
REPORT BY THE

Comptroller General

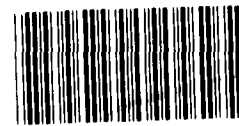
OF THE UNITED STATES

Proposed Changes In Meat And Poultry Net Weight Labeling Regulations Based On Insufficient Data

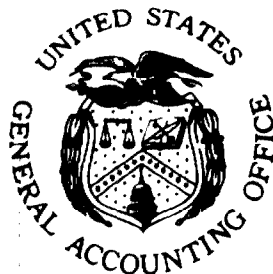
Although the Department of Agriculture has proposed changes in its net weight labeling regulations for meat and poultry products, it has not obtained sufficient data to

- support the need for changing the regulations,
- decide how to deal with moisture loss after a product has been packaged and shipped,
- consider the economic impact of the proposed changes, and
- comparatively evaluate the alternative net weight compliance systems.

The Department should expand and extend its search for information concerning the best way to monitor net weight labeling for meat and poultry products.



108220



0 02939

CED-79-28
DECEMBER 20, 1978





COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-163450

The Honorable W. R. Poage
Chairman, Subcommittee
on Livestock and Grains
Committee on Agriculture
House of Representatives

Dear Mr. Chairman:

In December 1977 the Department of Agriculture proposed revised regulations for assuring net weight compliance with Federal weight labeling laws for meat and poultry products. On August 17, 1978, you told us that these proposed revised regulations, if finalized, would have serious economic and practical consequences which Agriculture had not thoroughly considered. You requested that we evaluate Agriculture's proposed regulations and consider the feasibility of alternative systems.

We reviewed applicable laws, regulations, studies, and records and discussed Federal weight labeling laws with officials of the Departments of Agriculture and Commerce. We also interviewed officials from various trade organizations and consumer groups.

We concluded that Agriculture has not gathered adequate data to determine whether the current system needs to be changed or whether the proposed system or the other possible alternative net weight systems would be more economical and practical than the current system. Various Executive orders and GAO reports stress the importance of collecting and analyzing economic and other data to help choose the least burdensome and most feasible regulatory method of achieving an objective. Accordingly, we are recommending that Agriculture expand and extend its search for information concerning the best way to monitor net weight labeling activities for meat and poultry products.

Agriculture officials informed us that they would take the actions we are recommending before they make a final decision on the proposed system.

CONTROVERSIAL PROPOSAL TO REVISE NET WEIGHT REGULATIONS FOR MEAT AND POULTRY PRODUCTS

Agriculture's proposal to revise its regulations for net weight compliance with Federal weight labeling laws is controversial. Agriculture is authorized to regulate net weight compliance for meat and poultry products by the Federal Meat Inspection Act, as amended (21 U.S.C. 601 et seq.), and the Poultry Products Inspection Act, as amended (21 U.S.C. 451 et seq.). Agriculture's Food Safety and Quality Service administers the meat and poultry inspection program. The existing net weight regulations for meat products (9 CFR 317) and poultry products (9 CFR 381) processed at a federally inspected plant state that the labeled net weight shall not be false or misleading and shall express an accurate statement of the content's weight, exclusive of wrappings and packing substances. The regulations allow for a reasonable variation from the labeled net weight if caused by (1) moisture loss or gain during good distribution practices and (2) unavoidable deviations during good manufacturing practices.

Service inspectors are located at meat and poultry processing plants and determine net weight compliance for products leaving the plant. State and/or local weight and measures officials generally assure net weight compliance at warehouses and retail stores within their jurisdictions. Individual State and local jurisdictions developed net weight regulations which in some cases were more stringent than Agriculture's regulations. A March 1977 Supreme Court decision, 1/ however, held that the Federal Meat Inspection Act precluded States and localities from imposing different standards than those in the Service's requirements when determining net weight compliance for meat and poultry products processed at federally inspected plants. Accordingly, those States with different standards have had to conform their standards to the Service's requirements or cease net weight inspections of meat and poultry products processed at federally inspected plants.

