



FOOD INDUSTRY ALLIANCE OF NEW YORK STATE, INC.

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Comments

**By the Food Industry Alliance of New York State, Inc.
in opposition to the**

Amendment of Calorie Posting Requirements, Reference Number 2015 RG 065

Thank you for the opportunity to submit comments on the proposed Amendment of Calorie Posting Requirements, Reference Number 2015 RG 065. My name is Jay Peltz and I am the General Counsel and Vice President of Government Relations for the Food Industry Alliance of New York State (“FIA”). FIA is a nonprofit trade association that promotes the interests statewide of New York’s grocery stores, drug stores and convenience stores. Our members include chain and independent food retailers that account for a significant share of New York City’s retail food market and the grocery wholesalers that supply them, as well as many of New York City’s drug and convenience stores.

Under the proposed calorie posting rule, a “covered establishment” is defined as “...a food service establishment or similar retail food establishment that is part of a chain with 15 or more locations nationally...” “Similar retail food establishment” is defined as “...a ***food service establishment*** such as a convenience store, grocery or supermarket that serves restaurant-type food (bold and italics added).” “Food service establishment” is not defined in the proposed rule. That term, however, is defined identically in section 81.03(s) of the New York City Health Code (“NYC Health Code”) and section 23-01 of Chapter 23 of Title 24 of the Rules of the City of New York (“Chapter 23 of the NYC Rules”): A food service establishment is “...a place where food is provided for ***individual portion service*** directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises...(bold and italics added).” Indeed, this is the definition of food service establishment used in the current calorie posting rule.

Licensed food ***processing*** establishments – including thousands of grocery, supermarket and convenience stores operating in New York City – do not meet the definition of “food service establishment” under the NYC Health Code or Chapter 23 of the NYC Rules. Nor are they food service establishments under the State Sanitary Code or the Memorandum of Understanding, amended as of September 20, 2010 (“MOU”), between the New York State Department of Agriculture and Markets (“State Department of Agriculture”) and the New York State Department of Health (“State Health”), which binds all local (including city) health departments. To the contrary, these businesses meet the definition of “food processing establishment” under section 251-z-2 of the New York State Agriculture and Markets Law (“Agriculture and Markets Law”). As a result, these establishments have been permitted, regulated and inspected by the State Department of Agriculture with regard to food operations. Accordingly, we respectfully request that the proposed rule be revised so that grocery, supermarket and convenience stores that are licensed by the State Department of Agriculture as food processing establishments are expressly excluded as “covered establishments” under the proposed rule.

The fact that food processing establishments are permitted by the State Department of Agriculture is particularly important. On page 25 of its Reply Brief (submitted to support the Department's appeal of a lower court ruling invalidating the soda ban), the Department declared: "The Portion Cap Rule applies to all food service establishments ***regulated and permitted by the Department. This is consistent with all of the requirements of Article 81 of the Health Code***, including the restriction on the use of trans fat and the requirement to post letter grades after inspections by the Department (bold and italics added)." Since food processing establishments licensed by the State Department of Agriculture are neither regulated nor permitted by the Department, such businesses should be removed as covered establishments under the proposed rule. To include them would be ***inconsistent*** with all of the requirements of Article 81 of the Health Code.

Grocery and convenience stores clearly meet the definition of "food processing establishment" under section 251-z-2 of the Agriculture and Markets Law. Under section 251-z-2, "food processing establishment" is defined broadly to include "...any place which receives food or food products for the purpose of processing or otherwise adding to the value of the product for commercial sale." The term "processing" is also defined expansively to mean "...processing foods in any manner, such as by...packing, repacking...heating or cooking, or otherwise treating food in such a way as to create a risk that it may become adulterated..."

Accordingly, as provided in the State Department of Agriculture's website, "Retail food establishments, i.e. ***grocery stores***, that conduct ***any*** type of food preparation such as meat or cheese grinding, heating foods, sandwich making... (bold and italics added)" are required to obtain an Article 20-C Food Processing Establishment License. This explains why, historically, food processing establishments licensed by the State Department of Agriculture have not been regulated under Article 81 of the Health Code or inspected by the Department or another agency enforcing a Department rule.

