

MEMORANDUM

From: Gary Jay Kushner
Brian D. Eyink
Christine Forgues

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Re: **FSIS Issues Compliance Guideline on Kit Labeling**

Yesterday, FSIS issued its long-awaited guidance on the labeling and packaging of “kit” products. ^{1/} Although FSIS has long informally applied its “kit policy,” this FSIS Compliance Guideline marks the first public guidance that FSIS has provided on the topic. The Compliance Guideline generally reflects the Agency’s informal policy without significant change.

Under its kit policy, FSIS allows certain multi-component products containing a separately packaged meat or poultry component to be assembled and labeled without FSIS inspection, provided the product and label meet certain requirements. Importantly, the kit policy exempts these products from FSIS inspection and label approval, but FSIS still has jurisdiction over the products. The Agency is currently requesting comments on the Guideline. However, FSIS is encouraging industry to begin using the guidance immediately.

Kit Product Overview

Under FSIS policy, a “kit” product consists of individually-packaged food components sold together as a single unit. Often, the meat or poultry component is separately wrapped and fully labeled, and then assembled together with various other food components in the same outer, consumer-facing packaging. The meat or poultry items are commonly fully-cooked, but kit items may be formulated using raw meat or poultry.

The Guideline provides many different examples demonstrating the variety of products that could be positioned as kits, including:

- Wraps, pizza, stew, salads, fajitas, stroganoff, or stir fry skillet meals, that include meat or poultry components;

^{1/} Food Safety and Inspection Service (FSIS) Guideline on Kit Product Labeling (July 2019) <https://www.fsis.usda.gov/wps/wcm/connect/bbb1f44c-48d3-45a2-bcdc-ad91523fceca/guideline-kit-product-labeling.pdf?MOD=AJPERES> [the Guideline]; announced at *84 Fed. Reg.* 32705 (July 9, 2019).

- Products marketed to provide one meal to multiple consumers, such as a “Beef Stew Kit” with multiple servings; or
- A single serving meal for one, such as an “Individual Pizza Lunch Kit” with pizza, components, a brownie, and a soda.

Notably, FSIS appears to differentiate between these “kit” products and popular meal kit-type products. Specifically, FSIS explains that the Guideline does not apply to “boxes of ingredients (including FSIS-inspected, fully labeled meat and poultry products) that may also include recipes that are shipped directly to consumers to help them prepare home-cooked meals.” According to FSIS, these boxes are typically prepared and packed without FSIS inspection under the retail exemption. ^{2/}

Kit Policy Requirements

To position a product as a “kit,” the manufacturer must meet the following requirements:

- The meat /poultry component must be prepared and separately packaged and labeled under FSIS inspection;
- The meat/poultry component must be labeled with all required features, including:
 - Statement of identity (product name);
 - Ingredients statement (if composed of more than one ingredient);
 - Name and address of the manufacturer, packer, or distributor;
 - Handling statement (e.g., Keep Refrigerated), if product is perishable;
 - USDA legend and establishment number of the official establishment that packaged and labeled the meat/poultry component;
 - Safe handling instructions if the meat or poultry component is not ready-to-eat;
- The outer label for the kit product must identify all the individual components in the kit; and
- The outer kit label must clearly identify the product as a single unit or “kit” (e.g., “Chicken Barbecue Dinner Kit” and “Beef Lasagna Meal”).

Importantly, the Guideline makes clear that kit products may include meat or poultry terms in the product name. Historically, FSIS did not allow this practice, although recent years had seen a relaxing around product names for kits. Similarly, the Guideline makes clear that although the term “kit” may be used to identify the product, manufacturers may also use other terms to identify the product as a single unit.

Although the assembly of the kit product does not require FSIS inspection, the kit product still falls under FSIS’s jurisdiction. As such, it is required to meet all applicable FSIS requirements, including the general prohibitions against adulteration and misbranding of products. Moreover, labels for such kit products assembled without FSIS inspection are not required to be submitted to FSIS for approval. Last, kit products assembled without FSIS inspection may not bear the USDA mark of inspection on the label of the common packaging containing all the components of the kit. Instead, as noted above, the mark of inspection must appear on the label of the inner package containing the meat or poultry component included in the kit.

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The comment period will be open 60 days, with comments due September 9, 2019. FSIS indicated it may update the Guideline in response to comments received. Please do not hesitate to contact us with assistance in submitting comments or with any questions.

^{2/} See 9 CFR §§ 303.1(d), 381.10(d).