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Dockets Management Staff (HFA-305)  
Food and Drug Administration  
5630 Fishers Lane, Rm. 1061  
Rockville, MD 20852

**Comment on the U.S. Food and Drug Administration's Strategies to Reduce Added Sugars Consumption in the United States (Docket No. FDA-2023-N-3849)**

Dear Dockets Management Staff:

The undersigned respectfully submit the following comments on the U.S. Food and Drug Administration's (FDA's) Strategies to Reduce Added Sugars Consumption in the United States. We are a group of non-government organizations, public health advocates, and academics with extensive expertise and experience in nutrition science and policy who have collaborated to prepare this comment.

The average American consumes 17 teaspoons of added sugars per day (13% of total daily calories),<sup>1,2</sup> which is over 30% more added sugars than recommended for a healthy diet.<sup>3</sup> Overconsumption of foods and beverages high in added sugars is linked to increased risk of type 2 diabetes<sup>4,5,6</sup> and cardiovascular disease,<sup>7,8,9</sup> in part by increasing the risk of weight gain,<sup>10</sup> and can contribute to dental decay.<sup>11</sup>

The predominant sources of added sugars in Americans' diets are foods and beverages purchased from retail stores and restaurants, including sugary drinks, sweet bakery products, and candy.<sup>12,13</sup> As a result, consumers have only limited control over the amounts of added sugars they consume. Food and beverage companies are largely responsible for introducing excess added sugars into the food supply. Polling shows that 75% of U.S. consumers support a policy to reduce the amount of added sugars in the food supply.<sup>14</sup>

We appreciate this opportunity to comment on government and other stakeholder actions to reduce consumption of added sugars, which is a critical public health priority. Simultaneously, we wish to note our concerns over the proliferation of low- and no-calorie sweeteners (LNCS) in the food supply. LNCS include low- and no-calorie artificial and natural sweeteners that are used as alternatives to sugars, including sugar alcohols. We do not support replacement of added sugars with LNCS, particularly in foods and beverages consumed by children, and we urge FDA to proactively address safety and transparency concerns (see Recommendation 13). What is ultimately needed are actions to reduce exposure to added sugars and increase alternatives in the food supply that are unsweetened or have very low amounts of added sugars. Therefore, throughout our comment we have incorporated recommendations related to LNCS in addition to added sugars.

In this comment, **we recommend 13 actions for federal agencies** to reduce added sugars consumption across the U.S. population (order does not indicate level of importance):

- 1. Establish added sugars reduction targets for packaged and restaurant foods and beverages [FDA]**
- 2. Mandate interpretive, nutrient-specific front-of-package nutrition labels for packaged foods and beverages [FDA]**
- 3. Adopt strong limits on added sugars in FDA's final rule on "healthy" [FDA]**

4. **Regulate health-related marketing claims on products high in added sugars [FDA, USDA]**
5. **Issue guidance encouraging online retailers to provide consumers with access to the same nutrient, ingredient, and allergen information required on food and beverage packages [FDA]**
6. **Mandate added sugars disclosure at restaurants [FDA]**
7. **Update sugars standards for foods and beverages offered in schools and child and adult care settings, and disallow low- and no-calorie sweeteners in child-specific settings [USDA]**
8. **Publish a Surgeon General’s Report or Advisory on the importance of added sugars reduction [HHS]**
9. **Require SNAP-authorized retailers to adhere to stocking and marketing guidelines that increase availability, placement, and promotion of foods aligned with the Dietary Guidelines for Americans [USDA]**
10. **Implement advertising restrictions on products high in added sugars [FTC, FDA, USDA, CDC]**
11. **Encourage consumption of water instead of sugary drinks [HHS, FDA, USDA]**
12. **Use federal procurement strategies to reduce consumption of beverages high in added sugars and increase water consumption [All federal agencies]**
13. **Address concerns about safety of and lack of transparency around products containing low- and no-calorie sweeteners [FDA, USDA]**

We additionally provide four recommendations for actions that other stakeholders can take to reduce added sugars consumption across the U.S. population:

14. **Ensure that federal agencies have proper authority and adequate funding to facilitate added sugars reduction [Congress]**
15. **Implement sugary drink excise taxes [Congress, states, and localities]**
16. **Pass innovative healthy retail policies to decrease promotion of products high in added sugars and increase promotion of healthier products [States and localities]**
17. **Use procurement strategies to reduce consumption of beverages high in added sugars and to increase water consumption [States, localities, and institutions]**

## RECOMMENDATIONS FOR FEDERAL AGENCIES

### 1. **Establish added sugars reduction targets for packaged and restaurant foods and beverages [FDA]**

In recognition of the need for added sugars reduction across the U.S. food supply, the 2022 Biden-Harris Administration’s National Strategy on Hunger, Nutrition, and Health included a commitment to assess additional steps to reduce added sugars consumption, including potential voluntary targets.<sup>15</sup> In April of 2023, Center for Science in the Public Interest (CSPI) and the New York City Department of Health and Mental Hygiene (NYC DOHMH) filed a citizen petition echoing the White House’s call for such targets.<sup>16</sup> The petition requested that FDA develop voluntary, measurable added sugars reduction targets for processed, packaged, and prepared foods and beverages, with the 10-year goal of lowering average population intake of added sugars to less than 10% of total daily calories, as recommended by the Dietary Guidelines for Americans (DGA).

Policies encouraging added sugars reformulation provide benefits for individuals, the private sector, and public health.<sup>17</sup> A modeling study<sup>18</sup> estimating the effects of implementing NYC DOHMH’s national sugar reduction targets<sup>19</sup> on added sugars intake and cardiometabolic health outcomes in the U.S. found that

with full industry compliance, achieving sugars reduction targets was estimated to prevent 2.48 million cardiovascular disease events, 490,000 cardiovascular disease deaths, and 750,000 diabetes cases; and save \$160.88 billion in lifetime net costs.<sup>i</sup>

We recommend that FDA take the following actions, most of which (a-d) were specifically requested by the aforementioned petition:<sup>20</sup>

- a. **Issue guidance for the food and beverage industry that provides voluntary short-term (2.5-year), mid-term (5-year), and long-term (10-year) targets** for added sugars content in commercially processed and packaged foods and beverages from categories that contribute most to overall added sugars intake.
- b. **Create and maintain a public online database** of all the products included in the targeted food categories at baseline and the 2.5-year, 5-year, 7.5-year, and 10-year marks, including each product's category, brand, nutrition information (including added sugars content), ingredient list, and additional relevant product-level details.
- c. Following publication of the guidance, **provide interim progress reports to the public** at the 2.5-year, 5-year, 7.5-year, and 10-year marks evaluating industry compliance with the targets across each food and beverage target category and reporting any other significant change in other nutrients of concern (such as sodium or saturated fat).
- d. Extend the scope of this guidance to **include voluntary targets for added sugars content in prepared food and beverage categories** that contribute most to overall added sugars intake as soon as federal regulations are amended to require chain restaurants to declare added sugars nutrition information (see Recommendation 6).
- e. **Take steps to limit replacement of added sugars with LNCS.** Encourage manufacturers to avoid adding LNCS to their products as they lower added sugars content. In the public online database mentioned in 1b, track the type(s) and amount of LNCS in each product over time, and include LNCS content of products in interim progress reports to the public in 1c. For more information on LNCS, see Recommendation 13.

## 2. **Mandate interpretive, nutrient-specific front-of-package nutrition labels for packaged foods and beverages [FDA]**

Current U.S. food labeling requirements (i.e., the Nutrition Facts label) and voluntary industry initiatives (e.g, Facts Up Front<sup>21</sup>) are insufficient to help consumers reduce their added sugars consumption. Only 41% of people report using the Nutrition Facts panel always or most of the time when deciding to buy a food product,<sup>22</sup> and experimental studies have found that Facts Up Front-style labels do not improve the overall healthfulness of consumers' food choices compared to a no-label control.<sup>23,24,25</sup> Many countries, including Canada and Mexico, require simple front-of-package nutrition labels to help consumers quickly and easily identify foods and beverages that are high in sugars as well as saturated fat and sodium.<sup>26,27,28</sup>

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<sup>i</sup> The model assumed a 100% compliance scenario where industry fully met the 40% sales-weighted mean sugar reduction targets for sugar-sweetened beverages and the 20% sales-weighted mean sugar reduction targets for all other categories by 2026.

