

# **§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).**

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(2) \* \* \*

(v) The State agency shall budget income received on a recurring monthly or semimonthly basis for the month that it is intended to cover. The State agency shall not vary the budgeting of such income merely because it is received during another month as the result of changes in mailing cycles or pay dates, or because weekends or holidays result in an additional or missed payment.

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Dated: April 18, 2003.

**Eric M. Bost,**

*Under Secretary for Food, Nutrition, and Consumer Services.*

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## **DEPARTMENT OF AGRICULTURE**

### **Food Safety and Inspection Service**

#### **9 CFR Parts 319 and 381**

[Docket No. 01-032DF]

**RIN 0583-AC96**

#### **Approving Ingredients Used in the Production of Meat and Poultry Products: Use of Any Safe and Suitable Binder or Antimicrobial Agent in Meat and Poultry Products With Standards of Identity or Composition**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending its regulations to permit the use of any safe and suitable binder or antimicrobial agent in the production of meat and poultry products that are subject to a standard of identity or composition that provides for the use of such ingredients. The use of these ingredients must be consistent with any limitations or conditions of use prescribed in applicable FSIS or Food and Drug Administration (FDA) regulations. This direct final rule will provide establishments with greater flexibility in formulating meat and poultry products.

**DATES:** This rule will be effective June 30, 2003 unless FSIS receives written adverse comments that are within the scope of this rulemaking or written notice of the intent to submit adverse comments that are within the scope of this rulemaking on or before May 29, 2003.

If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit adverse comments or notice of intent to submit adverse comments within the scope of this rulemaking to: FSIS Docket Clerk, Docket No. 01-032DF, Room 102, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250-3700. Any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday. Copies of this direct final rule are available on the Internet at <http://www.fsis.usda.gov>.

#### **FOR FURTHER INFORMATION CONTACT:**

Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Room 602, 1400 Independence Avenue, SW., Room 602 Cotton Annex, Washington, DC 20250-3700, 202-205-0279.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On December 23, 1999, FSIS published in the **Federal Register**, a final rule entitled, "Food Ingredients and Sources of Radiation Listed or Approved for Use in the Production of Meat and Poultry Products." The final rule provided a comprehensive background regarding the status of food ingredients and sources of radiation currently listed in Titles 9 and 21 of the CFR, and explained the process by which FDA and FSIS would be working together regarding future requests for approvals of ingredients to be used in meat and poultry products, which are under USDA jurisdiction.

After publishing that rule, the two agencies entered into a memorandum of understanding (MOU) that outlines the responsibilities of each Agency during the joint review of new ingredients or new uses of previously approved ingredients. Under the Federal Food, Drug and Cosmetic Act (FFDCA), FDA has the responsibility for determining the safety of ingredients. FSIS has authority under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) to determine whether new ingredients, or new uses of previously approved ingredients, are suitable for their intended use in meat and poultry products. The final rule and MOU are available on the internet at: <http://www.fsis.usda.gov/oppde/larc>.

As used in this rule, the term "safe and suitable" has the same meaning as in FDA regulations (21 CFR 130.3(d)) and as is applied in the MOU between the two Agencies. A safe and suitable ingredient is one that: (1) Performs an

appropriate technical function in the food in which it is used; (2) is used at the lowest level necessary to achieve its intended purpose in that food; and (3) is currently approved or listed in FDA regulations as a food additive (21 CFR parts 172-180); GRAS substance (21 CFR parts 182 and 184); Prior-Sanctioned Food Ingredient (21 CFR part 181); Color Additive (21 CFR part 70); or is a self-determined GRAS ingredient for which FDA has provided FSIS with a written no objection opinion regarding the safety of the use of the substance in meat and poultry products and for which FSIS has determined the use to be suitable (per an acceptability determination described in the MOU).

Under current regulations, a person wishing to use an FDA-approved ingredient that FSIS has determined to be suitable for use in meat and poultry products, such as an antimicrobial agent or binder, in a product for which there exists a regulatory standard that does not provide for the use of the ingredient, must petition FSIS to amend the standard. Evaluation of the petition for the proposed ingredient use and the rulemaking to amend the standard may take two years or more.

FSIS receives approximately 2 to 3 petitions annually for uses of newly approved or new uses of approved antimicrobials or binders. A recent example of this was the 1999 petition to allow the use of transglutaminase enzyme and pork collagen for use in limited amounts as binders in certain standardized meat and poultry products, which led to an October 31, 2001, final rule (66 FR 54912). Without amending specific product standards of identity, the use of the approved ingredient is limited to non-standardized products only.

#### **The Final Rule**

FSIS is amending the general requirements of the regulations governing standards of identity and composition for meat and poultry products (9 CFR 319.1 and 381.155). A standard of identity prescribes the manner of preparation and the ingredients of a product that is to be called by a certain name. A standard of composition prescribes the quantity of ingredients, such as the minimum meat or poultry content, of a product. Numerous specific standards of identity and composition for meat and poultry products are set out in the regulations (9 CFR 319, subparts A-U and 381, subpart P). FSIS is adding to the general requirements a provision that will permit the use of any binder or antimicrobial agent if FDA and FSIS