July 15, 2025

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

Re: Food Labeling: Front-of-Package Nutrition Information; Docket No. FDA-2024-N-2910 (January 16, 2025)

To Whom It May Concern:

SNAC International greatly appreciates the opportunity to provide comments on the United States Food and Drug Administration's (FDA) Proposed Rule on Food Labeling: Front-of-Package (FOP) Nutrition Information (Docket No. FDA-2024-N-2910), which was published in the Federal Register on January 16, 2025.

SNAC International (SNAC) is the international trade association for the snack food industry representing snack manufacturers and suppliers. SNAC International represents over 400 companies worldwide including manufacturers of potato and vegetable chips, tortilla chips, pretzels, popcorn, kettle corn, cheese snacks, crackers, meat snacks, pork rinds, nuts, snack mixes, corn snacks, fruit snacks, snack bars, granola, rice and other grain-based snack cakes, cookies, and various other snacks. SNAC appreciates the opportunity to comment on this important initiative. We support FDA's goals to help consumers make informed dietary choices and we share the same commitment for transparency and clear labeling snack products.

We appreciate that FDA has begun its work on front-of-package nutrition labeling (FOPNL) by conducting consumer research and a review of scientific literature, as any FOPNL labeling framework should be science-based. Ultimately, the literature identifies important limitations in mandatory, interpretive FOP labeling programs; namely, that they do not produce sustained changes in consumer behavior nor do they lead to reductions in chronic disease rates[1]. SNAC understands that FDA has reached the same conclusion, as the proposed rule does not cite either of these as potential benefits but instead focuses on the benefit of helping consumers to quickly and easily identify healthier foods. Moreover, FDA's consumer research did not fully evaluate a scheme resembling the existing voluntary industry FOP labeling program, Facts Up Front, and therefore the utility of the research is also limited.

In light of these and the legal considerations we discuss below, as well as the practical inconsistencies and potential confusion the proposed scheme could create, SNAC asks FDA to consider a collaborative approach together with industry to fully explore the potential to leverage existing voluntary programs to

[1] von Hippel PT, Bogolasky Fliman F. Did child obesity decline after 2016 food regulations in Chile? Rev Panam Salud Publica. 2024;48:e16. https://doi.org/10.26633/RPSP.2024.16

accomplish our shared goal of providing readily-accessible nutrition information to consumers in a format that allows them to identify healthier foods.

1. Legal Considerations

SNAC acknowledges FDA's broad legal authority in regulating food and nutrition labeling, which the agency has implemented through detailed regulations designed to ensure that foods are labeled in a truthful and non-misleading manner. At the same time, SNAC and its members share a concern about the legal foundation for mandating interpretive FOP nutrition labeling.

Under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Nutrition Labeling and Education Act of 1990 (NLEA), Congress gave FDA highly specific direction to implement mandatory nutrition labeling that includes a comprehensive set of information.[2] That nutrition information must, by statute, include a detailed list of specified nutrients (calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, total protein, and certain other vitamins, mineral, or nutrients – though FDA can also take steps to add or remove nutrients from this list following a process outlined in the law), as well as information on the serving size and the number of servings per container.[3] Congress also provided specific direction on how FDA could highlight certain information within the nutrition information if the agency determines that such information will assist consumers in maintaining healthy dietary practices: specifically, this can be done through the use of larger type, bold type, or contrasting color.[4] Nowhere does the FFDCA provide authority for FDA to take other steps to highlight nutrition information on a mandatory basis. There is no authority that would allow FDA to mandate the display of an incomplete set of nutrition information that does not include each of the elements Congress directed, nor is there authority for the agency to take other steps to highlight information on the label, such as by pulling out certain information from the required comprehensive set of disclosures.

Additionally, the NLEA deems nutrient content claims voluntary, rather than mandatory[5], and FDA has historically taken the position that FOP nutrition labeling schemes constitute nutrient content claims.[6] And yet, with the proposed rule, FDA would seemingly be mandating a set of nutrient content claims. This runs counter to the statute, which provides that when nutrient information is highlighted outside of the mandatory nutrition information, it is only in the form of voluntary nutrient content claims.

