

May 23, 2024

New York City Department of Health and Mental Hygiene
Office of the General Counsel
Gotham Center, 42-09 28th Street, 14th Floor, CN 30
Long Island City, NY 11101-4132

RE: High Sugar Warnings on Food Service Establishment Menus Proposed Rule

To Whom it May Concern:

The Center for Science in the Public Interest (CSPI), a non-profit consumer education and advocacy organization that has worked since 1971 to improve the public's health through better nutrition and safer food, respectfully submits the following comment in strong support of New York City Department of Health and Mental Hygiene's (NYCDOHMH) proposed rulemaking regarding *High Sugar Warnings on Food Service Establishment Menus*.

As the first city to mandate added sugar warnings on chain restaurant menus, New York City is leading the way by promoting transparency and helping consumers make informed dietary choices. New York consumers have a right to know about the safety risks associated with overconsumption of added sugars and deserve to have access to information at the point of service about foods and beverages that may harm their health. The proposed rulemaking represents a commonsense approach that would provide vital evidence-based information to consumers and improve the food environment, with the long-term goal of reducing the risk of diet-related chronic disease.

I. The Proposed Rule Will Significantly Benefit Public Health

Unlike naturally occurring sugars found in fruits and vegetables, added sugars are concentrated sugars added to processed foods and drinks to make them more palatable, providing empty calories without the filling fiber or beneficial nutrients that come from whole, unprocessed foods.

Overconsumption of foods and beverages high in added sugars is linked to an increased risk of chronic diseases like type 2 diabetes^{1,2,3} and cardiovascular disease,^{4,5,6} in part by increasing the risk of weight gain,⁷ and can also contribute to dental decay.⁸ Addressing such consumption is particularly critical in New York, where diet-related chronic diseases, like type 2 diabetes and heart disease, are the leading cause of death across all racial and ethnic groups,⁹ more than one in three third-grade students has untreated tooth decay, and one in four adults ages 65 and older has no teeth.¹⁰

Chain restaurants consistently normalize overconsumption and are responsible for much of the excessive added sugars in the food environment. Individual meals offered by chain restaurants regularly approach or exceed the Dietary Guidelines for Americans (DGA) recommended limit¹¹ of added sugars that a person should consume in an entire day (50g), making it nearly impossible to regularly consume these foods while also maintaining a healthy diet. Much of the added sugars in restaurant meals comes from sugary drinks, and most consumers who buy a sugary drink at quick service chain restaurants get a beverage that contains enough drinkable calories to supply a full day's worth of added sugars.¹² A report published by CSPI in 2021, *Sweet Excess*, documents that most "small" size drinks from chain restaurants and even

some kids' size beverages contain at least a full day's worth of added sugars. Most "medium" or "regular" drinks contain at least 1½ days' worth, and most "large" drinks contain 2 days' worth.¹³ Given this background, it is no surprise studies have shown that having greater access to fast food restaurants contributes to poor diet,^{14,15,16} and many of these restaurants are disproportionately concentrated in Black and Latine communities.¹⁷

Additionally, consumers struggle to detect the amount of added sugars in restaurant menu items. A survey conducted by CSPI showed that when consumers were asked to select which menu items contained more than a day's worth of added sugars, respondents only identified the items correctly about half (49%) of the time.¹⁸

[The Sweet Truth Act](#) helps close the information gap for New York consumers. This law improves the restaurant food environment by requiring warnings on menu items with more than a day's worth of added sugars, empowering consumers with information and encouraging restaurants to offer healthier options.

Evidence from randomized controlled trials and real-world studies suggests that nutrient warnings can increase consumers' knowledge of added sugars content and lead to lower added sugars purchases.^{19,20} Additionally, warning icons provide a pictorial element, making them accessible to low literacy and non-English speaking consumers, providing more equitable access to information.^{21,22}

II. The Proposed Rule is A Valid Exercise of NYC DOHMH's Authority

NYCDOHMH has a legislative mandate to issue the proposed rule. Local Law 150 directed the department to issue a rule designating a warning icon and a warning statement.²³ Further, neither federal nor state law preempts the proposed warnings.

