



FEDERAL ACTIONS



Food and Drug Administration

OYSTERS—STANDARDS OF IDENTITY AND FILL OF CONTAINER: An order establishing definitions and standards of identity and amending the standard of fill of container for canned oysters was signed by Oscar R. Ewing, Administrator, on March 10. Excerpts from the full text of the order as it appeared in the Federal Register of March 13 follow:

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Federal Security Agency

[Docket No. FDC-59]

PART 36—SHELLFISH; STANDARDS OF IDENTITY AND FILL OF CONTAINER

CANNED OYSTERS

In the matter of establishing definitions and standards of identity and amending the standard of fill of container for canned oysters.

Final order. By virtue of the authority vested in the Federal Security Administrator by the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701; 52 Stat. 1046, 1055; 21 U. S. C., 341, 371), and on the basis of the evidence received at the above-entitled hearing duly held pursuant to notice issued on June 6, 1947 (12 F. R. 3726); upon consideration of the exceptions filed to the tentative order issued by the Federal Security Administrator on October 4, 1947 (12 F. R. 6699) and granting those relating to identity and denying those relating to fill of container, as may be seen by comparison of this order with the tentative order, the following order is hereby promulgated.

DEFINITIONS AND STANDARDS OF IDENTITY

Conclusion. Based on the foregoing findings of fact it is concluded that it will promote honesty and fair dealing in the interest of consumers to adopt a definition and standard of identity for canned oysters as follows:

§ 36.5 *Canned oysters; identity; label statement of optional ingredients.* (a) Canned oysters is the food prepared from one or any mixture of two or all of the forms of oysters specified in paragraph (b) of this section, and a packing medium of water, or the watery liquid draining from oysters before or during processing, or a mixture of such liquid and water. The food may be seasoned with salt. It is sealed in containers and so processed by heat as to prevent spoilage.

(b) The forms of oysters referred to in paragraph (a) of this section are prepared from oysters which have been removed from their shells and washed and which may be steamed while in the shell or steamed or blanched or both after removal therefrom, and are as follows:

(1) Whole oysters with such broken pieces of oysters as normally occur in removing oysters from their shells, washing, and packing.

(2) Pieces of oysters obtained by segregating pieces of oysters broken in shucking, washing, or packing whole oysters.

(3) Cut oysters obtained by cutting whole oysters.

(c) (1) When the form of oysters specified in paragraph (b) (1) is used, the name of the food is "Oysters" or "Cove Oysters," if of the species *Ostrea virginica*; "Pacific Oysters," if of the species *Ostrea gigas*; "Olympia Oysters," if of the species *Ostrea lurida*.

(2) When the form of oysters specified in paragraph (b) (2) is used, the name of the food is "Pieces of _____," the blank being filled in with the name "Oysters" or "Cove Oysters," if of the species *Ostrea virginica*; "Pacific Oysters," if of the species *Ostrea gigas*; "Olympia Oysters," if of the species *Ostrea lurida*.

(3) When the form of oysters specified in paragraph (b) (3) is used, the name of the food is "Cut _____," the blank being filled in with the name "Oysters" or "Cove Oysters," if of the species *Ostrea virginica*; "Pacific Oysters," if of the species *Ostrea gigas*; "Olympia Oysters," if of the species *Ostrea lurida*.

(4) In case a mixture of two or all such forms of oysters is used, the name is a combination of the names specified in this paragraph of the forms of oysters used, arranged in order of their predominance, by weight.

STANDARD OF FILL OF CONTAINER

Conclusions. It would not promote honesty and fair dealing in the interest of consumers to so reduce the require-

ments of the present standard of fill of container for canned oysters as to return to the fill in use prior to 1942.

It would not promote honesty and fair dealing in the interest of consumers to make separate standards of fill of container for canned oysters of different sizes or for oysters of different species.

