



National Grocers Association

July 17, 2001

FSIS Docket Clerk
Docket #98-005P
Food Safety and Inspection Service
Room 102
Cotton Annex
300 12th Street, SW
Washington, DC 20250-3700

RE: Nutritional Labeling of Ground or Chopped Meat and Poultry Products and Single Ingredient Products, 66 Fed. Reg., 4970 (January 18,2001)

Gentlemen:

The National Grocers Association (N.G.A.) is filing these comments in opposition to the Food Safety and Inspection Service (FSIS) proposal to amend the Federal Meat and Poultry Products Inspection regulations to require mandatory nutritional labeling of the major cuts of single ingredient, raw meat and poultry products. This nutritional information is to be provided for these products either on their label or at the point of purchase. N.G.A. also strongly opposes FSIS's proposal to require mandatory nutritional labeling on the individual packages of ground or chopped meat and poultry products. Cooperative efforts between government and industry to increase compliance through voluntary guidelines are far more cost effective than governmental mandates that create competitive imbalances and ultimately negatively impact the consumer.

N.G.A. is the national trade association representing the retail and wholesale grocers that comprise the independent sector of the food distribution industry. An independent retailer is a privately owned and controlled retail company operating in a variety of formats. Most independent operators are serviced by wholesale distributors, while others may be partially or fully self-distributing. N.G.A. members include retail and wholesale grocers and state associations, as well as manufacturers and service suppliers.

Since 1993, N.G.A. members have been committed to providing voluntary nutritional information for single ingredient, raw meat and poultry products, as well as ground beef products. N.G.A. has actively promoted compliance within USDA's established

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guidelines for voluntary nutritional labeling of these products to be posted at the point of service through posters, brochures, pamphlets, labels and other measures. N.G.A. members are committed to voluntarily providing consumers this nutritional information. In fact, 95% of the respondents to N.G.A.'s member survey on meat and poultry nutritional labeling reported posting the nutrition information. N.G.A. strongly encourages FSIS to continue with the existing voluntary program rather than imposing costly, regulatory burdens. FSIS could improve voluntary compliance by making the same free information available to retailers that it plans to make available under the proposed mandatory regulations. N.G.A. would continue and expand its promotion compliance materials to independent retailers.

For independent retailers, custom service meat departments have been an important point of competitive differentiation with consumers versus national chains and supercenters. The meat butcher is frequently requested by customers to do special cuts or grinds of meat and poultry products to satisfy their needs, similar to restaurant menu orders, which are not covered by your proposed mandatory labeling regulations. The FSIS's proposed rule, especially the provisions requiring labels on individual packages of ground meat and poultry products, would impose most of its costs and burdens upon independent retailers that offer custom service rather than pre-packed case ready meat. The effect of the FSIS regulation would disproportionately impact independent operators and their customers, coercing retailers into increasing prices to cover increased costs or eliminating custom service because of the prohibitive costs of testing for the nutritional content of products ground in retail stores.

FSIS Survey Analysis

FSIS conducted surveys of approximately 2,000 retail food stores in 1995, 1996 and 1999. These surveys were intended to measure compliance with the guidelines for voluntary nutritional labeling of raw meat and poultry products. Each study varied in its content and methodology. For example, the survey conducted in June 1995 encompassed both "new" and "old" formats for nutrition information at the point of purchase. The December 1996 survey only considered "new" materials, and included compliance descriptions on the basis of store count and all commodity volume. No comparison of "new" and "old" formats was considered. The October 1999 study based their reports on store count and store volume weighted. All the studies acknowledged that the margin of error based on 2,000 stores is approximately $\pm 4\%$. In order for a store to be deemed compliant by FSIS, at least 90% of the up to 45 major cuts of raw meat and poultry stocked within the store had to somehow be covered by "new" format nutritional labeling information.

