To amend the Federal Food, Drug, and Cosmetic Act to strengthen requirements related to nutrient information on food labels, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. PALLONE (for himself and Ms. DELAUNO) introduced the following bill; which was referred to the Committee on ____________________________

A BILL

To amend the Federal Food, Drug, and Cosmetic Act to strengthen requirements related to nutrient information on food labels, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

3 (a) SHORT TITLE.—This Act may be cited as the

4 “Food Labeling Modernization Act of 2013”.

5 (b) TABLE OF CONTENTS.—The table of contents of

6 this Act is as follows:

7 Sec. 1. Short title; table of contents.
Sec. 2. Additional requirements for front-of-packaging (FOP) labeling for processed foods.

Sec. 3. Claims for conventional foods.

Sec. 4. Use of specific terms.

Sec. 5. Modernization of the Nutrition Facts Panel.

Sec. 6. Ingredient labels.

Sec. 7. Caffeine content on information panel.

Sec. 8. Effective date; regulations.

Sec. 9. Definitions.

SEC. 2. ADDITIONAL REQUIREMENTS FOR FRONT-OF-PACKAGING (FOP) LABELING FOR PROCESSED FOODS.

(a) SUMMARY NUTRITION LABELING INFORMATION.—

(1) IN GENERAL.—Section 403 of Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) is amended by adding at the end the following new paragraph:

“(z)(1) Except as provided in subparagraphs (3), (4), and (5) of paragraph (q), if it is food (other than a dietary supplement) intended for human consumption and is offered for sale and otherwise required to bear nutrition labeling, unless its principal display panel bears summary nutrition information that reflects the overall nutritional value of the food or specified ingredients, as specified in accordance with regulations of the Secretary, and does not contain any summary nutritional information which is in addition to or inconsistent with the information required under this subparagraph.”.
(2) Principles for implementing regulations.—In promulgating regulations regarding the summary nutrition information required under the amendment made by paragraph (1), the Secretary of Health and Human Services shall take into account published reports of the Institute of Medicine of the National Academy of Sciences regarding such information and base regulations on the following principles:

(A) There should be a single simple, standard symbol system that displays calorie information related to a common serving size, and information related to nutrients strongly associated with public health concerns.

(B) Consumers should be able to quickly and easily comprehend the meaning of the symbol system as an indicator of a product's contribution to a healthy diet.

(C) The information should appear on all products that are required to bear nutrition labeling.

(D) The information should—

(i) appear in a consistent location on the principal display panels across products;
(ii) have a prominent design that visually contrasts with existing packaging design; and

(iii) be sufficiently large.

(E) The nutrition information should be consistent with the Nutrition Facts Panel and with the recommendations of the Dietary Guidelines of Americans.

(F) The information should aim to facilitate consumer selection of healthy product options, including among nutritionally at-risk sub-populations.

(G) The Secretary should periodically evaluate the front-of-package information to assess its ability to help facilitate consumer selection of healthy product options and the extent to which manufacturers are offering healthier products as a result of the disclosure.

(H) The implementation of the information disclosure should be accompanied by appropriate consumer education and promotion campaigns determined by the Secretary.

(b) PERCENTAGE OF WHEAT AND GRAINS IN GRAIN-BASED PRODUCTS.—Section 403(z) of Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(z)), as added by
subsection (a)(1), is further amended by adding at the end the following new subparagraph:

“(2) If, in the case of food other than a dietary supplement, the principal display panel bears—

“(A) the phrase ‘made with whole grain’, the term ‘multigrain’, or similar descriptive phrases, terms, or representations with respect to whole grain content, unless the amount of whole grains, expressed as a percentage of total grains, is conspicuously disclosed in immediate proximity to such descriptive phrase, term, or representation; or

“(B) the terms ‘wheat’ or ‘whole wheat’ on breads, pasta, crackers, or similar wheat-based products, unless the percentage of whole wheat by weight contained in the food is conspicuously declared in immediate proximity to that term or there is a conspicuous declaration that the food ‘contains no whole wheat’ in immediate proximity to that term.”.

(c) SWEETENERS, COLORING, AND FLAVORING.—

Section 403(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(z)) is further amended by adding at the end the following new subparagraph:

“(3) If, in the case of food other than a dietary supplement, it bears or contains any added artificial or natural coloring, any added artificial or natural non-caloric
sweetener, or any added artificial or natural flavoring, unless such fact is prominently stated on the principal display panel of a package or container of the food.”.

(d) CONFORMING AMENDMENT.—The second sentence of section 403(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(k)) is amended by striking “and (i)” and inserting “, (i), and (z)”.

