Understanding Nutrition:  
Primer Module on Key Issues  

Nutrition Labeling of Menus and Vending Machines  

Background  
In 1990, President George H.W. Bush signed the Nutrition Labeling and Education Act of 1990 (NLEA), which gave the Food and Drug Administration (FDA) the authority to require nutrition labeling on most packaged foods regulated by the FDA. Restaurants and vending machines were exempted under most circumstances from the NLEA.

Twenty years later, on March 23, 2010, President Barack Obama signed the Patient Protection and Affordable Care Act. While health care reform is the central purpose of the Act, the legislation also includes provisions focused on prevention. Section 4205 requires nutrition labeling of restaurant menus and food in vending machines. Poll data has indicated that a clear majority of Americans support menu labeling (62-84%, depending on the survey).

Numerous states and local jurisdictions throughout the country introduced, passed and/or implemented menu-labeling laws prior to the federal provision adopted in the Affordable Care Act. California was among a vanguard group of states that first introduced menu-labeling legislation in 2003 (including Maine, New Hampshire, Pennsylvania, New York, Texas).

Reasons for Menu and Vending Labeling  
The three primary benefits of menu labeling are:

1. Menu labeling helps consumers exercise personal responsibility and supports them to make informed food choices.
2. Menu labeling is an important strategy to address the nation’s obesity epidemic and failure to meet nutritional goals.
3. Menu labeling has resulted in nutritional improvements in chain restaurant foods, such as new and reformulated products.

In its regulatory impact analysis of the expected menu-labeling regulations, the federal Center for Food Safety and Applied Nutrition adds another compelling rationale for menu labeling – the commercial marketplace has failed to provide adequate information.

... the primary support for government intervention is an absence of sufficient nutritional information, produced by an inadequate incentive for restaurants to produce that information on their own. An absence of adequate information is of course a standard market failure, justifying disclosure requirements or provision of information in many contexts.
Menu Labeling in California
On September 30, 2008, Governor Arnold Schwarzenegger signed SB 1420, making California the first state in the nation to require statewide menu labeling.

With the passage of the Affordable Care Act, additional state legislation was needed to bring state menu labeling standards into conformity with federal provisions, which was accomplished with SB 20 in 2011.

As allowed in federal law, SB 20 also gives local jurisdictions the authority to enforce the federal regulations. Also of note, SB 20 imposes the federal menu labeling requirements on certain food facilities that would not otherwise be covered under the final federal regulations. For example, if the final federal menu labeling regulations do not apply to stadiums, bowling alleys or movie theaters (as is the case with the proposed regulations), then menu labeling would be required at these facilities in California if they are considered part of an in-state chain of 20 or more.

For more information on the history of California’s menu labeling laws, go to http://www.publichealthadvocacy.org/resources_menulabeling.html

Table 1:
Scientific Studies Related to Menu Labeling
from the Yale University Rudd Center for Food Policy and Obesity

The Yale Rudd Center for Food Policy and Obesity has published “Scientific Studies Related to Menu Labeling,” which compiles evidence for the following findings:*

- More people are eating out at fast-food restaurants and the number of fast-food restaurants is growing.
- Portion sizes are bigger, and people are consuming more calories when eating out.
- Excess fast-food caloric consumption may contribute to weight gain.
- People are unaware of how many calories are in their meals.
- Consumers want and use nutrition information.
- Posting caloric information may encourage chains to improve the nutritional content of their menus.
- Some, but not all, fast-food restaurants make nutrition information available. The information is not always accessible to customers at the point of purchase or ordering.

Federal Menu and Vending Labeling Requirements

Federal menu and vending labeling requirements became law the day the Affordable Care Act was signed (March 23, 2010). The Yale Rudd Center provides a concise summary of the menu labeling requirements in the 2010 federal law (see Table 2, below).

To guide implementation of the law, the Act required the FDA to issue regulations.

Proposed regulations (see Appendix A) were issued in April 2011, and public comments were invited through July 15, 2011. The proposed regulations called for a six-month implementation period for restaurants and a twelve-month implementation period for vending machines. Final regulations were expected at the end of 2011.

On the date of this document’s publication (September 30, 2012), no final regulations had been released, implementation periods had not been triggered, and no enforcement activities were underway through the FDA.