In addition to helping consumers understand the added sugars content of the foods they buy, such labels can encourage companies to reduce added sugars in their products; after Chile's adoption of a mandatory front-of-package nutrition labeling policy in 2016, there was a 10% decrease in sugar purchased per person per day<sup>29</sup> and a 15% decrease in the proportion of commonly consumed packaged foods that qualified for a "high in sugars" label.<sup>30</sup> Polling shows that Americans want front-of-package nutrition labels, with 75% responding that they would support a policy requiring labels like these in the United States, including majorities of Democrats (83%), Republicans (68%), and Independents (73%).<sup>31</sup>

FDA should issue regulations adopting mandatory front-of-package nutrition labels for packaged foods and beverages that highlight when foods are high in added sugars, among other nutrients of concern. CSPI, the Association of State Public Health Nutritionists, and the Association of SNAP Nutrition Education Administrators previously submitted a citizen petition requesting this action in August of 2022,<sup>32</sup> and we appreciate that FDA is already hard at work researching and developing a front-of-package nutrition label for the U.S. food supply. We are also happy to see interest from Congress with the December 2023 introduction of the TRUTH in Labeling Act of 2023 (S.3512/H.R.6766), which would amend the Federal Food, Drug, and Cosmetic Act to require standardized, interpretive nutrition labels on the front of food packages.<sup>33</sup> We support FDA's work and encourage the agency to move swiftly to issue a proposed rule. As the agency drafts a proposed rule, we encourage FDA to:

- **Make the policy mandatory.** This is the only way to ensure labels will appear on all foods and beverages high in added sugars. Voluntary front-of-package nutrition labeling policies may have inconsistent uptake by food manufacturers, and companies may selectively apply labels to products that will look more appealing with the label. For example, five years after Australia's adoption of a voluntary front-of-package nutrition labeling policy in 2014, the voluntary health star rating label appeared on less than half of eligible products (41%), and those products were more nutritious compared to products not displaying the label.<sup>34</sup>
- **Make the labels interpretive and nutrient-specific,** indicating when a product is high in added sugars as opposed to providing numeric content, such as grams of added sugars or Percent Daily Values (DV). FDA surveys show that 37% of people are unable to accurately interpret the Percent DV, with lower utilization and understanding among groups with lower educational attainment.<sup>35</sup> Interpretive labels are well-suited to consumer tendencies to rely on heuristic cues to evaluate the nutritional quality of foods,<sup>36</sup> and researchers have suggested that they may also be easier to understand by youth and people with less education, lower literacy or numeracy, and limited English.<sup>37</sup>
- **Make the labels simple and eye-catching.** Labels need to be useful for people of all ages and backgrounds, and stand out against other information on the package. Icons (e.g., an exclamation point) should be used to draw attention to the labels. Use of icons could additionally facilitate better comprehension among those with lower literacy<sup>38</sup> and improved effectiveness, especially among populations with limited English proficiency.<sup>39</sup>
- **Require the labels to appear prominently at any point of sale, whether on the package or online.** Given the rise in online food shopping—in 2020, 29% of U.S. households were active monthly users of online grocery platforms<sup>40</sup>—it is important that any labels mandated on the front of package are similarly prominent when products are sold online.

- **Move expeditiously and prioritize public health over private industry interests.** The Department of Health and Human Services' (HHS's) Fall 2023 Unified Agenda of Regulatory Actions stated that FDA would issue a notice of proposed rulemaking on front-of-package nutrition labeling in December 2023, but the Unified Agenda published in December delays the proposed rulemaking to June 2024.<sup>41</sup> We urge FDA not to further delay its timeline and to issue a proposed rule by June 1, 2024.
- **As FDA considers front-of-package labels for foods high in added sugars, it should also pursue separate regulations requiring LNCS disclosures like “sweetened with [LNCS], a low-/no-calorie sweetener” or “contains [LNCS] as a low-/no-calorie sweetener”, especially on products making claims about healthfulness or low/no/reduced sugar content.** We recommend consumer testing of the various terms used to describe these sweeteners, such as LNCS, high intensity sweeteners, non-sugar sweeteners, non-nutritive sweeteners, and others, to determine the term that consumers would best understand. See Recommendation 13 for more information.

### 3. Adopt strong limits on added sugars in FDA's final rule on “healthy” [FDA]

FDA has recently proposed updates to the nutrient content claim “healthy” and suggested it may endorse the use of a “FDA Healthy” logo on products meeting the new criteria. If widely used on products containing little or no added sugar, the healthy logo could contribute to diets lower in added sugars. However, it will only have this effect if the limits on added sugars in foods making “healthy” claims remain strong and uptake of the claim/logo is high.

In its proposed rule to update the “healthy” claim, FDA proposed a baseline limit of 5% of the DV for added sugars per Reference Amount Customarily Consumed (RACC) with adjustments for certain products, such as 0% DV for fruit, vegetable, and protein foods, and 10% DV for certain main dish and meal products.

Some industry groups, intent on leveraging nutrient claims like “healthy” to market their added-sugar-laden products, have asked FDA to adjust their baseline added sugars limit from 5% to 20% and allowances for meals from 10% to 25-30%.<sup>42,43</sup> We strongly urge the agency to hold fast to its original proposed limits on added sugars. There are plenty of foods across a range of product categories with very little or no added sugar, and only the healthiest foods should be allowed to market themselves as healthy.

### 4. Regulate health-related marketing claims on products high in added sugars [FDA, USDA]

Marketing claims suggesting that products are healthy and natural are common in the U.S. food supply, including on products with added sugars. Nearly 17% of all foods purchased in 2018 were labeled as “natural,” with even higher rates on breakfast cereals (28%) and desserts, sweets, and candies (21%).<sup>44</sup> Additionally, claims are highly prevalent on fruit drinks (i.e., sweetened fruit-flavored drinks with less than 100% juice),<sup>45,46</sup> the most common type of sugar-sweetened beverage consumed by young children.<sup>47,48</sup> For example, two separate content analyses found that nearly all fruit drinks purchased by households with young children displayed one or more claim such as “all natural” or “100% vitamin C” despite containing upwards of 30 grams of added sugar (more than half a day's worth).<sup>49,50</sup>

Studies demonstrate that the presence of marketing claims on sugary foods/drinks affects purchases, steering people towards more sugary products.<sup>51,52</sup> One experimental study found that the presence of marketing claims led parents to choose a sugar-sweetened fruit drink instead of 100% juice for their young child.<sup>53</sup> Another randomized controlled trial found that claims and fruit imagery on drink packaging increased the proportion of parents choosing beverages high in added sugar for their children by 7.6 percentage points.<sup>54</sup>

Marketing claims can also affect consumer perceptions of products. For instance, claims indicating that a product is healthy can produce “health halo” effects, in which consumers overgeneralize positive qualities of a product beyond the focus of the claim itself. A recent trial with parents of young children (ages 1-5 years), for example, assessed beliefs about two identical sugar-sweetened fruit drinks: one with and one without claims.<sup>55</sup> Parents who viewed a drink with a “100% all natural” claim were 4 times as likely to incorrectly believe that the drink did not contain any added sugar, compared to parents who saw the drink with no claim (47% vs. 12%).<sup>56</sup> The “100% all natural” claim also made parents think the sugary drink was healthier for their young child than the identical drink without a claim.<sup>57</sup> Similarly, a second study found that 76% of parents viewing a sugar-sweetened fruit drink with a “natural” claim incorrectly thought there was no added sugar in the drink, compared with only 37% who viewed the same drink without the claim.<sup>58</sup> Two additional experiments have also found that “natural” claims make people believe that potato chips and sugary drinks are lower in calories<sup>59,60</sup> and fat<sup>61</sup> than they really are. Likewise, an experiment found that health-related claims on toddler milks (i.e., a powdered milk-based product that often contains added sugar) led parents to believe toddler milk was healthier than when it had a non-health-related claim.<sup>62</sup>