(e) CONSTRUCTION.—Nothing in this section shall be construed as affecting any requirement in regulation in effect as of the date of the enactment of this Act with respect to matters that are required to be stated on the principal display panel of a package or container of food that is not required by an amendment made by this section or as restricting the authority of the Secretary of Health and Human Services to require additional information be disclosed on such a principal display panel.

SEC. 3. CLAIMS FOR CONVENTIONAL FOODS.

(a) STRUCTURE AND FUNCTION CLAIMS.—

(1) GUIDANCE.—Not later than one year after the date of enactment of this Act, the Secretary of Health and Human Services shall issue comprehensive guidance clarifying the application of section 403(r) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)) with respect to the mechanisms by which a nutrient in food (other than a dietary
supplement) is intended to affect the structure or any function of the human body, or characterize the documented mechanism by which a nutrient in such food acts to maintain such structure or function.

(2) SUBSTANTIATION OF CLAIM.—Section 403(r) of Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)) is amended—

(A) by redesignating subparagraph (7) as subparagraph (8); and

(B) by inserting after subparagraph (6) the following:

“(7) If the Secretary requests that a claim under paragraph (r)(1)(B) for food (other than a dietary supplement) be substantiated, then not later than 90 days after the date on which the Secretary makes such request, the manufacturer shall provide to the Secretary all documentation in the manufacturer’s possession relating to the claim.”.

(b) TRANS FATS.—Section 403(r)(2)(A) of Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)(2)(A)) is amended—

(1) in subclause (iii)—

(A) in the matter before item (I), by striking “fat or saturated fat” and inserting “fat, saturated fat, or trans fats”; and
(B) in item (II), by striking “fat or saturated fat” and inserting “fat, saturated fat, or trans fats”;

(2) in subclause (iv), by striking “saturated fat” and inserting “saturated fat or trans fats” each place it appears;

(3) by redesignating subclauses (v) and (vi) as subclauses (vi) and (vii), respectively; and

(4) by inserting after subclause (iv) the following new subclause:

“(v) may not be made with respect to the level of trans fats in the food unless the food contains less than one gram of saturated fat per serving or, if the food contains more than one gram of saturated fat per serving, unless the label or labeling of the food discloses the level of saturated fat in the food in immediate proximity to such claim and with appropriate prominence which shall be no less than one-half the size of the claim with respect to the level of trans fats,”.

SEC. 4. USE OF SPECIFIC TERMS.

(a) USE OF THE TERM “NATURAL”.—Section 403 of Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343), as amended by section 2, is further amended by adding at the end the following new paragraph:
“(aa) If, in the case of food other than a dietary supplement, the label bears the term ‘natural’ and the food contains any artificial ingredient (including any artificial flavor or artificial color), including—

“(1) any ingredient that is synthesized but has the same chemical structure as a naturally occurring ingredient;

“(2) any ingredient that has undergone chemical changes, such as corn syrup, high-fructose corn syrup, high-maltose corn syrup, maltodextrin, chemically modified starch, cocoa processed with alkali, but not including—

“(A) food that has undergone traditional processes used to make food edible, to preserve food, or to make food safe for human consumption (such as smoking, roasting, freezing, drying, and fermenting processes); or

“(B) food that has undergone traditional physical processes that do not fundamentally alter the raw product or which only separate a whole intact food into component parts (such as grinding grains, separating eggs into albumen and yolk, or pressing fruits to produce juice); or

“(3) any other artificially-created ingredient that the Secretary specifies in regulations.”.
(b) USE OF TERM “HEALTHY”.—The Secretary of Health and Human Services shall revise the regulations under the Federal Food, Drug, and Cosmetic Act relating to the use of the term “healthy” on the label of a food (other than a dietary supplement) to take into account the extent to which such food contains added sugars or whole grains. In the case of a food (other than a dietary supplement) that contains grains, in revising such regulations, the Secretary shall not consider the food to be “healthy” unless at least half of those grains, by weight, are whole grains.

SEC. 5. MODERNIZATION OF THE NUTRITION FACTS PANEL.

(a) DISCLOSURE OF CALORIE INFORMATION.—Section 403(q)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(1)) is amended—

(1) by striking the period at the end the clause (E) and inserting a comma;

(2) by inserting after clause (E) the following new clause:

“(F) in the case of food other than a dietary supplement—

“(i) the percent of recommended daily calories that are provided by one serving of the product, based on a recommended daily consumption of calories determined by the
Secretary to be appropriate for members of the general population; and

“(ii) at the discretion of the Secretary, the percent of recommended daily calories that are provided by one serving of the product—

“(I) for members of any subpopulation identified by the Secretary; and

“(II) based on a recommended daily consumption of calories determined by the Secretary to be appropriate for members of such subpopulation.”; and

(3) by adding, after the flush text following clause (F), as added by paragraph (2), the following:

“The information required under clause (C)(i) shall, in the case of food other than a dietary supplement, appear in a typeface and design which is more prominent and conspicuous than that used for other information required under this subparagraph.”.