After the Supreme Court decision, the State of California, which had a more stringent net weight compliance standard than the Federal standard, petitioned the Service to change its regulations. Officials from 47 other States, Washington, D.C., and American Samoa cosigned this petition. The petition said

1/ Jones v. Rath Packing Company (430 U.S. 519 (1977)).

that the Federal net weight standard, especially that portion concerning the undefined allowance for reasonable variation in net weight caused by moisture loss, would preclude States and localities from inspecting federally inspected meat and poultry products for net weight compliance at the warehouse and retail level. They would be precluded because their inspectors could not know the many variables which affect a product's moisture loss, such as variations in product composition, distance from the packing plant to the warehouse or the retail store, the product's shelf life, and the manner of product distribution. Without knowing these variables, the inspectors would be required to judge whether (1) the variation from net weight is reasonable and (2) the variation was caused by moisture loss or short packaging. California officials said inspectors could not make such judgments on the basis of the limited information available to them and thus net weight compliance at the warehouse or retail level would be unenforceable.

On December 2, 1977, the Service published proposed changes to its net weight labeling regulations in the Federal Register and requested public comments on the changes. The Service said that these changes were necessary because more definitive regulations concerning reasonable variations from labeled net weight were in the public interest. A comparison of the current and proposed regulations follows.

1. Currently, reasonable variations from net weight are allowed if caused by (1) moisture loss or gain during good distribution practices and (2) unavoidable deviations caused primarily by imperfect packing machinery during good manufacturing practices. The term "reasonable" is not further defined. The proposed changes would quantify the allowable variations for different weight products. For example, a product weighing over 7 ounces to less than 48 ounces could vary 0.73 ounces or less from the stated net weight and still be acceptable. The Service based the allowable variations on available data on variations caused by imperfections in equipment used to fill containers. Thus, no allowance was made for any variation caused by moisture gain or loss.
2. Under current regulations the Service inspector is required to observe the plant's processing and packing operations and check several lots each week for net weight compliance. The Service's proposal would require the plants to have Agriculture-approved, plant-operated quality-control systems to assure net weight compliance.

The plants' employees would sample all product lots for compliance; the Federal inspectors would monitor the plants' procedures and take sufficient samples to determine that acceptable standards are being met.

3. The proposed regulations would define the lot sampling procedures to be used at the plant and other distribution points in determining net weight compliance. (Previously, such procedures were not specified in the regulation.) The lot would be considered as meeting net weight requirements if (1) the sampled packages' average net weight is at least equal to the stated net weight and (2) no single package in the sample deviates more from the stated net weight than the allowable variation.
4. Presently, the only acceptable deduction from gross weight to determine net weight is the weight of the dry packaging material and wrappers. The Service's proposal would require that the weight of any liquid absorbed in these packaging materials and any remaining (free) liquid in the package also be deducted.
5. Currently, bulk shipments--shipments of wholesale sizes rather than retail sizes--are exempted from net weight regulations. They are, however, subject to the Service's plant inspection manual procedures. The Service's proposal would include such shipments under its net weight regulations.

Initially, the public comment period on the proposed changes was to end on March 2, 1978. It was later extended to June 2, 1978. The Service had initially determined that the impact of the proposed changes would not be great enough to require an economic impact statement. During the public comment period, however, the Service contracted for a study to determine the proposal's economic impact on consumers. 1/ On October 27, 1978, the Service reopened the comment period until December 26, 1978, to obtain public comment on the study. The Service will analyze all comments received and then make a final decision on the need for changing its net weight regulations.

1/ This study resulted in a report entitled "Analysis of Proposed Regulations on Net Weight Labeling," by the Consumer Federation of America.

Before closing the comment period on June 2, 1978, the Service received over 3,000 comments on the proposal. Primarily, food industry representatives were opposed because the factors which affect moisture loss, such as the time elapsed since the packaging of the meat and poultry, the method of distribution, storage temperature, and shelf life, could not always be anticipated at the time of packaging. Thus, all packages would have to be overpacked to assure compliance at all distribution points. These representatives believe that such overpacking would increase meat and poultry products' retail price. On the other hand, consumer group representatives generally favored the proposal because it would assure that consumers received the total quantity that they paid for and that they would not pay meat and poultry prices for water and juices which few consumers use.

In February 1978 the American Meat Institute asked the Service to extend the public comment period until September 1978 so that the Institute could conduct moisture loss studies. The Institute said that these studies were necessary to reach sound conclusions about the environmental and economic impact of the proposed regulations. The Service extended the comment period for 90 days--until June 2, 1978--but denied a second 90-day extension that the Institute said was needed to complete its study. According to Institute officials, the Institute was unable to complete its study but it submitted the incomplete study results to the Service. An Institute official informed us that the Institute has canceled its plans to complete the study.

