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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

Dear Sir or Madam:

Thank you for the opportunity to comment on the Food and Drug Administration's (FDA's) proposed rule on front-of-package nutrition labeling (FOPNL). As the food industry association, FMI works with and on behalf of the entire industry to advance a safer, healthier, and more efficient consumer food supply chain. FMI brings together a wide range of members across the value chain — from retailers that sell to consumers, to producers that supply food and other products, as well as the wide variety of companies providing critical services — to amplify the collective work of the industry. More information about our organization is available at www.FMI.org.

In the proposed rule, FDA discusses the growing prevalence of diet-related chronic diseases and the continued prioritization of nutrition initiatives that can help improve dietary patterns in the United States, including by helping consumers quickly and easily identify how foods can be part of a healthy diet. FMI and our members share these important goals. Health and nutrition is of the utmost importance to the food industry and for years, FMI and its members have recognized the need to help consumers navigate the varying labeling attributes on today's products. We remain committed to transparency and continuously strive to make nutrition information easily accessible to consumers.

Executive Summary

As discussed in more detail in the following comments, FMI strongly supports transparency in food labeling. It is for this reason that FMI has worked with the Consumer Brands Association to develop the widely implemented and recognizable voluntary Facts Up Front program, which for well over a decade has been implemented across food products to provide front-of-package information on calories, saturated fat, sodium, and added sugars (formerly total sugars), with the

ability to voluntarily declare up to two "positive nutrients," to enable consumers to readily identify important nutrition information at the point of purchase.

FMI appreciates a number of elements of FDA's proposed rulemaking, including that FDA has conducted consumer research; the fact that the Agency has not proposed a scheme that utilizes multiple colors – particularly given that the research does not support a significant difference resulting from the use of colors; and the inclusion of the percent daily value within the proposed FOPNL scheme. As an overarching comment, however, and as discussed in our prior comments on this important topic, FDA has not adequately addressed its underlying statutory authority to implement *mandatory* FOPNL. The statute provides FDA with highly prescriptive instruction as to how the Agency is to mandate nutrition labeling and does not include a provision that allows for a mandatory selection of information to be presented separate from the comprehensive nutrition information that includes each of the elements specified by Congress.

The proposed rule also raises important First Amendment and Administrative Procedure Act (APA) concerns, particularly with respect to the required placement and prominence of the scheme and the selection of only three nutrients to limit, to the exclusion of calories and all other nutrients. We discuss those important legal considerations at the end of these comments. FMI also has concerns that the anticipated benefit of the proposed rule – to help consumers quickly and easily identify healthy foods – is unlikely to materialize because of the focus on only three nutrients, leading to results that often do not lend to helping consumers quickly identify healthier food options. Accordingly, the impact and usability of the proposed scheme does not justify the significant burden it would impose. Importantly, FDA does not assert that the proposed rule is expected to change consumer behavior or reduce the risk of chronic disease. And indeed, the scientific literature would not support this type of sustained change in consumer behavior resulting from a mandatory FOPNL scheme.

In the event Congress were to provide the Agency with express authority to implement FOPNL on a mandatory basis, we have a number of recommendations about what such a scheme should look like.

1. FDA should give due consideration to existing front-of-package nutrition labeling schemes, including Facts Up Front, as tools to achieve the Agency's public health objectives.
2. FDA must ensure the anticipated benefits of the rule are justified by the expected costs.
3. Calories should be included in any FOPNL scheme.
4. The exclusive focus on three nutrients to limit should be reconsidered, as it is not consistent with arming consumers with information to help them build healthy dietary patterns.
5. The FOPNL scheme should be consistent with FDA's existing nutrient content claim regulatory framework, including for "low" nutrient content claims, the use of the RACC for nutrient content claims, and the distinction between products with "zero" of a nutrient vs. those with a "low" amount of a nutrient.
6. The "Medium" interpretive designator should be reconsidered.

7. The interpretive definitions must account for different serving sizes, particularly for main dishes and meal products.
8. FDA should reconsider the proposed placement requirement on the top third of the label and instead adopt a flexible approach, particularly given that consumers are accustomed to finding Facts Up Front information on the bottom third of the front panel.
9. FDA should ensure that the space required for the FOPNL scheme is the minimum space needed, and should work to incorporate all of the information, including calories, in a format that takes up less space, similar to the Facts Up Front approach.

We expand on these points and others in our more detailed comments, below.

Detailed Comments

1. **The Agency Should Be Considering Facts Up Front, an Existing Voluntary FOPNL Program with a Significant Market Presence, That Aligns with FDA's Existing Regulatory Framework and Helps Consumers Identify "Healthier Choices," as an Important Tool to Achieve FDA's Public Health Objectives.**

FMI was disappointed to see that a scheme resembling the Facts Up Front (FUF) program, including calories and positive nutrients, was not included in the consumer research and is not provided for in the proposed rule. Given the significant foundation of industry adoption and consumer familiarity with and understanding of FUF, we encourage FDA to continue to consider the role of the FUF program, as well as other existing voluntary programs, including Clear on Calories for beverages, could play in helping consumers to select healthful products. In particular, FDA should thoroughly consider the existing FUF program as a tool to achieve its public health objectives. The Agency could also consider potential updates to the program. FMI would be happy to work with the Agency on potential updates to existing programs and believes such a collaborative approach would offer numerous advantages for consumers, FDA, and industry alike. Of course, if the Agency were to *mandate* any FOPNL scheme, whether factual or interpretive, it would need express statutory authority to do so, as discussed in our comments at the end of this document.

FDA states in the proposed rule that the purpose of the regulation is to provide consumers with nutrition information in a format that helps them readily observe and comprehend the information at the point of decision-making. As we discussed in our comments on the Agency's consumer research notices related to FOPNL,[1] which are herein incorporated by reference, one important tool to achieve this goal is the FUF program. FMI believes this widely-adopted program facilitates consumer transparency and empowers informed choices by making important information – calories, added sugars, saturated fat, and sodium – easy to find in a simplified format. The FUF scheme requires these four mandatory nutrients while also allowing for the voluntary declaration of up to two "positive" nutrients, such as protein, fiber, iron, etc.,

[1] See https://www.regulations.gov/comment/FDA-2023-N-0155-0021; https://www.regulations.gov/comment/FDA-2023-N-0155-0040.

where relevant, to provide a broader picture of the food's nutritional profile. FDA has previously agreed that this "standardized, non-selective presentation of the four Basic Icons on a company's product line would alleviate some of FDA's concern regarding the potential for product labeling to mislead consumers by presenting only 'good news' about nutrient content on the front of the package, which is the concern that the regulations governing nutrient content claims were intended to address."[2] In short, the FUF scheme is helpful because it presents factual, standardized information that provides a more complete picture of the nutritional content of a food.

The FUF program has had marketplace visibility for over 10 years. This means consumers are familiar with the program and know how to use it. Current and extensive third-party research shows that consumers can easily understand the information provided through FUF icons.[3] As summarized in a November 2021 International Food Information Council (IFIC) report, titled *Knowledge, Understanding and Use of Front-of-Pack Labeling in Food and Beverage Decisions*,[4] 74% of respondents found nutrition facts highlights (like Facts up Front), which summarize key nutritional content per serving, either very easy or somewhat easy to understand. Additionally, FMI and the Consumer Brands Association funded consumer awareness research[5] that found that awareness and engagement with FUF are high among American adults. The key points from the research are as follows:[6]

- Nine-in-ten (90%) American adults are aware of the FUF label, demonstrating extensive recognition.
- Over six-in-ten (61%) American adults have used FUF information to inform their purchasing decisions, highlighting strong practical adoption.
- Nearly eight-in-ten (78%) of American adults believe that the FUF label effectively conveys the healthfulness of packaged foods and beverages.

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[2] Letter from Michael R. Taylor, FDA Deputy Commission for Foods, to James H. Sikes, Vice President and General Counsel, Grocery Manufacturers Association and Erik R. Lieberman, Regulatory Counsel, Food Marketing Institute (Dec. 13, 2011).

[3] International Food Information Council. Front-Of-Package (FOP) Nutrition Labeling: Front & Center Food Information To Encourage Healthy Choices. 24 May 2024. Front-Of-Package (FOP) Nutrition Labeling: Front & Center Food Information To Encourage Healthy Choices

[4] International Food Information Council. Knowledge, Understanding and Use of Front-of-Pack Labeling in Food and Beverage Decisions: Insights from U.S. Shoppers. 16 November 2021. https://foodinsight.org/ific-survey-fop-labeling/

[5] FMI – The Food Industry Association and Consumer Brands Association conducted a consumer awareness survey on Facts Up Front that, among other things, identifies FUF usage and effectiveness amongst American adults, including individuals with lower nutrition literacy. Survey questions utilized in the study are attached as Appendix A. The consumer awareness research was conducted online from May 8 – 23, 2025, among 2,028 American adults age 18 and above. Survey participants were comprised of a census balanced sample of ethnicity, gender, income, and US region. 792 of the participants were considered to be "low" nutrition literacy, which was determined using FDA's 3-question nutrition literacy quiz.

[6] The Final Report by Savanta, *Consumer Perceptions on the Facts Up Front Label*, is attached as Appendix B.

- Nearly three-quarters (72%) of American adults find it easy to use the nutritional information provided on the FUF label of packaged food and beverage products.
- Over three-quarters of American adults are satisfied with both the content and the presentation of the FUF label.
- More than three-fourths (77%) of American adults are likely to check the calorie information when purchasing a packaged food or beverage product.

FDA also notes in the proposed rule that any FOPNL scheme should "complement the Nutrition Facts label."[7] The FUF program was designed to be consistent with U.S. labeling regulations, including the nutrition labeling requirements and FDA's nutrient content claim framework, and allows consumers to easily understand and use key product information directly from the Nutrition Facts Label to make informed food choices. Importantly, and as discussed elsewhere in these comments, the FOPNL scheme proposed by FDA does not align with the Agency's long-standing nutrient content claims framework.

Moreover, the FUF program is implemented via a detailed Style Guide that ensures consistency within the marketplace and has accounted for the variety of package and product types that consumers interact with across the market. We discuss some of these considerations, such as placement and design, in more detail later in our comments. Below are examples of important practical considerations addressed by the Style Guide.

- The FUF Style Guide recognizes that packaged foods come in a large variety of sizes and layouts. Although the horizontal format is the preferred format, the Style Guide allows for a vertical format in a number of unique scenarios. Specifically, the vertical format is allowed when the horizontal format would interfere with mandatory labeling information or where branding architecture or package shape would render the horizontal format illegible.
- The Style Guide recognizes that for small packages inclusion of all the icons is not practical. For packages having a principal display panel of 13 square inches or less, the Style Guide allows for a calories-only icon.
- Additionally, the FUF Style Guide allows for placement anywhere on the principal display panel so long as consumers can still view the icons under normal conditions of display for that product. This gives manufacturers more flexibility to ensure FUF does not interfere with other mandatory information.

The Agency has not addressed many of these practical considerations within the proposed rule. For example, as we discuss later in our comments, FDA's proposed display format for variety packs is impractical and is highly likely to result in consumer confusion. The FUF Style Guide, on the other hand, recognizes the complexity of variety packs containing up to 7-10 differing items and allows for calories-only icons for each variety enclosed. The Style Guide also provides important and realistic solutions to issues that FDA's proposed rule fails to address at all. For example, as many foods are marketed to bilingual populations, inclusion of nutrition information

[7] 90 Fed. Reg. 5426, 5438 (May 16, 2025).

in two languages can be important to consumer understanding. The FUF Style Guide allows for and provides guidance on how to implement a bilingual format. The proposed rule fails to fully recognize or address these unique concerns, whereas existing industry programs have already implemented practical solutions to these issues.

While FMI strongly supports FUF and invites FDA to collaborate with industry on expanding upon existing voluntary programs to achieve joint public health goals, we have taken the time to review the proposed rule and hereby lay out the challenges with implementation and inconsistencies the proposed rule has with current labeling regulations. While we offer recommendations for improvements, FMI emphasizes that the easiest, most cost-effective, and consistent solution would be for FDA to collaborate with industry and explore the use of existing factual FOPNL schemes that are already in market and that would eliminate the many regulatory inconsistencies and misleading/confusing labels the Agency's proposed approach produces.

2. FDA Must Ensure that the Benefits of the Proposed Rule Justify the Costs.

The proposed rule would impose significant costs, which must be justified by the anticipated benefits of the rule. Based on the proposed rule as drafted, it appears that FDA has underestimated the costs, particularly when a well-established FOPL approach already exists in the U.S. marketplace (Facts Up Front), while the potential benefits are speculative and not supported by the scientific literature.

With respect to costs, several of our members estimate costs to implement FOPNL of $4,000-8,000 per label, with the higher end of the range applying where there is a need to update photography and graphics due to the size of the Nutrition Info Box, and depending upon the packaging material type. This range is based in part on experience implementing the Canadian FOPNL scheme. These costs should also be considered in the context of the fact that there is a much less burdensome option in the existing voluntary industry programs that have already been widely implemented, aligns with the Agency's claims framework, and provide a more holistic and factual picture of the food's nutrient profile In contrast to these estimates, we understand FDA estimated labeling and reformulation costs at $1,030 per UPC, significantly less than our members' estimates.

On the other side of the ledger, FDA has not sufficiently substantiated the asserted benefits of the proposed rule. The Agency asserts that a key benefit of the proposed rule would be to help consumers "quickly and easily identify how foods can be part of a healthy diet." This goal, in itself, could be viewed as inconsistent with the statutory framework established by Congress for nutrition labeling, which requires a comprehensive set of information to facilitate a holistic understanding of the food's contribution to the daily diet. Stated differently, simplifying a food's nutrient content to a "quick and easy" summary risks losing much of the important context Congress deemed important for consumers to have at hand. FDA asserts that the

"[b]enefits of this proposed rule would come from the value consumers receive from the information provided by the FOP label." [8]

In conducting its cost-benefit analysis, FDA recognizes that this benefit related to providing consumers with information cannot be quantified, and for that reason, the Agency is using a "break-even" approach to assess the regulatory impact.[9] FMI agrees that this benefit cannot be quantified and is speculative at best, particularly when Congress has not specifically recognized the value of consumers receiving this information as was the case with other new mandatory labeling requirements like nutrition labeling and menu labeling. Along the same lines, FDA explains that "[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."[10] Again, this benefit is theoretical and lacks quantification. For example, if consumers view the proposed "Medium" marker as suggesting a product should not be consumed, there would not be an incentive for companies to reduce the nutrient content in foods that are currently "High" in a nutrient under the proposed rule in order to achieve the "Medium" marker. The very large range used for "Medium" (6-19% DV) also means it will be challenging for companies to reformulate products that would otherwise be "Medium," to achieve a "Low" designation (5% DV) by reducing added sugars, sodium, or saturated fat. Both of these factors call into question the Agency's assumption that the FOPNL scheme would prompt reformulations to such an extent that it would positively impact the food supply. More broadly, FDA's analysis recognizes consumers will not change behavior as a result of the FOPNL scheme being implemented. Indeed, the Agency's Preliminary Regulatory Impact Analysis does not cite healthier diets due to changes in consumer behavior, nor reduction in chronic disease rates, as purported benefits of the rulemaking.[11] FMI is concerned that the costs of implementing the proposal will meaningfully outweigh any benefits, particularly if the goal of the proposed rule is to provide information that is already available on the back panel of the label, and in many cases is already provided voluntarily on the front panel of the label through the FUF program.

FMI appreciates and supports that FDA has conducted literature reviews as part of the rulemaking process. FMI has also conducted its own literature review. Overall, a few important themes emerge:

- Across outcomes of interest, most FOPNL schemes appear to be capable of drawing consumer attention and supporting informed choice.[12] Some positive, but weaker,

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8 90 Fed. Reg. 5426, 5455 (Jan. 16, 2025).

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

10 *Id*.

11 See PRIA, *infra*.

12 *See* Zenobia Talati, et al., *Food Choice Under Five Front-of-Package Nutrition Label Conditions: An Experimental Study Across 12 Countries*, 109 Am. J. Public Health 1770 (2019); Elizabeth D. Mansfield,

evidence suggests they drive healthier food purchasing behavior[13] and product reformulation.[14] Little to no causal evidence connects FOPL to changes in consumption, diet quality, or health status.[15] Further, studies have shown that consumers who are less healthy are less likely to read or utilize nutritional information than healthy consumers. For example, a study conducted in Mexico (which has a warning label FOP scheme in place) found that consumers who are overweight or obese were 26% less likely to utilize nutrition labels than healthy consumers, and those with three chronic conditions (obesity, overweight, and diabetes) were 66% less likely.[16]

- FOPNL research, like nutrition research more broadly, often cannot prove cause-and-effect.[17] Much of the available research is observational, conducted in laboratory vs. real-world settings, and/or using modeling approaches. The literature indicates that there is often a gap between preference on a survey and actual behavior,[18] meaning that there is much that remains unknown about FOP labeling. In particular, the amount of attention and processing paid to a stimulus in a lab may be different to that paid in a retail location. The research on the intention-behavior gap[19] as well as context effects[20] have shown that behavior may not immediately map to preferences or intentions via a one-to-one mapping. Indeed, FDA rightly points out in its literature review that effect sizes are often much lower in the retail environment than in the lab, and the real-world effect size is the only relevant one. For this reason, many studies call for post-implementation research to see how FOPL policies actually perform once implemented in society.[21]

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et al., *Efficacy of "High in" Nutrient Specific Front of Package Labels—A Retail Experiment with Canadians of Varying Health Literacy Levels*, 12 Nutrients 3199 (2020).

[13] *See* Zenobia Talati, et al., *Are Front-of-Pack Labels a Health Policy Tool?*, 14 Nutrients 771 (2022); H. Croker, et al., *Front of pack nutritional labelling schemes: a systematic review and meta-analysis of recent evidence relating to objectively measured consumption and purchasing*, 33 J. Hum. Nutr. Diet. 518 (2020); Jing Song, et al., *Impact of color-coded and warning nutrition labelling schemes: A systematic review and network meta-analysis*. PLoS Med. 18(10), e1003765 (2021).

[14] *See* Laxman Bablani, et al., *The impact of voluntary front-of-pack nutrition labelling on packaged food reformulation: A difference-in-differences analysis of the Australasian Health Star Rating scheme*, PLoS Med. 17(11), e1003427 (2020).

[15] *See* Muzzioli, *supra*; Lorenzo Maria Donini, et al., *Efficacy of front-of-pack nutrition labels in improving health status*, 102 Nutrition 111770 (2022).

[16] Business for Impact, Can Front-of Pack Product Labeling Fix the Obesity Crisis? (Apr. 2025), available at https://georgetown.app.box.com/s/78q85bxgt1grmadx6ck1xagog10j8pfg.

[17] *See* Véronique Braesco & Adam Drewnowski, *Are Front-of-Pack Nutrition Labels Influencing Food Choices and Purchases, Diet Quality, and Modeled Health Outcomes? A Narrative Review of Four Systems*, 15 Nutrients 205 (2023).

[18] *See* Muzzioli, *supra*; Pierre Dubois, et al., *Effects of front-of-pack labels on the nutritional quality of supermarket food purchases: Evidence from a large-scale randomized controlled trial*, 49 J. Acad. Mark. Sci. 119 (2021).

[19] Sheeran, P., & Webb, T. L. (2016). The intention–behavior gap. Social and Personality Psychology Compass, 10(9), 503–518.

[20] Jennifer S. Trueblood et. al. (2013). Not Just for Consumers: Context Effects Are Fundamental to Decision Making. Psychological Science 24(6) 901-908.

[21] *See, e.g.,* Mansfield, *supra*.

- Ultimately, existing FOP labeling schemes in other countries have not been proven to be effective in reducing obesity and other diet related chronic diseases. For example, obesity rates in Chile continue to rise even though they implemented an FOP warning label scheme in 2016, along with a tax on high-sugar beverages in 2014 and advertising restrictions in 2018.[22]

FMI also appreciates the Agency's work to conduct its own consumer research on the proposed schemes. We note that the results of this research have not been shared publicly despite requests submitted to FDA. Ultimately, though, there are a number of reasons why this consumer research, as summarized by FDA, does not support the purported benefits of the proposed scheme. For example:

- The survey used three products as stimuli: 100% toasted oat flake cereal, a frozen vegetable grain bowl, and a canned black bean soup. Given that these products were not individually pretested in any way and do not necessarily represent a general sample of all available products, preferences could be related specifically to these products suggesting a possible lack of generalizability. This is especially problematic if the products share some common traits such as potential healthiness perceptions.
- General terminology used in the survey, such as healthy, is not defined, and in the absence of a definition, participants typically focus on context. In this case, participants would be expected to focus on the attributes given – added sugars, sodium, and saturated fat – and to place less or no weight on other attributes, such as calories or other nutrients.
- The International Food Information Council (IFIC) conducted a consumer research study in 2023 using many of the research methods, questions, and schemes made publicly available from FDA's own consumer research study. Key findings indicated that no single FOP scheme tested was superior to any other FOP scheme in helping consumers identify the healthiest and least healthy choices, and that the inclusion of calories or dietary fiber improved the correct selection of the "healthiest" FOP label.

Importantly, FDA's research and the broader scientific literature do not support that the proposed FOPNL scheme would change consumer behavior. Absent such an anticipated benefit, with the appropriate substantiation, the proposal's costs would exceed its benefits. Moreover, it is unclear why the Agency did not start this significant and resource-intensive initiative by more thoroughly considering an FOPNL approach that is already well-established in market, supports the Agency's Nutrition Facts Label and is fully aligned with the existing claims framework.

[22] Can Front-of-Pack Product Labeling Fix the Obesity Crisis?, https://georgetown.app.box.com/s/78q85bxgt1grmadx6ck1xagog10j8pfg

3. Any FOPNL Scheme Should Include Calories.

FMI was surprised to see calories included only as a voluntary element of the proposed FOPNL scheme, particularly given the alignment between consumer advocacy groups, public health organizations, and the food industry that calories are a necessary component of any such scheme. Respectfully, we do not believe any fulsome discussion of providing additional nutrition information as part of an overall governmental effort to "help reduce the burden of diet-related chronic disease" – one of the stated goals of the proposed rule – can take place without including calories, as calories are a necessary component to putting other nutrients in context. The Agency explains that the FOP labeling scheme is intended to complement the Nutrition Facts Label. If that is the case, we question why the scheme would not include calories. Given the increased type size and bolding of calories in the Nutrition Facts Label and FDA's supporting rationale for mandating the increased prominence of calories,[23] it would be fully consistent and complementary to also highlight this information again on the front of pack. The information on calories provides a clearer picture of its contribution to the daily diet. And although there is no "interpretive" element related to calories because there is no established daily value for calories, the inclusion of calories puts the rest of the information in the Nutrition Info Box into the appropriate context. IFIC's consumer research study suggests that calories on an FOP scheme may improve consumers' correct selection of the "healthiest" FOP label, and that consumers place more importance on calories than added sugar or saturated fat when considering what makes a food healthy.[24]

Including calories in any FOPNL scheme is, in our view, necessary context from a public health perspective. The inclusion of calories provides the necessary reference point for all other nutrition information provided to a customer when making an informed decision. Further, including calories is consistent with the emphasis placed on calories in the Nutrition Facts Label, and therefore helps to supplement that information. The changes to the Nutrition Facts Label to increase the prominence of the calorie information were based on a 2004 FDA report finding that caloric balance is the single most important factor in weight control.[25] At the time the report was issued, FDA cited statistics finding that 64% of U.S. adults were overweight or obese. This number has only gone up in the past 20 years. According to 2017-2018 data from the National Health and Nutrition Examination Survey (NHANES), 73% of adults are overweight or obese. In 2010, Congress mandated nutrient labeling for foods served in restaurants and vending machines and elected to require *only* calories to appear at the point of purchase, illustrating the critical importance of this nutrient. FDA has continued to make obesity a priority

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[23] *See* 81 Fed. Reg. 33742, 33937 (May 27, 2016) ("The ability to determine the caloric content of packaged foods is important for all consumers, especially those who are trying to control their total caloric intake and manage their weight." "[G]iv[ing] more prominence to calories may benefit consumers in weight control and maintenance, as noted by the [FDA Obesity Working Group] in its final report entitled 'Calories Count'").