(b) SERVING SIZE.—Section 403(q)(1)(A)(i) of Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(1)(A)(i)) is amended by inserting “, or, in the case of a food (other than a dietary supplement) that is pack-
aged in an amount that could reasonably be consumed in
a single-eating occasion, which is an amount equal to the
amount of food contained in the package” before “, or”.

(c) DISCLOSURE OF INFORMATION RELATING TO
SUGAR ON NUTRITION FACT PANEL.—

(1) IN GENERAL.—Section 403(q)(1) of Federal
Food, Drug, and Cosmetic Act (21 U.S.C.
343(q)(1)), as amended by subsection (a), is amend-
ed—

(A) in subparagraph (D), by striking “sug-
ars” and inserting “sugars (and, in the case of
food other than a dietary supplement, total sug-
ars, and, of that, added sugars)” ; and

(B) by inserting after clause (F) the fol-
lowing new clause:

“(G) in the case of food other than a die-
tary supplement—

“(i) the percent of added sugars re-
ommended for daily consumption that are
provided by one serving of the product,
based on a recommended daily consump-
tion of calories determined by the Sec-
retary to be appropriate for members of
the general population; and
“(ii) at the discretion of the Secretary, the percent of added sugars recommended for daily consumption that are provided by one serving of the product—

“(I) for members of any subpopulation identified by the Secretary; and

“(II) based on a recommended daily consumption of calories determined by the Secretary to be appropriate for members of such subpopulation.”.

SEC. 6. INGREDIENT LABELS.

(a) Grouping of Sugars, Non-caloric Sweeteners, and Sugar Alcohols for Ordering of Predominance.—Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343), as amended by sections 2 and 4, is amended by adding at the end the following new paragraph:

“(bb) In case it is food other than a dietary supplement and is fabricated from two or more ingredients, unless—

“(A) any sugars, non-caloric sweeteners, or sugar alcohols are each treated as a group in the list of ingredients on the label, including for purposes of
determining the order of predominance of ingredients; and

“(B) individual sugars, non-caloric sweeteners, and sugar alcohols are listed parenthetically within each such group in their order of predominance within the group.”.

(b) **FORMAT OF INGREDIENT LABELS.**—

(1) **IN GENERAL.**—The Secretary of Health and Human Services shall include requirements for the format of the information required under section 403(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(i))—

(A) for the purpose of improving the readability of such information on the label of the food (other than a dietary supplement); and

(B) that are, as determined by the Secretary, necessary to assist consumers in maintaining healthy dietary practices.

(2) **FORMAT REQUIREMENTS.**—The format requirements referred to in paragraph (1) shall include requirements for upper- and lower-case characters, serif and noncondensed font types, high-contrast between text and background, and bullet points between adjacent ingredients with appropriate exemptions for small packages or other considerations.
SEC. 7. CAFFEINE CONTENT ON INFORMATION PANEL.
Section 403(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(i)) is amended—
(1) by striking “and (2)” and inserting “(2)”;
(2) by striking “and if the food purports” and inserting “, (3) if the food purports”; and
(3) by inserting “, and (4) if the food is food other than a dietary supplement and contains at least 10 milligrams of caffeine from all sources per serving, a statement (with appropriate prominence near the statement of ingredients required by this paragraph) of the number of milligrams of caffeine contained in one serving of the food and the size of such serving” after “vegetable juice contained in the food”.

SEC. 8. EFFECTIVE DATE; REGULATIONS.
(a) EFFECTIVE DATE.—The amendments made by—
(1) sections 3 through 7 shall take effect on the date that is 2 years after the date of enactment of this Act; and
(2) section 2 shall take effect on the date that is 3 years after such date of enactment.
(b) REGULATIONS.—
(1) PROPOSED REGULATIONS.—The Secretary of Health and Human Services shall propose regulations—
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(A) not later than 1 year after the date of enactment of this Act, to implement the amendments made by sections 3 through 7; and

(B) not later than 2 years after such date of enactment, to implement the amendments made by section 2.

(2) Final Regulations.—The Secretary of Health and Human Services shall promulgate final regulations—

(A) not later than 2 years after such date of enactment, to implement the amendments made by sections 3 through 7; and

(B) not later than 3 years after such date of enactment to implement the amendments made by section 2.

(3) Deadline.—If the Secretary of Health and Human Services does not issue a final regulation by the deadline specified in subparagraph (A) or (B) of paragraph (2), the corresponding proposed regulation under subparagraph (A) or (B) of paragraph (1) shall become final on the respective deadline.

SEC. 9. DEFINITIONS.

In this Act, the terms “food” and “dietary supplement” have the meanings given to such terms in section