



July 28, 2010

Submitted Electronically

The Honorable Margaret A. Hamburg, M.D.
Commissioner of Food and Drugs
U.S. Food and Drug Administration
White Oak Building 1
10903 New Hampshire Avenue
Room 2217
Silver Spring, MD 20993

RE: Front-of-Pack and Shelf Tag Nutrition Symbols; Establishment of Docket; Request for Comments and Information, 75 Fed. Reg. 22602 (April 29, 2010)

Docket No. FDA-2010-N-0210

Dear Commissioner Hamburg:

The Food Marketing Institute (FMI) appreciates the opportunity to respond to the Food and Drug Administration's (FDA) request for comments and information on front-of-pack (FOP) and shelf tag nutrition symbols. FMI looks forward to working with FDA to craft a policy which will increase consumer comprehension and use of nutrition information.

FMI is the national trade association that conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies – food retailers and wholesalers – in the United States and around the world. FMI's members in the United States operate approximately 26,000 retail food stores and 14,000 pharmacies. Their combined annual sales volume of \$680 billion represents three-quarters of all retail food store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms, and independent supermarkets. Our international membership includes 200 companies from more than 50 countries. FMI's associate members include the supplier partners of its retail and wholesale members.

FDA is seeking information to inform the agency's deliberations about ways to enhance the usefulness to consumers of point-of-purchase nutrition information. FDA and the U.S. Department of Agriculture are working to develop a voluntary front-of-pack (VFOP) nutrition label to increase consumers' understanding and use of nutrition information. FMI believes if FDA follows the recommendations contained within these comments, it can create a VFOP label that will be of benefit to consumers and a useful supplement to the information contained in the Nutrition Facts

label. FMI does not believe that it is necessary for the agency to create a voluntary shelf tag label program. Rather, FMI thinks such an effort would be counterproductive as it would stifle the vigorous competition occurring among supermarkets in providing nutrition information to consumers. This competition has fostered a great deal of innovation in providing nutritional information on shelf tags. These innovations have greatly enhanced the utility of existing nutritional information to consumers and should be encouraged, not suppressed.

These comments will first focus on recommendations for VFOP labeling and then discuss shelf tag labeling. Headings that are italicized reference specific requests for information posed by FDA in the notice.

Voluntary Front-of-Pack Labeling

FMI believes that the VFOP program should comprise of a simple, fact-based neutral disclosure of nutrition information that is easy for consumers to understand. The program should be flexible to accommodate the wide range of package shapes, sizes and printing processes. To encourage widespread adoption in the industry, the program must be affordable and easy for manufacturers to comply with.

“The Risk of ‘Too Much Clutter’ on the Label

FMI believes that the VFOP label should contain a disclosure on calorie, fat, sodium and sugar content per serving. In addition, participants in the program should have the option of including as part of the VFOP label two additional disclosures on nutrients of their choosing such as vitamins, minerals, protein and fiber. Any more nutrient facts will make the label “overpacked.” Consumers have limited time to assess the nutritional information of products when shopping, and the presentation of too much information on the front of the package will be overwhelming. Studies have shown that consumers most use information on calories, sugar, fat and salt.^{1,2} FMI believes that the VFOP label should include these disclosures and provide program participants with the option of including information on two more nutrients of their choice.

Flexibility in Size and Scaling

It is essential that any VFOP program crafted by FDA be flexible to accommodate the wide variety of shapes and sizes of grocery packages as well as the differing types of packaging materials used. While a large box of cereal may have plenty of space for FOP labeling, a small can of tuna does not. FDA must consider these issues in crafting any VFOP program. The VFOP program should

¹ Food Marketing Institute, 2009 U.S. Grocery Shopper Trends.

² EUFICFORUM No. 4, Pan-European consumer research on in-store observation, understanding & use of nutrition information on food labels, combined with assessing nutrition knowledge (December 2008).

also be adaptable to different methods of packaging, including packing occurring within supermarkets.

Color

FDA should recognize that adding new colors to a label may be very expensive and impracticable. FDA should give participants in the program the option of printing the VFOP label in a single color. Participants in the program should have discretion to select the color that they wish to use for the label. Black should be one option as most labels printed at the retail level are not capable of color or symbols. The agency should take into consideration the various printing processes used by both brand name and private label manufacturers.

Whether a Certain Amount of Blank Space is Needed Around FOP Nutrition Symbols

Space on most product labels is a precious commodity. As such, the amount of blank space around VFOP nutrition symbols should be minimized to the greatest extent possible while still keeping the information in a format easily visible to consumers.