Moreover, licensed food processing establishments are not food service establishments for purposes of the State Sanitary Code. As stated on page 14 of Judge Milton Tingling's opinion in the portion cap rule case: "Food service establishments are defined in section 14-1.20 (a) of the NYCRR as a place where food is prepared and intended for ***individual portion service*** and includes the site at which the individual portions are provided, whether consumption occurs on or off the premises. ***The term excludes food processing establishments, retail food stores...*** (bold and italics added)."

This definition is strikingly similar to the definition of food service establishment in the NYC Health Code and Chapter 23 of the NYC Rules. Both definitions are focused on individual portion service (i.e., the serving of meals). However, at a typical food processing establishment licensed by the State Department of Agriculture, most revenue is not derived from the sale of individual portions. Most revenue results from the sale of food products, much of which is pre-packaged and pre-sealed, in sizes other than individual portions, as well as the sale of non-food products such as cleaners, paper goods, personal care products, prescription drugs, baby items, pet items, batteries and greeting cards. This is why licensed food processing establishments have been excluded from the definition of food service establishment under the NYC Health Code, Chapter 23 of the NYC Rules and the State Sanitary Code.

Indeed, the sodium warning rule, proposed simultaneously with the calorie posting rule, defines a covered establishment as “...a food service establishment, as defined in section 81.03 of the Health Code **and permitted by the Department**, that is part of a chain...(bold and italics added).” This tracks the Department’s long standing history of regulating, under Article 81 of the NYC Health Code, only those businesses permitted by the Department.

Accordingly, food processing establishments licensed by the State Department of Agriculture are not food service establishments for purposes of the State Sanitary Code, the NYC Health Code, Chapter 23 of the NYC Rules, the current calorie posting rule, the original 2006 calorie posting rule or the sodium warning rule, yet the proposed rule purports to cover licensed food processing establishments as “similar retail food establishments” because they are “food service establishments.”

Moreover, the attempt to regulate and inspect licensed food processors as food service establishments directly conflicts with decades old state policy, as reflected in the MOU. The MOU, originally executed in December 1985, provides that “Health and local departments designated by Health will be responsible for the inspection and regulation of places where food is consumed on the premises or sold ready-to-eat for off-premises consumption...” The MOU specifies 45 “Examples of establishments over which Health normally has jurisdiction...,” including restaurants, night clubs and caterers. Nowhere on the list can food stores (including grocery or convenience stores) be found.

The MOU provides further that “Agriculture will be responsible for the inspection and regulation of places where food is processed or manufactured, food warehouses, wholesale food distributors and **retail food stores** (bold and italics added).” The MOU provides 21 “Examples of establishments over which Agriculture normally has jurisdiction...,” including food stores.

The Department apparently believes that the MOU does not apply to the proposed calorie posting rule, since it is a “labeling” rule. However, titles of rules do not resolve jurisdictional issues; the substance of them does. Accordingly, while the soda ban was titled the “Portion Cap Rule” and FDA and the Department refer to the calorie posting rule differently (FDA calls its version of the rule “menu labeling” while the NYC Health Code proposed section title is “Posting of calorie information”), in the end the soda ban and the calorie posting rule are about the same thing: Changing behavior through regulation, with the overall goal of improving the health of the general population by reducing calorie consumption.

By its own words, the Department took the position that the soda ban was subject to the MOU. On page 3 of the Department’s Reply Brief, the Department asserted “...without merit is [the] claim that the Rule is arbitrary and capricious because the Rule is not applicable to all food premises. Indeed, far from being an arbitrary line drawing, the application of the portion size rule **to the food service establishments regulated by the Department – meaning those establishments selling prepared foods most likely to be consumed immediately, and not to the stores selling food predominantly for home consumption** – is in line with the public health purpose of the rule (bold and italics added).” On page 27 of its Reply Brief, the Department added: “...it was not arbitrary or capricious to distinguish between FSEs that are regulated and inspected by the Department and **grocery stores that are not** (bold and italics added).”

