



Consumer Federation of America

Nov. 22, 2023

Dr. Robert Califf
Commissioner of Food and Drugs
U.S. Food and Drug Administration

Submitted via email to FOP@reaganudall.org

Re: Front-of-Package Nutrition Labeling virtual public meeting

Dear Commissioner Califf:

On behalf of Consumer Federation of America, I appreciate your consideration of these comments on the U.S. Food and Drug Administration's efforts to design and implement front-of-package ("FOP") nutrition labeling requirements on food and beverages. As noted in my oral comments, FOP labeling requirements are an important tool for enabling consumers to make healthier choices. CFA appreciates FDA and the Biden Administration making new labeling rules a priority in the National Strategy on Hunger, Nutrition, and Health, with an emphasis on reaching consumers with "lower nutrition literacy."¹ Taking into account this emphasis on equity, CFA recommends that FDA enact mandatory FOP labeling rules that are simple, highly visible, and transmit information solely regarding ingredients that raise health concerns.

More than ever, consumers need help navigating the food landscape. According to CDC, 41.9% of adults in the U.S.--and 19.7% of children between 2 and 19 years old²--suffer from obesity.³ The most recent data suggests this tragic situation is only getting worse,⁴ with the diet-release epidemic causing healthcare costs to skyrocket.⁵ To address this crisis, public policies

¹ See Biden-Harris Administration National Strategy on Hunger, Nutrition, and Health [Executive Summary]. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/27/executive-summary-biden-harris-administration-national-strategy-on-hunger-nutrition-and-health/>

² Centers for Disease Control and Prevention. (2022, May 17). *Childhood Obesity Facts*. <https://www.cdc.gov/obesity/data/childhood.html>

³ Centers for Disease Control and Prevention. (2022, May 17). *Adult Obesity Facts*. <https://www.cdc.gov/obesity/data/adult.html>

⁴ Centers for Disease Control and Prevention. (2023, September 21). *Adult Obesity Prevalence Remains High; Support for Prevention and Treatment Needed*. [Press Release]. <https://www.cdc.gov/media/releases/2023/p0922-adult-obesity.html>

⁵ See, e.g. The Rockefeller Foundation (2021, July). *True Cost of Food Measuring What Matters to Transform the U.S. Food System*. Accessed at: <https://www.rockefellerfoundation.org/report/true-cost-of-food-measuring-what-matters-to-transform-the-u-s-food-system/> (estimating that "productivity loss associated with diet and/or food," combined with "direct medical costs attributable to diet and/or food" exceeds \$1 trillion).

must help to shape healthier food environments, in which consumers need not draw on heroic feats of willpower to choose nutritious foods.⁶ FOP labeling is one such important public policy.

FOP labeling schemes are nothing new. In 1990, Congress passed the Nutrition Labeling and Education Act, directing FDA to require nutrition information “to be conveyed to the public in a manner which enables the public to readily observe and comprehend such information and to understand its relative significance in the context of a total daily diet.” 21 U.S.C. § 343(q). In implementing the Act, FDA considered labeling requirements similar to those under consideration by the agency now.⁷ Eventually, the agency settled on the now familiar Nutrition Facts label, which was updated in 2016.⁸ However, nutrition experts have long called on FDA to use its authority under the NLEA to enact FOP labeling. In particular, the Institute of Medicine issued a 2011 report outlining the key characteristics of a FOP labeling system for food products, recommending “a single, standardized system” for food labeling “that is easily understood by most age groups and appears on all food products,” in a consistent location, such as the upper left corner.⁹

Until now, the food industry has stymied efforts to enact new labeling rules at FDA, but outside of the U.S., FOP labeling schemes have proliferated.¹⁰ These schemes reflect growing concern over worsening diet-related disease rates worldwide, and increasing consensus that so-called ultra-processed foods (UPFs) are to blame.¹¹ UPFs now make up over two-thirds of the calories in American children’s diets.¹² Studies show that FOP labels that alert consumers to high levels of salt, fat, and sugar in packaged foods help consumers make healthier choices, and may tend to deter consumption of ultra-processed foods as well, since those are the foods most likely to be “high in” nutrients of concern.¹³ Given the evidence of health harms associated with UPFs, FDA should consider requiring FOP labels to specifically identify when a food is ultra-

⁶ See, e.g., Schubert L, Gallegos D, Foley W, Harrison C: Re-imagining the 'social' in the nutrition sciences. *Public Health Nutr.* 2011, 15 (2): 352-359.

