



1101 30th Street NW, Suite 200
Washington, DC 20007
(202) 534-1440 | www.CandyUSA.com

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Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Rm. 1061
Rockville, MD 20852

Re: Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Quantitative Research on Front of Package Labeling on Packaged Foods (Docket No. FDA-2023-N-0155)

The National Confectioners Association (“NCA”) appreciates the opportunity to provide input on FDA’s second procedural notice on consumer research on front of package labeling. NCA is the leading trade organization for the U.S. confectionery industry, which generates \$37.5 billion in retail sales each year. NCA advocates for an environment that enables candy makers to thrive and works to ensure that chocolate, candy, gum, and mints are celebrated for their contributions to culture, society, the economy, and everyday moments of joy. The industry employs nearly 58,000 workers in more than 1,600 manufacturing facilities across all 50 states and supports an additional 635,000 jobs in related fields. The U.S. confectionery industry has delivered on its [commitment](#) to increase transparency, provide more portion guidance options, and educate consumers about the role of confectionery in a happy, balanced lifestyle.

NCA provides these comments as a follow up to comments submitted on FDA’s first procedural notice in March 2023. As noted in previous comments, through NCA’s long standing commitment to its Always A Treat initiative, the confectionery industry has utilized front of pack (“FOP”) labeling to provide consumers with calorie information. NCA fully supports efforts to provide consumers with information about the nutritional content of foods to help them make informed choices. NCA urges the FDA to consider the following suggestions and revise the proposed quantitative research design on FOP labeling.

NCA respectfully requests that the following comments are shared with the Office of Nutrition and Food Labeling within the Center for Food Safety and Applied Nutrition as the agency proceeds with this initiative.

Study design considerations and transparency

NCA appreciates that FDA has increased the size of the study from 3,000 to 9,000 participants. We believe that the increased participation and representation of a wide, diverse group of consumers will be crucial in fully understanding consumer perceptions/understanding of these FOP labeling schemes.

NCA once again requests FDA to increase the number and variety of food products evaluated to capture a wider range of food products available to the consumers. In comments submitted to FDA in March 2023, the International Food Information Council (“IFIC”), a research firm with a focus on food safety and nutrition, noted that consumer reaction to FOP labeling greatly varies according to product type and other factors, such as if a product carries a claim or familiarity with the product.¹ In addition, IFIC’s 2021 research found that consumers’ attention to FOP labeling greatly differs based on the food category accessed.² As noted by IFIC, it is “essential that FDA compare consumer reactions to FOP schemes across multiple foods categories.”³ Therefore, to truly assess consumer understanding of FOP labeling schemes, FDA should consider testing various food categories, including confectionery.

Finally, NCA appreciates the efforts FDA has made in publishing information about the quantitative study, including the study design and potential FOP labeling schemes. However, we ask FDA to publish the findings of its previous focus groups on the topic for public review before conducting the quantitative research. NCA believes developing and implementing an FOP labeling system should be an iterative and transparent process with significant stakeholder involvement.

FDA should continue to include calorie labeling within proposed FOP labeling schemes

NCA strongly believes that FDA should continue to assess FOP labeling schemes that include information on calories. Overconsumption of energy (calories) plays a critical role in the development of nutrition-related chronic diseases, such as obesity. To assist consumers with managing caloric intake and energy balance, in 2016, FDA updated the Nutrition Facts Panel (“NFP”) to make information on calories more visible and prominent by increasing the size and in bold font within the NFP.⁴

With the rates of diet-related, non-communicable diseases continuing to increase in the U.S., in 2022, the White House charged FDA to develop, a FOP labeling scheme to “quickly and easily communicate nutrition information” on pre-packed food products. Providing consumers, particularly those with lower nutrition literacy, with the information they need to make informed food decisions, and encouraging shifts in dietary patterns to improve health and

¹ [IFIC-Comments-On-Proposed-FDA-Information-Collection-Activities-On-FOPL.pdf](#). March 2023.

