(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 a 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 poultry 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. 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 poultry products.

(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 that 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 constitute the complaint and answer in the proceeding, 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.)


§§ 381.470–381.479 [Reserved]

§ 381.480 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 §381.409 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 normal metabolism) shall bear on its label a statement that it contains a nonnutritive ingredient and the percentage by weight of the nonnutritive ingredient.

(2) A special dietary product may contain a nonnutritive sweetener or other ingredient only if the ingredient is safe for use in the product under the applicable law and regulations of this chapter. Any product that achieves its special dietary usefulness in reducing or maintaining body weight through the use of a nonnutritive sweetener shall bear on its label the statement required by paragraph (b)(1) of this section, but need not state the percentage.
by weight of the nonnutritive sweetener. If a nutritive sweetener(s) as well as nonnutritive sweetener(s) is added, the statement shall indicate the presence of both types of sweetener; e.g., “Sweetened with nutritive sweetener(s) and nonnutritive sweetener(s).”

(c) “Low calorie” foods. A product purporting to be “low calorie” must comply with the criteria set forth for such foods in §381.460.

(d) “Reduced calorie” foods and other comparative claims. A product purporting to be “reduced calorie” or otherwise containing fewer calories than a reference food must comply with the criteria set forth for such foods in §387.460(b) (4) and (5).

(e) “Label terms suggesting usefulness as low calorie or reduced calorie foods”.

(1) Except as provided in paragraphs (e)(2) and (e)(3) of this section, a product may be labeled with terms such as “diet,” “dietetic,” “artificially sweetened,” or “sweetened with nonnutritive sweetener” only if the claim is not false or misleading, and the product is labeled “low calorie” or “reduced calorie” or bears another comparative calorie claim in compliance with the applicable provisions in this subpart.

(2) Paragraph (e)(1) of this section shall not apply to any use of such terms that is specifically authorized by regulation governing a particular food, or, unless otherwise restricted by regulation, to any use of the term “diet” that clearly shows that the product is offered solely for a dietary use other than regulating body weight, e.g., “for low sodium diets.”

(3) Paragraph (e)(1) of this section shall not apply to any use of such terms on a formulated meal replacement or other product that is represented to be of special dietary use as a whole meal, pending the issuance of a regulation governing the use of such terms on foods.

(f) “Sugar free” and “no added sugar”: Criteria for the use of the terms “sugar free” and “no added sugar” are provided for in §381.460(c).