



February 2024

RE: Docket number: [FDA-2011-F-0172](#)

To Whom It May Concern:

The National Restaurant Association appreciates the opportunity to provide comments on *Menu Labeling: Supplemental Guidance for Industry (Edition 2)*. Founded in 1919, the National Restaurant Association (“The Association”) is the leading business association for the restaurant industry, which comprises more than 1 million restaurant and foodservice outlets and a workforce of 15.5 million employees. Together with 52 state associations, the National Restaurant Association creates a network of professional organizations dedicated to serving every restaurant through advocacy, education, and food safety.

5. Methods for Providing Calorie Disclosure Information

5.8 Third Party-Platform Disclosure (TPP)

Our members appreciate the Agency's proactive approach in encouraging covered establishments to provide essential nutrition information for standard menu items offered on third-party platforms (TPP), particularly for chains that already furnish this data on their individual websites, where it is readily accessible. Despite the availability of this information, our members have conveyed several obstacles hindering them from providing calorie details on TPP.

Our members tell us that despite desire to be transparent with customers, the current technology is limiting and resource intensive. In order to ensure the inclusion of accurate data on a TPP, a member of a restaurant team would be required to manually input and update calorie information with each menu cycle since presently TPP lack the technological capability for seamless uploads. It becomes difficult to provide nutrition information on a platform that isn't their own and isn't connected to a restaurant's nutrition data directly.

For a customer this technology challenge means calories are not dynamic on the TPP side so may not display properly- an issue outside of restaurant control. For example, most TPP have custom integration that does not support calories specifically, so as a workaround, the calories would have to be part of the menu item name, making it a static data point that cannot be updated with any customer customizations.

There are also legal concerns from our restaurants. Entrusting third parties with the responsibility of maintaining nutrition information poses the risk of inaccuracies, leading to potential litigation. Complicating matters further, TPP companies are not directly accountable to restaurants, leaving restaurants with no recourse if data is not adequately maintained. Consequently, our members find themselves in a continuous monitoring process to ensure the utmost accuracy on these platforms creating resource burdens for restaurants. Moreover, our members have encountered reservations from their third-party platform partners regarding who is liable if any of the data provided is found to be inaccurate.

In response to these challenges, restaurants strongly encourage their patrons to visit the company website before placing orders, as it guarantees the most accurate and comprehensive information available. For those that fall under menu labeling requirements, restaurant websites and apps have



full nutrition information available for menu items and in many cases additional information about foods in a much more user friendly format. These may include allergen tools, nutrition calculators, ingredient statement lists and more. In many cases we hear from our members they choose to just offer online ordering directly from their websites where nutrition info is readily available and accuracy of nutrition information can be ensured.

7. Determining Nutrient Content for Standard Menu Items

7.5 Added Sugar Disclosure

Our members were pleased with the Agency's approach by encouraging covered establishments to voluntarily include added sugars as part of the additional written nutrition information currently required to align the draft guidance with the requirement that added sugars be declared on the Nutrition Facts label for packaged foods. We know many of our members are already providing this information voluntarily while others have flagged challenges related to supplier disclosure and other issues like lack of information on nutrition software programs. Some members have told us even if our suppliers and nutrition software could provide added sugar information, the roadblock remains that they chemically test all our fried components and there is no way to test for added sugar- making an gap in ability to disclose.

Moreover, requiring added sugar disclosure in menu labeling provides minimal benefit to consumers. Unlike the readily available nutrition facts label on packaging, guests must specifically request this information at restaurants. Our members typically report low demand for such disclosures, suggesting that the resources required for compliance may not justify the perceived benefit to customers. In fact, dietitians for major brands have indicated over the course of the last 5 years they have received zero inquiries for added sugar information from guests. Since total sugar information is available upon request and even this information is rarely sought by customers, any mandate of added sugar disclosure may impose a disproportionate burden on restaurants without significantly enhancing consumer knowledge.

The Agency's voluntary approach allows our members the necessary time and flexibility needed to suit our members businesses.

In conclusion, we respectfully urge the agency to maintain its voluntary approaches on both third party and added sugar disclosure by finalizing this guidance. As the landscape, consumer demands and technology evolves, we look forward to continuing to work with FDA on these topics.

Sincerely,

A handwritten signature in black ink that reads "Aaron Frazier".

Aaron Frazier
Vice President of Public Policy
National Restaurant Association