



Association of State Public Health Nutritionists

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Division of Dockets Management

Food and Drug Administration

Room 1061, HFA-305

5630 Fishers Lane

Rockville, MD 20852

Re: Docket No. FDA–2011–F–0172

Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments; Extension of Compliance Date; Request for Comments

The Association of State Public Health Nutritionists (ASPHN) strongly supports immediate implementation of the menu labeling rule as finalized. We oppose any further delay or weakening of the menu labeling regulations and request that the FDA revoke the one-year delay of the compliance date. Founded in 1952, ASPHN is a non-profit organization that provides leadership on food and nutrition policy, programs and services to improve the health of the American people through good nutrition. ASPHN's membership is composed of more than 300 public health nutritionists working in state and local government agencies in all 50 states, the District of Columbia, and five U.S. territories. ASPHN's mission is that healthy eating and active living become the easy and natural choices for all Americans.

Extending the deadline of the menu labeling rule, passed back in 2010, until May 2018 is incompatible with public health interest. On average, Americans consume one-third of their calories from various eating out venues. In March 2015, sales at restaurants and bars exceeded spending at grocery stores for the first time, making it half of food dollars spent (Jamrisco, 2015). Consequently, consumption of calories from fast food venues have also increased significantly during the past few decades (Guthrie, Lin & Frazao, 2002). Alarming, studies link America's increased eating-out patterns with the snowballing rates of obesity and consumption of food calories in excess (Tandon, Wright, Zhou, Rogers, & Christakis, 2010). Furthermore, Obesity has been noted as one of the biggest drivers of both preventable chronic disease and health care costs in the United States. According to the Centers for Disease Control and Prevention (CDC), in 2008 dollars, the annual costs of obesity were estimated to be \$147 billion.

Many consumers have very little knowledge of the high levels of calories, fat, and saturated fat found in various popular, less healthful restaurant items (Kozup, Creyer, & Burton, 2003). Burton, Creyer, Kees, and Huggins (2006) explored how much the average consumer knows about the calories, fat and other macronutrient levels found in foods served at (Burton et al., 2006). Their results show that consumers substantially underestimated the levels of calories, fat, saturated fat, and cholesterol found in many less healthful menu items (Burton et al., 2006).

The American people must have access to dependable and consistent menu labeling in order to make informed food choices, and improve nutritional health; as well as reduce the risk of obesity related chronic diseases such as heart disease, diabetes, high blood pressure, and renal disease which are leading causes of disability, death and soaring healthcare costs (Swartz, Braxton, & Viera, 2011). Calorie labeling at the point of purchase is one way to inform consumers about the high calorie content of many fast food items, and reduce the number of calories purchased and consumed at restaurants (Swartz, Braxton, & Viera, 2011). Burton et al. (2006) found that when objective, quantitative nutrition information was provided at the point of purchase, consumers' purchase intentions for the less healthful items were significantly diminished (Burton et al., 2006).

The final regulations explained that a covered establishment must simply have a reasonable basis for its nutrient declarations. These can be determined through a wide range of approaches from menu analysis software, to cookbooks, to any other reasonable means. The food service industry has had nearly ten years to implement menu labeling, and many covered food outlets and establishments have already invested the valued resources needed to comply with the rule. Similarly, many national restaurant chains have had menu labeling for years as a result of state and local laws, beginning almost a decade ago. These food establishments have demonstrated that labeling is feasible in a reasonable space and at a reasonable cost without liability risks. In fact, if the requirements are changed, it is likely that chains will incur additional costs.

The ASPHN strongly urges the FDA to consider the need for calorie information from the perspective of the consumer, just as it has determined that the definition of menus and menu boards should be interpreted from a consumer's vantage point. To that end:

- Serving sizes must be standardized. Without standardization of serving sizes, people will have difficulty understanding and using the nutrition information provided for menu items. Arbitrary serving sizes would make it difficult for customers to determine total calories and to compare calories between menu items. For example, if serving sizes are left up to the discretion of the establishment, a restaurant could list calories for one-half of one appetizer, one-third of another appetizer on the menu, and one-tenth of another. Further, the FDA already addressed the pizza industry's concern about serving sizes and provided them the flexibility to label calories per slice of pizza, as long as the number of slices is also indicated.
- It is essential for calories to be listed for each item as typically prepared and offered for sale.
- Calorie information must be posted clearly and conspicuously for foods on display so that customers can use the calorie information at the point of selection.
- Calorie information must be located on or adjacent to the name of the food on a menu, menu board, or food label for self-service foods or foods on display and not in a separate part of the establishment.
- Calorie labeling should be required on all menus that customers use to make food selection decisions including in-store, drive-through, printed takeout and delivery, and online menus.



