

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE
FOOD AND DRUG ADMINISTRATION

TO : The Commissioner
Through: The Deputy Commissioner (HF-2) _____ DATE: _____
Associate Commissioner for Compliance (HFC-1) _____
Director, Bureau of Foods (HFF-1) _____

FROM : Associate Director for Compliance (HFF-300)

SUBJECT: Food Service Establishments - Proposed Exemption From Nutrition Labeling Requirements
(21 CFR 1.17) - ACTION

OBJECTIVE

To publish a proposal for exemption from certain nutrition labeling requirements of ready-to-eat food prepared in food service establishments.

BACKGROUND

McDonald's Corporation, a restaurant chain, has requested an exemption under 21 CFR 1.17 for food service establishments which display nutrition information concerning prepared meals offered for sale.

The petitioner requested exemption from the current requirement that the food label bear the complete nutrition label required by §1.17.

The attached draft of a FEDERAL REGISTER document (Tab A) proposes an amendment to exempt, under certain conditions, restaurant foods from nutrition labeling requirements.

DISCUSSION

Without the recommended proposal (Tab A), restaurant foods would be required to have a label bearing all nutrition labeling information required by §1.17 if nutrition information has been furnished by labeling or in advertising.

Such a requirement makes it unlikely that food service establishments will furnish any nutrition information about their food.

The proposed exemption would allow food service establishments to furnish complete nutrition information through displays in their establishments and through advertising without requiring that the foods also bear a nutrition label.

RECOMMENDATION

It is recommended that the attached proposed FEDERAL REGISTER document (Tab A) be approved for publication.

Robert Angelotti, Ph.D.

Enclosure

Tab A - FEDERAL REGISTER Document

Tab B - June 11, 1974, Letter from McDonald's Corporation

DECISION

Approved _____ Disapproved _____ Date _____

Prepared by: HFF-312, THORPE, X50986
HFF-302, BENNETT, X51254

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 1]

EXEMPTION FROM FOOD NUTRITION LABELING REQUIREMENTS

Notice of Proposed Rule Making

21 CFR 1.17(a) sets forth the conditions whereby nutrition information or claims in food advertising, labeling, or on labels subjects the labeling, to certain nutrition labeling requirements.

McDonald's Corporation, Oak Brook, Illinois 60521, has submitted a petition proposing to exempt restaurant food from the requirement of 21 CFR 1.17 (that a label subject to the requirements of §1.17 be required on the food) when nutrition information is furnished in other labeling which is prominently and conspicuously displayed in close proximity to the point where the menu is examined by the customer so that all consumers have adequate access to such information. The petition dated June 11, 1974, is available for inspection in the Office of the Hearing Clerk, Food and Drug Administration, Rm. 6-86, 5600 Fishers Lane, Rockville, MD 20852.

Under current regulations, foods prepared in restaurants and in other food service establishments are required to have a label bearing the nutrition labeling information required by §1.17 if nutrition information or claims of nutritional value have been furnished by labeling or in advertising. This requirement tends to discourage dissemination of nutrition information concerning foods prepared in food service establishments.

Also, due to the nature of the ready-to-eat food business, much of the packaging is not suitable for providing nutrition information because of direct exposure of the package label to moist food particles, condiments, meat juices, and residues of cooking oils or shortenings.

The Commissioner is in agreement with the proposal that ready-to-eat foods prepared in food service establishments should be exempted from the requirement of §1.17 that the labels and labeling bear certain nutrition information, provided that consumers have adequate opportunity to become informed through a prominent and conspicuous display of labeling complying with the requirements of §1.17.

The Commissioner proposes to accomplish the objectives of the petition by promulgation of an exemption under 21 CFR 1.17(h). If nutrition information concerning a food appears in advertising, then labeling in compliance with the requirements of §1.17 could be prominently and conspicuously displayed on the premises via table or counter placards and/or wall posters where such information would be readily available to the consumer when he is making a menu selection. If the nutrition information is so provided, the food itself need not bear nutrition labeling.

Since an objective of the regulation is to provide ample exposure of the consumer to nutrition information, nutrition labeling which is required as a result of nutrition information or claims in advertising shall also be displayed conspicuously and prominently in eating areas on the premises, if such areas are provided by the establishment. This requirement applies regardless of whether or not menus are examined by customers in such dining areas.

The proposed exemption specifically applies to ready-to-eat restaurant foods rather than foods requiring further preparation, since this is a factor which distinguishes restaurant foods from other types of foods, and to food service establishments where ready-to-eat foods are prepared for consumption on or off the premises, whether the food is sold or otherwise furnished.

If a label which bears a nutrition claim or nutrition information is present on the food, then the proposed exemption will not apply and the label will be required to bear all the nutrition labeling currently required by §1.17.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (Secs. 201, 403, 701(a), 52 Stat. 1040-1042 as amended, 1047, 1055; 21 U.S.C. 321, 343, 371(a)) and under authority delegated to him (21 CFR 2.120), the Commissioner proposes to amend 21 CFR 1.17 by adding a new paragraph (h)(13):

§1.17 Food; Nutrition Labeling

* * * * *

(h)(13) Ready-to-eat foods that are prepared in food service establishments and for which advertising claims involving nutrition information have been made need not bear nutrition labeling in accordance with the provisions of this section, provided that:

- (i) Such foods do not bear any nutrition claims or information on its label or in its labeling. If nutrition claims are made, or nutrition information is supplied, on the food label, complete nutrition labeling is required in accordance with the provisions of this section;

- (ii) Off-package labeling contains the nutrition information in the format required by this section, and is displayed prominently and conspicuously at locations at or near the point where the menu is examined by the consumer and in any dining areas that are located on the premises;
- (iii) Such labeling is displayed concurrent with, and for a period of not less than, two weeks after discontinuance of any advertising that contains nutrition claims or information concerning such foods; and
- (iv) Such labeling contains nutrition information for each average packaged unit, as it is sold or furnished to customer, of the particular food item advertised. Such nutrition information is not to cover two or more average packaged units collectively.

Interested persons may, on or before (insert date 60 days after publication in the FEDERAL REGISTER), file with the Hearing Clerk, Food and Drug Administration, Rm. 6-86, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: _____