DECISION ON CHANGING NET WEIGHT LABELING
REGULATIONS NOT ADEQUATELY SUPPORTED

The Service has limited data to support (1) the need for changing its net weight labeling regulations, (2) its decision to make no allowance for moisture loss in computing the allowable variations from labeled net weight, (3) the economic impact of the proposed changes, and (4) the feasibility of alternative net weight labeling systems--although these issues have been sharply debated by industry and consumer groups. The final decision on the need for changing the regulations and on the specific changes to be made is important due to the economic significance to the food industry, consumers, and taxpayers. Before finalizing these regulations, the Service should collect additional data on the issues discussed in this report to help assure that it chooses the most practical and cost beneficial net weight compliance regulations.

Changing views on need for revising
net weight labeling regulations

On July 11, 1978, Agriculture's Assistant Secretary for Food and Consumer Services testified before the Subcommittee on Livestock and Grains, House Committee on Agriculture, that many States felt their weight and measures functions would become ineffective because of the March 1977 Supreme Court decision. These States felt that without quantified allowable variations from labeled net weight in determining net weight compliance, they would be unable to determine what is a reasonable loss and what is short weighing.

Service officials told us that the proposed regulations were in response to the California petition discussed on page 2 and consumer complaints. There are some indications however, that some States have reconsidered the need for changing net weight regulations and that many States have not been adversely affected by the Supreme Court decision. For example:

- Three States--Iowa, North Carolina, and Georgia--oppose the proposed regulations, primarily because the proposal makes no allowance for moisture loss in determining net weight compliance.
- According to an official of the Department of Commerce's National Bureau of Standards, who is assisting the States by developing net weight testing standards and procedures, some States' weight and measures representatives have voiced reservations about the feasibility of the proposed regulations.
- A Consumer Federation of America (Federation) questionnaire to State and local weight and measures officials indicated that 66 percent of those responding said that the Supreme Court decision caused little or no impact on their net weight programs.

It appears to us that the State and local governments will bear much of the additional cost involved in implementing the proposed regulations. Fifty-one percent of the State and local officials answering the Federation's questionnaire said that additional staff or money would be required to carry out the proposed net weight regulations. In addition, 49 percent of the officials expressed unqualified approval of the proposed regulations.

Because the State and local net weight compliance programs' cost will increase and because these costs are eventually paid by consumers in the form of taxes, we believe that the Service should contact State and local officials and determine (1) the proposal's impact on State and local weight and measures program costs and (2) these officials' current opinions on the need for changing the regulations. According to Agriculture officials, the States are free to choose the degree to which they apply and enforce Federal meat and poultry inspection regulations; they may cease net weight inspections of meat and poultry processed at federally inspected plants.

Moisture loss: a very controversial issue

Moisture is present in meat and poultry products because of the live animal's biological nature--more than half is water or other liquids. After slaughter, meat and poultry begin to lose moisture and continue to do so until consumed. The moisture content is sometimes increased by using water in processing meat and poultry products. To varying degrees, most meat and poultry products will lose some moisture between weighing at the plant and sale at retail.

At least three things can happen to the moisture lost from a product after packaging. The moisture can evaporate, be absorbed by the packaging materials, or form a liquid in the container (free liquid).

Current Service regulations allow for an undefined reasonable variation from the labeled net weight if caused by moisture loss or gain during good distribution practices. The proposed change to these regulations would not make any allowance for moisture loss in determining net weight compliance. The moisture loss problem is the most sharply debated issue in the proposed regulations. Consumer groups believe that consumers should not have to pay meat and poultry prices for liquids which have seeped from the product after packaging and which few consumers use. Industry believes that the amount of moisture loss cannot be anticipated because of the many unpredictable variables which affect it, and that excluding an allowance for moisture loss in the proposed regulations will require plants to overpack each package and increase meat and poultry retail prices.

Variables which affect moisture loss include the (1) amount of water added to the product during processing, (2) transportation mode used, (3) distance between the packing plant and the retailer, (4) temperature and humidity conditions,

(5) shelf life, and (6) way the product is handled as it goes through the distribution chain. Often the packer, at time of packaging and weighing, cannot predict the extent to which these variables will affect the product's moisture loss.