[24] International Food Information Council. Front-Of-Package (FOP) Nutrition Labeling: Front & Center Food Information To Encourage Healthy Choices. 24 May 2024. Front-Of-Package (FOP) Nutrition Labeling: Front & Center Food Information To Encourage Healthy Choices.

[25] FDA, Calories Count: Report of the Working Group on Obesity (2004).

of its nutrition initiatives, with the 2025 Executive Order establishing the President's Make America Health Again (MAHA) Commission declaring it to be the policy of the federal government to combat obesity, among other chronic diseases.[26] Simply, obesity cannot be addressed without a focus on calories. Further, research on FOPNL schemes shows positive effects when calories are included, and the modeling studies evaluating diet quality and health outcomes attributed results to calorie, rather than nutrient reduction (Acton, 2019; Basto Abreu, 2020; Labonté, 2019; Reyes, 2020). Indeed, if calories are, as nearly universally agreed, the single most important element to consider when planning a healthful diet, and yet the inclusion of calories would be voluntary under the proposed scheme, it is unclear why any nutrients would need to be mandatory to declare on the front-of-package.

As an additional practical point, providing calories on the front of package is consistent with and establishes compliance with FDA's vending machine calorie labeling rule by providing calorie information on the front-of-package in a format that is easily visible at the point of purchase, 21 CFR 101.8. Further, it is unclear whether a voluntary approach where calories are declared on some labels but not others, would be confusing or convey an unintended message to consumers. For instance, would the voluntary declaration of calories on one product suggest to consumers that the calories are material information for that product, but not for other products where calories are not declared; or that the calories are notably "high" or notably "low" compared to other products and that this is why they are being declared? FDA has not considered the potential impact of an inconsistent approach in the marketplace with respect to the declaration of calories. For these reasons, we urge FDA to include calories as a mandatory element of any FOPNL scheme.

In the event FDA disagrees and includes calories as a voluntary but not mandatory element, we recommend that FDA provide that calories would be included within the Nutrition Info Box itself, rather than as a standalone labeling element that appears outside the box. This would help drive consistency in the marketplace as compared to the various options for voluntary declaration that FDA has proposed.

Regardless of whether calories are a mandatory or voluntary element, we urge FDA to look for ways to minimize the footprint of, or total space required for, the FOPNL scheme. Indeed, this is a key benefit of the existing Facts Up Front program. The icons are small in height and the inclusion of calories does not take up significant additional space on the label, while still providing readily accessible information on the front of pack. In contrast, the Nutrition Info box proposed by FDA, including the proposed voluntary calorie mockups, takes up significantly more space.

4. **The Proposed Focus on Nutrients to Limit is Over-Simplistic, Leading to Confusing Results that are Inconsistent with Dietary Guidance.**

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[26] See https://www.whitehouse.gov/presidential-actions/2025/02/establishing-the-presidents-make-america-healthy-again-commission/.

Inclusion of only Nutrients to Limit in the proposed FOPNL scheme is not aligned with the Dietary Guidelines for Americans (DGA), which does not focus exclusively on such nutrients as the key factors in making food choices to support a healthy diet. The Agency's proposed approach will not "nudge" consumers to nutrient dense choices that include whole grains, fruits, vegetables, dairy, or nutrients of public health concern (calcium, potassium, vitamin D, fiber). For example, the proposed FOPNL scheme will not nudge consumers toward whole grain choices, given that whole grain pasta, bread tortillas, cereal, rice, and snack bars would have the same (or in some cases worse) interpretive markers as versions made with refined grains. Similarly, when comparing packaged vegetable products (e.g., broccoli in cheese sauce or a bagged salad with dressing), which may be "medium" in saturated fat or sodium or both, the proposed FOP scheme could suggest that these are less healthy choices than other products that are less nutrient dense but that may be "low" in added sugars, sodium, or saturated fat.

More broadly, the proposed scheme will have results that are confusing or not aligned with the Dietary Guidelines. For example:

- **Dairy Foods**: Dairy foods, particularly those that are not low fat or fat free, would receive a "Medium" or "High" marker for saturated fat, which could discourage their consumption, notwithstanding that the DGA state that 90% of Americans are underconsuming dairy foods. Flavored low-fat yogurt, a food encouraged by the DGA, would be identified in some instances as "high" in added sugar, which could cause consumers to assume they should not consume these foods. Other foods that are less nutrient dense, in contrast, would appear to be more healthful under the proposed scheme. Maple syrup, for instance, or certain candy products sweetened with non-nutritive sweeteners, would bear all "Low" designators, and comparing between dairy foods and other foods using the Nutrition Info Box could cause consumer confusion.
- **Grain Foods**: Whole grain foods could receive "Medium" designators in added sugars or sodium, which are added for palatability, and would not be distinguished from foods made with refined grains. This would not be helpful in assisting consumers to identify whole grain foods, particularly when 98% of Americans do not meet whole grain recommendations according to the DGA. Appendix C includes examples of how whole grain foods compare to foods made with refined grains under the proposed rule.
- **Beverages**: Numerous other results of the proposal, particularly with respect to beverages, run counter to dietary guidance. Under the proposal, 100% juice and some juice beverages may be labeled as "Low" in all nutrients, while some milk may bear one or more "Med" or "High" disclosures, which suggests that one of these beverages fits better into a healthy diet than the other when that is not generally the case as both 100% juice and milk are recommended beverages in the Dietary Guidelines. Appendix C includes examples of how beverages would be labeled under the proposed rule.
- **Nutrient Dense Meals**: Because the rule applies on a per serving basis, it does not take into account the role of the food product in the diet. As a result, main dishes/meal products with a single, larger serving may receive "high" designators in added sugars, sodium and/or saturated fat when, by nature, they are intended to contribute greater than 20% of daily caloric needs. This may lead a consumer to believe that a nutrient

dense meal product is not a healthful choice due to "high" levels of added sugars, sodium, and saturated fat, when in reality the levels may be proportional to the role of the product in their daily diet.

- **Comparisons Between Foods**: There are numerous examples where the proposed scheme will not help consumers identify comparatively healthy products, which is the stated goal of the rulemaking. For example, if the proposed scheme is applied to frozen vegetables with sauce (Sat Fat – Low; Sodium – Med; Added Sugar – Low) and a bagged salad kit with dressing (Sat Fat - Low; Sodium, Med; Added Sugar – Med), these products would appear to be less healthful than bacon (Sat Fat – Low; Sodium – Med; Added Sugar – Low) or maple syrup (Sat Fat – Low; Sodium – Low; Added Sugar – Low).

  Further, the proposed Low/Medium/High criteria are not designed to accommodate comparative claims (e.g., reduced, less, more). As a result, the proposed scheme will not help consumers identify products with "less" sodium, saturated fat, or added sugar and may not lead to fully informed comparisons of healthfulness within particular categories. For example, under the proposed FOPNL scheme, a reduced sodium soup or broth may still be designated "high" in sodium, thus suggesting to consumers that it is a nutritionally equivalent choice to a version of the soup for which sodium content has not been reduced.

While we recognize that companies may continue to include voluntary information about food groups or positive nutrients, this does not correct for the fact that the standardized display will suggest that these other elements are the most critical for consumers and will lead to confusing results or conflict with dietary guidance.

Aside from omitting the important consideration of food groups, research suggests that when comparing the Facts Up Front program with several of the schemes that FDA has considered, the FDA proposals, including the one in the proposed rule, focus on "negatives" rather than giving a full nutritional picture.[27] This results in participants giving more weight to negative nutritional features in product evaluation, as opposed to viewing foods in a more holistic light.

In contrast, research from the International Food Information Council (IFIC) shows that FOP schemes that include calories and dietary fiber, along with saturated fat, added sugars, and sodium, may improve consumers' ability to correctly identify the healthiest option.[28] In the IFIC study conducted in 2023, participants were randomized across various FOPNL schemes to assess how different nutrition labels influenced their ability to evaluate the healthfulness of foods. Results from the study show that consumers find calories to be the most important piece of

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[27] Natalina Zlatevska, Rafi M. Chowdhury, Leona Tam, et al. Facts-up-front: should food companies follow the FDA or industry label format? The effects of combining virtue and vice information on consumer evaluations. Marketing Letters 30(3-4) (Dec. 2019).

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

nutrition information on the Nutrition Facts Label and also rate calories as more important than added sugars and saturated fat in determining a food's healthfulness.

5. The Per Serving Approach for Interpretive Terms Runs Counter to FDA's Existing "Per RACC" Framework for Nutrient Content Claims and Would Lead to Inconsistencies.

The proposed FOPNL scheme uses a per serving basis, but nutrient content claims using the very same terms – including "high" and "low" – are made on a per RACC basis, creating an illogical and contradictory discrepancy. Although FDA has attempted to address the inconsistency by proposing certain revisions to the "low" claim criteria for sodium and saturated fat nutrient content claims, the Agency has not addressed potential inconsistencies in the "high" criteria or the overarching inconsistency in the per RACC vs. per serving size approach. As discussed further below, FDA should take an approach that differentiates by serving size – including different standards for foods with small RACCs as well as main dishes/meals – consistent with the existing nutrient content claim regulations.

By using only the serving size as the basis for the FOPNL disclosures, the proposed rule could create an incentive to reduce package size, which would then inherently deliver "less" of the nutrients to limit. Importantly, this is exactly the reason that Congress required FDA to create standardized definitions for nutrient content claims that would account for differences in package/serving sizes.[29] FDA, in turn, developed reference amounts for more than 150 food categories, and conditioned the use of nutrient content claims on meeting the criteria on a "per RACC" basis,[30] precisely to avoid a situation where a product could qualify as "light" or "low fat" or "low calorie" merely by using a smaller serving size. FDA has explained, "Basing claim evaluations only on the labeled serving size could encourage manipulation of serving sizes to qualify for claims." 58 Fed. Reg. 2287 (Jan. 6, 1993). The proposed approach for the FOPNL scheme, where only serving size is used to present not only factual information, such as the number of milligrams or grams of a nutrient and the percent daily value, but also an interpretive statement that uses the same terms as are used for nutrient content claims, goes directly against all of this precedent, and without adequate justification.

Moreover, the proposed approach does not align with the Agency's long-standing nutrient content claims framework, and as a result, FDA has had to include additional, confusing exemptions for the same terms in order to make the proposed rule workable. That is, in order to

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[29] In the legislative history for the NLEA, Congress noted that the terms "light" and "lite" have no consistent meanings and that in some cases "the food purports to be 'light' merely because the suggested serving is smaller. For example, Sara Lee's 'Light Classics' cheesecake actually has no fewer calories and more fat than an equal-sized serving of the company's regular cheesecake. The 'Light' cheesecake is lower in fat and calories only if a smaller serving is eaten." Nutrition Labeling and Education Act, Hearing before the Subcommittee on Health and the Environment of the House Energy and Commerce Committee on H.R. 3028, 101st Congress, August 3, 1989, p I.

[30] *See, e.g.,* 21 CFR 101.13(p).

bear a "low" saturated fat or sodium claim, the food must also now display "low" in the Nutrition Info box, in addition to meeting the preexisting criteria. Even with the Agency's attempt to reconcile the Nutrition Info Box with the "low" criteria for nutrient content claims, there is still the potential for inconsistency and confusion.

Some foods will be "low" in sodium or saturated fat in the Nutrition Info box, and yet will not meet the requirements for a low sodium or saturated fat claim. Specifically, under the proposal, there is a discrepancy between nutrient content claims for foods with small RACCs (30 g or less or two tablespoons or less) and the "low in" thresholds for the proposed front-of-package nutrition labeling (FOPNL). For foods with small RACCs, nutrient content claims for sodium are evaluated on a per 50g basis (e.g. a food can claim to be "low in sodium" if it contains 140 mg or less of sodium per 50g), while the proposed FOPNL categorizes foods as "low" in sodium if they contain less than 5% of the Daily Value (DV) for sodium per serving. In light of the 2,300 mg daily value for sodium, this means any food with less than 115 mg of sodium per serving would be labeled as "low" in sodium under the proposed FOPNL scheme but could potentially not qualify for a "low sodium" claim.

In summary, FDA's proposed approach will create misleading and confusing labeling; consumers will see the word "Low" for sodium or saturated fat in the Nutrition Info Box and assume that the product is indeed "Low" in that nutrient and thus a good or better choice. However, some foods with small RACCs that are far from meeting the "low" claim for sodium and saturated fat would be identified as "Low" in these nutrients in the Nutrition Info Box. Conversely, many foods will not be tagged "low" in the Nutrition Info Box yet meet the current requirements for the low sodium/low saturated fat claim and will be unable to make the claim (under FDA's proposed revision).

Marketplace examples of foods that will display "Low" sodium/sat fat in the Nutrition Info Box and do not meet the requirements for the low sodium/saturated fat claim include:

- **Certain foods with small RACCs:** many snack chips, condiments, coffee creamer, Worcestershire sauce, mustard, parmesan cheese, sliced cheese, whipped dairy topping (many of these foods will be "high" in sodium and/or sat fat per 50g).

Other foods will meet the requirements for a low sodium/saturated fat claim yet be ineligible to bear the claim because they will not carry the "low" interpretive language in the Nutrition Info Box. Some examples include a soft baked bar with a serving size of 50 g and a RACC of 40 g and certain soups. Main dish and meal products would be especially impacted because of their inherently large serving sizes (six and 10 ounces respectively). FDA made accommodations for the larger serving sizes of main dishes and meals in the nutrient content claim regulations, as main dishes/meals must meet low sodium and low saturated fat claim criteria on a "per 100 g" basis, rather than per RACC. However, when the "low "criteria must be met "per serving size" (six or 10 ounces), it will be extremely difficult, if not impossible, for these products that have been considered "low in" saturated fat or sodium for decades, to meet the "Low" designation in the

Nutrition Info box. All of the above will create significant inconsistencies in the marketplace, and confusion for consumers.

There is also a potential inconsistency with the vending machine calorie labeling rule, which requires that "[t]he calorie declaration for a packaged food must include the total calories present in the packaged food, regardless of whether the packaged food contains a single serving or multiple servings." 21 CFR 101.8(c)(2)(C). Compliance with the vending machine labeling rule may be achieved via a front-pack calorie disclosure or other nutrition information that is visible to the purchaser. 21 CFR 101.8(b). The proposed rule creates the potential for conflicting and confusing information in the labeling of multi-serving vending machine items by requiring FOPNL to be provided "per serving" while the vending machine labeling rule requires it to be provided "per package."

With all of this in mind, FMI recommends that FDA consider approaches that would not run counter to the existing nutrient content claim framework. For example, the Facts Up Front program does not create an inconsistency with nutrient content claim regulations because it does not use interpretive terms and therefore supports consistency across the label.

6. Low/Medium/High Definitions

"Medium" Designation

There is no established nutrient content claim regulation defining the term "medium." Nor do nutritionists or health care practitioners advise consumers about "medium" levels of nutrients when counseling on nutrition or dietary guidance. FDA has cited no consumer research or evidence that would indicate the term "medium" is useful to consumers. Worse, the term "medium" could be confusing to consumers, particularly when evaluating a product that also bears a high or low designation or when comparing products. That is, it is unclear what conclusions a consumer would or should draw from the term "medium" and it could confuse the messages otherwise communicated by the "high" or "low" designators. We expect that consumers would take away the message that products labeled as "medium" are discouraged, even though products with 6-19% DV of any of the three nutrients can fit well into a balanced diet. This concern is supported by IFIC's research on FOPNL, where participants were shown labeling schemes that displayed only medium levels of specific nutrients. When viewing the black and white Nutrition Info Box with percent DV scheme, a substantial number of respondents expressed concern over the product having a medium level of each nutrient: 60% for sodium, 67% for saturated fat, and 69% for added sugars. Indeed, the potential confusion resulting from three interpretive elements representing high, medium, and low, is one of the reasons many other countries (including Canada and Mexico as well as Latin American countries

such as Chile, Peru, Brazil, and Argentina) opted to include only a "high in" type disclosure, rather than including three separate interpretive designators.[31]

We also note that the proposed definition for "medium" as including products with 6-19% DV per serving creates quite a wide range, which does not provide incentives for manufacturers to reformulate products to get to a "low" designation. Considering that potential reformulation leading to a healthier food supply is one of the key asserted benefits of the proposal, this is an important consideration.

For these reasons, FMI has significant concerns about the utility of the "medium" designator. Other approaches, particularly factual ones, would avoid all of these issues, and for that reason, are preferable.

The "Low" Designation Should Not Cover Products with "Zero" or Insignificant Amounts of a Nutrient

The proposed rule creates an inconsistency for products with "zero", or a nutritionally insignificant amount – as opposed to *"Low"* amounts – of a nutrient. FDA should create a fourth category for products that contain 0% DV of the relevant nutrients, or contain an amount that is eligible to be labeled as "Not a significant source of…", that is *separate* from the "Low" category. Products with 0% DV added sugars, saturated fat, or sodium per serving, including those with less than 2% DV per serving, should not be labeled as "Low," but instead should only declare the percent daily value. These foods are considered to contain trivial, or nutritionally insignificant, amounts of the nutrient, and should not be labeled as "Low." Indeed, it could be confusing for consumers to see a product labeled as containing "Zero Sugar" or "No Added Sugar" where the Nutrition Info Box states that the item is "Low" in added sugars. FDA has recognized that "zero" and "low" are distinct terms in its nutrient content claim regulations, which define these terms separately, and should not muddy that distinction here.

If the Agency takes this approach, FDA should also clarify that a "0% DV" or "1% DV" or "less than 2% DV" statement in the FOPNL scheme does not constitute a "free" or "zero" nutrient content claim and would not trigger a "not a low-calorie food" or similar disclosures under 21 C.F.R. § 101.60 or other FDA nutrient content claim regulations. Further, FDA should clarify that the disclosure of the % DV in the FOPNL would not trigger a requirement to disclose the nutrient to the Nutrition Facts Label when it is permitted to be part of the "not a significant source of" footnote in the Nutrition Facts Label.[32]

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[31] Lindsey Smith Taillie & Ana Clara Duran, The case for mandatory – not voluntary – front-of-package nutrition labels, World Health Organization Bulletin, iris.who.int/bitstream/handle/10665/379132/PMC11418843.pdf?sequence=1.

[32] For example, for added sugar, per 21 CFR 101.9(c)(6)(iii): "…. label declaration of added sugars content is not required for products that contain less than 1 gram of added sugars in a serving if no

"High" Designation

FDA explains that the nutrient content claim regulations define "high" as 20% DV or more per RACC, and that this is generally consistent with FDA's proposed definition. Not so. The existing nutrient content claim regulation is applied "per RACC" while the proposed rule would apply "per serving." Additionally, although "high" is defined as 20% DV per RACC for all nutrients, it is virtually never used as a voluntary claim for nutrients to limit. Supporting this, in the preamble to the proposed rule on nutrient content claims, FDA explained that it originally intended the "high" designation to apply to positive nutrients.[33] As a result, consumers have no experience with this use of "high in," nor is there data on how consumers would understand a "high in" claim as applied to a nutrient to limit like added sugars, saturated fat, or sodium. It is unclear that consumers would understand this term to refer to a product with at least 20% DV of the nutrient; instead, consumers could find the term "high" to be alarming and suggest the food should not be consumed.

Indeed, on an assumption of three meals and two snacks per day, a product with 20% DV of a nutrient to limit would fit easily into a healthy dietary pattern, and yet the proposed FOPNL scheme would deem this "high in," which could cause consumers to avoid these products. FDA recently, and appropriately, recognized in the December 2024 final rule redefining "healthy" as a nutrient content claim, that a meal product with less than 30% DV sodium may be labeled as "healthy"; yet under the FOPNL proposed rule, a meal would be considered "high in" sodium if it has 20% or more DV sodium. The message this FOPNL designator would send is inconsistent with the requirements of a healthy diet. Moreover, consumers will not easily discern between something that contains 21% of the DV and something that contains much more (e.g. over 50% of the DV).

7. Placement, Prominence, and Design

Placement and Size: Due to its size and the proposed placement, the proposed FOPNL scheme would require significant changes to product branding and label design. Implementing the requirements would put further cost pressures on manufacturers and may ultimately affect food prices and costs for consumers. The proposed placement on the upper third of the principal display panel is particularly burdensome because that is where intellectual property, product images and graphics, open date labeling, and other labeling elements are generally located. FDA has not cited sufficient evidence to support that its objectives could not be accomplished using a less burdensome alternative, including more flexibility related to placement on the

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claims are made about sweeteners, sugars, added sugars, or sugar alcohol content. …. if a statement of the added sugars content is not required and, as a result, not declared, the statement 'Not a significant source of added sugars' shall be placed at the bottom."

[33] FDA states that "for the purposes of nutrient content claims, the use of 'high' and 'source' provides appropriate opportunities to call attention to the positive aspects of the nutrient content of foods, and that these terms adequately reflect levels of nutrients in foods that can be especially useful to consumers in planning overall diets." 56 Fed. Reg. 60421, 60444 (Nov. 27, 1991).

principal display panel. FDA should allow more flexibility for any FOPNL scheme, including the bottom third of the package that would place the scheme together with other mandatory information such as the net quantity of contents. Such an approach would be consistent with existing FOPNL schemes, which allow flexibility in placement, but where the icons are typically placed in the bottom third of the principal display panel. Consumers are accustomed to looking in this location for the FOPNL information and FDA should seek to take advantage of this existing consumer habit.

Design: FMI recommends that FDA eliminate the "FDA.gov" notation in the proposed FOPNL scheme. We understand the Agency believes this helps lend credibility to the scheme, but we do not agree that it is necessary. Consumers would quickly come to understand the Nutrition Info Box as a government-mandated scheme, just as they understand the Nutrition Facts Label, which does not include a reference to FDA, to carry the same significance. Consumers are unlikely to visit the FDA website, and indeed, the main webpage referenced in the proposed scheme does not bear information specific to FOPNL, so we question its utility. The statement takes up valuable space without providing a commensurate benefit. Furthermore, as discussed elsewhere, FDA should closely coordinate its FOPNL rulemaking initiative with USDA to support consistency in the marketplace and to avoid consumer confusion. Inclusion of "FDA.gov" will conflict with the ability to harmonize approaches across agencies.

More broadly, the proposed FOPNL vignette has the potential to confuse consumers because it appears similar to the Nutrition Facts Label. There is a worrying potential that consumers will ignore the more robust Nutrition Facts Label because they think the Nutrition Info box is more important to focus on or takes the place of the Nutrition Facts Label. In fact, in FDA's consumer research, participants viewing the tested FOPNL schemes generally did not click on the link that led to more nutrition information.[34] Similarly, and concerningly, FDA has previously recognized that research shows that "with FOP labeling, people are less likely to check the Nutrition Facts label on the information panel of foods (usually, the back or side of the package)."[35]

This is particularly concerning given that Congress intended only for a singular, comprehensive presentation of nutrition information, and yet the proposed FOPNL scheme would likely take away from that scheme's use by consumers. For this reason, we encourage FDA to consider schemes such as Facts Up Front that more readily complement the Nutrition Facts Label rather than potentially taking away from it.

