



Consumer Federation of America

June 1, 2011

Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, MD 20852

Re: Docket No. FDA-2011-F-0172

To Whom It May Concern:

The Consumer Federation of America (CFA) appreciates the opportunity to comment on the Food and Drug Administration's (FDA) proposed rule on Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments (**Docket No. FDA-2011-F-0172**).

CFA is an association of nearly 300 nonprofit consumer organizations that was established in 1968 to promote the consumer interest through research, advocacy and education. Member organizations include local, state, and national consumer advocacy groups, senior citizen associations, consumer cooperatives, trade unions and anti-hunger and food safety organizations. CFA's Food Policy Institute was created in 1999 and engages in research, advocacy and education on food and food safety, nutrition, agricultural policy, and biotechnology.

The Affordable Care Act, signed into law on March 23, 2010, requires restaurants and similar retail food establishments that are part of a chain with 20 or more locations doing business under the same name and offering for sale substantially the same menu items to provide calorie information for standard menu items and to provide, upon consumer request, additional written nutrition information for standard menu items. FDA's proposed rule to meet the requirements of this provision in the Act raises numerous questions and requests for comment from the public on a variety of issues. CFA's comments below will focus on one of the issues raised in FDA's proposed rule –whether FDA's menu labeling requirements should apply to alcoholic beverages. CFA believes that alcoholic beverages should be covered by FDA's new menu labeling requirements and urges the FDA to include alcoholic beverages in its final regulations for menu labeling.

Alcohol is a Significant Source of Calories

Alcoholic beverages provide a significant source of calories for many Americans. According to the 2010 *Dietary Guidelines*, “[a]lcohol is a top calorie contributor in the diets of many American adults¹.” Alcohol contributes 7 calories per gram, compared with 4 calories per gram for protein and carbohydrate and 9 calories per gram for fat. Some alcoholic beverages may also contain calories from sugar and fat as well. The *Dietary Guidelines* also note that there is some evidence that “beverages are less filling than solid foods, such that the calories from beverages may not be offset by reduced intake of solid foods, which can lead to higher total calorie intake².” The intent of menu labeling is to provide consumers with information about caloric content of food when they are eating at restaurants and other retail establishments. Alcoholic beverages are frequently consumed in these settings and excluding them from calorie labeling will prevent consumers from adequately monitoring their caloric intake. It will also create confusion and may mislead consumers into thinking that alcoholic beverages contain a minimal amount of calories if they are not labeled on menus when other foods and drinks on the menu are labeled. Exclusion of alcoholic beverages from menu labeling will also prevent consumers from following Dietary Guidelines recommendations to control their calorie intake to manage body weight.

FDA Should Not Exempt Alcoholic Beverages from Menu Labeling Requirements

FDA states in its proposed rule that “it is not clear that Congress intended for the nutrition information disclosures required by section 4205 to apply to alcohol beverages.” To the contrary, section 4205 of the Affordable Care Act requires nutrition labeling of “food” offered for sale in restaurants and other retail establishments. Alcoholic beverages are considered a “food” under the Food, Drug & Cosmetics Act and, as such, should be covered under FDA’s new menu labeling requirements. Furthermore, while Congress did exclude certain foods from menu labeling, alcoholic beverages are not on the list of excluded foods.

FDA’s other excuse for excluding alcoholic beverages from menu labeling requirements seems to be that the Alcohol and Tobacco Tax and Trade Bureau (TTB) at the Department of Treasury has jurisdiction over labels of alcoholic beverages and TTB has a pending rulemaking on labeling of alcoholic beverages. However, Congress clearly directed the FDA, not TTB, to implement nutrition labeling of all foods (including alcohol) offered for sale in restaurants and other retail establishments. Congress’ requirement regarding calorie disclosure for alcoholic beverages is no different than its mandate to FDA to require calorie disclosure for meat and poultry dishes served at restaurants. Like alcoholic beverages, the labels of meat and poultry sold in stores are regulated by a different agency, the U.S. Department of Agriculture. Yet when it comes to calorie disclosure for burgers and chicken on chain restaurant menus FDA proposes to assume its menu labeling responsibility as Congress intended. There is no reason for FDA to have a different policy for alcoholic beverages.

¹ *Dietary Guidelines for Americans 2010*, p. 15.

² *Dietary Guidelines for Americans 2010*, p. 19.

Furthermore, TTB's proposed rule applies to labels on alcoholic beverage containers and has never proposed menu labeling for alcoholic beverages served in restaurants or other retail establishments. The agency has delayed finalizing its proposed rule on labeling of alcoholic beverages for seven years and there is no indication that a final rule is imminent. If FDA does not require nutrition labeling for alcoholic beverages served in restaurants and other retail establishments, consumers will remain in the dark about this significant source of calories when they eat at restaurants and other retail establishments.

CFA strongly urges FDA to include alcoholic beverages in its final regulations for menu labeling.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Waldrop". The signature is written in a cursive, flowing style.

Chris Waldrop
Director, Food Policy Institute