



**DEPARTMENT OF AGRICULTURE**

**Food Safety and Inspection Service**

**9 CFR Parts 317 and 381**

**[Docket Number FSIS-2018-0012]**

**RIN 0583-AD71**

**Rescission of Dual Labeling Requirements for Certain Packages of Meat and Poultry**

**AGENCY:** Food Safety and Inspection Service, Department of Agriculture (USDA).

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending its labeling regulations to remove provisions that require packages of meat or poultry products that contain at least one pound or one pint, but less than four pounds or one gallon, to express the net weight or net contents in two different units of measurement on the product label. FSIS is taking this action in response to a petition submitted on behalf of a small meat processing establishment. After reviewing the regulatory provisions and the comments on the proposed rule to remove them, FSIS has determined that it is not necessary for labels of any meat or poultry products to bear dual statements of weight or content using more than one unit of measurement to convey the accurate weight or amount of the product to consumers.

**DATES:** Effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Rosalyn Murphy-Jenkins, Director, Labeling and Program Delivery Staff (LPDS), Office of Policy and Program Development; Telephone: (301) 504-0878, Fax: (202) 245-4795.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary:**

On April 17, 2019, FSIS proposed (84 FR 15989) to amend its labeling regulations to remove provisions that require packages of meat or poultry products that contain at least one pound or pint, but less than four pounds or one gallon, to express the net weight or net content in two different units of measurement on the product label. Specifically, under the regulations at 9 CFR 317.2(h)(5) and 381.121(c)(5), dual declaration is required to express the net weight in ounces and immediately thereafter in parentheses in pounds, with any remainder in terms of ounces or common or decimal fraction of the pound (e.g., ``Net Wt. 24 oz. (1 lb. 8 oz.), ``Net Wt. 24 oz. (1.5 lbs.)'' or ``Net Wt. 24 oz. (1 1/2 lb.)''). For liquid measure, dual declaration is required to be expressed as the net content in fluid ounces and immediately thereafter in parentheses the largest whole U.S. customary unit (e.g., pints or, quarts, with any remainder expressed in terms of fluid ounces or common or decimal fraction of the pint or quart (e.g., ``Net contents 32 fl oz. (1 QT)'' or ``Net contents 30 fl oz. (1 pint 14 fl oz.)''). Packages of

products that contain less than one pound or pint or that contain four pounds or one gallon or more are not subject to the ``dual declaration`` and may express the product's net weight or net content as a single, accurate statement.

FSIS published the proposed rule in response to a petition submitted on behalf of a small meat processing establishment. The petitioner contended that the dual weight labeling requirements were unnecessary and imposed disparate cost on small businesses. After reviewing the existing regulations, FSIS determined that it is not necessary for labels of any meat or poultry products to bear dual statements of weight or content, using more than one unit of measurement to convey the accurate weight or amount of the product to consumers.

This final rule adopts the requirements in its April 17, 2019 proposed rule, but for a few non-substantive changes to the proposed regulatory language. Specifically, FSIS is revising the proposed regulatory language at 9 CFR 317.2 (h) (4) and 9 CFR 381.121(c) (5), and revising, instead of removing, the language at 9 CFR 317.2 (h) (5), to update the net weight statement examples and to preserve specific unrelated requirements associated with the labeling of random weight packages of meat and poultry that were inadvertently proposed for deletion. Otherwise, FSIS has reviewed the comments on the proposed rule and is finalizing it without changes related to the comments.

#### **Responses to Comments**

FSIS received 22 comments on the proposed rule submitted by a small business advocacy group; a meat and poultry trade association; individuals, including students; a State association of agricultural commissioners; and a nonprofit weights and measures organization.

*Comment:* FSIS received comments from individuals, including students, opposed to the proposal. According to these commenters, having to convert weight measurements from one unit of measurement to another would be inconvenient. The commenters supported dual weight labeling because of its convenience in calculating weights for recipes and in determining nutritional values and because, according to them, the dual weight requirement is helpful for people from other cultures. These commenters also questioned FSIS' analysis that found that the change would result in benefits for small businesses.

*Response:* FSIS believes there are various options available to consumers today that allow for the conversion of weight measurements with minimal inconvenience or cost to consumers. Requiring two different units of measurement on the same product, for limited products, is unlikely to significantly help inform consumers of different cultural backgrounds about the weights of their purchases. As discussed elsewhere in this document, industry, including small businesses, should benefit from the flexibility offered by this change to the labeling regulations.

