

in a reference product. These statements shall be known as "relative claims" and include "light," "reduced," "less" (or "fewer"), and "more" claims.

(1) To bear a relative claim about the level of a nutrient, the amount of that nutrient in the product must be compared to an amount of nutrient in an appropriate reference product as specified in this paragraph (j).

(i)(A) For "less" (or "fewer") and "more" claims, the reference product may be a dissimilar product within a product category that can generally be substituted for one another in the diet or a similar product.

(B) For "light," "reduced," and "added" claims, the reference product shall be a similar product, and

(ii)(A) For "light" claims, the reference product shall be representative of the type of product that includes the product that bears the claim. The nutrient value for the reference product shall be representative of a broad base of products of that type; e.g., a value in a representative, valid data base; an average value determined from the top three national (or regional) brands, a market basket norm; or, where its nutrient value is representative of the product type, a market leader. Firms using such a reference nutrient value as a basis for a claim, are required to provide specific information upon which the nutrient value was derived, on request, to consumers and appropriate regulatory officials.

(B) For relative claims other than "light," including "less" and "more" claims, the reference product may be the same as that provided for "light" in paragraph (j)(1)(ii)(A) of this section or it may be the manufacturer's regular product, or that of another manufacturer, that has been offered for sale to the public on a regular basis for a substantial period of time in the same geographic area by the same business entity or by one entitled to use its trade name, provided the name of the competitor is not used on the labeling of the product. The nutrient values used to determine the claim when comparing a single manufacturer's product to the labeled product shall be either the values declared in nutrition labeling or the actual nutrient values, provided that the resulting labeling is internally consistent (i.e., that the values stated in the nutrition information, the nutrient values in the accompanying information, and the declaration of the percentage of nutrient by which the product has been modified are consistent and will not cause consumer confusion when compared), and that the actual modification is at least equal to

the percentage specified in the definition of the claim.

(2) For products bearing relative claims:

(i) The label or labeling must state the identity of the reference product and the percent (or fraction) of the amount of the nutrient in the reference product by which the nutrient has been modified, (e.g., "50 percent less fat than 'reference product'" or "1/3 fewer calories than 'reference product'"); and

(ii) This information shall be immediately adjacent to the most prominent claim in easily legible boldface print or type, in distinct contrast to other printed or graphic matter, that is no less than that required by § 381.121(c) for net quantity of contents, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the referral statement shall be no less than one-half the size of the claim, but no smaller than 1/16-inch minimum height, except as permitted by § 381.500(d)(2).

(iii) The determination of which use of the claim is in the most prominent location on the label or labeling will be made based on the following factors, considered in order:

(A) A claim on the principal display panel adjacent to the statement of identity;

(B) A claim elsewhere on the principal display panel;

(C) A claim on the information panel; or

(D) A claim elsewhere on the label or labeling.

(iv) The label or labeling must also bear:

(A) Clear and concise quantitative information comparing the amount of the subject nutrient in the product per labeled serving size with that in the reference product; and

(B) This statement shall appear adjacent to the most prominent claim or to the nutrition information.

(3) A relative claim for decreased levels of a nutrient may not be made on the label or in labeling of a product if the nutrient content of the reference product meets the requirement for a "low" claim for that nutrient.

(k) The term "modified" may be used in the statement of identity of a product that bears a relative claim that complies with the requirements of this part, followed immediately by the name of the nutrient whose content has been altered (e.g., "modified fat 'product'"). This statement of identity must be immediately followed by the comparative statement such as "contains 35 percent less fat than 'reference product'." The label or

labeling must also bear the information required by paragraph (j)(2) of this section in the manner prescribed.

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(p)(1) Unless otherwise specified, the reference amount customarily consumed set forth in § 381.412(b) through (e) shall be used in determining whether a product meets the criteria for a nutrient content claim. If the serving size declared on the product label differs from the reference amount customarily consumed, and the amount of the nutrient contained in the labeled serving does not meet the maximum or minimum amount criterion in the definition for the descriptor for that nutrient, the claim shall be followed by the criteria for the claim as required by § 381.412(f) (e.g., "very low sodium, 35 mg or less per 55 grams").

(2) The criteria for the claim shall be immediately adjacent to the most prominent claim in easily legible print or type and in a size that is no less than that required by § 381.121(c) for net quantity of contents, except where the size of the claim is less than two times the required size of the net quantity of contents statement, in which case the criteria statement shall be no less than one-half the size of the claim but no smaller than 1/16-inch minimum height, except as permitted by § 381.500(d)(2).

(q) * * *

(4) The requirements of this section do not apply to infant formulas and medical foods, as described in 21 CFR 101.13(q)(4).

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22. Section 381.445 is amended by revising the section reference in paragraph (c) from "§ 381.409(g)" to "§ 381.409(f)" and by revising paragraph (a)(2) introductory text, (a)(2)(ii) and (a)(2)(iii) to read as follows: *§ 381.445 Guidelines for voluntary nutrition labeling of single-ingredient, raw products.*

(a) * * *

(2) A retailer may choose to provide nutrition information at the point-of-purchase, such as by posting a sign, or by making the information readily available in brochures, notebooks, or leaflet form in close proximity to the food. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media. If a nutrition claim is made on point-of-purchase materials all of the requirements of the mandatory nutrition labeling program apply. However, if only nutrition information—and not a nutrition claim—is supplied on point-of-purchase materials:

(i) * * *