

**Summary of responses to CL 2021/19/OCS-FL**

The Chairs of the Electronic Working Group on the draft Guidelines for Front of Pack Nutrition Labelling have prepared this summary document of responses received to CL 2021/19/OCS-FL. The Chairs hope this will assist in the upcoming virtual working group sessions on this topic and would like to assure participants that their CL comments have been considered ahead of these sessions. The comments are presented under the relevant Section of the draft Guidelines as proposed in Appendix II of 2021/19/OCS-FL, responses to questions which do not relate to the content of these Guidelines are summarised at the end of this document.

<b>PROPOSED DRAFT GUIDELINES ON FRONT-OF-PACK NUTRITION LABELLING</b>
<p><b>1. Purpose</b></p> <p>Provide general guidance to assist in the development of front-of-pack nutrition labelling, a form of supplementary nutrition information, as a tool to facilitate the consumer’s understanding of the nutritional value of the food and their choice of food, consistent with the national dietary guidance or health and nutrition policy of the country or region of implementation.</p>
<p><b>Summary of comments:</b> Very limited comments were received on the purpose.</p> <p>One respondent highlighted that this has already been agreed. Two respondents considered that the purpose should include reference to reformulation/ healthier product innovation.</p>
<p><b>2. SCOPE:</b></p> <p>2.1 These guidelines apply to front-of-pack nutrition labelling (FOPNL) to be used on pre-packaged foods<sup>1</sup> that include a nutrient declaration<sup>2</sup> subject to the section 5 of <i>Guidelines on Nutrition Labelling</i> (CXG 2-1985).</p> <p>2.2 Alcoholic beverages and foods for special dietary uses covered by the following Codex standards are excluded:</p> <p><i>[Guidelines on Formulated Complementary Foods for Older Infants and Young Children (CXG 8-1991)]</i></p> <p><i>Standard for Infant Formula and Formulas for Special Medical Purposes Intended for Infants (CXS 72-1981)</i></p> <p><i>[Standard for Canned Baby Foods (CXS 73-1981)]</i></p> <p><i>[Standard for Processed Cereal-Based Foods for Infants and Young Children (CXS 74-1981)]</i></p> <p><i>Standard for Follow-up formula (CXS 156-1987)</i></p> <p><i>Standard for Labelling of and Claims for Foods for Special Medical Purposes (CXS 180-1991)</i></p> <p><i>Standard for Formula Foods for Use in Weight Control Diets (CXS 181-1991)</i></p> <p><i>Standard for Formula Foods for Use in Very Low Energy Diets for Weight Reduction (CXS 203-1995)</i></p> <p>2.3 Additionally, certain prepackaged foods may be exempted<sup>3</sup> from FOPNL. These may include foods exempted from bearing a nutrient declaration on the basis of nutritional or dietary insignificance or small packaging as described in the <i>Guidelines on Nutrition Labelling</i> (CXG 2-1985).</p> <p><i>These guidelines can also be used as a guide in the case where simplified nutrition information is displayed near the food (e.g. shelf-tags or food service), for unpackaged foods or for foods sold via online (e.g. information available at point of purchase on websites).</i></p> <p><sup>1</sup> As defined in the <i>General Standard for the Labelling of Prepackaged Foods</i> (CXS 1-1985).</p> <p><sup>2</sup> As defined in the <i>Guidelines on Nutrition Labelling</i> (CXG 2-1985).</p> <p><sup>3</sup> Exemptions are where the food is not intended to have FOPNL but is still permitted to display FOPNL.</p>
<p><b>Summary of comments:</b> There continues to be divergent views on the scope, particularly on the</p>

exclusions (Section 2.2) and exemptions (Section 2.3).

### **Exclusions (section 2.2)**

While some supported listing specific exclusions other respondents suggested no specific exclusions should be included and considered these should be left for national authorities to decide. Rationale provided for this approach included that exclusions are system dependent and the Guideline should allow flexibility to accommodate different systems. One respondent stated that they preferred the previous wording which did not list specific Codex texts.

