

FDA's Nutrition Facts Panel and the Labeling of Added Sugars

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FDA Final Sugars Regulation

- FDA is requiring a new line on Nutrition Facts panel (NFP) for Added Sugars content in grams.
- FDA finalized a Daily Reference Value (DRV) for added sugars (50 g) and mandates that %DV be listed on the label after the Added Sugars content.

SIDE-BY-SIDE COMPARISON

Original Label

| Nutrition Facts | |
|---|---------------------------|
| Serving Size 2/3 cup (55g) Servings Per Container About 8 | |
| Amount Per Serving | |
| Calories 230 | Calories from Fat 72 |
| % Daily Value* | |
| Total Fat 8g | 12% |
| Saturated Fat 1g | 5% |
| <i>Trans</i> Fat 0g | |
| Cholesterol 0mg | 0% |
| Sodium 160mg | 7% |
| Total Carbohydrate 37g | 12% |
| Dietary Fiber 4g | 16% |
| Sugars 1g | |
| Protein 3g | |
| Vitamin A | 10% |
| Vitamin C | 8% |
| Calcium | 20% |
| Iron | 45% |
| * Percent Daily Values are based on a 2,000 calorie diet. Your daily value may be higher or lower depending on your calorie needs. | |
| | Calories: 2,000 2,500 |
| Total Fat | Less than 65g 80g |
| Sat Fat | Less than 20g 25g |
| Cholesterol | Less than 300mg 300mg |
| Sodium | Less than 2,400mg 2,400mg |
| Total Carbohydrate | 300g 375g |
| Dietary Fiber | 25g 30g |

New Label

| Nutrition Facts | |
|---|----------------------|
| 8 servings per container | |
| Serving size | 2/3 cup (55g) |
| Amount per serving | |
| Calories | 230 |
| % Daily Value* | |
| Total Fat 8g | 10% |
| Saturated Fat 1g | 5% |
| <i>Trans</i> Fat 0g | |
| Cholesterol 0mg | 0% |
| Sodium 160mg | 7% |
| Total Carbohydrate 37g | 13% |
| Dietary Fiber 4g | 14% |
| Total Sugars 12g | |
| Includes 10g Added Sugars | 20% |
| Protein 3g | |
| Vitamin D 2mcg | 10% |
| Calcium 260mg | 20% |
| Iron 8mg | 45% |
| Potassium 235mg | 6% |
| * The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice. | |

- Added Sugars Labeling was a special project of the Obama White House

PROPOSED

| Nutrition Facts | |
|----------------------------|------------------|
| 8 servings per container | |
| Serving size 2/3 cup (55g) | |
| Amount per 2/3 cup | |
| Calories | 230 |
| % DV* | |
| 12% | Total Fat 8g |
| 5% | Saturated Fat 1g |
| | Trans Fat 0g |
| 0% | Cholesterol 0mg |
| 7% | Sodium 160mg |
| 12% | Total Carbs 37g |
| 14% | Dietary Fiber 4g |
| | Sugars 1g |
| | Added Sugars 0g |



WASHINGTON, DC - FEBRUARY 27: U.S. first lady Michelle Obama announces proposed changes to food labels during an event in the East Room of the White House February 27, 2014 in Washington, DC. The proposed changes would highlight the calorie count of all foods, detail added sugars, and prove easier to understand the basic nutritional value of packaged foods.

Food Industry Asks for Delay

- In a March 14, 2017 letter to the Honorable Thomas E. Price, MD, Secretary, U.S. Department of Health and Human Services, the Grocery Manufacturers Association and major food industry trade groups representing bakers, confectioners, millers, corn refiners and dairy producers among others, asked that the FDA rules be delayed until May 2021.

Position of Trump Administration

- The Trump administration has been receptive.
- On October 2, 2017, FDA extended the compliance deadline for updating the Nutrition Facts label from July 26, 2018 to **January 1, 2020** (January 1, 2021 for manufacturers with less than \$10 million in annual food sales).

Position of Trump FDA

- The agency explained in a *Federal Register* notice that it was taking this action, in part, because it tentatively determined that additional time would help ensure that all manufacturers be provided more guidance on certain technical questions FDA received after issuance of the final rules in 2016. Many of those questions involved the labeling of added sugars.

Will Changes in the Final Rule be Proposed?

- FDA says no, but on June 16, 2017, the Natural Products Association (NPA) submitted a Citizen Petition asking FDA for reconsideration of key portions of the final rule.
- NPA's Petition focuses on the rule's requirements for added sugar (and also addresses the rule's dietary fiber definition).

Substance of Final Rule Should be Reviewed for Three Major Reasons

1. Rule based on tenuous science
2. Rule will mislead many consumers
3. Rule is based on shaky legal grounds

Substance of Rule Should be Reviewed

- Provisions of final rule Nutrition Facts rule may be revisited through:
 - Guidance documents, but also,
 - Use of enforcement discretion,
 - Issuance of interim final rule.