A. Federal law requires nutrition labeling for restaurant menu items

In 1990, the Nutrition Labeling and Education Act (NLEA) amended the Food, Drug, and Cosmetic Act (FDCA) to require nutrition labeling.²⁴ In 2010, the Patient Protection and Affordable Care Act (ACA) amended the FDCA to require that chain restaurants label calories on their menus and menu boards and provide additional nutritional information on request.²⁵ Both laws empower Food and Drug Administration (FDA) to determine the nutrients to be reported,²⁶ and FDA has adjusted these required nutrients several times, including most recently in 2016 by including added sugars alongside sodium and other nutrients required to be reported.²⁷ FDA has not yet made a similar adjustment to restaurant nutrition labeling, which it last updated in 2014,²⁸ though the agency did not require compliance until 2018.²⁹

B. Federal menu-labeling requirements do not expressly preempt the NYC warnings

The FDCA, as amended by the NLEA, expressly preempts "any [State and local] requirement for nutrition labeling of food that is not identical to" its nutrition and chain restaurant labeling requirements, with two exceptions. First, preemption does not apply to "any requirement respecting a statement in the labeling of food that provides for a warning concerning the safety of the food or component of the food."³⁰ Second, States and localities can petition the FDA for an exemption from federal preemption.³¹

Both New York City's existing sodium warnings and the proposed added sugar warnings are requirements for the labeling of food that are "not identical" to federal labeling requirements. Federal rules require only that restaurants maintain nutrition information on the premises and make it available on request, and do not require warnings to be printed on the menu. As such, the warnings would be expressly preempted if they did not fall within one of the two statutory exceptions.

Fortunately, both warnings fall within the exception for safety warnings. In February 2017, in *National*

Rest. Assn. v. New York City Dept. of Health & Mental Hygiene, a New York appellate court upheld the sodium warning on this basis, determining that the FDCA does not preempt NYC's sodium warnings.³² The analysis is no different for added sugar warnings. The exemption applies to "any requirement" concerning safety (emphasis added). Its application is not limited to safety warnings relating only to nutrients that are the subject of the FDCA's labeling requirements, so FDA menu labeling rules requiring sodium but not added sugars disclosure are irrelevant to the preemption analysis.

Opponents of the rule may argue that Congress did not intend the safety warnings exemption to include the type of nutrient warnings in the proposed rule. They may assert that Congress meant to provide only a limited exemption from preemption for laws related to the safety of non-nutritive food components like additives or pesticides. To support this argument, they may cite *Sciortino v. PepsiCo, Inc.*, a Northern District of California case in which the court applied the express preemption exemption to allow for cancer warnings under California's Proposition 65.³³ However, just because one court found that the exemption applied to non-nutritive food component warnings does not mean that it is limited to such food components. The court in *Sciortino* did not consider safety warnings related to sodium or added sugars, and in fact nothing in the NLEA's legislative history limits the exemption to cancer warnings. The *Sciortino* decision made clear that the exemption should be interpreted broadly by emphasizing that the preemption analysis assumes that "Congress does not cavalierly pre-empt"³⁴ state law and that the NLEA's "legislative history supports a broad construction of the savings clause."³⁵

Because nutrients are "a component of food," a court is likely to find, as the NY appellate court did for sodium in 2017, that Congress intended the safety warning exemption to include warnings about the safety risks of nutritional food components. Several statements in the NLEA's legislative history show that Congress intended the preemption exemption to be broadly construed. For example, Representative Henry Waxman explained that the legislation was specifically amended to narrow its preemptive scope and therefore to "explicitly permit the States to adopt requirements for warning about the ingredients or components of food."³⁶

C. Federal menu-labeling requirements do not implicitly preempt the warnings

Preemption can be implied either by legislative intent to occupy the legislative field,³⁷ or due to a conflict between a higher jurisdiction's law and a lower jurisdiction's law.³⁸ Here, Congress did not intend to occupy the field of nutrition and menu labeling because it drafted an express preemption provision that exempts safety warnings. Thus, Congress could not have intended for such warnings to be preempted by implication. Additionally, there is no conflict preemption, because it is possible for a restaurant to simultaneously have the proposed added sugar warnings, and the calorie labeling required under the FDCA.

D. State law does not preempt the warnings

No New York State laws preempt local food labeling requirements.