⁷ See Kessler D, et al. Developing the “Nutrition Facts” Food Label. *Harvard Health Public Review.* Fall 2003. Vol. 4. No. 2.

⁸ Food and Drug Administration. (2022, March 7). *Changes to the Nutrition Facts Label.*

<https://www.fda.gov/food/food-labeling-nutrition/changes-nutrition-facts-label>

⁹ McGuire S. Institute of Medicine. (2012). *Front-of-Package Nutrition Rating Systems and Symbols: Promoting Healthier Choices.* Washington, DC: The National Academies Press. *Adv Nutr.* 2012 May 1;3(3):332-3. [doi: 10.3945/an.112.001933](https://doi.org/10.3945/an.112.001933)

¹⁰ See, e.g., Crosbie E, Gomes F.S, Olvera J, Rincón-Gallardo Patiño S, Hoepfer S, Carriedo A. “A policy study on front-of-pack nutrition labeling in the Americas: emerging developments and outcomes.” *Lancet Reg Health Americas.* 2022; <https://doi.org/10.1016/j.lana.2022.100400>

¹¹ Yin Zhang & Edward L. Giovannucci (06 Jun 2022): *Ultra-processed foods and health: a comprehensive review*, *Critical Reviews in Food Science and Nutrition*, DOI: 10.1080/10408398.2022.2084359; see also Via, E., Contreras-Rodríguez, O. (2023). Binge-Eating Precursors in Children and Adolescents: Neurodevelopment, and the Potential Contribution of Ultra-Processed Foods. *Nutrients.* 15(13):2994. [doi: 10.3390/nu15132994](https://doi.org/10.3390/nu15132994).

¹² Wang, L., Martínez Steele, E., Du, M., Pomeranz, J.L., O'Connor, L.E., Herrick, K.A., Luo, H., Zhang, X., Mozaffarian, D., Zhang, F.F. (2021). Trends in Consumption of Ultraprocessed Foods Among US Youths Aged 2-19 Years, 1999-2018. *JAMA* 10;326(6):519-530. [doi: 10.1001/jama.2021.10238](https://doi.org/10.1001/jama.2021.10238)

¹³ Mora-Plazas M, Aida Higgins IC, Gomez LF, Hall M, Parra MF, et al. (2022) Impact of nutrient warning labels on choice of ultra-processed food and drinks high in sugar, sodium, and saturated fat in Colombia: A randomized controlled trial. *PLOS ONE* 17(2): e0263324. <https://doi.org/10.1371/journal.pone.0263324>

processed.¹⁴ In the meantime, however, the experience abroad suggests that the “high in” FOP labeling scheme (A1-A3)—ideally with added color (e.g. yellow background) and symbology (e.g. exclamation point in triangle) to command attention—will present the most effective FOP labeling option among those tested by FDA in focus groups.¹⁵

The indicated “high in” scheme will best improve public health because research shows that highly visible and easily understood FOP systems are most effective at nudging consumers towards more nutritious foods. Colors and symbols both capture shoppers’ attention, and are more likely to be understood by a broad range of consumers.¹⁶ Importantly, researchers studying FOP labeling have found that consumer purchasing decisions are “based more on negative evaluative judgements than on positive judgements.”¹⁷ So FDA should avoid including additional information in the label, particularly regarding healthful product aspects such as Vitamin C and fiber content, but also even more neutral elements like calories, for the sake of simplicity. In addition, FDA should reject calls to include elements like Vitamin C and fiber in a FOP labeling rules because doing so runs the risk of driving consumers towards comparatively unhealthy packaged goods over unlabeled fruits and vegetables, similar to the effect of “healthy” claims on packaged foods.¹⁸

Just as keeping FOP labeling rules simple is critical to allowing consumers to “quickly and easily identify foods that can help them build a healthy eating pattern,” so too is making those rules mandatory.¹⁹ Without mandatory rules, a FOP label system will lack consistency. Under a voluntary system, food manufacturers have an incentive to forego labeling on unhealthy foods, the very foods for which FOP labels will have the most impact, both in terms of alerting consumers and creating incentives for reformulating. Not surprisingly, voluntary FOP labeling schemes have been comparatively unsuccessful. In Australia, for example, the voluntary Health Star Rating label system has experienced limited uptake, disproportionately applied to products with “healthier” scores.²⁰ Here in the U.S., alcoholic beverage manufacturers have largely ignored voluntary serving facts labeling rules, with calories and other nutrient information disclosed on only a small minority of beer labels, and on not a single one of 67 wine labels

¹⁴ Cotter, T., Kotov, A., Wang, S., et al (2021). ‘Warning: ultra-processed’ — A call for warnings on foods that aren’t really foods. *BMJ Global Health* 6:e007240. <https://gh.bmj.com/content/6/12/e007240>

¹⁵ See “Other-Graphic: FOP schemes to test,” available at: https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202008-0910-021&icID=253321, p.4.

