

(5) Section 101.9(j)(17) for foods in packages that have a total surface area available to bear labeling greater than 40 square inches but whose principal display panel and information panel do not provide sufficient space to accommodate all required label information, except that the ingredient list shall continue to be located immediately below the nutrition label, or, if there is insufficient space below the nutrition label, immediately contiguous and to the right of the nutrition label as specified in § 101.4(g).

(j) Dietary supplements shall be subject to the misbranding provisions of § 101.9(k).

§ 101.42 Nutrition labeling of raw fruit, vegetables, and fish.

(a) The Food and Drug Administration (FDA) urges food retailers to provide nutrition information, as provided in § 101.9(c), for raw fruit, vegetables, and fish at the point-of-purchase. If retailers choose to provide such information, they should do so in a manner that conforms to the guidelines in § 101.45.

(b) In § 101.44, FDA has listed the 20 varieties of raw fruit, vegetables, and fish that are most frequently consumed during a year and to which the guidelines apply.

(c) FDA has also defined in § 101.43, the circumstances that constitute substantial compliance by food retailers with the guidelines.

(d) By May 8, 1993, FDA will issue a report on actions taken by food retailers to provide consumers with nutrition information for raw fruit, vegetables, and fish under the guidelines established in § 101.45.

(1) The report will include a determination of whether there is substantial compliance, as defined in § 101.43, with the guidelines.

(2) In evaluating substantial compliance, FDA will consider only the 20 varieties of raw fruit, vegetables, and fish most frequently consumed as identified in § 101.44.

(e) If FDA finds that there is substantial compliance with the guidelines for the nutrition labeling of raw fruit and vegetables or of fish, the agency will so state in the report, and the guidelines will remain in effect. FDA will reevaluate the market place for substantial compliance every 2 years.

(f) If FDA determines that there is not substantial compliance with the guidelines for raw fruit and vegetables

or for raw fish, the agency will at that time issue proposed regulations requiring that any person who offers raw fruit and vegetables or fish to consumers provide, in a manner prescribed by regulations, the nutrition information required by § 101.9. Final regulations would have to be issued 6 months after issuance of proposed regulations, and they would become effective 6 months after the date of their promulgation.

§ 101.43 Substantial compliance of food retailers with the guidelines for the voluntary nutrition labeling of raw fruit, vegetables, and fish.

(a) The Food and Drug Administration (FDA) will judge a food retailer who sells raw agricultural commodities or raw fish to be in compliance with the guidelines in § 101.45 with respect to raw agricultural commodities if the retailer displays or provides nutrition labeling for at least 90 percent of the raw agricultural commodities listed in § 101.44 that it sells, and with respect to raw fish if the retailer displays or provides nutrition labeling for at least 90 percent of the types of raw fish listed in § 101.44 that it sells. To be in compliance, the nutrition labeling shall:

(1) Be presented in the store or other type of establishment in a manner that is consistent with § 101.45(a)(1);

(2) Be presented in content and format that are consistent with § 101.45(a)(2), (a)(3), and (a)(4); and

(3) Include data that have been provided by FDA in appendices C and D to part 101 of this chapter, except that the information on potassium is voluntary.

(b) To determine whether there is substantial compliance by food retailers with the guidelines in § 101.45 for the voluntary nutrition labeling of raw fruit and vegetables and of raw fish, FDA will select a representative sample of 2,000 stores, allocated by store type and size, for raw fruit and vegetables and for raw fish.

(c) FDA will find that there is substantial compliance with the guidelines in § 101.45 if it finds based on paragraph (a) of this section that at least 60 percent of all stores that are evaluated are in compliance.

(d) FDA will evaluate substantial compliance separately for raw agricultural commodities and for raw fish.

[55 FR 60890, Nov. 27, 1991, as amended at 61 FR 42759, Aug. 16, 1996]

§ 101.44 Identification of the 20 most frequently consumed raw fruit, vegetables, and fish in the United States.

(a) The 20 most frequently consumed raw fruit are: Banana, apple, watermelon, orange, cantaloupe, grape, grapefruit, strawberry, peach, pear, nectarine, honeydew melon, plum, avocado, lemon, pineapple, tangerine, sweet cherry, kiwifruit, and lime.

(b) The 20 most frequently consumed raw vegetables are: Potato, iceberg lettuce, tomato, onion, carrot, celery, sweet corn, broccoli, green cabbage, cucumber, bell pepper, cauliflower, leaf lettuce, sweet potato, mushroom, green onion, green (snap) bean, radish, summer squash, and asparagus.

(c) The 20 most frequently consumed raw fish are: Shrimp, cod, pollock, catfish, scallops, salmon (Atlantic/Coho, chum/pink, sockeye), flounder/sole, oysters, orange roughy, Atlantic/Pacific mackerel, ocean perch, rockfish, whiting, clam, haddock, blue crab, rainbow trout, halibut, lobster, and swordfish.

[55 FR 60890, Nov. 27, 1991, as amended at 61 FR 42760, Aug. 16, 1996]

§ 101.45 Guidelines for the voluntary nutrition labeling of raw fruits, vegetables, and fish.

(a) Nutrition labeling for raw fruits, vegetables, and fish listed in § 101.44 should be presented to the public in the following manner:

(1) Nutrition labeling information should be displayed at the point of purchase by an appropriate means such as by a label affixed to the food or through labeling including shelf labels, signs, posters, brochures, notebooks, or leaflets that are readily available and in close proximity to the foods. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media.

(2) Serving sizes should be determined, and nutrients declared, in accordance with § 101.9 (b) and (c), respectively, except that the nutrition label-

ing data should be based on the raw edible portion for fruits and vegetables and on the cooked edible portion for fish. The methods used to cook fish should be those that do not add fat, breading, or seasoning (e.g., salt or spices).

(3) When nutrition labeling information is provided for more than one raw fruit, vegetable, or fish on signs, posters, brochures, notebooks, or leaflets, it may be presented in charts with horizontal or vertical columns or as a compilation of individual nutrition labels. Nutrition labeling that is presented in a linear display (see § 101.9(j)(13)(ii)(A)(2)) will not be considered to be in compliance. The heading "Nutrition Facts" must be in a type size larger than all other print in the nutrition label. The required information (i.e., headings, serving sizes, list of nutrients, quantitative amounts by weight (except for vitamins and minerals), and percent of Daily Values (DV's) (except for sugars and protein) must be clearly presented and of sufficient type size and color contrast to be plainly legible, with numeric values for percent of DV highlighted in contrast to the quantitative amounts by weight and hairlines between all nutrients.

(i) Declaration of the number of servings per container need not be included in the nutrition labeling of raw fruits, vegetables, and fish.

(ii) Except for the statement "Percent Daily Values are based on a 2,000 calorie diet," the footnote required in § 101.9(d)(9) is not required. However, when labeling is provided in brochures, notebooks, leaflets, or similar types of materials, retailers are encouraged to include the footnote.

(iii) When the nutrition labeling information for more than one raw fruit or vegetable is provided on signs, posters, brochures, notebooks, or leaflets, the listings for saturated fat and cholesterol may be omitted from the charts or individual nutrition labels so long as the fact that most fruits and vegetables provide negligible amounts of these nutrients, but that avocados contain 1 gram (g) of fat per ounce, is stated in a footnote (e.g., "Most fruits and vegetables provide negligible amounts of saturated fat and cholesterol; avocados provide 1 g of saturated