III. The Proposed Rule is Constitutional

The proposed rule does not unconstitutionally infringe on chain restaurants' commercial free speech rights. The First Amendment provides limited protection to commercial free speech, i.e., speech concerning the potential sale of a consumer good.³⁹ When the government requires a disclosure in the commercial context, such as the proposed rule's added sugars warnings, as a threshold question courts determine whether the disclosure is (1) strictly factual and uncontroversial; if it is, then, under the Supreme Court's test in *Zauderer v. Office of Disciplinary Counsel of Supreme Court*, the disclosure must be (2) reasonably related to a legitimate government interest, and (3) not unjustified or unduly burdensome.⁴⁰

The proposed icon and warning statement meet these requirements because they are 1) factually accurate and nonideological, 2) related to New York City's interest in ensuring consumers have sufficient information to make informed choices, and 3) not unjustified based on the scientific evidence or unduly burdensome so as to drown out chain restaurants' ability to advertise.

A. The warning icon and statement are strictly factual and uncontroversial

According to the Supreme Court, "factual and uncontroversial" information is not opinion-based,⁴¹ and circuit courts have further interpreted it to mean not subjective.⁴² Circuit courts have suggested that "uncontroversial" means factually accurate⁴³ and nonideological.⁴⁴

In 2017, in *National Rest. Assn. v. New York City Dept. of Health & Mental Hygiene*, a New York appellate court upheld New York City's sodium warning rule, finding that the required warning icon and statement do not violate the First Amendment.⁴⁵ Under that rule, a triangular black and white saltshaker icon must appear next to menu items with more than 2,300 milligrams of sodium.⁴⁶ At the point of purchase, chains must also conspicuously display disclosures stating that the icon "indicates that the sodium (salt) content of this item is higher than the total daily recommended limit (2,300) mg. High sodium intake can increase blood pressure and risk of heart disease and stroke."⁴⁷ Regarding the health warning, the court concluded that the "weight of the scientific evidence in the record shows that it is factual, accurate, and uncontroversial."⁴⁸

Similarly, NYCDOHMH's proposed added sugar warning icon and statement are strictly factual and uncontroversial. The existing sodium icon depicts an easily recognizable saltshaker in a black and white color scheme within a triangle. The proposed added sugar icon is also triangular, black and white, and has an illustration that consumers would identify as a spoonful of sugar. And, as with the sodium warning statement, the proposed added sugar warning statement conveys (1) factual information about the amount of added sugar in a menu item and about that amount relative to the Dietary Guidelines for Americans' recommendations, and (2) scientifically accurate information about the potential health effects of eating too much added sugar. There is scientific consensus that overconsumption of added sugars can increase risk of type 2 diabetes, in part by weight gain.⁴⁹ In Section IV below, we propose minor specific changes to the warning icon and statement for brevity and clarity, and to avoid weight stigma. While we believe these will increase the effectiveness of the warnings by making them more noticeable and highlighting evidence-based safety risks, we also believe the warnings to be factual and uncontroversial in their current form.

B. The warnings are reasonably related to a legitimate government interest

Under the *Zauderer* test's first prong, the government need only put forth a legitimate interest reasonably related to the disclosure requirement. In *National Rest. Assn.*, the court determined that improving consumer knowledge about sodium overconsumption's potential health risks was a valid reason for New York City to require sodium warnings.⁵⁰

A similar government interest animates the proposed warnings for added sugar. In its Notice of Public Hearing and Opportunity to Comment on the proposed rule, DOHMH states that "[c]onsumers must be able to easily identify items that exceed nationally recommended limits for daily added sugar consumption to decide whether they want to purchase an item that may harm their health."⁵¹ New York City's goal is to better inform consumers about high levels of added sugars in certain chain restaurant menu items and to improve consumer knowledge about added sugars overconsumption. Both goals are legitimate government interests to which the proposed warnings reasonably relate.

C. The warnings are not unjustified nor are they unduly burdensome

The *Zauderer* test's second prong requires that a compelled disclosure is not unjustified or unduly

burdensome. To prove that a disclosure requirement is justified, the government must provide evidence that the problem it hopes to address is “real and not purely hypothetical.”⁵² But a disclosure need not definitively address the problem.⁵³ A requirement is not unduly burdensome when it does not go beyond what is reasonably necessary, and therefore does not risk “chilling” protected speech.”⁵⁴ An unjustified or unduly burdensome mandatory disclosure “drowns out” an advertiser’s message and “effectively rules out the possibility” of advertising.⁵⁵