The Department elaborated further on page 16 of its Reply Brief: “Agencies and boards cannot adopt rules without regard to their enforcement powers. Thus, it is rational that the Portion Cap Rule applies to all food service establishments ***permitted by the Department, but not to businesses, such as 7-11 stores, that are regulated by a different agency because they derive more than half of their revenue from sales of packaged food and are not subject to the Department’s full enforcement authority pursuant to a Memorandum of Understanding...*** (bold and italics added)” between the State Department of Agriculture and State Health.

As noted above, under the proposed rule “covered establishment” is defined as “...a food service establishment or similar retail food establishment that is part of a chain...” “Similar retail food establishment” is defined as “...a food service establishment such as a convenience store, grocery or supermarket that serves restaurant-type food.” Leaving aside the circular nature of the definition, the Department has effectively concluded, without any coordination with or analysis from the State Department of Agriculture, that thousands of food processing establishments operating in New York City, licensed, regulated and inspected by the State of Department of Agriculture, are also food service establishments for purposes of the proposed rule.

What then? The Department itself provided the answer on page 26 of its Reply Brief. In quoting from the MOU, the Department noted: “If an establishment has operations that ***may fall*** under the jurisdiction of both Health and Agriculture, ***Agriculture shall have jurisdiction over all operations of the establishment*** unless sales of food for consumption on the premises or ready-to-eat for off premises consumption, measured by annual dollar receipts, exceeds fifty percent of total annual dollar receipts in which event Health shall have jurisdiction of the establishment...In resolving such jurisdictional issue, the representations of the establishment operator ***shall be dispositive*** as to whether or not sales of food for consumption on the premises or ready-to-eat for off-premises consumption exceed fifty percent of the total annual dollar receipts of the establishment. In no instance shall an establishment be required to have a license or permit to operate from both departments ***or be inspected by both departments*** (bold and italics added).”

The Department further amplifies its position on page 27 of its Reply Brief: “Thus, under the MOU, the departments ***will meet*** to determine whether a particular establishment is being regulated by the correct Department ***based on its sales receipts***. Under the MOU, an establishment can only be under the jurisdiction of one of the two agencies. [The parties challenging the soda ban] ***would revise the MOU to give the Department jurisdiction over establishments deriving less than fifty percent of their annual sales from ready-to-eat foods. [These] arguments highlight [a] complete misunderstanding of the Board’s jurisdiction as well as the interplay between the state agencies and the Board*** (bold and italics added).”

Furthermore, the lower and appellate courts were clear that when there is uncertainty regarding jurisdiction, the two agencies must meet to resolve the issue. On page 15 of the lower court opinion, Judge Tingling concluded that “[t]he failure of the Department to seek agreement under the ‘MOU’ ...is a demonstration of [the Department] weighing its stated goal of health promotion against political considerations.” Thus, the Department acted more like a legislature engaged in policymaking than an

agency adopting a rule to implement a policy determination by a legislature. On pages 20-21 of its opinion, the appellate court agreed: "...the MOU envisions 'cooperative efforts between the two agencies [to] assure comprehensive food protection and to avoid gaps in food surveillance.' Yet, the agency offers no evidence of any prior attempt to coordinate with the Department of Agriculture on the Portion Cap Rule."

Clearly, by including licensed food processors in the proposed rule without engaging in "cooperative efforts" with the State Department of Agriculture, the Department avoided the resource intensive process of surveying thousands of licensed food processors operating in New York City. As a result, every licensed food processor operating in New York City is declared to be a "food service establishment" for purposes of the proposed rule, notwithstanding the foregoing judicial admonitions and the fact that licensed food processing establishments are not food service establishments for purposes of the State Sanitary Code, the NYC Health Code, Chapter 23 of the NYC Rules, the current calorie posting rule, the original 2006 calorie posting rule or the sodium warning rule proposed by the Department simultaneously with this rule. Nor are they otherwise regulated or permitted by the Department.