The Service was aware that this loss is unpredictable when it proposed the regulations. However, it stated that to eliminate handling variables, which are not controllable by the packer, the packer should package and market its product so that at least the labeled weight is maintained throughout distribution. Also, the Service recognized that since both raw and processed meat and poultry products drain to some degree, it would be necessary for processors marking net weight at their plants to be able to determine the weight of meat juices, brine, and other liquids that will drain between packaging and retail sale. Otherwise, net weight marking will not be accurate.

Service officials told us that they do not have any knowledge or data on the extent of moisture loss under various conditions. They said that the decision to not make any allowance for moisture loss in determining net weight compliance resulted from the California petition and consumer complaints. They added that they believe industry officials are generally aware of their products' expected moisture loss. Also, they said that the meat and poultry industry was able to anticipate moisture loss and, accordingly, overpacked meat and poultry shipments to California for years until the 1977 Supreme Court decision. (See p. 2.)

On the other hand, industry sources contend that they do not have any data on moisture loss, especially since the extent to which the unpredictable variables will affect the products' moisture loss could only be guessed at when packaging. They said that this uncertainty would result in overpacking each product to allow for these variables' possible effect. Also, packers who have a national market would have to overpack more than a regional or local packer because of the longer distribution chain. Industry sources believe that this would not only cause different packages of a product to weigh different unspecified amounts over the labeled net weight at the retail level, thus frustrating consumer value comparisons, but also cause national distributors to charge a higher price, thus lessening their competitive position.

Consumer groups, however, point out that the current practice of allowing a reasonable variation from labeled net weight because of moisture loss frustrates consumer value comparison shopping because packages weigh less than the labeled net weight

by different unspecified amounts. They believe that although retail meat and poultry prices will increase slightly if no allowances for moisture loss are permitted in determining net weight compliance, consumers will get more product for their money and thus much of the price increase would be negated.

On the surface, both industry and consumer arguments appear to have merit. From conversations with both these groups and with Service officials, it appears that there is a lack of knowledge in the area of moisture loss. Accordingly, we believe that the Service should determine the answers to the following questions before finalizing any changes to the net weight regulations.

1. Will industry be able to make a practical determination of anticipated moisture loss for each shipment and package so that net weight compliance will be achieved under varying circumstances, or will it have to overpack each product for each shipment to comply with net weight requirements under the worst possible variables? What would be the effect of each of these practices on the product's retail price and on industry competition?
2. Will the benefit to the consumer of possibly receiving more product per package outweigh the increased cost resulting from overpacking?
3. Do consumers use the free liquid in the package in food preparation? If most consumers use the liquid in food preparation, should the liquid's weight be included in the product's net weight?
4. Will frozen meat and poultry products--many of which contain at least the same moisture level as fresh products--have a price advantage because their moisture will not seep out until the consumer defrosts or cooks the product?
5. Will the meat and poultry industry find it more practicable to produce frozen products if the proposed regulations are finalized? What effect will such a move have on energy use and product cost?

According to Agriculture officials, they assured industry representatives in June 1978 that the Service's proposed regulation changes would, when finalized, make it clear that responsibility for noncompliance would be imposed at the food industry level where noncompliance was detected.

Available economic data

The Service does not have adequate economic data to determine the (1) impact of the current regulations or (2) benefits and costs of the proposed system or alternative net weight compliance systems. Service officials believe that such economic data should be available and on two occasions--one involving an in-house draft economic analysis and the other involving a contractor's study--have attempted to collect such data. However, neither attempt was successful.

The need for adequate economic data before proposing any regulation has been stressed in recent years. On November 29, 1974, the President issued Executive order 11821 which requires all executive branch agencies to prepare an inflationary impact statement for all major legislative proposals, regulations, and rules. The Order directed the Office of Management and Budget to develop criteria for evaluating whether a proposal is major, and outlined general categories which would have to be considered in determining the cost impact on consumers; businesses; markets; or Federal, State, and local governments.

Early in 1975 the Office of Management and Budget delegated to each agency the responsibility for developing this criteria. In July 1975 it approved Agriculture's criteria for identifying major proposals needing an inflationary impact statement. This criteria provides among other things that any proposal likely to produce increased costs to consumers; businesses; or Federal, State, or local governments exceeding \$100 million in any year is major.

