

## MEMORANDUM

**From:** Gary Jay Kushner  
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**Date:** April 22, 2019

**Re: FSIS Publishes Proposed Rule Rescinding Dual Labeling Requirements for Certain Packages of Meat and Poultry**

On April 17, 2019, the United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) issued a proposed rule that would eliminate the requirement that certain packages of meat or poultry products display net weights using the so-called “dual declaration” format (e.g., requiring that some products declare weight in both pounds and ounces). The proposed rule, entitled Rescission of Dual Labeling Requirements for Certain Packages of Meat and Poultry (“Proposed Rule”), <sup>1/</sup> would eliminate the dual declaration net weight requirement for meat or poultry products in packages of at least one pound or one pint, but less than four pounds or one gallon.

FSIS issued the proposed rule based on a response to its docket seeking public comments on ways that FSIS could reform its regulatory programs and provide better service to its constituents. <sup>2/</sup> The proposed rule reinforces that FSIS is reviewing and acting on some industry recommendations. Companies may wish to consider whether there are additional opportunities for FSIS regulatory reform.

Importantly, this proposed change would be limited to meat and poultry product labels regulated by FSIS. FDA-regulated products would not be affected by this change.

### Proposed Changes

The Proposed Rule would eliminate the dual net weight labeling requirements that currently apply to meat or poultry product packages of at least one pound or one pint, but less than four pounds or one gallon. Currently, these packages must bear dual net weight labeling declaring the contents in both

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<sup>1/</sup> 84 Fed. Reg. 15989-15992 (Apr. 17, 2019). See also, Press Statement, FSIS Proposes to Remove Dual Labeling Requirements for Certain Amounts of Meat and Poultry Products (Apr. 16, 2017) available at <https://www.fsis.usda.gov/wps/portal/fsis/newsroom/news-releases-statements-and-transcripts/news-release-archives-by-year/archive/2019/nr-041619-01>.

<sup>2/</sup> Petition by C Dixon Lee, III (Aug. 14, 2017) available at <https://www.fsis.usda.gov/wps/wcm/connect/a37e6207-3d9e-4d7b-a376-8a1f699cf614/17-07-Petition-C-Dixon-Lee-08-14-17.pdf?MOD=AJPERES>.

ounces and pounds or specific units for liquid products (e.g., “Net Wt. 24 oz. (1.5 lbs.)”). These requirements are found in 9 C.F.R. § 317.2(h)(5) (meat) and 9 C.F.R. § 381.121(c)(5) (poultry). The proposed rule would remove and reserve 9 C.F.R. § 317.2(h)(5), revise 9 C.F.R. § 381.121(c)(5) to eliminate the portion that references dual declaration requirements, and make conforming changes to other portions of 9 C.F.R. §§ 317.2 and 381.121. If the proposal were finalized, manufacturers would be permitted to select a single weight declaration. For example, if a package is currently labeled as “Net Wt. 24 oz. (1.5 lbs.),” under the proposal, the manufacturer could declare the net weight as “Net Wt. 24 oz.” or “Net Wt. 1.5 lbs.”

In the proposal, FSIS explains that if the rule were finalized, companies would be permitted to exhaust existing dual declaration label inventory or to continue to use existing dual declaration label formats indefinitely.

In support of the changes, FSIS notes that roughly 62% of FSIS-regulated companies manufacture at least one product with a dual net weight or content statement, and over 35% manufacture products with both a dual and single net weight or content statement. The Agency notes that historical askFSIS data show longstanding industry confusion surrounding the dual declaration requirement, leading to various incorrect interpretations by industry. According to FSIS, eliminating the regulation would eliminate this confusion. FSIS also notes that these proposed changes would especially benefit start-up companies and companies with products having both single and dual weight statements.

FSIS Administrator Carmen Rottenberg characterized the Proposed Rule as “simply good government,” adding that “FSIS doesn’t believe that a duplicative labeling requirement helps consumers and sees it as an unnecessary requirement for industry.”

### **Public Comment**

Comments can be submitted to docket FSIS-2018-0012 on or before June 17, 2019.

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We will continue to monitor FSIS rulemaking regarding meat and poultry labeling. Please contact us if you are interested in submitting comments to FSIS’s docket, or if you have any questions on this or any other matter in the meantime.