Mixed views were received on the specific exclusions. While there was strong agreement that FOPNL should not promote consumption of alcohol, some did not consider alcohol should be automatically excluded as some systems may not promote its consumption.

Some expressed their support for the exclusions for infant formula and follow-up formula. Whereas others considered these should not be automatically excluded, citing concern around the potential for sugar to be added to beverages for children under 36 months and that the existence of other laws and standards such as the International Code of Marketing of Breastmilk substitutes should not be reason to automatically exclude these products. Rationale provided for excluding these products centered around concerns that FOPNL could promote consumption of these (particularly over breast milk) which may be contrary to provisions in the International Code of Marketing of Breastmilk substitutes and subsequent WHA resolutions.

Some supported the exclusions of the Codex texts currently in square brackets that relate to foods for infants and young children, whilst others did not. Those who supported removing these Codex texts from the list of exclusions, considered they do not contain appropriate guidance on nutrients of concern therefore the composition of these products can vary substantially. Some considered that complementary foods should be excluded as they are highly processed and were concerned that FOPNL could promote consumption of these products.

### **Exemptions (section 2.3)**

A few considered Section 2.3 should be deleted as it was unclear and exemptions should be left for countries to decide. One respondent wanted more specific text with listed exemptions. Another expressed that few exemptions should be permitted, especially in a mandatory scheme. One respondent considered that foods sold in small packages should not be exempted, whilst another wanted this term defined. One respondent wanted to explicitly exempt foods in non-retail containers. Another respondent considered you cannot have exemptions from a voluntary system.

Some editorial comments were received including adding a reference to the relevant paragraph in the *Guidelines on Nutrition Labelling (CXG 2- 1985)* and clarifying that exempted products may still display FOPNL, some specified that this is only if nutrition labelling is also provided. Some were of the view that footnote 3 is less clear than earlier versions and one respondent suggested replacing 'intended' with 'required' in this footnote.

Some suggested that the italicized paragraph should be made section 2.4. Clarity was requested on aspects of this paragraph, including why it was in italics, whether 'food service' is the same as 'foods for catering purposes' and 'food sold via online'. It was requested to align terminology with other Codex texts and ongoing work such as the e-commerce work. Others provided editorial comments to simplify wording or requested that wording is amended to allow flexibility for countries to decide to what extent nutrition information is displayed in other locations.

## **3. DEFINITION OF FRONT-OF-PACK NUTRITION LABELLING (FOPNL)**

3.1. *Front-of-pack nutrition labelling (FOPNL)* is a form of supplementary nutrition information that presents simplified, nutrition information on the front-of-pack<sup>4</sup> of pre-packaged foods.<sup>5</sup> It can include symbols/graphics, text or a combination thereof that provide information on the overall nutritional value of the food and/or on nutrients included in the FOPNL at a national level

3.2. This definition excludes nutrition and health claims.<sup>6</sup>

<sup>4</sup> *Front-of-pack* means the total area of the surface (or surfaces) that is displayed or visible to the consumer under customary conditions of sale or use.

<sup>5</sup> As defined in the *General Standard for the Labelling of Prepackaged Foods (CXS 1-1985)*.

<sup>6</sup> as defined in the *Guidelines for Use of Nutrition and Health Claims (CXG 23 – 1997)*.

**Summary of comments:** Minimal comments were received on the definition and most were supportive of the overall definition, including removing 'interpretive'.

Two respondents stated they would like to retain 'interpretive'. Some concerns were expressed about specific schemes, such as colour coded schemes. Others were concerned that warning labels may not be captured in the definition, however, several respondents expressed their support that warning labels are captured by the current definition. One respondent was concerned with section 5 of the CXG 2-1985 stating supplementary nutrition labelling should be optional.

Some comments were received on the exclusion of nutrition and health claims, specifically that some systems could be considered a 'claim' in national legislation. Therefore, one respondent suggested that only text-based nutrition claims should be excluded.

Some editorial suggestions were received such as in Section 3.1 deleting 'at a national level' and changing 'nutrients included in the FOPNL' to 'displayed on FOPNL' and making Section 3.2 a footnote.