The October 1999 study highlights a number of discrepancies and fallacies in the methodology, which argue against adopting mandatory regulations. For example, at no time did USDA publish in the *Federal Register* that only "new" materials would be

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considered the basis to be in compliance. The 1999 study discloses that "old" format materials were recorded in the survey but not in 1996. This discrepancy unfairly skews the results from one survey to the next. Furthermore, there is no validation for requiring that at least 90% of the up to 45 major cuts of raw meat and poultry stocked within the store be covered by the "new" format nutritional labeling.

The arbitrariness of this measurement is reflected in the fact that generic vehicles other than "new" format were rejected completely if the vehicle failed to include all 45 major meat/poultry items, or if the store had separate posters for each of the 3 different meat types and one or more of them were not posted. In essence, no credit was given to stores for any good-faith attempt to comply; rather, they were penalized and deemed non-compliant.

Even with these deficiencies in mind, the measurements of compliance based upon store count in 1995 were 66.5%, in 1996 – 57.5%, and 54.8% in 1999. Given a variance factor of 4%, the results could have just as easily been 70.5%, 61.5%, and 58.8%, respectively. In addition, the October 1999 report shows the fallacy of the results based upon store count versus when measured against volume-weighted compliance and the impact on consumers. With volume weighted estimates there was an increase from 60.9% in 1996 to 62.8% in 1999 in the percentage of consumers reached.

Furthermore, had FSIS given credit for retailers' good faith attempts to comply, compliance would have exceeded 60 percent. In fact, had partial compliance been given credit, the store compliance rate would have been 62% based upon retailers' good-faith efforts to comply. In addition, Table 14 of the October 1999 study discloses a discrepancy in the compliance rate for "new" formats of 60.9% compared to the reported 54.8%, and 71.0% of the total stores would have been in compliance with "old" and "new" posters and brochures/pamphlets.

A review of the FSIS survey discloses that FSIS could equally have reached the conclusion that the industry was in compliance with the voluntary guidelines. Through a joint government and industry educational initiative, this rate could be increased, especially with FSIS's offer to make information for posters and brochures available for free over the USDA website.

Major Cuts of Single Ingredient, Raw Meat and Poultry Products

FSIS is proposing to make guidelines currently in place for the voluntary nutritional labeling program mandatory, by requiring the nutritional information to be provided on the label of single ingredient, raw meat and poultry products or displayed at their point of purchase. N.G.A. agrees with FSIS, as it stated in the 1993 rule and affirms today, that *"consumers have reasonable expectations as to the nutrient content of major cuts*

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of single ingredient raw products, and that the nutrient content of a given major cut is relatively uniform across the market." FSIS's belief that it's relatively easy for consumers to find nutritional information for a particular major cut on point-of-purchase materials is well founded. N.G.A. members confirm that point of purchase materials meet consumer expectations. Based upon their almost 8 years of complying with the program, N.G.A. retailers report that they've been supplying the meat and poultry needs for consumers during this period to their satisfaction and consumers do not request nutritional information when purchasing meat and poultry products.

N.G.A. strongly supports the continuation of the current voluntary program because it works well in fulfilling consumer expectations. In fact, retailers report that the primary interest of consumers is in the particular cut of product being selected, serving size or package size, not nutritional information.

Nutritional Labeling of Ground or Chopped Products

FSIS is also proposing to mandate that nutrition labels be provided on all ground or chopped products, including single ingredient, raw hamburger, ground beef, ground beef patties, ground chicken, ground turkey, ground chicken patties, ground pork and ground lamb. This FSIS proposal for ground products expands the product category beyond the three ground beef products currently listed and is far more costly and burdensome. It would require nutrition labels be placed on each individual package for compliance to occur. N.G.A. believes the current voluntary point of sale nutrition information sufficiently meets consumer needs and expectations, and that the FSIS proposal adds unnecessary regulatory burdens and costs.

FSIS has tentatively determined that "nutrition facts" should be placed on packages of all ground and chopped meat and poultry products consistent with a petition filed by the Center for Science in the Public Interests (CSPI) on June 3, 1997. FSIS would require this information even if no nutrient content claim were made on the label.

