



Retail Exemption – Preparation of Meat Products

Question:

What is the FSIS policy regarding the preparation of meat products for sale to other than household consumers by retail stores?

Answer:

FSIS' policy regarding whether the preparation of meat products for sale to other than household consumers by a retail store is exempt from inspection is based on what operation is employed in preparing the product, and where that operation falls under 9 CFR 303.1 (d) (2) (iii) (f). If the retail store engages in the operations of cutting up, slicing, and trimming of carcasses, halves, quarters, or wholesale cuts into retail cuts such as steaks, chops, and roasts, and freezing such cuts; grinding and freezing products made from meat; breaking bulk shipments of products; or wrapping or rewrapping such products in the preparation of retail products for sale to other household consumers, it would be exempt from inspection. 9 CFR 303.1 (d) (2) (iii) (f). The retail store would also have to make no more than 25% of its sales to other than household consumers, and its sales to other than household consumers could not exceed the dollar limits on such sales that FSIS establishes. 9 CFR 303.1 (d) (2) (iii) (b).

If a retail store cures, cooks, renders, refines livestock fat, or engages in other operations to prepare products for other than household consumers, then those operations are subject to inspection, regardless of the percent of its sales that are to other than household consumers or of the dollar amount of those sales. 9 CFR 303.1 (d) (2) (iii) (f).

Additional Information regarding the Agency policy:

This policy flows in a straightforward and direct way from the Agency's regulations. There is significant confusion, however, when the question about the Agency's policy focuses not on the operation employed in preparing the product, but on what goes into the product. In a letter in 2004, Philip Derfler, Assistant Administrator, OPPED (now OPPD), stated to Art Marquez of the State of New Mexico that the preparation of a multi-component meat product by a retail store for other than household consumers would not be covered by the retail exemption and would be subject to inspection. This letter has been interpreted to mean that the preparation of any multi-ingredient product for non-household consumers by a retail store would subject the store to inspection, including, for example, a grinding process in which a seasoning is added to the meat that is ground.

OPPD has received numerous inquiries as to whether this interpretation of the limits of the coverage of the retail exemption is correct. In response to these inquiries, OPPD has reconsidered the interpretation of 9 CFR 303.1 (d) set out in Mr. Derfler's letter. After careful consideration of the letter, the regulation, related regulations, and the Federal Meat Inspection Act, OPPD has concluded that the interpretation in Mr. Derfler's letter to Mr. Marquez is not supportable.

Tying the preparation of a multiple component meat product, regardless of what components go into that product, to the exemption from inspection is not consistent with the principle for determining the coverage

of the exemption that is embodied in 9 CFR 303.1 (d). On the face of that regulation, the factor that determines whether the exemption applies is the nature of the operation used in preparing the product, not food composition. See 9 CFR 303.1 (d) (2) (i). Grinding is listed in 9 CFR 303.1 (d) (2) (i) (b) and, under 9 CFR 303.1 (d) (2) (iii) (f), is one of the operations that would remain subject to the retail exemption even if used in the production of product for non-household consumers. Mr. Derfler's letter would create an exception to the regulation if the grinding is of a multi-component product, but there is nothing in 9 CFR 303.1(d) that would provide a basis for such an exception.

It makes sense to focus on the operation used in preparing a meat product in deciding whether inspection is required. The operation will have a definitive effect on the nature of the product, and there is a need to verify that nothing that will affect the safety or wholesomeness of the food occurs in the performance of the operation. The addition of a component or an ingredient may not have such a definitive effect. For example, the addition of a curing agent to Italian sausage would affect the nature of the sausage, as well as its safety, and the modified sausage would need to be named to reflect the fact that it is cured. See 9 CFR 319.145. However, the addition of other ingredients for the purpose of seasoning would have no effect on the nature or safety of a meat product. The addition of seasoning to beef that is ground, for example, would not affect the nature of the meat product. The product would still be ground beef. See 9 CFR 319.15. Thus, because the addition of an ingredient (component) would not necessarily have an effect on the nature of a meat product, there is no logical reason why this factor should be determinative of whether the preparation of the product at a retail store for a non-household consumer is exempt or subject to inspection.

An argument may be made, however, that the use of the words "preparation of products" in 9 CFR 303.1 (d) (2) (i) (c) was intended to cover the preparation of multi-component products. In the Federal Meat Inspection Act itself, "prepared" is defined as "slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed." The argument in support of the interpretation in Mr. Derfler's letter would be that putting together a multi-ingredient product would come within the "otherwise manufactured" part of this determination. However, the definition of "prepared" in the statute includes operations that cannot be performed at retail such as slaughter. Therefore, this definition cannot be used to decide how to interpret 9 CFR 303.1 (d) (2) (i) (c).

A more straightforward interpretation of the phrase "preparation of products" in 9 CFR 303.1 (d) (2) (i) (c) is that it is intended to be a catchall that covers any operation not otherwise listed in 9 CFR 303.1 (d) (2) (i). Interpreted in this way, the phrase would not convey any special status to multi-ingredient products. The grinding of multi-ingredient products at retail for non-household consumers would be covered by 9 CFR 303.1 (d) (2) (i) (b) and thus would be exempt from inspection.

Thus, Mr. Derfler's letter is not supported by the Agency's regulations and is hereby withdrawn and declared to be without force or effect. To reiterate, FSIS' policy regarding whether the preparation of products for sale to other than household consumers by a retail store is exempt is that the question is to be resolved based on what operation is employed in preparing the product, and where that operation falls under 9 CFR 303.1 (d) (2) (i) (f).

If there are questions about FSIS' policy, contact the Policy Development Division.

Source:

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