

June 11, 2024
Division of Dockets Management
U.S. Food and Drug Administration
5630 Fishers Lane
Room 1061, HFA-305

Comment on Citizen Petition for the U.S. Food and Drug Administration to issue final guidance requiring covered establishments that post and/or maintain menus on third-party platforms to include calories and additional nutrition labeling (FDA-2024-P-0806)

The undersigned organizations support this petition from the Center for Science in the Public Interest, American Public Health Association, Consumer Reports, and Consumer Federation of America calling on the U.S. Food and Drug Administration (FDA) to require covered establishments (*e.g.*, chain restaurants and convenience stores) to include calories and additional nutrition labeling when posting/maintaining menus on third-party platforms (TPPs).

The U.S. population consumes more calories than needed and suffers from suboptimal diet quality,¹ contributing to increased risk of diet-related diseases such as obesity, type 2 diabetes, and cardiovascular disease.^{2,3} Average calorie intake has increased since the 1970s, including a 346-calorie increase in the average adult daily intake from food prepared away from the home.⁴ Studies have shown that menu labeling is associated with modest but significant reductions in average daily calories,^{5,6} which could meaningfully improve public health.⁷

For FDA's existing menu labeling policy⁸ to have its intended outcome of informing consumers and improving diets, consumers must have consistent access to menu labeling information wherever they encounter menus, which for delivery orders is often on TPPs.⁹ FDA's 2023 draft guidance¹⁰ encouraging voluntary labeling for menus on TPPs is not sufficient—a final guidance must clarify that existing FDA regulations make calorie labeling mandatory, not voluntary.

History shows there is low uptake of voluntary nutrition labeling policies.^{11,12} And the same pattern is already playing out for voluntary menu labeling on TPPs. A recent study found that across three popular TPPs, consistent calorie labeling was present on chain restaurant menus less than 30% of the time.¹³ This is problematic because TPPs play a growing role in how Americans obtain food.¹⁴

FDA's draft guidance reflects an underutilization of its authority, and a failure to leverage existing FDA regulations to promote transparency and health in our evolving food environment. Under current menu labeling regulations, covered establishments are required to provide calorie information on both physical menus and “menus on the Internet.”¹⁵ FDA must clarify that this includes menus posted/maintained by those establishments on TPPs.

Consumers benefit from menu labeling and deserve access to calorie and nutrition information, regardless of how they are obtaining their food. We urge you to issue final guidance making it mandatory for covered establishments to include calories and other nutrition information when posting on TPPs.

Sincerely,

Organizations

American Heart Association

American Society for Nutrition

Association of State Public Health Nutritionists

Center for Digital Democracy

Consumer Federation of America

Healthy Food America

National Association of Pediatric Nurse Practitioners

Nebraska Appleseed

Partnership For A Healthier America

Individuals

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References

- ¹ U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition. December 2020. Available at [DietaryGuidelines.gov](https://www.dietaryguidelines.gov)
- ² Bellou V, Belbasis L, Tzoulaki I, Evangelou E. Risk factors for type 2 diabetes mellitus: An exposure-wide umbrella review of meta-analyses. *PLOS ONE*. 2018;13(3):e0194127. doi:[10.1371/journal.pone.0194127](https://doi.org/10.1371/journal.pone.0194127)
- ³ Barbaresko J, Rienks J, Nöthlings U. Lifestyle Indices and Cardiovascular Disease Risk: A Meta-analysis. *American Journal of Preventive Medicine*. 2018;55(4):555-564. doi:[10.1016/j.amepre.2018.04.046](https://doi.org/10.1016/j.amepre.2018.04.046)
- ⁴ Lin BHL, Guthrie J, Smith T. Dietary Quality by Food Source and Demographics in the United States, 1977–2018. Economic Research Service: U.S. Department of Agriculture. Published 2023. Accessed January 19, 2024. <https://www.ers.usda.gov/publications/pub-details/?pubid=105955>
- ⁵ Crockett RA, King SE, Marteau TM, et al. Nutritional labelling for healthier food or non-alcoholic drink purchasing and consumption. *Cochrane Database Syst Rev*. 2018;2(2):CD009315. doi:[10.1002/14651858.CD009315.pub2](https://doi.org/10.1002/14651858.CD009315.pub2)
- ⁶ Petimar J, Zhang F, Cleveland L, et al. Estimating the effect of calorie menu labeling on calories purchased in a large restaurant franchise in the southern United States: quasi-experimental study. *BMJ*. 2019;367:l5837. doi:[10.1136/bmj.l5837](https://doi.org/10.1136/bmj.l5837)
- ⁷ Dupuis R, Block JP, Barrett JL, et al. Cost Effectiveness of Calorie Labeling at Large Fast-Food Chains Across the U.S. *Am J Prev Med*. 2024;66(1):128-137. doi:[10.1016/j.amepre.2023.08.012](https://doi.org/10.1016/j.amepre.2023.08.012)
- ⁸ 79 Fed. Reg. 71156. Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments
- ⁹ Marchesi K, McLaughlin P. *COVID-19 working paper: Food-away-from-home acquisition trends throughout the COVID-19 pandemic* (Report No. AP-113). U.S. Department of Agriculture, Economic Research Service. Published May 2023. Accessed February 7, 2024. <https://doi.org/10.32747/2023.8023697.ers>
- ¹⁰ Food and Drug Administration. Draft Guidance for Industry: Menu Labeling Supplemental Guidance (Edition 2). Published December 2023. Accessed January 16, 2024. https://www.fda.gov/regulatory-information/search-fda-guidance-documents/draft-guidance-industry-menu-labeling-supplemental-guidance-edition-2?utm_medium=email&utm_source=govdelivery
- ¹¹ World Cancer Research Fund International. *Building momentum: lessons on implementing a robust front-of-pack food label*. 2019. Available at wcrf.org/buildingmomentum
- ¹² Greenthal E, Sorscher S. P21-004-23 Implementation of Voluntary Nutrition Labeling Policies on Wine and Beer Sold in the United States. *Current Developments in Nutrition*. 2023;7 (supplement 1):690. doi:<https://doi.org/10.1016/j.cdnut.2023.101654>
- ¹³ Greenthal E, Sorscher S, Pomeranz JL, Cash SB. Availability of calorie information on online menus from chain restaurants in the USA: current prevalence and legal landscape. *Public Health Nutr*. 2023;26(12):3239-3246. doi:[10.1017/S1368980023001799](https://doi.org/10.1017/S1368980023001799)
- ¹⁴ Marchesi K, McLaughlin P. *COVID-19 working paper: Food-away-from-home acquisition trends throughout the COVID-19 pandemic* (Report No. AP-113). U.S. Department of Agriculture, Economic Research Service. Published May 2023. Accessed February 7, 2024. <https://doi.org/10.32747/2023.8023697.ers>
- ¹⁵ 21 C.F.R. § 101.11(a).