

Is American Food having an Identity Crisis?

By: Laura Stanley | March 9, 2020

Former Food and Drug Administration (FDA) Commissioner Scott Gottlieb was not joking when he [tweeted](#) that the FDA was on a mission to “de-regulate frozen cherry pie.” He was referring to the food standard of identity regulations, which prescribe criteria that foods ranging from frozen cherry pie to canned tuna must meet.

Both FDA and the U.S. Department of Agriculture (USDA) promulgate food identity standards that require foods sold under particular names to have certain characteristics or ingredients that consumers might expect. USDA sets the standards for meat and poultry products, while FDA sets the standards for the remaining foods.

In 2005, the agencies jointly proposed a [rule](#) to establish principles for evaluating food identity standards. However, the rule was never finalized. FDA recently [reopened](#) the comment period on the proposed rule, but only in regard to FDA-specific aspects of the proposal.

The Issues with Food Identity Standards

FDA has issued over 280 food identity standards under the Federal Food, Drug and Cosmetic Act. These standards identify the common name of a food product and establish certain characteristics the food product must have to be sold under that name. Some standards specify that the food include particular ingredients, while others specify the manufacturing process that must be used. For example, the [standard](#) for frozen cherry pie specifies that the weight of the washed and drained cherries cannot be less than 25 percent of the weight of the pie. The [standards](#) for cheese products specify the various manufacturing processes that distinguish different types of cheese.

USDA has promulgated over 80 food identity standards for meat and poultry products under the Federal Meat Inspection Act and the Poultry Product Inspection Act. Similar to the FDA standards, the USDA standards vary widely depending on the food product. The [standard](#) for meat stews, for example, is only two sentences and requires at least 25 percent of the stew to be meat—otherwise a company could still call it “chunky meat soup.” On the other hand, the [standard](#) for barbecued meats specifies the manufacturing process that must be used, requiring that the meats be cooked with dry heat from burning hard wood or coals.

In brief...

FDA and USDA proposed a rule in 2005 to establish general principles the agencies could rely on to evaluate food identity standards. The agencies did not finalize the rule, but FDA recently reopened the comment period on the proposal.

While food identity standards may provide some assurance of truth in labeling, they can impede technological innovation in the food industry, and both agencies [acknowledge](#) this problem. Although manufacturers are developing new ingredients that might improve the nutrition or shelf life of food, these improvements might not fit into the existing standards, discouraging manufacturers from introducing new products or preventing them from marketing them effectively. For example, a USDA standard that requires a minimum percentage of meat might discourage industry from producing similar products with lower amounts of saturated fat or cholesterol. Additionally, when the standards contain unnecessary production requirements and raise the cost for manufacturers, they create effective barriers to competition and raise food prices.

The Proposed Fix

To fix these problems, the agencies issued a [proposed rule](#) in 2005 that explored various alternatives, ranging from completely eliminating the food identity standards to using agency resources to review and update all the existing standards. According to the agencies, there was not enough support from commenters on the Advance [Notice](#) of Proposed Rulemaking to justify eliminating the standards entirely, and the agencies did not have the resources to review all the existing standards.

The agencies found a middle ground. Under the proposed rule, they will rely on external parties to submit petitions with recommendations to revise, eliminate, or add a standard. If the recommendations are sufficiently in line with the set of general principles laid out in the proposed rule, either FDA or USDA would issue a new or revised standard.

The agencies proposed separate sets of principles that are similar, but not identical. The first few principles in both sets relate to the professed purpose of food identity standards. For example, FDA's first principle states that a food identity standard should "promote honesty and fair dealing in the interest of consumers." FDA's next two principles state that a standard should "describe the basic nature of the food" and "reflect the essential characteristic of the food." The remaining principles describe how the standards should be written and what should be incorporated. For example, FDA's principles state that the standards should contain clear requirements and allow for maximum technological flexibility.

Economic Evaluation of Food Identity Standards and the Proposed Rule

The preamble to the proposed rule includes a qualitative discussion of the general economic impacts of food identity standards as well as the costs and benefits of the proposed rule. FDA and USDA write that in theory, food identity standards can be economically beneficial if they reduce search costs for consumers.

The agencies argue the standards are more effective when consumer beliefs about food products are homogeneous, and less effective when consumers have different beliefs about food products. If consumers have similar expectations that a food product has certain ingredients or characteristics, consumers can more easily ascertain whether the food product has that ingredient or characteristic when the standard is consistent with the consumer expectations. For example, if you are having a dinner party and serving cottage cheese on peach halves, you need to be confident that every guest will have the same size. A standard with a size requirement for canned peaches might reduce the time you spend checking that each peach half is the same size.

However, if consumers have widely different beliefs about food products, a food standard of identity can encourage consumers to attribute differences to food products that do not exist, increasing search costs. High search costs discourage consumers from trying new products and encourage them to stick to products they are familiar with, further impeding innovations in the food industry. The agencies do not point to any empirical evidence that tests this theory.

The agencies believe that the proposed rule will generate net economic benefits. They argue that because the principles require a petitioner to show that a proposed standard “preserve[s] the basic nature of the food and its essential characteristics,” this will ensure the standard is consistent with consumer expectations. This suggests that the agencies plan to review recommended standards to ensure they are consistent with consumer beliefs, but not necessarily to ensure that consumer beliefs are uniform. A standard will only maximize economic benefits if it is designed to be consistent with consumer expectations and consumer expectations are homogeneous.

The preamble does not offer a way to determine if consumer expectations are homogeneous, and the proposed rule does not require petitioners to submit actual evidence of whether consumer expectations are homogeneous or heterogeneous.

The agencies point out that the proposed principles will reduce costs for external parties that submit petitions because they will not waste time and resources on petitions the agency cannot accept. The proposed rule would transfer the costs of assessing the standards from FDA and USDA to these external parties, but the agencies could not assess the overall effect of the transfer because they could not measure the relevant opportunity costs.

The economic evaluation accompanying the proposal discusses the costs and benefits of alternative options, including eliminating all food identity standards. The agencies argue that the net benefits of eliminating the standards would be lower than the net benefits of the proposed option because it would eliminate existing food identity standards that are economically beneficial.

The economic evaluation does not explicitly discuss the role that food identity standards play in alleviating information asymmetries. The search costs theory relates to information asymmetries because it describes scenarios where consumers might have less information about a product than the manufacturer. However, the agencies do not discuss any potential adverse selection problem that might result from these asymmetries. Economists have [pointed out](#) that food-labeling requirements are effective at addressing the problem of asymmetric information (but are not as effective at addressing other types of market failures).

FDA’s Efforts to Modernize Food Identity Standards

FDA [released](#) the “FDA Nutrition Innovation Strategy” in 2018 with the goal of reducing preventable death and disease related to poor nutrition. This strategy included a commitment to modernize the food identity standards. As a part of this effort, the agency recently reopened the comment period on the 2005 proposed rule. Specifically, the agency is [seeking comment](#) on whether it should finalize the proposed rule and add, eliminate, or revise any of the proposed principles.

Interested parties are invited to comment on the FDA-specific portions of the proposed rule by April 21, 2020.