Regulating the use of marketing claims on products high in added sugar could protect consumers and ultimately improve public health. Both FDA and the U.S. Department of Agriculture (USDA) have the regulatory authority and responsibility to act. Recommendations for regulatory action include:

- a. **Formalize the definition of and regulate “natural” claims.** Given that the term “natural” is only loosely and informally regulated,<sup>63</sup> FDA and USDA could create and formalize a definition of “natural” and crack down on companies that misuse the term. For example, “natural” could be prohibited on products that meet existing definitions of being high in added sugars or on products that do not meet FDA’s forthcoming definition of “healthy.”
- b. **Require that fruit drink labels state up front how much (or little) juice is in the product.** Fruit drinks are already required to declare the percent juice content near their Nutrition Facts labels, but less than half of consumers report regular use of the Nutrition Facts label when deciding whether to buy a food product and presumably even fewer notice the percent juice declaration.<sup>64</sup> Prominent front-of-package “percent juice” disclosures on fruit drink labels could prevent consumers from being misled to believe that fruit drinks are 100% fruit juice or contain no added sugars. Products making fruit/juice claims should be required to disclose percent juice content on the front of package if juice content is below a minimum level.
- c. **Fund and disseminate campaigns to inform consumers.** In light of the potentially deceptive nature of certain claims on products that are high in added sugars, health communication campaigns can help prevent deception and inform consumers about how to interpret marketing claims with caution. Counter-marketing communications strategies are especially promising; these approaches expose the motives of and de-normalize marketing activities, including the use of deceptive claims.<sup>65,66,67</sup>

## **5. Issue guidance encouraging online retailers to provide consumers with access to the same nutrient, ingredient, and allergen information required on food and beverage packages [FDA]**

The Nutrition Facts labels and ingredients lists required on foods and drinks are currently the most important tools available to consumers looking to limit or avoid added sugars. Unfortunately, as an increasing proportion of food purchases are made online rather than in stores, people are losing reliable access to these tools. Nutrition and ingredient information is often missing at the online point of sale and, even when present, it is often outdated, inaccurate, or hard to find. The American Heart Association and WISEcode highlighted this issue in recent comments to the FDA citing results from their own informal studies that found frequent inaccurate or missing nutrition information online.<sup>68,69</sup> Both noted especially high error rates for added sugars, with WISEcode documenting missing added sugar information on nearly 50% of online labels assessed. Congress should pass legislation giving FDA the authority to require that the same Nutrition Facts and ingredient information that is now on packages also be available for online grocery items (see Recommendation 14). In the meantime, FDA should issue guidance with best practices for grocery labeling for retailers and manufacturers selling food online. The guidance should encourage sellers to provide nutrition and ingredient information in a way that is consistent across online products, easy to read, easy to find, and not buried beneath marketing and promotional material.

## **6. Mandate added sugars disclosure at restaurants [FDA]**

Restaurant foods and beverages are a significant source of added sugars in the American diet, contributing 20% of total daily added sugars intake,<sup>70</sup> but consumers currently have no way of determining the added sugars content of these products. Consumers need access to this information to make informed choices when ordering from restaurants.

In January of 2022, CSPI, along with others, petitioned FDA to update its menu labeling rules to require chain restaurants (hereafter in this section referred to as “restaurants”) to disclose added sugars information alongside other nutrition information that consumers can request.<sup>71</sup> The original menu labeling rule was finalized in 2014 and included only disclosures for total sugars.<sup>72</sup> It was not until 2 years later that FDA updated its regulations for the Nutrition Facts Panel to require added sugars information to be disclosed for packaged foods.<sup>73</sup> In doing so, the agency did not similarly update its menu labeling regulations, leaving a discrepancy.

FDA has clear authority to require restaurants to publish added sugars information if the agency determines that it “should be disclosed for the purpose of providing information to assist consumers in maintaining healthy dietary practices.”<sup>74</sup> FDA already leveraged nearly identical authority<sup>75</sup> to require added sugars disclosure in the Nutrition Facts label, so there is no question that it could similarly require the declaration for restaurants. Harmonizing the menu labeling rules with the Nutrition Facts label is also a simple, straightforward way for the agency to reinforce the importance of added sugars as a nutrient to consider, thus facilitating reductions in added sugars consumption. Unfortunately, the agency has to date not indicated it will engage in rulemaking to correct the discrepancy in the menu labeling rule, and this item does not appear in the Current Unified Agenda.<sup>76</sup>

In addition to consumer education, access to added sugars information is important for state and local policymakers and researchers to develop and evaluate policies designed to reduce added sugars in

restaurant meals. In November of 2023, New York City adopted the Sweet Truth Act, which will require warnings on menu items that are high in added sugars.<sup>77</sup> However, until FDA requires restaurants to disclose added sugars information, most restaurant items will not be subject to this novel New York City law. Mandating added sugar disclosure at restaurants will be important to pave the way for other jurisdictions to follow New York City's lead and further help consumers reduce added sugars consumption in restaurant settings.

Additionally, Congress should give FDA authority to mandate ingredient disclosure in restaurants (see Recommendation 14). In the meantime, FDA should recommend that restaurants disclose the presence and type of LNCS in each of their menu items. For more recommendations related to LNCS, see Recommendation 13.

## **7. Update sugars standards for foods and beverages offered in schools and child and adult care settings, and disallow low- and no-calorie sweeteners in child-specific settings [USDA]**

School nutrition standards are outdated with respect to added sugars: there are currently no added sugars limits in the National School Lunch or Breakfast programs or in Smart Snacks standards for competitive foods. This has resulted in nine out of ten schools exceeding the 2020 DGA limit for added sugars for breakfast meals, and nearly seven out of ten schools exceeding the limit for lunch.<sup>78</sup> In January of 2022, CSPI, the American Heart Association, and the American Public Health Association petitioned USDA to establish an added sugars standard for school meals and competitive foods to align with the 2020-2025 DGA recommendation limiting added sugars consumption to less than 10 percent of total calories.<sup>79</sup> We recommend the following actions to reduce children's intake of added sugars in schools and childcare settings:

### **a. Establish added sugars standards for school meals.**

In February of 2023, USDA proposed limits on added sugars in the National School Lunch and Breakfast programs.<sup>80</sup> We applaud this action and urge USDA to finalize both the per-product and per-meal limits on added sugars.

### **b. Update sugar standards for competitive foods and beverages in schools.**

USDA should replace the total sugar limits in Smart Snacks standards with added sugars limits, with no more than 5 grams added sugars for snacks, no more than 9 grams for entrees, and no added sugars for beverages (except for flavored milk, which should meet USDA's proposed product-based caps on added sugars of no more than 10 grams per 8-ounce serving, and no more than 15 grams per 12-ounce serving). We support allowing yogurt and breakfast cereals to meet the proposed limits for the National School Lunch and Breakfast programs for ease of implementation. To prevent deception, food companies should be required to package the Smart Snack versions of their products in a way that clearly distinguishes them from the less nutritious versions sold outside of schools.<sup>81</sup>

### **c. Apply proposed per-product added sugars limits to the Child and Adult Care Food Program (CACFP).**

USDA has proposed applying per-product added sugars limits for breakfast cereals and yogurts to CACFP,<sup>82</sup> which we support.



- d. **USDA should disallow products containing LNCS as part of their added sugars standards for school meals, competitive foods, and CACFP** (in child-specific programs). See Recommendation 13 for more information.

