I would like to make some observations about the FDA’s Center for Food Safety and Applied Nutrition, or CFSAN, which oversees the safety and labeling of all foods except meat and poultry products, as well as food additives, dietary supplements, and cosmetics.

What with all the attention that pharmaceuticals receive, because of their potential for both saving lives and for taking lives, most FDA commissioners have treated the foods division as an afterthought. After all, food is basically safe and hardly cutting edge, isn’t it?

In fact, the ingredients that FDA regulates have tremendous potential for harm and the diet we eat has tremendous potential for good. But the FDA has done far too little to control the bad or encourage the good.

The two most dangerous ingredients in the food supply are trans fat—from partially hydrogenated vegetable oil—and salt. According to experts at the Harvard School of Public Health, trans fat causes between about 70,000 and 230,000 heart attacks a year, about 50,000 of which are fatal. And according to a 2004 estimate by the director of the National Heart, Lung, and Blood Institute, cutting the salt, or sodium, content of packaged and restaurant foods by 50 percent would prevent about 150,000 fatal heart attacks and strokes each year. Together partially hydrogenated oil and trans fat may be causing as many as 200,000 premature deaths each year. Still, the FDA considers both ingredients to be “generally recognized as safe,” or GRAS.

To give credit where credit is due, the FDA has taken one valuable action on trans fat: As of last January it requires trans fat to be listed on nutrition labels. And that has spurred some major manufacturers, including Kraft and ConAgra, to switch to healthier oils. But we shouldn’t forget the tens of thousands of people who died prematurely during the 13 years it took to develop, propose, finalize, and implement the labeling regulation. And we shouldn’t forget restaurant foods, which are not covered by the labeling regulation. For two years now, the FDA has sat on CSPI’s petitions to require restaurants to disclose when their foods contain trans fat and, more broadly, to get partially hydrogenated oil out of the food supply.

The situation with salt is similar. Back in 1979, an FDA advisory committee concluded that salt could not be considered “generally recognized as safe” because it promotes high blood pressure. The previous year CSPI had petitioned the agency to require better labeling and to revoke salt’s GRAS status. But the FDA chose feeble education over effective regulation. Though sodium is now listed on all labels, Americans are consuming more sodium now than they did 25 years ago. CSPI has petitioned the agency twice and sued the agency twice to try to get it to make sodium reduction a top priority. All to no avail. The FDA does not have a single staffer working on this critically important issue.

The same policy of inaction pertains to other FDA activities, such as food safety. Eggs had already been a major cause of Salmonella food poisoning for a decade when in 1997 CSPI petitioned the FDA to improve on-farm conditions to prevent contaminated eggs from getting into grocery stores. After seven years of delay, with thousands of people getting sick every year, the FDA finally proposed regulations. Unfortunately, the FDA has not finalized those regulations, and there’s no telling when it will. On another issue, every summer contaminated shellfish from the Gulf of Mexico kill about 20 people. But the FDA refuses to require pasteurization or other measures to ensure safe shellfish. The FDA did do one thing, though. It
tried, unsuccessfully, to stop California from banning Gulf Coast shellfish during summer months. In the same vein, the FDA has tried to stop California from requiring warning labels on foods that contain acrylamide, a cancer-causing contaminant, and on fish that is high in mercury. Another problem is that the rate of illnesses from contaminated produce is on the rise. But with too few staffers, FDA can neither keep contaminated produce off the market nor adopt prevention-oriented regulations, leaving consumers to fend for themselves.

Consumers are affected every single day by the FDA’s regulation of food labels. The law forbids false or misleading labels. But the cop’s not on the beat any more, and companies can—and sometimes do—let their marketing impulses run wild. CSPI—and even industry groups—have filed numerous complaints with the FDA, but they seem to languish for years. Some of the claims that trick consumers include:

- “Made with Whole Wheat” when the product also contains ordinary white flour;
- “Trans fat-free” when the product is high in saturated fat, which also promotes heart disease;
- “Natural” claims on products that contain decidedly unnatural ingredients, like high-fructose corn syrup; and
- “Contains fruit or vegetables” when the food contains little or none of the fruit or vegetable.

Why no action? The FDA told us that it has only four people assigned to stopping deceptive labeling, and that they only have time to respond to questions rather than to be proactive. Because of the FDA’s disinterest in stopping deceptive labels, CSPI is resorting to lawsuits against companies to fill the regulatory void.

As I noted earlier, some of the blame for FDA’s inaction is due to budget cutbacks. CFSAN has 11 percent fewer employees at its headquarters than it did in 1978, a decline from 995 employees to 881—despite more people to protect, more companies to regulate, and more laws to enforce (such as the Infant Formula Act, Nutrition Labeling and Education Act, Dietary Supplement Act, and others).

CFSAN does have 60 percent more field staff and inspectors than it did 25 years ago. But it still only inspects the average manufacturing facility once every five years….and because food imports have soared, the percentage of shipments inspected has actually fallen in half, from 1.5 percent to 0.8 percent.

This administration’s and this Congress’s disinterest in the FDA and its mission are abundantly clear. However, in 2009, the new Congress and new administration will have an opportunity to revitalize the agency. They could start by funding the FDA at a level that is commensurate with its responsibilities. They could put in place a commissioner who knows that FDA regulates foods and would aggressively enforce the Food, Drug, and Cosmetic Act. And, most dramatically, they could establish an independent food safety agency that would oversee all foods.