§ 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.


§ 101.44 What are the 20 most frequently consumed raw fruits, vegetables, and fish in the United States?

(a) The 20 most frequently consumed raw fruits are: Apple, avocado (California), banana, cantaloupe, grapefruit, grapes, honeydew melon, kiwifruit, lemon, lime, nectarine, orange, peach, pear, pineapple, plums, strawberries, sweet cherries, tangerine, and watermelon.

(b) The 20 most frequently consumed raw vegetables are: Asparagus, bell pepper, broccoli, carrot, cauliflower, celery, cucumber, green (snap) beans, green cabbage, green onion, iceberg lettuce, leaf lettuce, mushrooms, onion, potato, radishes, summer squash, sweet corn, sweet potato, and tomato.

(c) The 20 most frequently consumed raw fish are: Blue crab, catfish, clams, cod, flounder/sole, haddock, halibut, lobster, ocean perch, orange roughy, oysters, pollock, rainbow trout, rockfish, salmon (Atlantic/coho/Chinook/sockeye, chum/pink), scallops, shrimp, swordfish, tilapia, and tuna.

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§ 101.9(j)(13)(i)(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 retailers provide nutrition labeling information for more than one raw fruit or vegetable on signs or posters or in brochures, notebooks, or leaflets, the listings for saturated fat, trans fat, and cholesterol may be omitted from the charts or individual nutrition labels if a footnote states that most fruits and vegetables provide negligible amounts of these nutrients, but that avocados contain 0.5 gram (g) of saturated fat per ounce (e.g., “Most fruits and vegetables provide negligible amounts of saturated fat, trans fat, and cholesterol; avocados provide 0.5 g of saturated fat per ounce”). The footnote also may contain information about the polyunsaturated and monounsaturated fat content of avocados.

(iv) When retailers provide nutrition labeling information for more than one raw fish on signs or posters or in brochures, notebooks, or leaflets, the listings for trans fat, dietary fiber, and sugars may be omitted from the charts or individual nutrition labels if the following footnote is used, “Fish provide negligible amounts of trans fat, dietary fiber, and sugars.”

(4) When nutrition labeling is provided for individual raw fruits, vegetables, or fish on packages or on signs, posters, brochures, notebooks, or leaflets, it should be displayed in accordance with §101.9, except that the declaration of the number of servings per container need not be included. For individual labels provided by retailers on signs and posters, the footnote required in §101.9(d)(9) may be shortened to “Percent Daily Values are based on a 2,000 calorie diet.”

(b) Nutrition label values provided by the Food and Drug Administration (FDA) in Appendices C and D to part 101 for the 20 most frequently consumed raw fruits, vegetables, and fish listed in §101.44 shall be used to ensure uniformity in declared values. FDA will publish proposed updates of the 20 most frequently consumed raw fruits, vegetables, and fish and nutrition label data for these foods (or a notice that the data sets have not changed from the previous publication) at least every 4 years in the Federal Register.

(1) The agency encourages the submission of data bases with new or additional nutrient data for any of the most frequently consumed raw fruits, vegetables, and fish to the Office of Nutritional Products, Labeling and Dietary Supplements (HFS–800), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, for review and evaluation. FDA may incorporate these data in the next revision of the nutrition labeling information for the top 20 raw fruits, vegetables, and fish.


(ii) The submission to FDA should include, but need not be limited to, information on the following: Source of the data (names of investigators, name of organization, place of analyses, dates of analyses), number of samples, sampling design, analytical methods, and statistical treatment of the data. Proposed quantitative label declarations may be included. The proposed values for declaration should be determined in
§ 101.54 Nutrient content claims for “good source,” “high,” “more,” and “high potency.”

(a) General requirements. Except as provided in paragraph (e) of this section, a claim about the level of a nutrient in a food in relation to the Reference Daily Intake (RDI) established for that nutrient in §101.9(c)(8)(iv) or the Daily Reference Value (DRV) established for that nutrient in §101.9(c)(9), (excluding total carbohydrates) may only be made on the label or in labeling of the food if:

1. The claim uses one of the terms defined in this section in accordance with the definition for that term;
2. The claim is made in accordance with the general requirements for nutrient content claims in §101.13; and
3. The food for which the claim is made is labeled in accordance with §101.9, §101.10, or §101.36, as applicable.

(b) “High” claims. (1) The terms “high,” “rich in,” or “excellent source of” may be used on the label and in the labeling of foods, except meal products as defined in §101.13(l) and main dish products as defined in §101.13(m), provided that the food contains 20 percent or more of the RDI or the DRV per reference amount customarily consumed.

(2) The terms defined in paragraph (b)(1) of this section may be used on the label and in the labeling of meal products as defined in §101.13(l) and main dish products as defined in §101.13(m), provided that:

1. The product contains a food that meets the definition of “high” in paragraph (b)(1) of this section; and