Label Placement

It is important for FDA to assess what constitutes the panel of a package presented to consumers as they shop in a supermarket. While the front of a cereal box or a bag of potato chips is generally obvious, products such as sandwich cookies are often packaged in trays whereby the side of the package is often the fronting visible to the consumer when shopping.

VFOP Should be a Fact-Based Neutral Disclosure

FMI believes the VFOP program should present nutrition information in a standard, fact-based, neutral disclosure allowing consumers the freedom to make the decision to purchase a product for themselves. The VFOP label should provide consumers with the nutrition content of foods in an unbiased, straightforward manner. Colors or symbols with negative connotations would make the VFOP disclosure akin to a warning label and FMI believes such a labeling system would create confusion among consumers. Studies have shown that labels with negatively connoted colors lead to consumer misinterpretation that they should avoid a product altogether, rather than eating it in moderation or as an occasional treat.^{3,4} FMI believes that a standardized VFOP with a simple

³ Id at 13. “Colours indicating the highest nutrient levels (red in the U.K., orange in France) are misinterpreted often by consumers in the U.K. and France . . . most respondents exaggerated the meaning of amber and red traffic lights. The red traffic light was taken to mean “I should try not to eat this product” by 73% of respondents rather than the UK Food Standard Agency’s definition, “It’s fine to have this product occasionally as a treat.” In France, [a] majority of consumers (63%) had a similar reaction to the orange colour, believing it meant “should try not to eat this product. . . .”

⁴ Id at 8. “. . . many consumers also mistakenly thought experts recommend they should “try to avoid” rather than “eat less” foods that are high in fat, sugar or salt.”

disclosure on the calories, fat, sugar and sodium of an item along with two more optional disclosures—listed at the discretion of the participant—on vitamin, mineral, fiber or protein content will be of greatest benefit to consumers. Information on vitamin, mineral, fiber and protein content may be important factors for many consumers in deciding whether to purchase a product. If a VFOP participant believes that disclosing this information as part of the VFOP label will be of benefit to consumers, they should have the flexibility to do so. The vast majority of consumers (81%) believe that they as individuals are responsible for ensuring the foods they purchase are nutritious.⁵ Furthermore, consumers are able to make correct health inferences from nutrition labels with no major difference in various labeling systems.⁶ FMI believes the VFOP label should be a fact-based, neutral disclosure presenting consumers with an unbiased view of the key nutrients of foods.

Whether Certain Shapes Have Inherent Meaning

FMI believes that certain shapes and colors have inherent meaning. Stars and checks generally have a positive connotation which increases with the number of each symbol appearing on the label. The color green may have a positive connotation on a label while yellow, orange and red often have negative connotations.

The Size of an FOP Symbol Relative to the Rest of the Package

The sizes and shapes of food packages vary significantly. As the nutrition information is only one of many considerations evaluated in a shopping purchase and for most consumers not the first priority,⁷ the VFOP label should not overwhelm the rest of the label which identifies the product and indicates flavor and quality. A VFOP label should not interfere with the manufacturer's ability to market the product. FMI believes that VFOP label should be no larger than necessary to be visible to consumers while shopping.

Factors that Influence Ease of Comprehension

As explained previously, VFOP label should be a simple, fact-based neutral disclosure that allows consumers the freedom to make a purchase decision themselves. Keeping the label simple, neutral and uncluttered will ease consumer comprehension of FOP nutrition information.

⁵ Food Marketing Institute, 2009 U.S. Grocery Shopper Trends.

⁶ EUFICFORUM No. 4, *Pan-European consumer research on in-store observation, understanding & use of nutrition information on food labels, combined with assessing nutrition knowledge* (December 2008).

⁷ Klaus G. Grunert and Josephine M. Wills, *A review of European research on consumer response to nutrition information on food labels*, *Journal of Public Health* (April 2007).

Words on Label

FMI believes that the information on the front of the package should be consistent with the information required by the Nutrition Labeling and Education Act.⁸ As such, sodium should be used on the VFOP label, rather than the term salt.

FOP Uniformity

FMI believes a uniform FOP labeling across product categories will help consumers' recognition, understanding and trust of any VFOP program.

Nutrient Specific Symbols

FMI research has found that consumers do appreciate health claims on packages. In the most recent U.S. Grocery Shopper Trends Survey, 57 percent of shoppers look for a whole grain claim while the other health claims consumers most look for are high fiber (52%), low fat (51%), low sodium (51%) and absence of trans fats (48%). Any VFOP program should not prohibit the display of other health claims elsewhere on the package. By participating in the VFOP program, a manufacturer should not be precluded from making additional health claims outside of the VFOP label.