Initially, the Service did not consider its net weight proposal as a major proposal and did not prepare an inflationary impact statement. However, in January 1978, over a month after the proposal was published, the Service prepared a draft inflationary impact statement and submitted it, as required, to Agriculture's Office of Management and Finance for review. A Service official told us that the draft was prepared because the food industry's responses to the proposal indicated that such changes would be very costly. The draft statement concluded that (1) no additional staff or cost would be necessary within Agriculture to approve the quality-control program for the 7,000 meat and poultry processing plants inspected by the Service, (2) industry's annual costs of implementing the quality-control program would range between \$65 million and \$97.5 million, and (3) the changes would cause only a slight increase in retail meat and poultry prices. The statement did not consider State and local government costs of monitoring net weight compliance.

The Office of Management and Finance directed the Service to issue the draft statement for public comment even though the Office acknowledged that the statement needed additional clarification to facilitate understanding its implications. The Office concluded that the benefits that would accrue from timely public review and comments on the draft statement outweighed the benefits from further delaying its release to incorporate what little additional data could be gathered in a limited time. According to a Service official, however, the Service decided not to publish the draft statement.

Subsequently, the Service attempted to gather additional data. In March 1978 it solicited bids for a study and analysis of (1) consumer costs with and without the proposed changes, (2) benefits to consumers and industry from the current and proposed regulations, and (3) alternatives which would provide consumers with greater benefits and/or lower costs than the current or proposed regulations. The contract was awarded to the Consumer Federation of America which made the study and submitted its report to the Service in October 1978.

In evaluating the Federation's study, a Service official said that it appeared to be more an extensive background paper than a definitive argument for or against the proposal or any of its main points. Our review confirmed his statement. He added that while the analysis was very useful as a compilation of most of the arguments for and against the proposal, it came to no conclusion about the proposal's impact and made no recommendations concerning it. Thus, he believed the analysis would be amply and selectively quoted by both those for and those against the proposal.

In the past we have stressed the importance of developing adequate economic data before adding to the body of Government regulations or changing existing regulations. For example, in a June 1977 report on Government regulatory activity, 1/ we concluded that a regulatory reform effort should begin by studying the basic justifications for the regulation and end with an analysis of operational alternatives to the present regulations. In a more recent report on food prices, 2/

1/ "Government Regulatory Activity: Justifications, Processes, Impacts, and Alternatives," PAD-77-34, June 3, 1977.

2/ "What Causes Food Prices to Rise? What Can Be Done About It?" CED-78-170, Sept. 8, 1978.

we concluded that the executive branch, in considering actions which appear beneficial to society but which would also increase industry or consumer costs, should emphasize determining the extent to which the proposed actions may increase food prices.

In addition, Executive order 12044, dated March 23, 1978, stresses the importance of adequately determining a proposal's effect before adoption. The Order directs all executive agencies to adopt procedures to improve existing and future regulations so that they do not impose unnecessary burdens on the economy, individuals, public or private organizations, or State or local governments. The President ordered each agency to determine before a significant regulation is published for public comment (1) that the proposed regulation is needed, (2) the regulation's direct and indirect effects, and (3) that the alternative chosen is the least burdensome alternative.

It is therefore important that the Service collect enough economic data to judge the (1) present regulation's effect, (2) costs and benefits of the proposed changes, and (3) costs and benefits of viable alternative systems. Agriculture officials told us that Executive order 12044 requirements, including preparing appropriate economic impact statements, would be met before its proposed regulation revisions were finalized.

Alternatives to the proposed system

Although various net weight systems exist or have been proposed, the Service's draft inflationary impact statement identified only one--its current system--as an alternative to the proposed system. It discounted that because of consumer complaints and enforcement problems by State and local weight and measures officials. After gaining more knowledge and data on the feasibility of not allowing for moisture loss in net weight compliance and on the proposed system's economic impact, the Service should assess the feasibility of all available alternatives. These should include, but not be limited to, the current system as well as the systems discussed below.

Mandatory quality control

One possible alternative system would include (1) a mandatory plant-operated quality-control program covering net weight compliance and other operations in all federally inspected meat and poultry processing plants, (2) strict controls on the amount of water added to a product during processing, and (3) authority to impose, for violations by processing plants operating under

a quality-control system, penalties which by necessity must be economic deterrents, with severity far exceeding possible economic gains. An adequate quality-control program at federally inspected meat and poultry processing plants would help assure that, on the average, packaged products weigh at least the labeled net weight when shipped from the plant. Thus, the consumer could be more confident of the labeled net weight. With proper quality control at the federally inspected plant and with proper monitoring and test checks of the quality controls by Service inspectors, there should be no need for routinely inspecting the product for net weight compliance at any other point in the distribution chain.