Finally, as previously stated, the MOU provides that "In no instance shall an establishment be required to have a license or permit to operate from both departments ***or be inspected by both departments*** (bold and italics added)." It also provides that "Agriculture will be responsible for the inspection ***and regulation*** of places where food is processed or manufactured, food warehouses, wholesale food distributors and ***retail food stores*** (bold and italics added)." Notwithstanding this significant restriction of its regulatory and inspection authority over licensed food processors, the Department seeks to adopt this rule, which includes the purported authorization of the Department of Consumer Affairs (DCA) to enforce it.

The MOU, however, clearly prohibits dual regulatory and inspection authority once a determination is made as to whether an establishment is a food processor or a food service establishment. Accordingly, food processing establishments licensed by the State of Department of Agriculture cannot be regulated by the Department as specified in the proposed rule. Moreover, the designation of DCA as an enforcement agency thwarts a clearly articulated purpose of the MOU: To prohibit inspections by or through a local health department once a determination is made that an establishment is a food processor. Lastly, what legal authority does the Department have to empower another agency to enforce one of its rules?

In light of the foregoing, we respectfully request that the proposed rule be revised so that grocery, supermarket and convenience stores that are licensed by the State Department of Agriculture as food processing establishments are expressly excluded as "covered establishments." The Department's desire, asserted in the Statement of Basis and Purpose of proposed rule, to "...repeal and reenact Health Code section 81.50 so that its requirements are identical to the federal requirements..." does not override the requirements of the MOU or the decades long practice of not regulating licensed food processors as food service establishments under the State Sanitary Code, the NYC Health Code or Chapter 23 of the NYC Rules. It also conflicts with the current calorie posting rule and the original 2006 calorie posting rule, neither of which covered licensed food processing establishments, as well as the

sodium warning rule (proposed simultaneously with this rule). In any event, the proposed rule is not identical to the federal rule: It seeks to continue to cover “chains” with 15-19 locations nationally, while the federal rule defines a “chain” as a business with 20 or more locations nationally.

Thank you for your time and attention to FIA’s concerns. We look forward to hearing from you.

Respectfully submitted,

Food Industry Alliance of New York State, Inc.

Jay M. Peltz

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Proposed Amendments to Menu Posting Requirements of Section 81.50 of the Health Code

THE RESTAURANT INDUSTRY PERSPECTIVE

On July 24, 2015, the New York City Department of Health and Mental Hygiene (“DOHMH”) will hold a hearing to receive comments regarding the DOHMH’s efforts to repeal and reenact the menu posting requirements of the Health Code.

The New York State Restaurant Association submitted this document as written testimony at the hearing to provide the restaurant industry’s perspective on the proposed regulation.



NEW YORK
STATE
RESTAURANT
ASSOCIATION

July 24, 2015

The New York State Restaurant Association is a trade group that represents approximately 5,000 food service establishments in New York City and over 10,000 statewide. The Association is the largest hospitality trade association in the State of New York and it has advocated on behalf of its members for over 75 years. Our members, known as Food Service Establishments, represent one of the largest constituencies regulated by the City as nearly every agency regulates restaurants in one aspect or another.

Restaurants employ hundreds of thousands of New Yorkers and are a backbone of the tourism trade here in New York City. To ensure the continued viability of the restaurant and hospitality industry, New York City must have sensible and reasonable regulations that protect consumers and the restaurants that serve them.

We are writing to provide you with the hospitality industry's concerns over the DOHMH's efforts to implement the proposed repeal and reenactment of Health Code section 81.50.

Adopted in 2008, Section 81.50 of the Health Code contains the menu labelling requirements of the Health Code that apply to chain restaurants. The proposed repeal and reenactment of Section 81.50 is premised upon the DOHMH's desire to have the Code conform to new federal requirements initially set to be implemented on December 1, 2015. This premise is set forth in the DOHMH's notice for this hearing, specifically:

While the Department does not have the authority to enforce the federal requirements, it can enforce identical posting requirements in the Health Code. Where the Health Code currently requires a posting that the federal law will not, the Department will be preempted from enforcing the Health Code requirements in restaurants subject to the federal regulations.

Accordingly, the Department is proposing that the Board repeal and reenact Health Code section 81.50 so that its requirements are identical to the federal requirements that will go into effect on December 1, 2015. While the new federal requirements only apply to restaurants that are part of chains with 20 locations or more nationally, the Department is proposing that, in New York City, restaurants that are part of chains with 15 to 19 locations nationally continue to provide calorie information.

