FEDERAL AND STATE REGULATIONS

Congress holds hearings on foods standards bill

THE Subcommittee of the House Committee on Foreign and Interstate Commerce has concluded its hearings on the Hale bill, H.R. 5055. The bill has been proposed to overhaul the sections of the present pure food law concerning the establishment of identity standards for food products.

Congressman Joseph P. O'Hara (R. Minn.) presided over the meeting of the subcommittee. Because of the apparent unanimity of opinion that the bill would benefit both industry and the Government, there was no major criticism of the bill voiced at the hearings.

Michael F. Markel of the Food, Drug, and Cosmetic Law Section of the New York State Bar Association testified as a spokesman for the food industry and urged passage of the legislation.

The Food and Drug Administration was represented by Commissioner Charles W. Crawford. Dr. Crawford testified that the FDA was in favor of the bill on two major counts: "It sacrifices no rights and will save a lot of money." He added that minor changes in the wording of the bill will be submitted to the committee through the sponsors of the bill. These technical changes are thought to be necessary to clear up some of the language of the measure.

In brief, Congressman Hale's bill would eliminate the requirement that food standards be promulgated on the basis of evidence of record at a formal hearing. The bill would also extend the eligibility for ingredient manufacturers to apply for hearings on food standards. Under the existing legislation, only the manufacturers of end food products have the right to apply for hearings on food standards.

Present Procedure

Government and industry spokesmen agree that under the present pure food law food standards hearings are often unnecessarily prolonged with resultant cost to both Government and the food industry. The Hale bill has been proposed to streamline the rules for these hearings, to eliminate prolonged formal hearings where none are required and yet preserve the legal safeguards against possible arbitrary administrative action.

The administrative authority for the establishment of food standards is assigned to the Food and Drug Administration by section 401 of the Federal Food Drug and Cosmetic Act. H.R. 5055 has no effect on this authority to establish standards; rather it would modify the procedures by which the standards are established. The bill proposes specific amendments of Sections 401 and 701 of the present act.

The section of the present law relating to the regulations and hearings provides that hearings are to be conducted by the Secretary or a designated employee of the Department of Health, Education, and Welfare. The manner for conducting the hearings is described in considerable detail in Section 701. The hearings can be initiated by the Secretary on his own initiative or upon application of interested parties.

When the Secretary concludes that reasonable grounds for the proposed food standards exist, a proposal is issued from the Department.

The proposed standards are usually rather lengthy and detailed so that anyone who may object to them can specify the specific provisions which are considered objectionable. The proposal is issued as part of a notice that formal hearings are to be held and the date of the formal hearings is fixed in the notice.

The purpose of the hearing is to receive evidence concerning the questions of the proposal. The law specifies that all the provisions of the proposed regulation, whether challenged or not, must be supported by legal evidence.

As a result of these provisions, a formal hearing is in many respects similar to a court trial.

After the hearings have been completed, the interested parties can file suggested regulations or suggested modification of the proposed regulations, together with a brief in support of the suggestion.

After consideration of the hearings and the briefs, the Secretary issues a proposed order, which includes the proposed regulations and the evidence on which the proposed regulations are based. Parties who are dissatisfied with the proposed regulation can again file objections supported by briefs.

After consideration of these final objections, the Secretary issues a final order, establishing a set of standards of identity for a food product. This final order does not become effective until 90 days have elapsed from the date it was issued. During the 90-day period dissatisfied parties can file for judicial review of the Secretary's order in a U. S. Court of Appeals.

Provisions of Hale Bill

Under the provisions of the Hale bill the original action to get a regulation issued, amended, or repealed can be initiated either by the Secretary, on his own initiative, or by any interested persons who can show reasonable ground for the action. The proposed action must be published so that all interested persons can have an opportunity to present their views. After consideration of the proposal and the opinions which may have been submitted, the Secretary is required to issue a proposed order and if the proposed order meets with no objections then it becomes a regulation on the day following the last day for filing objections. This would be the end of the procedure in all cases where no objections are raised.

Appeal Rights Maintained

The bill provides that anyone who is dissatisfied with the proposed regulation can file objections and by this act the formal procedures available under the present law would be initiated.

The present law identifies those who are eligible for administrative consideration in a proposal to issue, amend, or repeal a food standard as: "Any interested industry or a substantial portion thereof." The Hale bill defines those eligible as: "any interested party." The Hale bill is much broader in scope of who can be considered.

The eligible group as identified in the present law has been construed to include only basic food processors and to exclude the group who supply ingredients for the food processors. However, in recent years the interests of the ingredient suppliers in food standards has increased greatly and under the Hale bill they would have legal grounds for initiating hearings on regulations.

Mr. Markel introduced the statement from the National Research Council Committee on Food Standards in his testimony. He explained that the Research Council does not participate in Congressional hearings but said that they had given permission for the introduction of the committee's findings.

Congressman O'Hara concluded the hearing with a statement to the effect that the subcommittee would try to get the Hale bill up for a vote in Congress as soon as possible.