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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2016-0030]

Nutrition Facts Label Compliance

AGENCY: Food Safety and Inspection Service, USDA.

Action: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that while FSIS is in the process of rulemaking to update the Nutrition Facts label format for meat and poultry products, establishments may voluntarily choose to use the Nutrition Facts label format that the Food and Drug Administration (FDA) recently finalized ("Food Labeling: Revision of the Nutrition and Supplement facts labels", May 27, 2016; 81 FR 33742; and "Food Labeling: Serving Sizes of Foods That Can Reasonably be Consumed at One-Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments"; May 27, 2016; 81 FR 34000). As long as the information on the labels is still truthful and not misleading, FSIS will not find noncompliance if companies use the FDA format. When FSIS publishes a final rule to update the Nutrition Facts label format for meat and poultry products, companies would have to comply with that final rule by the

effective date and will no longer be able to use the FDA format if it is different from the FSIS format.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- **Mail, including CD-ROMs, etc.:** Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8-163B, Washington, DC 20250-3700.

- **Hand- or Courier-Delivered Submittals:** Deliver to Patriots Plaza 3, 355 E Street SW., Room 8-163B, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2016-0030. Comments received in response to this docket will be made available for public inspection and posted without change,

including any personal information, to
<http://www.regulations.gov>.

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 8-164, Washington, DC 20250-3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jeff Canavan, Deputy Director, Labeling and Program Delivery Staff, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Stop Code 3784, Patriots Plaza 3, 8-161A, 1400 Independence Avenue SW., Washington, DC 20250-3700; Telephone (301) 504-0879; Fax (202) 245-4792.

SUPPLEMENTARY INFORMATION:

Background

FSIS is the public health regulatory agency in the USDA that is responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and accurately labeled and packaged. Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601-695, at 607), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451-470, at 457), and the Egg Products Inspection Act (21 U.S.C. 1031-1056, at 1036) (the "Acts"), the labels of meat, poultry, and egg products must be approved by the Secretary of Agriculture, who has delegated this authority to FSIS, before these products can

enter commerce. The Acts prohibit the sale or offer for sale by any person, firm, or corporation of any article in commerce under any name or other marking or labeling that is false or misleading or in any container of a misleading form or size (21 U.S.C 607(d); 21 U.S.C 457(c)). The Acts also prohibit the distribution in commerce of meat or poultry products that are adulterated or misbranded. The FMIA and PPIA give FSIS broad authority to promulgate such rules and regulations as are necessary to carry out the provisions of the Acts (21 U.S.C. 621 and 463(b)).

To prevent meat and poultry products from being misbranded, the meat and poultry product inspection regulations require that the labels of meat and poultry products include specific information, such as nutrition labels, and that such information be displayed as prescribed in the regulations (9 CFR part 317 and part 381). The nutrition labeling requirements for meat and meat food products are in 9 CFR 317.300-317.400, and the nutrition labeling requirements for poultry products are in 9 CFR 381.400-381.500.

Nutrition Facts Label Compliance

On May 27, 2016, FDA published two final rules, "Food Labeling: Revision of the Nutrition and Supplement Facts Labels" (81 FR 33742) and "Food Labeling: Serving Sizes of Foods That

Can Reasonably Be Consumed at One-Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments" (81 FR 34000), to update the Nutrition Facts label to reflect newer nutrition and public health research and recent dietary recommendations from expert groups and to improve the presentation of nutrition information to help consumers make more informed choices and maintain healthy dietary practices. FSIS has reviewed FDA's analysis and believes it is necessary to propose nutrition labeling regulations for meat and poultry products that will parallel, to the extent possible, FDA's regulations. This approach will help prevent consumer confusion and nonuniformity in the marketplace. While FSIS is in the process of rulemaking to update the Nutrition Facts label format for meat and poultry products, establishments may voluntarily choose to use the Nutrition Facts label format that FDA recently finalized (81 FR 33742 and 81 FR 34000). As long as the information on the labels is still truthful and not misleading, FSIS will not find noncompliance if companies use the FDA format. Because FDA's new Nutrition Facts format is different than FSIS's current regulations, and the new formatted labels that FSIS's Labeling and Program Delivery Staff (LPDS) has reviewed so far contained errors and needed corrections, companies that wish to use FDA's Nutrition Facts

label format will need to submit at least one label sketch in that format to LPDS. A parent company for a corporation may submit only one label application for a product produced in other establishments that are owned by the corporation. Subsequent similar labels that use FDA's Nutrition Facts format for other products can be generically approved. Submitting one label and receiving approval helps ensure the rest are applied in compliance with FDA's regulations and may prevent additional problems in the future. FSIS believes that if only one label is submitted per corporation, LPDS's review would not be a large burden to FSIS or industry and wouldn't adversely affect the label review backlog. When FSIS publishes a final rule to update the Nutrition Facts label format for meat and poultry products, companies would have to comply with that final rule by the effective date and will no longer be able to use the FDA format if it is different from the FSIS format. FSIS is requesting comments on whether there are any issues or problems with allowing companies to voluntarily use FDA's Nutrition Facts label format on meat and poultry products until FSIS issues a final rule that addresses nutrition labeling requirements.

USDA Nondiscrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status,

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http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf, or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250-9410.

Fax: (202) 690-7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure

that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at

<http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register/federal-register-notice>.

FSIS also will make copies of this Federal Register publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, Federal Register notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <http://www.fsis.usda.gov/subscribe>.

Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Dated: November 10, 2016.

Alfred V. Almanza,
Acting Administrator.

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