*Comment:* FSIS received comments from a nonprofit and

a State association that supported the proposal, noting that it makes FSIS' regulations more consistent with the Fair Packaging and Labeling Act (the FPLA, from which meat and poultry are exempt), which was amended in 1992 to eliminate the requirement for product weight labeling in pounds and ounces on consumer commodities. To further promote FPLA consistency, these comments recommended that FSIS:

- Require all meat and poultry weights be declared in largest whole units;
- Remove the requirement to include the words "Net Weight" or "Net Wt." from avoirdupois<sup>1</sup> net weight statements and remove "Net Contents" and "Net" from liquid net weight statements, or as an alternative, allow the use of "Net" and "Net Mass" for avoirdupois net weight statements; and
- Require that all meat and poultry weights be declared in both imperial<sup>2</sup> and metric units,<sup>3</sup> or, as an alternative, allow metric units instead of imperial units.

One commenter also proposed that the net weight statement be allowed in any order, regardless of the use of imperial or metric units.

*Response:* In general, FSIS believes that the costs to industry from the additional requirements proposed by these commenters cannot be justified. Further, since 1966, meat and

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<sup>1</sup>Avoirdupois is a system of weights and measures that includes pounds and ounces.

<sup>2</sup> The imperial system is a system of weights and measures that includes pounds, ounces, feet, yards, and miles.

<sup>3</sup> The metric system is a system of weights and measures that includes meters, liters, and grams.

poultry product labeling are expressly exempted from the FPLA and the regulations issued thereunder. Thus, consistency between the FSIS labeling regulations and the FPLA is not required. Specifically, FSIS' net weight regulations already require that the "largest whole unit" be used for liquid weights to promote consistency on labeling due to the high number of volume measurements, for example, fluid ounce, cups, pints, quarts, and gallons, and will remain in use pursuant to 9 CFR 317.2(h)(5) and 381.121(c)(5).

FSIS is removing the dual declaration requirement for avoirdupois weight on packages weighing one pound to less than four pounds to allow for the use of either ounces or pounds alone or in a voluntary dual declaration format that allows for ounces and pounds to be listed in any order. Requiring the use of the "largest whole unit" for these packages would require that all such packages be declared in pounds first; therefore, that requirement would remove the compliance flexibility that FSIS is providing by removing the dual declaration requirement.

Regarding the comments on net weight declaration, FSIS' position is that the terms "Net Weight", "Net Wt.", "Net Contents", and "Net" are an integral part of the net weight statement that clarifies for consumers the weight of the product separate from its package, as well as from other voluntary weights that may be included on a label, such as the weight per piece. FSIS' net weight regulations do not require metric units. However, FSIS allows metric weights and measures in the net

weight statement as voluntary information after the net weight information required by the regulations is declared. Changing the regulations to include metric weights and measurements and the term "Net Mass" is outside the scope of this rule.

### **Executive Orders 12866 and 13563, and the Regulatory Flexibility Act**

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety benefits, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated as a "non-significant" regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

#### *Economic Impact Analysis*

FSIS has updated the final qualitative analysis to incorporate more recent data. The changes include: Updated estimates in the "Baseline" section with 2019 Information Resources, Inc (IRI) scanner data; and updated estimates in the "Expected Benefits Associated with the Final Rule" section with 2020 Label Submission and Approval System (LSAS) data.

#### *Baseline*

Prior to the effective date of this final rule, FSIS' regulations required labeling on packages of meat or poultry products that contain at least one pound or one pint, but less than four pounds or one gallon, to express the net weight or content as a "dual declaration" (i.e., in both ounces and pounds or fluid ounces and pints, or quarts) on the product label, unless an exemption<sup>4</sup> applied. According to 2019 IRI scanner data,<sup>5</sup> about 30,758 FSIS regulated products in the retail market have a dual net weight or content statement on the label. About 55 percent (2,620/4,725) of FSIS regulated companies manufacture at least one product with a dual net weight or content statement, and about 31 percent (1,459/4,725) of FSIS regulated companies manufacture products with both a dual and single net weight or content statement.

#### *Expected Benefits Associated with the Final Rule*

The final regulatory amendments to 9 CFR 317.2(h)(5) and 9 CFR 381.121(c)(5) remove the requirements for dual net weight or content statements on labels of meat and poultry products that contain at least one pound or one pint, but less than four pounds or one gallon. Under the final rule, all FSIS meat and poultry products will need to include only one unit of measurement in the net weight or content statement. Industry will benefit from more flexible net weight and content statement

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<sup>4</sup> See 9 CFR 317.2(h)(9) and 381.121(h)(9) for the list of exemptions.