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- Chain establishments operating under the same name must be required to provide calorie labeling, regardless of the type of ownership such as a co-op or franchise as stipulated in the law.

Over two thirds of our Nation believe fast-food and other chain restaurants should list nutritional information, such as calories, fat, or salt, on menus and menu boards (Caravan Opinion Research Corp International [CORCI], 2008). People want nutrition information from food service establishments: 80% of Americans support menu labeling in chain restaurants; 77% want calorie labeling at convenience stores; and 81% favor having supermarkets provide calorie information for their prepared, restaurant-type foods (CORCI, 2008). In support of their efforts, state and local agencies charged with enforcing calorie labeling laws thus far have worked with food retail establishments to correct any problems before levying fines. Many states and localities have required calorie labeling for years and not a single restaurant chain has faced a lawsuit. It is our hope that the FDA would take a similar approach, as the Agency has already provided food retail establishments with considerable flexibility for variations and accuracy of nutrient declarations.

Again, ASPHN strongly supports the immediate implementation of menu labeling in chain restaurants, supermarkets, convenience stores, movie theaters, and other food establishment; without any further delay or weakening of the menu labeling. ASPHN does not support exempting food service establishments from providing calorie information inside the restaurant/store if 49 percent or fewer orders are placed from in-store menus or menu boards as scores of consumers would not then have access to calorie/nutrition information.

ASPHN urges the FDA to revoke the delay to the menu labeling compliance date and move forward with implementing the regulations as finalized. It is vital to the health of all Americans that the FDA ensure that nutrition information is readily accessible to the American public without further delay. The FDA should not weaken the rules for menu labeling, nor make the rules confusing (i.e. allowing restaurants to arbitrarily assign serving sizes). Mandated menu labeling information needs to be strategically posted at those points where customers are making decisions about which foods they will select to purchase and consume. In light of rocketing health care costs compounded by ever increasing rates of obesity and obesity-related chronic illness, such as diabetes, heart disease, and cancer, the FDA should quickly move forward with implementing the menu labeling regulations as finalized.

Thank you for your considerations in this matter.

Sincerely,

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President, ASPHN Board of Directors

References:

Burton, S., Creyer, E. H., Kees, J., & Huggins, K. (2006). Attacking the obesity epidemic: the potential health benefits of providing nutrition information in restaurants. *American journal of public health, 96*(9), 1669-1675. Retrieved from <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2004.054973>

Caravan Opinion Research Corp International. Restaurant Calorie Content: ORC Study 721210 February 28 – March 2, 2008. Retrieved from http://www.cspinet.org/new/pdf/census_menu_board_question.pdf

Guthrie, J. F., Lin, B. H., & Frazao, E. (2002). Role of food prepared away from home in the American diet, 1977-78 versus 1994-96: changes and consequences. *Journal of nutrition education and behavior, 34*(3), 140-150.

Jamrisko, M. (2015). Americans' spending on dining out just overtook grocery sales for the first time ever. *Bloomberg News*. Bloomberg Business, April 14, 2015. Retrieved from <http://www.bloomberg.com/news/articles/2015-04-14/americans-spending-on-dining-out-just-overtook-grocery-sales-for-the-first-time-ever>

Kozup, J. C., Creyer, E. H., & Burton, S. (2003). Making healthful food choices: the influence of health claims and nutrition information on consumers' evaluations of packaged food products and restaurant menu items. *Journal of Marketing, 67*(2), 19-34. Retrieved from <https://archive.ama.org/archive/ResourceLibrary/JournalofMarketing/documents/9431547.pdf>

Swartz, J. J., Braxton, D., & Viera, A. J. (2011). Calorie menu labeling on quick-service restaurant menus: an updated systematic review of the literature. *International Journal of Behavioral Nutrition and Physical Activity, 8*(1), 135. Retrieved from <https://ijbnpa.biomedcentral.com/articles/10.1186/1479-5868-8-135>

Tandon, P. S., Wright, J., Zhou, C., Rogers, C. B., & Christakis, D. A. (2010). Nutrition menu labeling may lead to lower-calorie restaurant meal choices for children. *Pediatrics, 125*(2), 244-248.