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Protect, Prevent, Live Well

July 5, 2011

Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, rm. 1061
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.

To Whom It May Concern:

On behalf of the American Public Health Association (APHA), the oldest and most diverse organization of public health professionals and advocates in the world dedicated to promoting and protecting the health of the public and our communities, we appreciate the opportunity to comment on the Food and Drug Administration's (FDA) proposed rule for Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments. This proposed rule would fulfill the requirement of disclosure of nutrient content information for standard menu items offered at chain restaurants as required under the Affordable Care Act.

In general, we are pleased with FDA's proposed regulations for menu labeling for chain restaurants. We believe that by providing the required nutritional information, consumers will have important information to make informed decisions about their food choices.

However, there are a number of areas in which we believe FDA should strengthen the proposed rule. We urge FDA to take our comments into consideration as it works to formulate the final rule on this important public health issue.

Covered establishments

We strongly urge FDA to broaden the proposed definition of covered establishments by returning to the original definition that was included in the proposed draft guidance issued by FDA last August. That proposal would have covered foods sold in movie theaters, bowling alleys, stadiums, casinos, cafes in superstores, hotels and airlines. These venues often sell foods that are similar to foods sold in restaurants and should not be exempt from coverage under the proposed rule. We believe it is in the best interest of consumers to require the venues that FDA has proposed to exempt to provide this important information so consumers can make better choices about the foods they chose – regardless of the venue. We believe it was the intent of Congress that menu labeling should be broadly applied to all establishments that sell food for immediate consumption.

Prepared foods sold at chain grocery and convenience stores

We support FDA's proposal to cover foods sold at chain grocery and convenience stores under the menu labeling rule. Grocery stores, which sell many foods for immediate consumption, should provide calorie labeling information for bakery items, prepared meals and side dishes, including foods such as potato salads, pasta salads and sandwiches, freshly cooked pizza, fountain drinks and other foods sold for immediate consumption. Convenience stores, which often sell foods ready for consumption, such as hot dogs, fountain drinks and pizza should also be subject to the menu labeling requirements.

Alcoholic beverages

APHA urges FDA to reconsider its decision to exempt alcoholic beverages from menu labeling requirements. Alcoholic beverages can vary widely in calories and consumers should have access to this information when considering their ordering options.

Nutrition information

We agree that calories must be listed for the standard menu item as usually prepared and offered for sale. The total calorie number posted must include all of the components that are included in the standard menu item and that are listed in the menu description. We agree with the FDA that menu items must be labeled as offered for sale, even if they might provide more than one serving. The law is clear; calories must be posted per menu item as it is usually offered for sale.

Calorie postings must be clear and conspicuous. We urge FDA to require that the calorie labeling be at least as large as the name or price associated with the item, whichever is *larger* (as opposed to the FDA proposal that the calories be as large as whichever is smaller). For the information to be useful to consumers, the calories must be prominent and easy to read. We agree that the color and contrasting background must all be comparable to the name and price of the item on the menu, making it as easy to see and read as other core ordering information.

Variable menu items and combination meals

FDA should provide more direction to help ensure that restaurants and similar retail food establishments provide meaningful calorie labeling for menu items that come in multiple flavors and varieties and combination meals. Such labeling should be done in as uniform a manner across the industry as possible to make consumer use of the information easier and reduce confusion.

The definition of variable menu items should be revised to the following:

- Variable menu item means a standard menu item that comes in different flavors, varieties, or combinations, and is listed as a single menu item. It does not include foods, beverages, or meals that are listed as separate menu items but could be combined in a variety of combinations or that are different sizes of the same menu item.

The definition should clarify that variable menu items do not include a food item that is listed on the menu in different sizes. Each size of a menu item listed on the menu, menu board, or display tag must be accompanied by a calorie posting. For example, calorie information should be provided for all serving sizes of soft drinks or French fries.

Additional nutrition information provided

FDA should give more guidance about the format that companies could use to provide the additional nutrition information. The written materials should be easy to read. The information should be provided in a large enough font to be easily readable. Food names and nutrients should not be in all capital letters (which are hard to read) or other difficult-to-read fonts, and should have a contrasting background.

The information should be readily available. 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. In addition, the nutrition information should not be provided in a format that greatly hinders the speed of ordering. For example, the additional 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.

Importantly, the format should allow people to make comparisons between menu items. For example, information provided through a computer kiosk or website on which only one or a small number of menu items could be viewed at a time would not satisfy this requirement. Making comparisons between items is a key way that people use nutrition information.

We support the inclusion of trans fats in the additional nutrition information provided given the detrimental health effects of trans fat and that trans fat is required to be listed on Nutrition Facts labels.

We support the following definitions proposed by FDA:

- Menu or menu board. We support the FDA's proposal that all primary writings from which customers make ordering decisions must provide calorie labeling, including menu boards, take-out menus, children's menus, dessert menus, and food display tags. We also agree that the law requires calories be posted directly on drive-through menu boards. Separate stanchions can be hard to read, especially from a car, where customers have limited mobility and field of vision. For example, Congress required calorie postings directly on drive-through menus, though most restaurants also have menus inside their restaurants. In addition, the law requires the information to again be posted for foods on display or in a self-serve arrangement, even if those items also are listed on the menu board. Calories must be supplied again with the other nutrients required in written form. FDA should make clear that covered menus include individualized order sheets that are sometimes filled out by customers to place sandwich orders.
- Combination meal. We agree that a combination meal may be presented in ways other than words, and are pleased that the FDA has included representations such as numbers, pictures, or other depictions in the definition.
- Doing business under the same name. We support the proposed definition; we agree that the name is the same even if there are modest variations in the name.
- Offering for sale substantially the same menu items. We support FDA's interpretation that offering substantially the same menu items means that the recipes and preparation techniques are similar, even if the name of the menu item is different. For example, if a restaurant uses the same recipe for its ribs in all restaurants, but calls them Texas Ribs in

one location and Tennessee Ribs in another, it is still the same menu item and should be labeled. We also support that a chain is considered to have the same menu even if not all restaurants in the chain offer all items or if some add items to the core menu.

- Standard menu item. We support that the definition includes items on the menu or menu board or that are self-serve items or foods on display that are routinely available.
- Temporary menu item. We support FDA's proposed definition and agree that the 60 days per year that the item appears on the menu do not need to be consecutive.

Educating the public and restaurant workers about the new rule

Finally, APHA strongly recommends that FDA engage in efforts to provide nutrition education opportunities for both consumers and restaurant employees. Restaurant staff must be trained to answer at least minimal questions about the new information provided on the menus, and the location of the additional nutritional information relating to. If restaurant staff are not trained, there is a risk that the nutritional information may be misrepresented. This is not to say that staff should be able to provide counseling or embellish the nutrition information in any way, but they should be able to accurately state in understandable language what the calorie label on the menu says. Additionally, FDA should consider collaborating with the Centers for Disease Control and Prevention, other appropriate agencies, public health and nutrition organizations on efforts to educate the public about the new labeling requirements and how they can help consumers make healthier dining choices.

Thank you for the opportunity to comment on this important public health regulation. We look forward to working with FDA as you move forward with monitoring of the process and the implementation that will be essential to make this regulation successful. We strongly support the FDA's proposal to enforce the final menu labeling regulations six months following publication of the final rule. Please feel free to contact Don Hoppert of our staff at 202-777-2514 if you have any questions regarding our comments.

Sincerely,



Georges C. Benjamin, MD, FACP, FACEP (E)
Executive Director