

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend its nutrition labeling regulations to change the definition of “meal-type” products to allow for nutrient content claims on multiple-serve food containers, to adopt the definition of “main dish” used by the Food and Drug Administration (FDA), and to define how meal-type products and main dishes should be nutritionally labeled. The change in the definition of meal-type products would allow nutrient content claims to be based on 100 grams of product rather than on the serving size, which is based on the Reference Amounts Customarily Consumed (RACC) for the food components. These actions are being proposed in response to a petition filed by ConAgra, Inc. (the petitioner). The proposed changes will help to ensure that FSIS’ nutrition labeling regulations are parallel, to the maximum extent possible, to the nutrition labeling regulations of FDA, which were promulgated under the Nutrition Labeling and Education Act (NLEA) of 1990.

DATES: Interested persons are requested to submit written comments by June 16, 2003.

ADDRESSES: Submit an original and two copies of comments to the FSIS Docket Clerk, Room 102, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program and Employee Development, FSIS, at (202) 205–0279 or by fax at (202) 205–3625.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) authorize the Secretary of Agriculture to establish and maintain inspection programs designed to ensure that meat and poultry products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. FSIS regulates the labeling of meat and poultry products, and FDA has responsibility for the labeling of all other foods.

In January of 1993, FSIS and FDA published their final rules on nutrition labeling. Both agencies amended their respective regulations to (1) require either mandatory or voluntary nutrition labeling on most of the food products they regulate; (2) revise the list of required nutrients and food

components; (3) specify a new format for declaring the nutrients and food components in nutrition labeling; (4) permit specific products to be exempt from nutrition labeling; (5) establish RACC specific for food categories; and (6) prescribe a simplified form of nutrition labeling and the conditions under which such labeling may be used.

If people are to use the nutrition information to construct healthy diets that include products from across the food supply, the two agencies recognized that the regulations need to be as consistent as possible. There was overwhelming support in response to the proposal on claims for FSIS to proceed with the adoption of FDA-defined nutrient content claims, including adopting a constant value of 100 grams for comparison of nutrient content claims on meal-type products. As a result, both agencies issued regulations establishing, as nearly uniform as possible, definitions for nutrient content claims to allow consumers to make valid comparisons among food product categories.

In addition, the agencies participated in the Interagency Committee on Serving Sizes to jointly establish the RACC for food and the criteria for converting RACC to serving sizes in common household measures. The final FSIS rule, among other things, established RACC for 23 meat (9 CFR 317.12(b)) and 22 poultry product categories (9 CFR 381.412(b)). These amounts were calculated to reflect the amount of food, including snacks, dinners, and condiments, that persons four years of age and older customarily consume. These calculations were based on consumption survey data and on data used by food manufacturers and grocers. RACC are designed to be used by food companies as the basis for determining the serving sizes for nutrition labeling of their products.

Nutrient content claims for both FDA and FSIS are composed of two defined parts: The amount (weight) of the nutrient and the amount (generally a serving) of food in which the nutrient is found. If the food is considered to be an individual food, the amount of food (a serving) is represented as the RACC for the food category. If the food is a meal-type product, the amount of food is measured by weight, *i.e.*, 100 grams. If a “low-fat” or “healthy” claim is used, the amount of fat is limited to a maximum of 3 grams per RACC for individual foods and 3 grams per 100 grams of product for single-serve meal-type products.

However, FSIS and FDA have established different criteria for what constitutes a meal. FSIS defined a

“meal-type” product (9 CFR 317.313(l) and 381.413(l)) as a product for consumption by one person on one eating occasion that constitutes the major portion of a meal. For purposes of making a nutrition claim, a meal-type product must (1) make a significant contribution to the diet by weighing at least 6 ounces, but no more than 12 ounces per serving (container); (2) contain ingredients from two or more food groups, depending on the weight of the product; and (3) represent, or be in a form commonly understood to be, a meal (breakfast, dinner, etc). In addition, the serving size for meal-type products is defined as the entire content (edible portion only) of the package.

FDA defined a “meal-type” product (21 CFR 101.13(l)) for the purpose of making a claim as a product that makes a major contribution to the total diet by (1) weighing at least 10 ounces per labeled serving; (2) containing not less than three 40-gram portions of food or combinations of foods from two or more of the four food groups; and (3) representing, or being in a form commonly understood to be, a meal (breakfast, dinner, etc). FDA’s regulations do not restrict the use of the meal-type product claims to single-serve containers.

FDA also defined a “main-dish” product (21 CFR 101.13(m)) for the purpose of making a claim as a food that makes a major contribution to the meal by (1) weighing at least 6 ounces per labeled serving; (2) containing not less than 40 grams of food, or combinations of foods from at least two of four food groups; and (3) representing, or being in the form commonly understood to be, a main dish (*i.e.*, not a beverage or dessert). FSIS regulations do not define a “main-dish” product.

FSIS’ and FDA’s rationale for allowing different criteria to serve as the basis for evaluating nutrient content claims on meal-type products versus other types of foods is that meal-type products have potentially large variations in amounts customarily consumed, and the average serving size would not be an appropriate basis for comparison of nutrients. Rather, a constant value of 100 grams was determined to be an appropriate basis. It was further reasoned that restricting this category to a single-serving criterion and requiring that products within the category be represented as a meal would adequately distinguish these products from other similarly formulated products.

ConAgra’s Petition

In September 1998, ConAgra petitioned FSIS to amend the definition