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[34] *See* FDA, Quantitative Research on FOP Labeling on Packaged Foods, OMB No. 0910-0920 (May 2024), https://www.regulations.gov/document/FDA-2024-N-2910-0040 ("Although very few participants clicked to see the Nutrition Facts label when [asked to identify the healthiest and least healthy nutrient profile], those viewing the High In schemes were significantly more likely to click than those viewing the Nutrition Info schemes").

[35] Guidance: Letter Regarding Point of Purchase Food Labeling (Oct. 2009) ("However, FDA's research has found that with FOP labeling, people are less likely to check the Nutrition Facts label on the information panel of foods (usually, the back or side of the package). It is thus essential that both the criteria and symbols used in front-of-package and shelf-labeling systems be nutritionally sound, well-designed to help consumers make informed and healthy food choices, and not be false or misleading").

8. Exemptions

Below we discuss various proposed, and potential, exemptions from the proposed FOPNL scheme.

Products That Would Be Exempt from Nutrition Labeling but Bear a Nutrient Content Claim: FDA should clarify that FOPNL is not required for products that are otherwise exempt from nutrition labeling under an exemption in 21 CFR 101.9(j) but that bear a claim about nutrients or nutrition information in labeling or advertising and therefore are required to bear a Nutrition Facts Label. Such an exemption is justified because the product will bear full nutrition labeling.

Labels Printed in Retail Establishments: The final rule should include an exemption from the FOPNL display for product labels that are printed in a retail establishment. In the context of grab-and-go items sold at retail establishments, which are often prepared or packaged in some manner in store, there is not a traditional printed label that could accommodate the proposed FOPNL display. These items typically are labeled with scale labels printed in-store, and technology does not exist to print the proposed Nutrition Info Box. We therefore ask FDA to grant an exemption for products for which the label is printed and applied in a retail establishment.

Labels with a Single Display Panel: FMI requests that products that utilize a single display panel be exempt from FOPNL based on both the lack of space available and the duplicative nature of including both a Nutrition Info box and the Nutrition Facts Label within a single panel. These items are typically packaged in clear plastic containers with only one side of the container – generally the top of the container – being flat and serving as a logical place to apply a label sticker to display mandatory labeling information. Examples here include pre-cut fruit and containers of salad greens that are labeled using a sticker on one panel, as shown in Appendix C. Importantly, this exemption would be limited in nature and would not apply to foods that bear labeling on other panels of the container.

Foodservice: FDA should explicitly state that only those food products in packaged form that are offered for retail sale are subject to the FOPNL scheme. For example, products sold for use in foodservice channels would be exempt from the FOPNL scheme because they are not offered for retail sale, and indeed, are exempt from nutrition labeling under 21 CFR 101.9(j)(2)(v).

9. Special Displays

Aggregate Display: FDA's proposed display format for aggregate packaging is impractical and will not be helpful to consumers. For variety packs with only two or three varieties, it will 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. We ask FDA to identify a single FOPNL scheme that could be used to accommodate aggregate packaging without requiring multiple Nutrition Info Boxes. This could include an option that would combine the nutrition information into a singular Nutrition Info Box. We wish to reiterate here that the FUF Style Guide already provides a workable solution for aggregate packaging, where only calories for each variety are provided, and there is flexibility in terms of orientation of the icons on the package.

Modified Format for Smaller Packages: The exemption and modified format for smaller packages should be tied to the size of the principal display panel (PDP), rather than the total surface area available to bear labeling, because it is the size of the PDP that is most relevant for purposes of this specific modified format.

10. Compliance

Compliance Period: FDA proposes a compliance date of three years for businesses with $10 M or more in annual food sales and four years for businesses with <$10 M food sales. We respectfully request an additional year for each category of business to reflect the often significant design changes that would be required, as well as the significant number of labels that would need to be modified. When FDA issued its updates to the Nutrition Facts Label in 2016, it took at least four years for industry to implement those changes, and we expect the same to be required here. We also ask that the Agency base any compliance date on the date the product is labeled, consistent with other recent labeling initiatives. This is also the most straightforward way for manufacturers to ensure compliance, given the uncertainty about the date upon which a food is considered to be "introduced into interstate commerce."

Rounding and Assessing Compliance: FDA should incorporate the so-called "80-120" rule for compliance, found in 21 CFR 101.9(g), as well as the rounding rules for nutrients found in 21 CFR 101.9(c), into the FOPNL regulation. In the preamble to the proposed rule, FDA commented that the FOPNL disclosures would be considered nutrition information rather than a nutrient content claim, which provides support for the position that the FOP disclosures should be subject to the same rounding rules and compliance standard as for nutrition labeling. However, the proposed regulatory text does not cross-reference these standards in 101.9(c) and (g). We ask that FDA make it explicit that the compliance standard for nutrition labeling also applies to the FOP disclosures. After all, the two values in the FOP disclosure and the Nutrition Facts Label should be consistent.

We also ask the Agency to provide clarity on how the thresholds would work together with the rounding rules. For example, a product with 3.8 g of saturated fat per serving would contain 19% DV using the unrounded gram value (considered "Medium") while a product with 4 g of saturated fat would be considered "High" at 20% DV. Yet under the rounding rules, 3.8 g would round to 4 g. It would be very helpful for FDA to clarify that the % DV may be calculated based on the unrounded gram amount for purposes of assessing which interpretive designator applies.

Such an approach is consistent with how the % DVs may be determined under the existing nutrition labeling requirements.

11. Nutrient Content Claims for "Low"

FDA is proposing to revise the definitions of "Low saturated fat" and "Low sodium" to facilitate consistency with the proposed FOPNL scheme. Given the proposed rule's establishment of a "Low" interpretive designator that would apply to added sugars, it would be logical for FDA to also establish a low added sugar nutrient content claim definition as part of the final rule, which could mirror the proposed revised low sodium definition. FMI recommends that the Agency issue a supplemental proposed rule to address this point. This would help promote consistency across the label in use of the term "low" as applied to added sugars specifically and across different nutrients.

12. USDA-Regulated Products

It is important to note that the proposed rule would not apply to, and does not account for, roughly 15% of the U.S. food supply that is comprised of USDA-regulated meat, poultry, and egg products. As a result, a cheese pizza would bear FOPNL while a pepperoni pizza would not unless USDA adopts similar requirements. Importantly, USDA has not yet adopted the updated Nutrition Label Reform (NLR) regulations implemented for FDA-regulated foods, including the requirement to declare added sugars and the updated daily values, as a mandatory requirement. The proposed rule, therefore, creates the potential for further discrepancies between the agencies' approaches and the labeling of FDA- vs. USDA-regulated products. FMI asks FDA to ensure it is coordinating with USDA on the FOPNL rulemaking to avoid inconsistencies in the marketplace. FDA should also consider the extent to which the inconsistent use of a FOPNL scheme across FDA regulated products, but not on those food products regulated by USDA, could confuse consumers or convey an unintended message.

Comments on Legal Authority

1. FDA Has Not Adequately Addressed the Lack of Statutory Authority for Mandatory FOPNL.

As discussed in FMI's previous comments,[36] there are significant concerns regarding the lack of statutory authority for a mandatory FOPNL scheme.

When Congress enacted the Nutrition Labeling and Education Act ("NLEA"), amending the Federal Food, Drug, and Cosmetic Act, it gave FDA explicit authority to require nutrition labeling

[36] See https://www.regulations.gov/comment/FDA-2023-N-0155-0021; https://www.regulations.gov/comment/FDA-2023-N-0155-0040.

on most food packages and specified the nutrients to be listed in the nutrition label.[37] It also provided FDA authority to "require any information required to be placed on the label or labeling to be highlighted on the label or labeling by larger type, bold type, or contrasting color if the Secretary determines that such highlighting will assist consumers in maintaining healthy dietary practices."[38] Thus, FDA has limited authority to mandate certain comprehensive nutrition information to appear on food labels and may use certain tools—e.g., size, bolding, or color—to emphasize elements required to appear on label.

Nothing in the plain language or legislative history of the statute evidences congressional intent to confer statutory authority to highlight certain information outside of the comprehensive set of information that Congress specified. When discussing the use of highlighting to present nutrition information in a manner that facilitates the public's understanding, Congress did not express intent that any such action would occur outside of the comprehensive nutrition statement now known as the Nutrition Facts.[39] In short, FDA is simply not authorized to cherry-pick key nutrients to be placed on front-of-pack without the context of the full nutrition label expressly required by Congress.

The FFDCA does not grant the Agency the authority to mandate a separate, incomplete scheme on-pack. Under the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 144

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[37] 21 U.S.C. § 343(q), stating that a food is misbranded unless it bears nutrition information as follows:

> (q) Nutrition information
> (1) Except as provided in subparagraphs (3), (4), and (5), if it is a food intended for human consumption and is offered for sale, unless its label or labeling bears nutrition information that provides—
> . . .
> (B) the number of servings or other units of measure per container,
> (C) the total number of calories—
> (i) derived from any source, and
> (ii) derived from the total fat, in each serving size or other unit of measure of the food,
> (D) the amount of the following nutrients: Total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and total protein contained in each serving size or other unit of measure,
> (E) any vitamin, mineral, or other nutrient required to be placed on the label and labeling of food under this chapter before October 1, 1990, if the Secretary determines that such information will assist consumers in maintaining healthy dietary practices.

[38] *Id.* ("The Secretary may by regulation require any information required to be placed on the label or labeling by this subparagraph or subparagraph (2)(A) to be highlighted on the label or labeling by larger type, bold type, or contrasting color if the Secretary determines that such highlighting will assist consumers in maintaining healthy dietary practices.").

[39] House Report No. 101-538 to Accompany H.R. 3562, Nutrition Labeling and Education Act of 1990, 101st Congress, June 13, (1990) ("In order to present nutrition information in a manner that facilitates the public's understanding, the Secretary may choose among a variety of options. For example, one way that this could be accomplished would be to include information about the recommended daily intake on the label.").

S. Ct. 2244 (2024), an Agency cannot infer a grant of authority from silence in a statute, particularly where Congress has specified with exacting detail what FDA's authority over nutrition labeling encompasses, and has not provided a means to enact a separate scheme that includes a selection of nutrition information on the front of the label.

FDA cites a number of authorities in the proposed rule, but none provides the specific grant of authority that is needed to mandate FOPNL. First, the Agency cites the FFDCA's provision allowing FDA to issue regulations to require that any required nutrition information be highlighted with larger type, bold type, or contrasting color after determining that such highlighting will help consumers in maintaining healthy dietary practices.[40] The statute also outlines a process for FDA to add or remove nutrients from the label.[41] And a more general provision provides that a food is misbranded if any information required by the FFDCA is not prominent on the label with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.[42]

Importantly, these provisions do not grant FDA the authority to mandate a second, incomplete presentation of nutrition information. First, the statute explicitly limits FDA's toolbox in highlighting information to the use of larger type size, bold type, or contrasting colors. It does not allow FDA to mandate a separate, incomplete presentation of information with an interpretive overlay. And indeed, if FDA's authority was so broad as to allow the Agency to use any tool to highlight information, it would not have been necessary for Congress to specify these three methods. Second, the provisions allowing the Agency to add or remove nutrients, or to ensure adequate prominence of mandatory information, relate to the single comprehensive presentation of nutrition information with all of the information Congress went to the trouble of specifying in the statute – including serving size, number of servings per container, calories, total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, total protein, and vitamins and minerals. It does not grant separate authority for an additional mandatory nutrition labeling scheme.

The Agency next points to a statutory note in the NLEA that directs FDA to require nutrition information to be presented in a way that enables consumers to readily observe and comprehend the information.[43] But again, this does not provide that FDA may require one comprehensive set of information that complies with the detailed statutory list of mandatory elements, as well as one shortened set of information that provides only a selection of information related to nutrients to limit without context to total nutrient contributions. The Agency is permitted to "fill up the details of a statutory scheme" only within the detailed bounds that Congress provided.

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40 21 U.S.C. § 343(q)(1).

41 *Id.* at § 343(q)(2)(A) and (q)(2)(B).

42 *Id.* at § 343(f).

43 21 U.S.C. § 343 note.

FDA also cites a comment in the NLEA's legislative history that contemplates the use of the terms "low," "medium," and "high" to help consumers understand nutrient levels in the context of a daily diet. But the same problem exists here – this comment was only in the context of the single comprehensive scheme that Congress authorized that includes information on all nutrients, the serving size, and other information. It does not authorize FDA to mandate a separate presentation of selected information.

Finally, the Agency discusses its nutrient content claim rulemaking authority and its general authority to issue regulations for the efficient enforcement of the Act, as well as the Agency's general authority over false and misleading labeling.[44] Taking first FDA's nutrient content claim authority, this authority makes clear that nutrient content claims are voluntary rather than mandatory.[45] FDA attempts to address this by stating in the proposed rule that the FOPNL scheme is mandatory nutrition information rather than a nutrient content claim. But Congress has only authorized one comprehensive presentation of nutrition information, so this explanation is unavailing. And the Agency cites no basis in law or in fact for why the same words (e.g., "High") constitute a nutrient content claim when used outside of the Nutrition Info Box but are not a nutrient content claim when placed inside the box. Moreover, FDA's statement that FOPNL is not a nutrient content claim runs counter to FDA's prior position that front-of-pack labeling – specifically the Facts Up Front program – does in fact constitute a nutrient content claim.[46] And yet FDA has not acknowledged or offered an explanation for the change in position.

With respect to FDA's general rulemaking authority, this is not an independent grant of rulemaking authority; rather, any regulation issued under section 701(a) must "effectuate a Congressional objective specified elsewhere in the Act."[47] Congress has never specified an objective to make a subset of information from the Nutrition Facts Label available outside the Nutrition Facts Label, except for on a voluntary basis in the form of approved nutrient content claims. There is also no broader Congressional purpose allowing FDA to impose any requirement that the Agency finds would help consumers to understand the nutrition information. To the contrary, Congress was highly specific and prescriptive about the tools FDA could use to highlight information or further consumer understanding.

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44 *Id.* at § 403(r);

45 21 U.S.C. § 343(r)(1)(A). This distinction between nutrient content claims as voluntary and nutrition information as mandatory is borne out in the regulatory language at 21 CFR 101.13(c), which states that information that is required or permitted to be declared in nutrition labeling and that appears as part of the nutrition label "is not a nutrient content claim." However, the regulation states, "If such information is declared elsewhere on the label or in labeling, it is a nutrient content claim and is subject to the requirements for nutrient content claims." FOPNL would constitute a mandate to use a nutrient content claim outside of the nutrition label.

46 Letter of Enforcement Discretion to GMA/FMI re "Facts Up Front", Dec, 13, 2001, https://www.fda.gov/food/nutrition-food-labeling-and-critical-foods/letter-enforcement-discretion-gmafmi-re-facts-front.

47 *Pharmaceutical Manufacturers Association v. FDA*, 484 F. Supp. 1179, 1183 (D. Delaware 1980).

Additionally, any exercise of authority under the Agency's general rulemaking authorities is subject to a three-party test articulated in *National Confectioners Ass'n v. Califano*, 569 F.2d 690, 693 (D. D.C. 1978), under which the regulation must (1) have a limited scope, (2) not be unreasonably onerous, and (3) clearly assist in the efficient enforcement of the act. The proposed rule would not satisfy this test. First, it would not be limited in scope, as it would apply to all or a significant majority of the FDA-regulated packaged food supply. Second, it would require food manufacturers to revise thousands of truthful and accurate food labels that already include substantial amounts of mandatory information, including information on the nutrients that would need to be repeated on the front panel. Third, and critically, a FOPNL scheme would not clearly assist FDA in the efficient enforcement of the NLEA. Packaged foods already bear comprehensive nutrition information on-pack, and many labels voluntarily bear front-panel disclosures of calories, added sugars, sodium, and saturated fat, including the daily values for the latter three nutrients, making the added value of the proposed FOPNL scheme at best speculative. Lastly, in order for the Agency to rely on its general misbranding authorities under section 403(a), the Agency would have to demonstrate that packaged food products uniformly mislead consumers as to their nutrition content and appropriate role in the diet. FDA cites no research that would demonstrate that, nor does such research exist.

For these reasons, FDA cannot point to any provision in the FFDCA as expressly authorizing the presentation of subset of nutrition information, separate from the comprehensive set of nutrition information that Congress required. And although the Agency certainly has authority to prohibit misleading labeling, there is no evidence that food labels are categorically misleading in the absence of FOPNL.

2. The Proposed Rule Raises First Amendment Concerns.

Even if the FFDCA authorized the Agency to implement this rulemaking, FDA would still have to establish that compelling businesses to provide FOPNL passes constitutional muster. The proposed rule would require food manufacturers to include specific government-mandated nutrition information on the most prominent part of their product packaging, conveying interpretive and value-laden warnings that are likely to mislead the ordinary consumer. Such a requirement is vulnerable to being struck down as violating the First Amendment's protection of commercial speech under both the *Zauderer* and *Central Hudson* tests. *See N.Y. State Rest. Ass'n v. N.Y.C. Bd. of Health*, 556 F.3d 114, 131 (2d Cir. 2009) ("*NYSRA*") ("It is undisputed that commercial speech is entitled to the protection of the First Amendment.") (citing *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 637 (1985)).

By compelling individuals to communicate a particular message, disclosure laws ordinarily are subject to strict scrutiny as content-based regulations, *Nat'l Inst. of Family & Life Advocs. v. Becerra*, 585 U.S. 755, 766 (2018) ("*NIFLA*"), "unless they come within . . . the commercial speech exceptions of *Zauderer* or *Central Hudson*." *RJ Reynolds v. FDA*, 96 F.4th 863, 875 (2024). Under the *Zauderer* exception, FDA may compel commercial speech as long as it is (1) purely factual and uncontroversial; (2) reasonably related to a substantial government interest; and (3) neither unjustified nor unduly burdensome. *Am. Beverage Ass'n v. City & Cty. of S.F.*, 916 F.3d 749, 756

(9th Cir. 2019) (en banc) ("*ABA*"). If the FOPNL fails to satisfy any one of these criteria, the compelled speech is subject to intermediate scrutiny—that is, FDA must show that the regulation "directly advances" a "substantial" government interest and is "not more extensive than is necessary to serve that interest." *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 566 (1980).

As explained further below, because the FOPNL rule is misleading and unduly burdensome, it will almost certainly be struck down if challenged because FDA has more narrowly tailored alternatives that do not "co-opt [businesses] to deliver its message for it." *NIFLA*, 585 U.S. at 775; *cf. ABA*, 916 F.3d at 756 n.5 (reasoning that if a health warning does not meet the lower standard under *Zauderer*, it "necessarily" does not meet *Central Hudson*'s higher standard). For instance, FDA could post information on its website or conduct an advertising campaign regarding saturated fat, sodium, and added sugars "without burdening [businesses] with unwanted speech." *Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1283 (9th Cir. 2023) ("*NAWG*"). Alternatively, FDA could partner with industry stakeholders in establishing a voluntary FOP labeling system, where food manufacturers would be incentivized—but not compelled—to adopt standardized FOP labels. Indeed, as discussed elsewhere in these comments, the existing Facts Up Front scheme has been widely implemented by industry and is well-recognized by consumers. As FDA stated in 2011, the FUF program could accomplish the same goals as articulated in the proposed rule. The Agency noted with respect to Facts Up Front: "We also recognize that the 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."[48] With the public's increasingly widespread access to smart phones, FDA could also promote QR codes or mobile app integrations that offer consumers more insightful nutritional information in context without sacrificing precious advertising space and First Amendment rights, more importantly. *See Italian Colors Rest. v. Becerra*, 878 F.3d 1165, 1178 (9th Cir. 2018) (availability of "numerous and obvious less-burdensome alternatives" informs whether the compelled speech is narrowly drawn to achieving the State's interest).

The nutrient information businesses would be compelled to provide under the FOPNL rulemaking, while arguably "literally true," is still "misleading to the ordinary consumer" and thus not "purely factual." *Nat'l Ass'n of Wheat Growers v. Zeise*, 309 F. Supp. 3d 842, 851 (E.D. Cal. 2018); *see also Personal Care Products Council v. Bonta*, No. 2:23-cv-01006-TLN-JDP, 2024 WL 3011001, at *9 (E.D. Cal. June 12, 2024) (finding cancer warnings on cosmetics was "not purely factual because they tend to mislead the average consumer"); *Cal. Chamber of Commerce v. Becerra*, 529 F. Supp. 3d at 1118 (explaining how statements that invite misleading conclusions are not "factual" even if they are "technically true"), *aff'd* 29 F.4th 468 (9th Cir. 2022).

[48] Letter of Enforcement Discretion to GMA/FMI re "Facts Up Front", Dec, 13, 2001, https://www.fda.gov/food/nutrition-food-labeling-and-critical-foods/letter-enforcement-discretion-gmafmi-re-facts-front.

To take an example, a low-fat flavored yogurt might be marked as "High" in added sugars, and thus could be viewed as unhealthy by the ordinary consumer, despite the fact that low-fat yogurt is a dairy food recommended by federal dietary guidance and is a source of protein and calcium among other nutrients. Meanwhile, a candy product sweetened with non-nutritive sweeteners would be identified as "Low" in all three nutrients, which could cause consumer confusion. The FOPNL scheme will not inform consumers about meaningful differences in food groups; for example, a whole grain product will receive the same score as one made with refined grains. FDA's proposed labeling scheme fails to account for nutrient density, and ignores dietary patterns and overall health outcomes, which depend on dietary patterns, food groups, satiety, and caloric value – none of which is reflected in the proposed FOPNL. By highlighting very narrow, albeit arguably "technically true," nutritional characteristics of foods at the expense of nutrient density and other variables that influence chronic diseases like obesity, the FOPNL is still misleading and thus not "purely factual" because it risks steering consumers toward the wrong conclusions about healthy eating. In short, FDA's proposal grossly oversimplifies nutrition by focusing on single nutrients like sodium or saturated fat without providing crucial context.

FDA's labeling rule would fail *Zauderer* for the additional reason that it compels food manufacturers to provide interpretive, value-laden warnings (e.g., "High in Added Sugars") that are not "purely factual and uncontroversial." Although FDA's "High," "Medium," and "Low" ranking scheme purports to be based on objective, science-based assessments, it reflects nothing more than "government opinions and viewpoints," which are "subject to more exacting scrutiny" than *Zauderer*. *See CTIA-The Wireless Ass'n v. City & Cty. of San Francisco*, 827 F. Supp. 2d 1054, 1059 (N.D. Cal. 2011), *aff'd* 494 F.App'x 752 (9th Cir. 2012). Indeed, FDA's determination that a specific nutrient is "high" is a policy-driven and discretionary line-drawing exercise that draws a great deal of debate among nutritionists and public health experts.[49] As discussed elsewhere in these comments, the term "High" with respect to a "nutrient to limit" communicates a negative message that is not in keeping with the way in which FDA proposes to define "healthy." For example, a meal product would contribute more than 20% of daily caloric needs (assuming three meals and two snacks per day) but would be labeled "high in" saturated fat, sodium, or added sugars when it contributes 20% or more of the daily value of one of those nutrients. This communicates a negative message when in fact the nutrient content may not in fact be "high" when considering the significant role of the food in the diet as well as the important food groups found in the meal product. In essence, the interpretive warnings compelled by the FOPNL rule transform factual data into an FDA-endorsed value judgment

[49] *See Am. Meat Inst. v. U.S. Dep't of Agric.*, 760 F.3d 18, 34 (D.C. Cir. 2014) (Kavanaugh, J., concurring) (explaining that *Zauderer* does not tolerate government "mandates of moral or policy-laden messages"); *Video Software Dealers Ass'n v. Schwarzenegger*, 556 F.3d 950, 953 (9th Cir. 2009) (holding that California's requirement to label video games as "violent" was unconstitutional because it did "not require the disclosure of purely factual information," but instead "compel[led] the carrying of the State's controversial opinion"); *cf. Entertainment Software Ass'n v. Blagojevich*, 469 F.3d 641, 651-53 (7th Cir. 2006) (applying higher scrutiny to a labeling requirement that did not concern the disclosure of "purely factual" information, but instead reflected the state's opinion that the product contained material that the state deemed "sexually explicit").

about what consumers should or should not consume. Commercial speakers cannot be "forced to carry a [government] message fundamentally at odds with their businesses" without violating the First Amendment. *See NAWG*, 85 F.4th at 1278.