Consumer Education

In order for the VFOP program to be successful, it is essential that FDA engage in a comprehensive consumer education campaign. To respond to concerns regarding childhood obesity, in 2007, FDA launched the Spot the Block program. The program was crafted to encourage children to look for the Nutrition Facts label and assess nutritional information before making food choices. In conducting outreach to children, FDA partnered with the Cartoon Network to launch the campaign and created an interactive website. The agency should consider developing a similarly innovative campaign for the VFOP program.

FMI Study

FMI wishes to inform FDA that it is conducting a study to gather further data on many of the questions the agency is posing in the notice and looks forward to reporting on this data in the coming months.

⁸ Pub. L. No. 101-535.

Shelf Tags

FMI does not believe that FDA should pursue a voluntary shelf tag labeling program. The use of shelf tags has increased dramatically among supermarkets in recent years and is an important point of differentiation for retailers. The industry has seen robust competition among supermarkets as they battle to win over consumers with innovative new ways of providing nutritional information. These innovations are benefitting consumers by making it easier for them to identify nutritious foods. Shelf tag programs have been the core focus of this competition. FMI believes that a standardized, voluntary FDA shelf tag program would stifle the robust competition in this area and limit the innovations supermarkets are making in providing nutrition information to consumers.

It is clear that consumers are demanding nutrition information and supermarkets are responding. No less than 89 percent of Americans say that they are either somewhat or very concerned about the nutritional content of their food intake.⁹ The number of shoppers very concerned about nutrition is growing. In 2005, only one-third of the population indicated that they were very involved in making good nutritional choices, compared to 46 percent in 2009.¹⁰

In the most recent study on shopper trends conducted by FMI, 70 percent of shoppers surveyed rated the availability of nutrition and health information as being a somewhat or very important factor in selecting a primary grocery store, and 71 percent of consumers stated that their primary store provides nutrition and health information. Sixty percent of consumers use this resource at least once a month and 21 percent use it once a week.¹¹

Retailers are responding to consumers' demands. Nearly 18 percent of food retailers have some form of shelf tag labeling program. An additional 30 percent are planning on implementing a shelf tag program of sorts in the next two years.¹² Approximately half of the retail food industry will have implemented shelf tag labeling in 2011. Almost 70 percent of retailers compete on the basis of consumer wellness and family health.¹³

Decline in Consumer Use of Nutrition Labels

As the use of nutrition labels has declined, shelf tags have become an increasingly important means of supplementing the information contained on the Nutrition Facts panel. From 1995-96 to 2005-06, consumer use declined approximately 3 percentage points for the Nutrition Facts panel, 11 percentage points for the ingredient list, and 10 percentage points for the panel's information about

⁹ Food Marketing Institute, 2009 U.S. Grocery Shopper Trends.

¹⁰ Id.

¹¹ Id.

¹² Food Marketing Institute, The Food Retailing Industry Speaks 2009.

¹³ Id.

calories, fat, cholesterol, and sodium.¹⁴ FMI believes the innovation currently occurring in the development of shelf tags will continue to increase consumers' awareness of nutrition information, especially among the new generation of shoppers. This is critical as the decrease in nutrition information use has been greatest for individuals 20-29 years old.¹⁵

What Retailers Are Currently Doing

Retailers have created a vibrant marketplace for nutrition information in response to consumer demands. Listed below are examples of the different types of shelf tag programs leading retailers have implemented:

- Symbol on shelf label indicates that food has at least 10% of the daily recommended amount of one nutrient, such as calcium or vitamin C or meets other USDA Food Pyramid requirements.
- Multiple color-coded shelf tags indicating low sodium, organic, heart healthy, natural, gluten free, low sugar, and healthy kids.
- Circle design with acronym on shelf tag signifies nutritious foods including good source of calcium, excellent source of vitamins, heart healthy, lactose free, and others.
- A particular aspect of health maintenance is highlighted each quarter. Shelf tags with logos identify items to customers known to provide nutrients to help with the specific health matter highlighted.
- Shelf tags indicate low calorie, low fat, fat free, low saturated fat, low sodium, very low sodium, and low sugar and contain nutrition facts.
- Color-coded shelf tag labels indicate organic, natural, sugar free, fat free, low fat, low sodium, and gluten free products.
- Shelf tag labels indicate vegan, low sodium, gluten free, low fat, or diabetes managing.
- Color-coded shelf-tag labeling program that indicates low fat, low sodium, high fiber, gluten free, sugar free, and low calorie attributes in food products. Check marks are used to identify the presence of one of the six attributes. A heart symbol is used to identify products that are low in fat, low in sodium or high in fiber.
- A wholesaler created a shelf tag program for its independent retailers to identify products that meet FDA guidelines for important health-related attributes such as low fat, low cholesterol, and low calorie.
- A zero-to-three star nutrition guidance program, good (one star), better (two stars), best (three stars), making it simple for busy shoppers to find foods with the most nutrition for the calories.

