



SENT VIA EMAIL

May 15, 2018

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FSIS Docket Clerk
Department of Agriculture
Food Safety and Inspection Service
Room 2534 South Building
1400 Independence Ave., SW
Washington D.C. 20250-3700

Re: *Petition to Amend 9 C.F.R. Part 355.*

Dear FSIS Docket Clerk:

I am a food industry lawyer who works closely with USDA and FDA regulated food companies throughout the United States. In addition to working with food companies that process and sell human food, I also work with companies that produce pet foods. Currently, pet food companies that produce the types of pet food identified in 9 C.F.R. § 355.29 can apply for federal inspection. Once inspection is granted, those pet food companies are permitted to label and sell their pet food as “USDA Certified Pet Food.” The USDA seal of inspection gives the American consumer assurance that the pet food he or she is purchasing has been processed with meat and protein derived only from USDA inspected and passed animals, and under USDA inspection.

Requested Action

Currently, 9 C.F.R. § 355.29 unnecessarily limits the types of pet foods eligible for USDA Certification to canned, semi-most, fresh frozen, and variety pet foods. Because there are more types of pet food products available for sale today than there were when Part 355 was first enacted, I am petitioning FSIS to amend 9 C.F.R § 355.29 to broaden the types of pet food products that are eligible for certification. For the

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reasons set forth in more detail below, I am also requesting that Part 355 be amended to add USDA inspected and passed rabbit to the list of permissible ingredients for USDA Certified pet food products, and also to modernize label approval under Part 355.

Submitter

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Basis for Request

When it was first enacted, the purpose of 9 C.F.R. Part 355 was to give American consumers a high level of confidence in the underlying quality of the pet food products they were purchasing and feeding to their pets. When the regulation was first authored in the 1950s, however, the authors did not contemplate the different types and broad selection of pet foods and treats that would be available for purchase by American consumers today. As a result, 9 C.F.R. § 355.29 unnecessarily limits the specific types of pet food products that could become eligible for USDA Certification.

The same principle that justifies the eligibility of canned, semi-moist, fresh-frozen and variety pet foods for certification extends with equal force to other pet food products. USDA Certification of pet food products tells the American consumer that the pet food products they are purchasing and feeding to their pets have been processed with wholesome ingredients, including meat and protein derived only from USDA inspected and passed animals. If any pet food product meets these standards, it should be eligible for USDA Certification.

For this reason, I am requesting that 9 C.F.R Part 355 be amended to broaden the types of pet food products that are eligible for USDA Certification to include freeze dried and frozen pet foods, and also pet treats. The proposed amendments to broaden Part 355 affect only 9 C.F.R. § 355.29 and 9 C.F.R. § 355.32, and substantially mirror the standards already established for canned and semi-moist pet food in 9 C.F.R. § 355.29(a). The proposed amendments are set forth in red-line format below:

§ 355.29 Composition of certified products for dogs, cats, and other carnivora

(a) Composition of canned or semi-moist certified maintenance food.

- (1) Only ingredients which are normal to canned or semi-moist food for dogs, cats, and other carnivora, which are favorable to adequate nutrition, and which are classed by the Administrator as conforming with requirements contained in this part shall be used in the preparation of certified maintenance food.
- (2) Not less than 30 percent of meat or animal food meat byproduct or both, or of horse meat or animal food horse meat byproduct or both, or of mule meat or animal food mule meat byproduct or both, or of poultry products, shall be used in the preparation of canned or semimoist certified maintenance food. Upon specific approval of the Administrator, combinations of the above specified ingredients may be used. The uncooked weight of the meat or animal food meat byproduct or both, or of the horse meat or animal food horse meat byproduct or both, or of the mule meat or animal food mule meat byproduct or both, or of the poultry products, or of the combinations thereof, shall be used in the calculation, and the percentage shall be obtained by relating this weight to the total weight of the certified maintenance food.
- (3) Certified maintenance food shall contain not less than 10 percent of protein.
- (4) Certified maintenance food shall contain a level of minerals and vitamins generally recognized to be essential to the nutritional value of the food.
- (5) Vegetables and grains and their derivatives, used as ingredients of certified maintenance food, shall be of good quality, shall be free from

discoloration, mold, smut, and insect infestation, and shall be otherwise fit for use as animal food.

- (6) Inedible material such as tankage, dried blood, bone meal, and the like shall not be used as ingredients of certified maintenance food.
- (7) Semi-moist certified maintenance food shall have a soft granular consistency, shall be shelf stable, and shall be processed so that the moisture content thereof does not exceed 27 percent of the net weight of such food.

