



March 18, 2010

SUBMITTED ELECTRONICALLY

U.S. Department of Agriculture, FSIS
Room 2-2127
George Washington Carver Center
5601 Sunnyside Avenue, Mailstop 5474
Beltsville, MD 20705-5474

Re: Docket No. FSIS-2005-0018; Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products

Dear Sir or Madam:

The Food Marketing Institute (FMI) welcomes the opportunity to respond to the request from the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) for comments concerning mandatory nutrition labeling for meat and poultry products. We appreciate the agency's efforts to respond to comments on the original proposed rule and to allow the public this additional opportunity to comment. As explained below, although FMI continues to believe that the voluntary program provides a sound means of offering information to consumers, we suggest that any mandatory program should be more flexible than that proposed in the supplemental proposed rule.

FMI conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies — food retailers and wholesalers — in the United States and around the world. FMI's members in the United States operate approximately 26,000 retail food stores and 14,000 pharmacies. Their combined annual sales volume of \$680 billion represents three-quarters of all retail food store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms, and independent supermarkets. Its international membership includes 200 companies from more than 50 countries. FMI's associate members include the supplier partners of its retail and wholesale members.

I. Executive Summary

FMI and its members have implemented various methods of voluntary nutrition labeling in order to comply with the current voluntary nutrition labeling regulation. As discussed more fully below, we believe that the agency should not impose a mandatory program until it accesses the current state of compliance with the voluntary program. If a mandatory program is adopted, it

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should allow retailers the flexibility to use either point-of-purchase or on-package nutrition labeling for all types of meat and poultry products, not just the major cuts.

As in the past, FMI welcomes the opportunity to play a role in the development of effective point-of-purchase materials. FMI, in conjunction with our partners in the meat and poultry production chain, used data generated by USDA to develop the Nutri-Facts consumer information program in 1985. Today, Nutri-Facts brochures and posters continue to provide point-of-purchase nutrition information to consumers on meat and poultry products, as well as produce and seafood, and have been used by our members and other food retailers for over two decades. We believe that because the majority of consumers use the nutrition information now provided at retail, there is no need to switch to a mandatory on-pack labeling program for ground and chopped products.

We are also enhancing information to consumers at retail through non-traditional means including dietitians and nutrition consultants in many stores.

We support the agency's proposal to allow the use of percent fat and lean statements on ground and chopped products, regardless of whether they meet the definition of "low fat." Such statements provide important information to consumers and should not be restricted. FMI and its members also commend the agency's recognition that small businesses deserve the flexibility to include percent fat and lean statements on product packaging. If a final rule mandating nutrition labeling is adopted, we hope that the agency will recognize the burden imposed on retailers and provide the opportunity for additional time for implementation.

Several of these issues were addressed in our previous comments, which are attached. We do not repeat our earlier comments here but do reference the former discussion where appropriate.^{1/}

II. The Voluntary Nutrition Labeling Program Should Remain in Effect

FSIS's regulations establish a voluntary nutrition labeling program for certain meat products with the caveat that "if significant participation [of at least 60% of retailers] is not found, FSIS shall initiate rulemaking to require nutrition labeling on those products under the voluntary program."^{2/} Based on surveys conducted by the agency in 1996 and 1999 to measure retailer participation in the voluntary program, FSIS determined in the 2001 proposed rule that compliance fell below the "significant participation" standard established in the agency's regulations.^{3/}

^{1/} See [FMI Comments](#) to FSIS Docket No. 98-005P (July 17, 2001). These comments are incorporated by reference.

^{2/} 9 C.F.R. §§ 317.343 and 381.443.

^{3/} 9 C.F.R. §§ 317.343 and 381.443. See also 58 Fed. Reg. 640 (Jan. 5, 1993).

Because the agency has not conducted any surveys to determine retailer participation since 1999, the data used as a basis for promulgating this rule is out of date.^{4/} USDA has not presented a justification for basing this rulemaking on the level of participation that may have existed over ten years ago, nor has it shown that the information available to consumers today is the same as was available in 1999. Although the agency is basing its rulemaking on the “most recent surveys,” these do not provide a reliable basis upon which FSIS could reasonably conclude that a mandatory program is warranted.