¹⁴ U.S. Dept. of Agriculture, Economic Research Service, The Decline in Consumer Use of Food Nutrition Labels, 1995-2006, ERR-63 (August 2008).

¹⁵ Id.

- A label consisting of a numerical ranking between 1-100 that tells the consumer how nutritious a product is. The closer to 100, the more nutritious the product.
- A single symbol on shelf label and private label products that identifies a healthy food based on the federal definition of healthy.

Consumer Interpretation of the Coexistence of FOP Nutrition Symbols and Nutrition Symbols on Shelf Tags

Consumers view shelf tags differently than FOP labels for a variety of reasons. Firstly, consumers tend to have a more personal relationship with their local retailer than the manufacturer of a grocery product. Many shoppers have been going to the same store for years, if not decades. Consumers claim more loyalty to supermarkets than any other retail segment.¹⁶ Most consumers shop regularly at one store and are very familiar with its layout and product availability. Three-quarters of the total number of shopping trips of a consumer are to a primary store.¹⁷ Consumers may also know the employees at their primary store on a personal basis and thus be comfortable asking them questions about products. A recent comprehensive study on value found that more than 80 percent of consumers polled want companies to show a human face.¹⁸ Supermarkets are meeting this desire and generally have employees available on the premises to answer consumers' questions about products. Consumers trust the grocery stores they shop at. The supermarket industry was rated the most honest and trustworthy industry in America in 2009 and has held this position for six of the past seven years.¹⁹ Trust in a company factors into purchase decisions for most consumers.²⁰ Furthermore, of all major industries in the U.S., supermarkets are the least likely to be cited by the public as needing more government regulation.²¹

The shelf tag constitutes a "second opinion" to the claims on a package that a product is nutritious. FMI believes that consumers benefit from multiple opinions on the nutritional value of foods. The shelf tag serves as a key supplement to the nutrition information on the package. Shelf tag symbols are generally seen as less biased by consumers than information on the package as they are not directly linked to the manufacturer of a product. Importantly, when examining a product consumers can in many instances simultaneously look at the price on the shelf, along with the shelf tag nutritional information allowing them to make a purchase decision based on both nutrition and value.

¹⁶ Colloquytalk, The Loyalty Marketing Mix (June 2008).

¹⁷ Food Marketing Institute, 2009 US Grocery Shopper Trends.

¹⁸ Euro RSCG Worldwide, The Value Study 2009.

¹⁹ Harris Interactive, The Harris Poll 2009.

²⁰ Euro RSCG Worldwide, The Value Study 2009.

²¹ Harris Interactive, The Harris Poll 2009.

The Differences, if any, in Consumer Response to Nutrition Symbols Among Various Demographic Subgroups

Health literacy plays a major role in the understanding of nutrition information. Health literacy is the degree to which individuals have the capacity to obtain, process and understand basic health information and services needed to make appropriate health decisions. Only 12 percent of adults have proficient health literacy.²² Populations most likely to experience low health literacy are older adults, racial, and ethnic minorities, people with less than a high school degree or GED certificate, people with low income levels, non-native speakers of English, and people with compromised health status. Consumers with low health literacy are likely to respond differently to a nutrition label than other consumers. It is impossible for a single nutritional label to reach all consumers with equal effectiveness. While it makes sense for a VFOP label on the package itself to strive to do this as consistency on a package can increase consumers' recognition and trust, FMI believes that retailers are best attuned to the consumers they are serving and have tailored shelf tag labeling programs to meet the needs of their customers.

Conclusion

FMI appreciates the opportunity to submit comments on this important matter. In conclusion, FMI believes the VFOP label should be a simple, fact-based neutral disclosure of nutrition information that is easy for consumers to understand. The VFOP label should contain a disclosure on calorie, fat, sodium and sugar content per serving and participants in the program should have the option of including as part of the VFOP label two additional disclosures on nutrients of their choosing such as vitamins, minerals, protein and fiber. The VFOP program should be flexible to accommodate the wide range of package shapes, sizes and printing processes. To encourage widespread adoption in the industry, the VFOP program must be affordable and easy for manufacturers to comply with. For the VFOP program to be successful, it is critical that FDA engage in a comprehensive consumer education campaign. FMI does not believe that FDA should pursue a voluntary shelf tag labeling program.

Sincerely,



Erik R. Lieberman
Regulatory Counsel

²² U.S. Dept. of Education, Institute of Education Sciences, 2003 National Assessment of Adult Literacy.