## **8. Publish a Surgeon General's Report or Advisory on the importance of added sugars reduction [HHS]**

We urge the Surgeon General to prepare a Report or Advisory on the health effects of added sugars in the U.S. food supply and issue a Call to Action to spur national efforts to reduce added sugar consumption. Much like the 1964 *Surgeon General's Report on Smoking and Health* focused national attention on the harms of commercial tobacco use,<sup>83</sup> such a report could galvanize urgent societal action to reduce added sugars consumption. Although the CDC has many resources about the health effects of added sugars consumption,<sup>84</sup> there is no current, authoritative federal report summarizing the evidence on the health effects of added sugars. For example, the evidence summary from the 2020-2025 DGA report is dated and does not include important recent evidence. The current Dietary Guidelines Advisory Committee is not conducting any systematic reviews on the health effects of added sugars—it is more narrowly focused on health effects of sugar-sweetened beverages (SSBs). The World Health Organization and other nations (e.g., United Kingdom) have issued reports on the health effects of added sugars; the U.S. lags behind.

A Surgeon General's Report or Advisory on the health effects of added sugars would describe sources of added sugars in the diet, present trends in consumption and factors influencing consumption, evaluate the evidence for the effects of added sugars on health; and alert health professionals, health officials, federal food assistance program personnel, policymakers, and consumers to the serious threat that added sugars pose to health. The report/advisory would pave the way for policy measures at all levels of government and for widespread voluntary actions in the private sector to improve health and reduce health care costs. An accompanying Surgeon General's Call to Action to reduce consumption of foods and beverages with added sugars could establish goals for federal, state, and local government programs and policies, as well as for other public and private entities. Because substitution of LNCS for added sugars is a rapidly growing industry practice (see Recommendation 13), the report or advisory should also note the extent to which LNCS are present in food and beverage products and implications for health.

## **9. Require SNAP-authorized retailers to adhere to stocking and marketing guidelines that increase availability, placement, and promotion of foods aligned with the Dietary Guidelines for Americans [USDA]**

The Supplemental Nutrition Assistance Program (SNAP) is a powerful food safety net program and has many positive public health impacts. The program helps to reduce poverty, food insecurity, health care expenditures, and the risk of chronic conditions later in life.<sup>85</sup> Nearly 260,000 retailers participate in SNAP across the country,<sup>86</sup> with SNAP sales representing approximately 14 percent of total food retailer sales.<sup>87</sup> Thus, SNAP retailers and SNAP sales are a critical component of the U.S. retail food environment and represent a large-scale opportunity to increase healthy food access and reduce added sugars consumption.

SNAP participants have choices when it comes to where to shop but may lack choice when it comes to the foods available in these venues. Stocking standards aim to increase the number of food items and overall nutritional content of foods available at SNAP retailers. Most SNAP benefits are redeemed at supermarkets and super stores where stocking standards are easily met.<sup>88</sup> However, nearly half of SNAP-authorized retailers are convenience stores<sup>89</sup> that have limited fruit and vegetable, whole grain, and dairy products compared to larger retailers.<sup>90,91</sup> This limited healthy food availability disproportionately impacts African American, Hispanic, and Native American SNAP participants as they spend more of their benefits at smaller retailers relative to White SNAP participants,<sup>92</sup> thus providing an opportunity for stronger stocking standards to promote health equity. Healthier product availability has the potential to help shift consumers to consume less added sugar.

USDA should explore ways to further improve retail environments to include stronger stocking standards to increase availability of foods in-store and online that align with the latest DGA. Congress should remove the stocking standards appropriations rider, which currently bars USDA from expanding stocking standards (see Recommendation 14). **In the meantime, USDA should:**

- a. **Improve stocking standards to better align with the DGA.**
- b. **Provide a timebound waiver for retailers that allows flexibility for smaller retailers to make changes.**
- c. **Offer technical assistance and grants to assist smaller retailers with sourcing, stocking, and marketing staple foods.**

USDA should also establish SNAP retailer healthy food placement standards in-store and online. Even when healthy foods and beverages are available at retailers, they might not be the easy choice due to inconvenient placement. **To make healthy food and beverage choices easier at SNAP-authorized stores, we recommend USDA to:**

- d. **Create healthy placement standards for SNAP-authorized retailers that improve the availability of nutritious foods in prominent locations in-store and online.**
- e. **Provide a phase-in period to allow for retailer implementation.**
- f. **Offer technical assistance and grants.**

For more information, see CSPI's 2023 report on recommendations to promote healthy retail environments.<sup>93</sup>

## **10. Implement advertising restrictions on products high in added sugars [FTC, FDA, USDA, CDC]**

Online food and beverage marketing can impact children's food preferences, purchase requests, and consumption patterns.<sup>94</sup> Today, marketing of candy, sugar-sweetened beverages, and similar products high in added sugars is targeted to consumers using an integrated set of "Big Data" and digital marketing applications that reach them whether they shop at physical locations—including supermarkets, retail, "dollar," and convenience stores—or via online e-commerce.<sup>95</sup> These now well-established and growing practices also involve sugar-sweetened products sold by quick-service restaurants, other restaurants, and food delivery services. Advances in data analytics, as well as the ubiquity of mobile phones and other devices, enable these marketers to seize on the geo-location of individuals and unique characteristics of communities to influence them in real time. Data and marketing partnerships between supermarkets,

convenience stores, quick-service restaurants, and video companies enable a continuous stream of advertising and marketing that is reinforced through cross-platform promotions.<sup>96,97</sup>

- a. FTC should protect children and adolescents from contemporary marketing practices used by the food industry and others.**

**We support FTC’s recently announced strengthened rules implementing the Children’s Online Privacy Protection Act (COPPA) of 1998.**<sup>98</sup> Under the FTC’s proposal, caregivers would have the opportunity to opt out of data-driven advertising directed to children under 13—including targeted advertisements for foods and beverages high in added sugars. However, it is crucial that the verification process confirming the child’s age is designed to protect the privacy of both caregivers and children. **We additionally urge FTC to offer protections for adolescents 13-17 (currently this group does not receive any federal privacy and digital marketing protections) in their upcoming rulemaking on Commercial Surveillance practices.**<sup>99</sup> FTC should also impose meaningful safeguards for the uses of AI, virtual reality, and influencers in data-directed or connected marketing applications.

- b. The Interagency Working Group on Food Marketed to Children should publish their Proposed Nutrition Principles to Guide Industry Self-Regulatory Efforts once Congress allows it to do so.**

The Interagency Working Group included representatives from FTC, FDA, CDC, and USDA, and was established at the direction of Congress to develop recommendations for the nutritional quality of food marketed to children and adolescents (ages 2-17). The nutrition standards developed by these federal agencies proposed voluntary standards for foods advertised to children.<sup>100</sup> These standards set limits on added sugars in addition to saturated fat and sodium, and required that foods contain ingredients that make a meaningful contribution to a healthy diet (i.e., fruit, vegetable, whole grain, skim or 1% milk, extra lean meat, fish, nuts or seeds). The Group requested public comments on the proposed nutrition guidelines, but was blocked from completing its work by Congress in an appropriations rider. Congress should remove this rider, allowing the Group to publish its guidelines (see Recommendation 14).

- c. FTC should use its authority to restrict blurred advertising to children on digital media, including on gaming apps/sites, video channels, social media and all other digital platforms in which advertisements blend into the surrounding content.**

An FTC staff paper from September 2023<sup>101</sup> recommended that businesses, social media influencers, and others who market or promote products online to children should avoid blurring advertising by clearly separating advertising from entertainment, educational, and other content to help limit potential harms to children. FTC also noted that for younger children in particular, disclosures are unlikely to be effective in helping them distinguish advertising from other content. Companies that engage in blurred advertising can be held liable under the FTC Act if their conduct is deceptive or unfair to children,<sup>102</sup> so we urge FTC to use this authority.

