

MEMORANDUM**From:** Steven B. Steinborn
Brian D. Eyink**Date:** January 12, 2011**RE: FSIS Issues Final Rule Requiring Nutrition Labeling for Single-Ingredient Meat and Poultry Products**

On December 29, 2010, the Food Safety and Inspection Service (FSIS) published a final rule¹ that requires nutrition labeling for single-ingredient meat and poultry products. Under the new rule, major cuts of meat and poultry and ground or chopped meat and poultry products will have to be accompanied by nutrition information. The labeling requirements differ for the major cuts and for the ground and chopped products. Failure to provide this mandatory information will render the product misbranded. The new rule also permits ground or chopped meat and poultry products that do not qualify for a low-fat claim to bear a lean percentage claim. These changes will become effective January 1, 2012. This memorandum summarizes the new rule's labeling requirements.²

Major Cuts

Major cuts of single-ingredient, raw meat and poultry products that are not ground or chopped must bear nutrition information either on the label or at the point of purchase.³ Ground beef and ground pork are no longer included as major cuts of meat.

If the nutrition information is included on the product's label, the label must bear the complete nutrition information normally required of packaged meat or poultry.⁴ The final rule, though, makes several variations to the nutrition information requirements regarding major cuts' labels. Notably, the nutrient content can be stated in terms of either "as packaged" or "as consumed," and the label does not need to state the number of servings per container. If a major cut of poultry's label declares nutrition information as consumed, the label must specify the cooking method used, which cannot add nutritional content from other ingredients.

¹ Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products; Final Rule, 75 Fed. Reg. 82,148 (Dec. 29, 2010) (to be codified throughout 9 C.F.R. parts 317 and 381). FSIS published its original proposed rule on January 18, 2001. 66 Fed. Reg. 4,969. After a period of inactivity, FSIS published a supplemental proposed rule on December 18, 2009, to provide additional opportunity for public comment. For a summary of the original proposed rule and supplemental proposed rule, respectively, see Hogan & Hartson memorandum dated January 24, 2001, *USDA Proposes Mandatory Nutrition Labeling to Replace Voluntary In-Store Program*, and Hogan & Hartson memorandum dated December 18, 2009, *FSIS Issues Supplemental Proposed Rule to Mandate Nutrition Labeling for Certain Meat and Poultry Products*.

² Although the requirements for meat and poultry products are codified in different parts of the C.F.R., they mirror each and are treated together here.

³ The major cuts are listed in 9 C.F.R. § 317.344 (meat) and § 381.444 (poultry).

⁴ The required nutrition information and formatting is specified in 9 C.F.R. § 317.309 for meat or § 381.409 for poultry.

Alternatively, the nutrition information for the major cuts may be displayed at the point of purchase.⁵ The point of purchase materials must be “in close proximity to the food,” and can include signs, brochures, notebooks, and leaflets. The nutrition information can be supplemented by a video, a live demonstration, or other media. If the materials make a nutrition claim (rather than merely providing nutrition content information), the point of purchase materials must comply with all the format and content requirements imposed on labels. If the point of purchase materials include only nutrition content information, though, the requirements are relaxed: the percent daily value for all nutrients except certain vitamins and minerals⁶ may be omitted, and the point of purchase materials are not subject to the normal nutrition label format requirements.

Ground or Chopped Products

All ground or chopped single-ingredient meat and poultry products must bear nutrition information on their labels. Point of purchase materials will not suffice. The labeling requirements apply to products with or without added seasonings. Ground beef, ground pork, and hamburger are included in this labeling requirement.

Ground or chopped meat or poultry products must comply with the normal nutrition information label requirements for packaged meat or poultry. In this regard, FSIS will treat ground or chopped meat and poultry products as it treats multi-ingredient and heat-processed products. The label will have to state nutrient content as packaged, but they may include an additional, optional statement of nutrient content as consumed. The number of servings per container may still be stated as “varied.”

