

## E-ALERT | Food &amp; Drug

April 29, 2010

## FDA REQUESTS COMMENTS AND INFORMATION ON FRONT-OF-PACKAGE LABELING SYSTEMS

Today the Food and Drug Administration (FDA) announced a request for data on point-of-purchase nutrition information, including front-of-package (FOP) labeling.<sup>1</sup> FDA and the United States Department of Agriculture (USDA) are working with public and private stakeholders to develop a voluntary FOP nutrition label that is driven by “sound nutrition criteria, consumer research, and design expertise.” Toward that end, FDA established this public docket to solicit consumer research and design information to inform the development of a voluntary government-sponsored nutrition symbol program.

FDA aims to make calorie and nutrition information available to consumers in ways that will help them choose foods for more healthful diets, a goal the agency views as particularly important in light of the prevalence of obesity and diet-related diseases in the U.S. FDA does not intend for FOP labeling to supplant the Nutrition Facts box, but recognizes, as Commissioner Hamburg has stated in a number of recent speeches, that Americans’ busy lifestyles demand ready access to simple nutrition information on the FOP.

Today’s announcement is the latest step in a series of FDA’s efforts regarding FOP labeling, which have included public meetings, prior solicitations of comments, consumer survey research, and enforcement actions against allegedly deceptive FOP claims.<sup>2</sup> The agency is now soliciting more concrete data regarding how consumers actually view and use FOP labeling. Such data may be helpful in ensuring that any voluntary FOP system the agency develops would be grounded in consumer behavior research, rather than speculation as to how consumers might change their dietary habits if presented with certain FOP information.

**FDA’s Stated Goal for FOP Labeling**

FDA stated that its goal for an FOP nutrition label is to “increase the proportion of consumers who readily notice, understand, and use the available information to make more nutritious choices for themselves and their families, and thereby prevent or reduce obesity and other diet-related chronic disease.” To succeed in achieving this goal, FDA stated that an FOP labeling system should be:

- based on standardized nutrition criteria that are grounded in the Dietary Guidelines for Americans;
- widely adopted by food retailers and manufacturers;

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<sup>1</sup> 74 Fed. Reg. 22602 (April 29, 2010), available at <http://edocket.access.gpo.gov/2010/2010-9939.htm>.

<sup>2</sup> See, e.g., Covington & Burling LLP E-alerts, “FDA Issues 17 Warning Letters as Part of an Enforcement Sweep Regarding Food Labeling,” March 4, 2010; “IOM Committee Holds Public Workshop Regarding Front-of-Package Labeling Systems,” April 12, 2010.

- presented in a standardized format consumers can readily notice, understand, and use; and
- designed to enable consumers with a wide range of literacy, educational levels, age, and other characteristics to compare the relative healthiness of products within and across food categories in the context of routine food shopping.

### FDA's Current Request for Comments

To supplement information the agency has already gathered, FDA is seeking a range of data and information relevant to the use of FOP nutrition symbol schemes. FDA believes that the food industry and others have acquired extensive market experience with consumer reaction to nutrition symbols, and therefore solicits comments from all interested parties, including consumers, industry, graphic designers, marketing experts, the nutrition community, and others with specific expertise in nutrition and in conveying scientific information to ordinary citizens. FDA's request focuses on data related to how consumers make food choices and how a voluntary FOP labeling system may affect consumer decision making.

Specifically, FDA is seeking data concerning:

- consumer perception and behavior, including:
  - the purpose for which consumers use nutrition symbols
  - consumer perceptions when there are multiple health messages or nutrition symbols on a given package
  - consumer attitudes toward products that carry an FOP label compared to other products in the same category that do not carry such a label
  - the differences in consumer response to nutrition symbols among various demographic groups
- the effectiveness of particular possible approaches to FOP labeling, including graphic design, advertising, marketing, and human factors that affect understandability and use; and
- the extent to which FOP labeling may affect decisions by food manufacturers to reformulate products.

Although some of the requested information may be proprietary in nature, interested parties may wish to submit comments to help ensure that any voluntary FOP system ultimately developed by FDA would be practical, workable, and reflect real-world labeling and consumer behavior considerations.

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If you have any questions concerning the material discussed in this client alert, please contact the following members of our food & drug practice group:

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