In an earlier report 1/ we discussed the need for a mandatory quality-control program for all phases of operations, including net weight labeling, at federally inspected meat and poultry processing plants. We recommended that the Congress amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to authorize the Secretary of Agriculture to:

- Make periodic unannounced inspections of meat and poultry processing plants, tailoring the inspection frequency to the inspection needs of individual plants based on (1) the reliability of the plant's quality-control system, (2) the plant management's attitude toward complying with inspection requirements, (3) the plant's history of compliance with inspection requirements, and (4) such other factors as the Secretary deems necessary.

- Require meat and poultry processing plants to develop and implement quality-control systems that can be relied on to insure that wholesome, unadulterated, and properly branded products are produced. The necessary criteria for determining the quality-control systems needed at various types and sizes of plants should be developed by the Secretary in cooperation with industry. Such systems should provide for maintaining appropriate records of quality-control tests, test results, and corrective actions. These records should be available to Agriculture's inspection personnel for monitoring the quality-control systems.

1/ "A Better Way for the Department of Agriculture to Inspect Meat and Poultry Processing Plants," CED-78-11, Dec. 9, 1977.

- Withdraw inspection or impose civil penalties of up to \$100,000 for processing plants failing to take appropriate action when the quality-control system identifies a deficiency or when plants fail to comply with inspection requirements.

We also recommended that if the Congress amends the acts as recommended above, the Secretary of Agriculture:

- Develop criteria for deciding the optimal inspection frequency for individual processing plants based on such factors as (1) the reliability of the plant's quality-control system, (2) the plant management's attitude toward complying with inspection requirements, and (3) the plant's history of compliance with inspection requirements.
- In cooperation with industry, develop criteria for determining the quality-control systems needed at various types and sizes of plants to insure that their products are wholesome, unadulterated, and properly branded.
- Develop criteria for assessing penalties, within the provisions of the acts, when plants do not comply with inspection requirements.

We pointed out in the report that in June 1977 Agriculture had released the results of an earlier consultant report--"Study of the Federal Meat and Poultry Inspection System" by Booz, Allen, and Hamilton, Inc., June 1977. The study's purpose was to identify alternative inspection systems that would improve cost effectiveness, eliminate unnecessary interference in commerce, and still insure that meat and poultry for human consumption was unadulterated and not misbranded.

The consultant report concluded that several areas of the meat and poultry inspection operations and management, including inspection at processing plants, offered opportunities to improve cost effectiveness. A monitoring approach to inspection at processing plants in which an inspector uses a firm's quality-control records, accompanied by frequent verification samples, was considered the best alternative to improve cost effectiveness and consumer protection at processing plants.

The consultant report recommended a mandatory quality-control system for processing plants which would place the

responsibility for compliance with inspection requirements squarely on industry's shoulders. The report envisioned a quality-control system which would embrace all areas of product flow, including incoming products, product processing, and outgoing products.

According to the report, the Service, industry, and consumers would all benefit from inspectors monitoring in-plant quality control. The Service would have greater staffing flexibility and would be able to cover more plants with the same number of inspectors. Industry and consumers would benefit, according to the study, because quality-control programs would result in a more consistent product entering food channels and less throwaway at the plant.

The report concluded that an in-plant quality-control system must be accompanied by new enforcement tools. Economic deterrents were considered the most effective means to insure compliance. The report recommended that the Service devise a plant rating system tied to a progressive enforcement system that includes economic penalties, such as charging for extra inspection time spent in problem plants.

In commenting on our December 1977 report, Agriculture said it was unable to take any position on our recommendations because it was soliciting views from all affected parties on similar recommendations contained in the consultant's report. It also said that our recommendations would be considered along with other views it received during the public evaluation process before any steps were taken toward implementation.

Subsequently, Agriculture informed the House Committee on Government Operations and the Senate Committee on Governmental Affairs that on the basis of our December 1977 report, the consultant's report, and public comments received on the consultant's report, it was considering a new approach to improve inspection at processing plants. It said that this approach would increase the level of consumer protection from health hazards and economic fraud without increasing taxpayers' or consumers' cost. This approach would consist of (1) mandatory quality control to cover all processes and operations affected by inspection requirements, (2) varying intensities of inspection supervision at processing plants and operations based on the risk potential for health or economic hazard to the consumer, and (3) strengthened penalty provisions for plants which fail to meet inspection requirements.

