

Don't Go Changing to Try and Please Me...FDA (Food and Drug Administration) Nutrition Facts and Supplement Facts information

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The **FDA** caused quite a stir recently by announcing proposed updates to the **Nutrition Facts and Supplement Facts information** required for packaged foods and dietary supplements. These changes reflect the first significant changes in the 20 years since nutrition information was first required to be placed on labels in the form of a **Nutrition Facts panel or Supplement Facts panel** (changes to include *trans fats* information were initiated in 2006.) First Lady **Michelle Obama** and **FDA Commissioner Margaret Hamburg**, M.D. both trumpeted the updates as important changes that will allow consumers to make healthier food choices.

While compliance with regulatory requirements for labeling is always a consideration for companies, class action litigation over labeling issues has become an equal, if not greater, concern for food, beverage, and dietary supplement companies. Consumer activist groups and plaintiff lawyers have increased their **focus and attention on labeling claims like “all natural,” to more technical labeling issues such as the names of ingredients and nutrient content claims like “high in calcium.”** Accordingly, the process regarding these proposed labeling changes will most assuredly be monitored with great interest, not only by regulatory attorneys and industry companies, but by public interest groups, class action lawyers, and consumers alike.

Some of the proposed changes include:

- In recognition of growing obesity issues, information about the amount of “added sugars” in a food product would be required.
- Serving sizes would be updated to more accurately reflect the amounts people currently eat. For example, the serving size for beverages would be changed from eight fluid ounces to 12 fluid ounces.
- Information will be presented in “dual column” formats to indicate “per serving” and “per package” calorie and nutrition information for packages that that could be consumed in one or multiple sittings.
- Revision of the Daily Values for nutrients like sodium, dietary fiber and Vitamin D will be made to more accurately reflect the recommended intakes.
- Information regarding nutrients such as Vitamin D and potassium would become mandatory,

while information on other nutrients that is currently mandatory, such as Vitamin A and Vitamin C, would no longer be mandatory.

- Certain elements of the Nutrition Facts panels will be emphasized, including calories, serving sizes and Percent Daily Value.

While the Supplement Facts panel will also undergo some changes, the proposed changes do not appear to be nearly as dramatic.

The proposed changes come in the form of two proposed rules. One rule consists of revisions to the language in **21 CFR 101.9** and **21 CFR 101.36** regarding **Nutrition Facts and Supplement Facts panels**, respectively. The other rule will modify the current regulation found at 21 CFR 101.12 regarding the “**Recommended Amounts Customarily Consumed**” or “**RACCs**.” Both proposed rules will be open for public comment for an initial ninety-day period from the date of publication, intended for Monday, March 3, 2014. The rules implementing changes, if finalized, will not go into effect until two years after the effective date of the regulations

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