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## WLF's Comments Explain How FDA's Added-Sugars Disclosure Mandate Would Violate First Amendment

*(In re: Revision of the Nutrition and Supplemental Facts Label; Supplemental Proposed Rule)*

**“FDA’s labeling mandate not only offers consumers the informational equivalent of empty calories, but it also violates manufacturers’ First Amendment rights and runs afoul of federal laws that protect due process.”**

**— Glenn Lammi, WLF Chief Counsel for Legal Studies**

WASHINGTON, DC—Washington Legal Foundation (WLF) filed comments yesterday with the Food and Drug Administration (FDA) on two rulemaking notices related to the government’s revision of the Nutrition Facts food label. In those notices, FDA reiterated its intention to mandate disclosure of a product’s amount of added sugars, and it newly proposed the addition of a recommended Percent Daily Value of added sugars to the label.

FDA asserted in a July 27, 2015 notice that the 2015 Dietary Guidelines Advisory Committee’s (DGAC) Scientific Report provides additional support to the agency’s requirement of a dedicated “Added Sugars” disclosure, triple-indented under “Total Sugars.” WLF’s comments argue that the DGAC report does not help FDA bring its compelled-speech proposal into compliance with the First Amendment, because the agency still cannot demonstrate a reasonable fit between the disclosure mandate and consumer behavior. The comments also question the constitutionality of the new Percent Daily Value disclosure.

The DGAC report’s failure to comply with several federal laws—such as the Federal Advisory Committee Act—further undermines FDA’s citation of that report as support for the added-sugars labeling mandate.

Finally, WLF’s comments argue that because FDA did not peer review either the DGAC report or a survey it conducted to test consumers’ reaction to the listing of added sugars, the agency’s proposal is vulnerable to legal challenge under the Information Quality Act.

Upon filing comments, WLF issued the following statement by Chief Counsel for Legal Studies Glenn Lammi: “Despite the scientific reality that the human body treats all sugars equally, ‘added sugars’ have replaced fat as today’s nutrition bogeyman. Rather than be responsive to the many comments noting that FDA’s original Nutrition Facts redesign was scientifically and legally flawed, FDA has regrettably doubled down and expanded that proposal. FDA’s labeling mandate not only offers consumers the informational equivalent of empty calories, but it also violates manufacturers’ First Amendment rights and runs afoul of federal laws that protect due process.”

*WLF is a public interest law firm and policy center that regularly advocates in defense of sound science and against regulatory proposals that harm consumers with confusing information.*

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