1. Final FDA Rule Mistakenly Targets Added Sugars

- Under the Obama administration, FDA mistakenly singled out added sugars as the primary driver for the increase in U.S. obesity rates and incidence of a variety of diseases.

Tenuous Scientific Support

- FDA's DRV for added sugars is largely based on a U.S. Dietary Guidelines Advisory Committee (DGAC) report that was heavily influenced by political appointments made by the Obama team.
- The decision making process was rushed -- the process did not include a scientific review by the National Academies of Sciences.

Previous DRVs Based on Stronger Science

- In taking this short cut, FDA lowered the scientific standard for adding new nutrients and %DVs to the Nutrition Facts label.
- All previous DRVs have been based on findings of the NAS.

NAS Recommends Changes

- This controversy was examined in a September 14, 2017 report released by the U.S. National Academies of Sciences which recommended that the government overhaul the process for preparing the Dietary Guidelines for Americans.
- Robert Russell, the chair of the NAS committee that prepared the report stated:

NAS Criticizes DGAC Process

- “The process of updating the Dietary Guidelines for Americans should be redesigned to increase transparency and allow for the appropriate expertise and time to focus on each step of the process, which can be achieved by reallocating the steps to a balanced and expanded set of multidisciplinary experts.”

Scientific Short Cuts Should Be Avoided

- Instead of relying on indirect and questionable evidence, NAS should conduct a study of added sugars to determine daily recommended intakes, as has been the case for every nutrient found on the Nutrition Facts label.

2. Delay Should Also be Used to Review Consumer Understanding

- Added sugars labeling leads to consumer confusion.
- FDA's own survey research shows 24% of consumers would be misled by the proposed added sugars label.

Consumer Confusion – FDA Research Findings

- About a quarter of consumers will choose a food higher in saturated fat and sodium merely because its added sugars content is higher than a competing product that contains healthier saturated fat and sodium levels.

Natural vs. Added Sugar

Similar sugar and calories but labeled “unhealthy” due to added sugar



Nutrition Facts

About 8 servings per container

Serving size 1 cup (240ml)

Amount per 1 cup

Calories 110

% DV*

0% Total Fat

0% Saturated Fat 0g

Trans Fat 0g

0% Cholesterol 0mg

1% Sodium 35mg

10% Total Carbs 28g

0% Dietary Fiber 0g

Sugars 28g

Added Sugars 25g

Protein 0g

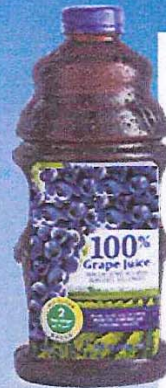
0% Vitamin A 0mcg

100% Vitamin C 90mg

0% Calcium 0mg

0% Iron 0mg

* Footnote on Daily Values (DV) and calories reference to be inserted here.



Nutrition Facts

About 8 servings per container

Serving size 1 cup (240ml)

Amount per 1 cup

Calories 140

% DV*

0% Total Fat

0% Saturated Fat 0g

Trans Fat 0g

0% Cholesterol 0mg

1% Sodium 15mg

13% Total Carbs 36g

0% Dietary Fiber 0g

Sugars 36g

Added Sugars 0g

Protein 1g

0% Vitamin A 0mcg

120% Vitamin C 108mg

2% Calcium 10mg

4% Potassium 140mg

* Footnote on Daily Values (DV) and calories reference to be inserted here.

Labeling cranberry juice cocktail “unhealthy” based only on the sugar content, ignores the fruit’s dense nutrients and well-documented health benefits.

Table Sugar – Added or Not?



Sugar Packages

- A retail package of sugar would list the contents on the Nutrition Facts as Total Sugars and “Added Sugars” when common sense dictates otherwise.

Honey – Is It All Added Sugar?

A serving of honey from a honey jar would be listed on the Nutrition Facts label as “Added Sugars” raising similar confusion.



Consumer Education is Inadequate

- FDA promises consumer education programs.
- Past FDA Nutrition Facts education programs have failed.
- FDA research shows that only 29% of consumers surveyed understand the concept of % DV of fat.

3. Legal Issues

- Current rule misleads consumers thus violating the Food, Drug, and Cosmetic Act.
- FDA engaged in arbitrary and capricious decision-making in ignoring the NAS thus violating the Administrative Procedure Act.
- Final regulation raises 1st Amendment concerns; the rule does not “directly advance” the governmental interest asserted.

Other Problems with FDA's Added Sugars Labeling Regulation

- Will be enforced by unprecedented recordkeeping requirement - FDA inspectors may request documents containing proprietary information.
- Health Canada considered and rejected added sugars labeling.
- FDA rule inconsistent with Codex standards.

In Sum . . .

Delay period should be used to modify the provisions of the final regulation:

- Rule based on tenuous science;
- Requirement would lead to consumer confusion;
- Final regulation rests on shaky legal grounds.

Thank You

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