<sup>5</sup> The analysis, findings, and conclusions expressed in this report should not be attributed to IRI. IRI gathers data by scanners in supermarkets, drugstores, and mass merchandisers and maintains a panel of consumer households that record purchases at outlets by scanning UPC codes on the products purchased.



regulations across all FSIS meat and poultry products, especially start-up companies and companies currently with products having both single and dual net weight or content statements. Companies will no longer have to keep track of which products need to include a dual or single net weight or content declaration.

The final rule also clarifies the net weight and content requirements for the industry and FSIS inspectors. When FSIS analyzed historical askFSIS<sup>6</sup> data, it showed confusion surrounding the dual declaration net weight and content requirements. Industry often incorrectly interpreted the dual declaration net weight and content requirements as needing to include both the avoirdupois measure (ounces or pounds) and the metric measure (grams or kilograms) in the net weight or content statement. FSIS also received askFSIS questions about exemptions. For example, industry wanted to know if random weight packages, packages under one pound, and products sold for further processing were exempt from the dual declaration net weight and content requirements. The remaining questions sought formatting clarification on the order of the measurements and about the line spacing. Questions regarding the order sought clarification on which measurements should be listed first: pounds or ounces, fluid ounces or pints or quarts. Industry also asked if the second net weight or content declaration could be

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<sup>6</sup> askFSIS is a web-based computer application, designed to help answer technical and policy-related questions from inspection program personnel, industry, consumer groups, other stakeholders, and the public.

listed on a separate line to better fit on labels. Under the final rule, FSIS expects that the new net weight and content requirements will be clearer for industry and FSIS inspectors and that there will be fewer askFSIS questions and less misunderstanding of the net weight and content requirements.

Further, the likelihood of misprinted labels should decrease under the final rule. FSIS' Labeling and Program Delivery Staff (LPDS) evaluates sketches of labels<sup>7</sup> through the LSAS prior to the associated labels entering the marketplace. According to 2020 LSAS data, LPDS requested corrections of errors in the dual net weight statement for 48 labels from 27 firms. These labels would not have needed modifications to their net weight statement under this final rule.

In addition, removing the dual declaration requirements will free-up a small amount of space on the principal display panel of labels. Switching from dual declarations to single declarations could also marginally decrease ink consumption for companies.

FSIS did not find a price difference in capital printing equipment for complying with the dual declaration net weight or content statement. However, there is a price difference in scale-printing systems for printing a dual net weight or content statement versus a single statement. Companies typically use

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<sup>7</sup> LPDS evaluates four types of FSIS labels: (1) Labels for religious exempt products, (2) Labels for export with deviations from domestic requirements, (3) Labels with special statements and claims, and (4) Labels for temporary approval. All other labels can be generically approved. Additional information on generically approved labels is available here: <https://www.fsis.usda.gov/wps/wcm/connect/bf170761-33e3-4a2d-8f86-940c2698e2c5/Label-Approval-Guide.pdf?MOD=AJPERES/>.

scale-printing systems to print net weight information on random weight packages (e.g., sliced turkey from a deli counter). Random weight packages with varying weight and with no fixed weight pattern are currently exempt from the dual declaration net weight and content statement requirement. Therefore, the scale-printer cost discrepancies were not included in the cost analysis. The Agency sought, but did not receive, comment on capital costs for printing equipment for the dual declaration net weight and content statement.

#### *Expected Costs Associated with the Final Rule*

There are no expected costs associated with this final rule. Companies that already have products labeled with the two measurements in the net weight or content statement are not required to update their labels to a single net weight or content statement.

#### **Regulatory Flexibility Act Assessment**

The FSIS Administrator has made a determination that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The final rule is not expected to increase costs to the industry.

#### **Paperwork Reduction Act**

There are no new paperwork or recordkeeping requirements associated with this final rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### **Executive Order 12988, Civil Justice Reform**

This rule has been reviewed under E.O. 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

#### **E-Government Act**

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

#### **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of E.O. 13175, "Consultation and Coordination with Indian Tribal Governments." E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSIS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, FSIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

**USDA Non-Discrimination Statement**

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#### **Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <https://www.fsis.usda.gov/federal-register>.

FSIS also will make copies of this publication available through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, *Federal Register* notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is

able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <https://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

### **List of Subjects**

#### *9 CFR Part 317*

Food labeling, Food packaging, Meat inspection, Nutrition, Reporting and recordkeeping requirements.

#### *9 CFR Part 381*

Administrative practice and procedure, Animal diseases, Crime, Exports, Food grades and standards, Food labeling, Food packaging, Government employees, Grant programs-agriculture, Intergovernmental relations, Laboratories, Meat inspection, Nutrition, Polychlorinated biphenyls (PCB's), Poultry and poultry products, Reporting and recordkeeping requirements, Seizures and forfeitures, Signs and symbols, Technical assistance, Transportation.

