

August 12, 2011

Via E-mail

The Honorable Elisabeth A. Hagen, M.D.
Under Secretary for Food Safety
United States Department of Agriculture
Administration Building
1400 Independence Avenue, SW
Washington, DC 20250

RE: Enforcement Discretion for Final Rule on Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products

Dear Under Secretary Hagen:

On December 29, 2010, the Food Safety and Inspection Service (FSIS or the Agency) of the United States Department of Agriculture (USDA) published in the Federal Register for comment a final rule to require nutrition labeling of the major cuts of single-ingredient, raw meat and poultry products, as well as all ground or chopped meat and poultry products (the “Final Rule”).¹

The Final Rule states that “Six months prior to the effective date, FSIS intends to make available nutrition labeling materials that can be used at the point-of-purchase [for] the major cuts . . . Six months prior to the effective date, FSIS will make additional examples of acceptable labels for such (ground) products available on the Agency’s Web site.”² The effective date for the Final Rule is January 1, 2012.

The Final Rule also states that FSIS “will conduct meetings and Webinars on the final rule.”³

In addition, a question and answer document crafted by the Agency dated June 9, 2011, notes: “FSIS plans to have a webinar within a month or two that discusses the general requirements of the nutrition labeling final rule and some Q&As. Once FSIS has prepared point-of-purchase materials and labels, FSIS also plans to schedule additional webinars and meetings.”⁴

FSIS did not meet its deadline in providing the industry point-of-purchase materials. The materials have only been made available in the past two weeks—effectively one month late. Less than five months remain before the effective date, and the Agency has yet to conduct a single webinar for industry or provide additional examples of acceptable labels for ground product. As a result we

¹ 75 Fed. Reg. 82148 (December 29, 2010).

² Id. at 82151.

³ Id.

⁴ http://www.fsis.usda.gov/PDF/Nutrition_labeling_Q&A_060911.pdf

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respectfully request that FSIS exercise enforcement discretion on the Final Rule for a six month period following the January 1, 2012 effective date to allow retailers and packer processors and opportunity to develop their own point-of-purchase materials, conduct adequate training of personnel, and submit and receive approval on newly required or revised labels.

The Final Rule imposes significant burdens on food retailers and meatpackers in regard to its requirement that all ground and chopped product contain on-package nutrition labeling. For retailers this means that tens of thousands of scales across the industry will have to be replaced or updated with new software. Tens of thousands of employees at retail locations will need to be educated on complying with the requirements of the Final Rule. As the Agency has not provided the information it indicated it would to assist food retailers, many retailers have expressed concern that it will be very difficult to have systems in place and training completed to meet the January 1, 2012 deadline.

For meatpackers, thousands of labels and packages will need to be redesigned and submitted to FSIS for approval. Considering the current 4 to 5 weeks delays in label review, we have concerns that the Agency will face challenges in approving all of these labels in advance of the January 1, 2012 effective date.

Thus, we respectfully request that FSIS exercise enforcement discretion until July 1, 2012. During this period we believe the Agency should conduct education and outreach to the various industries impacted by the Final Rule. The undersigned organizations would be eager to partner with FSIS during the aforementioned education and outreach period to assist the Agency in providing information to industry.

We greatly appreciate your consideration of this request. Please contact Erik Lieberman at the Food Marketing Institute at (202)-220-0614 or elieberman@fmi.org if you have any questions pertaining to the letter.

Sincerely,

American Lamb Board
American Meat Institute
Food Marketing Institute
National Cattlemen's Beef Association
National Chicken Council
National Grocers Association
National Pork Board
National Turkey Federation

cc: Administrator Al Almanza