

June 29, 2017

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

On behalf of the National Association of County and City Health Officials (NACCHO), I write to oppose any delay or weakening of the menu labeling regulations and recommend that the compliance date extension to May 7, 2018 be revoked. This extension published in the Federal Register on May 4, 2017—the day before the scheduled compliance date—is contrary to the public interest and unnecessarily delays menu labeling implementation more than seven years after passage of the law.

NACCHO is the voice of the nearly 3,000 local health departments across the country. Local health departments create and promote conditions that make it easier for people to be healthy. Many local health departments have been leaders in making sure that people in their communities have the information they need to make healthy choices, including choices when dining out or purchasing prepared food.

Preventable risk factors such as physical inactivity and poor diet have contributed to the obesity epidemic over time. Local health departments work with a wide range of community partners to create conditions and policies that help people make healthy choices, such as avoiding tobacco use and eating healthier foods.

Delaying the implementation of menu labeling denies Americans the ability to make their own informed choices about how many calories to eat at a time of high rates of nutrition-related health problems such as diabetes, heart disease, and obesity, which add significant fiscal and public health burdens on the American public, businesses, and federal, state, and local budgets.

Delay will not save companies money. Importantly, covered establishments have already invested the resources for compliance with the rule as finalized and the issues raised in the May 4th interim final rule have been clarified through the final regulations, final guidance, and



technical assistance, and covered establishments have had ample time to comply, with additional time provided by both the Food and Drug Administration (FDA) and Congress.

Studies show that providing nutrition information at restaurants can help people make lower-calorie choices and encourage restaurants to provide healthier offerings. According to the FDA's regulatory impact analysis, the estimated benefit of menu labeling is \$9.2 billion over 20 years: the total cost is \$1.2 billion, providing a total savings of \$8 billion over 20 years. A Harvard University study found restaurant menu labeling could prevent up to 41,000 cases of childhood obesity and could save over \$4.6 billion in healthcare costs over ten years.

Given that the menu labeling final rule was stayed a day before the compliance date, all chain restaurants, supermarkets, convenience stores, and other food service establishments would have had to already have their prepared foods and menu items analyzed, their menus redesigned and updated, and staff trained. Delaying the compliance date is unlikely to result in any cost savings for them. In fact, if the requirements of the regulations are changed, it is likely that chains will incur additional costs.

Many national restaurant chains have labeled for years under state and local menu labeling laws beginning nine years ago with the implementation of the first two menu labeling laws in New York City and Seattle/King County, Washington with leadership from the local health departments in those cities. Food establishments have demonstrated that labeling is feasible in a reasonable space and at a reasonable cost without liability risks.

Covered establishments. It would be unfair for chain restaurants to have to provide calorie labeling, and for similar prepared foods at supermarkets and convenience stores to be exempt. The FDA should consider the definition of covered establishments from the consumer perspective, just as it has determined that the definition of menus and menu boards "should be interpreted from a consumer's vantage point." A national poll found that 80% of Americans support calorie labeling at chain supermarkets, the same level of support as for restaurant labeling.

When drafting the menu labeling statute, Congress, advocates, and the restaurant industry all strongly agreed that menu labeling should be broadly applied to all establishments that sell food for immediate consumption. The FDA addressed concerns about covered establishments in the final regulations, taking into account different business practices and operations, including doing business under the same name and offering for sale substantially the same menu items, and carefully considered industry concerns expressed during the comment period.

Calorie disclosure signage for self-service foods, including buffets and grab-and-go foods. 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. However, the convenience store and supermarket industries have been lobbying for a bill that would allow them to either post calories right next to a displayed item or on a menu board, and that menu board would not have to be in close proximity to the

displayed item. Posting calories in a location that is not visible to people as they are making food selections would significantly weaken menu labeling, limiting access to and the usefulness of calorie information for consumers. Information on a single menu board by the cash register would do people little good as they try to compare options and make informed choices at the bakery department, salad bar, hot bar, or deli.

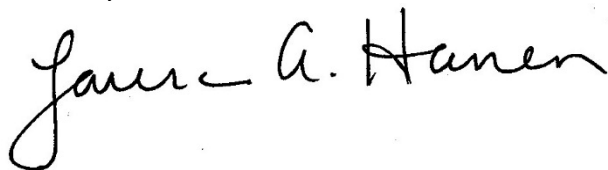
The FDA has already provided considerable flexibility for labeling foods on display. According to the FDA's final guidance, there are several options for the placement of calories for foods on display. This applies to all self-service foods, not only at supermarkets but also restaurants.

Serving sizes. It is essential for calories to be listed for each item as offered for sale. Without standardization, people will have difficulty understanding and using the nutrition information for menu items. Posting the total calories per menu item enables consumers to more easily compare different types of food items, such as nachos, chicken wings, or pizza, and leaves it up to the individual—not the restaurant—to determine how many people will share the item.

In order to protect the public's health, I strongly urge the FDA to revoke the compliance date extension and move forward with implementing the menu labeling regulations as finalized. Americans need calorie labeling to make informed choices. The final menu labeling regulations provide well-defined nutrition labeling requirements that are applied in a fair manner to all covered establishments and would provide clear, conspicuous, and accessible calorie labeling to allow consumers to make their own choices about what to order when eating out.

Please contact Eli Briggs, NACCHO Senior Government Affairs Director at ebriggs@naccho.org or 202-507-4194 with any questions or for further information.

Sincerely,

A handwritten signature in black ink that reads "Laura A. Hanen". The signature is written in a cursive, flowing style.

Laura A. Hanen, MPP
Interim Executive Director & Chief of Government Affairs