The *National Rest. Assn.* court did not specifically address this third prong, although its conclusion about the sufficiency of the scientific evidence regarding sodium warnings supported the conclusion that the warnings were justified. The court may not have discussed the sodium warnings’ sizes because they occupy a fraction of the advertising space available to chains in their restaurants. Circuit courts have upheld mandatory solicitation disclosures applicable to loan lenders that are required to be in the same or larger font as other lender information⁵⁶ and a tobacco warning taking up 50 percent of the back and front of cigarette packages.⁵⁷ The Court of Appeals for the Ninth Circuit, sitting en banc, invalidated San Francisco’s sugar-sweetened beverages warning that would have taken up 20 percent of advertising space, but only because evidence from the City’s expert indicated that the City could accomplish its goal with a warning half of that size.⁵⁸

High rates of type 2 diabetes, obesity and tooth decay in New York City, and the scientific evidence that such diseases are a serious public health issue and that overconsumption of added sugars can increase the risk of these diseases, justify added sugar warnings. And the warnings will take up little space. Chains have ample additional space on their menus, menu boards, and elsewhere in their restaurants for advertising.

IV. The Proposed Rule Could Benefit from Specific Changes to Make It More Effective

A. NYCDOHMH should amend the proposed rule to modify the warning statement language.

Although, as discussed above, the current warning language is factual and therefore constitutional, changes would make it more comprehensible and potentially less likely to promote weight stigma. To that end, we recommend modifying the current warning language, “Eating too many added sugars can contribute to type 2 diabetes and weight gain,” to, “High added sugars intake can increase risk of type 2 diabetes, weight gain, and tooth decay.”

Replacing “Eating too many” with “High intake” would include both eating *and drinking* added sugar. The phrases “High intake” and “increase risk” would also align the added sugar warning statement with New York City’s existing sodium warning statement, which states: “High sodium intake can increase blood pressure and risk of heart disease and stroke.”⁵⁹

Furthermore, there is strong evidence that high intake of added sugars can increase risk of type 2 diabetes,^{60,61,62} weight gain,⁶³ and tooth decay.⁶⁴ Aside from being supported by science, adding tooth decay as an outcome may be more effective at reaching consumers with health concerns beyond type 2 diabetes and weight gain.

Finally, we recommend considering whether “weight gain” is necessary to mention as a health outcome. Although it is supported by science, an ongoing study found that health warning language on sugary drinks mentioning “obesity” (not “weight gain”) was perceived to be more stigmatizing—but not more effective—than a warning that did not mention obesity.⁶⁵ We recommend DOHMH investigate the incremental effectiveness of using “weight gain” language in the warning statement in addition to type 2 diabetes and tooth decay, and also investigate the potential stigma that such language may cause.

B. NYCDOHMH should amend the proposed rule to require the warning statement to be posted on menus and at self-service dispensing points (e.g. self-service soda fountains)

The proposed rule should cover an expanded number of locations on which the warning statement must appear. Local Law 150 requires that the factual warning statement be posted in three locations: (1) “prominently and conspicuously at the point of purchase,” (2) “on the menu or menu board,” and (3) “at any location where a food item requiring an icon pursuant to this subdivision is sold as a self-service item dispensed directly to the consumer.”⁶⁶ However, the proposed rule is plainly inconsistent with the language passed by the Council and incorporates only one of these locations, stating only: “The following statement must be posted prominently and conspicuously at the point of purchase of a covered establishment...”⁶⁷

NYCDOHMH should amend the proposed rule to cover all three locations required by Local Law 150. For labels to be effective at informing consumers, consumers must first see them and attend to them,⁶⁸ which is more likely when the labels are displayed in more locations. Additionally, the rule should clarify that the warning should appear next to fountain soda dispensers, because fountain sodas often exceed the Daily Value for added sugars. A 2021 CSPI survey found that all drinks sizes except “kids” at most fast-food chains surveyed consistently exceeded the Daily Value for added sugars.⁶⁹

C. NYCDOHMH should amend the proposed rule to issue guidance instructing restaurants on electronic menus and ordering

We urge the Health Department to issue guidance instructing restaurants on use of the icon for ordering on electronic menus, including electronic menus in store, ordering through the restaurant’s proprietary application, and ordering via a third-party application. The guidance should clarify that the warning must appear wherever the menu item appears on an electronic menu, even if that menu item appears on multiple pages.