Subsequently, during departmental consideration of the 1980 budget, the Secretary of Agriculture requested that the Service take immediate action to implement mandatory quality-control procedures in meat and poultry plants. The Secretary also asked that a legislative package be prepared and sent to the Office of Management and Budget for approval. Included in the package would be proposed legislation to amend the meat and poultry inspection laws to allow quality-control programs in lieu of continuous inspection by Service inspectors. On December 1, 1978, a Department official told us that Agriculture had decided to defer action on this matter for 1 year.

We believe that a system involving mandatory quality-control programs could serve as an alternative to the proposed net weight labeling regulations if Agriculture would also change its allowable water standard. The standard limits the amount of water, introduced during processing, which can remain in meat and poultry products at the time of packaging. If these limits were lowered, the products would contain less moisture when packaged and thus tend to lose less moisture during distribution.

In poultry processing, a water bath is used to reduce the carcasses' temperature after slaughter, a step essential to maintaining the product's fresh condition. This process, however, makes water an unavoidable additive, which under Agriculture regulations is not required to be fully removed. According to a December 1977 report by a consumer organization, under the regulations chilled poultry can retain up to 12 percent added water; frozen poultry, up to 10 percent. The consumer organization indicated that using water in processing poultry has a substantial economic effect on the consumer. According to the consumer organization, consumers paid about \$488 million in 1976 for water contained in fresh and frozen chicken. The dollar figure is based on the assumption that all fresh and frozen chicken contained the maximum amount of allowable added water.

A representative of this consumer organization told us that one poultry processor had experimented with an air-chilling method for reducing poultry carcass temperatures. He said that this processor found the air-chilling method to be economical and now uses it exclusively in processing poultry. The representative said that if processing methods are followed which do not use water, the extent of subsequent moisture loss--the most sharply debated issue in Agriculture's proposed regulations--would be substantially lessened.

On the other hand, representatives from industry groups told us that air-chilling methods are not an economical alternative to water chill. They added that air chilling uses vast amounts of energy.

Some Service officials told us that the water bath method of processing poultry is one reason poultry products lose moisture after packaging. In their opinion, the allowable water gain for these products should be reexamined and lowered if feasible.

Codex system

Another possible alternative to the proposed net weight system is the net weight system recommended by the United Nations Codex Committee on Methods of Analysis and Sampling. The Codex Committee is responsible for studying and making recommendations on enforcing net weight in prepackaged foods on an international basis.

The Codex Committee recognized that certain variations from the labeled net weight are unavoidable. It therefore recommended a net weight compliance system based on the average net weight of containers in a lot at the time of packaging and allowances for reasonable tolerances. The allowable tolerances would vary depending on the degree of difficulty in filling the container and/or maintaining the labeled net weight.

The Codex Committee recommended a building block approach in sampling for net weight compliance. Under this approach, inspectors would make limited inspections at the retail level and assess minor administrative sanctions for violations. If the retail sample indicates noncompliance, the sample would be expanded and in-plant inspections would be performed at the processing plant. The building block approach established statistical limits of variance from stated net weight which were developed by experts from 23 countries.

Swedish system

Another possible alternative is the Swedish system of net weight compliance. It is based on accurate net weight at the time of packaging and requires a statement on each package's label that the net weight was taken at the time of packaging. A U.S. industry representative told us that such a system would assure the consumer that, at the time

of packaging, the product weighed the stated net weight regardless of who packaged it. The Fair Packaging and Labeling Act (15 U.S.C. 1453), however, prohibits any qualifying phrase on the label such as "when packed."

Grocery Manufacturers of America system

Another alternative net weight system has been offered by the Grocery Manufacturers of America, an industry organization. This system would involve forming a national net weight assurance conference, comprised of representatives of Federal, State, and local governments; the food industry; and the general public. The conference would be responsible for overseeing a new, cooperative national net weight assurance program. It would

- publish lists of food products subject to moisture loss during distribution and the normal moisture content for each product,
- establish procedures for periodically inspecting the product at the point of packing to assure widespread compliance with net weight labeling, and
- establish a cooperative inspection and enforcement data reporting program which would allow Federal, State, and local authorities to exchange data on enforcements and inspections.