Non-Major Cuts That Are Not Ground or Chopped

Non-major cuts that are not ground or chopped are not subject to the new mandatory requirements. Information that is voluntarily provided must conform to the requirements governing major cuts of meat or poultry.

Lean Percentage Claims

Ground or chopped meat or poultry products that are not eligible to make a “low fat” claim may include a statement of the lean percentage on their labels. If a lean percentage claim is made, the label must also include a statement of the fat percentage “contiguous to and in lettering of the same color, size, type, and on the same color background, as the statement of the lean percentage.”

Compliance/Enforcement

Enforcement will differ for the major cuts and the ground or chopped products. For the major cuts of meat or poultry, FSIS will verify that nutrition information is provided on the label or at the point of purchase. If the nutrition information is drawn from the USDA’s National Nutrient Data Bank or the USDA’s National Nutrient Database for Standard Reference, there are no nutrition claims on the

⁵ The point of purchase requirements are specified in 9 C.F.R. § 317.345 for meat or § 381.445 for poultry.

⁶ The vitamins and minerals are Vitamins A, B₆, B₁₂, C, D, and E; calcium; iron; thiamin; riboflavin; niacin; folate; biotin; pantothenic acid; phosphorus; iodine; magnesium; zinc; and copper.

labeling, and the inspector can visually verify the cut of meat or poultry, FSIS will not sample or test the product.⁷

For ground or chopped meat or poultry, FSIS will treat the product as it would any other product required to bear a nutrition label. FSIS will collect samples of the ground or chopped product at retail and analyze the nutrition content, even if the nutrition information is based on the USDA's National Nutrient Data Bank or the USDA's National Nutrient Database for Standard Reference.

Exemptions

The final rule exempts small businesses from the ground or chopped product labeling requirements, but not from the major cuts requirements. Because nutrition information for the major cuts can be obtained from the USDA's National Nutrient Data Bank or the USDA's National Nutrient Database for Standard Reference, FSIS does not anticipate that the point of purchase requirements for major cuts will be burdensome for small businesses. A small business can include a lean percentage and fat content claim on the label or labeling for a ground or chopped product without triggering the labeling requirement so long as the labels bear no other nutrition claims or nutrition content information. A small business is one that employs 500 or fewer people and produces no more than 100,000 pounds of qualifying product.

Additional exemptions apply, depending on the type of product:

Exemptions for major cuts and ground or chopped meat or poultry products

- Products intended for further processing whose labels bear no nutrition claims or nutrition content information
- Products not for sale to consumers whose labels bear no nutrition claims or nutrition content information
- Products sold in small, individually wrapped packages that weigh less than 0.5 ounces, so long as the labels bear no nutrition claims or nutrition content information
- Custom-slaughtered or custom-prepared products
- Products for export

Exemptions for ground or chopped meat or poultry products only

- Products ground or chopped at the customer's request and prepared and served at retail, so long as the labels bear no nutrition claims or nutrition content information
- Packaged products whose packages have less than 12 square inches of surface area for labeling, so long as the labels bear no nutrition claims or nutrition content information. Instead, the labels must bear an address or telephone number for the customer to use to obtain the nutrition information.
- The above-described small business exemption

The final rule states that the nutrition-information labeling exemptions do not apply to ready-to-eat ground or chopped products packaged or portioned at retail or multi-ingredient product processed at retail. Unless the business otherwise qualifies as a small business, these ready-to-eat products will be subject to labeling requirements.

⁷ The USDA National Nutrient Database for Standard Reference will be used in place of the Agricultural Handbook No. 8 series for determining nutrient values. Moreover, FSIS has eliminated the voluntary nutrition labeling program set out in 9 C.F.R. § 317.343 for meat and § 381.443 for poultry.

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The new mandatory program will require retailers and others to consider which products are subject to the new rule and to plan for ensuring compliance by January 1, 2012. Several features of the new rule will be familiar to those participating in the pre-existing voluntary nutrition labeling program.

We will continue to monitor this and other food-labeling developments. Please contact us if we can help further analyze this new rule or assist with compliance efforts.