July 14, 2025

Martin A Makary M.D., M.P.H.
Commissioner, U.S. Food and Drug Administration
5630 Fishers Lane, Rm. 1061
Rockville, MD 20852

Re: Food Labeling: Front-of-Package Nutrition Information, A Proposed Rule by the Food and Drug Administration (Docket No. FDA-2024-N-2910)

VIA ONLINE SUBMISSION

Dear Commissioner Makary:

Consumer Federation of America appreciates the opportunity to comment on this important rulemaking. As stated in our joint comments with members of the National Alliance for Nutrition and Activity (NANA), we strongly support FDA's proposal to implement a mandatory, interpretive front-of-package nutrition labeling (FOPNL) system that highlights only nutrients to limit—saturated fat, sodium, and added sugars, and we urge FDA to strengthen the rule by adopting a more effective "High In" label design that includes disclosures for low and no-calorie sweeteners. CFA writes separately here to underscore the important role that FOPNL should play in complementing the Administration's efforts to reduce ultra-processed foods (UPFs) in American diets.

As the recent MAHA report pointed out "[m]ost American children's diets are dominated by ultra-processed foods (UPFs) high in added sugars, chemical additives, and saturated fats," while "a growing body of research associates UPFs with negative health outcomes, including in children."[1] Researchers have documented significant overlap between UPFs and foods high in saturated fat, sodium, and added sugars ("high in" foods).[2] As noted in our joint comments, the experience of FOPNL in other countries suggest that the FDA's proposed rule could lead many consumers to choose healthier alternatives, including whole foods that are not ultra-processed.

FDA's proposal would also likely lead many food manufacturers to reduce sugar, saturated fat and sodium in certain foods by reformulating them. However, a FOPNL system that only includes sugar, saturated fat, and sodium will give little incentive for food manufacturers to rely on fewer additives in UPFs. In fact, some manufacturers, seeking to avoid a "high in" warning label, may reformulate products to replace excessive salt, sugar and fat with chemical additives that raise their own concerns, such as monosodium glutamate, non-nutritive sweeteners, and emulsifiers. Such

[1] https://www.whitehouse.gov/wp-content/uploads/2025/05/MAHA-Report-The-White-House.pdf
[2] Popkin, Barry M et al. "A policy approach to identifying food and beverage products that are ultra-processed and high in added salt, sugar and saturated fat in the United States: a cross-sectional analysis of packaged foods." *Lancet regional health. Americas* vol. 32 100713. 8 Mar. 2024, doi:10.1016/j.lana.2024.100713

"regrettable substitutions" have affected school children, for example, as meal providers increasingly rely on artificial sweeteners to meet new USDA added sugar limits.[3]

The risk of regrettable substitutions is one of the reasons our joint comments recommend that FDA's final rule include requirements for front-of-pack disclosure of non-nutritive sweeteners. The risk also supports FDA taking other complementary steps to this rulemaking to help consumers avoid UPFs, such as developing a certification standard for manufacturers to use in indicating on a label that a product is "not ultra-processed," "less processed," etc. FDA could even go so far as to require a disclosure or warning label on certain foods that identifies them as UPFs. However, such a rule would face significant obstacles. In particular, the list of additives that trigger UPF status for the purposes of a disclosure or warning label would invite challenges under the First Amendment claiming that the underlying disclosure or warning is not "purely factual and uncontroversial."[4]

By contrast, FOPNL schemes do not raise serious constitutional objections. Moreover, many "high in" foods that do not fall into the category of "ultra-processed" based on their ingredients are nevertheless unhealthy and should be avoided. For example, employing the definition of "ultraprocessed foods" set out in California draft legislation, foods like Lay's plain potato chips (ingredients: potatoes, vegetable oil (canola, corn, soybean, and/or sunflower oil), and salt) are excluded from the UPF category.[5] Even these relatively "natural" potato chips, however, tend to crowd out more nutritious foods and lead to overeating, harming health in much the same way as many UPFs.

Again, UPFs tend to have high levels of sugar, salt, and fat, and this macronutrient content is perhaps the most straightforward mechanism by which diets high in calories from UPFs lead drive weight gain and diet-related disease. These macronutrients are the hallmarks of energy-dense foods, which lend themselves to overeating because they can be eaten faster. Indeed, some researchers claim that combinations of salt, fat, sugar, and other simple carbohydrates result in so-called "hyperpalatable foods."[6] Many "hyperpalatable foods" are not UPFs, but UPFs present unique concerns with respect to macronutrients insofar as ultra-processing enables the delivery of particularly high levels of salt, sugar, and fat. Sodas like Coca-Cola, for example, would taste "sickly sweet" if their high loads of sugar were not coupled with the sourness of phosphoric acid, a chemical extracted from rocks that causes tooth decay and osteoporosis.[7] By drawing on these sorts of industrial processes, soda companies and other UPF manufacturers are able to pack astronomical levels of sugar into their products which in turn jack up blood glucose levels and stimulates neurons in the gut and brain that create deep-seated cravings and positive associations with their brands.[8]

The proposed FOPNL scheme will help consumers to develop positive associations with healthier foods, and represents an important component in a comprehensive strategy to improve the

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[3] 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/

[4] *See* Zauderer v. Office of Disc. Counsel | 471 U.S. 626 (1985).

[5] https://a46.asmdc.org/press-releases/20250603-california-advances-first-nation-legislation-phase-out-harmful-ultra

[6] Fazzino, T. L., Rohde, K., & Sullivan, D. K. (2019). Hyper-Palatable Foods: Development of a Quantitative Definition and Application to the US Food System Database. *Obesity*, *27*(11), 1761–1768. https://doi.org/10.1002/oby.22639

[7] Chris Van Tulleken. *Ultra-Processed People*. Norton (2023).

[8] Veldhuizen, M. G., et al (2017). Integration of Sweet Taste and Metabolism Determines Carbohydrate Reward. *Current Biology*, *27*(16), 2476-2485.e6. https://doi.org/10.1016/j.cub.2017.07.018

American diet. While FOPNL will not directly address concerns about additives in UPFs that may degrade the gut microbiome, disrupt the endocrine system, stymie healthy brain development, or harm health in other ways, the labeling will help consumers to more accurately evaluate the nutritional profile of many UPFs, and in doing so, lead many consumers to make healthier choices. FDA should follow through on these important labeling requirements, consistent with its position as a world leader among food regulators.

Thank you for your consideration of these comments.

Sincerely,

Thomas Gremillion
Director of Food Policy
Consumer Federation of America