- d. Additional actions Congress should take to support marketing-related added sugars reduction include:**

- **Repeal the FTC Improvements Act of 1980<sup>103</sup>** and reinstate the FTC’s ability to regulate food marketing to children on the basis of unfairness (See Recommendation 14).
- **Fund an update of the FTC food and beverage marketing report** that documented extensive food, beverage, and restaurant marketing to children and adolescents, including expenditures by category, marketing techniques, and the nutrition of the products

marketed. A report issued in 2012<sup>104</sup> (2009 data) followed up a 2008 (2006 data) report. An update is overdue, especially in light of the rapid development of child-directed digital marketing practices (See Recommendation 14).

- **Pass the Stop Subsidizing Childhood Obesity Act**<sup>105</sup> to eliminate the tax deduction for business expenses related to marketing of unhealthy foods and beverages to children.
- **Legislate restrictions on marketing of unhealthy foods and beverages in specific venues**, including playgrounds, schools, and daycare facilities.<sup>106</sup>

## **11. Encourage consumption of water instead of sugary drinks [HHS, FDA, USDA]**

Reducing consumption of beverages high in added sugars is a crucial strategy for lowering overall intake of added sugars, because they are a leading source of added sugars in the American diet and have little or no nutritive value. Effectively addressing sugary drink consumption requires not only active efforts to discourage it but also parallel initiatives to encourage and facilitate access to safe and appealing drinking water.

Drinking plain water in place of sugary drinks is a simple, low-cost, and viable means of reducing intake of added sugars among both children and adults, and can mitigate risks of chronic diseases.<sup>107,108,109,110,111</sup> Research shows that implementing policies, systems changes, and altering environments to support increased availability of safe and enticing drinking water along with educational initiatives to encourage drinking water instead of sugary drinks can foster healthier hydration habits and significantly impact health.<sup>112,113,114,115</sup>

USDA, HHS, and FDA can use a variety of tools—including education, communication, accessibility, and safety measures—to elevate drinking water as a preferable alternative to sugary drinks. Federal agencies should:

- Incorporate a symbol for drinking water in the MyPlate graphic and intensify water promotion messaging in all consumer-facing materials.**

Many in the general public are unaware of the high level of added sugars and calories they consume each day while quenching their thirst with SSBs.<sup>116</sup> In addition, many are unfamiliar with the importance of water and lack an understanding of the factors mediating the amount of water required by an individual on any given day.<sup>117</sup> MyPlate is ubiquitous as a foundation for nutrition education in clinics, schools, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), SNAP-Ed, the Expanded Food and Nutrition Education Program (EFNEP), and other public health programs. Inclusion of water on the graphic could raise awareness of the benefits of drinking water among those segments of the population that are most vulnerable to over-consumption of SSBs, including young people to whom SSBs are heavily marketed.<sup>118,119</sup> Adding a symbol for water to the MyPlate graphic would support other strategies designed to decrease SSB consumption.<sup>120</sup> This recommendation has been widely endorsed, including by the National Clinical Care Commission,<sup>121</sup> and by leading public health professionals and organizations in letters on this issue submitted to the Dietary Guidelines Advisory Committees of 2014<sup>122</sup> and 2020<sup>123</sup> and to USDA and HHS in 2020.<sup>124</sup> Sixty-nine members of Congress sent a letter to USDA and HHS making this request in 2019.<sup>125</sup> The U.S. should catch up and join the nearly fifty countries around the world that feature “water” in their graphic nutrition guidance.<sup>126</sup>

**b. Improve drinking water access for schools and childcare participating in federal child nutrition programs by enhancing existing practices.**

We recommend the following three actions in this area:

Enhance Administrative Review of School Nutrition Programs (NSLP, SBP, SFSP, CACFP Afterschool Snack/Supper) to improve drinking water access.<sup>127,128</sup> National School Lunch Program regulations call for on-site Administrative Review (AR).<sup>129</sup> AR Food Safety compliance includes review of nine requirements. The instruction for water says only, “The SA’s responsibility is to determine whether free potable water is available at each school selected for review during the lunch and breakfast meal services on the day of review.”<sup>130</sup> On-site AR procedures should be revised to provide instruction to ascertain that students have effective access<sup>131</sup> to “free potable water...available for consumption.” Procedures to add include assuring that:

- Water source meets standards for accessibility and maintenance.
- Water source has adequate and appropriate water flow or water level.
- Water source meets required federal and state water safety regulations.
- Refillable water bottles are permitted and/or cups are provided.
- Promotional/educational materials for drinking water are placed near drinking water sources.

Enhance “monitoring” in the Child and Adult Care Food Program (CACFP) to improve drinking water access.<sup>132,133</sup> The CACFP’s drinking water provisions are excellent, but USDA should ensure that monitoring guidance and technical assistance are provided to ascertain compliance with all provisions for access, including USDA guidance specifying “throughout the day” and “offer and serve.”<sup>134</sup> The CACFP monitoring handbook does not mention water.<sup>135</sup> Tap water safety is of particular importance for any infant whose formula is reconstituted with tap water.

Boost the strength and comprehensiveness of Local School Wellness Policy (LSWP).<sup>136</sup> LSWP is required under the Healthy, Hunger-Free Kids Act of 2010 for schools participating in the National School Lunch Program.<sup>137</sup> USDA should work with partners (EPA, CDC Nutrition and Obesity Policy Research and Evaluation Network (NOPREN) Drinking Water Work Group,<sup>138</sup> Alliance for a Healthier Generation, and National School Boards Association) to develop and promulgate model policy for drinking water.

**c. Utilize SNAP-Ed, Head Start, WIC, and home visiting programs to encourage water intake while discouraging consumption of sugary drinks.**

USDA and HHS, in collaboration with other appropriate stakeholders, should develop and disseminate a nutrition education component on the basics of tap water safety and healthy hydration habits (including the health, environmental, and equity benefits of tap water) for WIC<sup>139</sup> and for the Head Start program. USDA should add a requirement that all state SNAP-Ed programs include a healthy beverage component consisting of education, policy, systems, and environmental change strategies, all aimed both at reducing sugary drink intake and at enabling consumption of water (preferably tap water).<sup>140</sup>

**12. Use federal procurement strategies to reduce consumption of beverages high in added sugars and increase water consumption [All federal agencies]**

We urge federal agencies to develop and implement and/or strengthen policies and guidelines to eliminate or restrict access to sugary drinks on their properties and in the programs they fund. All

agencies should also increase access to free, potable, and appealing sources of drinking water for their employees and visitors.<sup>141</sup> Such procurement strategies are already in use at the state, tribal, regional, and local levels and should be widely adopted. Specific recommendations include:

- a. Eliminate sales and serving of sugar-sweetened beverages on all federal properties and in all federally funded programs or events.**

Two U.S. cities that have undertaken such an action are San Francisco, CA and Berkeley, CA. In 2010, the city of San Francisco issued an executive order, later converted to an ordinance, restricting the purchase, sale, or distribution of SSBs by or for the city.<sup>142</sup> In 2022, the city of Berkeley amended a 2018 ordinance that prohibited the purchase of SSBs using city funds and prohibited the sale of SSBs on city properties, adding a prohibition on the serving of SSBs on city properties.<sup>143</sup> To support blind vendors operating facilities through the Randolph Sheppard Act (RSA) and similar state laws, this elimination could be accomplished through a phase out that includes increased support and technical assistance to RSA vendors to implement changes and maintain successful operations.