The Grocery Manufacturers of America's proposal added that such a system would (1) enable local weight and measures officials to readily identify products with moisture loss and (2) establish general rules for screening products at point of sale.

Within Agriculture opinions on this plan varied. For example, in March 1978 the Service's former Administrator said that the plan was an excellent piece of work which laid out the coordination needed, reasonable time frames for preparing the data, and most important, a practical implementation plan. He added, however, that although the plan was an excellent approach to resolving many of the issues under question, the Service did not believe it could wait the 2 to 4 years necessary to gather needed data and implement the plan. He said that since the Supreme Court decision, the Service had been seeking an expedient response to the net weight situation.

Agriculture's Deputy Assistant Secretary for Food and Consumer Services noted two major problems with the plan. First, Agriculture would have enormous problems in establishing moisture loss standards on a product-by-product basis, taking into account the many variables which can affect the extent of loss. He felt, however, that individual meat and poultry processors could determine the amount of moisture loss for their own products. Second, the plan would allow the actual product weight to be below the stated weight; thus, consumer comparison shopping would be frustrated.

Agriculture has not, however, estimated the costs and benefits of this system or of other possible alternative net weight systems.

CONCLUSIONS

Choosing a net weight regulatory system for meat and poultry products will be economically significant. The proposed regulations, which have been sharply debated, would (1) exclude the estimated weight of moisture loss and the weight of the liquid remaining in the package from the product's net weight in determining net weight compliance, (2) require a mandatory plant-operated quality-control system for net weight compliance, (3) outline sampling procedures to determine net weight compliance, and (4) include provisions regulating the net weights of bulk shipments from processors to retailers for further processing and packaging.

Agriculture has not gathered adequate data to determine whether the current system needs to be changed or whether the proposed system or other possible alternative systems would be more economical and practical than the current system. Various Executive orders and GAO reports stress the importance of collecting and analyzing economic and other data to help choose the least burdensome and most feasible regulatory method of achieving an objective.

RECOMMENDATION TO THE SECRETARY OF AGRICULTURE

We recommend that the Secretary of Agriculture direct the Service to expand and extend its search for information concerning the best way to monitor net weight labeling activities for meat and poultry products. Such a search should include

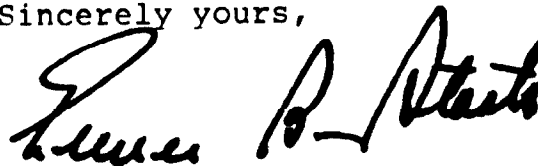
--a reevaluation of the need for change;

- a comparison of available viable alternatives, including those discussed in this report;
- a comprehensive economic impact statement for each system considered;
- a thorough and objective analysis of comments from major groups including State and local government regulatory organizations, industry, and consumers affected by such activities; and
- research to resolve the packaged meat and poultry moisture loss controversy.

- - - -

In accordance with discussions with your office, we discussed the matters covered in the report with Agriculture officials and their comments are incorporated where appropriate. As agreed, we are sending copies of this report to the Secretary of Agriculture; the Director, Office of Management and Budget; various congressional committees and Members having jurisdiction over or interest in the matters discussed in this report; industry representatives; and other interested persons.

Sincerely yours,



Comptroller General
of the United States

(02242)

Single copies of GAO reports are available free of charge. Requests (except by Members of Congress) for additional quantities should be accompanied by payment of \$1.00 per copy.

Requests for single copies (without charge) should be sent to:

U.S. General Accounting Office
Distribution Section, Room 1518
441 G Street, NW.
Washington, DC 20548

Requests for multiple copies should be sent with checks or money orders to:

U.S. General Accounting Office
Distribution Section
P.O. Box 1020
Washington, DC 20013

Checks or money orders should be made payable to the U.S. General Accounting Office. NOTE: Stamps or Superintendent of Documents coupons will not be accepted.

PLEASE DO NOT SEND CASH

To expedite filling your order, use the report number and date in the lower right corner of the front cover.

GAO reports are now available on microfiche. If such copies will meet your needs, be sure to specify that you want microfiche copies.

AN EQUAL OPPORTUNITY EMPLOYER

**UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548**

**OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300**

**POSTAGE AND FEES PAID
U. S. GENERAL ACCOUNTING OFFICE**



THIRD CLASS