
complaint and answer in the proceeding, which shall thereafter be conducted in accordance with the Department’s Uniform Rules of Practice.

(ii) The hearing shall be conducted before an administrative law judge with the opportunity for appeal to the Department’s Judicial Officer, who shall make the final determination for the Secretary. Any such determination by the Secretary shall be conclusive unless, within 30 days after receipt of notice of such final determination, the applicant appeals to the United States Court of Appeals for the circuit in which the applicant has its principal place of business or to the United States Court of Appeals for the District of Columbia Circuit.

(5) If the labeling application is not summarily denied by the Administrator, the Administrator shall publish a notice of the labeling application in the FEDERAL REGISTER seeking comment on the use of the implied nutrient content claim. The notice shall also summarize the labeling application, including where the supporting documentation can be reviewed. The Administrator’s notice shall seek comment from consumers, the industry, consumer and industry groups, and other interested persons on the labeling application and the use of the implied nutrient content claim. After public comment has been received and reviewed by the Agency, the Administrator shall make a determination on whether the implied nutrient content claim shall be approved for use on the labeling of meat food products.

(i) If the claim is denied by the Administrator, the Agency shall notify the applicant, in writing, of the basis for the denial, including the reason why the claim on the labeling was determined by the Agency to be false or misleading. The notification letter shall also inform the applicant that the applicant may submit a written statement by way of answer to the notification, and that the applicant shall have the right to request a hearing with respect to the merits or validity of the Administrator’s decision to deny the use of the proposed implied nutrient content claim.

(A) If the applicant fails to accept the determination of the Administrator and files an answer and requests a hearing, and the Administrator, after review of the answer, determines the initial determination to be correct, the Administrator shall file with the Hearing Clerk of the Department the notification, answer, and the request for a hearing, which shall thereafter be conducted in accordance with the Department’s Uniform Rules of Practice.

(B) The hearing shall be conducted before an administrative law judge with the opportunity for appeal to the Department’s Judicial Officer, who shall make the final determination for the Secretary. Any such determination by the Secretary shall be conclusive unless, within 30 days after receipt of the notice of such final determination, the applicant appeals to the United States Court of Appeals for the circuit in which the applicant has its principal place of business or to the United States Court of Appeals for the District of Columbia Circuit.

(ii) If the claim is approved, the Agency shall notify the applicant, in writing, and shall also publish in the FEDERAL REGISTER a notice informing the public that the implied nutrient content claim has been approved for use.

(Paperwork requirements were approved by the Office of Management and Budget under control number 0583–0088)

§§ 317.370–317.379  [Reserved]

§ 317.380  Label statements relating to usefulness in reducing or maintaining body weight.

(a) General requirements. Any product that purports to be or is represented for special dietary use because of usefulness in reducing body weight shall bear:

(1) Nutrition labeling in conformity with §317.309 of this subpart, unless exempt under that section, and

(2) A conspicuous statement of the basis upon which the product claims to be of special dietary usefulness.

(b) Nonnutritive ingredients. (1) Any product subject to paragraph (a) of this section that achieves its special dietary usefulness by use of a nonnutritive ingredient (i.e., one not utilized in
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§ 317.400 Exemption from nutrition labeling.

(a) The following meat or meat food products are exempt from nutrition labeling:

(1) Food products produced by small businesses provided that the labels for these products bear no nutrition claims or nutrition information,

(i) A food product, for the purposes of the small business exemption, is defined as a formulation, not including distinct flavors which do not significantly alter the nutritional profile, sold in any size package in commerce.

(ii) For purposes of this paragraph, a small business is any single-plant facility or multi-plant company/firm that employs 500 or fewer people and produces no more than the following amounts of pounds of the product qualifying the firm for exemption from this subpart:

(A) During the first year of implementation of nutrition labeling, from July 1994 to July 1995, 250,000 pounds or less,

(B) During the second year of implementation of nutrition labeling, from July 1995 to July 1996, 175,000 pounds or less, and

(C) During the third year of implementation and subsequent years thereafter, 100,000 pounds or less.

(ii) For purposes of this paragraph, calculation of the amount of pounds shall be based on the most recent 2-year average of business activity. Where firms have been in business less than 2 years or where products have