#### 4. PRINCIPLES FOR THE ESTABLISHMENT OF FOPNL SYSTEMS

A FOPNL should be based on the following principles in addition to the general principles in the *General Standard for the Labelling of Prepackaged Foods* (CXS 1-1985):

**Summary of comments:** Limited comments were received on this text; some expressed their general support for Section 4.

One respondent suggested reordering the introduction sentence for clarity, so that it would read: "In addition to the general principles in the *General Standard for the Labelling of Prepackaged Foods* (CXS 1-1985), FOPNL should be based on the following principles:" Formatting changes are summarised in the response to the question on principle groupings below.

Only one FOPNL system should be recommended by government in each country. However, if multiple FOPNL systems coexist, these should be complementary, not contradictory to each other.

**Summary of comments:** Limited and only editorial comments were received on this principle.

Several suggested changing 'recommended by government' to 'government-endorsed'. Some comments were received to allow for greater flexibility such as adding 'where appropriate' to the end of the first sentence or adding 'ideally' to the beginning.

FOPNL should be calculated and applied to the food in a manner consistent with the corresponding nutrient declaration for that food where applicable.

**Summary of comments:** Some editorial comments were received on this principle, primarily around the term 'calculated'.

Many suggested removing 'calculated' as FOPNL is not always based on a calculation. Another suggested this is replaced with 'assessed' and another suggested simplifying to 'FOPNL should be based on and consistent...'. One respondent stated that 'in a manner consistent with the nutrient declaration' is not clear and others suggested 'where applicable' be removed as this is already covered in Section 2.1.

FOPNL should align with evidence-based national or regional dietary guidance or, in its absence, health and nutrition policies. Consideration should be given to both the nutrients and the food groups consumption of which is discouraged and encouraged by these documents.

**Summary of comments:** Some comments were received on this principle, primarily in relation to the second sentence.

Some expressed their support for this principle, stating it was a crucial element of FOPNL. Some considered only the first sentence was necessary as the second sentence is already covered by recommendations in dietary guidance. Some did not support referencing 'food groups' whose consumption is encouraged, citing evidence of the success of FOPNL system that focus on risk nutrients. Others supported retaining the second sentence as it brings important balance and context,

<p>one respondent suggested adding 'taking into account the overall nutrient profile of a product'. Some suggested changing the wording to "discourage and/or encourage" to allow greater national flexibility and so that it is applicable to the various FOPNL systems.</p> <p>Other editorial suggestions included changing 'guidance' to 'recommendation' adding 'public' to health and further clarifications to the second sentence. Some considered more clarity was needed on the term 'food groups', for example defining this term or providing examples.</p>
<p>FOPNL should present information in a way that is easy to understand and use by consumers in the country or region of implementation. The format of the FOPNL should be supported by scientifically valid consumer research.</p>
<p><b>Summary of comments:</b> Limited and only editorial comments were received on this principle.</p> <p>Some expressed their support for the text, including the addition of 'and use'. A number of editorial changes were suggested including removing 'in the country or region of implementation', changing 'normal conditions' to 'typical conditions', simplifying to "FOPNL format must..." and consolidating the two sentences. One respondent suggested adding reference to 'consumers across demographic and socioeconomic groups' and 'measurable behavior changes'.</p>
<p>FOPNL should be clearly visible on the package at the point of purchase under normal conditions.</p>
<p><b>Summary of comments:</b> Limited and only editorial comments were received on this principle.</p> <p>Some expressed their support for the text. Two respondents wanted more specific text about the placement, such as specifying 'on the front of' or 'on the principle display panel'. Other wording suggestions including using 'point of sale' rather than 'point of purchase' to align with the e-commerce work, retaining 'of sale and use', using 'container' rather than 'package' and specifying that this should not mislead the consumer. One respondent considered that the text needed to specifically reference foods sold via ecommerce and provided wording suggestions to accommodate this.</p>
<p>FOPNL should allow consumers to make comparisons between foods.</p>
<p><b>Summary of comments:</b> Some comments were received on this principle.</p> <p>A number of respondents expressed their support for this principle including the proposal to remove "within a food category". One respondent wanted this retained as it didn't make sense to compare between food categories. Another considered this may need to be further explored in the CCFNSDU work on nutrient profiles, such as having different threshold for different food groups.</p> <p>Some editorial suggestions included changing 'allow' to 'help', adding 'appropriate' before comparisons and adding 'and food groups on nutritional value'.</p>
<p>FOPNL should be government lead but developed in collaboration with all interested parties including private sector, consumers, academia, public health associations among others.</p>
<p><b>Question:</b> Do you agree that the proposed text for principle 4.3.1 manages the potential for conflict of interest in the development of a FOPNL system?</p>
<p><b>Summary of comments:</b> The majority of respondents (28 out of 45 respondents; 18 members and 10 observers) considered that the current text adequately manages the potential for conflict of interests.</p> <p>This was primarily due to the text 'government led', which ensures government oversight. Many stated that it is important that views of all stakeholders, including the private sector, are considered in the development of FOPNL.</p> <p>Some that supported the current text highlighted that collaboration with relevant stakeholders allows for co-development to best utilize expertise of all key stakeholders. One respondent noted that 'conflict of interest' should not be used to exclude expertise provided by industry.</p> <p>Those that did not consider the current text appropriately manages conflict of interest (14 respondents; 7 members and 7 observers) were primarily concerned that government oversight was</p>