The proposed rule also presents potential First Amendment concerns. Like other forms of speech, commercial speech is afforded protections under the First Amendment, which limits FDA's ability to

[2] 21 U.S.C. 343(q)(1).
[3] *Ibid*.
[4] *Ibid*.
[5] 21 U.S.C. 343(r)(1).
[6] FDA Letter of Enforcement Discretion to GMA/FMI re "Facts Up Front", Dec. 13, 2011, https://www.fda.gov/food/nutrition-food-labeling-and-critical-foods/letter-enforcement-discretion-gmafmi-re-facts-front; FDA Guidance on Front of Package Labeling (2009).

compel and censor speech alike.[7] By mandating businesses to carry specific nutritional claims on their products, FDA's proposal would ordinarily be subject to strict scrutiny—a very high bar—unless it can satisfy one of two standards that the U.S. Supreme Court has articulated when determining the constitutionality of government-compelled commercial speech.[8] There are reasons to think the FOP labeling scheme may not satisfy either standard.

Under the first, FDA would need to establish that the compelled disclosure here conveys "purely factual and uncontroversial information."[9] This requires, among other things, that the information is not "misleading to an ordinary consumer," and supported by a "strong scientific consensus."[10] FDA's proposal is vulnerable to failing both criteria. For example, under this proposal, foods that are vitamin-, mineral-, and protein-deficient—but nevertheless earn "low" marks for saturated fat, added sugars, and sodium—would be viewed by average consumers as healthier options when compared with most trail mix or protein bars (which contribute protein, minerals, and healthy fats) that may rank "medium" or "high" in nutrients that the proposed rule would single out. In this way, FDA's narrow focus on just three nutrients risks misleading consumers about a healthy and balanced diet. And considering the decade's worth of guidance—from FDA and other authorities in nutritional sciences—stressing the important role of caloric intake in the obesity rates, that myopic framing of nutritional information is also controversial.[11]

As unlikely it is that FDA's proposal could satisfy the *Zauderer* standard, it is even unlikelier that this scheme could satisfy the "more demanding standard of *Central Hudson*."[12] Under that standard, regulations of speech must directly advance a substantial governmental interest and be no more extensive than necessary.[13] That can hardly be shown here, where FDA "could reasonably post information about [saturated fat, added sugars, and sodium] on its own website or conduct an advertising campaign," neither of which burdens the First Amendment rights of SNAC members.[14] The proposed placement requirement on the top third of the label could likewise be challenged as more extensive than necessary. Meanwhile, considering the potential consumer confusion over what foods are or are not healthy, the FOP labeling proposal arguably hinders FDA's advancement of public health.

With these concerns in mind, the proposed rule would raise significant First Amendment considerations.

2. SNAC Supports Existing Voluntary Programs Such as Facts-Up-Front (FUF)

SNAC strongly supports existing voluntary programs such as Facts-Up-Front (FUF) as an effective, consumer-friendly alternative to mandatory interpretive schemes. Specifically, in light of the statutory

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[7] *See Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1275 (9th Cir. 2023) ("*NAWG*") ("The First Amendment's guarantee of freedom of speech makes no distinction of constitutional significance between compelled speech and compelled silence.") (cleaned up) (citing *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 796-97 (1988).
[8] *RJ Reynolds v. FDA*, 96 F.4th 863, 875 (5th Cir. 2024).
[9] *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985).
[10] *NAWG*, 85 F.4th at 1276-78.
[11] *NAWG*, 85 F.4th at 1279 (finding a "compelled statement of a hotly disputed scientific finding" controversial).
[12] *Nat'l Ass'n of Mfrs. v. SEC*, 800 F.3d 518, 522 (D.C. Cir. 2015).
[13] *Central Hudson Gas & Elec. Corp. v. Public Service Comm'n of N.Y.*, 447 U.S. 557, 572 (1980).
[14] *NAWG*, 85 F.4th at 1283.

and constitutional constraints that would apply to the proposed rule, SNAC recommends that FDA ensure that it has adequately considered the alternative of a voluntary, industry-led approach to FOP through existing programs such as FUF. We believe such an approach is well positioned to achieve the goal of helping consumers to quickly and easily identify healthy foods.