Table 2: Requirements of the Federal Menu Label Law*

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<th>Restaurants</th>
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<td>• Menu labeling requirements apply to retail food establishments that are part of a chain with 20 or more locations nationwide.</td>
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| • The calorie content of each menu item must be disclosed on all menus, menu boards, drive-through boards, internet and take-out menus if they are the primary menu used for ordering (hereinafter "menus"), and self-service displays.  
  Exceptions to this requirement: items that are offered for fewer than 60 days a year or for market testing on a menu for fewer than 90 days. |
| • A statement identifying the total daily recommended calories must be included on all menus. |
| • Menus must include a statement that written nutrition information is available to customers upon request, which must include |
  | o total number of calories; |
  | o total number of calories derived from fat; and |
  | o total amount of fat, saturated fat, cholesterol, sodium, carbohydrates, sugars, dietary fiber, and protein in each serving. |

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<th>Vending Machines</th>
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<td>• Operators of 20 or more vending machines must disclose calorie information for food sold in the machines if the Nutrition Facts Panel is not visible.</td>
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<th>Opt-In Provision</th>
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<td>• Any individual restaurant, restaurant chain, or vending operator that is not covered by federal law can voluntarily elect to comply with the federal requirements and register with the FDA every other year. Once the entity “opts in,” it is subject to the federal requirements and enforcement (and is exempt from any state or local requirements that differ from federal requirements).</td>
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Impact on Other State or Local Labeling Requirements

• The federal law does not affect other state or local labeling requirements concerning the safety of the food or a component of the food, such as warning statements, consumer advisories, or allergen labeling.

* This summary is adapted from and, for some provisions, directly quoted from Federal Menu Label Law, Yale University Rudd Center for Food Policy and Obesity. Available at: [http://yaleruddcenter.org/what_we_do.aspx?id=350](http://yaleruddcenter.org/what_we_do.aspx?id=350)
Options for State and Local Regulation
States and many local jurisdictions may regulate establishments not covered by the federal law, which include restaurants in chains of 19 or fewer, non-chain restaurants, and any establishments that the final federal regulations do not specify. (For example, stadiums, bowling alleys and movie theaters are not covered in the proposed federal regulations.)

In addition, states and many local jurisdictions may adopt their own enforcement provisions that supplement the federal enforcement scheme (as the State of California did with the passage of SB 20).

Unresolved Issues
The final federal regulations may resolve a number of issues that remain the focus of debate:

• How to provide nutritional information for menu items that come in different varieties, flavors, sizes, or combinations (e.g., different ice cream flavors or pizza).

• Specific wording for the required statement on suggested daily caloric intake, and whether or not an additional statement on the caloric needs of children will be added.

• Whether or not the Secretary of Health and Human Services will require disclosure of any additional nutrients in written form, an option provided in the legislation.

• Whether or not nutritional information will be required for alcoholic beverages.

• The final list of establishments that will be required to provide menu labeling, with uncertainty as to whether or not stadiums, supermarkets, convenience stores, movie theaters, airplanes, or bowling alleys will be included.

• Information as to how enforcement will be carried out, including the role of state and local governments.

Consumer Education Campaign
If the benefits of menu labeling are to be realized, a national campaign will be necessary to educate consumers and business owners. Ideally, a national education campaign would be coordinated with state and local efforts, as well as those led by leaders in the private, nonprofit and philanthropic sectors.
Resource List
For current information on the federal menu labeling law, go to:

**Food and Drug Administration** (FDA)
http://www.fda.gov/food/labelingnutrition/ucm217762.htm

**Center for Science in the Public Interest** (CSPI)
http://www.cspinet.org/menulabeling/

**Yale University Rudd Center on Food Policy and Obesity**
http://www.yaleruddcenter.org/what_we_do.aspx?id=147

**ChangeLab Solutions**
http://changelabsolutions.org/node/3261

**Public Health Law Center**
http://publichealthlawcenter.org/topics/healthy-eating/menu-labeling

**California Center for Public Health Advocacy** (CCPHA)
http://www.publichealthadvocacy.org/resources_menulabeling.html

**Healthy Eating Research, Robert Wood Johnson Foundation**
http://www.healthyeatingresearch.org/research-results-mainmenu-35/menu-labeling
Appendix A:
Federal Menu Labeling: Proposed Regulations

Below is a summary of the proposed regulations for the federal menu labeling law, adapted from and, for some provisions, directly quoted from the Federal Drug Administration description found at: http://www.fda.gov/Food/LabelingNutrition/ucm248732.htm

The proposed regulations address the establishments that would be covered, the calorie display, statements regarding calorie intake, and the availability of additional nutritional information.