Although the 1996 and 1999 surveys are the most recent surveys conducted, the regulations requiring the agency to evaluate the level of participation in the voluntary program “every 2 years” remain in effect.^{5/} Before taking further action on this proposed rule, FSIS should conduct another survey to determine the *current* level of participation in the voluntary program. Because of changes in the composition of the retail sector over the past decade and efforts by FMI to encourage the widespread use and dissemination of Nutri-Facts materials, it is quite likely that the level of participation may have increased and currently surpasses the “significant participation” threshold. If this is the case, a rule mandating nutrition labeling is not warranted.

III. Any Mandatory Program Should Allow Retailers the Flexibility to Use Either Point-of-Purchase Materials or Nutrition Facts Labels

FMI and its members have several concerns related to the proposal to mandate on-pack nutrition labels for all ground and chopped products. We believe that the agency should adopt a more flexible approach to mandatory nutrition labeling, allowing retailers the choice to use either point-of-purchase materials or on-label nutrition facts for all types of meat and poultry products. Effective and easy-to-understand point-of-purchase materials can be developed to clearly convey nutrition information for all of the various formulations of meat and poultry products, not just the major cuts. Should nutrition labeling be mandated for ground and chopped products, several otherwise avoidable detriments to both consumers and retailers will result.

A. Point-of-Purchase Materials Allow Consumers to Readily Compare Multiple Products

Point-of-purchase materials provide several benefits to consumers over nutrition labels. For example, materials available at the point-of-sale provide consumers with a more simple means of comparing the nutritional profiles of different meat and poultry products. As discussed in our previous comments, if a consumer were interested in lowering “fat per serving,” for instance, a nutrition labeling chart would provide an ideal means of comparison. Similarly, if a consumer was

^{4/} Our earlier comments explain FMI’s significant concerns with the methodology used to conduct the 1990s studies.

^{5/} 9 C.F.R. §§ 317.343 and 381.443.

interested in comparing three or four particular products, they could find them all in a point-of-purchase chart and compare them on that basis rather than juggling the individual packages.

In addition, for products purchased at the meat counter, point-of-purchase materials allow consumers to inspect nutrition labels before making their purchase. Unlike nutrition labels that would just be added to packages once consumers place their orders, point-of-purchase materials allow consumers to view the nutrition content of the products they are considering before making their purchase decision.

We disagree with the agency’s contention that “it would be difficult for consumers to find the correct information for a specific ground or chopped product on point-of-purchase materials concerning numerous formulations of these products.”^{6/} Currently, consumers can readily identify the major cuts by using the materials developed jointly by USDA and FMI. The ease-of-reference would be no less for materials that cover ground and chopped products.

B. Effective Point-of-Purchase Materials Can Be Developed for Ground and Chopped Products

The agency also cites concerns that “it would be difficult for producers or retailers to develop point-of-purchase materials that would address all the different formulations that exist for these products.”^{7/} We believe such concerns are overstated. Rather than mandating that ground and chopped products bear nutrition facts on the package, retailers deserve the flexibility to choose the means of presenting information to consumers. Both point-of-purchase materials and on-pack labeling should be permitted for all types of meat and poultry products.

As cited by USDA in the supplemental proposed rule, FMI has previously worked with the agency to develop “meaningful and accurate” consumer Nutrition Facts materials for the major cuts.^{8/} We welcome the opportunity to continue these efforts by developing effective, consumer-friendly point-of-purchase materials for ground and chopped products. Although the timeframe for responses to the supplemental proposed rule did not allow us to prepare drafts of such materials, we are confident that acceptable materials can be designed. The agency should not disallow retailers the opportunity to use point-of-purchase materials based on the unfounded belief that effective materials cannot be developed.^{9/}

^{6/} 74 Fed. Reg. 67736, 67737 (Dec. 18, 2009) (citing 66 Fed. Reg. 4977 (Jan. 18, 2001)).

^{7/} 74 Fed. Reg. at 67737.

^{8/} 74 Fed. Reg. at 67746.

^{9/} Especially given the high costs of compliance with a mandatory on-pack nutrition labeling rule for ground and chopped products, as discussed further below, retailers should be given the opportunity to attempt to design point-of-purchase materials. If, development of sufficient point-of-purchase materials becomes onerous or impracticable, a rule

Furthermore, as we pointed out in our previous comments, it will be substantially more difficult to develop and ensure the accuracy of complete, on-pack nutrition labels for the full offering of ground and chopped products offered to consumers than to develop clear point-of-purchase materials. We remain concerned that retailers may be forced to eliminate some of the choices that are currently available to consumers because of the expense associated with testing and verifying the nutrient values required for each nutrition label.

