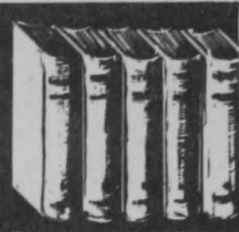




FEDERAL ACTIONS



Food and Drug Administration

FINAL ORDER ON FILL OF CONTAINER FOR CANNED SHRIMP: In the matter of amending the standard of fill of container for canned shrimp, the Food and Drug Administration issued a final order dated June 17, according to the Federal Register. This order was issued upon consideration of the exceptions filed to the tentative order issued on August 7, 1947, by the Federal Security Administration and its denial of the exceptions on the basis of the evidence received at the hearing held on June 6, 1947, which was the basis of the tentative order.

Full text of the order, as it appeared in the Federal Register of June 23, 1948, follows:

FEDERAL SECURITY AGENCY

Food and Drug Administration

[21 CFR, Part 36]

[Docket No. FDG-48]

CANNED SHRIMP

PROPOSED STANDARD OF FILL OF CONTAINER

In the matter of amending the standard of fill of container for canned shrimp.

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. 3725); upon consideration of the exceptions filed to the tentative order issued by the Federal Security Administrator on August 7, 1947 (12 F. R. 5429) and denying them, save as otherwise may be seen by comparison of this order with the tentative order, the following order is hereby promulgated.

*Findings of fact.*¹ 1. By order published in the FEDERAL REGISTER of July 2, 1942 (7 F. R. 4944), standards of fill of container were promulgated for canned wet-pack shrimp and canned dry-pack shrimp in nontransparent containers. The effective date of the order was August 1, 1942, and since that date nearly all of the canned shrimp in nontransparent containers produced in the United States has been packed in compliance with those standards of fill of container. (R. 10, 91, 100-101; Ex. 7)

2. The change from the lower fills which were used prior to the promulgation of these standards of fill of container made it necessary for canners to exercise more careful control at certain stages of the canning process. More care was necessary in packing the shrimp into the cans and additional precautions were necessary to prevent shrimp spilling from cans before sealing. The exercise of these additional precautions placed no unreasonable burden on the canners of shrimp. (R. 15-17, 33, 45, 56-57, 59, 61-62, 77, 100-101, 115-117, 119-120, 127, 131, 134-135)

3. The probability of an increase in breakage in the closure of cans during and after processing, as a result of compliance with the present requirements, was advanced at the hearing on July 8, 1947, as a reason for reducing the requirement as to fill. The causes of such difficulties are directly related to the structure of the cans used and to lack of proper control of canning operations, particularly the head space of the can and the temperature of its contents when it is closed. (R. 10-12, 29-30, 35-36, 39-40, 45, 61-62, 65-67, 77, 79-80, 120, 133-134, 141)

4. Canners of shrimp presented at this hearing certain reasons for objecting to the present requirements of fill of container in addition to increased manufacturing difficulties. These included an increased tendency for struvite crystals (referred to in exhibits 3 and 6 as phosphate crystals) to form when canned shrimp is held after canning, lowering of keeping quality caused by the longer time of processing used with the present fill, a

tendency for shrimp in some cans to stick together and to stick inside the cans, and an increase in the number of broken and twisted shrimp. (R. 12, 15, 43, 45, 51-52, 61-62, 74-75, 77, 96, 121-122; Exs. 3, 4, 6)

5. For many years it has been observed that small glass-like crystals of the compound struvite (magnesium ammonium phosphate) will develop in an occasional can of shrimp. This is objectionable, since uninformed consumers sometimes mistake the crystals for particles of glass. The cause of the formation of these crystals is not known. There was evidence of an increase in complaints from consumers because of the occurrence of struvite crystals in canned wet-pack shrimp since the promulgation of the present standards, but this evidence does not show the cause of the crystal formation or a relationship between the incidence of struvite crystals and the drained weight of shrimp. The number of complaints compared with the number of cans of shrimp packed is so small as to be statistically insignificant. (R. 12-14, 30-32, 37, 45, 52, 67-70, 74-75, 77, 80-81, 82-87, 102-108, 125-126, 139, 89; Exs. 3, 6, 9)

6. Apprehension was expressed that the longer processing time now used would render the shrimp somewhat softer when held for an extended period, unless they were held in cold storage. There is insufficient evidence to show that any increase in softening of shrimp packed under the present standard is of significance to consumers. Nor is the evidence sufficient to show whether the hazards of holding canned shrimp from one season to another have been increased by the longer processing time

¹The citations following each finding of fact refer to the pages of the transcript of the testimony and the exhibits received in evidence at the hearing, which are the basis for these findings.

now employed. (R. 50-52, 58; 64-65, 73-74, 77-79, 100-101, 122-129, 135-136; Ex. 9)

7. Sometimes the shrimp in cans of wet-pack shrimp stick together or stick to the sides of the can and at times one or more shrimp is broken. This happened to a lesser extent when cans contained less shrimp. This characteristic is not an impairment of quality of any significance. (R. 15, 43-45, 77, 100-101, 107, 121-122, 124, 127; Ex. 9)