Should this recommendation not be adopted, we recommend the following actions:

- b. Eliminate all sales and serving of sugar-sweetened beverages in all federally funded healthcare facilities.**

Federally funded healthcare facilities, including the Veteran Health Administration (Department of Veterans Affairs), the Military Health System (Department of Defense), and Federally Qualified Health Centers (Health Resources and Services Administration), should not serve or sell SSBs (excepting in cases of clinician-prescribed beverages). Several hospital systems in the U.S. have implemented such a policy, eliminating all SSBs, including in hospital cafeterias, patient meals and other sales points.<sup>144,145</sup> A study from the University of California, San Francisco (UCSF) found that ten months after an SSB sales ban in all UCSF workplace locations, staff had significant decrease in SSB intake and significant improvement in health outcomes (waist circumference and health biomarkers).<sup>146</sup>

- c. Implement CDC's Food Service Guidelines for Federal Facilities in all federal facilities that have not eliminated sales and serving of sugar-sweetened beverages.**

Any federal agencies that have not eliminated SSB sales and serving should at a minimum implement the Food Service Guidelines for Federal Facilities—as called for in the Biden-Harris Administration National Strategy on Hunger, Nutrition, and Health<sup>147</sup>—and provide incentives for facilities to move beyond the standard guidelines to the “Innovative” level for food categories that include added sugars (e.g., the “Beverages” category).<sup>148</sup> Agencies should also consider alternate procurement scoring systems, such as the Good Food Purchasing Program: Purchasing Standards for Food Service Institutions,<sup>149</sup> which supports five core values: nutrition, local economies, environmental sustainability, valued workforce, and animal welfare. A host of jurisdictions have implemented SSB service restrictions, including state agencies in Massachusetts<sup>150</sup> and Washington State.<sup>151,152</sup>

- d. Adopt and implement single-use plastics reduction policies to discourage sugar-sweetened beverage consumption and protect the environment.**

All federal agencies should restrict sugar-sweetened beverage sales to beverage dispensers only, provide recyclable/compostable cups, and encourage use of reusable bottles (i.e., no single-serve

containers). For example, in 2022 the Secretary of the Interior released ORDER NO. 3407, a “Department-Wide Approach to Reducing Plastic Pollution,” aiming to eliminate all single-use plastic packaging including all single-use beverage bottles.<sup>153</sup> It should be noted that when University of Vermont banned only bottled water, the strategy backfired and students purchased more sugary drinks.<sup>154</sup>

### 13. Address concerns about safety of and lack of transparency around products containing low- and no-calorie sweeteners [FDA, USDA]

We want to call attention to an important unintended consequence of reducing added sugars in the food supply. As industry responds to policies aimed at reducing added sugars and consumers demand lower-sugar products, industry is *reducing* added sugars while *increasing* use of low- and no-calorie sweeteners (LNCS) to maintain product palatability.

**Industry is substituting LNCS for added sugars.** When policies induce industry to reduce the added sugars content of their products, manufacturers often respond by adding LNCS. Chile’s 2016 Law of Food Labeling and Advertising requires front-of-package added sugar warning labels, restricts marketing of products high in added sugars to children, and bans sales of products with excessive added sugars in schools.<sup>155</sup> After the law’s implementation, the proportion of foods and beverages with LNCS, purchases of LNCS-containing products, and LNCS consumption increased, including among children.<sup>156</sup> The adoption of the sugary drinks industry levy in the UK, which taxed drinks with higher sugar levels, resulted in reformulation of many products to reduce their sugar content to below the taxed levels.<sup>157,158</sup> However, as Rogers, et al. note, “It is likely that the reformulation that has occurred in response to the [sugary drinks industry levy] reflects substantial increases in the use of artificial sweeteners in the UK soft drinks market.”<sup>159</sup>

**LNCS use is common and increasing.** Globally, LNCS use in beverages and packaged food is increasing,<sup>160</sup> and use of LNCS is now widespread and increasing in the U.S. food supply.<sup>161</sup> A recent survey of over 80,000 products found that more and more foods and beverages contain LNCS. Between 2013-2022, the number of products with synthetic sweeteners, including beverages, cereals, dairy, and frozen foods, increased 3-8 fold.<sup>162</sup> There were also increases in products using certain non-synthetic sweeteners, like monk fruit and stevia.<sup>163</sup> LNCS are also commonly found in products marketed to children (e.g., 70% of beverages, primarily fruit drinks, contain LNCS) and a fifth of children age 2-5 years old consume products with LNCS (as of 2012—the prevalence is likely higher now).<sup>164,165</sup>

In particular, the use of plant-derived LNCS (e.g., stevia and monk fruit) is increasing, and industry markets them as a healthy, natural alternative to traditional LNCS like aspartame, sucralose, and acesulfame-potassium.<sup>166</sup> Stevia and monk fruit came to market through the “generally recognized as safe” (GRAS) loophole, a process by which industry can bypass the FDA approval process for new food additives by claiming the substance is GRAS. Industry can voluntarily notify FDA of their GRAS determinations, but FDA does not approve them; there have been 41 voluntary GRAS notifications for stevia and 4 for monk fruit. Although FDA raised no questions regarding industry’s GRAS determinations for stevia and monk fruit, concerns remain. Monk fruit has not been adequately tested in animals for safety,<sup>167</sup> little is known about the effects of stevia and monk fruit on human diet, weight, and health, and no studies are available in children. It is therefore unclear if these “natural” LNCS are favorable relative to traditional LNCS, so the term “natural” should not be equated with “healthy.”<sup>168</sup>

**Evidence for harm from some LNCS is increasing.** Given that each LNCS is a different chemical, it is important to consider their safety individually while also considering potential class effects on human health. Certain LNCS have been linked to increased risks of various cancers and endocrine disruption, including aspartame,<sup>169</sup> acesulfame potassium,<sup>170</sup> saccharin,<sup>171</sup> and sucralose.<sup>172</sup> Randomized controlled trials further provide evidence that saccharin can alter gut microbiota in humans,<sup>173,174</sup> and that aspartame, stevia, and sucralose can alter gut microbiota in some, but not all, humans.<sup>175</sup> RCTs in humans have also shown plausible biological mechanisms linking saccharin and sucralose to decreased insulin sensitivity and increased risk of diabetes.<sup>176,177,178,179</sup> Long-term prospective cohort studies additionally report associations between consumption of LNCS-containing beverages and obesity, type 2 diabetes, cardiovascular disease, cancer, and all-cause mortality.<sup>180, 181, 182, 183, 184, 185, 186, 187, 188, 189</sup> These findings, however, may be limited by residual confounding and reverse causality as well as difficulty in accurately measuring exposure to and effects from specific LNCS.

In addition to specific effects associated with each individual LNCS, there also may be class effects on health outcomes common to all LNCS. All LNCS are potentially sweet, activate sweet taste receptors, and are often consumed in combination. Several potentially sweet LNCS, including sucralose, acesulfame-potassium, and saccharin, have been shown to activate sweet taste receptors and induce insulin secretion in vitro, which suggests that the intense sweetness of certain LNCS may define a set of LNCS that have similar metabolic effects, despite being a heterogeneous group of compounds.<sup>190</sup> It has also been speculated that LNCS consumption in early childhood may set preferences for sweeter foods later in life,<sup>191</sup> which could affect long-term health.

**d. FDA should closely monitor the use and safety of low- and no-calorie sweeteners in the U.S. food supply.**

It is practically impossible to estimate the total quantitative amount of different LNCS in foods and beverages, as the food industry is not required to disclose the amount of LNCS in their products. Researchers typically are limited to evaluating LNCS consumption based only on the presence or absence of LNCS in products, which is an imprecise measure. Other barriers to conducting research on LNCS include lack of data on exposure to specific LNCS, inaccuracy of consumer dietary recall to assess consumption, and lack of validated food frequency questionnaires to measure LNCS.<sup>192</sup> FDA has the authority to reassess the safety of chemicals at any point, but is not obligated to do so with any regularity. To adequately monitor the use and safety of LNCS in the U.S. food supply, Congress should ensure that FDA has the authority to collect data on the production and use of LNCS (see Recommendation 14). Meanwhile, FDA must encourage the food industry to disclose the LNCS content of their products.

**We recommend FDA quantitatively monitor the use of all LNCS in foods and beverages in the U.S. The agency should make this data publicly available to allow the government and outside researchers to track use and evaluate safety over time.** For example, it is mandatory to declare the presence and amounts of LNCS in packaged products in Chile,<sup>193</sup> which has allowed researchers to quantify increases in LNCS intake and purchases after the Chilean law was implemented.

