



BREAKING NEWS:

USDA's New Nutrition Labeling Rule Placed on Inactive List by Trump Administration

by Jesse Zuehlke, PhD

Late last week, the Trump Administration moved the [USDA's Revised Nutrition Facts Panel](#) proposed rule to their "[Inactive](#)" list, indicating that it is no longer active and will be reconsidered at some indefinite date in the future. Today a USDA spokesperson clarified that "inactive" items *"are not expected to have action fall before the end of the Spring Regulatory Agenda cycle (approximately June 2018)...[and] will undergo further careful review before the next Regulatory Agenda is published."*

In addition to the USDA's revised Nutrition rule, the Administration also placed on the inactive list rules for "National Bioengineered Food Disclosure Standard" and "Use of the Voluntary Claim "Natural" on the Labeling of Meat and Poultry Products".

Separately, the FDA submitted an [Interim Final Rule in June](#), "Extension of Compliance Date for Nutrition Facts Label Rule and Serving Size Rule", which is pending review at the White House. This rule will determine the final date by which all FDA products must comply with the revised Nutrition labeling regulations.

So while FDA food and beverage companies have no choice but to convert eventually to the new Nutrition Panel format, this action leaves USDA meat and poultry companies in limbo. Last November, the USDA issued a notice allowing USDA companies the choice to either decide to keep the twenty five year old format or to [follow the new FDA format \(see relevant FSIS Notice\)](#) "until a new USDA rule is finalized". This notice states:

Establishments may voluntarily choose to use the Nutrition Facts label format that FDA recently finalized (81 FR 33742 and 81 FR 34000). As long as the information on the labels is still truthful and not misleading, FSIS will not find noncompliance if companies use the FDA format. Because FDA's new Nutrition Facts format is different than FSIS's current regulations, and the new formatted labels that FSIS's Labeling and Program Delivery Staff (LPDS) has reviewed so far contained errors and needed corrections, companies that wish to use FDA's Nutrition Facts label format will need to submit at least one label sketch in that format to LPDS.

Note that USDA companies following the FDA format must adhere to the new RDIs, revised list & definition of nutrients, and new reporting requirements as well. Revised Reference Amounts Customarily Consumed (RACCs), are only for FDA products, however, so old USDA RACCs still apply.

This action is part of the Trump Administration's push to withdraw or remove from active consideration more than 800 proposed regulations as it seeks to reduce the US government's regulatory footprint. The White House listed the following accomplishments on the [Agenda's homepage](#):

- *Agencies withdrew 469 actions that had been proposed in the Fall 2016 Agenda;*

- *Agencies reconsidered 391 active actions by reclassifying them as long-term (282) and inactive (109), allowing for further careful review;*
- *Economically significant regulations fell to 58 - about 50 percent fewer than Fall 2016;*
- *For the first time, agencies will post and make public their list of "inactive" rules."*

Industry reaction has been swift. Bob Hibbert, formerly Director of USDA's standards and labeling staff, and current partner at Morgan Lewis said *"Ever since nutrition labeling was first mandated in the 1990s, FDA and FSIS have worked cooperatively and effectively to maximize uniformity in this area. Regardless of intent, and while it raises more questions than answers, this action undermines this history. Will FSIS establishments have the option to toggle back and forth between the old and new formats? What kinds of records will support compliance? Anyone who has ever worked with the FSIS label system, both in and out of government, knows that such questions cannot simply be tabled for further discussion sometime next year."*

Prime Label will continue to monitor these developments closely, seek guidance from our contacts at USDA and FDA, and notify our Label Alert subscribers as soon as new information is available. Stay tuned!