FUF is a voluntary, industry-led program that was developed in consultation with FDA and that has provided at-a-glance nutrition information to consumers on the front of food packages for nearly 15 years. FUF pulls factual information directly from the Nutrition Facts panel (NFP) and includes much of the same information that would be included in FDA's proposed scheme: information on saturated fat, sodium, and added sugars, the serving size, and the percent daily values for each of these nutrients. Additionally, and importantly, FUF includes calories, which is arguably the most important component to consider when putting a food's nutritional contribution into context. It also permits the voluntary inclusion of up to two "nutrients to encourage" such as dietary fiber or calcium. In that way, it allows for a broader picture of a food's nutritional content than a scheme focused only on nutrients to limit. The FUF program has and will continue to evolve to follow science, adhere to FDA regulations guidance, and provide the consumer with the information they most want to meet their dietary needs and goals. For example, FUF was recently updated to include added sugars rather than total sugars.

As reflected in the comments submitted on FOP labeling to the Reagan-Udall Foundation, all stakeholders, including the public health community, consumers, and industry alike, agreed that calories should be part of any FOP approach. Indeed, arguably calories are the most important piece of nutrition information on the label. (This is consistent with Congress's view in enacting mandatory calorie labeling, to the exclusion of all other nutrients, on menus for restaurant foods and on vending machines for packaged foods.) If FDA nevertheless maintains calories as voluntary, the agency should allow manufacturers to voluntarily incorporate calories within the Nutrition Info box, especially in cases when this is mandatory (i.e., to establish compliance with the vending machine labeling calorie rule, 21 CFR 101.9), as this will allow for a more seamless experience for consumers, and would require less space than a separate icon.

We also note from FDA's consumer research that consumers most often look for calories, total sugar, sodium, and serving size. Only one of these nutrients (sodium) was included in FDA's Proposed Rule for FOP, with calories as an optional component.

FDA explains that the proposed labeling scheme, if finalized, would help consumers "quickly and easily identify" how foods can be part of a healthy diet, including by allowing them to compare nutrition information across foods.[15] The agency also asserts that the proposed rule's benefits "would come from the value consumers receive from the information provided by the interpretive FOP label on food packages." [16] But it is unclear that even the benefit related to identifying healthier foods would be realized by a scheme that focuses only on the three proposed nutrients to limit. Research from the International Food Information Council (IFIC) shows that FOP schemes that include calories and dietary

15 90 Fed. Reg. 5426, 5434 (Jan. 16, 2025).

16 *Id.* at 5455.

fiber improve consumers' ability to choose healthier foods.[17] In its consumer study on *Front-Of-Package Nutrition Labeling: Front & Center Food Information To Encourage Healthy Choices*, IFIC examined consumer reactions to several types of existing and potential FOP schemes. The study found that when FOP schemes include calories and dietary fiber along with added sugars, saturated fat, and sodium, consumers are better able to select the "healthiest" FOP label. The study results also show that consumers find calories to be the most important piece of nutrition information on the Nutrition Facts label. Moreover, according to the study, calories are also the second most sought out piece of information on the Nutrition Facts labels when purchasing food (the first is sodium) and FDA has historically recognized the potential of the FUF program to support the same public health goals that the agency seeks to advance with the proposed rule. In particular, as part of the agency's initial consultation on the program, FDA recognized that the FUF program's "standardized, non-selective presentation of the four Basic Icons on a company's entire product line, if widely adopted by the food industry in a uniform manner, may contribute to FDA's public health goals by fostering awareness of the nutrient content of foods in the marketplace and assisting consumers in making quick, informed, and healthy food choices."[18] SNAC fully agrees.

Because FUF focuses on factual information pulled directly from the NFP, it fully avoids many of the potential inconsistencies that interpretive approaches can create, as discussed later in our comments. It also avoids results that could be confusing to consumers or inconsistent with dietary guidance, when comparing the FOP information between different foods. For this reason, it avoids the First Amendment concerns discussed above. And as a voluntary approach it does not risk exceeding the agency's statutory authority. On the practical side, the FUF program is implemented through a detailed Style Guide that provides flexibility in formatting and addresses detailed compliance considerations such as bilingual labels and horizontal vs. vertical formats. In light of this well-established and well-considered program, **SNAC encourages continued collaboration with industry on FUF frameworks that are widely used and understood**. For example, FDA could consider working with the industry to identify any potential updates that could be made to the existing FUF program, providing consumer education on this existing scheme, and encouraging its adoption across the marketplace.