**We also recommend that FDA re-evaluate the safety of LNCS for which evidence of harm has recently emerged, and routinely re-evaluate the safety of those for which use is found to have increased from previous exposure estimates.** A recent HHS report to Congress on sugar substitutes recommended that FDA update and refine dietary exposure estimates for U.S. children's consumption of LNCS.<sup>194</sup> **We**



**encourage FDA to update these exposure estimates for children and extend them to the entire population (i.e., also include adults).**

Further, because the GRAS exemption is a process rife with industry conflicts of interest, **FDA should identify the LNCS for which the manufacturer did not submit a GRAS notice, and those for which the manufacturer did submit a GRAS notice but did not receive a subsequent "no questions letter."** FDA should review the published safety data for those LNCS, encouraging companies to submit a GRAS notice if data supporting safety appear to be inadequate.

**e. FDA and USDA should make special efforts to reduce exposure to LNCS among children.**

LNCS are not recommended for young children because long-term health effects associated with their consumption in childhood are still unknown, and it has been suggested that early exposure to LNCS may predispose children to prefer higher levels of sweetness in the diet and unfavorably influence their future dietary patterns.<sup>195,196,197,198,199</sup> The lack of data on health effects of LNCS on children is a concern, given the potential for varying effects across developmental stages and the potential risks of chronic exposure over a lifetime. Exposure may begin before birth through transplacental fetal exposure.<sup>200</sup> In animal studies, in utero exposures to aspartame elevated the risk of cancer to a greater degree than when exposures begin in adulthood.<sup>201,202</sup> Infants may be exposed through intake of breast milk,<sup>203</sup> and children through the foods and beverages served to them. Another consideration is that although replacing added sugar with LNCS reduces sugar and calories, the sweetness of the product is maintained or even increased. Sweetness increases product palatability, which is a well-documented driver of food purchases and energy intake. Given the uncertainty of benefit and potential for harm, it is appropriate to use caution; we believe it is prudent for children to avoid prolonged consumption of foods and beverages sweetened with LNCS.

**We propose that the FDA restrict LNCS in food categories commonly consumed by children and products marketed to children until long-term evidence of safety is available.**

**We also urge USDA to disallow products containing LNCS as part of their sugars standards for school meals, competitive foods, and CACFP (in child-specific programs).**

**f. FDA should consider disclosures and more ingredient information on products that contain low- and no-calorie sweeteners to alleviate consumer confusion.**

Another concern is the challenge consumers face in accurately identifying products that contain LNCS. Research has shown that many U.S. parents try to avoid purchasing products sweetened with LNCS for their children, but are largely unsuccessful due to confusing product labels. In one simulated shopping study in a supermarket, parents indicated that they avoided LNCS for their children, but they failed to identify the majority (77%) of the foods and beverages that contained LNCS, and roughly one quarter of the foods and beverages they selected for their family contained LNCS.<sup>204</sup> Similarly, the majority of parents in another study (62%) could not identify beverages with LNCS, even when shown the ingredients lists.<sup>205</sup> This likely is because many parents may not read the ingredients list due to its fine print and placement on the back of packages, or they may be unable to interpret which ingredients in the ingredients list are LNCS.<sup>206</sup> Recognizing the importance of transparency to inform consumers, other countries, including Mexico, and Argentina, require black box warnings on the front of packages that state "Contains sweeteners – not recommended for children" if a product contains LNCS (a third country, Columbia, limits its label to "contains sweeteners").

As FDA considers front-of-package labels for foods high in added sugars, it should also consider separate regulations requiring LNCS disclosures like “sweetened with [LNCS], a low-/no-calorie sweetener” or “contains [LNCS] as a low-/no-calorie sweetener”, especially on products making claims about healthfulness or low/no/reduced sugar content. We recommend consumer testing of the various terms used to describe these sweeteners, such as LNCS, high intensity sweeteners, non-sugar sweeteners, non-nutritive sweeteners, and others, to determine the term that consumers would best understand. A 2023 randomized controlled trial found that adding a front-of-package LNCS disclosure on fruit drinks and flavored waters significantly improved participants’ accuracy in identifying which products contained LNCS.<sup>207</sup>

Additionally, **amounts of each individual LNCS per serving should be disclosed on food and beverage packaging**, as recommended by the American Academy of Pediatrics<sup>208</sup> and as Chile has already done.<sup>209</sup> This information will be useful both to consumers who want to know more about the LNCS content of foods they purchase and to researchers seeking data on LNCS content.

**In summary, we recommend the following actions regarding LNCS:**

- **FDA should:**
  - **Quantitatively monitor the use of all LNCS in foods and beverages in the U.S., and make this data publicly available to allow the government and outside researchers to track use and evaluate safety over time.**
  - **Re-evaluate the safety of LNCS for which evidence of harm has recently emerged, and routinely re-evaluate the safety of those for which use is found to have increased from previous exposure estimates.**
  - **Update and refine dietary exposure estimates for U.S. children’s consumption of LNCS, and extend them to the entire population (i.e., also include adults).**
  - **Identify LNCS for which the manufacturer did not submit a GRAS notice, and those for which the manufacturer did submit a GRAS notice but did not receive a subsequent “no questions letter.” FDA should review the published safety data for those LNCS, encouraging companies to submit a GRAS notice if data supporting safety appear to be inadequate.**
  - **Restrict LNCS in food categories commonly consumed by children and products marketed to children until long-term evidence of safety is available.**
  - **Consider regulations requiring LNCS disclosures like “sweetened with [LNCS], a low-/no-calorie sweetener” or “contains [LNCS] as a low-/no-calorie sweetener,” especially on products making claims about healthfulness or low/no/reduced sugar content.**
  - **Require amounts of each individual LNCS per serving to be disclosed on food and beverage packaging.**
  
- **USDA should:**
  - **Disallow products containing LNCS as part of their sugars standards for school meals, competitive foods, and CACFP (in child-specific programs).**

As we make progress in addressing the harms of excessive added sugars consumption, it is critical that we also avoid the potential for unintended adverse consequences of exposure to LNCS.

## RECOMMENDATIONS FOR OTHER STAKEHOLDERS

### **14. Ensure that federal agencies have proper authority and adequate funding to facilitate added sugars reduction [Congress]**

As noted throughout this comment, federal agencies often lack authority and/or funding to implement strategies to reduce added sugars consumption. Therefore, Congress should:

- a. **Give FDA authority to require that the same Nutrition Facts and ingredient information that is now on packages also be available for online grocery items (see Recommendation 5).**
- b. **Give FDA authority to mandate ingredient disclosure in restaurants (see Recommendation 6).**
- c. **Remove the stocking standards appropriations rider, which currently bars USDA from expanding stocking standards (see Recommendation 9).**
- d. **Repeal the FTC Improvements Act of 1980<sup>210</sup> and reinstate FTC's ability to regulate food marketing to children on the basis of unfairness (see Recommendation 11).**
- e. **Remove the appropriations rider blocking the Interagency Working Group from publishing its nutrition guidelines for foods marketed to children and adolescents (see Recommendation 11).**
- f. **Fund an update of the FTC food and beverage marketing report that documented major food, beverage, and restaurant marketing to children and adolescents, including expenditures by category, marketing techniques, and the nutrition of the products marketed (see Recommendation 11).**
- g. **Give FDA authority to collect data on the production and use of LNCS (see Recommendation 13).**

### **15. Implement sugar-sweetened beverage excise taxes [Congress, states, and localities]**

Taxing SSBs is a highly effective, evidence-based intervention for reducing sales of these products. In addition, reduced sales likely contributes to improved health outcomes, such as better oral health and lower rates of weight gain and obesity. Taxes can signal that SSB consumption is unhealthy, raise revenues to support valuable programs and services such as early childhood education and healthy food subsidies, and induce reformulation of beverages to reduce added sugars content.<sup>211</sup> Implementation of SSB taxes is expanding rapidly across the world. Globally, 132 jurisdictions have imposed taxes, including 8 cities and counties in the U.S. (one of which was subsequently repealed). These taxes cover 57% of the world's population.<sup>212</sup> The World Health Organization recommends that governments adopt SSB taxes to reduce SSB consumption and advance health.<sup>213</sup>

**SSBs are the largest source of added sugars in the American diet.**<sup>214</sup> Consumption of SSBs is associated with risk for weight gain, obesity, type 2 diabetes, cardiovascular disease, tooth decay, and all-cause mortality.<sup>215, 216, 217, 218, 219, 220</sup> Reducing SSB consumption is thus a key strategy for reducing added sugars consumption and preventing the adverse health effects of excessive added sugars intake.