² International Food Information Council. [Knowledge, Understanding and Use of Front-of-Pack Labeling in Food and Beverage Decisions: Insights from U.S. Shoppers](#). November 2021.

³ [IFIC-Comments-On-Proposed-FDA-Information-Collection-Activities-On-FOPL.pdf](#). March 2023.

⁴ FDA adopted recommendations of its Obesity Working Group to bring attention to calories on the nutrition facts panel as “maintain health body weight and caloric balance is the key factor in managing body weight.”

reduce the burden of chronic disease are key areas of the White House National Strategy on Hunger, Nutrition, and Health.⁵

Just as it was when FDA updated requirements for nutrition labeling in 2016, calorie information continues to be a key component for consumers when assessing the nutrition contribution of the food and therefore should be maintained within proposed FOP labeling schemes for consumer research. Consumers are looking for easily accessible calorie information on products. A 2019 survey by FDA and the 2022 IFIC survey showed that consumers commonly seek out calorie information on the NFP.^{6,7} Given this, it is reasonable to expect that consumers would desire having this information available at-a-glance with other front of package nutrition information.

In its response to stakeholder comments related to calorie labeling, FDA does not provide adequate justification as to why the proposed FOP labeling schemes do not include calories. FDA only notes that calories are not part of schemes they are testing as, at this point, they believe that “consumers have adequate access to calorie information.” But Americans continue to overconsume calories every day despite this information being available on the back of the package.⁸ Including calorie information to the front of the package may help consumers who overconsume calories and those who do not utilize the back of package nutrition information frequently. According to a 2018 study on consumer use of nutrition facts labeling, only 1/3 of participants utilized the NFP “frequently.”⁹ This is supported by recent IFIC consumer survey that shows that the NFP is not frequently or consistently utilized.¹⁰

Consumers are also already familiar with calories on the front of package. Consumer research conducted by NCA in 2023 shows that 59% believe it would be beneficial to have calorie information on the front of product packages.¹¹ Popular schemes like Facts Up Front (includes calorie information) on pre-packaged food products and calorie only labeling on confectionery products, are widely available in the market, have consumer familiarity, and have been helpful in ensuring consumers have the information to make informed food choices.¹² As FDA has stated in several public meetings on the topic, research shows that consumers prefer simple, clear, and consistent messages to help make food choices. It is crucial that the FDA consider elements of these schemes that are commonly recognized and easily understood by consumers in their quantitative research. Given that calories are an important component both from a nutritional standpoint and for consumer understanding, FDA should continue to include this information and provide sound rationale if they elect not to include this information.

⁵ [Biden-Harris Administration National Strategy on Hunger, Nutrition, and Health](#). September 2022.

⁶ U.S. Food and Drug Administration Center for Food Safety and Applied Nutrition. [2019 Food Safety and Nutrition Survey](#). 2021.

⁷ [IFIC Food and Health Survey Report](#). May 2022.

⁸ U.S. Department of Agriculture and U.S. Department of Health and Human Services. [Dietary Guidelines for Americans, 2020-2025](#). 9th Edition. December 2020.

⁹ Christoph MJ, Larson N, Laska MN, Neumark-Sztainer D. Nutrition Facts Panels: Who Uses Them, What Do They Use, and How Does Use Relate to Dietary Intake? *J Acad Nutr Diet*. 2018 Feb;118(2):217-228. doi: 10.1016/j.jand.2017.10.014. PMID: 29389508; PMCID: PMC5797995.

¹⁰ International Food Information Council. [Knowledge, Understanding and Use of Front-of-Pack Labeling in Food and Beverage Decisions: Insights from U.S. Shoppers](#). November 2021.

¹¹ National Confectioners Association. *Sweet Insights: State of Treating Report*. 2023.

¹² [Partnership for Healthier America Progress Report](#). 2021.

