

will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### Paperwork Requirements

This policy is not subject to the Paperwork Reduction Act because it deals solely with internal rules governing Department of Agriculture personnel.

#### List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Indemnity payments, Government employees, Claims.

■ For the reasons stated in the preamble, title 7 part 1 of the Code of Federal Regulations is amended by adding subpart N to read as follows:

#### SUBPART N—POLICY WITH REGARD TO INDEMNIFICATION OF DEPARTMENT OF AGRICULTURE EMPLOYEES

**Authority:** 5 U.S.C. 301.

##### § 1.501 Policy on employee indemnification.

(a) Indemnification, under the context of this section, shall be the policy whereby the Department of Agriculture compensates an employee for the legal consequences of conduct, taken within the scope of his or her employment, giving rise to a verdict, judgment, or other monetary award rendered against the employee.

(b) The Department of Agriculture may indemnify a Department employee (which for the purposes of this regulation shall include a former employee) for any verdict, judgment, or other monetary award rendered against such employee, provided the Secretary or the Secretary's designee determines, in his or her discretion, that the conduct giving rise to such verdict, judgment, or award was taken within the scope of his or her employment with the Department, and such indemnification is in the interest of the United States.

(c) The Department of Agriculture may pay for the settlement or compromise of a personal damage claim against a Department employee by the payment of available funds, at any time, provided that the Secretary or the Secretary's designee determines, in his or her discretion, that the alleged conduct giving rise to the personal damage claim was taken within the scope of the employee's employment, and such settlement or compromise is in the interest of the United States.

(d) Absent exceptional circumstances, as determined by the Secretary or his or her designee, the Department will not

entertain a request to agree to indemnify or pay for a settlement of a personal damage claim before entry of an adverse judgment, verdict, or other monetary award.

(e) When a Department employee becomes aware that an action has been filed against the employee in his or her individual capacity as a result of conduct taken within the scope of his or her employment, the employee should immediately notify his or her supervisor that such an action is pending. The supervisor shall promptly thereafter notify the Office of the General Counsel.

(f) A Department employee may request indemnification to satisfy a verdict, judgment, or monetary award entered against the employee or to satisfy the requirements of a settlement proposal. The employee shall submit a written request, with appropriate documentation that includes a copy of the verdict, judgment, award or settlement proposal, as appropriate, to the head of his or her employing component, who shall thereupon submit it to the General Counsel, in a timely manner, a recommended disposition of the request. The Office of the General Counsel shall seek the views of the Department of Justice. The Office of the General Counsel shall forward the employee's request, the employing component's recommendation, and the General Counsel's recommendation, along with the time frame in which a decision is needed, to the Secretary or his or her designee for decision. The Secretary or his or her designee will decide promptly whether to indemnify or pay for a settlement of a personal damage claim.

(g) Any payment under this section to indemnify a Department employee for a personal damage verdict, judgment, or award or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the employing component of the United States Department of Agriculture.

**Ann M. Veneman,**

*Secretary.*

[FR Doc. 04-11051 Filed 5-17-04; 8:45 am]

**BILLING CODE 3410-DM-M**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

#### 9 CFR Parts 317 and 381

[Docket No.01-018E]

#### Definitions and Standards of Identity or Composition: Elimination of the Pizza With Meat or Sausage Standards

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule: extension of compliance date.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is providing additional time for manufacturers of packaged pizza products to comply with new regulations that require that the labeling of products identified as "pizzas" that contain a meat or poultry component as part of the product name, declare the percent of meat or poultry in the product in a parenthetical statement contiguous to the ingredients statement. The effective date for this final rule was October 22, 2003. The extension of the compliance date for the labeling requirement applies only to those manufacturers of packaged pizzas that have not changed the formulation of their products since the final rule became effective and that continue to use their current label designs without change. FSIS is taking this action to minimize the costs to small manufacturers of packaged pizza products to redesign and print new product labels.

**DATES:** The compliance date for 9 CFR 317.8(b)(40) and 9 CFR 381.129(f) is extended from October 22, 2003, to July 31, 2004, for manufacturers of packaged pizzas that can and do continue to use their current product labels without change.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700; (202) 205-0279.

**SUPPLEMENTARY INFORMATION:** On July 31, 2003, FSIS published a final rule in the **Federal Register** to rescind the regulatory standards of identity for "pizza with meat" and "pizza with sausage" by removing 9 CFR 319.600 from the Federal meat inspection regulations (68 FR 44859). The effective date for the final rule was October 22, 2003. As a result of the final rule, products identified as "pizzas" that contain a meat or poultry component as part of the product name are no longer

required to contain a minimum amount of meat or poultry, provided that they contain a sufficient amount of these components to make the product subject to USDA jurisdiction.