The FOPNL rule is also constitutionally vulnerable because it is arguably unduly burdensome and thus unlikely to be reviewed under *Zauderer*. Courts have repeatedly instructed that a compelled disclosure is "unduly burdensome" where it "drowns out the [commercial speaker's] own message." *NIFLA*, 585 U.S. at 778; *see also Ibanez v. Fla. Dep't of Bus. & Prof'l Reg.*, 512 U.S. 136, 146-47 (1994) (holding a compelled disclaimer "unduly burdensome" where it "effectively rules out" the business's own speech). Unlike discrete factual disclaimers that are routinely required with some products, the FOPNL here compels a visually prominent, bolded message that occupies the most valuable real estate on a product's package – the front label. Food manufacturers rely on the front label to convey a message to consumers that distinguishes them from competitors, provides context on the role of the food in the daily diet, and builds a recognizable brand. Crowding the front label with a government-mandated message inhibits a business from driving their preferred messaging, which is already subject to existing requirements that it must be truthful and non-misleading. Not only that, but it also forces companies to dramatically alter their label designs and could interfere with their intellectual property. In addressing the requirements and potential burdens of a FOP label, FDA fails to adequately evaluate whether a smaller, less conspicuous disclosure, including the existing Facts Up Front program, among others, would still accomplish the Agency's goals. *See ABA*, 916 F.3d at 757 (finding ordinance requiring health warning on advertising for sugar-sweetened beverages that covered 20% of the ad was unduly burdensome where findings suggested that goals could be accomplished with a smaller warning); *Blagojevich*, 469 F.3d at 652 (declaring a compelled "18" sticker on videogames unconstitutional because it covered a "substantial portion" of the box, and the state meanwhile failed to explain why a smaller sticker would not suffice).

3. The Proposed Rule Presents Vulnerabilities under the APA's Arbitrary and Capricious Standard

In addition to exceeding the Agency's statutory authority and presenting First Amendment concerns, the contemplated FOPNL scheme would be vulnerable to challenge as "arbitrary and capricious" under the APA.[50] As the Supreme Court has explained, an agency rule is "arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[51] In addition,

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[50] *See Mot. Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29 (1983) at 41 (quoting 5 U.S.C. § 706(2)(A) in noting that agency action "may be set aside if found to be 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'").

[51] *Id. at* 43.

the agency's analysis must be "reasonable and reasonably explained,"[52] and the agency "must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made."[53] And to the extent that the agency action reflects a change from past agency policy, the Supreme Court has consistently cautioned that an agency's failure to acknowledge that it is changing its policy is, in and of itself, arbitrary and capricious since it inherently involves the failure to establish a reasoned explanation of the change.[54] Here, FDA's proposed FOPL scheme could be considered arbitrary and capricious for a number of reasons under the standards described above.

First, by highlighting, on the front of food packages, an incomplete picture of the nutritional composition of packaged foods, the proposed rule would arbitrarily emphasize certain food constituents over others. As discussed above, this results in confusing and irrational labeling outcomes that are inconsistent with dietary guidance and potentially confusing and misleading to consumers. Significantly, calories would be omitted, notwithstanding the critical importance of calories to nutrition advice and in relation to obesity, a factor recognized both by Congress in enacting the menu and vending machine labeling requirements, and by FDA in revising the nutrition labeling regulations to highlight calories. These decisions run contrary to Congress's stated intent to have a complete set of nutrition information provided together with all relevant context (as described above). Moreover, FDA's own research shows that FOP labeling makes it less likely that consumers will consult the full nutrition information on the back or side of the label.[55]

More concerning, the proposed scheme would affirmatively discourage consumption of foods (such as dairy foods, due to their saturated fat content, and whole grain foods, which tend to require modest amounts of added sugar for palatability) that federal dietary guidance, as captured by the DGA, would seek to encourage. FDA has not offered a reasonable explanation for these choices, nor addressed the potential for arbitrary results. Indeed, the anticipated benefit of the proposed rule—which is that the FOPNL scheme will "help ensure that consumers in the U.S. have greater access to nutrition information they can use to identify healthier food choices"[56]—is undercut by the reality of what is being proposed. The proposed scheme would present consumers with incomplete nutrition information, without the important context of the complete list of information that Congress mandated, and this information will not provide what consumers need to "identify healthier food choices" consistent with federal dietary guidance.

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52 *Pharmaceutical Mfg. Research Servs., Inc. v. FDA*, 957 F.3d 254, 262 (D.C. Cir. 2020)

53 *Mot. Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983).

54 *See, e.g., FCC v. Fox Television Stations, Inc.,* 556 U.S. 502 (2009).

55 FDA Guidance: Letter Regarding Point of Purchase Food Labeling (Oct. 2009) ("However, FDA's research has found that with FOP labeling, people are less likely to check the Nutrition Facts label on the information panel of foods (usually, the back or side of the package). It is thus essential that both the criteria and symbols used in front-of-package and shelf-labeling systems be nutritionally sound, well-designed to help consumers make informed and healthy food choices, and not be false or misleading").

56 *See* https://www.fda.gov/food/food-labeling-nutrition/front-package-nutrition-labeling (noting FDA's goal "to help ensure that consumers in the U.S. have greater access to nutrition information they can use to identify healthier food choices").

Second, the proposed rule does not acknowledge important changes in policy. As discussed above, the Agency has not acknowledged or explained why the proposed approach deviates from federal dietary guidance. The Agency also does not acknowledge the change in position from FDA's longstanding policies holding that other FOPNL schemes should be viewed as nutrient content claims. As discussed earlier in these comments, FDA has historically taken the position that the Facts Up Front icons constitute nutrient content claims.[57] FDA's prior position on FOPL schemes has been as follows:

> It is important to note that nutrition-related FOP and shelf labeling … *is subject to the provisions of the Federal Food, Drug, and Cosmetic Act that prohibit false or misleading claims and restrict nutrient content claims to those defined in FDA regulations*. Therefore, FOP and shelf labeling that is used in a manner that is false or misleading misbrands the products it accompanies. Similarly, a food that bears FOP or shelf labeling with a nutrient content claim that does not comply with the regulatory criteria for the claim … is misbranded.[58]

In the proposed rule, in contrast, FDA states that the FOPNL scheme is not a nutrient content claim but rather is mandatory nutrition information. This distinction is an important one because nutrient content claims, by statute, are voluntary,[59] and yet FDA is proposing to *mandate* a FOPNL system that under the Agency's traditional approach should be treated as *voluntary* nutrient content claims. The Agency's only stated rationale for why the proposed scheme does not constitute a series of nutrient content claims is that FDA is mandating the FOPNL information in the proposed rule. Though an agency is permitted to change its views over time, the Supreme Court has held that an agency's failure to acknowledge that it is making such a change is inherently arbitrary and capricious in violation of the APA.

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[57] Letter of Enforcement Discretion to GMA/FMI re "Facts Up Front", Dec, 13, 2001, https://www.fda.gov/food/nutrition-food-labeling-and-critical-foods/letter-enforcement-discretion-gmafmi-re-facts-front ("FDA views the Nutrition Keys Basic Icons (calories, saturated fat, sodium and total sugar content) and Optional Icons as nutrient content claims subject to all the requirements of the FDCA and the Agency's regulations").

[58] FDA, *Guidance for Industry: Letter Regarding Point of Purchase Food Labeling* (October 2009).

[59] 21 U.S.C. 343(r)(1).

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We greatly appreciate the opportunity to comment on the FOPNL proposed rule. FMI is happy to answer any questions regarding our comments and look forward to continuing to work with FDA on this important topic.

Sincerely,

Dana Mullen Graber
Associate General Counsel & Senior Director, Legal and Regulatory Affairs

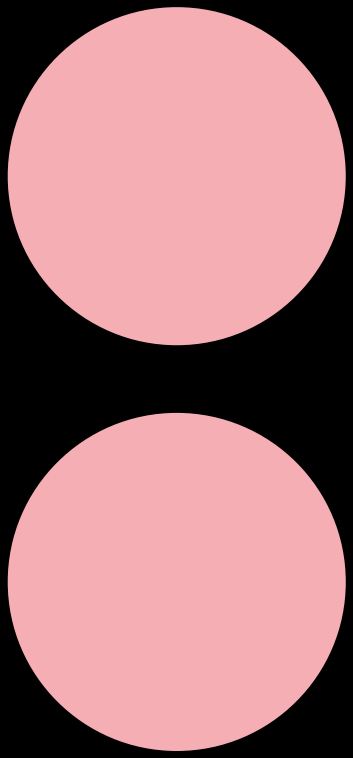
Krystal Register, MS, RDN, LDN
Vice President, Health & Well-being

Appendix A

April 2025

CBA x FMI Facts up Front Label Survey

SmartLabels x Savanta



Make better decisions

Savanta:

PROGRAMMING GUIDELINES	
SURVEY NAME TO APPEAR ON URL	Marketing survey
SAMPLE SOURCE	Panel
7062BRANDING	Standard Savanta branding
BACK BUTTON	No (disabled)
PROGRESS BAR	Yes
LANGUAGES	English
QUOTAS	Total sample US, N=2,000 • Census balanced sample of ethnicity, gender, income, and US region • Minimum sample of 500 people with low nutrition literacy
ESTIMATED TOTAL COMPLETES	N=2,000
IN-SURVEY REDIRECTS	None
SCREEN OUT REDIRECT	Panel links
END REDIRECT	N/A

Objectives

- Measure the wide awareness and usage of Facts up Front Label among US consumers
- Understand the impact of Facts up Front Label on consumer preferences and purchasing behavior
- Evaluate the currently used Facts up Front Label on key parameters – Clarity of information, Ease of use, usefulness in evaluating nutrient contents
- Evaluate the impact of Facts up Front Label on consumer purchase, nutrition
- Evaluate the importance of key components of Facts up Front Label

Section 1: Screening and Profiling

ASK ALL. SINGLE CODE.

QS1. How do you identify yourself?
Please select one option.

Male	1	CONTINUE
Female	2	CONTINUE
Other	98	CONTINUE
Prefer not to answer	99	CONTINUE

ASK ALL. OPEN END. NUMERIC RESPONSE. MAX CHARS=3.

QS2. How old are you?
Please type your answer below.

HIDDEN QUESTION

QS3. Age Bands

RECODE AGE ENTERED AT QS2 INTO APPROPRIATE BAND

Below 18 years	1	SCREEN OUT
18 – 24 years	2	CONTINUE
25-34 years	3	CONTINUE
35-44 years	4	CONTINUE
45-64 years	5	CONTINUE
65 years or older	6	CONTINUE

ASK ALL. DROP DOWN MENUS OF STATES.

QS4. Where in the United States do you live?

HIDDEN QUESTION

QS4a. US Region based on QS4

Northeast	1	CONTINUE
Midwest	2	CONTINUE
South	3	CONTINUE
West	4	CONTINUE

ASK ALL. SINGLE CODE.

QS5. In what type of area do you live in?
Please select one option.

Urban	1	CONTINUE
Suburban	2	CONTINUE
Rural	3	CONTINUE

ASK ALL. SINGLE CODE.

QS6. Which best describes your ethnicity?

Please select one option.

White or Caucasian	1
Black or African American	2
Asian and/or Pacific Islander	3
Native American, Indian or Alaskan Native/Inuit	4
Other (Please specify:____)	98
Prefer not to answer	99

ASK ALL. SINGLE CODE.

QS7. Are you of Hispanic or Latino heritage?

Yes	1
No	2
Prefer not to answer	99

ASK ALL. SINGLE CODE.

QS8. Which of the following categories contains your total annual household income (before taxes and including income from all sources)?

Please select one option.

Less than $25,000	1	CONTINUE
$25,000 - $34,999	2	CONTINUE
$35,000 - $49,999	3	CONTINUE
$50,000 - $74,999	4	CONTINUE
$75,000 - $99,999	5	CONTINUE
$100,000 - $149,999	6	CONTINUE
$150,000 - $199,999	7	CONTINUE
$200,000 and more	8	CONTINUE
Prefer not to say	99	**TERMINATE**

ASK ALL. SINGLE CODE.

QS9. Which of the following describes your responsibility for grocery shopping in your household?

Please select one option.

I am the primary grocery shopper	1	CONTINUE
I share the grocery shopping responsibilities with someone else	2	CONTINUE
I have no involvement in grocery shopping for my household	3	CONTINUE
Prefer not to say	4	CONTINUE

ASK ALL. FILL IN THE BLANK SELECTION.
QS10. This question involves a fill-in-the-blank exercise. From the list below, please select the option that best fits both blank spaces using the corresponding response options lists for blank space "A" and blank space "B".

For a healthy diet, we are advised to eat five _____A_____ of fruits and vegetables each _____B_____.

Answer options for A. RANDOMIZE OPTIONS

Option	Code	Literacy Score
Pieces	1	0
Ounces	2	0
Grams	3	0
Servings	4	1

Answer options for B. RANDOMIZE OPTIONS

Option	Code	Literacy Score
Day	1	1
Morning	2	0
Meal	3	0
Week	4	0

ASK ALL. SINGLE CODE.
QS11. The Nutrition Facts label is often found on the back of a food package. It is the table showing the amount of various nutrients in the food.

If the Nutrition Facts label shows that one serving of the food contains 25% of the Daily Value (or DV) of Sodium, based on this information, would you consider a serving of this product to have a low, medium, or high amount of Sodium?

Option	Code	Literacy Score
Low	1	0
Medium	2	0
High	3	1
Don't know	4	0

Hidden question on Literacy score
HQS11A

Option	Score	Code
Total score based on QS10 + QS11	2 or 3	High Literacy
Total score based on QS10 + QS11	0 or 1	Low Literacy

ASK ALL. SINGLE CODE.
QS12. How do you rate your knowledge about nutrition in general?

Not at all knowledgeable	1
Not very knowledgeable	2
Somewhat knowledgeable	3
Very knowledgeable	4
Extremely knowledgeable	5

Main Questionnaire

Intro: Congratulations, you have qualified for our survey. First, we will be asking you some questions about your shopping behaviors and preferences when purchasing food and beverage products.

ASK ALL. MULTICODE. RANDOMIZE.
Q1. What information do you find important when buying food and beverages for the first time? *Please select all that apply*.

Price	1
Brand name	2
Nutrition Facts label	3
Detailed product information	4
Allergen information	5
Sustainability and eco-friendly traits	6
Recycling information	7
Ingredients	8
Nutrition information	9
Other (Please specify)	98. ANCHOR.

Intro:

On the next screen, you will see some image snapshots and text explaining what the **Facts up Front Label** is. Please make sure to read and review the material carefully before answering the next questions.

PN: SHOW ON NEXT SCREEN

Facts up Front is a voluntary industry-led labelling initiative that summarizes important nutritional information from the Nutrition Facts Panel (found on the back and/or sides of food packaging) in a simple and easy-to-see format directly on the front of food and beverage packaging.

Facts up Front Labels display the number of calories and serving size, along with the specific amount and % Daily Value of saturated fat, sodium and added sugars contained in each serving of a food or beverage product. Some labels may also provide information about other positive nutrients, such as dietary fiber and calcium.

PN: SHOW ON NEXT SCREEN. DISPLAY IMAGES FOR 10 SECONDS BEFORE ALLOWING THE "NEXT" BUTTON TO APPEAR.

Here are some examples of what kind of product information you can find on a **Facts up Front Label**

The four icons are always presented together as a consistent set:

In addition, manufacturers may also include up to two "nutrients to encourage."

These nutrients — dietary fiber, protein, vitamin D, calcium, iron, potassium, vitamin A and vitamin C— are needed to build a "nutrient-dense" diet, as noted in the Dietary Guidelines for Americans, and are highlighted in the Nutrition Facts panel. These "nutrients to encourage" can only be placed on a package when a product contains 10 percent or more of the Daily Value per serving of the nutrient and meets the FDA requirements for a "good source" nutrient content claim.

On small food packages with limited space, one icon may be used, representing calories in a single serving of the food and beverage product.

Section 1: Familiarity and usage of Facts up Front Label

ASK ALL. SINGLE CODE.
Q2. Before today, how familiar were you with the Facts up Front Label?

Please select one option.

I had not seen it/ I did not know about it	I had seen it but didn't know much about it	I knew just a little about it	I knew some about it	I knew it well
1	2	3	4	5

ASK ALL. SINGLE CODE.
Q3. If you see the Facts up Front Label on the front of a package when buying a food or beverage product for the first time, how often do you check the FUF Label?

Please select one option.

Always	5
Most of the time	4
Sometimes	3
Rarely	2
Never	1
I have never seen the Fact up Front Label/ I am not aware of it	99 (Anchor Exclusive)

ASK ALL. SINGLE CODE.
Q4. Have you ever used the information on the Facts up Front Label to decide whether to buy or not buy a packaged food or beverage product?

Please select one option.

Yes	1
No	2
Not Sure	3

ASK ALL. MULTICODE. RANDOMIZE.
Q5. Which of the following pieces of nutritional information do you believe are essential for evaluating the healthfulness of packaged food and beverage products?

Please select all that apply.

Serving Size	1
Calories	2
Total Fat	3
Saturated Fat	4
Trans Fat	5
Cholesterol	6
Sodium	7
Total Carbohydrates	8
Dietary Fiber	9
Total Sugars	10
Added Sugars	11
Protein	12
Vitamin D	13
Calcium	14
Iron	15
Potassium	16
Other (Please specify):_____	98 [ANCHOR]

ASK ALL. SINGLE CODE.
Q6. How easy or difficult is it for you to use the nutritional information on the Facts up Front Label found on consumer-packaged food and beverage products? *Please select one option.*

Very difficult	Somewhat difficult	Neither easy nor difficult	Somewhat easy	Very easy
1	2	3	4	5

ASK ALL. SINGLE CODE.
Q7. How clear or unclear do you find the nutritional information on the Facts up Front Label for consumer-packaged food and beverage products? *Please select one option.*

Very unclear	Somewhat unclear	Neither clear nor unclear	Somewhat clear	Very clear
1	2	3	4	5

ASK ALL. SINGLE CODE.
Q8. How helpful do you find the nutritional information on the Facts up Front Label when buying consumer-packaged food and beverage products? *Please select one option.*

Not at all helpful	Not too helpful	Neutral	Somewhat helpful	Very helpful
1	2	3	4	5

ASK ALL. SINGLE CODE.
Q9. How effectively does the Facts up Front Label communicate the healthfulness of consumer-packaged foods and beverages? *Please select one option.*

Not at all effective	Not too effective	Neutral	Somewhat effective	Very effective
1	2	3	4	5

ASK ALL. SINGLE CODE.
Q10. How satisfied are you with the Facts up Front Label information for consumer-packaged food and beverage products? *Please select one option.*

Not at all satisfied	Not too satisfied	Neither satisfied nor dissatisfied	Somewhat satisfied	Very satisfied
1	2	3	4	5

ASK ALL. SINGLE CODE.
Q11. How sufficient is the information on the Facts up Front labels found on consumer-packaged food and beverage products for making informed decisions about their healthfulness? *Please select one option.*

Not sufficient – There should be more information	It has just the right amount of information	There is too much information
1	2	3

ASK ALL. SINGLE CODE.
Q12. How much do you trust the nutritional information on the Facts Up Front Label on consumer-packaged food and beverage products? *Please select one option.*

Distrust completely	Distrust somewhat	Neither trust nor distrust	Trust somewhat	Trust completely
1	2	3	4	5

ASK ALL. SINGLE CODE.
Q13. How does the Facts up Front Label affect your ability to understand the nutritional details of packaged food and beverage products? *Please select one option.*

Very negatively	Somewhat negatively	Neither positively nor negatively	Somewhat positively	Very positively
1	2	3	4	5

ASK ALL. SINGLE CODE.
Q14. How important is it for you to see each nutrient displayed on the Facts up Front Label for consumer-packaged food and beverage products? *Please select one option.*

Not at all important	Not too important	Neither important nor unimportant	Somewhat important	Very important
1	2	3	4	5

ASK ALL. MULTICODE. RANDOMIZE.
Q15. What information on the Facts up Front Label do you find most valuable? *Please select your top three.*

Calories	1
Saturated Fat	2
Sodium	3
Added Sugar	4
Serving Size	5
Nutrients to encourage (e.g., dietary fiber, protein, vitamin D, calcium, etc.)	6

ASK ALL. SINGLE CODE.
Q16. How likely are you to check the calorie information on a consumer-packaged food and beverage product when making a purchase? *Please select one option.*

Very unlikely	Somewhat unlikely	Neither likely nor unlikely	Somewhat likely	Very likely
1	2	3	4	5

Appendix B

Savanta:

Consumer Perceptions on the Facts Up Front Label

Research Report

June 2025

savanta.com

Table of Contents

Research Objectives and Methodology

Objectives & Methodology

This research aims to measure consumer awareness and usage of the Facts up Front Label among US consumers, providing a comprehensive view of how widely the label is recognized and utilized across the population.

It seeks to understand the influence of the Facts up Front Label on consumer preferences and purchasing behavior, evaluating its effectiveness in supporting informed decision-making at the point of purchase. The study also assesses the label on key parameters, such as the clarity of information it provides, its ease of use, and its usefulness in evaluating nutrient content.

Furthermore, the research evaluates the impact of the Facts up Front Label on both purchase decisions and nutritional choices, as well as the relative importance of the label's key components for consumers.

Sample Details

What:

Online Panel Survey with an LOI of around 5 minutes.

When:

Survey Fieldwork : **May 8th – 23rd 2025**

Audience:

Total sample:

N=2,028 American Adults (18 yo and above)

Comprised of:

- Census balanced sample of ethnicity, gender, income, and US region
- Includes **N=792** with low nutrition literacy*

* Note: Calculation of Nutrition literacy shown on slide 30

Summary of Findings

Awareness and engagement with the Facts up Front label are high among American adults.

01

Nine-in-ten (90%) American adults are aware of the Facts up Front label, demonstrating extensive recognition.

02

Nearly Eight-in-ten (79%) American adults check the Facts up Front label before purchasing new products, showing active engagement at the point of sale.

03

Over six-in-ten (61%) American adults have used the Facts up Front label information to inform their purchasing decisions, highlighting strong practical adoption.

04

More than half (54%) of American adults say the **Nutritional Facts label** is the most important when buying food and beverage for the first time.

American adults focus on calories, sugars, and sodium as key nutrition details, and overwhelmingly value Facts up Front labels for their clarity and optimal level of information.

01

For nutritional information, American adults rank **calories (60%) , total sugars (58%) and sodium** (56%) as the top three most essential nutritional information for evaluating healthfulness of food and beverages.

02

More than three-fourths (77%) of American adults are likely to check calorie information prior to making a purchase.