(b) Composition of canned or fresh frozen certified supplemental animal foods.

- (1) Certified animal protein supplement shall comply with the following requirements:
 - (i) Certified animal protein supplement shall contain not less than 95 percent of meat or animal food meat byproduct or both, or of horse meat or animal food horse meat byproduct or both, or of mule meat or animal food mule meat byproduct or both, or of poultry products. Upon specific approval of the Administrator, combinations of the above specified ingredients may be used;
 - (ii) Certified animal protein supplement shall have added thereto a sufficient amount of fresh ground bone or other acceptable agent to satisfy the requirements of the regulations promulgated under the Meat Inspection Act (34 Stat. 1260), as amended (21 U.S.C. 71 et seq.), and the Horse Meat Act (41 Stat. 241; 21 U.S.C. 96), in order to insure decharacterization of the product for human food purposes;
 - (iii) Certified animal protein supplement may contain not more than 3 percent wheat flour or other processing aid acceptable to the Administrator, which shall be of good quality, shall be free from insect infestation, and shall be otherwise fit for use as animal food;
 - (iv) Certified animal protein supplement shall contain not less than 15 percent protein; and
 - (v) Certified animal protein supplement shall contain not less than 3 percent fat.
- (2) Certified pet food supplement shall comply with the following requirements:

- (i) Certified pet food supplement shall contain not less than 50 percent of meat or animal food meat byproduct or both, or of horse meat or animal food horse meat byproduct or both, or of mule meat or animal food mule meat byproduct or both, or of poultry products. Upon specific approval of the Administrator, combinations of the above specified ingredients may be used;
 - (ii) Certified pet food supplement shall have added thereto a sufficient amount of fresh ground bone or other acceptable agent to satisfy the requirements of the regulations promulgated under the Meat Inspection Act (34 Stat. 1260), as amended (21 U.S.C. 71 et seq.), and the Horse Meat Act (41 Stat. 241; 21 U.S.C. 96), in order to insure decharacterization of the product for human food purposes;
 - (iii) Certified pet food supplement may contain various cereals, flours, vegetables, flavorings, seasonings and other processing aids acceptable to the Administrator which shall be of good quality, shall be free from discoloration, mold, smut, and insect infestation, and shall be otherwise fit for use as animal food;
 - (iv) Certified pet food supplement shall contain not less than 11 percent protein;
 - (v) Certified pet food supplement shall contain not less than 3 percent fat; and
 - (vi) Certified pet food supplement may not contain more than 74 percent moisture.
- (c) Composition of canned certified variety pet food.
- (1) Certified variety pet food shall contain not less than 25 percent of meat or animal food meat byproduct or both, or of horse meat or animal food horse meat byproduct or both, or of mule meat or animal food mule meat byproduct or both, or of poultry products. Upon specific approval of the Administrator, combinations of the above specified ingredients may be used.
 - (2) Certified variety pet food shall contain a variety of vegetables and may contain other ingredients which are favorable to adequate nutrition.

- (3) Vegetables and grains and their derivatives used as ingredients of certified variety pet food shall be of good quality, shall be free from discoloration, mold, smut, and insect infestation, and shall be otherwise fit for use as animal food.
- (4) Certified variety pet food shall contain not less than 8 percent protein.
- (5) Certified variety pet food shall contain not less than 2 percent fat.
- (6) Certified variety pet food may contain not more than 75 percent moisture.

(d) Composition of certified freeze-dried pet food and pet treats.

- (1) Only ingredients which are favorable to adequate nutrition shall be used in the preparation of certified freeze-dried pet food.
- (2) Not less than 75 percent of meat or animal food meat byproduct or both, or of horse meat or animal food horse meat byproduct or both, or of mule meat or animal food mule meat byproduct or both, or of poultry products, shall be used in the preparation of freeze-dried pet food. Upon specific approval of the Administrator, combinations of the above specified ingredients may be used. The uncooked weight of the meat or animal food meat byproduct or both, or of the horse meat or animal food horse meat byproduct or both, or of the mule meat or animal food mule meat byproduct or both, or of the poultry products, or of the combinations thereof, shall be used in the calculation, and the percentage shall be obtained by relating this weight to the total weight of the certified freeze-dried pet food.
- (3) Certified freeze-dried pet food shall contain not less than 10 percent of protein, and not less than 3 percent of fat.
- (4) Certified freeze-dried pet food shall contain a level of minerals and vitamins generally recognized to be essential to the nutritional value of the food.
- (5) Vegetables and grains and their derivatives, used as ingredients of certified freeze-dried food or certified freeze-dried pet treats, shall be of good quality, shall be free from discoloration, mold, smut, and insect infestation, and shall be otherwise fit for use as freeze-dried animal food.