**Strong evidence shows that SSB taxes are associated with higher prices and decreased purchases of taxed beverages.** A systematic review and meta-analysis by Andreyeva and colleagues found that 82% of the tax was passed through to prices (95% CI 66.2, 98.3,  $p < 0.001$ ). Sales decreased on average by 15% (95% CI -20.4, -8.8,  $p < 0.001$ ), with a price elasticity of -1.59.<sup>221</sup> A meta-analysis of U.S. taxes had similar findings. Taxes were associated with a 20% decrease in demand, corresponding to a price elasticity of -1.5. After accounting for cross-border shopping, elasticity of demand was -1.1.<sup>222</sup> Kaplan et al, using a cross-sectional study design with an augmented synthetic control analysis that pooled data from five U.S. cities with taxes, found that the volume of SSB purchases declined by 33% following tax implementation.<sup>223</sup> Evaluations of taxes in Berkeley, CA;<sup>224</sup> Philadelphia, PA;<sup>225,226</sup> Seattle, WA;<sup>227</sup> Cook County, IL;<sup>228</sup> and Oakland, CA<sup>229,230</sup> all reported significant post-tax implementation declines in sales. Taxes also decreased purchases of added sugars.<sup>231,232</sup>

Fewer available studies have assessed consumption, and measures of consumption are less precise than those of purchases. Andreyeva et al. found that taxes were associated with a close to significant 18% decrease in SSB consumption (95% CI -37.6%, 1.5%,  $p = 0.07$ ).<sup>233</sup> A recent large U.S. study of 86,928 adolescents reported a decrease of 0.81 servings per week after Philadelphia implemented its tax (-15% from baseline consumption).<sup>234</sup> Consumption in Berkeley declined during the three years following tax implementation.<sup>235</sup>

**SSB taxes induce industry to reduce added sugars in beverage products to avoid taxes.**<sup>236</sup> While this advances the goal of added sugars reduction, unintended consequences must also be considered. When beverage manufacturers reduce sugar in their products, they often add LNCS, some of which are associated with safety concerns (see Recommendation 13). This suggests that a tax on all sweetened beverages—those with only sugar as a sweetener as well as those with LNCS—may be beneficial. Indeed, 76% of taxes globally include diet beverages.<sup>237</sup>

**In the U.S., tax revenues are used to advance community health and well-being.** Investments should and in most instances have been targeted to benefit low-income communities and have included early childhood education programs, community infrastructure (e.g., parks, libraries), workforce development, and fruit and vegetable subsidies.<sup>238</sup> Importantly, taxes with revenue investments directed towards low-income communities can provide greater benefits to people with low incomes relative to people with higher incomes. A study of the economic benefits and costs of taxes stratified by household income showed that while lower-income populations paid a higher percentage of their income in beverage taxes, there was no difference across income groups in taxes paid per capita. The investment of tax revenues in lower-income communities was greater than the amount these communities paid in taxes. The opposite was true for higher-income communities. The annual net benefit to lower-income communities ranged from \$5.3 million to \$16.4 million across the three U.S. cities included in the study.<sup>239</sup>

**Evidence regarding the health benefits of SSB taxes is emerging and promising.** The Philadelphia beverage tax was not associated with reduced tooth decay in the general population, but was associated with reduced tooth decay in adults and children enrolled in Medicaid.<sup>240</sup> A tax in Mexico was associated with a reduction in dental caries and outpatient visits for dental caries.<sup>241</sup> The Mexican tax was also associated with reductions in the prevalence of overweight and obesity among girls living in cities where the price of SSBs increased by more than ten percent.<sup>242</sup> Identifying associations of taxes with health outcomes is challenging, given the myriad factors that affect health and the long time horizon some outcomes take to develop.<sup>243</sup> Simulation models predict reductions in obesity and health equity.<sup>244</sup>

**We recommend that Congress implement a national SSB excise tax.** SSB taxes reduce sales, induce product reformulation, signal that these products are unhealthy, and generate revenues to support valuable programs and services. Evidence for health benefits is emerging. The U.S. should catch up with the rest of the world and join the scores of nations that have adopted sweetened beverage taxes. A national tax would be more efficient and effective than a patchwork of local and state taxes. Tax uniformity would prevent tax evasion from cross-border shopping (where consumers purchase beverages in jurisdictions without taxes), simplify administration and compliance, and extend the benefits of taxes to all Americans. **We recommend prompt adoption of a national SSB excise tax in the U.S. Absent a federal tax, local and state jurisdictions should continue to implement SSB excise taxes.**

**16. Pass innovative healthy retail policies to decrease promotion of products high in added sugars and increase promotion of healthier products [States and localities]**

Price promotions and product placement affect consumer shopping behavior in the food retail environment. For example, a study of 179 supermarkets found that sales were markedly higher for products when they were placed in prominent locations (e.g., checkout, endcaps, themed displays); this was the case for both unhealthy *and* healthy products (e.g., sales of placement-promoted products increased by 35% for baked goods, 29% for SSBs, 41% for vegetables, and 56% for fruit).<sup>245</sup> The increase in sales was even more pronounced when placement-promoted products were also price-promoted.<sup>246</sup> Healthy changes to food retail environments have the potential to improve the healthfulness of in-store marketing and consumer purchases. For example, when multiple supermarket chains in the United Kingdom (UK) adopted healthy checkout standards that limited candy and sweets and encouraged products like fruits, nuts, and water at checkout, purchases of unhealthy checkout items (e.g., small packages of candy and chips) decreased by 17%, which was sustained 1 year later.<sup>247</sup>

In March of 2021, the city of Berkeley, CA became the first jurisdiction to implement a healthy checkout policy, which permits only the following foods and beverages in the checkout area of applicable stores: beverages without sweeteners (caloric or noncaloric) and foods with  $\leq 5$  g added sugar and  $\leq 200$  mg sodium per labeled serving in the following categories: sugar-free gum and mints, fruit, vegetables, nuts, seeds, legumes, yogurt or cheese, and whole grains. The policy applies to all checkouts in large stores ( $>2,500$  sq ft) that sell  $\geq 25$  linear feet of food, and applies to the entire checkout area up to and including the endcap.<sup>248</sup> In October of 2022, the UK went even further, implementing regulations that prohibit price promotions and product placement of foods high in added sugars, saturated fat, and sodium at large store checkouts, aisle ends (i.e., endcaps), or separate structures near aisle ends.<sup>249</sup> U.S. states and localities should implement similar nutrition standards for in-store product pricing and placement.

**17. Use procurement strategies to reduce consumption of beverages high in added sugars and to increase water consumption [States, localities, and institutions]**

Recommendation 12 highlighted the need for federal agencies to adopt procurement strategies that reduce consumption of beverages high in added sugars and increase water consumption. Institutions, states, and localities throughout the U.S. should adapt and adopt these strategies as well.

In conclusion, and as highlighted in this comment, there are plenty of opportunities for action by federal agencies and other stakeholders to reduce added sugars consumption in the U.S. We urge federal

agencies to act quickly on these recommendations to ensure a safe U.S. food supply with reduced added sugars, and to enable consumers to access the information they need to make healthy choices for themselves and their families.

Sincerely,

**Center for Science in the Public Interest**

**Healthy Food America**

**Rudd Center for Food Policy and Health**

**Center for Digital Democracy**

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