March 28, 2023

Division of Dockets Management U.S.
Food and Drug Administration
5630 Fishers Lane
Room 1061, HFA-305
Rockville, MD 20852

Re: Public comment on the citizen petition submitted to the United States Food and Drug Administration (FDA) to adopt a mandatory, nutrient-specific, and interpretative front-of-package nutrition labeling system for all packaged foods sold in the United States

Corporate Accountability submits this comment according to 5 U.S.C. § 553(e), 21 U.S.C. § 343, and 10 C.F.R. § 10.30 requesting that the Commission of Food and Drugs amend its regulations, specifically 21 C.F.R. § 101, to require on the principal display panel of a food an easy-to-understand, standardized system that is 1) mandatory, 2) nutrient-specific, 3) includes calories, and is 4) interpretative for the levels of added sugars, sodium, and saturated fat per serving and per 100g.[1]

Evidence to Support FONPL System:

Following the commitment of the White House's National Strategy on Hunger and Heath, pillar 3, aiming to empower consumers to make and have access to healthy choices by updating to a more accessible food labeling, we share our public comment to support the petition submitted by the Center for Science in Public Interest (CSPI).[2] Corporate Accountability supports this petition for **mandatory, nutrient-specific, and interpretative front-of-pack nutrition labelling** (FOPNL) that could easily be communicated and interpreted by consumers. FOPNL systems with these characteristics have proven to be effective in communicating nutrient profile to consumers[3] and have been successfully implemented as a policy in countries like Chile, Perú, Argentina, Uruguay, Brazil, Venezuela, Israel, Colombia, Canada, and Israel.[4] This type of FOPNL has also been supported by the World Cancer Research Fund International[5], UNICEF[6], and the World Health Organization[7], among others, and was recommended 20 years ago by the Institute of Medicine (I.O.M.), now the National Academy of Medicine (N.A.M.), after a thorough review of FOPNL schemes.[8] The experts of the N.A.M. recommended the U.S.D.A. "to develop, test, and implement a standardized FOPNL system to appear on all food and beverage products."[9] Experts around the globe continue to recommend that other countries also adopt interpretative systems for warning labels,[10,11,12,13,14] as those implemented largely in the America's region.[15]

We encourage the U.S. to learn from experiences abroad and follow the science to select a system with the most significant potential to promote equitable access to information, reduce consumption of ultraprocessed foods, and advance public health through unbiased and objective policy guidance. Evidence and experience from implementing FOPNL continues to evolve, and thus the improvements to the current FOPNL systems in the Americas. The evolution includes new or amended provisions that require larger sizes for warning labels, contrasting background devices for the design and application of warning labels to provide better salience for warnings, using the word

"excess" instead of "high in" for the warnings to improve efficacy, and using Pan American Health Organization's (PAHO) Nutrient Profile Model to define the products that should feature warning labels.[16,17] Additionally, research on the impact of ultraprocessed foods consumption on health compels to explore a system of labeling products that is responsive to their level of processing.[18,19]

Considering the analysis shared above and the lessons learnt by experts, we request that the FDA agrees to:

a) Implement a standardized system that is 1**) mandatory, 2) nutrient-specific, 3) includes calories, and is 4) interpretative** with respect to the levels of **added sugars, sodium, and saturated fat per serving.**
b) Pilot and test the alternative interpretative warning FOPNL used largely in the Americas region.
c) Explore adequate nutrient profile models that not only categorize foods depending on the level of nutrients of concern, such as sugar, added sugars, non-caloric sweeteners, saturated fat, and salt, but also address the processing levels of food.[20]

Industry's tactic and response:

Food industry's voluntary initiative "Facts Up Front" largely available in packaged products in the U.S. is insufficient to support consumers in selecting holistically healthier options.[21] On the other hand, evidence from countries that have implemented mandatory FOPNL has shown to improve consumers understanding and encourage healthier diets.[22]

In countries where FOPNL has been discussed as a mandatory policy or has been approved as such, it has been highly contested by the food industry. These can be legal challenges or non-legal challenges related to the design, criteria, or type of label. Legal challenges have encompassed domestic, international trade, and investment laws. [23] For instance, in Mexico the current mandatory FOPNL had three primary threats of legal challenges by the food and beverage industry citing international laws and guidelines, including the World Trade Organization (WTO), Codex Alimentarius, and the North American Free Trade Agreement (NAFTA)/US-Mexico-Canada Agreement (USMCA).[24] The funding of science challenging the value of labeling systems, as well as industry-backed media campaigns sowing doubt in such policy efforts are a few other ways by which the industry attempts to challenges such regulatory discourse.