03

Nearly **three-in-four** (**73%**) American adults feel it's important to see each nutrient displayed on the Facts up Front label when purchasing packaged food and beverage products.

04

Over three-quarters (76%) of American adults believe the Facts up Front label has just the right amount of information.

An overwhelming majority of American adults find the Facts up Front label helpful, trustworthy, easy to use, and well-presented, with clear information that effectively supports healthy purchasing decisions.

01

Helpfulness of the FUF Label in purchase decisions

More than **eight-in-ten (82%)** American adults consider the nutritional information provided on the Facts up Front label **helpful** when purchasing packaged food and beverage products.

02

Effectiveness in conveying healthfulness of foods and beverages

Nearly **eight-in-ten (78%)** American adults believe that the Facts up Front label effectively conveys the **healthfulness** of packaged foods and beverages.

03

Trust in the Nutritional information of the FUF label

Three-quarters (75%) of American adults **trust** the nutritional information on the Facts up Front Label on consumer-packaged food and beverage products.

04

Ease of using nutritional information on the FUF label

Nearly **three-quarters (72%)** of American adults find it **easy to use** the nutritional information provided on the Facts up Front Label of packaged food and beverage products.

05

Clarity of information on the FUF label/satisfaction with content

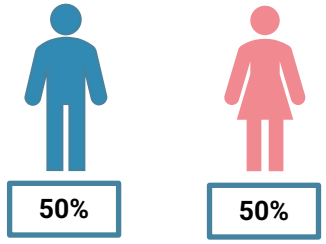
Nearly **eight-in-ten (79%)** American Adults say it is **clear** where to find nutritional information on the Facts up Front Label of consumer-packaged food and beverage products.

Over three-quarters (76%) of American adults are satisfied with both the content and the presentation of the label.

Demographic Profile of Respondents

Demographic Profile of Respondents (1/2)

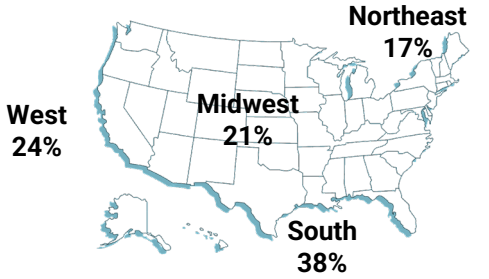
Gender Identity



Age Ranges

18 - 24 years old	12%
25 - 34 years old	17%
35 - 44 years old	18%
45 - 64 years old	33%
65 and over	20%

US Regional Split



Ethnicity

White or Caucasian	63%
Black or African American	13%
Asian and/or Pacific Islander	7%
Native American, Indian or Alaskan Native/Inuit	1%
Other	14%
Prefer not to answer	2%

Hispanic/Latino Heritage

Yes	No
20%	79%

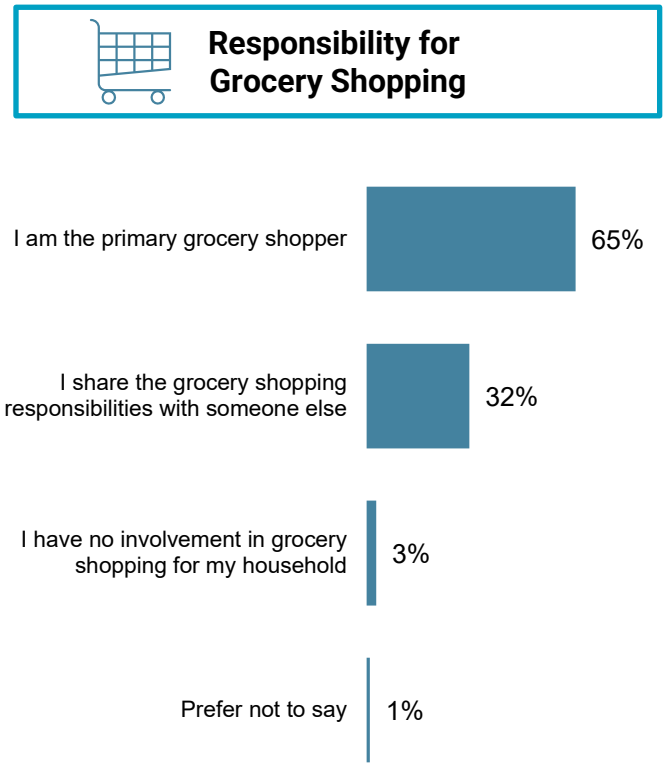
1% selected prefer not to answer

Type of Residence

Suburban	50%
Urban	32%
Rural	17%

QS1. How do you identify yourself? **QS3.** Age Bands **QS4a.** US Region **QS5.** In what type of area do you live in? **QS6.** Which best describes your ethnicity? **QS7.** Are you of Hispanic or Latino heritage?
Base: Total Respondents (n=2028)

Demographic Profile of Respondents (2/2)

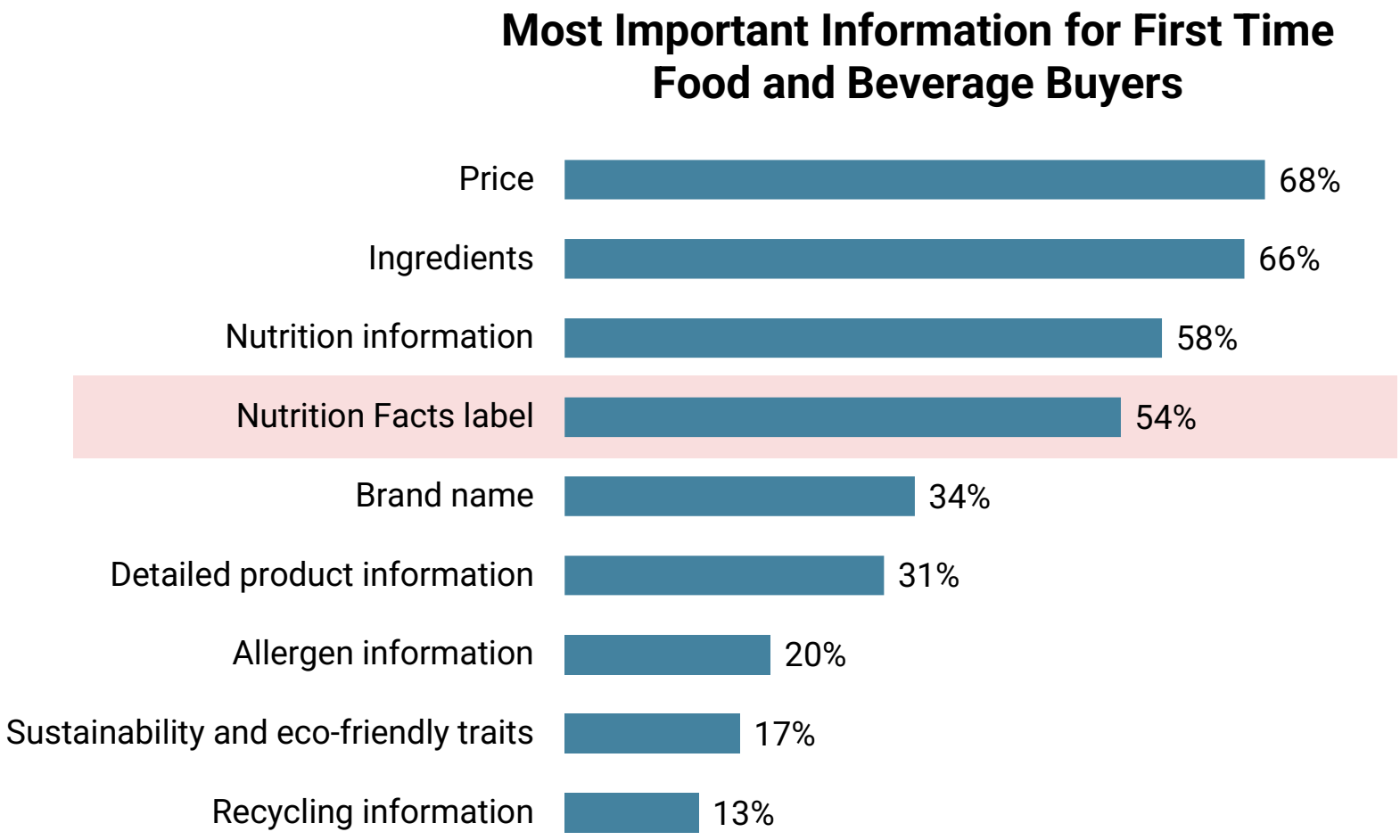


Total Annual Household Income	
Less than $25,000	13%
$25,000 - $34,999	8%
$35,000 - $49,999	8%
$50,000 - $74,999	17%
$75,000 - $99,999	15%
$100,000 - $149,999	19%
$150,000 - $199,999	10%
$200,000 and more	11%

QS8. Which of the following categories contains your total annual household income (before taxes and including income from all sources)? **QS9.** Which of the following describes your responsibility for grocery shopping in your household? **HQS11A.** Hidden question on Literacy Score.
Base: Total Respondents (n=2028)

Key Findings

More than half of American adults find the Nutritional Facts label important when buying food and beverage for the first time.



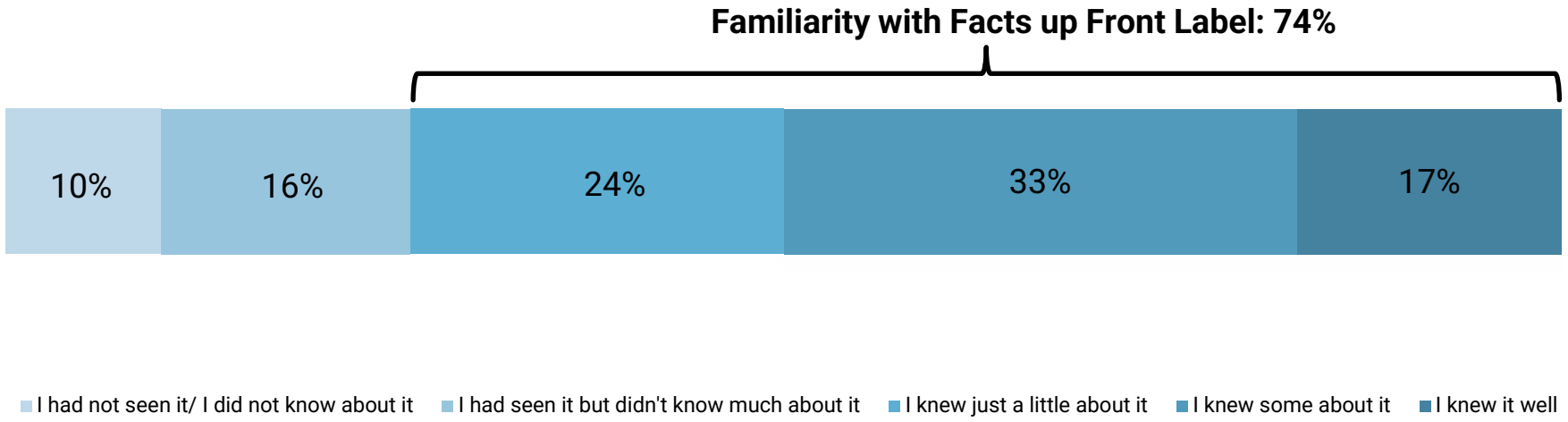
- Those aged less than 35 years old **(48%)** are less likely to find the Nutritional Facts Label important compared to those aged 35 years old and older **(57%).**
- Those with annual HHIs of $49,999 or less **(43%)** are less likely to find the Nutritional Facts Label important compared to higher HHIs.
- Those with High Nutrition Literacy **(60%)** are more likely to find the Nutritional Facts Label important than those with Low Nutrition Literacy **(46%).**

Note: Numbers highlighted in **(Bold) show significant differences** between respective groups at a 95% confidence level

Q1. What information do you find important when buying food and beverages for the first time?
Base: Total Respondents (n=2028)

Nine-in-ten American adults are aware about the Facts up Front Label and about three-fourths are familiar with it.

Familiarity with The Facts up Front Label Before Today



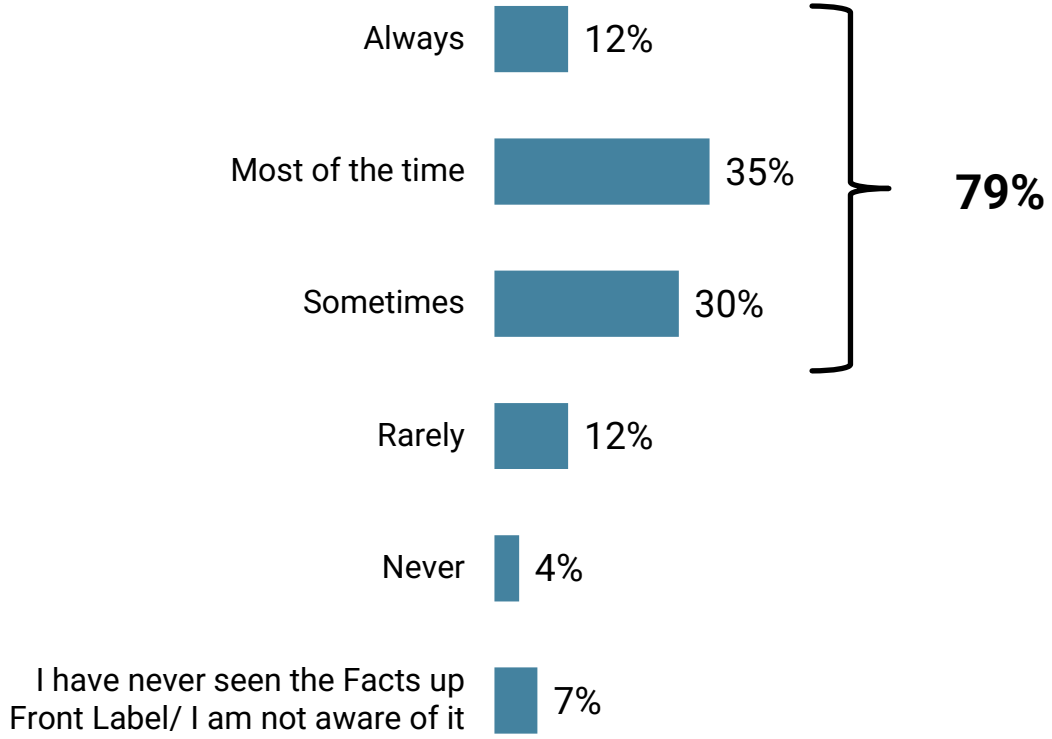
- Familiarity with the Facts up Front label is less likely for those aged 65 years or older **(63%)** compared to all other age groups.

Note: Numbers highlighted in **(Bold) show significant differences** between respective groups at a 95% confidence level

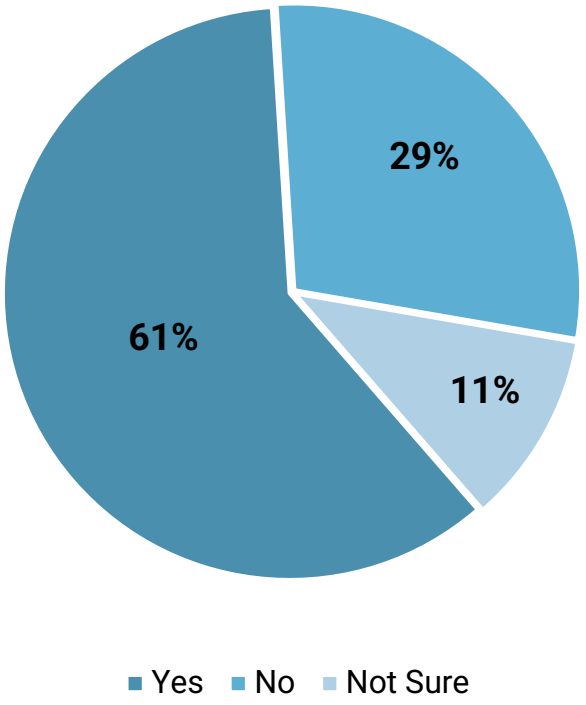
Q2. Before today, how familiar were you with the Facts up Front Label?
Base: Total Respondents (n=2028)

Nearly Eight-in-ten American adults check the Facts up Front label before purchasing new food and beverage products, and over six-in-ten have used the Facts up Front label to inform their purchases.

Shoppers Review the Facts up Front Label on New Products

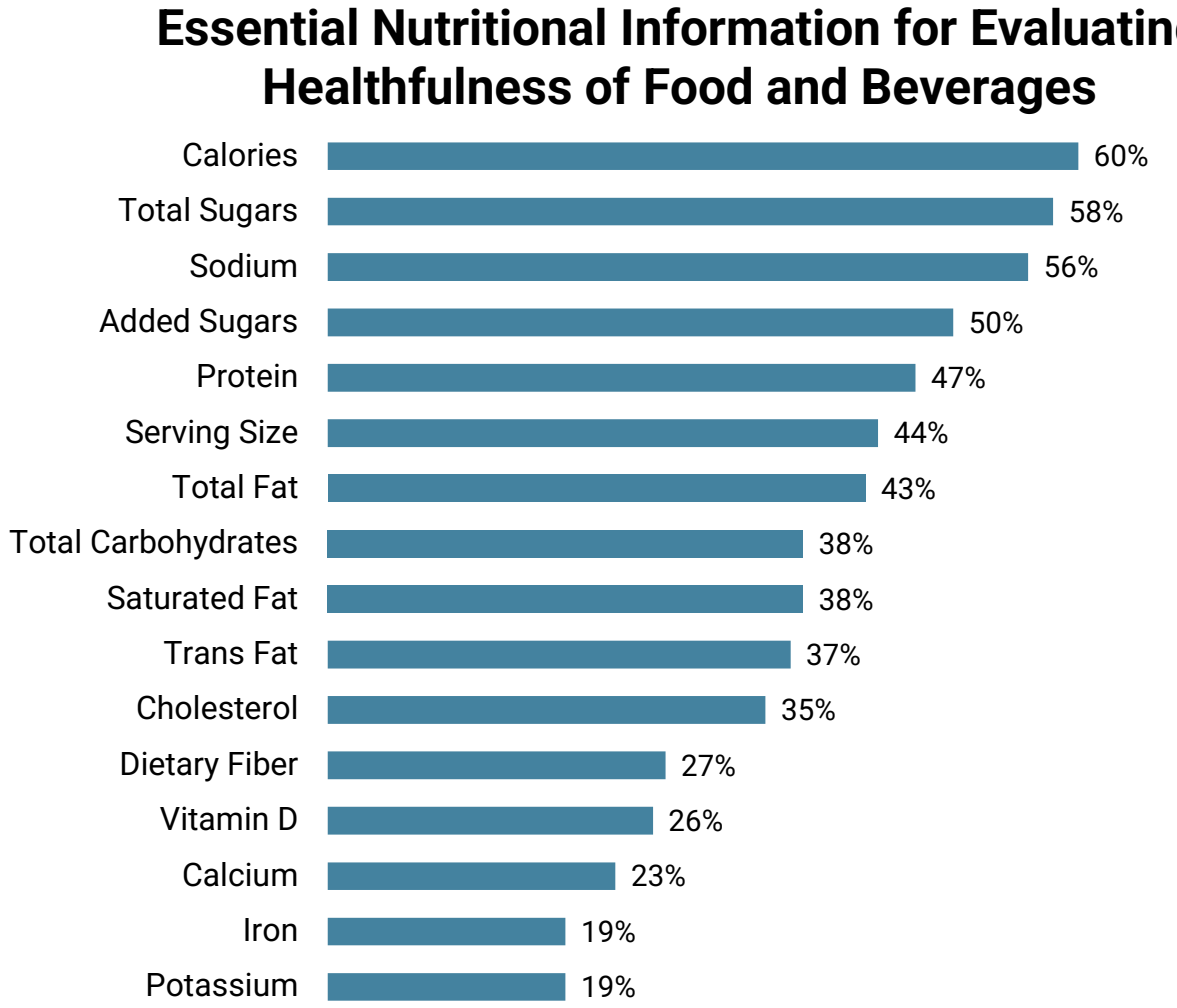


Using Facts up Front Information to Make Purchasing Decision



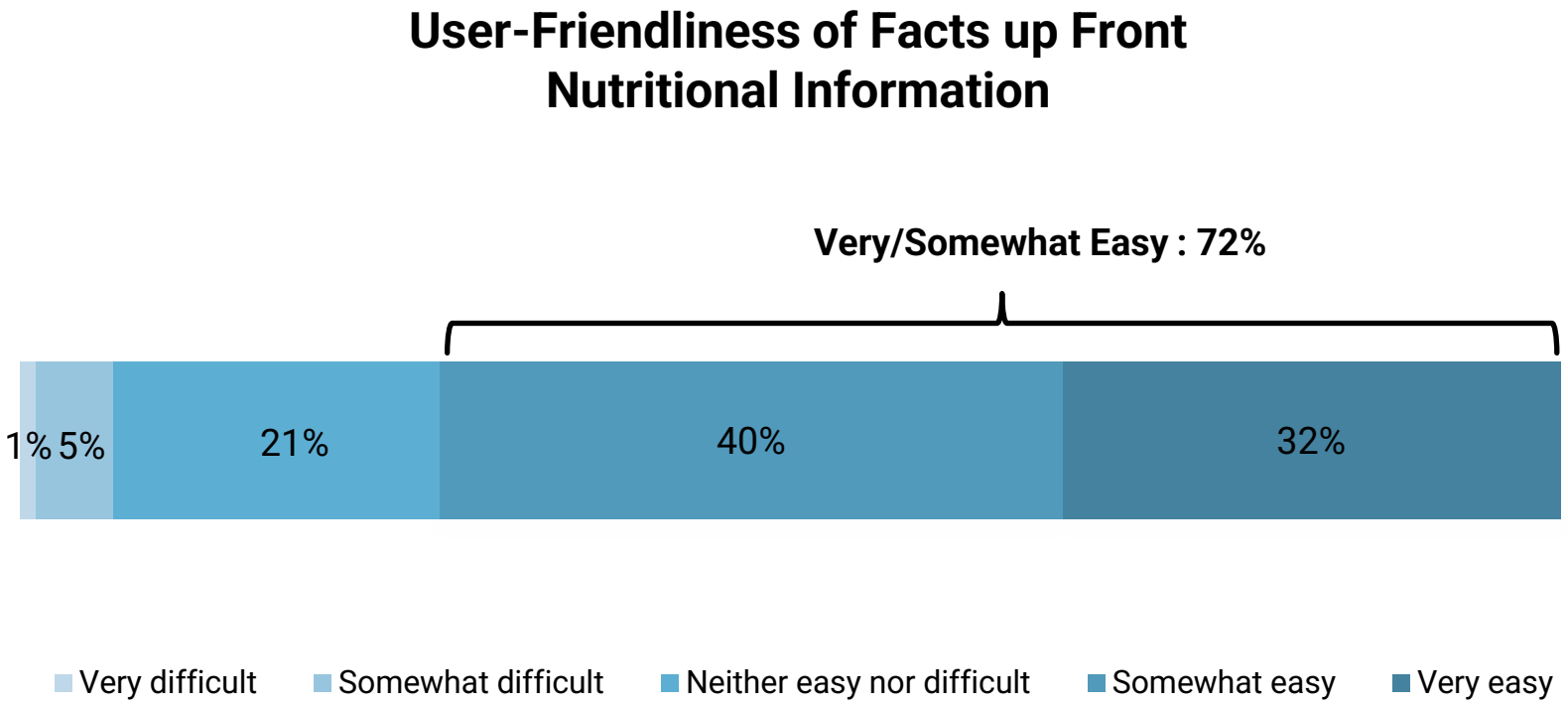
Q3. If you see the Facts up Front Label on the front of a package when buying a food or beverage product for the first time, how often do you check the FUF Label?
Q4. Have you ever used the information on the Facts up Front Label to decide whether to buy or not buy a packaged food or beverage product?
Base: Total Respondents (n=2028)

Calories top the list of important nutritional facts, closely followed by total sugars and sodium, when evaluating the healthfulness of packaged foods and beverages.



