

of "meal-type" products in its regulations to allow nutrient content claims on multi-serve food containers based on the same criteria as for meals that are sold in single-serving containers. Specifically, the petitioner sought an amendment of the definition of "meat" (9 CFR 317.313(l)) to include product in multiple-serving containers in the general principles (9 CFR 317.313) and the "healthy" regulations (9 CFR 317.363). FSIS' initial response was that the few changes requested by the petitioner would not be sufficient to address all of the issues and amend the regulations so that manufacturers can make consistent nutrition content claims on multi-serve containers. FSIS requested that the petitioner provide additional data to justify the changes it is seeking and clearly state the need for consistent definitions for main dish and meal-type products that do not compromise the established RACC for food products and that are consistent with the intent of the NLEA.

After several follow-up discussions with FSIS, ConAgra provided the Agency with marketing and consumption data that FSIS termed insufficient to justify granting the change in the regulations. FSIS said that it was concerned that to allow such claims could confuse and mislead consumers, create market inequities between sellers of individual food products and sellers of meal-type products, and discourage the development of products eligible for such claims. The Agency said that the data submitted by the petitioner did not alleviate those concerns.

In 2001, FSIS concluded that more conclusive data submitted by the petitioner indicated that there was a market for multi-serve meals that did not exist in 1993 when the nutrition labeling regulations were issued. Because of the increasing popularity of multi-serve meals and evidence that a significant number of consumers were purchasing such meals, FSIS said it was prepared to consider changing the regulatory definition of "meal-type" products and allowing nutrient content claims based on a 100 gram criterion as long as there are no established RACC for the food product category in question. It also said that consistency in nutrient content claims and RACC criteria for all meat and poultry products must be maintained in accordance with the regulations. The Agency noted that if Federal regulations regarding the basis for which nutrient content claims are made are modified for consistency, FSIS and FDA need identical definitions for what constitutes a meal and a main-dish

product. FSIS granted the petition in November 2001. The petition and the supporting documentation are available in the FSIS Docket Room (*see ADDRESSES*) and on the FSIS Web site at <http://www.fsis.usda.gov>.

Costs and Benefits Associated With the Proposal

No significant cost impact is seen as a result of this proposed rule. All costs would be borne by industry, which petitioned for the change. The only labels that would be affected would be those of multi-serve, meal-type products above 6 ounces that would be able to bear nutrient content claims. The Agency believes that no more than 300 products currently on the market will be affected by the change. Lean and extra-lean products that have the same definition for meal-type products as main-dish products would not be affected. Therefore, the expected additional labeling costs would be nominal for the industry.

A more consistent format across similar food products would be of benefit to consumers, who would be able to make more informed choices in their food purchases. There is evidence that consumers are experiencing some confusion about how some food products are labeled.

The Proposed Rule

The proposed rule would provide consumers of meat and poultry products with additional consistency in nutrition labeling with FDA's requirements by amending § 317.309 and the parallel poultry regulations at § 381.409 to provide for the nutrition labeling of multi-serve meal-type products and of main-dish products. The proposal also would amend § 317.313(l) and § 317.313(m) and the parallel poultry regulations at § 381.413(l) and § 381.413(m) by revising the definitions of a "meal-type" product and a "main-dish" product for the purpose of making a claim on the packaging of the food products. In addition, the proposal would amend the individual nutrient content claim regulations for both meat and poultry products.

FSIS' paramount objectives in considering modification to its nutrition labeling regulations were that such changes not undermine the basic principles or intent of the misbranding provisions of the Federal Meat Inspection Act and the Poultry Products Inspection Act, and that such modifications result in labels that would not mislead consumers or create unfair marketing advantages for any segment of the food industry. The Agency also was concerned about extending the use of

the 100-gram criterion for nutrient content claims to include products not in single-serve containers. Although useful, the 100-gram criterion does not provide nutrient information to consumers that is as definitive as the amount of nutrient per RACC.

However, in the interests of maintaining consistency between FSIS and FDA and of providing incentives to industry to develop meals and main dishes in multi-serve containers that are able to bear nutrient content claims, FSIS is proposing changes in its nutrition labeling regulations. The Agency believes that consumers will benefit from the information on the containers of products that were formulated to qualify to bear such claims.

Executive Order 12866 and the Regulatory Flexibility Act

This proposed rule has been determined to be not economically significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. FSIS is responding to an industry petition for a labeling change affecting approximately 300 food products.

Executive Order 12778

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. When this rule becomes final:

(1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Effect on Small Entities

The Administrator, FSIS, has made a determination that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposal would change the definition of "meal-type" products to allow for nutrient content claims on multi-serve food containers and adopt FDA's definition of "main-dish" products. In addition, small entities are exempt from nutrition labeling regulations if their products do not make nutrition claims or bear nutrition information.

Additional Public Notification

Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this proposed rule and are informed