On the basis of the evidence of record and the foregoing findings of fact it is concluded that, by using any of the heat treatments given raw oysters before packing into the can, a 6½-ounce drained weight from the No. 1 can can be obtained without impairment of the quality of canned Pacific oysters.

On the basis of the evidence of record and the foregoing findings of fact and conclusions, and taking into account the differences between commercial canning and experimental canning, it is concluded that a standard of fill of container that will promote honesty and fair dealing in the interest of consumers is a standard based on drained weight of oysters, applicable to oysters of all sizes and species in cans of various sizes, requiring that the drained weight of oysters be not less than 59 percent of the water capacity of the can.

Wherefore, it is ordered, That paragraphs (a) and (b) of § 36.6 be deleted and that there be substituted therefor a new paragraph (a) as follows:

§ 36.6 *Canned oysters; identity; label statement of optional ingredients.* (a) The standard of fill of container for canned oysters is a fill such that the drained weight of oysters taken from each container is not less than 59 percent of the water capacity of the container.

Paragraphs (c), (d), and (e) of § 36.6 are hereby designated as paragraphs (b), (c), and (d), respectively.

Effective date. The regulations and amendments hereby promulgated shall become effective on the ninetieth day following the publication of this order in the FEDERAL REGISTER.

Dated: March 10, 1948.

["SEAL"]

OSCAR R. EWING,
Administrator.

Department of Labor

WAGE AND HOUR ACT INTERPRETATION: The Administrator of the Wage and Hour Division, Department of Labor, on March 9 issued an interpretation of the Fair Labor Standards Act as it applies to the seaman and fishery exemption. It is as follows:

PART 784 - SEAFOOD AND FISHERY EXEMPTION

784.1 Enforcement policy concerning performance of non-exempt work. The Division has taken the position that the exemption provided by section 13 (a) (5) of the Fair Labor Standards Act will be deemed applicable even though some non-exempt work (that is, work of a nature other than that which characterizes the exemption) is performed by the employee during the workweek, unless the amount of such non-exempt work is substantial. For enforcement purposes, the amount of non-exempt work will be considered substantial if it occupies more than 20 percent of the time worked by the employee during the workweek.



Department of State

PORT PRIVILEGES FOR CANADIAN VESSELS IN ALASKA: The Department of State announced on February 27 that the Canadian Government has requested the resumption of port privileges granted to Canadian halibut fishing vessels in Alaskan ports of entry during the war, and the Department of State is now considering the advisability of their temporary resumption for the year 1948. Under the peacetime navigation laws, foreign fishing vessels are permitted to enter ports of the United States only when in distress or to secure supplies, repairs, or equipment. From 1942 through 1946, under the authority of the Second War Powers Act, the Secretary of the Treasury, upon the recommendation of the Secretaries of State and Interior, waived the navigation laws to the extent necessary to permit Canadian halibut fishing vessels to enter Alaskan ports of entry to land their catch upon compliance with the applicable Customs regulations. The privilege to land the catch carried with it certain corollary privileges such as the sale and transshipment in bond of the catch.

With the expiration of the Second War Powers Act on March 31, 1947, the authority to grant these privileges to Canadian fishermen lapsed. Canada has, however, continued to grant privileges to American fishing vessels by annual Orders in Council. American halibut fishing vessels may, for example, enter Canadian Pacific ports of entry not only to secure supplies, repairs, or equipment, but also to ship crews, sell the catch subject to duty, or transship it in bond. The present request on the part of Canada asks that similar privileges be granted to Canadian halibut fishing vessels in Alaskan ports.

Special legislation will be required if the Alaskan port privileges are again to be granted. The Department of State, in collaboration with the Treasury Department and the Department of the Interior, is now formulating its position with regard to the necessary legislation.