FDA should maintain calories as part of their FOP labeling schemes within consumer testing to account not only for package-size, specific considerations but also to account for how existing FDA FOP labeling fulfills compliance with other regulations for pre-packaged products. For example, FDA should assess consumer understanding when FOP labeling systems are utilized with other regulations, such as calorie disclosure requirements for products sold in vending machines. Under FDA's labeling requirements, pre-packaged food products sold through vending machines ([21 CFR 101.8](#)) must have visible calorie information available at the point of purchase. Confectionery manufacturers have implemented these requirements by providing calorie information on the front of packages of confectionery sold through these channels. As recently as 2021, the industry worked to meet the compliance date for updated type size requirements for vending machine calorie labeling. Consumers are, therefore, familiar with FOP calorie labeling in this setting. If FDA does not revisit plans to incorporate calories into FOP icons being tested, then at a minimum, FDA should consider the interplay between their proposed FOP labeling schemes and vending calorie labeling requirements within its quantitative study to evaluate consumer understanding if FOP labeling schemes were implemented in such situations.

In FDA's response to the comments on the first procedural notice, FDA declined to test calorie-only schemes or options for products in small package size. NCA believes that testing schemes that would work for small package size at this point would help to ascertain consumers' understanding of these options for small packages. We, therefore, ask FDA to consider alternate FOP labeling schemes for small packages and are happy to work with FDA in this space.

Focus on monochrome FOP labeling schemes to provide consumers additional information

NCA believes that providing factual, objective, and non-discriminatory information on the front of the package about relevant aspects of a food product could assist consumers in making informed decisions about a food in context of their entire diet. NCA supports labeling consistent with the holistic diet approach, emphasizing a comprehensive diet on the whole rather than food labeled as "good" or "bad." Within the study design, it appears that FDA is asking consumers to rank the healthfulness of food (most healthful, middle, and least) based on the proposed FOP labeling schemes. The healthfulness of a food is dictated by more than just if it is "high" or "low" in sugars, sodium, or saturated fat. While NCA understands that FDA is planning to test traffic light schemes (green, yellow, and red) based on the FDA's literature review, we are concerned that such schemes may not help consumers truly understand how these foods or beverages can fit within the context of their diet over the course of the day and may discourage consumption of nutrient dense foods overall. For example, a product may be high in sodium but also contains other important nutrient(s) such as dietary fiber.

As noted by Health Canada in their consultation process on FOP labeling, research shows that consumers may find it difficult to understand traffic light labeling when a combination of colors is used on the same package, causing consumers to focus too much on avoiding those with

“red” and a potential “health halo” effect for foods with “green.”¹³ Monochromatic schemes, have been shown to be just as helpful to foster consumers understanding without these potential concerns. A consumer study commissioned by Healthy Canada in 2020 utilizing eye-tracking technology showed that monochromatic schemes (black and white schemes) when compared to those utilizing red color were equally effective in capturing consumer attention and helping them understand the nutritional content of a food product under retail conditions.¹⁴

Based on the concerns above, we urge the FDA to focus on monochrome schemes and avoid dissuasive labels utilizing traffic lights.

Conclusion

NCA believes that providing factual, objective, and non-discriminatory information on the front of the package about relevant aspects of a food product could assist consumers in making informed decisions about a food in context of their entire diet. Given the potential impact of the FOP labeling work on the industry and consumers, NCA urges FDA to consider and incorporate these suggestions as it moves forward with quantitative research.

Thank you for the opportunity to participate in this important process. We welcome the chance to further discuss our views with the agency. Please contact me at farida.mohamedshah@candyusa.com or 202-534-1492 if you have any questions.

Sincerely,



Farida Mohamedshah, MS, CNS
Senior Vice President, Scientific & Regulatory Affairs
National Confectioners Association

¹³ Health Canada. [Front-of-Package Nutrition Labelling: Stakeholder Engagement Meeting](#). September 2017.

¹⁴ Mansfield ED, Ibanez D, Chen F, Chen E, de Grandpré E. Efficacy of "High in" Nutrient Specific Front of Package Labels-A Retail Experiment with Canadians of Varying Health Literacy Levels. *Nutrients*. 2020 Oct 20;12(10):3199. doi: 10.3390/nu12103199. PMID: 33092033; PMCID: PMC7590840.