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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 355

[Docket No. FSIS-2020-0013]

RIN [0583-AD83]

**Certified Products for Dogs, Cats, and Other Carnivora;
Inspection, Certification, and Identification as to Class,
Quality, Quantity, and Condition**

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to end the program under which FSIS inspectors provide fee-for-service certification that certain foods for dogs, cats and other carnivora (pet food) are produced under sanitary conditions and meet compositional and labeling requirements. The certified pet food regulations are outdated, and no firms are currently paying for FSIS certification services for pet food. Further, the fact that both USDA and the Food and Drug Administration (FDA) inspect pet food has led to industry and consumer confusion, and both agencies agree that stakeholders will benefit from the simplification of Federal jurisdiction over pet food.

DATES: Submit comments on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: FSIS invites interested persons to submit comments on

the proposed rule. Comments may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** This website provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to <https://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- **Mail:** Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250-3700.

- **Hand- or courier-delivered submittals:** Deliver to 1400 Independence Avenue SW, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2020-0013. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <https://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202)720-5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250-3700.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205-0495.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Food, Drug, and Cosmetic Act (FFDCA), FDA is responsible for ensuring that pet food is safe for animals, produced under sanitary conditions, contains no harmful substances, and is truthfully labeled. FDA has had authority to regulate pet food since the FFDCA was passed in 1938. FDA does not charge pet food producers a fee for any FDA activities related to pet food. Individual States also regulate and inspect pet food.

Since 1958, under the Agricultural Marketing Act at 7 U.S.C. 1622(h), USDA also has provided for the certification of pet food as having been produced under sanitary conditions and meeting compositional and labelling requirements.¹ Under the regulations at 9 CFR part 355, participating facilities pay for this certification. The regulations governing FSIS certification services for pet food have not been substantively amended since the 1960's; therefore, the requirements are outdated (e.g., requirements regarding pet food ingredients and the submission of firm blueprints). Additionally, the regulations allow for certification only of certain categories of pet food (i.e., canned or semi-moist maintenance food, canned or fresh frozen certified supplemental animal foods, and canned certified variety meats). Many types of pet foods developed in the last few decades are thus not eligible for FSIS certification (e.g.,

¹ See 23 FR 10107: <https://www.govinfo.gov/content/pkg/FR-1958-12-23/pdf/FR-1958-12-23.pdf#page=1>.

pet jerky, pet treats, pet rawhides, raw pet food, freeze-dried pet food, and prescription pet food). Likely for these reasons, as of June 2020, no firms were participating in the FSIS certified pet food program.

FSIS is proposing to remove 9 CFR part 355 from the regulations because the certified pet food regulations are outdated, no companies use the voluntary service, and the regulations have led to industry and consumer confusion. FSIS and FDA agree that stakeholders will benefit from a single set of Federal pet food safety regulations under FDA jurisdiction.

Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a "non-significant" regulatory action under section 3(f) of E.O. 12866. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

Expected Costs and Benefits of the Proposed Rule

The proposed rule (i.e., removing 9 CFR part 355) would clarify that FDA has sole Federal jurisdiction over pet food

inspection, benefiting industry and consumers by reducing confusion. As described above, the certified pet food regulations are outdated and unnecessary. As of June 2020, no firms were using FSIS' certified pet food program. As such, the proposed rule is not expected to increase industry or Agency costs or have a negative public health impact.

Regulatory Flexibility Act Assessment

The FSIS Administrator has made a preliminary determination that this proposed rule would 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). The proposed rule is not expected to increase costs to the industry.

Paperwork Reduction Act

There are no new paperwork or recordkeeping requirements associated with this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

E-Government Act

FSIS and the U.S. Department of Agriculture (USDA) are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, et seq.) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication and officially notify the World

Trade Organization's Committee on Sanitary and Phytosanitary Measures (WTO/SPS Committee) in Geneva, Switzerland, of this proposal on-line through the FSIS Web page located at:
<https://www.fsis.usda.gov/federal-register>.

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. Constituent Updates are available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <https://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

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List of Subjects in 9 CFR part 355

Certified Pet Food.

PART 355 -- [REMOVED]

Accordingly, under the authority 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 255, the Food Safety and Inspection Service proposes to amend 9 CFR chapter III by removing part 355.

Paul Kiecker,
Administrator.

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