Example from McDonald’s app:

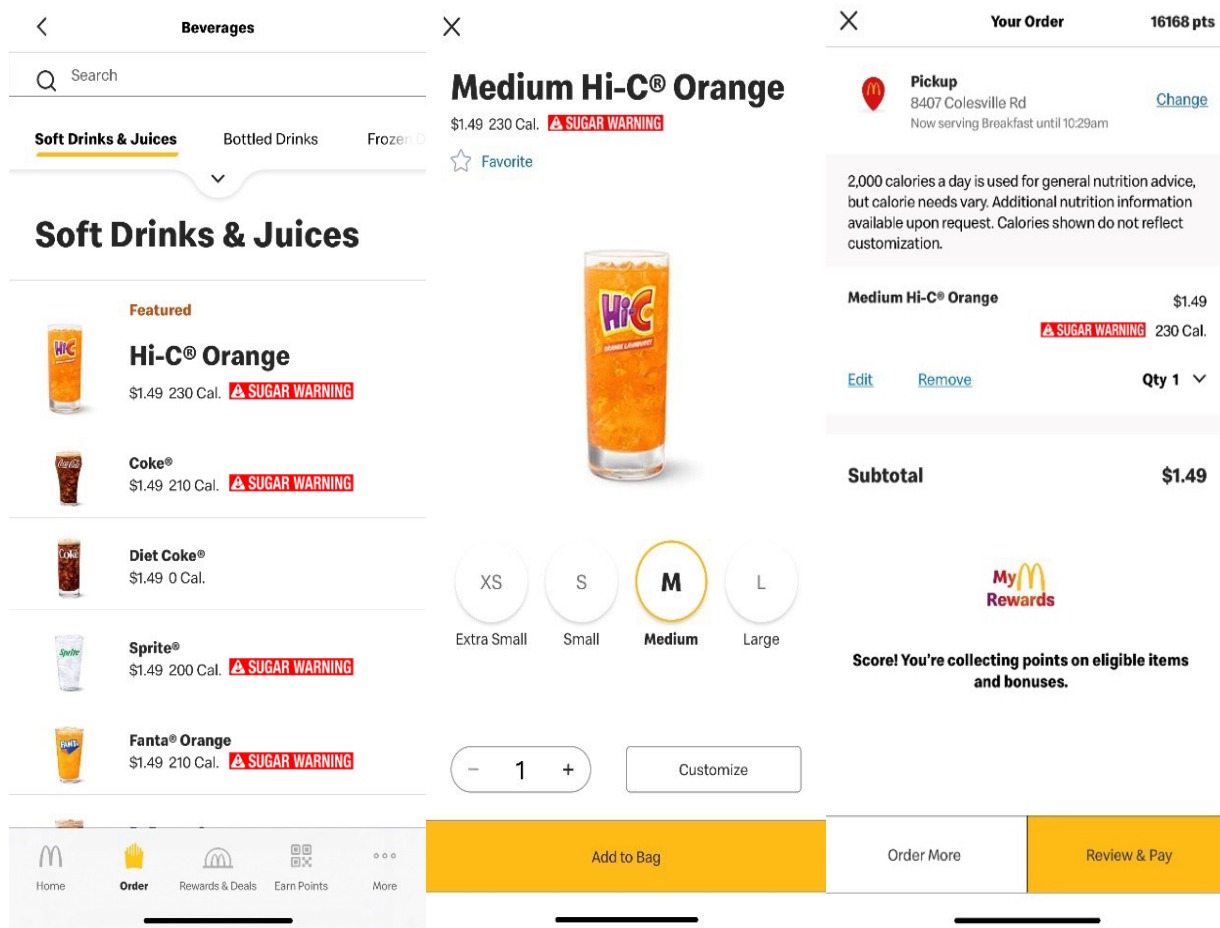


Fig 1: A single menu item may appear on multiple pages of an electronic menu during the same ordering process and the icon should appear on all of these pages. *Source: Image adapted from McDonald's mobile application.*

In addition, we request that NYC Health modify the definition of “point of purchase” in NYC Health Code 81.49 to omit “within an establishment” as follows:

“Point of purchase means any place where a customer may order food ~~within an establishment.~~”

This amendment is necessary because chain restaurants have begun using ordering applications and websites to make it possible to complete the purchase via application outside of the establishment for pickup in-store.

D. NYCDOHMH should simplify the process for restaurants to demonstrate the amount of added sugar in a menu item by posting such information as part of the nutrition information made available to consumers.

The rule currently states that a “food item that is identical to a prepackaged food item will be presumed to have the same density of added sugar as is displayed on the nutrition facts panel of the corresponding prepackaged food item, unless the food service establishment demonstrates otherwise to the satisfaction of the Department.”

