



Department of Health
and Mental Hygiene

Department of
Consumer Affairs

December 27, 2017

via electronic submission

RE: Menu Labeling: Supplemental Guidance for Industry (Docket No. FDA-2011-F-0172)

To Whom It May Concern:

The New York City (NYC) Departments of Health and Mental Hygiene (DOHMH) and Consumer Affairs (DCA) welcome the opportunity to comment on the draft menu labeling supplemental guidance for industry. We commend Congress' action to provide consumers nationwide with important nutrition information in restaurants and retail settings and we applaud the Food and Drug Administration (FDA) for publishing this draft guidance. This publication moves the nation one step closer to ensuring all consumers have access to important calorie and nutrition information in chain restaurants and retailers by May 7, 2018, the federal compliance date for menu labeling provisions.

For nearly 10 years, NYC has been a national leader in calorie labeling. Since 2008 NYC chain restaurants have been required to post calorie information on menu boards and menus. More than 3,000 NYC restaurants have posted calories on their menus and menu boards pursuant to requirements set out in the NYC Health Code. In 2016 and 2017 approximately 98% of chain restaurants were in compliance with the rule, demonstrating the feasibility of providing calorie information to consumers. Given NYC's particularly diverse landscape of restaurant -type food, our high compliance rate also demonstrates the feasibility of the rule amid a wide diversity of cuisines. Upon enforcement of our amended calorie labeling rule, which now covers both chain restaurants and similar chain retail establishments, we expect that NYC's supportive actions, including industry education and guidance, will help our NYC chain retailers reach the same near universal compliance demonstrated by our restaurants.

As is well known, poor nutrition is a driver of leading causes of early death related to chronic diseases and contributes to hypertension, heart disease and diabetes. Americans consume an estimated one third of calories from foods and beverages prepared outside of the homeⁱ and deserve calorie and nutrient information for these restaurant-type foods in order to make informed choices to support their health goals. Data show that calorie labels are popular with New Yorkers. In a poll of NYC adults, the majority found calorie labels useful.ⁱⁱ Data also shows that an estimated 1 million New Yorkers see calorie information daily.ⁱⁱⁱ New Yorkers have come to expect this information while dining out in chain restaurants, and consumers nationwide should be able to obtain the same information in both chain restaurants and chain retail establishments that offer restaurant-type food.

In response to the FDA's draft supplemental guidance, DOHMH and DCA provide a comment to the FDA's answer to Question 3.3., specifically with regard to guidance provided on front-of-pack (FOP) labels. FDA's written and pictured guidance is not clear as to how a covered establishment must declare calories using an FOP label. We ask the FDA to state in its guidance that FOP labels must declare calories per displayed food or if the food is not offered for sale in a discrete unit, calories per serving and the serving or discrete unit used to determine the calorie content on the FOP label – thereby maintaining parity with calorie declaration requirements otherwise set forth for standard menu items that are self-service or on display.



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This will ensure consistent application of menu labeling rules and to avoid consumer confusion during the food selection process.

Consumers deserve every opportunity to prevent diet-related disease and disability and providing accessible nutrition information enables consumers to make informed choices appropriate to their own health. We commend the FDA for maintaining the requirement to post calorie information on all covered establishments' menus and menu boards. It is important for consumers to easily and readily access calorie information at the time and place at which they make their choices. Maintaining the requirement for on-site calorie posting provides an opportunity for consumers to utilize calorie information to inform food choice.

NYC has demonstrated the feasibility and utility of calorie labeling, is committed to ensuring that New Yorkers have access to this important information to support choice and health, and encourages the FDA to move swiftly and follow its planned timeline in the interest of prioritizing the health of the nation. . . Thank you for your consideration.

Sincerely,

Mary T. Bassett, MD, MPH
Commissioner
Department of Health and Mental Hygiene

Lorelei Salas
Commissioner
Department of Consumer Affairs

i Lin BH, Guthrie J. Nutritional quality of food prepared at home and away from home, 1977-2008, EIB-105, U.S. Department of Agriculture, Economic Research Service, December 2012.

ii Quinnipiac University Poll. October 20, 2011. Accessed June 1, 2015. Available at: <http://www.quinnipiac.edu/news-and-events/quinnipiac-university-poll/new-york-city/release-detail?ReleaseID=1664>

iii Dumanovsky T, Huang CY, Bassett MT, Silver LD. Consumer awareness of fast-food calorie information in New York City after implementation of a menu labeling regulation. *American Journal of Public Health*. 2010; 2520-5.