3. SNAC Supports the FDA Statements Regarding Express Federal Preemption as Related to Front-of-Package Nutrition Labeling

Notwithstanding the discussion above regarding the agency's legal authority, SNAC greatly appreciates the discussion in the preamble of the proposed rule regarding express preemption of differing front-of-package nutrition labeling (FOPNL) and the importance of uniformity in FOPNL, as opposed to a state-by-state patchwork approach. Indeed, the FFDCA preempts expressly preempts state requirements for nutrition labeling and nutrient content claims that differ from federal law.[19] As a result, any state requirement for front-of-package nutrition labeling would be expressly preempted by federal law. This

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[17] International Food Information Council (IFIC), *Front-of-Package (FOP) Nutrition Labeling: Front & Center Food Information to Encourage Healthy Choices* (May 2024), available at: https://foodinsight.org/wp-content/uploads/2024/05/IFIC-FOP-Nutrition-Labeling-Consumer-Study-FINAL-Report.pdf.

[18] FDA Letter of Enforcement Discretion to GMA/FMI re "Facts Up Front", Dec. 13, 2011, https://www.fda.gov/food/nutrition-food-labeling-and-critical-foods/letter-enforcement-discretion-gmafmi-re-facts-front.

[19] 21 U.S.C. 343-1(a)(4) and (5) .

result makes sense from a policy perspective as well, as having a single national standard is critical to avoid consumer confusion and unnecessary supply chain disruptions.

4. Any FOP Nutrition Labeling Scheme Should be Expected to Provide Quantitative Benefits that Exceed its Costs

SNAC and its members support the agency's goal of increased transparency by providing consumers with information that helps them to quickly and easily identify healthy foods. It is this same goal that motivates many of our members to voluntarily provide FUF or other voluntary front-of-package labeling on snack products. The agency's Preliminary Regulatory Impact Analysis, however, does not provide the detailed justification of the proposed rule's benefits that would be required given the costly packaging redesigns that would need to be undertaken across nearly every packaged food product and that would significantly impact production and inventory management.[20] The agency's assessment also underestimates the cost of compliance, estimating labeling reformulation costs at $1,030 per UPC, which is significantly less than our members' estimates that the cost to implement FOPNL as proposed would range between $4,000 and 8,000 per UPC. Moreover, these costs must be viewed in light of the much less burdensome option available to FDA: to build upon the existing voluntary programs that have already been widely implemented, aligns with FDA's existing regulations for nutrient content claims, and provide a more holistic and purely factual picture of the food's nutrient profile.

With respect to the benefits of the proposed rule, the agency's analysis does not include quantitative benefits, as the agency recognizes that the benefit related to providing consumers with information cannot be quantified. The agency also discusses how "[i]f some packaged food manufacturers chose to reformulate products," then "consumers whose nutritional intake changes accordingly would also benefit from a healthier food supply."[21]Again, this benefit is theoretical and lacks quantification. SNAC therefore asks that the agency provide clear, quantitative benefits to justify the burden that a mandatory scheme would impose and consider how the rulemaking would impact small and mid-sized businesses.

5. Any FOP Nutrition Labeling Scheme Should Provide Flexibility in Label Placement and Should Occupy a Minimal "Footprint" on the Label

The proposed rule would require the Nutrition Info box to appear in the top third of the principal display panel. SNAC and its members strongly urge FDA to provide flexibility with respect to placement. This is important to reduce the need for significant brand redesigns, and to accommodate packaging constraints. Importantly, other placement options would be easily visible by consumers on the front panel. The existing voluntary industry FOP nutrition labeling programs are typically presented on the lower right-hand part of the label, near the net quantity of contents information. Consumers are accustomed to looking for the information in this location. We also encourage FDA to consider the flexibilities provided by the existing FUF Style Guide, including those for smaller packages, and the ability to use a more horizontally oriented format, rather than one that takes up significant vertical space.