We urge the department to clarify that a restaurant can demonstrate an alternate added sugar content for its food items by publishing the amount of added sugar in nutrition information available to consumers. Such information should be adequate to demonstrate the added sugar content of a menu item to the satisfaction of the department, because both federal and state law require such consumer-facing labeling to be factual and non-misleading. Such an approach will simplify compliance with the rule and could potentially provide the benefit of encouraging restaurants to post added sugar information in a manner that is accessible to consumers.

E. DOHMH should amend the proposed rule to modify the warning icon design to ensure it is as effective as possible at helping consumers identify high-added-sugar items.

We urge the department to require added sugar warnings that include icons *and* text. In a menu ordering task of a recent randomized controlled trial testing added sugar warning label designs, added sugar warning icons accompanied by “SUGAR WARNING” text led to 11 fewer grams of added sugar ordered compared to icon-only warnings (95% CI: -14, -7, $p < 0.001$).⁷⁰ This large difference was likely due to noticeability, as researchers found that only 7% of participants who saw icon-only warnings recalled seeing high-added-sugar warnings, while 44% of participants who saw icon-plus-text warnings recalled seeing high-added-sugar warnings; the addition of text resulted in a 6-fold increase in the noticeability of the warnings ($p < 0.001$).⁷¹

Similar results have also been found for sodium warnings. An online randomized controlled trial testing restaurant menu sodium warning label designs found that icons accompanied by text were significantly more noticeable and more effective at reducing sodium in menu items selected than icons alone.⁷² There is precedent for such label designs being mandated by localities, as Philadelphia requires sodium warning labels on restaurant menus that include icons accompanied by text.⁷³ Therefore, in addition to modifying added sugar warnings to include icons accompanied by text, we urge DOHMH to amend its sodium warning policy, in a separate proceeding, to mandate icons accompanied by “sodium warning” text for consistency and improved effectiveness.

Another way to potentially increase noticeability of icon-only warnings could be to require the added sugar explanatory statement to show the icon accompanied by “ADDED SUGAR WARNING” text. This is similar to conditions in which researchers have tested icon-only added sugar warnings on mock restaurant menus (Figure 1).⁷⁴

Figure 1. Mock restaurant menu showing icon-only warnings but with “SUGAR WARNING” text in the explanatory warning statement

 SUGAR WARNING Item exceeds half the Daily Value for added sugars based on a 2,000 calorie diet. The U.S. Dietary Guidelines advises limiting added sugars.	
2,000 calories a day is used for general nutrition advice, but calorie needs vary.	
	
combo meals > includes medium fries and medium soft drink	
Big Mac 870 Cal. 	8.19
2 Cheeseburgers 920 Cal. 	6.38
Quarter Pounder w/Cheese 830 Cal. 	8.19
Double Quarter Pounder w/Cheese 1040 Cal. 	9.59
Crispy Chicken Sandwich 790 Cal. 	8.99
10 Pc. Chicken McNuggets 740 Cal. 	8.29
Filet-O-Fish 700 Cal. 	7.69
	
burgers	
Big Mac 550 Cal.	5.19
Quarter Pounder w/Cheese 510 Cal.	5.19
Double Quarter Pounder w/Cheese 720 Cal.	6.59
Hamburger 250 Cal.	1.59
Cheeseburger 300 Cal.	1.69
	
chicken & sandwiches	
10 Pc. Chicken McNuggets 420 Cal.	5.29
Crispy Chicken Sandwich 470 Cal.	5.99
Filet-O-Fish 380 Cal.	4.69
	
snacks & sides	
Fries, small 220 Cal.	2.19
Fries, medium 320 Cal.	2.79
Fries, large 490 Cal.	3.19
Apple Slices 15 Cal.	0.99
	
desserts & shakes	
Chocolate Shake	
Small 530 Cal. 	2.00
Medium 630 Cal. 	3.39
Large 840 Cal. 	3.79
Strawberry Shake	
Small 500 Cal. 	2.19
Medium 590 Cal. 	3.39
Large 800 Cal. 	3.79
Vanilla Shake	
Small 490 Cal. 	2.00
Medium 590 Cal. 	3.39
Large 790 Cal. 	3.79
Oreo McFlurry	
Snack 340 Cal. 	1.59
Regular 510 Cal. 	2.99
Vanilla Cone 200 Cal.	1.29
Hot Fudge Sundae 330 Cal. 	1.89
Baked Apple Pie 240 Cal.	1.19
Chocolate Chip Cookie 170 Cal.	0.59