By notice dated July 10, 2015, the U.S. Department of Health and Human Services delayed the implementation of the new federal menu labelling requirements until December 1, 2016.ⁱ As the sole basis cited by the DOHMH for the proposed changes was to ensure that the Health Code’s menu labelling requirements were “identical” to the federal requirements in content and timing, it is imperative that the DOHMH abide by its own rationale and delay the proposed repeal and reenactment of Section 81.50.

This logical process will allow for certainty to the impacted FSEs as they will then not be subject to potentially divergent NYC and federal regulations on menu labelling which would lead to inflated costs necessitated by the need to comply with two sets of regulations. Moreover, there is simply not enough time for FSEs covered by this proposed DOHMH regulation to develop and comply with the DOHMH’s proposed labelling requirements. This was a major basis for the FDA’s delay of the implementation of the federal regulations and the same rationale further supports delaying the implementation of the proposed changes to the Health Code.

The Association also believes that the DOHMH’s regulations should conform to the FDA’s proposed thresholds for compliance. The FDA’s regulations will apply to chains with twenty (20) or more locations. Yet the DOHMH is seeking to have the mandates within Section 81.50 apply to chains of fifteen (15) or more. There is simply no rational basis tendered by the DOHMH to have its regulations diverge from the federal rules.

CONCLUSION

The Association looks forward to working with the DOHMH and its staff to help further develop sensible regulations for the restaurant industry. We hope that the DOHMH will show its good faith by conforming the timing of any changes in the identical menu labelling requirements of the Health Code to the FDA regulations.

A vital part of NYS Restaurant Association’s mission is to seek the development of a fair and equitable regulatory environment that encourages the success and growth of New York City’s world famous restaurant industry. The Association thanks you for the opportunity to provide these comments today on behalf of the members of the NYS Restaurant Association in New York City and the entire food service industry.

Respectfully submitted,

James W. Versocki, Esq.
Counsel, NYC Chapter
New York State Restaurant
Association

ⁱ See <https://s3.amazonaws.com/public-inspection.federalregister.gov/2015-16865.pdf> and <https://www.federalregister.gov/articles/2015/07/10/2015-16865/food-labeling-nutrition-labeling-of-standard-menu-items-in-restaurants-and-similar-retail-food>



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Testimony

In Support of
Proposed Amendment to Article 81 of the New York City Health Code
To make the city requirements for posting nutritional information on restaurant
consistent with recently enacted federal rules

Submitted by:

American Heart Association / American Stroke Association
Robin Vitale, Senior Director, Government Relations, New York City

July 24, 2015

Good morning. Thank you to the members of the New York City Board of Health for this opportunity to present testimony on behalf of the American Heart Association / American Stroke Association in support of recommended improvements to the city's Health Code. My name is Robin Vitale and I serve as the American Heart Association's Senior Director of Government Relations in New York City. As the AHA is the largest volunteer-led, science-based organization dedicated to building healthier lives, free of cardiovascular diseases and stroke, we felt it was imperative that we participate in today's hearing in order to emphasize our strong support of the proposed menu labeling requirements.

We are in the grips of an obesity epidemic. Simply stated, we are ingesting too many calories, often from the wrong types of food, and have become increasingly sedentary. The results of this caloric equation can be deadly, leading not only to obesity, but a higher risk of cardiovascular disease, diabetes, cancer, and early death or disability. Obesity is not only a major health risk factor but it threatens to reverse all of the improvements in cardiovascular health made over the last fifty years.¹

Our environment often doesn't help matters. This is particularly true in many of our New York City neighborhoods, where access to recreational space and healthy, affordable foods is limited. Across the country, Americans now spend nearly half (46%) of our food budget on meals and food items eaten away from home.² And foods eaten away from home are typically served in larger portion sizes and usually have more calories than those consumed at home.³ Research documents the link between more frequent eating

¹ Levy, D. Combating the Epidemic of Heart Disease. JAMA, 2012; 308(24), 2624-2625.