Q5. Which of the following pieces of nutritional information do you believe are essential for evaluating the healthfulness of packaged food and beverage products?
Base: Total Respondents (n=2028)

Nearly three-quarters of American adults find it easy to use the nutritional information provided on the Facts up Front Label of packaged food and beverage products.

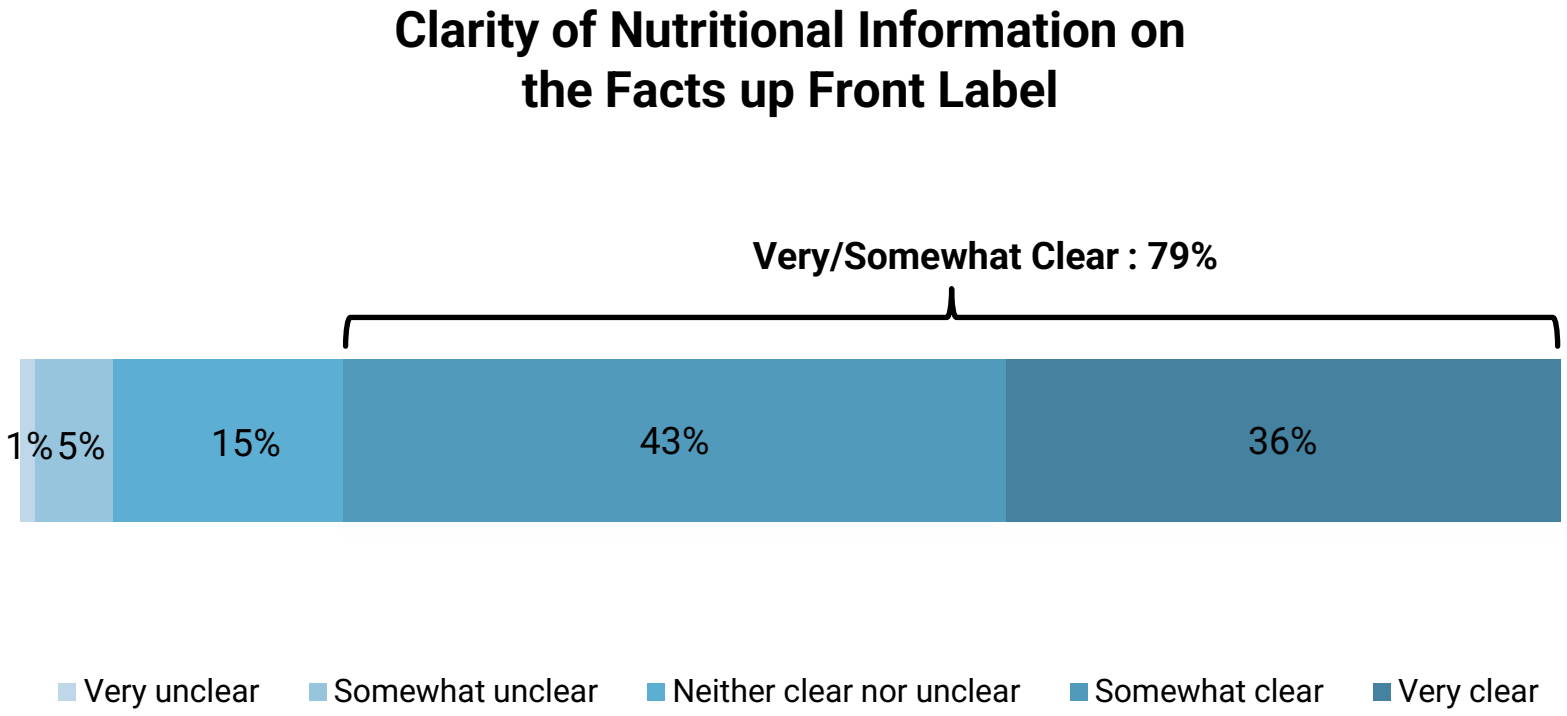


- Those aged 18-24 **(60%)** are less likely to find the FUF label user-friendly compared to all other age groups.
- Those with annual HHIs of $49,999 or less **(60%)** are less likely to find the FUF label user-friendly compared to higher HHIs.
- Those with High Nutrition Literacy **(77%)** are more likely to find the FUF label user-friendly than those with Low Nutrition Literacy **(65%).**
- The White (non-Hispanic) **(76%)** audience is more likely to find the FUF label user-friendly than Black (non-Hispanic) **(66%)** and Hispanic/Latino **(68%)** audiences.

Note: Numbers highlighted in **(Bold) show significant differences** between respective groups at a 95% confidence level

Q6. How easy or difficult is it for you to use the nutritional information on the Facts up Front Label found on consumer-packaged food and beverage products?
Base: Total Respondents (n=2028)

Nearly eight in ten American Adults say it is clear where to find nutritional information on the Facts up Front Label of consumer-packaged food and beverage products.

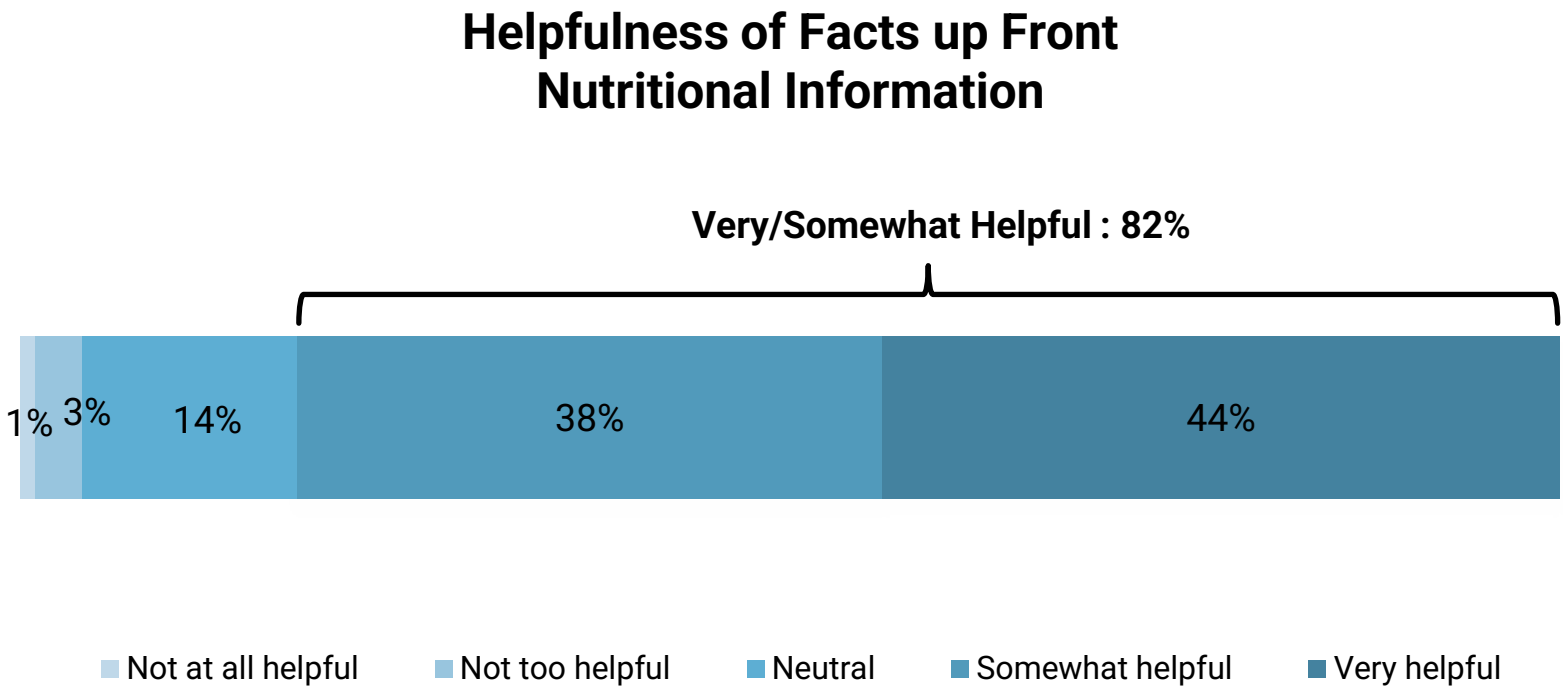


- Those aged 18-24 **(65%)** are less likely to find the FUF label clear compared to all other age groups.
- Those with annual HHIs of $49,999 or less **(67%)** are less likely to find the FUF label clear than higher HHIs.
- Those with High Nutrition Literacy **(84%)** are more likely to find the FUF label clear than those with Low Nutrition Literacy **(62%).**
- The White (non-Hispanic) **(81%)** and Other (non-Hispanic) **(82%)** audiences are more likely to find the FUF label clear than the Black (non-Hispanic) **(69%)** and Hispanic/Latino **(75%)** audiences.

Note: Numbers highlighted in **(Bold) show significant differences** between respective groups at a 95% confidence level

Q7. How clear or unclear do you find the nutritional information on the Facts up Front Label for consumer-packaged food and beverage products?
Base: Total Respondents (n=2028)

More than eight-in-ten American adults consider the nutritional information provided on the Facts up Front label helpful when purchasing packaged food and beverage products.

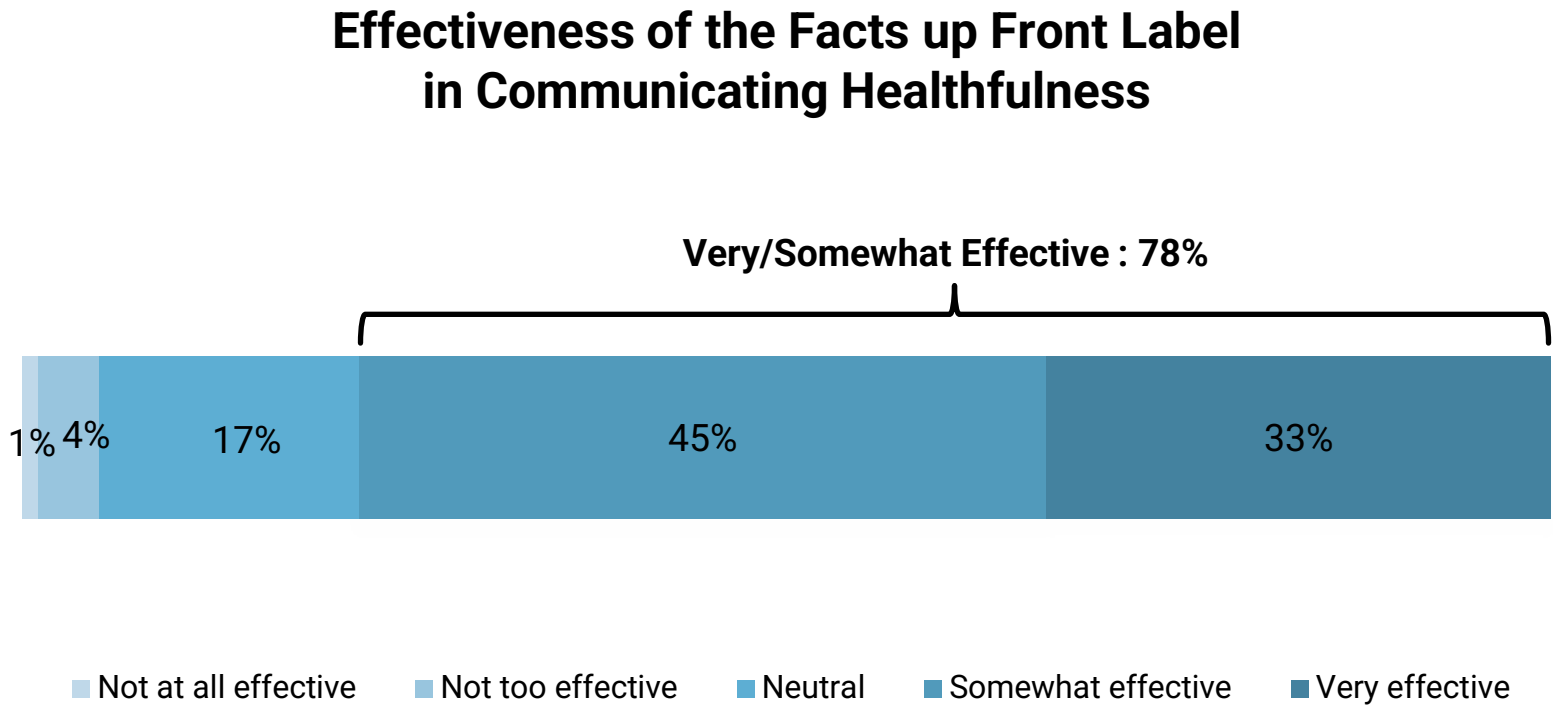


- Those aged 35-44 **(88%)** and 45-64 **(86%)** are more likely to find the FUF label helpful than all other age groups.
- Those with annual HHIs with annual household income of $49,999 or less **(74%)** are less likely to find the FUF label helpful compared to higher HHIs.
- Those with High Nutrition Literacy **(86%)** are more likely to find the FUF label helpful than those with Low Nutrition Literacy **(74%).**
- The White (non-Hispanic) **(83%)** audience is more likely to find the FUF label helpful compared to the Hispanic/Latino **(78%)** audience.

Note: Numbers highlighted in **(Bold) show significant differences** between respective groups at a 95% confidence level

Q8. How helpful do you find the nutritional information on the Facts up Front Label when buying consumer-packaged food and beverage products?
Base: Total Respondents (n=2028)

Nearly eight-in-ten respondents believe that the Facts up Front label effectively conveys the healthfulness of packaged foods and beverages.

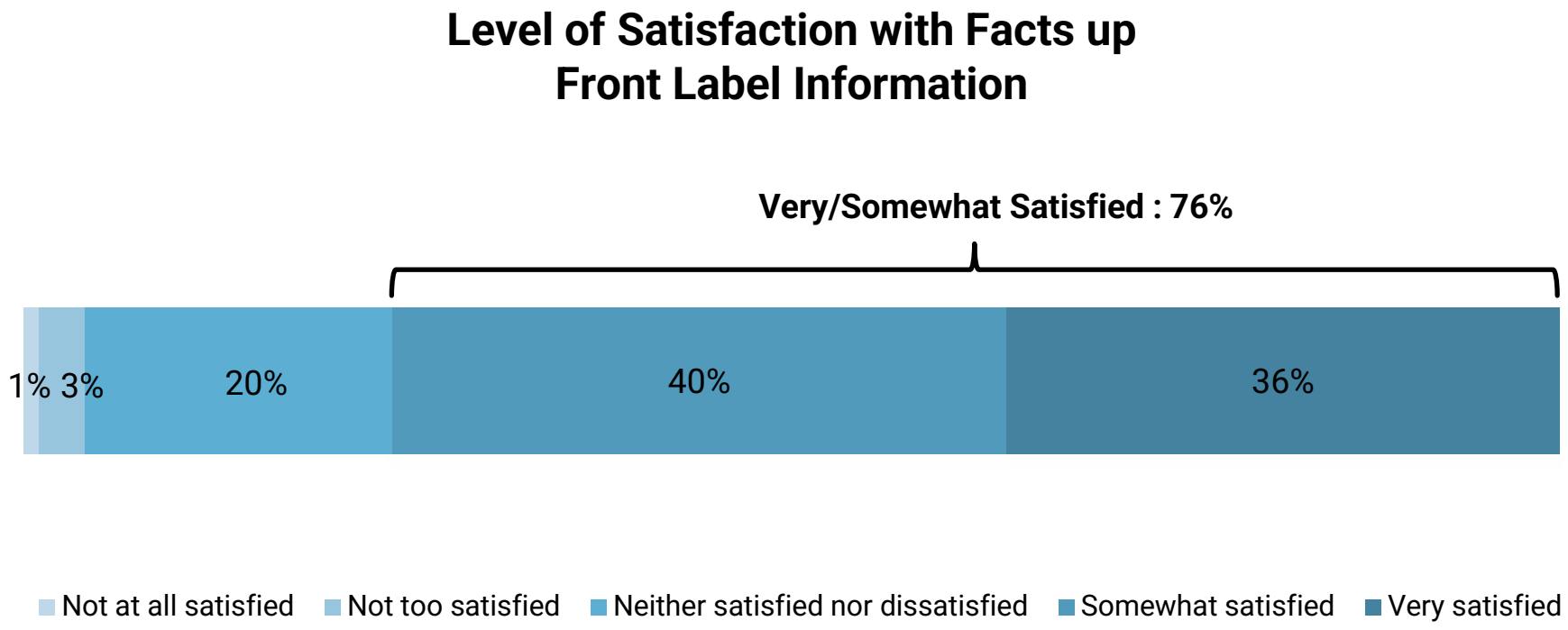


- Those aged 45-64 **(82%)** and 65 years and older **(81%),** are more likely to find the FUF label effective in communicating healthfulness than younger age groups.
- Those with annual HHIs of $49,999 or less **(70%)** are less likely to find the FUF label effective in communicating healthfulness than higher HHIs.
- Those with High Nutrition Literacy **(81%)** are more likely to find the FUF label effective in communicating healthfulness than those with Low Nutrition Literacy **(73%).**
- The White (non-Hispanic) audience **(80%)** is more likely to find the FUF label effective in communicating healthfulness compared to the Black (non-Hispanic) audience **(72%).**

Note: Numbers highlighted in **(Bold) show significant differences** between respective groups at a 95% confidence level

Q9. How effectively does the Facts up Front Label communicate the healthfulness of consumer-packaged foods and beverages?
Base: Total Respondents (n=2028)

More than three-quarters of American adults are satisfied with the information provided by the Facts up Front label on packaged food and beverage products.

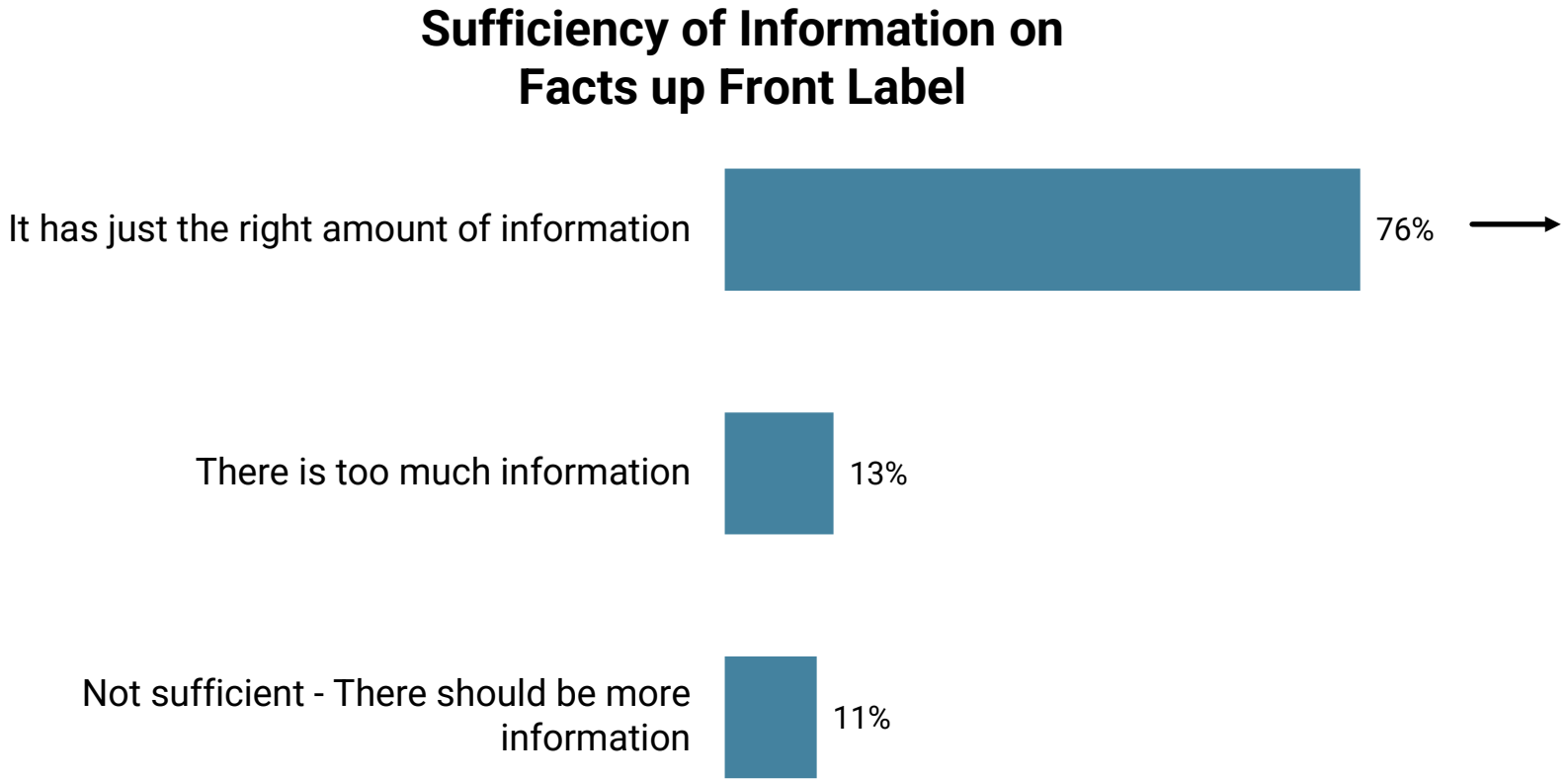


- Those aged 35-44 **(81%)** and 45-64 **(79%)** are more likely to be satisfied with the FUF label information compared to those younger than them.
- Those with annual HHIs of $49,999 or less **(70%)** are less likely to be satisfied with the FUF label information compared to higher HHIs.
- Those with High Nutrition Literacy **(80%)** are more likely to be satisfied with the FUF label information compared to those with Low Nutrition Literacy **(71%).**
- The White (non-Hispanic) audience **(78%)** is more likely to be satisfied with the FUF label information compared to the Black (non-Hispanic) audience **(70%).**

Note: Numbers highlighted in **(Bold) show significant differences** between respective groups at a 95% confidence level

Q10. How satisfied are you with the Facts up Front Label information for consumer-packaged food and beverage products?
Base: Total Respondents (n=2028)

Over three-quarters of American adults believe the Facts up Front label has just the right amount of information.

