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FDA WILL CHANGE FRONT OF PACK FOOD LABELING

The FDA is aiming to change the Front of Pack (“FOP”) food labeling. Its goal is to “maximize the number of consumers who readily notice, understand, and use point-of-purchasing information to make more nutritious choices for themselves and their families.” *Front-of-Pack and Shelf Tag Nutrition Symbols*, 75 FR 22602-22606 (29 April 2010). In its recent Notice, the FDA established a docket to collect data that will establish a scientific foundation for decision-making on nutrition symbols and FOP labeling. 75 FR 22603. The FDA seeks data on nutrition content, symbols, the display panel, and self tags.

This FDA goal is not new but efforts to inform consumers about calories and nutrition by labeling are newly invigorated. As recently as March 3, 2010, FDA Commission Margaret A. Hamburg called on food companies to correct labeling violations—which included unauthorized health claims, unauthorized nutrient content, and unauthorized use of terms such as “healthy”—and to provide industry data about calorie and nutrient content. *Id.*, citing FDA Press Release, *FDA Calls on Companies to Correct Labeling Violations*, 03 March 2010. Similarly, Michelle Obama recently launched a coordinated national campaign, *Let’s Move*, to combat obesity among children. *Id.* at 22603.

In 1993, the FDA established regulations that implemented the Nutrition Labeling and Education Act of 1990. *Id.* citing Public Law 101—535, amending the Federal Food, Drug, and Cosmetic Act. In 2007, the agency held public hearings on this same subject, which included a focus group study the following year. *Id.* at 22604, citing *Food Labeling: Use of Symbols to Communicate Nutrition Information, Consideration of Consumer Studies, and Nutritional Criteria*, 72 FR 39815 (20 July 2007). This year, healthcare reform legislation included requirements for menu labeling, which will require chain restaurants to post calorie information on all menu items and to have additional nutrition information available upon request. Commissioner Hamburg, *Remarks at the Nutrition Summit* (28 April 2010). The FDA is charged with oversight responsibility for this labeling.

Specifically, the agency is gathering data that informs symbol schemes on food packages or shelf tags, effectiveness studies on approaches to FOP labeling, human factors data, design considerations, and consumer attitudes toward nutrition symbols. 75 FR 22604-22605. Other data collections were taken by the FDA in 2007 and 2009. 72 FR 39815; *Experimental Study of Nutrition Symbols on Food Packages*, 74 FR 26244 (01 Jun 2009); *Experimental Studies of Nutrition Symbols on Food Packages*, 74 FR 62786 (01 Dec 2009). The current collection effort is undertaken by the FDA’s Center for Food Safety and Applied Nutrition in cooperation with the U.S. Department of Agriculture. Typically, comment and data collection are performed by the agency in advance of its rulemaking on the same topic. For now, the FOP labeling is voluntary.

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