insufficient to manage conflict of interests when collaborating with stakeholders, particularly the private sector. Most of these respondents considered that managing conflict of interests would be better addressed by replacing 'collaboration' with 'consultation' (10 respondents). As consultation implies a lower level of engagement and government retains ultimate decision-making. Some countries supported replacing 'collaboration' with 'consultation' or including 'collaboration/consultation' as their national legislation or regulatory process only requires consultation. One respondent did not consider that Codex text should list collaboration or consultation with stakeholders as this is up to government to decide.

Some respondents stated that it was inappropriate for Codex to mandate collaboration with stakeholders and that this does not reflect current international guidance for example from the WHO and the UN around safeguarding against conflicts of interest. A few respondents requested that reference be specifically made to safeguarding against conflicts of interest in the Guidelines, either in this principle or elsewhere in the Guideline.

Very few respondents disagreed with 'government led', those that did disagree considered it could be appropriate for systems to be developed by other stakeholders, specifically academia. One respondent suggested this text be replaced with 'led by [competent authorities / recognized authoritative scientific bodies]'. Two respondents suggested allowing more flexibility for example stating, 'preferably government led' or 'government led if required'. However, the majority considered it was essential that government led the development process.

Some editorial comments were also received to the list of interested parties, including replacing this term with stakeholders, replacing 'among others' with 'and all other interested stakeholders', adding 'trading partners' and one respondent queried whether there was a more appropriate term than 'public health associations'. Additionally, one respondent suggested adding 'based on consumer insights and food and nutrition sciences, to ensure effective and practical implementation' to the end of this principle. Several participants also highlighted an error in the principle in Appendix II as this states 'government lead' instead of 'government led', as was proposed on page 15 of Agenda paper CX/FL 21/46/6.

[FOPNL should be implemented in a way that facilitates consumer use of the FOPNL].

**Question:** Do you agree with the change in focus for principle 4.3.2 to focus on facilitating consumer use of FOPNL?

**Summary of comments:** The majority of respondents (30 out of 43 respondents; 23 members and 7 observers) supported the change in focus of this principle to facilitating consumer use of FOPNL.

The main rationale provided was that it more closely aligns with the agreed purpose. Others highlighted that this avoids language that may be misinterpreted as implying mandatory implementation and that it still captures the original intent as high uptake is needed to facilitate consumer use. One respondent highlighted that it may help manage conflicts of interest in the development of a FOPNL system. Some suggested further clarifying this principle to better express the original intent around uptake, for example the addition of '...facilitates the availability of FOPNL for consumer use' or adding "and encourages adoption by food manufacturers'. Other editorial suggestions were received such as substituting 'facilitates' with 'encourages', adding reference to not discriminating against food products and referencing consumer understanding in addition to use.