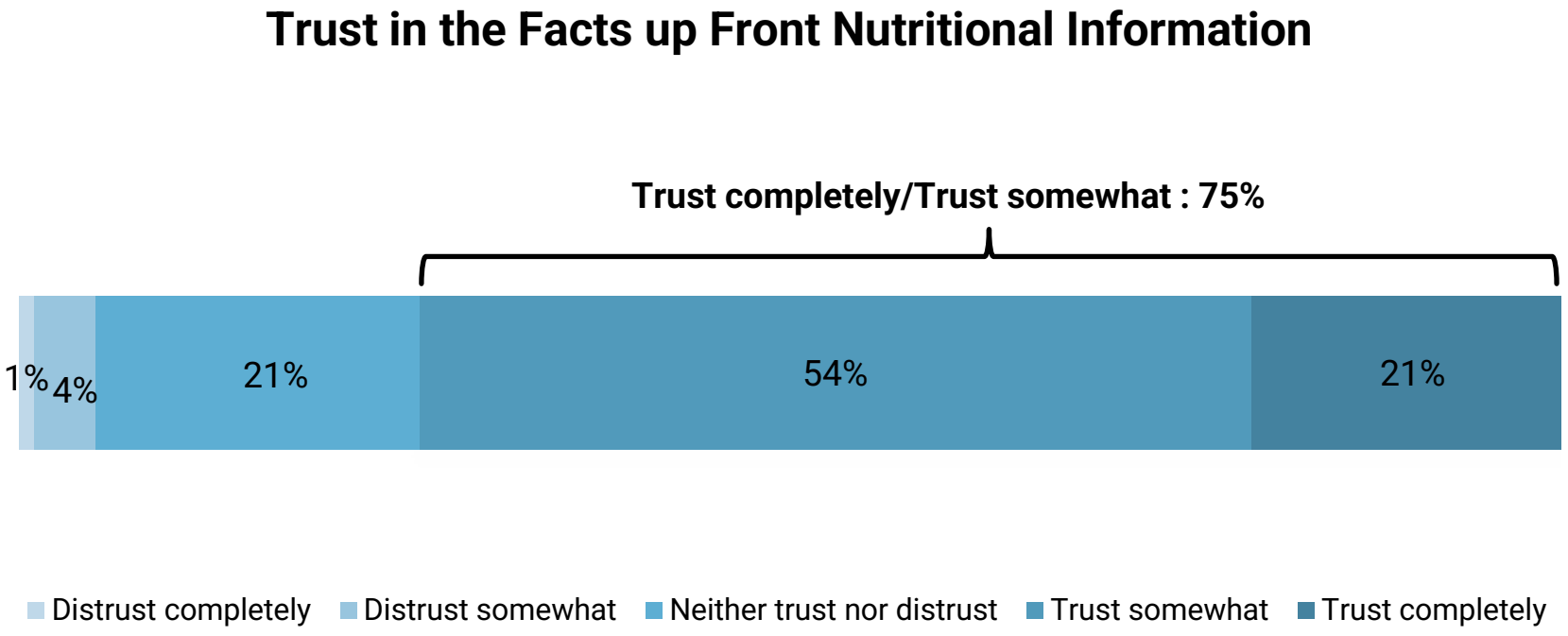


- Those aged 25-34 years old **(70%)** are less likely to find the information on the FUF label to be sufficient compared to those aged 45 and older.
- Those with High Nutrition Literacy **(78%)** are more likely to find the information on the FUF label to be sufficient compared to those with Low Nutrition Literacy **(72%).**

Note: Numbers highlighted in **(Bold) show significant differences** between respective groups at a 95% confidence level

Q11. How sufficient is the information on the Facts up Front Labels found on consumer-packaged food and beverage products for making informed decisions about their healthfulness?
Base: Total Respondents (n=2028)

Three-quarters of American adults trust the nutritional information on the Facts up Front Label on consumer-packaged food and beverage products.

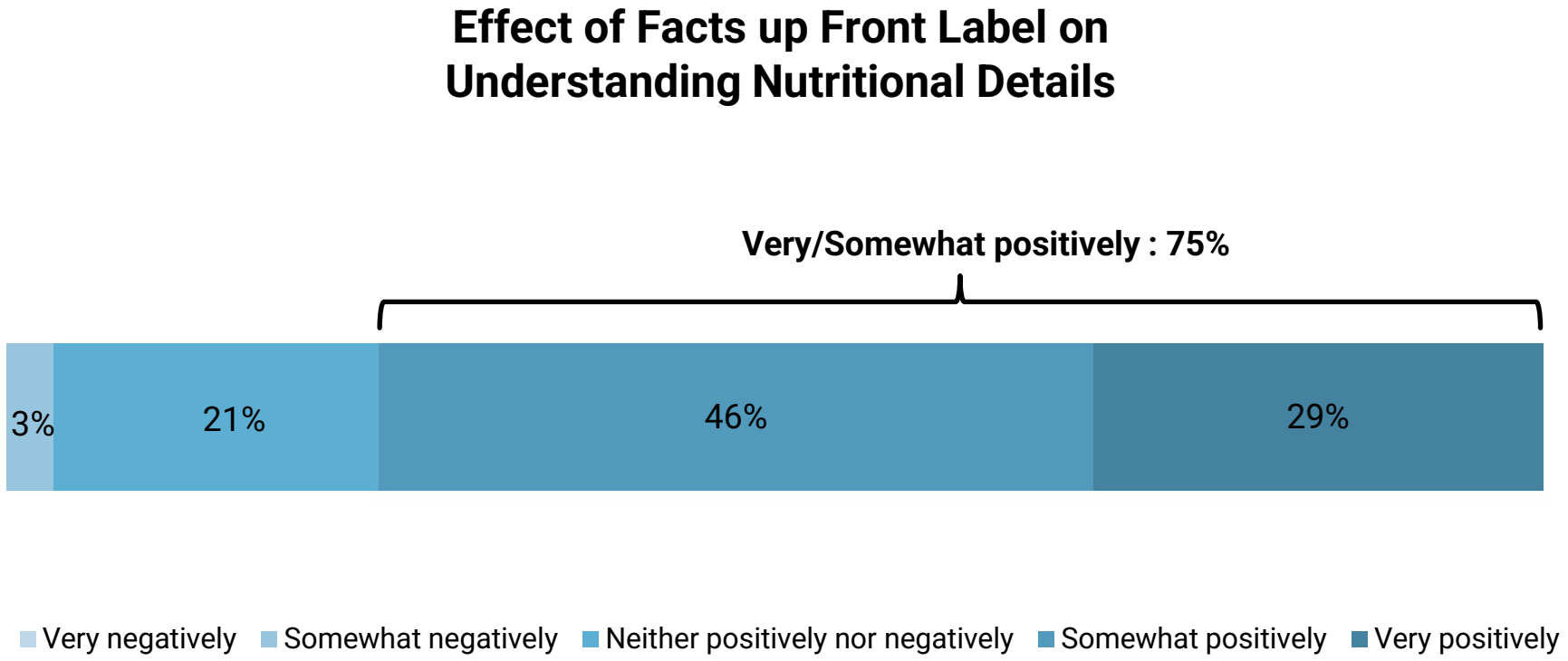


- Those aged 45-64 **(78%)** and 65 years or older **(79%)** are more likely to trust the FUF label compared to those who are younger.
- Those with HHIs of $49,999 or less **(68%)** are less likely to trust the FUF label compared to higher HHIs.
- Those with High Nutrition Literacy **(78%)** are more likely to trust the FUF label compared to those with Low Nutrition Literacy **(69%).**
- The White (non-Hispanic) audience **(79%)** is more likely to trust the FUF label than all other ethnicities except the Asian (non-Hispanic) audience **(77%).**

Note: Numbers highlighted in **(Bold) show significant differences** between respective groups at a 95% confidence level

Q12. How much do you trust the nutritional information on the Facts Up Front Label on consumer-packaged food and beverage products?
Base: Total Respondents (n=2028)

Three-quarters of American adults believe that the Facts up Front Label has a positive impact on their ability to understand the nutritional details of packaged food and beverage products

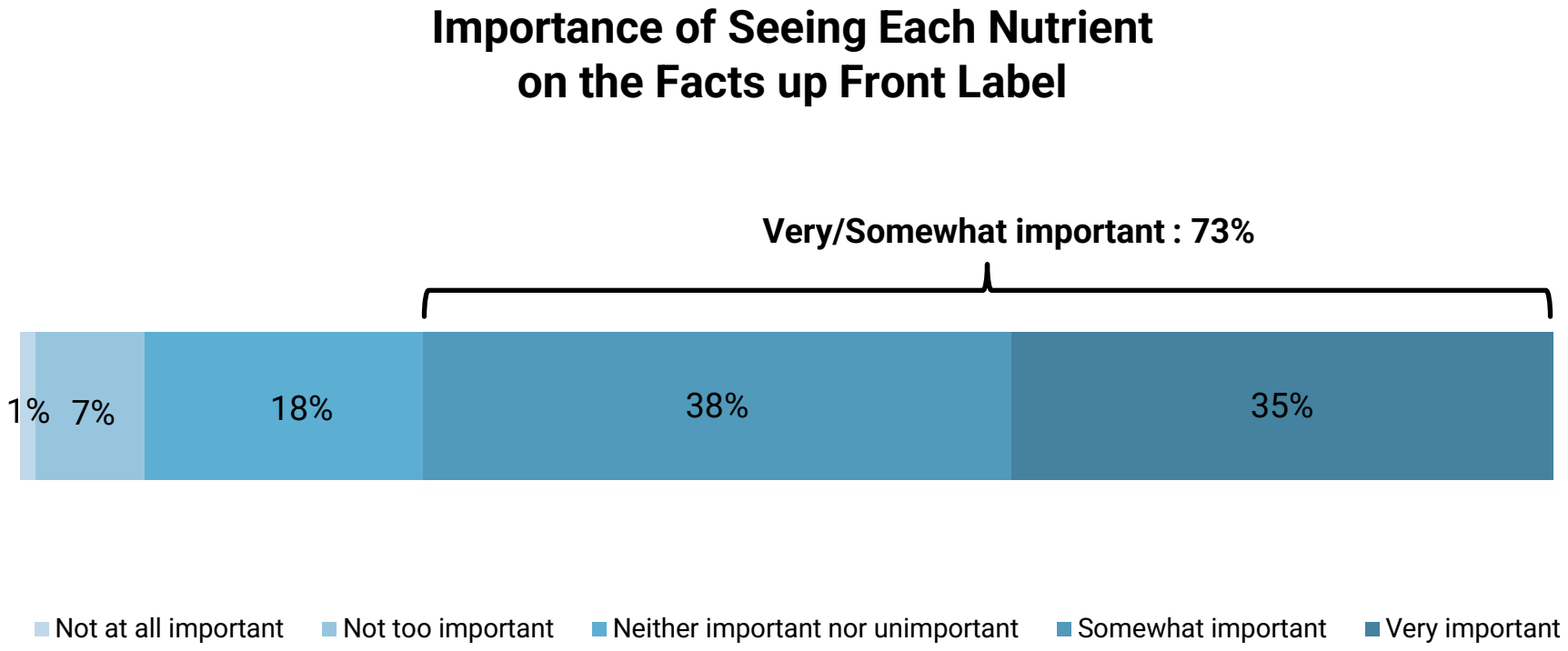


- Those aged 45-64 and 65 years or older (**both 79%**) are more likely to say the FUF label positively affects their ability to understand nutritional details than younger age groups.
- Those with annual HHIs of $49,999 or less **(66%)** are less likely to say the FUF label positively affects their ability to understand nutritional details than higher HHIs.
- Those with High Nutrition Literacy **(78%)** are more likely to say the FUF label positively affects their ability to understand nutritional details than those with Low Nutrition Literacy **(71%).**
- The White (non-Hispanic) audience **(78%)** is more likely to say the FUF label positively affects their ability to understand nutritional details than the Black (non-Hispanic) **(72%)** and Hispanic/Latino **(72%)** audiences.

Note: Numbers highlighted in **(Bold) show significant differences** between respective groups at a 95% confidence level

Q13. How does the Facts up Front Label affect your ability to understand the nutritional details of packaged food and beverage products?
Base: Total Respondents (n=2028)

Nearly three-in-four American adults feel it's important to see each nutrient displayed on the Facts up Front label when purchasing packaged food and beverage products.

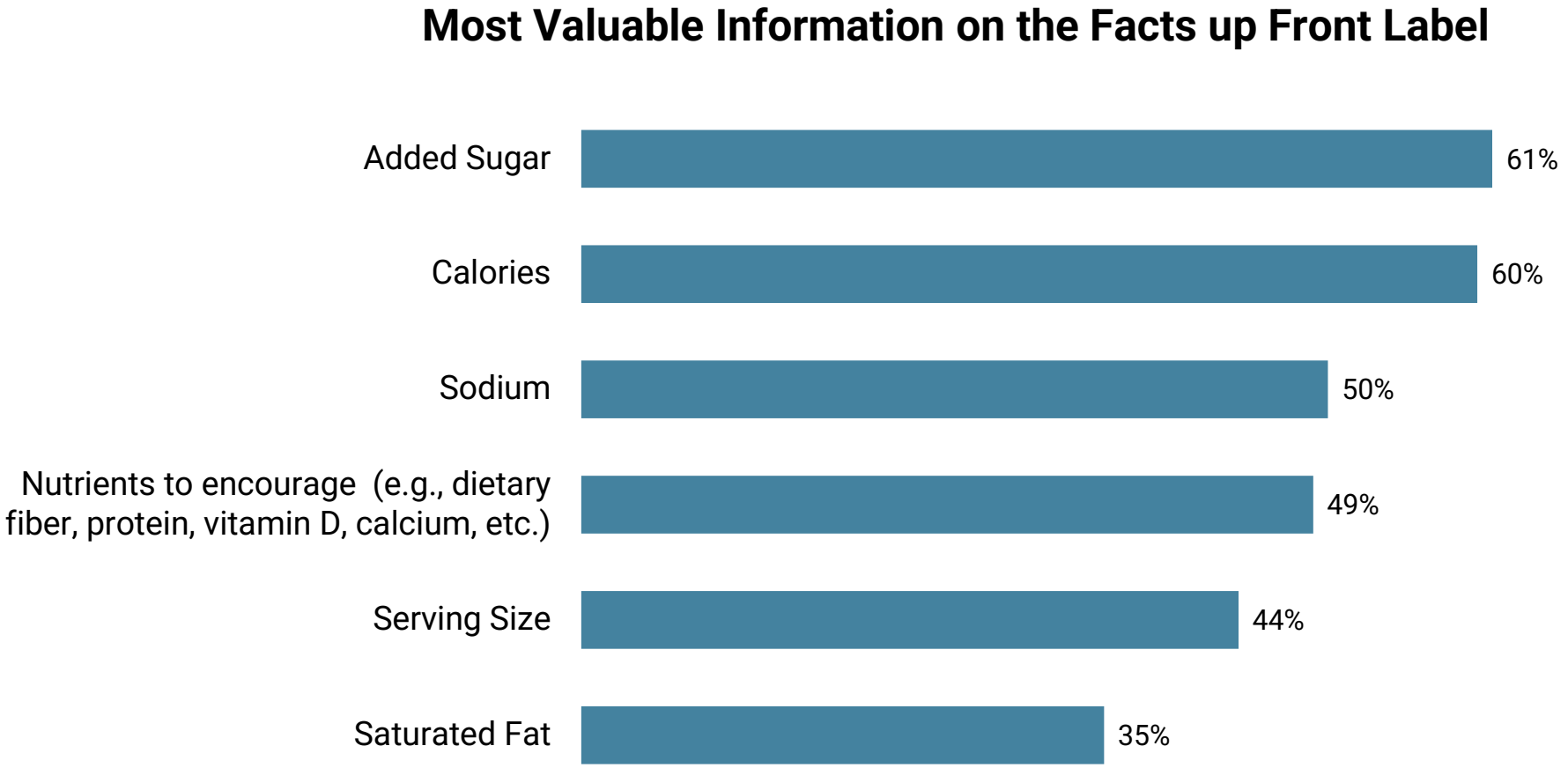


- Those aged 45-64 and 65 years or older **(both 76%)** are more likely to say it is important to see each nutrient displayed on the FUF label compared to those aged 18-34 years old.
- Those with annual HHIs of $49,999 or less **(64%)** are less likely to say it is important to see each nutrient displayed on the FUF label compared than higher HHIs.
- The Asian (non-Hispanic) audience **(82%)** is more likely to say it is important to see each nutrient displayed on the FUF label compared to the Black (non-Hispanic) **(72%)** and Hispanic/Latino **(70%)** audiences.

Note: Numbers highlighted in **(Bold) show significant differences** between respective groups at a 95% confidence level

Q14. How important is it for you to see each nutrient displayed on the Facts up Front Label for consumer-packaged food and beverage products?
Base: Total Respondents (n=2028)

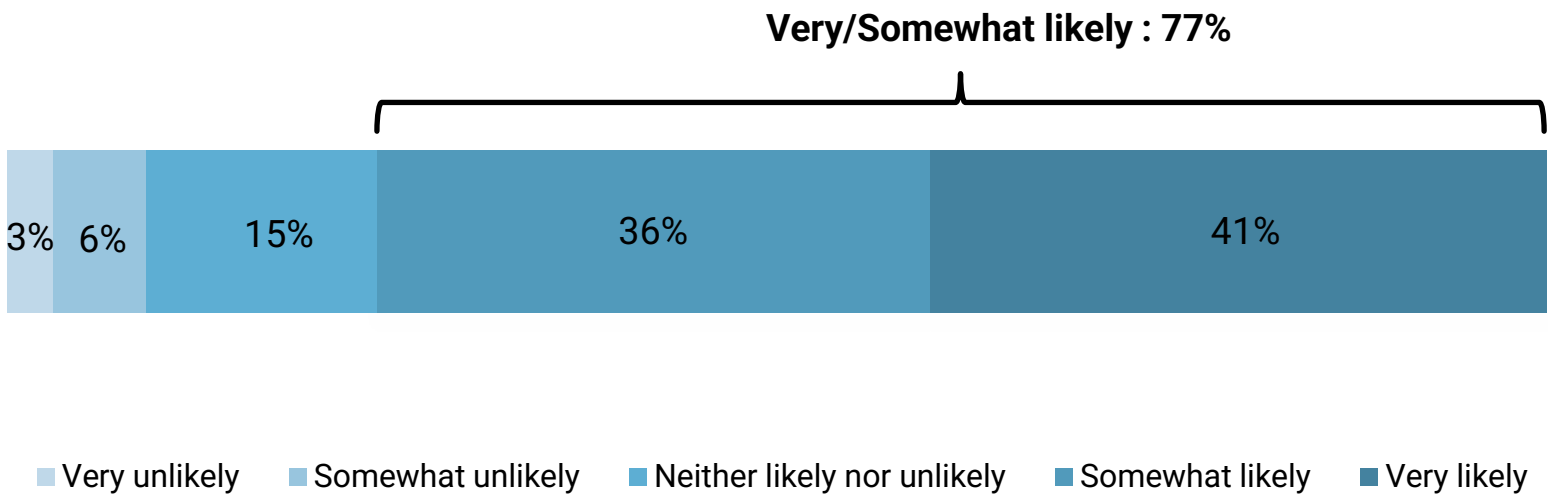
American adults consider added sugar and calories as the most valuable information on the Facts up Front label, closely followed by sodium.



Q15. What information on the Facts up Front Label do you find most valuable?
Base: Total Respondents (n=2028)

More than three-fourths of American adults are likely to check the calorie information when purchasing a packaged food or beverage product.

Likelihood of Checking Calorie Information When Purchasing



- Those aged 45-64 **(80%)** are more likely to check the calorie information of consumer-packaged food and beverages upon purchase than those aged 25-34 **(70%)** and 65 years or older **(75%).**
- HHIs of $49,999 or less **(68%)** are less likely to check the calorie information of consumer-packaged food and beverages upon purchase than higher HHIs.
- Those with High Nutrition Literacy **(79%)** are more likely to check the calorie information of consumer-packaged food and beverages upon purchase than those with Low Nutrition Literacy **(73%).**

Note: Numbers highlighted in **(Bold) show significant differences** between respective groups at a 95% confidence level

Q16. How likely are you to check the calorie information on a consumer-packaged food and beverage product when making a purchase?
Base: Total Respondents (n=2028)

Appendix

“More/Less Likely” = Statistical Significance

When we say that one data cut is more or less likely to be XYZ, what we mean is that the difference is "**statistically significant“.**

We define a result as "**statistically significant**" when there is strong evidence that a difference or relationship observed in the data is unlikely to have occurred by chance.

Specifically, we use a **95% confidence interval** as our standard. This means that if a difference is described as statistically significant, there is less than a 5% probability that it happened randomly, and we can be reasonably confident that the finding reflects a real pattern in the data.

The probability is based on the underlying **statistical tests** applied to the survey data—such as t-tests, z-tests, or chi-square tests—depending on the type of data and comparison being made.

Nutrition Literacy Score Calculation

QS10. For a healthy diet, we are advised to eat five _____A_____ of fruits and vegetables each _____B_____.

Answer options for A

Servings	Score	67%
Pieces	1	13%
Ounces	0	11%
Grams	0	9%

Answer options for B

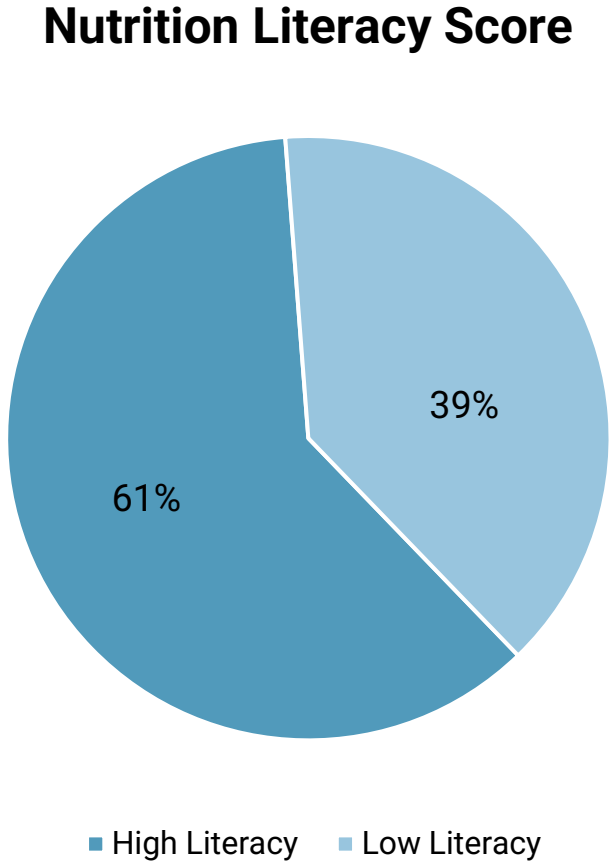
Day	1	71%
Meal	0	15%
Week	0	10%
Morning	0	5%

The Nutrition Literacy Score was based on 3 response options from 2 questions posed to the respondent. For each one they answered correctly, they were given 1 point. Those who scored 2 or 3 points were classified as having high nutrition literacy, and those whose scored 0 or 1, were classified as having low nutrition literacy.

Option	Score	Code
Total score based on QS10 + QS11	2 or 3	**High Literacy**
Total score based on QS10 + QS11	**0 or 1**	**Low Literacy**

QS11. If the Nutrition Facts label shows that one serving of the food contains 25% of the Daily Value (or DV) of Sodium, based on this information, would you consider a serving of this product to have a low, medium, or high amount of Sodium?

High	1	30%
Medium	0	47%
Low	0	18%
Don't know	0	5%



Denotes the correct response for each of the Nutrition Literacy Score questions.