We do not think a distinction is warranted between the major cuts and ground and chopped products as to how nutrition information should be provided. The agency states that these products differ from other single-ingredient, raw products because the products can be formulated to precise specifications and thus are similar to products in the existing mandatory program that must bear nutrition labels.^{10/} Although the content of these ground and chopped products can be more precisely controlled than that of the major cuts, our concerns about the burdens imposed by mandatory nutrition labeling are no less applicable.

C. Consumers May Not Benefit from Additional On-Pack Labeling

If the agency mandates nutrition fact labeling on ground and chopped product packages, consumers may not benefit from the requirement. The addition of the too much nutrition information may decrease the ability for consumers to visually inspect products. Moreover, the additional labeling information may create a tension with the important food safety information and cooking instruction that is provided to consumers on product labels.

Consumers repeatedly cite the importance of visually inspecting meat prior to purchase. A recent report published by FMI and the American Meat Institute (AMI) found that 47% of consumers rank product appearance as the first or second most important factor when selecting or purchasing meat products.^{11/} Ground and chopped products already bear labels containing numerous pieces of required information: the name of the product, the ingredients, the name and place of business of the manufacturer, packer, or distributor for whom the product is prepared, net quantity of contents, safe handling instructions, country-of-origin labeling, and an official inspection legend. Requiring additional nutrition facts labels on the front of the package, which are

allowing retailers the option of either point-of-purchase or on-pack nutrition labeling provides an effective solution that requires no further rulemaking by the agency.

^{10/} 74 Fed. Reg. at 67737.

^{11/} *The Power of Meat: An In-Depth Look at Meat Through the Shoppers' Eyes*, 2010 (Report prepared for the Annual Meat Conference). Assigning a score of one through six, where six is the most important, consumers ranked product appearance as the second most important factor when purchasing meat, with an average score of 4.1.

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inherently large, on products can obscure consumers' view of the products, reducing the ability for consumers to inspect products visually.^{12/}

We are also concerned that the safe handling instructions mandated by USDA will be less visibly apparent to consumers if additional on-pack labeling is required.^{13/} If packages bear additional labeling or more labels, this important food safety information will inherently be less prominent. Additionally, the voluntary information provided by many retailers regarding minimum recommended cooking instructions will also become hidden among the large amount of information on the label or on the package. Point-of-purchase materials provide a good alternative particularly with packages with a limited amount of space including ground and chopped meat packages does not need to be overcrowded by the addition of mandatory on-pack nutrition labeling.

D. Mandatory Nutrition Facts Labels Impose a Substantial Financial Burden on Retailers

In addition to the increased benefits to consumers that would result from allowing point-of-purchase labeling for ground and chopped products, this increased flexibility would also spare retailers from the substantial financial burden of the proposed rule. If all ground and chopped products are required to bear nutrition facts labels, retailers will be required to incur substantial costs in order to comply. The agency could easily avoid imposing these high costs on retailers by allowing them the option of provide nutrition information through point-of-purchase materials for all types of meat.

Few retailers currently have the capability to print nutrition facts labels. Most retailers will have to upgrade or obtain equipment that can print labels of adequate size to display nutrition facts for ground or chopped products. In the supplemental proposed rule, the agency estimates the total cost for upgrading printer-scale systems will be at least \$50 million (\$2400 per store or \$2247 per label design), and possibly more depending on the method used to include the nutrition information on labeling.^{14/}

We view the costs estimated by the agency to be on the lower end of the actual costs that will be incurred by retailers, although were not able to develop specific estimates of costs in the time provided for comment on the supplemental proposed rule. The agency's cost assessment does

^{12/} The *Power of Meat* report also found that an increasing percentage of consumers believe that sufficient health and nutrition information is available when purchasing fresh meat and poultry. In 2010, 61% of consumers found that the varying ways retailers and suppliers provide nutritional information, including on package, in brochures, on take-home flyers, and on posters in the store, gives them enough health and nutrition information at the time of purchase. This is up four points from 2009.

^{13/} 9 C.F.R. § 381.125.

^{14/} 74 Fed. Reg. at 67772.

not take into account the number of retailers that would be required to replace their entire scale systems at the store level.^{15/} Retailers should be provided the flexibility to display nutrition information in a variety of fashions so that they are not required to scrap their current equipment. As retail margins have decreased in the current economic environment, these costs would impose a significant burden on many stores.