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[20] Food Labeling: Front-of-Package Nutrition Information, Preliminary Regulatory Impact Analysis (PRIA), https://www.fda.gov/media/185202/download?attachment.
[21] *Ibid*.

For foods in smaller packages like snack foods, we ask that FDA recognize the ability to use stickering and ask that the agency consider a more flexible approach for such packages. Although SNAC appreciates the modified Nutrition Info box that FDA has proposed for smaller packages, it still would require a significant "footprint" on the label, especially when placed in the top third of the principal display panel. We are confident that a smaller or more streamlined option could be developed for smaller packages such as single-serve crackers and dips, granola bars, chips, or popcorn bags. By way of example, the existing industry programs utilize a calories-only icon for smaller packages, which can appear anywhere that is easily visible on the front panel.

Products that are in intermediate sized packages would be particularly impacted, as they may not qualify for the modified format, and yet could not accommodate the full FOP information due to space constraints. Even if a product package has more than 40 square inches available to bear labeling, the front panel may not be able to accommodate the proposed information, particularly in the top third of the panel. A typical 1 oz package of potato chips, for example, would have insufficient space on the principal display panel to accommodate the proposed modified Nutrition Info box when considering the existing mandatory information, including product name, net quantity of contents, and in some cases, a "Best if used by" date that is ink-jetted onto the front panel.

As another comment related to the size and contents of the proposed Nutrition Info box, FDA should remove "FDA.gov" from the icon in order to reduce the overall footprint of the label. Further, the "FDA.gov" information could create consumer confusion as the website does not directly bring consumers to educational information about the product or the FOP scheme.

6. Any FOP Nutrition Labeling Scheme Should Promote Harmonization with Existing Regulations and Nutrition Policy

The proposed rule would create certain contradictions and inconsistencies with existing regulations, discussed below. The agency should seek, in the final rule, to ensure harmonization between FOP labeling and existing regulations and policies.

- **"Healthy"**. The proposed rule would require "high in" statements for foods that qualify for FDA's recently revised "healthy" implied nutrient content claim criteria. For example, products labeled as "healthy" could also be labeled "high" in sodium under the proposed framework, particularly with respect to foods with larger serving sizes like main dishes and meal products. SNAC recommends that FDA use product category-specific %DV thresholds, depending upon the serving size of the food, as was implemented in the final rule defining healthy as an implied nutrient content claim.
- As another example, the "heathy" rule excludes the inherent saturated fat in nuts, whereas under the proposed scheme, which does not include a similar exemption, nuts (e.g., lightly salted cashews) could receive a "Med" saturated fat rating and therefore could be considered unhealthy by consumers. In the preamble to the final rule on "healthy" claims, FDA provides several reasons for this exclusion: nuts have a fatty acid profile that is predominantly unsaturated fat; scientific evidence demonstrates that replacing other sources of saturated fat in the diet with nuts has beneficial effects on risk of coronary heart disease; the *Dietary Guidelines for Americans 2020-2025* recommends consuming nuts without differentiating among types (even though the saturated fat content of nuts is variable); and the *Dietary* Guidelines

recommends reducing saturated fat by substituting certain ingredients with sources of unsaturated fats (e.g., using nuts in a dish instead of cheese).[22] If FDA does not take a similar approach in the FOPNL scheme, it could result in consumer confusion.

- **Use of serving size rather than RACC**. The use of the labeled serving size as the basis for the thresholds for low and high, creates an inconsistency with the criteria for those same terms, which are used as nutrient content claims under FDA's existing regulations and assessed on a "per reference amount customarily consumed" or "per RACC" basis. As discussed further below, this creates an inconsistency relative to "low" nutrient content claims and runs counter to FDA's traditional approach where nutrient content claims should be assessed on a per RACC basis to facilitate more accurate comparisons between products, as opposed to comparisons that can be manipulated by changing the serving/package size. These inconsistencies could be avoided with an FOPNL system that is strictly factual in nature.