To allow consumers to become familiar with variations in the meat or poultry content permitted in meat or poultry pizzas as non-standardized foods, the final rule requires that, for three years, the labeling of meat or poultry pizzas declare the percent of meat or poultry in the product in a parenthetical statement contiguous to the ingredients statement (9 CFR 317.8(b)(40) and 9 CFR 381.129(f)). This labeling requirement is a transitional step to allow consumers to understand the nature of the food. To minimize costs associated with the new labeling requirement, FSIS allowed pizza manufacturers to exhaust their remaining packaging inventories so that they would not have to discard any unused labels.

However, according to the National Frozen Pizza Institute (NFPI), the ability to exhaust remaining packaging inventories may not provide enough flexibility for small pizza manufacturers. According to information that NFPI recently shared with the Agency, in an effort to minimize operating costs and maintain a sound cash flow, small pizza manufacturers generally do not keep large label inventories. To free resources, these companies keep a small inventory and order labels frequently. Hence, NFPI has explained that, for most small pizza makers, there is no "stockpile" of labels. Consequently, the requirement to change labels at the next printing will impact these companies within the next few months.

Moreover, although FSIS requested comments on whether the Agency should require that the product name of non-standardized pizza products disclose the percent of meat or poultry in the product in the preamble to the proposed rule, the proposed text of the regulation did not include new labeling requirements. Therefore, because the labeling requirement in the final rule was not included in the proposed text of the regulation, most small manufacturers of pizza products did not budget for costs associated with "label changes" resulting from the final rule. The NFPI stated that, accordingly, label costs for the small pizza makers will be taken from company profits concentrated over a short time period. This is especially true for private label processors who generally cannot include the cost in existing contracts; have low profit margins; have the smallest amount of labels on hand; and

have the largest number of individual labels affected.

The recent data submitted to FSIS by NFPI explains that, because most small companies that produce packaged pizza products do not change label designs on a regular basis nor do they maintain large stocks of product labels, the costs for changing branded and private label UPC codes will be incurred more quickly than anticipated. Thus, to comply with the final rule, many small manufacturers of packaged pizzas that otherwise would not have modified their current label designs because they have not changed the formulation of their products, are required to redesign and print new product labels. NFPI suggested that an effective method to minimize the financial impact of the final regulation is to permit these companies to spread costs over a longer period of time. With a longer period to accomplish the label changes, the companies may spread costs over a longer period of time, thus enabling them to stretch the costs from profits over a longer period or to modify their pricing to incorporate the costs of the label changes. In response, in order to minimize the label redesign and printing costs to these small businesses, FSIS has decided to provide additional time to comply with the new labeling requirement.

FSIS is extending until July 31, 2004, the date that manufacturers of packaged pizza products must comply with the meat or poultry labeling requirement in 9 CFR 317.8(b)(40) and 9 CFR 381.129(f) for those manufacturers that have not changed the formulation of their products since the final rule became effective and that continue to use their current product label designs without change. To ensure that consumers are not adversely affected by the extension of the compliance date, companies that take advantage of the extension must continue to use labels that include a declaration of the percent of meat or poultry in the product for three years from the date that such new labels are first applied to their products. All manufacturers must begin to comply with the meat or poultry content declaration requirement by the new compliance date.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that the public, and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it online through the FSIS Web page located at <http://www.fsis.usda.gov>. The

Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at <http://www.regulations.gov>.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

Done at Washington, DC, on May 13, 2004.

**Barbara Masters,**

*Acting Administrator.*

[FR Doc. 04-11215 Filed 5-17-04; 8:45 am]

BILLING CODE 3410-DM-P

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 70

#### Office of Nuclear Material Safety and Safeguards; Notice of Issuance of Final Backfit Guidance

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final issuance; effective date announcement.

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**SUMMARY:** The U. S. Nuclear Regulatory Commission's (NRC) Office of Nuclear Material Safety and Safeguards (NMSS) has issued the final document, NMSS 10 CFR Part 70 Backfit Guidance.

The final document provides guidance for implementing the backfit provisions in 10 CFR 70.76. As a result of this final issuance and as discussed in 10 CFR 70.76, backfit provisions are now effective for all part 70