STATE OF CALIFORNIA
ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FOOD AND AGRICULTURE
A.G. KAWAMURA, Secretary

Division of Measurement Standards
8500 Fruitridge Road
Sacramento, CA 95826

DMS NOTICE
QC – 04 – 3

August 2, 2004

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

Subject: Enhanced Meat Products – Determination of Net Quantity

The Division of Measurement Standards and the California Agricultural Commissioners and Sealers Association have corresponded with the United States Department of Agriculture (USDA)/Food Safety and Inspection Service (FSIS) requesting clarification of its policy regarding the net weight determination of federally inspected, case ready meat and poultry products labeled as “enhanced and/or marinated with solution”.

As you may be aware there exists a clear requirement that testing performed in USDA plants and products from such plants follow USDA regulations. We as state and county government regulatory officials are preempted from using test methods that determine net weight of these products that are different than USDA.

In April of this year, Dr. Barbara J. Masters, the Acting Administrator for USDA/FSIS, responded with a letter that made it perfectly clear that “because the solutions added are identified as part of the product names of enhanced products, whether the solution is incorporated into the product or is free flowing, it is considered part of the product.” “As such, it is expected that the labeled net weight applied at a federal establishment represents essentially the weight of the product minus the packaging.” The full text of Dr. Masters’ letter is attached.

If you have any questions, please contact Ken Lake, Program Supervisor for the Measurement Compliance Program at (916) 229-3047.

Sincerely,

Mike Cleary
Director
(916) 229-3000

Attachment

cc: Dr. Robert Post, Director, USDA/FSIS Labeling and Consumer Protection Staff
Henry Oppermann, Chief, National Institute of Standards Technology

United States Department of Agriculture

Food Safety and Inspection Service

APR - 5 2004

Mr. Mark Dopp
Senior Vice President and General Counsel
American Meat Institute
1700 North Moore Street, Suite 1600
Arlington, Virginia 22209-1995

Dear Mr. Dopp:

Thank you for your April 1, 2004, letter, co-signed by Mr. Ken Mastracchio, requesting clarification of the Food Safety and Inspection Service (FSIS) policy regarding the net weight determination of federally-inspected, case-ready meat and poultry products labeled as enhanced and/or marinated with solutions. We appreciate this opportunity to clarify FSIS' position on net weight and to resolve any confusion associated with net weight compliance standards being set by the California Department of Food and Agriculture (CDFA) for these products.

FSIS of the Department of Agriculture is the public health agency responsible for ensuring that meat, poultry, and processed egg products are safe, wholesome, and accurately labeled. FSIS enforces the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act, which require Federal inspection and regulation of meat, poultry, and processed egg products prepared for distribution in commerce for use as human food.

On March 23, 2004, Dr. Robert Post, Director of the FSIS Labeling and Consumer Protection Staff (LCPS), and his staff met with representatives of the National Institute of Standards and Technology (NIST), the American Meat Institute (AMI), and the Food Marketing Institute (FMI), to discuss this issue. At the meeting, and in his conversation with you, Dr. Post explained that there seems to be a few issues that have erroneously been linked by the CDFA policy.

First, as you know, net weight is applied to the labeling of most products at Federal establishments prior to the distribution of products in commerce. States have a function to check net weight of consumer packages at retail. Mr. Roger Macey, an official with CDFA, wrote to Dr. Post in August 2003 to seek advice on whether it is appropriate to apply the moisture loss allowance for poultry, as provided in the NIST Handbook 133 - 4th Edition, to similarly processed fresh poultry and meat products, particularly those products injected with a solution. The NIST guidelines state that a standard exists for a 3 percent moisture loss allowance for packages of fresh poultry, franks, hotdogs, bacon, fresh sausage, and luncheon meats.

Based on advice from NIST, FSIS sent a response to CDFA stating that it would be appropriate to apply the standard for the moisture loss allowance for packages of fresh poultry (i.e., 3 percent) to fresh meat products injected with a solution. The FSIS advice was not intended to infer or establish a policy on the method of net weight compliance verification; it was only intended to provide an opinion that the 3 percent allowance could apply to meat products in addition to poultry products. Moreover, the Agency's net weight labeling compliance regulations (9 CFR 317.19, and 381.121(a) and (b)) incorporate by reference NIST Handbook 133 as providing the appropriate procedures to be followed for determining net weight labeling compliance. Therefore, in regard to the appropriate method of determining net weight compliance, we would like to note that FSIS policies have not changed. FSIS continues to depend on the NIST guidance to determine net weight labeling compliance.

In addition, because the August 2003 letter from CDFA did not address questions about how "enhanced" products are labeled or what constitutes product versus packaging, it is also possible that the appropriate method of determining net weight compliance is linked to confusion about what enhanced products are, how they are labeled, and whether or not the added solutions are intended to be part of the labeled net weight.

As you know, products containing flavoring, seasoning, and tenderizing solutions that have been incorporated by injecting, massaging, and/or tumbling, have been marketed for many years. The Agency's policies on raw bone-in poultry, boneless poultry, and uncooked red meat products containing added solutions, as well as meat products with added solutions used in secondary products, have been in existence for over two decades. The policies are based on labeling regulations governing product identity (9 CFR 317.2(e) and 381.117) and require that the labels of products into which solutions are injected, or into which meat and poultry are placed, bear a prominent and conspicuous statement as part of the product name. The specific ingredients in the solution may be part of the product name or may be listed in the ingredients statement on the label. Examples of such products are "boneless turkey breast containing up to 15% of a solution," "beef strip loin steak enhanced with up to 10% of a solution," and "pork chop flavored with 20% teriyaki sauce." Furthermore, as stated in FSIS Policy Memo 102, labels on raw, enhanced meat and poultry products packaged with free-flowing solutions or sauces may contain such phrases as, "beef in barbecue sauce" and "turkey thighs in lemon pepper marinade solution."

Therefore, in the case of enhanced products, the solutions that are added to the meat or poultry or into which the meat or poultry are placed for flavoring, seasoning, and tenderizing, are intended to be part of the product. Thus, we are in agreement with your assessment that because the solutions are identified as part of the product names of enhanced products, whether the solution is incorporated into the product or is free-flowing, it is considered part of the product. As such, it is expected that the labeled net weight applied at the Federal establishment represents essentially the weight of the product minus the packaging. This view is further supported by the fact that if the added

solution is not intended to be consumed or is intended to be strictly a packing medium, according to Agency regulations (9 CFR 317.8(b)(17)), the product labeling needs to bear a statement to that effect.

We hope that you find this information helpful. If you need additional information about this issue or any other food labeling policy issues, we encourage you to contact Dr. Robert Post, Director, LCPS, at (202) 205-0279.

We are sending a similar response to Mr. Mastracchio. Thank you for writing.

Sincerely,

for Dr. Barbara J. Masters
Acting Administrator