- **Challenges for variety pack labeling.** FDA's proposed display format for aggregate packaging is impractical and could create consumer confusion. For variety packs with only two or three varieties, it could be very difficult for consumers to comprehend two to three separate Nutrition Info boxes quickly at the point of decision-making, which is the stated objective of the proposed rule. Our members make variety packs with up to 7-10 differing items, and these concerns would only be compounded for the additional varieties or flavors. Labels cannot accommodate multiple Nutrition Info boxes across the principal display panel, as the proposed format takes up a significant amount of space on the packaging. We ask FDA to identify a single FOPNL scheme that could be used to accommodate aggregate packaging without requiring multiple Nutrition Info boxes.

- **Vending machine labeling inconsistencies.** We request that FDA reconcile the misalignment of the nutrition information presentation in the proposed FOP scheme and the existing vending machine calorie labeling rule. The FOP Proposed Rule requires the information be presented per serving, while the vending machine labeling rule requires the calorie information to be presented based on the entire package. If this misalignment is not reconciled, it could result in consumer confusion as well as space constraints on the label from having a separate calorie icon. A logical solution would be to revise the vending machine labeling rule so that it applies per serving; or to allow manufacturers to voluntarily incorporate calories within the Nutrition Info box, especially in cases where calorie labeling is required by other regulations, such as the vending machine labeling rule.

- **Ability to help consumers quickly and easily identify healthy foods**. As noted, SNAC fully supports the stated goal of the rulemaking to help consumers quickly and easily identify healthy foods. The current Dietary Guidelines for Americans (DGA) outlines the considerations that should be in play when constructing a healthy dietary pattern. Just as the DGA recommends that consumers make certain "small shifts", any FOP nutrition labeling scheme should not take away from the ability of consumers to make these types of small shifts, such as shifting toward more whole grain foods as a percentage of total grains or incorporating more nutrient dense foods into the diet. The approach under consideration, in some instances, would over-simplify the

[22] 89 Fed. Reg. 106064, 106094-95 (Dec. 12, 2024).

important information about food, and due to the use of an interpretive approach, could convey messages that may not be consistent with dietary guidance. As just one example, a whole grain and refined grain snack could perform similarly based only on the three nutrients saturated fat, sodium, and added sugars. In some cases, the whole grain option may contain greater amounts of sodium or added sugars for palatability, meaning it would appear to be less healthy.

7. Nutrient Characterization: High/Medium/Low

With respect to the proposed interpretive markers, low, medium, and high, SNAC has the following comments. In general, we ask that FDA articulate a clear scientific basis for the thresholds, as required under the Administrative Procedure Act's (APA's) arbitrary and capricious standard. In particular:

- **Low**: The proposed threshold for "low" in sodium in the Nutrition Info Box would be 5% or less per serving, which equates to 115 mg or less sodium per serving size. This would create a significant discrepancy from the current standard of 140 mg or less sodium per RACC under the existing "low sodium" nutrient content claim regulation. In an attempt to reconcile this difference, FDA has proposed to require a food to bear a "low" designator in the Nutrition Info Box when making a low sodium nutrient content claim, which means that products with more than 115 mg sodium would no longer qualify as "low sodium." This would be a significant revision to the criteria for use of "low sodium" and it is important for FDA to clearly address in the record the scientific basis for this change.
    - As this proposed regulation applies only to foods regulated by FDA, a contradiction in nutrient information and dietary choices will occur with USDA FSIS regulated meat, poultry and egg snacks that do not bear the Nutrition Info boxed information. FDA should partner with USDA FSIS to assess the potential for consumer confusion with this proposed FOPNL. A brand's portfolio may contain both FDA-regulated and USDA-regulated labels.

- **Medium**: As a new term not currently defined as a nutrient content claim, there are significant open questions as to whether and how consumers will understand the term "medium" when used to describe a nutrient. The term could convey that consumers should avoid foods that are "medium" in one or more nutrient in the Nutrition Info box, a message that would not be supported by nutrition science. We also note that the term "medium" is not used in advising consumers on healthy dietary patterns and it is unlikely that they will know how to assess foods that are "medium" in one or more nutrient. For that reason, we ask FDA to ensure that there is a robust basis, including one founded in consumer perception research, to inform the use of the "medium" interpretive label.

