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.
• Added Sugars Labeling was a special project of the Obama White House.
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 %DV's 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**

<table>
<thead>
<tr>
<th>Calories</th>
<th>110</th>
</tr>
</thead>
</table>

**% DV**

| 0% | Total Fat |
| 0% | Saturated Fat 0g |
| 0% | Trans Fat 0g |
| 0% | Cholesterol 0mg |
| 1% | Sodium 25mg |
| **10%** | Total Carbs 28g |
| 0% | Dietary Fiber 0g |
| 0% | Sugars 28g |
|  | Added Sugars 25g |

- **Protein**: 0g
- **Vitamin A**: 0mcg
- **Vitamin C**: 90mg
- **Calcium**: 0mg
- **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**

<table>
<thead>
<tr>
<th>Calories</th>
<th>140</th>
</tr>
</thead>
</table>

**% DV**

| 0% | Total Fat |
| 0% | Saturated Fat 0g |
| 0% | Trans Fat 0g |
| 0% | Cholesterol 0mg |
| 1% | Sodium 15mg |
| **13%** | Total Carbs 36g |
| 0% | Dietary Fiber 0g |
| 0% | Sugars 36g |
|  | Added Sugars 0g |

- **Protein**: 0g
- **Vitamin A**: 0mcg
- **Vitamin C**: 108mg
- **Calcium**: 10mg
- **Potassium**: 140mg

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

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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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