- (6) Inedible material such as tankage, dried blood, bone meal, and the like shall not be used as ingredients of certified freeze-dried pet food or certified freeze-dried pet treats.
 - (7) Certified freeze-dried pet food and certified freeze-dried pet treats shall be shelf stable, and shall be processed so that the moisture content thereof does not exceed 10 percent of the net weight of such food.
- (e) Composition of certified frozen pet food and pet treats.
- (1) Only ingredients which are favorable to adequate nutrition shall be used in the preparation of certified frozen pet food.
 - (2) Not less than 75 percent of meat or animal food meat byproduct or both, or of horse meat or animal food horse meat byproduct or both, or of mule meat or animal food mule meat byproduct or both, or of poultry products, shall be used in the preparation of frozen pet food. Upon specific approval of the Administrator, combinations of the above specified ingredients may be used. The uncooked weight of the meat or animal food meat byproduct or both, or of the horse meat or animal food horse meat byproduct or both, or of the mule meat or animal food mule meat byproduct or both, or of the poultry products, or of the combinations thereof, shall be used in the calculation, and the percentage shall be obtained by relating this weight to the total weight of the certified frozen pet food.
 - (3) Certified frozen pet food shall contain not less than 10 percent of protein, and not less than 3 percent of fat.
 - (4) Certified frozen pet food shall contain a level of minerals and vitamins generally recognized to be essential to the nutritional value of the food.
 - (5) Vegetables and grains and their derivatives, used as ingredients of certified frozen pet food or certified frozen pet treats, shall be of good quality, shall be free from discoloration, mold, smut, and insect infestation, and shall be otherwise fit for use as frozen animal food.
 - (6) Inedible material such as tankage, dried blood, bone meal, and the like shall not be used as ingredients of certified frozen pet food or certified frozen pet treats.

(7) Certified frozen pet food and certified frozen pet treats may not contain more than 80% moisture

~~(d)~~(f) Certified products for dogs, cats, and other carnivora may contain whale meat, fish, and animal food poultry byproducts or combinations thereof as optional ingredients in lieu of some but not all of the ingredients named in paragraphs (a)(2), (b)(1)(i), ~~and (c)(1),~~ (d)(2) and (e)(2) of this section, respectively, upon specific approval of the Administrator.

§ 355.32 Labeling required.

Each container of inspected and certified product shall have affixed thereto a label bearing the following information, prominently displayed:

- (a) The name of the product, class of product, ingredient statement, and the animal foods inspection legend in the manner provided by paragraphs (a) (1), (2), (3), (4), (5), and (6) of this section.
 - (1) The name of the canned, or semimoist certified food shall include words such as “dog food,” “cat food,” “dog and cat food,” or “fox food,” accompanied with such references to optional ingredients as may be required by the Administrator under this part. Product names shall not be misleading in regard to class of canned or semi-moist certified food for which label is intended.
 - (2) Class of product as outlined in paragraphs (a), (b), ~~and (c),~~ (d) and (e) of § 355.29 shall be declared on either the main display or 20 percent panel of the label.
 - (3) The word “ingredients,” followed by a complete list of ingredients of the food in the order of their predominance and by their common or usual names, shall appear on the label with the name of the food.
 - (4) The inspection legend for canned, semi-moist, freeze-dried or frozen certified animal food and treats shall appear on the label in the form shown herewith, except that the plant number need not appear with the legend when such number is embossed on the sealed metal container as provided in § 355.33.

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- (5) When a product is prepared in whole from any of the items defined in § 355.2 (i) through (n), its name shall identify the item and there shall appear contiguous to the name of the item the name of the decharacterizing agent used, if any, followed by the word “added” as, for example, “bone added.”
- (6) When wheat flour or other processing aid is added to the product, there shall appear on the label, with the name of the decharacterizing agent, in predominating order, the name of the processing aid, as, for example, “Wheat flour and bone added” or “Bone and wheat flour added.”
- (b) A statement of the quantity of contents of the container, representing in terms of avoirdupois weight the quantity of product in the container.
- (c) The name and place of business of the manufacturer, packer, or distributor. The name under which inspection is granted to a plant may appear without qualification on the label of a product prepared by that plant. When the certified product is not prepared by the person whose name appears on the label, the name shall be qualified by a phrase which reveals the connection such person has with the product as, for example, “Prepared for _____.”