Tariff Commission

"ESCAPE CLAUSE" IN TRADE AGREEMENTS: On July 25, 1947, the Committee on Ways and Means adopted a Resolution containing, inter alia, the following paragraph:

"Resolved that the Tariff Commission is requested to establish as soon as practicable the substantive and procedural criteria, measurements, or other standards by which it will determine whether imports, of any particular commodity are entering in such quantities as to 'injure' or threaten 'injury' to any domestic unit of agriculture, labor, industry or segment thereof, and to inform the Committee on Ways and Means as to how that Commission intends to comply with the provisions of Executive Order 9832 issued February 25, 1947 * * *."

The Tariff Commission, in a memorandum entitled Procedure and Criteria with Respect to the Administration of the "Escape Clause" in Trade Agreements, undertakes to set forth the general procedure which the Commission will follow in carrying out its obligations regarding the escape clause under Executive Order 9832, and, so far as practicable at this time, to indicate the major considerations which it will take into account in determining whether, as a result of unforeseen developments and of a concession granted by the United States on any article in a trade agreement, the article is being imported in such increased quantities and under such conditions as to cause, or threaten, serious injury to domestic producers.

The relevant portions of Executive Order 9832 for present purposes are contained in paragraphs 1-3, inclusive, of Part I, as follows:

1. There shall be included in every trade agreement hereafter entered into under the authority of said act of June 12, 1934, as amended, a clause providing in effect that if, as a result of unforeseen developments and of the concession granted by the United States on any article in the trade agreement, such article is being imported in such increased quantities and under such conditions as to cause, or threaten, serious injury to domestic producers of like or similar articles, the United States shall be free to withdraw the concession, in whole or in part, or to modify it, to the extent and for such time as may be necessary to prevent such injury.
2. The United States Tariff Commission, upon the request of the President, upon its own motion, or upon application of any interested party when in the judgment of the Tariff Commission there is good and sufficient reason therefor, shall make an investigation to determine whether, as a result of unforeseen developments and of the concession granted on any article by the United States in a trade agreement containing such a clause, such article is being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or similar articles. Should the Tariff Commission find, as a result of its investigation, that such injury is being caused or threatened, the Tariff Commission shall recommend to the President, for his consideration in the light of the public interest, the withdrawal of the concession, in whole or in part, or the modification of the concession, to the extent and for such time as the Tariff Commission finds would be necessary to prevent such injury.
3. In the course of any investigation under the preceding paragraph, the Tariff Commission shall hold public hearings,

giving reasonable public notice thereof, and shall afford reasonable opportunity for parties interested to be present, to produce evidence and to be heard at such hearings. The procedure and rules and regulations for such investigations and hearings shall from time to time be prescribed by the Tariff Commission.

An escape clause under which emergency action withdrawing or modifying a concession may be taken is included in the multi-lateral trade agreement recently negotiated at Geneva, which covers a large part of our total import trade both in number of articles and in aggregate value. A similar clause will also be included in subsequent trade agreements. But it is not included in any of the trade agreements which were concluded prior to the Geneva Agreement, except the agreements with Mexico and Paraguay, which are still in effect.

The first paragraph of Article XIX of the General Agreement on Tariffs and Trade negotiated at Geneva is an escape clause meeting the requirements of the President's Executive Order 9832. The language of this paragraph, which is, of course, controlling so far as action under the Geneva Agreement is concerned, is as follows:

- 1.(a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

The Geneva Agreement contains detailed provisions regarding the procedure to be followed in making use of the escape clause. These are quoted in full in the appendix to this report. In substance the Article requires consultation with the other contracting parties before taking action under the escape clause; under critical circumstances, however, action may be taken without prior consultation provided consultation is effected immediately thereafter. Even if agreement among the interested parties is not reached, the country proposing to take action under the escape clause may nevertheless do so. Other affected contracting countries are then free to suspend substantially equivalent obligations, so far as concerns trade with the country taking the action.

The memorandum also contains a detailed account of the "Procedure Regarding Investigations" and "Criteria for Determinations under the Escape Clause."

Copies of the complete report may be obtained, from the U. S. Tariff Commission, Washington 25, D. C.

