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May 30, 2006

FSIS Docket Clerk
Docket No. (04-041P)
U.S. Department of Agriculture
Food Safety Inspection Service
300 12th Street, SW
Room 102 Cotton Annex
Washington, DC 20250

Re: Docket No. 04-041P
Federal Register Tuesday, March 28, 2006
Vol. 71, No. 59
Pages 15340- 15343

Gentlemen:

On behalf of the National Meat Association (NMA) members, we respectfully submit the following comments in response to the Food Safety Inspection Service request regarding the *Federal Register* Proposed Rule entitled, "Determining Net Weight Compliance for Meat and Poultry Products."

Organized in 1946, NMA represents the interests of meat packers and processors throughout the United States. With approximately 300 general member companies, all of which are affected by net weight compliance, NMA has a substantial interest in the *Federal Register* Proposed Rule "Determining Net Weight Compliance for Meat and Poultry Products."

In theory, NMA is in agreement with FSIS's concept to combine and consolidate regulations to enable regulatory standards and requirements to be consistently applied in a uniform manner. Therefore, consolidating the separate net weight regulations of CFRs

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317.18 through 317.22 and the provisions in 381.121a through 381.121e to new part 442 is logical and efficient.

While NMA agrees with the concept of consolidation of these regulations, we feel that the proposed rule continues to incorporate inconsistencies in the net weight regulation by making reference to NIST Handbook 133. For example, NIST Handbook 133 identifies poultry, hot dogs and franks as products subject to Wet tare procedures. NIST Handbook 133 specifically makes reference to the fact that in these products “Free flowing liquids are considered part of the tare weight”. Therefore any product purge consisting of free flowing liquid would no longer be considered part of the product but rather part of the tare weight.

In contrast FSIS Directive 7240.1 entitled “Compliance Testing for Net Weight Labeling of Meat and Poultry Products,” indicates that formerly poultry product tare weight consisted of wet or dry packaging materials and giblet wrapping materials. And that currently tare weight for poultry products included the weight of the dry packaging materials. Furthermore, Directive 7240.1 does not stipulate any specific classification in tare weights for hot dogs and franks that would correlate to Handbook 133. If the standards and definitions for NIST Handbook 133 “are the basis of the FSIS Field Manual for In-Plant Meat and Poultry Net Weight Compliance Testing,” the NIST Handbook could inaccurately represent the procedures that FSIS inspectors will enforce.

These factors will lead to confusion among FSIS field employees as they conduct their net weight compliance testing. NMA therefore urges FSIS to take this opportunity to rectify this issue by removing conflicting references in the proposed rule.

By referencing the NIST Handbook 133, FSIS is going against its own procedures under Directive 7240.1. Clarification is needed by FSIS for its inspectors, so the regulations reflect the most current accurate information available.

Furthermore, in the preamble of the Proposed Rule, there are references to Handbook 133 being used for “compliance testing.” While we understand that the FSIS regulations incorporate by reference the inspection procedures used in Handbook 133 for purposes of net weight compliance, recent court decisions have made it clear that the procedures set forth in Handbook 133 cannot alone determine noncompliance with net weight requirements. Instead, jurisdictions must consider all relevant facts, including inspection

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results from multiple locations and as well as reliable data presented by the packer. To that extent, we believe the wording of the preamble needs to be revised to indicate that Handbook 133 may be utilized during inspections, but that it should not be used alone in determining whether there is net weight compliance.

In conclusion, though NMA agrees with FSIS's efforts to consolidate the separate regulations into one new CFR for determining of net weight compliance, we disagree with the inconsistencies posed by referencing NIST Handbook 133. These inconsistencies between NIST Handbook 133 and Directive 7240.1 should be amended in order to define specific parts of the NIST Handbook 133 that will support the proposed rule and not conflict with FSIS compliance procedures.

We are thankful for this opportunity to submit comments on the proposed rule. As always, NMA looks forward to working with FSIS to aid the industry.

Sincerely,

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National Meat Association