CSPI also petitioned FSIS to prohibit "percent lean" claims on ground beef; require ground beef to meet the same definition of "lean" and "extra lean" that applied to other foods; and require ground beef labels to replace "percent lean" and "percent fat", "percent less fat" claims used by other foods. N.G.A. supports FSIS's decision to not revise the regulations as requested by CSPI on the use of "percent lean," "extra lean," and "percent less fat". N.G.A. also supports FSIS's proposal to permit the option of a statement of lean percentage on the label of all ground and chopped meat and poultry products that do not meet the regulatory definition for "low fat" when accompanied by the fat percentage.

N.G.A. strongly disagrees with FSIS's conclusions that ground products should be labeled with nutrition information on the individual package. Based upon the everyday experience of N.G.A. retailers, consumer expectations can be effectively met by point-

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of-purchase materials, whether the products involved are major cuts of single-ingredient raw meat and poultry products, or raw ground or chopped products. Even though as FSIS asserts that consumers may not easily see the fat in ground or chopped beef, consumers are educated and knowledgeable regarding the terminology of "percent lean" and "percent fat" and visually peruse products in the meat cases when making purchases. Retailers report that consumers are primarily interested in percent lean and percent fat of ground products and not in the nutrition facts that are currently listed. Therefore, retailers should be given the option of labeling ground products with the percent lean and fat as FSIS proposes, and post standardized nutrition information for ground meat and poultry products as is presently done with the three ground beef products.

The current beef and veal nutrition facts used by FDA for ground beef provide the acceptable guidelines for 10%, 17% and 27% fat. For the last eight years, this information has been acceptable in providing consumers with information on ground beef. Now FSIS would require retailers and consumers to bear the cost of monitoring and testing the individual variation in nutrient content for all the different ground and chopped products. The necessity to measure and quantify fat and nutrient content of individual ground and chopped meat and poultry products does not conform to consumer expectations. Consumers make their selections based upon the lean labeling or percent fat of ground products, not nutrient content. Just as a consumer asks the butcher whether it is an 1/8" or 1/4" of fat on a steak, she asks how much lean or fat in ground beef. One distributing company supplying 200 supermarkets estimates that this labeling requirement would affect over 20 million packages annually. Using FSIS estimate of .005 cents per label, the labels alone would cost \$100,000 per year. While retail stores may be able to access fat content by using a fat analyzer when doing in-store grinding, testing for nutrient content would require the use of a laboratory and prove costly. In addition, this would now require a new and additional label for nutrition information. This would cause many independent retailers that provide on-site custom service to increase prices or sell case-ready meat to the detriment of consumer choice.

As the preamble to the rule points out, the effect of the FSIS proposal is likely to fall disproportionately on independent retailers because major supermarket chains like Kroger, Safeway, Albertson's and others may voluntarily include nutrition facts on ground beef. What the FSIS fails to recognize is that it is imposing an additional \$60 to \$85 million dollar cost on the industry and the consumer, when almost 60 percent of the industry is already in compliance by voluntarily posting nutrient information. Moreover, FSIS would clearly discriminate against food retailers by requiring nutrition labeling on ground products in food stores, but not on the other half of ground products which are sold through restaurants. Clearly, the FSIS preference for mandatory regulation versus voluntary compliance will prove to be costly to consumers, and unduly burdensome for food retailers. The cost-benefit analysis does not justify such a tax on the consumer or the industry.

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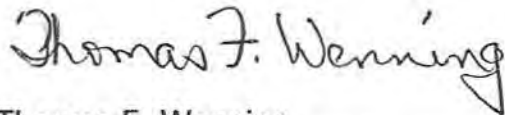
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Conclusion

American consumers will be more cost effectively served by FSIS working with industry to better inform and educate consumers through voluntary guidelines. Consumer expectations are being effectively met by posting nutrition information for meat and poultry products. This can be enhanced by FSIS updating the nutrition facts and making the information available free through its web-site.

Sincerely,

A handwritten signature in cursive script that reads "Thomas F. Wenning". The signature is written in dark ink and is positioned above the typed name.

Thomas F. Wenning

Senior Vice President and General Counsel