IV. Percent Fat and Lean Statements Provide Valuable Information to Consumers

FMI supports the proposal to establish a regulation allowing the use of statements of fat and lean percentages on the label or in labeling of all ground or chopped meat products. Such statements provide many benefits to consumers, who rely on the information in making their purchasing decisions. Accordingly, we urge the agency to adopt this proposed regulation and permit the use of percent lean and fat statements regardless of whether the product meets the “low fat” criteria or its nutrition labeling. For instance, a consumer may recognize that a package containing ground beef that is 80% lean may be an acceptable choice for a recipe that allows you to thoroughly drain the fat before incorporating the meat.

With our previous comments, we provided the agency with a copy of research we conducted that indicated consumers understand this information and continue to rely on it in making their purchasing decisions. We are currently conducting a health and wellness study that may provide updated insights on consumer understanding of this information, however it was not complete in time for the comments deadline.

Most retailers that we informally surveyed use both percent fat and lean statements on their ground beef products. The percent fat and lean statements are complementary, not redundant, working together to provide busy shoppers with desired information at-a-glance. For many years, consumers have relied on these statements to quickly determine which meat products meet their needs. Consumers can readily select products that meet their dietary requirements, focusing on the percent lean statement, or that will accommodate specific recipes. Additionally, consumers can use this information to determine the price/value relationship of the product.

If the use of such percent fat and lean statements was limited to products that meet the regulatory definition of “low fat,” consumers would be provided less information than they currently have available. Many products in the meat case will be devoid of percent fat and lean statements if their use was limited to only “low fat” products. This may result in consumers unintentionally opting to purchase products that are higher in fat, because the fat percentage is not readily visible at-a-glance. Similarly, consumers may choose higher fat products based on their lower cost because they do not have the information available to them to determine the connection

^{15/} Additional burdens also would be imposed on retailers, including the time required to locate scale manufacturers with adequate capabilities and the need to have state weights and measures officials calibrate scales

between the price and the lean percentage. Consumers are more likely to be misled by limiting the situations where percent fat and lean statements are permissible than by allowing their use on all ground and chopped products.

V. Flexibility for Small Businesses Should Be Maintained

We commend the agency for recognizing the importance of providing flexibility to small businesses and exempting them from many of the requirements of the supplemental proposed rule. We also appreciate the agency's recognition that small businesses that produce ground or chopped product and include a statement of lean percentage and fat percentage on the product's label or in labeling should not also be required to include nutrition information on the product label, unless they include other nutrition claims or information on the product label.^{16/} The agency's modification of the original proposed rule in this regard illustrates a reasonable recognition of the significant expenses such requirements can impose on small businesses, many of which are already struggling in the current economy.

FMI urges the agency to continue this approach for the final rule. As the agency has recognized, such statements do not mislead consumers.^{17/} Requiring nutrition information on products bearing percent lean and fat statements would impose an undue economic hardship on small businesses and result in a competitive disadvantage against larger retailers.

VI. The Agency Should Provide an Opportunity for Extension of the Final Rule's Effective Date

If the agency adopts a final rule mandating nutrition labeling for meat and poultry products, we encourage the agency to consider the significant changes required for retailers when setting the effective dates. The supplemental proposed rule would become effective on January 1, 2012 for ground and chopped products and one year from the date of publication of the final rule for the point-of-purchase requirements for the major cuts.^{18/} Due to the time inherently required to come into compliance, we suggest that the agency include in the final rule a provision allowing an extension of the effective dates of up to 6 months for each date if there is sufficient evidence that compliance is not readily obtainable by industry. While industry and retailers are already developing coalitions to plan implementation of a final rule, the agency should recognize the possibility that unforeseen circumstances may arise and additional time may be necessary to comply.

^{16/} 74 Fed. Reg. at 67741.

^{17/} 74 Fed. Reg. at 67741.

^{18/} 74 Fed. Reg. at 67741.

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VII. Conclusions

In conclusion, FMI and its members urge the agency to conduct a survey to determine current participation in the voluntary nutrition labeling program so that its policies and requirements reflect today's marketplace and the purchasing habits of today's consumers. We encourage USDA to provide flexibility for retailers should a mandatory nutrition labeling program be adopted. We believe that a system allowing for the use of either point-of-purchase or on-package labeling will be beneficial for both consumers and retailers. FMI would be pleased to work with USDA to develop consumer-friendly point-of-purchase materials for all types of meat and poultry products. Before imposing new mandatory on-label requirements, it is important that the agency consider the potential negative impacts of such a program and how existing programs might be adopted to address an increased range of products.

Thank you for this opportunity to comment.

Sincerely,



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