In response to the draft regulations, more than 400 public comments were submitted, all of which will be reviewed before final regulations are released. Most experts expect the final regulations to differ at least in part from the proposed regulations.

**Restaurants**

**Establishments Covered**
- Restaurants or similar retail food establishments (SRFEs) with 20 or more locations, doing business under the same name and offering for sale substantially the same menu items.

To be classified a restaurant or SRFE, the establishment must:
* sell restaurant or restaurant-type food, or
* sell food to consumers as a primary business activity
  (which means that the establishment defines itself as a restaurant or that 50 percent of the establishment’s total floor area is used for the sale of food).

**Establishments Not Covered**
- Movie theaters, airplanes, bowling alleys, and other establishments whose primary purpose is not to sell food are *not* required to label menus.

**Opt-In Provision**
- Restaurants and SRFEs not covered by the federal law (for example, if they are part of a chain with fewer than 20 locations) may choose to “opt in” to the federal menu labeling requirements by registering with the FDA every other year. (Link to voluntarily register.)

**Calorie Display**
- Calories must be displayed clearly and prominently on all menus and menu boards (including those for drive-through locations).

  The words “Calories” or “Cal” must be posted next to the number of calories.

  Calories for variable menu items, like combination meals, should be displayed in ranges.

  For foods on display or for self-service foods (like a buffet or salad bar), calories should be listed per item or per serving on a sign next to the food.

  Calorie display is *not* required for alcoholic beverages.
Statement Regarding Calorie Intake
• A succinct statement about recommended caloric intake should be posted prominently on menus and menu boards. The FDA proposes: “A 2,000 calorie diet is used as the basis for general nutrition advice; however, individual calorie needs may vary.”

Availability of Additional Written Nutrition Information
• A clear and prominent statement should be posted on menus and menu boards stating that additional written nutrition information is available to consumers on request.

• The following written nutrition information for standard menu items should be available upon request: total calories, calories from fat, total fat, saturated fat, cholesterol, trans fat, sodium, total carbohydrates, sugars, dietary fiber and protein.

Relationship to State and Local Laws
• For food sold in restaurants and SRFEs covered by the federal law or regulations, state and local governments would not be able to impose any different or additional nutrition labeling requirements.

• For establishments not covered by the new law or regulations, state and local governments can establish nutrition labeling requirements for establishments (for example, chains with fewer than 20 locations).

Vending Machines
Vending Machines Covered
• Vending machine operators that own or operate 20 or more vending machines must disclose calorie information for food sold from a vending machine unless certain nutrition information is visible to consumers on individual packages of food while inside the machine.

Opt-In Provision
• Operators of vending machines not covered (for example, operators with fewer than 20 vending machines) may opt-in to the federal requirements by registering with FDA every other year.

Calorie Display
• Calorie information must be displayed clearly and prominently.

• The words “Calories” or “Cal” must be posted next to the number of calories.

• Calorie information must be posted on a sign in close proximity to the article of food, i.e., not necessarily attached to the vending machine, but in the same field of vision as the food items in the machine.
For More Information

This key issue on Nutrition Labeling of Menus and Vending Machines is a component of Understanding Nutrition: A Primer on Programs and Policies in California. Go to www.ccrwf.org to access additional modules.

The primer was produced by the California Center for Research on Women and Families (CCRWF), in partnership with California Food Policy Advocates and the California Department of Public Health’s Network for a Healthy California (Network), a public health effort working with hundreds of partners and organizations to empower low-income Californians to live healthier lives through good nutrition and physical activity.

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Recommended Citation


End Notes

i Menu Labeling in Chain Restaurants: Opportunities for Public Policy, Yale University Rudd Center for Food Policy and Obesity, 12/08. Available at: www.yaleruddcenter.org/resources/upload/docs/what/reports/RuddMenuLabelingReport2008.pdf

ii A national map depicting these laws can be accessed at http://cspinet.org/new/pdf/ml_map.pdf.

iii See a complete list of states at http://www.cspinet.org/nutritionpolicy/menu_labelingbills.pdf.

iv Adapted from: Nutrition Labeling at Fast-Food Restaurants and Other Chain Restaurants, Center for Science in the Public Interest, available at www.cspinet.org/menulabeling/why.pdf

v The Center for Food Safety and Applied Nutrition is located in the Food and Drug Administration at the U.S. Department of Health and Human Services.