¹⁶ Jones A, Neal B, Reeve B, et al. Front-of-pack nutrition labelling to promote healthier diets: current practice and opportunities to strengthen regulation worldwide. *BMJ Global Health* 2019;4:e001882. doi:10.1136/bmjgh-2019-001882 <https://gh.bmj.com/content/bmjgh/4/6/e001882.full.pdf>

¹⁷ Kelly B, Jewell J. *What is the evidence on the policy specifications, development processes and effectiveness of existing front-of-pack food labelling policies in the WHO European Region?* Copenhagen: WHO Regional Office for Europe; 2018. (Health Evidence Network Synthesis Report, No. 61.) Available from: <https://www.ncbi.nlm.nih.gov/books/NBK534354/>

¹⁸ See, e.g. https://www.foodpolitics.com/wp-content/uploads/JAMA_10.pdf (noting that “health claims confer an aura of healthfulness that might encourage consumption of products of poor nutritional quality.”).

¹⁹ U.S. Food and Drug Administration. (2023, July 23). *FDA Issues Second Procedural Notice on Consumer Research on Front-of-Package Labeling*. <https://www.fda.gov/food/cfsan-constituent-updates/fda-issues-second-procedural-notice-consumer-research-front-package-labeling>

²⁰ Shahid M, Neal B, Jones A. Uptake of Australia’s Health Star Rating System 2014-2019. *Nutrients*. Jun 16 2020;12(6) [doi:10.3390/nu12061791](https://doi.org/10.3390/nu12061791)

analyzed by the Center for Science in the Public Interest (CSPI) as part of a soon to be released report.

Fortunately, FDA has ample authority under the NLEA to promulgate mandatory FOP labeling rules, as the language in 21 U.S.C. § 343(q) cited above makes clear. Once the agency moves forward with requiring a “high in” or other effective FOP labeling scheme, however, it will need to monitor for unintended consequences. One such consequence concerns non-sugar sweeteners.

As several commenters at the public meeting pointed out, FOP labeling schemes, and increased concerns about added sugars in general, have led food manufacturers to reformulate products with non-sugar sweeteners, including many products marketed to children.²¹ As CFA pointed out in previous comments on FDA’s rules regarding “healthy” claims, a growing body of research has raised concerns about the long-term impacts of non-sugar sweetener consumption, and the Dietary Guidelines for Americans specifically advise against young children consuming these products.²² In response to increased industry reliance on non-sugar sweeteners after adoption of FOP labeling rules in Mexico, the government there began requiring the statement “Contains sweeteners. Not recommended for children” on qualifying foods.²³ FDA should consider similar rules.

Conclusion

We commend FDA for pushing forward with this important public policy. With appropriate design, and the broad and consistent implementation made possible by a mandatory rule, FOP labeling rules can play an important role in educating consumers and reducing the toll of diet-related disease in the United States.

Thank you for your consideration.

Sincerely,

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Director of Food Policy
Consumer Federation of America

²¹ Reiley, L. (2023, July 14). Despite warnings, sweeteners are creeping into foods aimed at kids. *Washington Post*. <https://www.washingtonpost.com/business/2023/07/14/artificial-sweeteners-kids-foods/>

²² Letter from Thomas Gremillion to Commissioner Robert Califf regarding the Proposed Rule on Nutrient Content Claims and Definition of Term “Healthy,” February 15, 2023. Accessed at: <https://consumerfed.org/testimonial/cfa-commends-fda-for-revisions-to-healthy-claims-definition-but-urges-agency-to-go-further/>

²³ Arellano-Gómez, L.P., Jáuregui, A., Nieto, C., Contreras-Manzano, A., Quevedo, K.L., White, C.M., Thrasher, J.F., Davis, R.E., Hammond, D., Barquera, S. (2023). Effects of front-of-package caffeine and sweetener disclaimers in Mexico: cross-sectional results from the 2020 International Food Policy Study. *Public Health Nutr.* 2:1-13. [doi: 10.1017/S1368980023002100](https://doi.org/10.1017/S1368980023002100)