For the reasons set out in the preamble, FSIS amends 9 CFR parts 317 and 381 as follows:

### **PART 317 - LABELING, MARKING DEVICES, AND CONTAINERS**

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601-695; 7 CFR 2.18, 2.53.

§ 317.2 [Amended]

2. Amend § 317.2 as follows:

- a. In paragraph (h) (4), remove the phrase "a declaration of 1½ pounds avoirdupois weight shall be expressed as "Net Wt. 24 oz. (1 lb. 8 oz.)," "Net Wt. 24 oz. (1½ lb.)," or "Net Wt. 24 oz. (1.5 lbs.)."" and add in its place "a declaration of 1 ½ pounds avoirdupois weight shall be expressed as "Net Wt. 24 oz.," "Net Wt. 1 lb. 8 oz.," "Net Wt. 1½ lb.," or "Net Wt. 1.5 lbs."".
- b. In paragraph (h) (5), remove "the statement shall be expressed as a dual declaration both in ounces and (immediately thereafter in parentheses) in pounds" and add in its place "the statement shall be expressed in ounces or in pounds".
- c. In paragraph (h) (9) (i), remove the phrase ", dual declaration," from the second and fourth sentences;
- d. In paragraph (h) (9) (iii), remove the phrase ", dual declaration,";
- e. In paragraph (h) (9) (iv), remove "paragraphs (h) (3) and (5)" and add in its place "paragraph (h) (3)";
- f. In paragraph (h) (9) (v), remove "paragraphs (h) (3) and (h) (5)" and add in its place "paragraph (h) (3)" and remove the phrase ", and that the statement be expressed both in ounces and in pounds,";



g. In paragraph (h) (12), remove the phrase “, except that such declaration of total quantity need not be followed by an additional parenthetical declaration in terms of the largest whole units and subdivisions thereof, as required by paragraph (h) (5) of this section”.

**PART 381 – POULTRY PRODUCTS INSPECTION REGULATIONS**

3. The authority citation for part 381 is revised to read as follows:

Authority: 7 U.S.C. 138f, 1633; 21 U.S.C. 451-472; 7 CFR 2.7, 2.18, 2.53.

4. Amend § 381.121 as follows:

a. Paragraph (c) (5) is revised.

b. In paragraph (c) (8), remove “, except that such declaration of total quantity need not be followed by an additional parenthetical declaration in terms of the largest whole units and subdivisions thereof, as otherwise required by this paragraph (c)” from the first sentence;

c. In paragraph (c) (9) (i), remove the phrase “, dual declaration,” from the second and fourth sentences; and

d. In paragraph (c) (9) (iii), remove the phrase “, dual declaration,”.

The revision reads as follows:

**§ 381.121 Quantity of contents.**

\* \* \* \* \*

(c) \* \* \*

(5) The terms "net weight" or "net wt." shall be used when stating the net quantity of contents in terms of weight, and the term "net contents" or "contents" when stating the net quantity of contents in terms of fluid measure. Except as provided in § 381.128, the statement shall be expressed in terms of avoirdupois weight or liquid measure. Where no general consumer usage to the contrary exists, the statement shall be in terms of liquid measure, if the product is liquid, or in terms of weight if the product is solid, semi-solid, viscous, or a mixture of solid and liquid. On packages containing less than 1 pound or 1 pint, the statement shall be expressed in ounces or fractions of a pint, respectively. On packages containing 1 pound or 1 pint or more, and less than 4 pounds or 1 gallon, the statement shall be expressed in ounces or in pounds with any remainder in terms of ounces or common or decimal fraction of the pound, or in the case of liquid measure, in the largest whole units with any remainder in terms of fluid ounces or common or decimal fraction of the pint or quart. For example, a declaration of three-fourths pound avoirdupois weight shall be expressed as "Net Wt. 12 oz."; a declaration of  $1\frac{1}{2}$  pounds avoirdupois weight shall be expressed as "Net Wt. 24 oz.," "Net Wt. 1 lb. 8 oz.," "Net Wt.  $1\frac{1}{2}$  lb.," or "Net Wt. 1.5 lbs.". However, on random weight packages the statement shall be expressed in terms of pounds and decimal fractions of the pound, for packages over 1 pound, and for packages which do not exceed 1 pound the statement may be in decimal fractions of the pound in lieu of ounces. The numbers

may be written in provided the unit designation is printed.

Paragraphs (c) (8) and (9) of this section permit certain exceptions to this paragraph (c) (5) for multi-unit packages, and random weight consumer size and small packages (less than  $\frac{1}{2}$  ounce), respectively.

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Done in Washington, DC.

Paul Kiecker,  
*Administrator.*

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