Thus, it is vital to follow through on what public interest organizations, such as CSPI, is requesting via their petition. The guidance in the petition aligns with experts, scientists, and legislators who are worried the corporate and ineffective voluntary actions on FOPNL will be pushed forward by the food and beverage industry to delay any mandatory action that the country aims to advance. For instance, the joint comment submitted by the Consumer Brands Association (C.B.A) and the Food Industry Association (F.M.I.) dated October 25, 2022, in response to the citizen petition asks to amend part 101 of title 21 of the Code of Federal Regulations.[25] This seems like an attempt to challenge the mandatory nature of the FONPL outlined in the petition by questioning the evidence, suggesting that such schemes may confuse the consumers, and by promoting a voluntary approach instead.

Contrary to the C.B.A. and F.M.I. comment, there is a vast amount of evidence on the fact that using both positive attributes and negative attributes of packaged foods simultaneously can be confusing for consumers, while it does not change behaviors towards reducing the consumption of packaged and processed foods. On the contrary, it is by stressing the "nutrients to limit" that can enable change towards purchase of healthier foods. Positive claims, instead, are a means for corporations to reformulate, or just add "special ingredients" that make the product seem healthier, despite being highly processed and overall unhealthy. For example, in 2019, the Robert Wood Johnson Foundation Healthy Eating Research program convened an experts panel to create a set of evidence-based nutrition standards for food banks.[26] The panel recommended using light traffic colors (green, yellow, or red) and text labels (i.e. choose often, choose sometimes, or choose rarely) to communicate the three tiers of nutrition rankings. The panel noted empirical evidence that traffic light nutrition rating systems could increase the selection of green foods selection, but also of red foods in a range of settings.[27][28][29][30] But, in other countries, warning labels have been more effective in changing attitudes toward specific foods than the traffic lights system.[31] A study of the impact of FOPNL on perceived healthfulness of sugar-sweetened beverages (SSBs) among youth in six countries (Australia, Canada, Chile, Mexico, United Kingdom, and United States) found that warning labels were most effective in helping youth identify SSBs as unhealthy, compared to all other labels tested (Health Star Rating, octagonal warning, traffic light, Nutri-Score, Guideline Daily Amounts, and a control).[32] In the U.S. sample of youth who were randomly assigned to view the warning label, 42% perceived SSBs to be unhealthy, while among those who were randomly assigned to view the traffic light label, only 19% perceived SSBs to be unhealthy, confirming that warnings were more effective than light traffic labels.[33] A 2020 meta-analysis of 14 experimental studies examining the FOPNL found that only "high in" warning labels significantly reduced the calorie and sugar content of purchased products compared to those not labeled.[34]

The evidence on the effectiveness of the FOPNL interpretative systems cited in the C.B.A. and F.M.I letter is mainly referring to Ecuador, Australia, and U.K.'s traffic light labelling, systems which are not the latest systems implemented, nor refer to the most recent available evidence. In the past 10 years new interpretative systems have been proposed and implemented in many countries that have shown improvements in consumer behavior. The mandatory interpretative systems have been regulated only recently in most countries. Therefore, the long-term effects of such policies are yet to be comprehensively evaluated. This limited evidence due to the nascent nature of these policies seem to be misinterpreted by the industry as mandatory FONPL having little or no effectiveness. This is a misrepresentation, as enforced measures have already shown positive outcomes in their short-term existence, with the potential to produce larger positive impact in the longer term.

All in all, evidence that does not have industry conflict supports the adoption of a FOPNL system. Mandatory nutrient warnings clearly illustrate to consumers that a product has a high or excessive level of sodium, sugars, or saturated fat.

Need for Mandatory System:

Voluntary FOPNL leaves the criteria used for the system, the compliance of its implementation, and the impact evaluation in the hands of the food and beverage industry, reducing accountability and transparency of its impact and design. Therefore, as the industry continues to argue for voluntary actions to ensure its business is not impacted by greater consumer awareness around unhealthy products, it is imperative we do not let such industry narratives delay the implementation of

mandatory measures. On the contrary, statutory policies related to FOPNL are helping to achieve other related policies to be implemented, such as restrictions on marketing of ultraprocessed foods to children.[35] For example, in Chile, in 2016, products with warning labels were no longer allowed to depict cartoon characters or other devices targeted at children on product labels.[36] In 2020 and 2021, Mexico and Argentina adopted additional restrictions for health or nutrition claims, endorsements, and other persuasive elements in products with warning labels.[37, 38]

It is about time that the U.S. follows the steps of countries in the region that have implemented robust FOPNL policies. Also, for a country that is confronting a massive public health challenge of diet-related diseases, with soaring obesity crisis in adults and children, it is vital for its government not to let the industry dictate, distract, delay, or dilute public policy measures that have the potential to safeguard the health and wellbeing of the American people.

Sincerely,
Corporate Accountability

Corporate Accountability is a global campaign organization. For more than 40 years, it has been challenging transnational corporations for devastating democracy, trampling human rights, deepening racist systems, and destroying the planet. Corporate Accountability's public health work focuses on holding food, beverage, and tobacco corporations accountable for their harmful products, predatory marketing, and interference in the politics and policies focused on food, nutrition, and public health.

Endnotes

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