Thirteen respondents (4 members and 9 observers) did not support this change in focus. Most of these respondents considered the concept of facilitating consumer use is already captured elsewhere in the Guidelines, such as the purpose and principles (previous 4.2.1, 4.2.3, 4.3.3). For this reason, some considered this principle should be deleted, additionally one respondent cited that implementation is out of scope.

Several respondents (7) considered that the original principle on uptake should be retained, mainly as they did not think the new text captured the previous intent. Many of these respondents stated that uptake is not covered elsewhere in the Guidelines, unlike consumer use and that it is important that FOPNL development consider uptake to ensure success. Some stated that many voluntary FOPNL have been unsuccessful due to poor and selective uptake. They noted it is important that the Guidelines do not prevent mandatory FOPNL implementation. These respondents wanted the original principle retained with a reference to 'maximising' uptake, whilst other respondents expressed this should state 'encouraging' uptake if the original principle was retained. One

respondent highlighted that in some instances, such as mandatory warning systems, it may not be appropriate to maximize uptake as decreased uptake may reflect greater availability of healthier products. One respondent considered there could be an opportunity to incorporate reformulation or healthier product innovation into this original wording. They also considered that being silent on uptake may suggest mandatory implementation.

FOPNL should be accompanied by a consumer awareness and education/ information program to increase consumer understanding and use of the system.

**Summary of comments:** Limited comments were received on this principle.

Some respondents expressed their support for this principle. Some suggested that more information should be included on who (such as 'government led in collaboration with stakeholders') and how this should be done. One respondent suggested removing 'awareness and' as this is not an aspect that those implementing front of pack nutrition labelling have control over and it is complex to measure.

FOPNL should be monitored and evaluated to determine effectiveness/impact.

**Summary of comments:** Limited comments were received on this principle.

Several respondents suggested simplifying this principle by removing 'impact'. Whilst others wanted both 'effectiveness' and 'impact' retained but these terms separated by 'and' as they are not synonymous. Some supported reinstating a reference to targets and others suggested more information being included on how to monitor and measure effectiveness such as the type of studies that should be considered.

### Deleted principles

**Summary of comments:** Few concerns were raised with the deletion of the three principles.

Some expressed their support for deleting all three principles. One respondent wanted the deleted principle on reformulation retained and provided editorial suggestions for this principle. Two respondents wanted the deleted principle "FOPNL should be based on a standard reference amount" retained. The rationale provided for retaining this principle was that it was supported by the majority of the electronic working group and that a standalone principle on this was still warranted as this concept was not completely covered by the principle on facilitating consumer comparisons (rationale provided by the Chairs in support of deleting this principle). One of these respondents considered that this principle should specify per 100g/ml to best facilitate comparisons.

### Suggested new principles

**Summary of comments:** Several new principles were suggested.

These included:

FOPNL being non-discriminatory, specific wording examples included:

- FOPNL should be objective and non-discriminatory
- FOPNL should not be used as the basis of punitive actions or utilized in such a manner that it hinders trade
- FOPNL should not be used as the basis to select or ban foods or be utilized as a disguised barrier to trade establishing hierarchy between domestic and imported foods, or between traditional foods and other types of foods.
- FOPNL systems should be as much as objective and non-discriminatory as possible and not exploit fear of consumers, consistent with the section 3.5 of the Codex *General Guidelines on Claims* (CXG 1, latest version (2019)).

- FOPNL should frame information as constructive nutritional help, not warnings. It should be meaningful and not alarmist or mis-leading to consumers. There are many public misperceptions on foods, and FOPNL has the opportunity to educate consumers for more balanced understanding, based on science

Positioning FOPNL in the context of the overall diet, specific wording examples included:

- FOPNL should properly take into account the role of portions in a balanced diet.
- FOPNL should empower consumers to make informed food choices in order to help them follow healthy diets
- FOPNL system should empower, rather than confuse, consumers about nutrition labelling information and the importance of a balanced diet and relative roles of diverse foods.
- FOPNL should be a form of supplementary nutrition information, serving as a tool to facilitate the consumer's understanding of the contribution or importance of a food to the diet, and not a sole means to reformulate products.