QS10. Answer options for A - This question involves a fill-in-the-blank exercise. From the list below, please select the option that best fits both blank spaces using the corresponding response options lists for blank space "A" and blank space "B". **QS10B.** Answer options for B - This question involves a fill-in-the-blank exercise. From the list below, please select the option that best fits both blank spaces using the corresponding response options lists for blank space "A" and blank space "B". **QS11.** The Nutrition Facts label is often found on the back of a food package. It is the table showing the amount of various nutrients in the food.**HQS11A.** Hidden question on Literacy Score.
Base: Total Respondents (n=2028)

Familiarity with The Facts up Front Label Before Today

	Total	Age					Ethnicity/ Race				
		18-24 years old	25-34 years old	35-44 years old	45-64 years old	65 years or older	White (non-Hispanic)	Black (non-Hispanic)	Asian (non-Hispanic)	Other (non-Hispanic)	Hispanic/ Latino
Base	**2028**	**243**	**349**	**360**	**678**	**398**	**1069**	**219**	**134**	**199**	**400**
I knew it well	17%	21%	20%	23%	15%	11%	17%	20%	13%	17%	18%
I knew some about it	33%	34%	32%	35%	35%	28%	32%	33%	30%	36%	34%
I knew just a little about it	24%	23%	28%	21%	23%	24%	22%	28%	30%	26%	24%
I had seen it but didn't know much about it	16%	15%	16%	14%	17%	16%	16%	16%	17%	16%	16%
I had not seen it/ I did not know about it	10%	7%	4%	7%	10%	21%	14%	3%	10%	6%	8%
I knew well/ knew some about it	50%	55%	52%	58%	50%	39%	49%	53%	43%	53%	52%
I had seen it but didn't know much about it, or had not seen/didn't know about it	26%	22%	20%	21%	27%	37%	29%	19%	27%	22%	24%

	Total	Annual Household Income				Nutrition Literacy	
		$49,999 or less	$50,000-$99,999	$100,000-$149,999	$150,000+	High Literacy	Low Literacy
Base	**2028**	**587**	**646**	**385**	**410**	**1236**	**792**
I knew it well	17%	14%	17%	19%	20%	17%	18%
I knew some about it	33%	33%	35%	34%	29%	32%	34%
I knew just a little about it	24%	25%	24%	23%	22%	22%	27%
I had seen it but didn't know much about it	16%	18%	13%	16%	17%	17%	14%
I had not seen it/ I did not know about it	10%	10%	10%	9%	12%	12%	8%
I knew well/ knew some about it	50%	47%	52%	52%	49%	49%	51%
I had seen it but didn't know much about it, or had not seen/didn't know about it	26%	28%	24%	25%	29%	29%	22%

Q2. Before today, how familiar were you with the Facts up Front Label?

User-Friendliness of the Facts up Front Label

	Total	Age					Ethnicity/ Race				
		18-24 years old	25-34 years old	35-44 years old	45-64 years old	65 years or older	White (non-Hispanic)	Black (non-Hispanic)	Asian (non-Hispanic)	Other (non-Hispanic)	Hispanic/ Latino
Base	**2028**	**243**	**349**	**360**	**678**	**398**	**1069**	**219**	**134**	**199**	**400**
Very easy	32%	18%	30%	32%	40%	29%	35%	26%	25%	37%	28%
Somewhat easy	40%	42%	42%	44%	36%	41%	41%	40%	43%	38%	41%
Neither easy nor difficult	21%	31%	21%	20%	19%	19%	18%	27%	25%	20%	25%
Somewhat difficult	5%	9%	6%	3%	4%	8%	5%	5%	5%	5%	6%
Very difficult	1%	1%	1%	1%	1%	2%	1%	1%	1%	1%	1%
Very/Somewhat Easy	72%	60%	72%	76%	76%	71%	76%	66%	68%	75%	68%
Very/Somewhat Difficult	7%	9%	7%	4%	5%	10%	6%	7%	7%	6%	7%

	Total	Annual Household Income				Nutrition Literacy	
		$49,999 or less	$50,000-99,999	$100,000-149,999	$150,000+	High Literacy	Low Literacy
Base	**2028**	**587**	**646**	**385**	**410**	**1236**	**792**
Very easy	32%	24%	32%	36%	39%	38%	23%
Somewhat easy	40%	36%	41%	43%	42%	39%	42%
Neither easy nor difficult	21%	29%	21%	16%	13%	17%	27%
Somewhat difficult	5%	7%	5%	4%	5%	4%	7%
Very difficult	1%	3%	*%	*%	*%	1%	1%
Very / Somewhat Easy	72%	60%	74%	79%	81%	77%	65%
Very/ Somewhat Difficult	7%	11%	5%	4%	6%	6%	8%

Q6. How easy or difficult is it for you to use the nutritional information on the Facts up Front Label found on consumer-packaged food and beverage products?

Clarity of Nutritional Information on the Facts up Front Label

	Total	Age					Ethnicity/ Race				
		18-24 years old	25-34 years old	35-44 years old	45-64 years old	65 years or older	White (non-Hispanic)	Black (non-Hispanic)	Asian (non-Hispanic)	Other (non-Hispanic)	Hispanic/ Latino
Base	**2028**	**243**	**349**	**360**	**678**	**398**	**1069**	**219**	**134**	**199**	**400**
Very clear	36%	21%	28%	38%	45%	36%	41%	22%	32%	43%	30%
Somewhat clear	43%	44%	45%	43%	39%	45%	41%	47%	46%	39%	45%
Neither clear nor unclear	15%	24%	19%	15%	12%	14%	14%	19%	16%	12%	19%
Somewhat unclear	5%	9%	6%	2%	4%	4%	4%	9%	4%	5%	4%
Very unclear	1%	1%	1%	2%	1%	1%	1%	3%	1%	1%	2%
Very/Somewhat clear	79%	65%	73%	81%	84%	81%	81%	69%	78%	82%	75%
Very/Somewhat unclear	6%	11%	8%	4%	5%	5%	5%	12%	6%	6%	6%

	Total	Annual Household Income				Nutrition Literacy	
		$49,999 or less	$50,000-99,999	$100,000-149,999	$150,000+	High Literacy	Low Literacy
Base	**2028**	**587**	**646**	**385**	**410**	**1236**	**792**
Very clear	36%	28%	38%	40%	42%	42%	26%
Somewhat clear	43%	39%	43%	47%	42%	42%	44%
Neither clear nor unclear	15%	22%	15%	10%	10%	11%	22%
Somewhat unclear	5%	8%	3%	2%	5%	4%	6%
Very unclear	1%	2%	1%	1%	1%	1%	2%
Very/Somewhat clear	79%	67%	80%	87%	84%	84%	70%
Very/Somewhat unclear	6%	10%	4%	2%	6%	5%	8%

Q7. How clear or unclear do you find the nutritional information on the Facts up Front Label for consumer-packaged food and beverage products?

Helpfulness of the Facts up Front Nutritional Information

	Total	Age					Ethnicity/ Race				
		18-24 years old	25-34 years old	35-44 years old	45-64 years old	65 years or older	White (non-Hispanic)	Black (non-Hispanic)	Asian (non-Hispanic)	Other (non-Hispanic)	Hispanic/ Latino
Base	**2028**	**243**	**349**	**360**	**678**	**398**	**1069**	**219**	**134**	**199**	**400**
Very helpful	44%	30%	36%	44%	51%	45%	45%	40%	48%	49%	40%
Somewhat helpful	38%	42%	40%	43%	34%	35%	38%	40%	35%	34%	38%
Neutral	14%	19%	18%	10%	11%	15%	13%	14%	15%	12%	17%
Not too helpful	3%	7%	5%	2%	2%	3%	3%	5%	2%	5%	4%
Not at all helpful	1%	1%	1%	1%	1%	2%	1%	2%	0%	1%	1%
Very/Somewhat helpful	82%	72%	75%	88%	86%	81%	83%	79%	83%	83%	78%
Not too/Not at all helpful	5%	8%	7%	3%	3%	4%	4%	6%	2%	6%	5%

	Total	Annual Household Income				Nutrition Literacy	
		$49,999 or less	$50,000-99,999	$100,000-149,999	$150,000+	High Literacy	Low Literacy
Base	**2028**	**587**	**646**	**385**	**410**	**1236**	**792**
Very helpful	44%	36%	43%	47%	53%	49%	35%
Somewhat helpful	38%	38%	40%	37%	35%	37%	39%
Neutral	14%	19%	14%	12%	8%	10%	19%
Not too helpful	3%	5%	3%	3%	3%	3%	5%
Not at all helpful	1%	2%	1%	1%	1%	1%	1%
Very/Somewhat helpful	82%	74%	83%	84%	88%	86%	74%
Not too/Not at all helpful	5%	7%	3%	4%	4%	4%	6%

Q8. How helpful do you find the nutritional information on the Facts up Front Label when buying consumer-packaged food and beverage products?

Effectiveness of the Facts up Front Label in Communicating Healthfulness

	Total	Age					Ethnicity/ Race				
		18-24 years old	25-34 years old	35-44 years old	45-64 years old	65 years or older	White (non-Hispanic)	Black (non-Hispanic)	Asian (non-Hispanic)	Other (non-Hispanic)	Hispanic/ Latino
Base	**2028**	**243**	**349**	**360**	**678**	**398**	**1069**	**219**	**134**	**199**	**400**
Very effective	33%	28%	29%	33%	39%	31%	35%	30%	29%	32%	31%
Somewhat effective	45%	44%	44%	44%	43%	50%	45%	42%	46%	44%	45%
Neutral	17%	21%	20%	18%	15%	15%	15%	21%	19%	18%	18%
Not too effective	4%	5%	7%	6%	3%	4%	4%	5%	7%	4%	4%
Not at all effective	1%	1%	1%	1%	1%	1%	*%	2%	0%	2%	2%
Very/Somewhat effective	78%	72%	72%	76%	82%	81%	80%	72%	75%	76%	76%
Not too/Not at all effective	5%	7%	8%	6%	4%	5%	4%	7%	7%	6%	6%

	Total	Annual Household Income				Nutrition Literacy	
		$49,999 or less	$50,000-99,999	$100,000-149,999	$150,000+	High Literacy	Low Literacy
Base	**2028**	**587**	**646**	**385**	**410**	**1236**	**792**
Very effective	33%	27%	35%	32%	40%	35%	30%
Somewhat effective	45%	43%	44%	52%	40%	46%	42%
Neutral	17%	22%	17%	11%	14%	15%	20%
Not too effective	4%	6%	4%	4%	4%	3%	6%
Not at all effective	1%	2%	*%	1%	1%	1%	1%
Very/Somewhat effective	78%	70%	79%	85%	81%	81%	73%
Not too/Not at all effective	5%	8%	4%	4%	5%	4%	7%

Q9. How effectively does the Facts up Front Label communicate the healthfulness of consumer-packaged foods and beverages?

Level of Satisfaction with Facts up Front Label Information

	Total	Age					Ethnicity/ Race				
		18-24 years old	25-34 years old	35-44 years old	45-64 years old	65 years or older	White (non-Hispanic)	Black (non-Hispanic)	Asian (non-Hispanic)	Other (non-Hispanic)	Hispanic/ Latino
Base	**2028**	**243**	**349**	**360**	**678**	**398**	**1069**	**219**	**134**	**199**	**400**
Very satisfied	36%	27%	32%	35%	41%	38%	38%	33%	34%	38%	35%
Somewhat satisfied	40%	44%	39%	45%	37%	39%	41%	37%	45%	37%	41%
Neither satisfied nor dissatisfied	20%	23%	25%	17%	18%	20%	18%	24%	19%	20%	22%
Not too satisfied	3%	5%	3%	2%	3%	3%	3%	5%	3%	5%	2%
Not at all satisfied	1%	1%	1%	1%	1%	1%	1%	1%	0%	1%	2%
Very/Somewhat satisfied	76%	71%	71%	81%	79%	77%	78%	70%	78%	75%	75%
Not too/Not at all satisfied	4%	6%	4%	3%	4%	3%	3%	6%	3%	5%	3%

	Total	Annual Household Income				Nutrition Literacy	
		$49,999 or less	$50,000-99,999	$100,000-149,999	$150,000+	High Literacy	Low Literacy
Base	**2028**	**587**	**646**	**385**	**410**	**1236**	**792**
Very satisfied	36%	30%	37%	36%	44%	39%	32%
Somewhat satisfied	40%	40%	43%	41%	37%	41%	39%
Neither satisfied nor dissatisfied	20%	25%	18%	20%	16%	17%	25%
Not too satisfied	3%	4%	2%	3%	2%	3%	3%
Not at all satisfied	1%	2%	*%	*%	1%	*%	1%
Very/Somewhat satisfied	76%	70%	80%	77%	80%	80%	71%
Not too/Not at all satisfied	4%	5%	3%	3%	3%	4%	4%

 Q10. How satisfied are you with the Facts up Front Label information for consumer-packaged food and beverage products?

Sufficiency of Information on the Facts up Front Label

	Total	Age					Ethnicity/ Race				
		18-24 years old	25-34 years old	35-44 years old	45-64 years old	65 years or older	White (non-Hispanic)	Black (non-Hispanic)	Asian (non-Hispanic)	Other (non-Hispanic)	Hispanic/ Latino
Base	**2028**	**243**	**349**	**360**	**678**	**398**	**1069**	**219**	**134**	**199**	**400**
Not sufficient - There should be more information	11%	9%	10%	8%	12%	15%	12%	9%	19%	16%	7%
It has just the right amount of information	76%	74%	70%	73%	78%	80%	76%	72%	74%	77%	76%
There is too much information	13%	18%	20%	19%	10%	5%	12%	19%	7%	7%	17%

	Total	Annual Household Income				Nutrition Literacy	
		$49,999 or less	$50,000-99,999	$100,000-149,999	$150,000+	High Literacy	Low Literacy
Base	**2028**	**587**	**646**	**385**	**410**	**1236**	**792**
Not sufficient - There should be more information	11%	11%	11%	9%	13%	13%	8%
It has just the right amount of information	76%	74%	78%	76%	73%	78%	72%
There is too much information	13%	14%	11%	14%	14%	9%	20%

Q11. How sufficient is the information on the Facts up Front Labels found on consumer-packaged food and beverage products for making informed decisions about their healthfulness?

Trust in the Facts up Front Nutritional Information

	Total	Age					Ethnicity/ Race				
		18-24 years old	25-34 years old	35-44 years old	45-64 years old	65 years or older	White (non-Hispanic)	Black (non-Hispanic)	Asian (non-Hispanic)	Other (non-Hispanic)	Hispanic/ Latino
Base	**2028**	**243**	**349**	**360**	**678**	**398**	**1069**	**219**	**134**	**199**	**400**
Trust completely	21%	16%	19%	23%	23%	20%	23%	16%	16%	14%	21%
Trust somewhat	54%	49%	51%	53%	56%	59%	56%	49%	61%	54%	52%
Neither trust nor distrust	21%	29%	24%	20%	17%	19%	17%	29%	18%	26%	23%
Distrust somewhat	4%	6%	5%	3%	3%	2%	3%	6%	5%	5%	4%
Distrust completely	1%	0%	1%	1%	1%	*%	1%	0%	0%	1%	1%
Trust completely/ somewhat	75%	65%	70%	76%	78%	79%	79%	65%	77%	68%	73%
Distrust completely/ somewhat	4%	6%	6%	4%	4%	2%	4%	6%	5%	6%	5%

	Total	Annual Household Income				Nutrition Literacy	
		$49,999 or less	$50,000-99,999	$100,000-149,999	$150,000+	High Literacy	Low Literacy
Base	**2028**	**587**	**646**	**385**	**410**	**1236**	**792**
Trust completely	21%	19%	19%	21%	26%	21%	20%
Trust somewhat	54%	50%	56%	57%	56%	58%	49%
Neither trust nor distrust	21%	27%	22%	16%	14%	17%	26%
Distrust somewhat	4%	3%	3%	5%	3%	4%	4%
Distrust completely	1%	1%	*%	1%	1%	1%	1%
Trust completely/ somewhat	75%	68%	75%	78%	82%	78%	69%
Distrust completely/ somewhat	4%	4%	4%	6%	5%	4%	5%

Q12. How much do you trust the nutritional information on the Facts Up Front Label on consumer-packaged food and beverage products?

Facts up Front Label's Effect on Understanding Nutritional Details

	Total	Age					Ethnicity/ Race				
		18-24 years old	25-34 years old	35-44 years old	45-64 years old	65 years or older	White (non-Hispanic)	Black (non-Hispanic)	Asian (non-Hispanic)	Other (non-Hispanic)	Hispanic/ Latino
Base	**2028**	**243**	**349**	**360**	**678**	**398**	**1069**	**219**	**134**	**199**	**400**
Very positively	29%	21%	29%	29%	32%	30%	30%	26%	28%	27%	30%
Somewhat positively	46%	45%	42%	48%	47%	50%	48%	47%	47%	46%	42%
Neither positively nor negatively	21%	28%	23%	21%	19%	20%	19%	25%	22%	25%	23%
Somewhat negatively	3%	7%	5%	1%	2%	1%	2%	3%	2%	3%	4%
Very negatively	*%	0%	1%	1%	*%	*%	*%	0%	1%	1%	1%
Very/Somewhat positively	76%	66%	70%	77%	79%	79%	78%	72%	75%	72%	72%
Very/Somewhat negatively	3%	7%	6%	2%	3%	1%	3%	3%	3%	3%	5%

	Total	Annual Household Income				Nutrition Literacy	
		$49,999 or less	$50,000-99,999	$100,000-149,999	$150,000+	High Literacy	Low Literacy
Base	**2028**	**587**	**646**	**385**	**410**	**1236**	**792**
Very positively	29%	22%	29%	30%	39%	30%	28%
Somewhat positively	46%	44%	48%	52%	42%	48%	43%
Neither positively nor negatively	21%	28%	21%	16%	16%	20%	24%
Somewhat negatively	3%	5%	2%	2%	2%	2%	4%
Very negatively	*%	1%	*%	*%	*%	*%	1%
Very/Somewhat positively	76%	66%	77%	82%	81%	78%	71%
Very/Somewhat negatively	3%	6%	2%	2%	3%	2%	5%

Q13. How does the Facts up Front Label affect your ability to understand the nutritional details of packaged food and beverage products?

Importance of Seeing Each Nutrient on the Facts up Front Label

	Total	Age					Ethnicity/ Race				
		18-24 years old	25-34 years old	35-44 years old	45-64 years old	65 years or older	White (non-Hispanic)	Black (non-Hispanic)	Asian (non-Hispanic)	Other (non-Hispanic)	Hispanic/ Latino
Base	**2028**	**243**	**349**	**360**	**678**	**398**	**1069**	**219**	**134**	**199**	**400**
Very important	35%	32%	29%	38%	38%	37%	34%	37%	41%	38%	34%
Somewhat important	38%	36%	40%	38%	38%	39%	40%	35%	41%	35%	36%
Neither important nor unimportant	18%	21%	22%	19%	17%	14%	17%	21%	13%	19%	21%
Not too important	7%	8%	8%	4%	7%	8%	7%	6%	4%	7%	7%
Not at all important	1%	2%	1%	1%	1%	2%	1%	1%	1%	2%	2%
Very/Somewhat important	74%	68%	69%	75%	76%	76%	74%	72%	82%	73%	70%
Not too/Not at all important	8%	11%	9%	6%	8%	10%	9%	7%	5%	8%	9%

	Total	Annual Household Income				Nutrition Literacy	
		$49,999 or less	$50,000-99,999	$100,000-149,999	$150,000+	High Literacy	Low Literacy
Base	**2028**	**587**	**646**	**385**	**410**	**1236**	**792**
Very important	35%	29%	37%	39%	38%	34%	37%
Somewhat important	38%	35%	39%	40%	40%	41%	34%
Neither important nor unimportant	18%	25%	17%	13%	15%	17%	21%
Not too important	7%	8%	6%	6%	6%	7%	6%
Not at all important	1%	3%	1%	1%	1%	1%	2%
Very/Somewhat important	74%	64%	76%	79%	78%	75%	71%
Not too/Not at all important	8%	11%	7%	8%	7%	8%	8%

Q14. How important is it for you to see each nutrient displayed on the Facts up Front Label for consumer-packaged food and beverage products?

Likelihood of Checking Calorie Information When Purchasing

	Total	Age					Ethnicity/ Race				
		18-24 years old	25-34 years old	35-44 years old	45-64 years old	65 years or older	White (non-Hispanic)	Black (non-Hispanic)	Asian (non-Hispanic)	Other (non-Hispanic)	Hispanic/ Latino
Base	**2028**	**243**	**349**	**360**	**678**	**398**	**1069**	**219**	**134**	**199**	**400**
Very likely	41%	32%	37%	42%	46%	39%	42%	38%	44%	42%	37%
Somewhat likely	36%	44%	33%	38%	35%	36%	36%	38%	30%	33%	40%
Neither likely nor unlikely	15%	15%	19%	14%	13%	14%	13%	16%	19%	18%	14%
Somewhat unlikely	6%	6%	7%	4%	4%	9%	6%	6%	5%	3%	6%
Very unlikely	3%	3%	3%	2%	3%	3%	3%	1%	2%	5%	3%
Very/Somewhat likely	77%	76%	70%	80%	80%	75%	78%	76%	74%	74%	77%
Very/Somewhat unlikely	8%	9%	10%	6%	7%	12%	9%	7%	7%	8%	9%

	Total	Annual Household Income				Nutrition Literacy	
		$49,999 or less	$50,000-99,999	$100,000-149,999	$150,000+	High Literacy	Low Literacy
Base	**2028**	**587**	**646**	**385**	**410**	**1236**	**792**
Very likely	41%	29%	46%	44%	47%	44%	36%
Somewhat likely	36%	40%	35%	35%	35%	36%	37%
Neither likely nor unlikely	15%	21%	12%	12%	12%	13%	18%
Somewhat unlikely	6%	6%	5%	7%	4%	5%	6%
Very unlikely	3%	5%	2%	2%	2%	3%	3%
Very/Somewhat likely	77%	68%	81%	79%	82%	79%	73%
Very/Somewhat unlikely	8%	11%	7%	9%	6%	8%	9%

Q16. How likely are you to check the calorie information on a consumer-packaged food and beverage product when making a purchase?

Thank you

Appendix C

Comparison of Grain Foods Labeled Under the Proposed Rule

Sodium – Low
Sat Fat – Low
Added Sugar – Low

Sodium – Low
Sat Fat – Low
Added Sugar – Low

Sodium – Medium
Sat Fat – Medium
Added Sugar – Low

Sodium – Medium
Sat Fat – Medium
Added Sugar – Low

Sodium – Low
Sat Fat – Low
Added Sugar – Low

Sodium – Low
Sat Fat – Low
Added Sugar – Low

Sodium – Low
Sat Fat – Low
Added Sugar – Low

Sodium – Low
Sat Fat – Low
Added Sugar – Low
Healthy

Comparison of Milks Labeled Under the Proposed Rule

Skim Milk:
Sodium – Med
Sat Fat – Low
Added Sugar – Low

2% Milk:
Sodium – Low
Sat Fat – Med
Added Sugar – Low

1% Chocolate Milk:
Sodium – Med
Sat Fat – Med
Added Sugar – High

Whole Milk:
Sodium – Low
Sat Fat – High
Added Sugar – Low

Examples of Products Bearing a Single Display Panel

Below are examples of products bearing a single display panel. As discussed in our comments, we request an exemption from FOPNL for these products given the lack of available label space to accommodate additional mandatory labeling information.


3.50"
3.50"
pineapple
RINGS
THIN CUT
EXCELLENT SOURCE OF VITAMIN C
KEEP REFRIGERATED
Nutrition Facts Servings: 2, Serv. size: 5 oz (142g),
Amount per serving: Calories 70, Total Fat 0g (0% DV), Sodium 0mg (0% DV), Total Carb. 19g (7% DV), Fiber 2g (7% DV), Total Sugars 15g, Protein 1g, Potas. (4% DV), Vit. C (90% DV).
Not a significant source of saturated fat, trans fat, cholesterol, added sugars, vitamin D, calcium and iron.
Ingredients: Pineapple.
Distributed By: Food Company,
Indian Head, MD 20640
NET WT 10 OZ (284 g)