” and question its understanding by consumers, and retail and restaurant employees.
2. FMI does not believe that fully cooked products that had been mechanically tenderized need to bear the descriptive designation on their labels.
3. FMI does not believe that the descriptive designation needs to be in the same style and font size as the product description.
4. FMI is concerned that there is not enough guidance available to assist those retailers who mechanically tenderize products at the retail level and which do not have resources to validate cooking instructions for their products.

Impact on FMI Members

Understanding of “Mechanically Tenderized”

FMI does not believe that the term “mechanically tenderized” can be considered to be “non-technical” and thus “likely to be understood by consumers, restaurants, [and] retail stores...” as stated in the proposed rule.⁴ While official establishments are highly likely to understand this term and use it to identify these processes, we do not believe that understanding carries through to the general public – which includes those employees working in restaurants and retail.

Because FMI questions how well this term is understood by consumers, we believe that consumer testing should be done on this term to determine whether it is, as FSIS comments in the proposed rule, “non-technical and likely...understood....”⁵

Fully Cooked Products Have No Need to Bear the Descriptive Designation

FMI does not believe that mechanically tenderized products which have been fully cooked by official establishments need to bear the descriptive designation of

⁴ 78 Fed. Reg. 34593.

⁵ *Id.*

“mechanically tenderized.” These products, as stated in the preamble, are recognized by consumers to be fully cooked and are purchased as such. Current labeling requirements easily allow consumers to clearly distinguish between raw or partially-cooked products and these that are ready-to-eat.

Moreover, as discussed in the preamble, “consumers are aware of...the safe handling instructions labels...”⁶ and FMI believes that to add the descriptive designation to raw and partially-cooked products and also require it on products that are fully-cooked will only serve to confuse consumers and others. FMI does not support adding the descriptive designation of “mechanically tenderized” to fully cooked products.

Descriptive Designation Style and Font Size

FMI fully supports the requirement that establishments manufacturing raw and partially-cooked mechanically tenderized products be responsible for ensuring product labels meet the proposed requirements. However, FMI is concerned with the label requirements proposed regarding the font size and style being the same as the product name and description. The majority of product labels applied to these types of products by our members are not very large and this requirement will mean that all labeling information is reduced in size to the point where this information may be difficult to read.

FMI suggests that FSIS consider the actual labeling space available and provide options for those labels that are under a certain size. For example, if a label has less than or equal to six (6) square inches of available printing space, the descriptive designation and product description could be at least ½ the font size of the product name. The font style and single contrasting color background requirements could still be maintained. This will allow the information on the label to still be legible and not so reduced in size as to be ignored by consumers.

Additional Guidance on Validated Cooking Instructions for Retailers

FMI is supportive of the opportunity to comment on the Compliance Guideline provided by FSIS entitled “Validating Cooking Instructions for Mechanically Tenderized Beef Products (Guideline),”⁷ While the Guideline provides cooking instructions which establishments may use and which, if used, would mean that the original journal articles as well as further supporting documentation would not be needed to meet the first element of validation; these instructions in the Guideline are not “user-friendly” for those at the retail level. We are very concerned that retailers who mechanically tenderize products will not understand the Guideline as it is written with establishment as the target audience.

⁶ 78 Fed. Reg. 34592.

⁷ Available for review at: http://www.fsis.usda.gov/wps/wcm/connect/606919b6-5192-40bd-a32b-99a41c75eeb6/Comp_Guide_MTB.pdf?MOD=AJPERES

While the information contained in the Guideline summarizes the technical support currently available supporting various products and cooking instructions, FMI believes that the information in the Guideline and its attachments should be re-formatted to be "retail-friendly." We would be happy to work with FSIS to develop a guideline which could be used by those retailers mechanically tenderizing product in determining what a validated cooking instruction is, whether there is something currently developed, or if the retailer would need to develop its own validation study.

Conclusion

We believe that further research needs to be done on consumer understanding of "mechanically tenderized," that mechanically tenderized but fully cooked products need not bear the descriptive designation; that the font size of the descriptive designation need not be the same as the product name; and that additional cooking validation guidance be developed specifically for retailers.

We appreciate your consideration of these comments. Please contact me at 202-220-0614 or elieberman@fmi.org if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik R. Lieberman". The signature is fluid and cursive, with the first name "Erik" being the most prominent.

Erik R. Lieberman
Regulatory Counsel