



August 2, 2017

The Honorable Scott Gottlieb, M.D.
Commissioner
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

Dear Commissioner Gottlieb:

Trust for America's Health (TFAH) appreciates the opportunity to respond to the request for comments on the implementation of requirements for nutrition labeling of standard menu items in restaurants and similar retail food establishments, including the agency's recent decision to extend the compliance date. TFAH is a non-profit, non-partisan organization dedicated to saving lives by protecting the health of every American and working to make disease prevention a national priority. It is with this focus in mind that we express our strong opposition to any delay in the compliance date for nutrition labeling or any further weakening of the regulations.

More than 80 percent of Americans support labeling in chain supermarkets and restaurants. An extension of the deadline to comply with nutritional labeling to May 2018 is contrary to the public interest and unnecessarily delays this important regulation. The food service industry has had ample time to implement menu labeling in the more than seven years since Congress directed their implementation under law in 2010. As a result, many covered food outlets have already done so and are currently in compliance with these regulations.

Nutrition labeling is one key tool in our nation's fight against the obesity epidemic. As discussed in the most recent edition of *The State of Obesity*, TFAH's annual report on obesity trends and policies in the United States, over 17 percent of American children are obese, a rate that has tripled since 1980.¹ Rates among adults are even higher, at nearly 38 percent.² Conditions and complications like type 2 diabetes, heart disease and hypertension, cancer, and premature death

¹ Segal, L. M., Rayburn, J., & Martin, A. (2016). *State of Obesity: Better Policies for a Healthier America: 2016*. Trust for America's Health.

² *Id.*

are all positively associated with obesity.³ Obesity leads to upwards of \$210 billion dollars in preventable healthcare spending annually.^{4,5}

To address these dire threats to the population's health, it is imperative that citizens have information and tools to help them make healthier eating choices. Menu labeling is one such evidence-based tool. In a controlled trial, consumers who had access to nutritional labeling consumed 14 percent fewer calories than consumers who did not have access to such information.⁶ Notably, when calorie labeling was combined with daily recommended caloric requirements, study participants consumed fewer calories later in the day after leaving the food establishment.⁷ This suggests that nutritional information may support healthy food choices not only within retail food establishments but also beyond, making consumers more cognizant of the healthfulness of their choices all day.

Menu labeling also appears to encourage food retail establishments to offer healthier choices. Over the past several years, the caloric content of newly introduced menu items in large chain restaurants has declined by 12 percent.⁸ Delaying the compliance date for nutritional labeling requirements negatively affects the impact such supply-side changes could have on obesity by slowing their spread to other retail food establishments like non-chain restaurants, supermarkets, convenience stores, movie theaters, and stadiums.

In addition to our overall concern regarding a delay in compliance, we share the concerns of many public health and consumer protection organizations regarding potential weakening of the content of the regulations. Specifically, we agree with the Center for Science in the Public Interest that:

- **“Covered establishments” should include all retail food establishments that sell ready-to-eat foods, as required under law.** Requiring nutritional labeling at chain restaurants but not for similarly prepared foods at other establishments like non-chain restaurants, supermarkets, convenience stores, movie theaters, and stadiums would be counterproductive to the nutritional and policy goals underlying these requirements. Consumers should have adequate information to make healthy choices no matter where they choose to dine.
- **Nutritional labeling is only meaningful if serving sizes are standardized.** Calorie and other nutritional information presented to consumers should be based on how foods are typically prepared and offered for sale. Allowing establishments to set arbitrary serving

³ *Id.*

⁴ Cawley, J & Meyerhoefer, C. (2012). *The medical care costs of obesity: an instrumental variables approach*. *Journal of Health Economics*, 31(1): 219-230.

⁵ Finkelstein, Trogon, Cohen, et al. (2009). *Annual medical spending attributable to obesity*. *Health Affairs*, 38(5): w822-w831.

⁶ Roberto, C. A., Larsen, P. D., Agnew, H., Baik, J., & Brownell, K. D. (2010). Evaluating the impact of menu labeling on food choices and intake. *American journal of public health*, 100(2), 312-318.

⁷ *Id.*

⁸ Bleich, S. N., Wolfson, J. A., & Jarlenski, M. P. (2015). Calorie changes in chain restaurant menu items: implications for obesity and evaluations of menu labeling. *American journal of preventive medicine*, 48(1), 70-75.

sizes creates unnecessary confusion about total calories consumed and makes it difficult to compare items on the menu, which effectively impedes the role of consumer choice.

- **Calorie information should be located on or adjacent to the name of the food, not in a separate part of the establishment.** Customers must be able to access clear and conspicuous calorie information at the point of selection. Nutritional information that is separated from where consumers make their food choices — for instance, on a single menu board by the cash register — is neither clear nor conspicuous and makes the process of choosing healthier foods at bakery departments, salad bars, hot bars, and/or delis more difficult if not entirely unfeasible.
- **Calorie information should be required on all menus that customers use to make food selections.** Whether in-store, at the drive-through, on printed takeout and delivery menus, or online, nutritional information should be available at all potential points of selection, even for establishments where the majority of orders are placed by phone or online.
- **The FDA has provided sufficient clarity and flexibility for covered establishments in its final guidance so additional changes are not necessary.** The final guidance contains criteria for distinguishing menus from advertisements. The guidance also provides establishments with sufficient flexibility for variations and accuracy of nutritional information. Therefore, no further changes to the rule with regard to these topics are necessary and would, in fact, only serve as a hindrance to accomplishing the goals of this law.

We urge the FDA to revoke the delay to the menu labeling compliance date and to move forward with implementing the regulations as finalized. The American people have waited long enough to access nutritional information they need to make healthy and informed choices. Proceeding with the implementation date, as finalized, will empower citizens to take charge of their health and is an important step in combatting the obesity epidemic in this country.

If you have any questions, please contact Jack Rayburn, TFAH's Senior Government Relations Manager, at (202) 864-5942 or jrayburn@tfah.org.

Sincerely,



John Auerbach
President and Chief Executive Officer
Trust for America's Health