

intent while providing manufacturers with the opportunity to use the term on food labeling consistently with dietary guidelines. Therefore, as the agencies consider whether alternative levels may be more appropriate, it would be contrary to the public interest to require manufacturers to comply with the second-tier sodium levels within the "healthy" definition by the current effective date of January 1, 2003. Moreover, FSIS is taking this action so that its labeling regulations remain consistent with those promulgated by FDA. In the **Federal Register** dated May 8, 2002, FDA further extended the partial stay on their provisions to coincide with the aforementioned effective date of January 1, 2006 (67 FR 30795).⁸ Accordingly, further extending the second-tier sodium level requirements' effective date for meat and poultry products is warranted.

Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

This interim final rule is not intended to have retroactive effect.

If this interim final rule is adopted, administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this interim final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

Executive Order 12866 and the Regulatory Flexibility Act

This interim final rule has been determined to be non-significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

The Administrator has made an initial determination that this interim final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This interim final rule will impose no new requirements on small entities.

FSIS is initiating this action so that its labeling regulations remain consistent with those promulgated by FDA. Moreover, FSIS needs time to conclude its reevaluation of the impact imposed by further reducing limits on sodium contents of foods labeled as "healthy" to determine if the costs of such an action exceed the benefits. The petitioner requesting the extension presented data to support that lowering the sodium content on foods labeled as "healthy" could result in fewer "healthy" foods being consumed or consumers adding table salt to improve the products' palatability. In addition, the petitioner suggested that lack of available substitutes for sodium would impair the industry's ability to continue manufacturing "healthy" foods as currently defined. However, information collected by the Agency continues to support our belief that it is feasible to produce individual meat and poultry products with a sodium level of 360 mg or less at this time.

FSIS will use the time allotted by the extension to initiate the appropriate rulemaking, and respond to its comments. Industry's constituents will be afforded ample time to reformulate their products (a critical consideration since product reformulation may not be a simple task for products such as hot dogs) and modify labeling.

Five commenters to the December 28, 1999, FSIS interim final rule agreed with the petitioner that lowering the sodium level would affect the products' palatability. One commenter posited that establishing a maximum level of sodium contained in meat and poultry products labeled as "healthy" does not correlate to the definition of "healthy" with respect to positive health benefits. Another commenter supported the implementation of the second-tier sodium level with the intended effective date. The last commenter stated that the health risk focus should not be directed towards sodium, and the effective date should be extended to allow FSIS "time to conduct a review of the science on

this issue to establish the basis for removing altogether any sodium-related disqualification for the term 'healthy'."

FSIS continues to believe that further health benefits could be achieved by lowering the sodium content of foods labeled as "healthy". However, the Agency needs time: (1) To conclude its reevaluation process in conjunction with FDA; and (2) to initiate the appropriate rulemaking. Therefore, as the agencies consider whether alternative levels may be more appropriate it would be contrary to the public interest to require manufacturers to comply with the lower sodium levels in the "healthy" definition by the current effective date of January 1, 2003.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedures Act (5 U.S.C. 553) it is the practice of the Administrator to offer interested parties the opportunity to comment on proposed regulations. However, the extended effective date in this interim final rule does not establish any new rules. In addition, this interim final rule must be published in the **Federal Register** prior to January 1, 2003, because that is the current effective date in the regulations. Therefore, the Administrator has determined that publication of a proposed rule is impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b)(B). For the same reasons, the Administrator waives the 30-day delayed effective date under 5 U.S.C. 553(d).

Paperwork Requirements

There is no paperwork associated with this action.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice; FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv

⁸ Final Rule; extension of partial stay, Food Labeling; Nutrient Content Claims, Definition of Sodium Levels for the Term "Healthy;" Extension of Partial Stay, 67 FR 30795, May 8, 2002. This document may be accessed via the World Wide Web at <http://www.access.gpo.gov>.