James H. Skiles  
Vice President and General Counsel  
Grocery Manufacturers Association  
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Washington, DC 20005

Eric R. Lieberman  
Regulatory Counsel  
Food Marketing Institute  
2345 Crystal Drive, Suite 800  
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Dear Mr. Skiles and Mr. Lieberman:

This letter is in response to your letter dated November 20, 2012, and other communications with the Food Safety and Inspection (FSIS), regarding the approval of the “Facts Up Front” (Nutrition Keys) voluntary front-of-pack labeling (FOP) program. You are requesting written acknowledgement from the USDA that the FSIS plans to continue to approve labels that bear the Facts Up Front information. Mr. Ronholm has asked me to reply on his behalf.

Facts Up Front is a voluntary labeling program developed by the Grocery Manufacturers Association (GMA) and the Food Marketing Institute (FMI), which provides information on the principal display panel of food labels about the amounts of important nutrients in the food. Products labeled with Facts Up Front include four “Basic Icons” on the Principal Display Panel (PDP). The four “Basic Icons” provide information from the Nutrition Facts panel on calories, saturated fat, sodium, and total sugar content. In addition to the “Basic Icons,” some products may display up to two “Optional Icons,” which may provide information from the Nutrition Facts panel on potassium, dietary fiber, protein, vitamin A, vitamin C, vitamin D, calcium or iron.

Under the rules of the Facts Up Front program as described in your letter and the accompanying “Facts Up Front Style Guide” dated March 15, 2012, participating companies are to present the Basic Icons in a standardized format that includes all four icons on all their eligible products, rather than selectively on some products. We understand that, after a phase-in-period, you expect broad implementation of the Facts Up Front, resulting in a uniform system that will make information on the amounts of nutrients in a food available to consumers at a glance in the four “Basic Icons.”
You have requested that FSIS acknowledge the use of Facts Up Front icons under the same conditions that FDA accommodates in the attached letter of enforcement discretion. This alignment with FDA would mean that FSIS would allow:

Use of the Facts Up Front Basic Icons only, and use the Facts Up Front Basic Icons with any Facts Up Front Optional Icons, without declaration of polyunsaturated fat and monounsaturated fat in the Nutrition Facts panel.

Additionally, without the use of any disclosure statement if the food exceeds specific levels of total fat, saturated fat, cholesterol or sodium, as FSIS has no rules mandating disclosure statements with nutrition-related claims.

FSIS views the Facts Up Front Basic Icons (calories, saturated fat, sodium and total sugar content) and Optional Icons as nutrient content claims subject to all the requirements of the Agency’s regulations and Acts. We recognize, however, that standardized, non-selective presentation of the four Basic Icons on a company’s product line would alleviate some of FSIS’s concerns regarding the potential for product labeling to mislead consumers by presenting only “good news” about nutrient content on the front of the package, which is the concern that the regulations governing nutrient content claims were intended to address. We also recognize that the standardized, non-selective presentation of the four Basic Icons on a company’s entire product line, if widely adopted by the food industry in a uniform manner, may foster awareness of the nutrient content of foods in the marketplace and assist consumers in making informed food choices.

FSIS expects to continue to approve labels for establishments that participate in and comply with the terms of the Facts Up Front program. Similar to FDA, FSIS will not require declaration of polyunsaturated fat and monounsaturated fat in the Nutrition Facts panel when the four Basic Icons are applied with or without the Optional Icons. In addition, FSIS will not require the use of a disclosure statement when the food exceeds specific levels of total fat, saturated fat, cholesterol or sodium required for foods regulated by the Food and Drug Administration (FDA) under Title 21 of the Code of Federal Regulations (CFR), Section 101.13(h). Unlike FDA, FSIS does not have any regulations requiring the use of a disclosure statement. FSIS strongly encourages, however, establishments to voluntarily apply a disclosure statement to meat and poultry products that bear the four Basic Icons and exceed the disclosure trigger levels for total fat, saturated fat, cholesterol, or sodium identified in FDA’s regulations.

It is FSIS’s understanding that GMA and FMI will use their best efforts to ensure that participating companies use the Facts Up Front program as outlined in the Facts Up Front Style Guide. While FSIS intends to continue to approve labels for firms that participate in, and comply with the terms of the Facts Up Front program, FSIS does not intend to approve labeling for companies that misuse or modify the Facts Up Front labeling system in a manner that misleads consumers or otherwise violates the Acts or regulations. FSIS will continue to evaluate the use of the Facts Up Front Program on labeling on a case by case basis under its prior label approval system. We look forward to working with you to ensure that consumers get the reliable and standardized information they need to make healthy food choices.
Mr. Skiles and Mr. Lieberman

Sincerely,

Rosalyn Murphy-Jenkins, Director
Labeling and Program Delivery Division