When 9 C.F.R. Part 355 was first enacted, USDA was also not inspecting and passing rabbits for human food consumption. USDA has since developed an inspection program for rabbits, and thus 9 C.F.R. Part 355 should be modernized to reflect this development. For this reason, I propose that 9 C.F.R. § 355.2(i), 355.2(j) and 355.2(o) be amended as set forth in red-line format below:

§ 355.34 Labels, approval of, by Administrator.

- (i) Meat means the U.S. inspected and passed and so identified clean, wholesome muscle tissue of cattle, sheep, swine, ~~or~~ goats, or rabbit which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or

in the esophagus with or without the accompanying and overlying fat and the portions of skin, sinews, nerves, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears.

- (j) Animal food meat by-product means the part other than meat which has been derived from one or more cattle, sheep, swine, ~~or~~ goats or rabbit that have been U.S. Inspected and Passed and is fit for use as animal food.
- (o) Bone means the U.S. inspected and passed and so identified clean, wholesome bone which has been derived from cattle, sheep, swine, goats, ~~or~~ horses, or rabbit, or bone derived from mules slaughtered and passed under Program inspection in accordance with § 355.41.

Because FSIS labeling regulations have been modernized in recent years to allow for generic label approvals pursuant to 9 C.F.R. 412.2, I am also requesting that the label approval requirements contained within Part 355 also be modernized so that they align more closely with contemporary FSIS labeling requirements. The proposed limited amendment affects only 9 C.F.R. § 355.34, and is set forth in red-line format below:

§ 355.34 Labels, approval of, by Administrator.

- (a) Except as provided in paragraph (c) of this section, no label shall be used on any container of certified products until it has been approved by the Administrator. For the convenience of the inspected plant, sketches or proofs of proposed labels may be submitted in triplicate to the Administrator for approval, and the preparation of the finished labels deferred until such approval is obtained. All finished labels shall be submitted in quadruplicate to the Administrator for approval. In the case of lithographed labels, paper take-offs in lieu of sections of the metal containers shall be submitted for approval. Such paper take-offs shall not be in the form of a negative but shall be a complete reproduction of the label as it will appear on the package, including any color scheme involved.

- (b) Inserts, tags, liners, pasters, and like devices containing printed or graphic matter for use on, or to be placed within, containers and coverings of certified products shall be submitted for approval in the same manner as provided for labels in paragraph (a) of this section, except that inspectors in charge may permit the use of such devices if they contain no reference to the certified products and bear no misleading feature.
- (c) An establishment producing a certified food in accordance with this part is authorized to use generically approved labels, as defined in 9 C.F.R. 412.2. Stencils, labels, box dies, and brands may be used on shipping containers, including tierces, barrels, drums, boxes, crates, and large-size fiberboard containers, without approval by the Administrator, provided the markings are applicable to the certified products, are not false or deceptive, and are used with the approval of the circuit supervisor.
- (d) No certified product and no container thereof shall be labeled with any false or deceptive term, and no statement, word, picture, design, or device which conveys any false impression or gives any false indication of the origin, quality, or quantity of the product shall appear on any label.

Statement of Negative Consequences

Petitioner is not aware of any negative consequences to the requested amendments to 9 C.F.R. § 355.2, 9 C.F.R. § 355.29, 9 C.F.R. § 355.32 and 9 C.F.R. § 355.34.

Conclusion

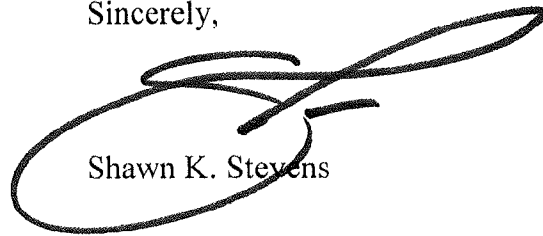
When 9 C.F.R. Part 355 was enacted, the authors were not intending to disqualify pet food products that had not yet been conceived. Modernizing Part 355 will further the authors' intent by allowing a greater range of pet food products that satisfy

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heightened standards of wholesomeness to become eligible for certification. The proposed amendments will also be welcomed by American consumers because they will have access to a wider range of USDA Certified pet foods to provide to their pets.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn K. Stevens". The signature is stylized with a large loop and a horizontal stroke that extends to the right. It is positioned above the printed name "Shawn K. Stevens".

Shawn K. Stevens