Other suggestions for new principles related to:

- safeguarding against possible conflict of interests
- enabling flexibility at the national level, some requested including wording that allows members to implement FOPNL on a mandatory basis to achieve their public health objectives
- reducing trade barriers

Encouraging the development of a compliance guide to be published with or in addition to guidelines on FOPNL

**Question:** Considering the proposed changes to the principles, do you agree with deleting the principle groupings?

**Summary of comments:** Most respondents (39 out of 43) agreed with the Chairs proposal to delete the principle groupings as considered these were no longer necessary.

Other rationale provided in support of deleting the groupings included that it was easier to understand by keeping the guidelines clear and concise and that all principles relate to the general development of FOPNL. Some participants did suggest some reformatting, including adding principle numbers and creating a sub list to reduce duplication of 'FOPNL should'. The few who wanted the groupings retained cited facilitating readability and clarity.

**Question:** Do you confirm the majority preference to delete Section 5 and to incorporate relevant aspects from Section 5 to Section 4?

**Summary of comments:** Nearly all respondents (44 out of 46) confirmed the majority preference to delete Section 5.

The main rationale was to eliminate duplication and to streamline the document, others stated that it included aspects that were out of scope or beyond the mandate of Codex. Some respondents specified the areas they would like incorporated into Section 4, this included greater recognition of national flexibility, safeguarding against conflict of interests, flexibility to mandate and reducing trade barriers. These specific comments are considered within Section 4.

**Question:** Consider advancing the Guidelines to Step 5 or Steps 5/8.

**Summary of comments:** Most supported advancing the guidelines to either Step 5 (14 out of 34 respondents; 18 members and 6 observers) or Step 5/8 (11 respondents; 9 members and 2 observers), many on the caveat that feedback is addressed and agreed by Committee consensus.

Rationale provided for progression to Steps 5/8 was that the FOPNL landscape is changing rapidly and the Guidelines need to be finalised to meet their agreed purpose. One respondent considered this would support the CCNFSDU work on nutrient profiles. Rationale provided for progression to Step 5 only was recognition of the significant progress made but the need for further discussion and consideration of the text. Some also stated that adequate time needs to be provided for consideration given the changing landscape and related CCNFSDU work. A few considered there were still significant issues to consider particularly around conflicts of interests, government flexibility and maximising uptake. Some felt that progression depended on discussions at the working group sessions and plenary.

**Question:** Consider whether Guidelines will be part of section 5 “supplementary nutrition information” of the *Guidelines on Nutrition Labelling (CXG 2-1985)*, an annex to the *Guidelines on Nutrition Labelling (CXG 2-1985)*, or a stand-alone document.

**Summary of comments:** The clear preference was to place the Guidelines as an annex to the *Guidelines on Nutrition Labelling (CXG 2-1985)*(31) (31 out of 49 respondents).

This links FOPNL as a form of supplementary nutrition labelling and keeps all relevant Codex Guidance on nutrition labelling together. This rationale was also provided by those who supported it being part of Section 5 “supplementary nutrition information” of the *Guidelines on Nutrition Labelling (CXG 2-1985)* (8 respondents). However, the preference for an annex was because it still provides separation in recognition that the Guidelines are specific to FOPNL and not all forms of supplementary nutrition labelling. Some felt that including as part of Section 5 would make it unnecessarily long and suggested if this was the preference that the text may need to be further streamlined.

A few preferred the Guidelines as a standalone document (7 respondents), as it was considered that the *Guidelines on Nutrition Labelling (CXG 2-1985)* predominately provide information on nutrient declarations and this should be kept separate from FOPNL which has a greater public health focus. They also considered that a standalone document would allow the CCNFSDU work on nutrient profiling to be incorporated as an annex when available.

Some stated they could not determine the best placement for the Guidelines until they are finalised and requested further information on the legal implications of the different placement options. Some respondents noted that the placement of the Guidelines does not alter their legal status.