



AMERICAN PUBLIC HEALTH ASSOCIATION  
*For science. For action. For health.*

June 28, 2017

Division of Dockets Management (HFA-305)  
Food and Drug Administration  
5630 Fishers Lane, Room 1061  
Rockville, MD 20852

SUBMITTED VIA: Regulations.gov

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

On behalf of the American Public Health Association, a diverse community of public health professionals who champion the health of all people and communities, I am writing to express concern about the extension of the compliance date for the final rule requiring disclosure of nutrition information for standard menu items in restaurants and retail food establishments. APHA opposes further delays in implementation and any weakening of the rule, and requests that the FDA revoke the one-year compliance date extension.

Previously, APHA applauded FDA’s menu labeling rule recognizing the importance of the rule for public health given the high rates of nutrition- and obesity-related illnesses including diabetes, heart disease and cancer and the large role that food prepared outside of the home plays in the American diet. Many covered establishments have already made the necessary changes and demonstrated the feasibility of labeling the nutrient content of menu items prior to the recently announced delay, which was made just days before the final effective date. The delay and reopening of the rule denies consumers the ability to make informed decisions about their food choices.

We urge FDA to take our comments into consideration as the agency reexamines the rule on this important public health issue.

### **Covered establishments**

We strongly urge FDA to maintain the broadest definition of “covered establishments” to include all chain retail food establishments selling ready-to-eat foods, including restaurants, supermarkets, convenience stores and movie theaters that sell similarly prepared foods. Additionally, FDA should consider the definition of covered establishments 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.” We believe it is in the best interest of consumers who want to make informed choices that all locations selling food for immediate consumption provide menu labeling. It does not matter if the consumer purchased a slice of pizza from a restaurant,

convenience store, movie theater, stadium or supermarket. Calories contribute to the consumers' diet the same regardless of where the food is purchased.

### **Location of calorie information**

We oppose modification of the rule to allow for posting calories on a menu board or sign that is not in close proximity to the displayed item, such as posting the calories on a sign near the cash register. FDA has already provided flexibility for labeling foods on display, and no additional changes in the requirement are needed.

Under the final rule, calorie information must be posted clearly and conspicuously for self-service foods and 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. It should not be provided in a format that requires people to leave their place in line or leave their table to access the information. Calorie labeling should be required, without exception, on all menus that customers use to make food selection decisions including in-store, drive-through, printed takeout and delivery, and online menus. For example, the nutrition information should not be provided via a poster at the back of the restaurant, but rather in a manner that allows the consumer to conveniently access it without leaving the ordering line. Posting calories in a location that is not visible to people as they are making food selections would significantly limit the usefulness of calorie information for consumers.

### **Educating the public and restaurant workers about the new rule**

APHA strongly recommends that FDA engage in efforts to provide nutrition education opportunities for both consumers and restaurant employees to improve menu-labeling awareness and use among all customers so that the calorie information is translated into healthier food choices. Restaurant staff should have a basic understanding of the nutrition information provided and where the customer may find the information on the menu. Additionally, FDA should consider collaborating with the Centers for Disease Control and Prevention, and other appropriate agencies, public health and nutrition organizations on efforts to educate the public about the new labeling requirements.

We urge you to put the health of our nation first and immediately proceed to implementation of the rule. We look forward to working with you to ensure that people have access to the information they need to make informed choices, and to lead full and healthy lives.

Sincerely,

A handwritten signature in black ink, appearing to read "Georges C. Benjamin". The signature is fluid and cursive, with a large, stylized initial "G".

Georges C. Benjamin, MD  
Executive Director