8. Sales of canned shrimp have been slow due to high prices. It is the opinion of many dealers that sales would be facilitated if canned shrimp were available in a smaller quantity than 7 ounces, the weight of shrimp in the No. 1 can wet pack, so that the price per can could be reduced. The No. 1 can was the smallest can permitted until recently under requirements of the wartime tin conservation order. During the last few months some canners have packed shrimp in smaller cans. There was evidence that certain of these smaller cans are not of a size well adapted to the packing of large and extra large shrimp. The

shrimp are too large for the can. However, there is no evidence indicating that there should be established a standard of fill of container for large and extra large shrimp different from the standard of fill of container for medium and small shrimp. (R. 17-25, 45, 49, 77, 93, 99-100, 104, 107, 116-117, 119-120, 131-133; Exs. 4, 8, 9)

Conclusions. On the basis of the foregoing findings of fact it is concluded that:

(a) Reducing the standard of fill of container for wet-pack shrimp would result in the replacement of shrimp with brine. The reduction of the standard of fill of container for dry-pack shrimp would result in omitting from the can shrimp that could be contained therein. In both instances the size of the cans would inaccurately reflect the amount of shrimp contained therein, particularly because consumers of canned shrimp have been receiving well-filled cans for about 5 years.

(b) It would not promote honesty and fair dealing in the interest of consumers to reduce the requirements of cut-out

weight in the standards of fill of container for canned wet-pack shrimp and canned dry-pack shrimp in nontransparent containers.

Wherefore, it is ordered, That the regulations promulgated July 2, 1942 (7 F. R. 4944; 21 CFR, Cum. Supp. 36.3), fixing and establishing standards of fill of container for canned wet-pack shrimp and canned dry-pack shrimp, in non-transparent containers, be not amended to provide for reduction in the requirement for cut-out weight.

Dated: June 17, 1948.

OSCAR R. EWING,
Administrator.

[F. R. Doc. 48-5585; Filed, June 22, 1948; 8:51 a. m.]

* * * * *

OYSTERS--STANDARDS OF IDENTITY AND FILL OF CONTAINER: A West Coast oyster processing plant filed a petition with the United States Circuit Court of Appeals for a judicial review of the order issued by the Food and Drug Administration, Federal Security Administration, on March 10, 1948. The order in question promulgated regulations fixing and establishing a definition and standard of identity and amending the standard of fill of container for canned oysters. The Court, by an order dated June 8, 1948, referred it for hearing to the Federal Security Administrator. The Food and Drug Administration, according to the Federal Register, in compliance with the direction of the Court, gives notice of a public hearing.

Full text of the order, as it appeared in the Federal Register of June 23, 1948, follows:

121 CFR, Part 361

[Docket No. FDC 50]

FILL OF CONTAINER FOR CANNED OYSTERS;
DEFINITIONS AND STANDARDS OF IDENTITY
AND STANDARDS

NOTICE OF HEARING

Whereas, the Federal Security Administrator, by an order in this proceeding dated March 10, 1948, and published in the FEDERAL REGISTER of March 13, 1948, promulgated regulations fixing and establishing a definition and standard of identity and amending the standard of fill of container for canned oysters; and

Whereas, Willapoint Oysters, Inc., filed its petition with the United States Circuit Court of Appeals for the Ninth Circuit for a judicial review of said

order praying, however, that the proceeding be remanded to the Federal Security Administrator with directions that additional evidence be taken as to the petitioner's alleged new method of preparing oysters for canning by blanching fresh shucked oysters and as to the proper standard of fill of container under the Federal Food, Drug, and Cosmetic Act for oysters canned after such preparation; and

Whereas, the said Court, by order dated June 8, 1948, remanded for proceeding to the Federal Security Administrator.

• • • with direction to take such additional evidence (and evidence in rebuttal thereof) as may be offered relative to said process of packing blanched oysters, within a period of 30 days from the date of this order on such reasonable notice to the petitioner as he may give.

Administrator gives notice hereby that a public hearing will be held commencing at 10:00 a. m. eastern daylight time, July 7, 1948, in Room 5540, Federal Security Building, Independence Avenue and Fourth Street SW., Washington, D. C., to receive such evidence as may be adduced by Willapoint Oysters, Inc., as to its alleged new method of preparing oysters for canning and as to the relationship of such method to a reasonable standard of fill of container, as contemplated by the Federal Food, Drug, and Cosmetic Act, for canned oysters. Rebuttal evidence may be adduced by any interested party. A copy of this notice shall be mailed forthwith to Willapoint Oysters, Inc.

Dated: June 17, 1948.

[SEAL]

OSCAR R. EWING,
Administrator.

[F. R. Doc. 48-5580; Filed, June 22, 1948; 8:48 a. m.]

13 F. R. 1337-1339.