Research has shown that there is potential for increased consumer confusion when the FOPNL scheme requires consumers assess multiple varying levels (e.g., high/med/low) for nutrients.[23] Inclusion of medium could be particularly confusing, especially if it appears with low and/or high for other nutrients. Further, IFIC research revealed that consumers' level of concern related to a "medium" interpretive

[23] *See* Pan American Health Organization, *Front-of-Package Labeling*, available at: https://www.paho.org/en/topics/front-package-labeling.

marker tends to vary depending on which nutrient is medium (e.g. consumers show more concern for medium amounts of added sugars than for sodium or saturated fat).[24]

- **High**: Like the comments above, FDA should ensure that the term "high" in the Nutrition Info box would be understood by consumers in a way that is consistent with the scientific basis for the use of the term. The term high is defined as a nutrient content claim, but in practice is virtually only ever used to characterize nutrients to encourage (e.g., high in protein, high in fiber). When high is used to refer to a nutrient to limit, in contrast, consumers could take away the understanding that they should avoid a food that is "high" in one or more of these nutrients. Such a message would not be supported based on the proposed definition of high, particularly for main dish and meal products, which make a larger contribution to the diet and therefore could contain greater amounts of nutrients to limit while still falling within dietary guidance recommendations. SNAC asks FDA to revisit the proposed definition of "high" and ensure that any definition incorporated in the final rule is supported by scientific and consumer perception evidence.

Nutrients Present at 0% DV and Insignificant Amounts. Products that contain zero or insignificant amounts of saturated fat, sodium, or added sugars, should not be labeled as "low" in those nutrients. For example, a food that bears a "sodium free" or "no added sugars" claim but then bears a low sodium or low added sugars statement in the Nutrition Info box, could result in consumer confusion. Instead, they should be characterized as "zero" or 0% DV, where consistent with the Nutrition Facts Panel, or allowed to be omitted from the icon all together.

8. Compliance Period

SNAC requests that FDA provide a 4-year compliance period to reflect the significant time needed to redesign and print new labels to implement the proposed FOPNL scheme. We request at least a four-year compliance period for companies over $10 million in global food sales and a five-year compliance period for companies with $10 million and less in global food sales to also reduce the wasted packaging that would go to landfills unnecessarily. Smaller companies will be competing for resources to achieve the proposed changes.

As discussed above, the proposed placement of the Nutrition Info box in the top one-third of the principal display panel means that this new information would require other information to be revised or moved, such as brand names, product names, and other intellectual property; as well as label graphics that are important to the overall design. Implementing the proposed scheme as currently drafted, therefore, would require not only changes to labels, but also in many cases significant redesigns to ensure there is sufficient space in the top third of the label for the Nutrition Info box, which would take up a significant "footprint" on the label. The proposed rule would affect almost every product bearing a Nutrition Facts panel, and would require label changes at the same time as companies are implementing a plethora of other mandatory label revision efforts, such as those to comply with FDA's new "healthy" regulation, which has a 2028 compliance period; state laws such as California's SB343

[24] IFIC, supra, at 29.

that restricts the use of recycling claims and information; and reformulations and ingredient labeling changes to implement new state legislation restricting certain color additives and ingredients in foods.

Relatedly, we ask FDA to clarify that the compliance (enforcement) date for FOPNL applies to the date the food is labeled, as opposed to the date it is introduced in interstate commerce. This approach is consistent with the agency's approach in recent FDA regulations requiring labeling changes, including the "Nutrition Label Reform" final rules in 2016. The date a food is labeled is also easier for companies to determine and control than the date the food is introduced into interstate commerce.

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SNAC shares the agency's goals with respect to transparency and empowering consumers to make informed decisions about the foods they incorporate into their diets. We urge FDA to adopt an approach that is flexible, cost-conscious, and aligned with the agency's legal obligations and the latest science including the literature assessing FOP nutrition labeling schemes. Additionally, SNAC encourages continued collaboration with industry to ensure feasible and effective implementation.

We look forward to working with FDA as the agency evaluates next steps in this important initiative. If there are any questions, please feel free to reach out to Colleen Farley, SNAC International's Director of Advocacy & General Counsel, at cfarley@snacintl.org.

Respectfully,

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SNAC International