Source: Falbe et al., 2023;⁷⁵ Aviva Musicus

DOHMH should also consider modifying the added sugar warning design to be red, 150% the height of the menu item text, and placed to the right of menu item text. A recent randomized controlled trial testing added sugar warning label designs found that red added sugar warning labels sized 150% the height of the menu item text were strikingly more noticeable than black warnings sized 100%.⁷⁶ Red added sugar warnings would also help distinguish the added sugar warnings from the existing black sodium warnings. This study also showed that warnings placed on the right of the menu item text (as opposed to on the left) were more noticeable, especially for icon-only labels.⁷⁷

Finally, the icon design should clearly indicate that a product is high in added sugar, especially if

the icon is not accompanied by “added sugar warning” text. We recognize the value of creating a label that is distinct but clearly related to the existing sodium warning label. One way to further distinguish the two NYC labels (Figure 2) can be illustrated by Israel’s front-of-package sugar and sodium warning labels (Figure 3).⁷⁸ NYCDOHMH could consider mimicking Israel’s design for added sugar, which shows the spoon at an angle to more clearly show that it contains sugar. The department should also consider designs that researchers (in partnership with a graphic designer) have already developed and tested (Figure 4).^{79,80,81}

Figure 2. NYC proposed added sugar warning label, next to NYC sodium warning label:



Source: New York City Department of Health and Mental Hygiene

Figure 3. Israeli front-of-package sugar warning label, next to sodium warning label:



SUGAR

SODIUM

IN HIGH QUANTITY

IN HIGH QUANTITY

Source: USDA Foreign Agriculture Service.⁸²

Figure 4. Added sugar warning label designs tested in randomized controlled trials (icon-only and icon-plus-text):



Sources: Sigala et al., 2022;⁸³ Falbe et al., 2023;⁸⁴ Lemmon et al., 2024⁸⁵

V. Conclusion

In conclusion, CSPI strongly supports the proposed rulemaking and applauds the steps that New York City has taken to put progressive public health initiatives in place. We also encourage the NYCDOHMH to ensure that the final regulations take the changes outlined in this comment into consideration to increase its public health impact.

Thank you for the opportunity to comment on this important issue. We look forward to continuing to partner with NYCDOHMH and work toward our shared goal of reducing added sugars consumption, ensuring a safe food supply, and enabling consumers to access information they need to make healthy choices for themselves and their families.

Sincerely,

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- ²⁹ Food Labeling; Nutrition Labeling of Standards Menu Items in Restaurants and Similar Retail Food Establishments; Extension of Compliance Date; Request for Comments. 82 Fed. Reg. 20825.

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- ³¹ 21 U.S.C. 343-1(b).
- ³² *National Rest. Assn.*, 148 A.D. 3rd 169.
- ³³ *Sciortino v. PepsiCo, Inc.*, 108 F. Supp. 3d 780, 806 (N.D. Cal. 2015).
- ³⁴ *Sciortino*, 108 F. Supp. at 795 (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)).
- ³⁵ *Sciortino*, 108 F. Supp. 3rd at 803.
- ³⁶ 136 Cong. Rec. 20414-21 (daily ed. July 30, 1990) (statement of Rep. Waxman).
- ³⁷ *Fidelity Fed. Sav. & Loan Assn v. De la Cuesta*, 458 U.S. 141, 153 (1982).
- ³⁸ *Geier v. American Honda Motor Co.*, 529 U.S. 861, 869-874 (2000).
- ³⁹ *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978).
- ⁴⁰ *Zauderer v. Office of Disc. Counsel of Supreme Court*, 471 U.S. 626, 651 (1985).
- ⁴¹ *Zauderer*, 471 U.S. at 651.
- ⁴² *Discount Tobacco City & Lottery, Inc. v. United States*, 674 F.3d 509, 526 (6th Cir. 2012); *Entm't Software Ass'n v. Blagojevich*, 469 F.3d 641, 652 (7th Cir. 2006).
- ⁴³ *Am. Meat Inst. v. United States Dep't of Agric.*, 760 F.3d 18, 27 (DC Cir. 2014).
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- ⁴⁵ *National Rest. Assn. v. New York City Dept. of Health & Mental Hygiene*, 148 A.D. 3rd 169, 178 (App. Div. 1st Dept. 2017).
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