² Cohen, DA, & Bhatia, R. Nutrition standards for away-from-home foods in the USA. Obesity Reviews, 2012; 13(7):618-29.

³ Scourboutakos, M. J., et al. Restaurant Meals: Almost a Full Day's Worth of Calories, Fats, and Sodium. JAMA Intern Med: 2013; 1-2.

out and obesity.⁴ Additionally, consumers have also been unable to accurately gauge calorie counts for their meals, often believing that the calorie level is significantly lower than in reality.⁵

The American Heart Association believes that educated consumers, armed with the right nutrition information, can make healthier choices, especially when we are eating out. Better menu labeling can also inspire restaurant industry innovation. These two aspects - empowering the individual and working to improve restaurant practices - are what motivated us to support New York City in 2006 when this government body led the way toward championing this policy.

Implemented in 2008, New York City's robust menu labeling initiative required all restaurant chains with at least 15 stores nationally to list calories per serving next to each food item on the menu or menu board.⁶ The city also conducted an accompanying education campaign to teach consumers about calories and has been most helpful in monitoring the policy and providing valuable evaluation.

Initial research from this evaluation of New York City's menu labeling law seemed to provide favorable consumer reactions and indication for beneficial health outcomes:

- 86% of consumers thought it was a positive move;
- 84% said they read the calories on menus;
- 97% said that calories were higher than they expected; and
- 77% said that restaurants have a responsibility to respond to consumers' nutritional concerns.⁷

Some research has indicated that the city's law may not have had a significant impact on fast food consumption and may only have an influence on those individuals who are already motivated to read nutritional information.⁸ On the contrary, other studies of menu labeling have shown that these laws resulted in consumers purchasing entrees lower in calories, fat, and sodium.⁹ At the American Heart Association, our work continues to focus on building the bridge between education and action. Policies such as the menu labeling law are pivotal toward our success of empowering a more health-conscious consumer.

Indeed, the National Restaurant Association has stated that, "menu labeling has the potential to improve our nation's health by allowing guests to make informed choices about the foods that are appropriate for their diet. This could ultimately contribute to the prevention and control of obesity, heart disease, cancer, diabetes, and other nutrition-related conditions."¹⁰

⁴ Fulkerson, JA, et al. Away-from-Home Family Dinner Sources and Associations with Weight Status, Body Composition, and Related Biomarkers of Chronic Disease among Adolescents and Their Parents. *Journal of the American Dietetic Association*, 2011; 111(12), 1892-1897.

⁵ Block, J. P., et al. Consumers' estimation of calorie content at fast food restaurants: cross sectional observational study. *BMJ*: 2013; *British Medical Journal* 346.

⁶ Rules of the City of New York, Title 24, New York City Health Code x81.50.

⁷ Technomic, Inc. Executive Summary. *Consumer Reaction to Calorie Disclosure on menus/menu boards in New York City*. Project Number 13109. September 2008.

⁸ Vadiveloo, M. K., et al. Consumer purchasing patterns in response to calorie labeling legislation in New York City. *International Journal of Behavioral Nutrition and Physical Activity*:2011; 8(1): 51.

⁹ Auchincloss, A. H., et al. Customer Responses to Mandatory Menu Labeling at Full-Service Restaurants. *Am J Prev Med*: 2013; 45(6): 710-719.

¹⁰ Jones-Mueller A. 5 Musts for Menu Labeling. In *National Restaurant Association and Healthy Dining*

Additionally, evidence has shown that while mandatory menu labeling laws may not decrease unhealthy food items on a menu, it has motivated more healthy options to be offered at fast food restaurants.¹¹

As a result of these potential benefits, other cities, states, and most recently our federal government have all affirmed the support of providing more transparent nutritional information for consumers by passing their own menu labeling laws. With the approval of the Affordable Care Act, restaurants across the country with 20 or more locations will soon be required to post calories on menus and menu boards, including boards at drive through service, and make other nutrition information available in the restaurant.¹² To put this information in context with overall diet, chain restaurants are required to include a daily calorie intake statement. In addition, vending machine operators with more than 20 machines must also post calories on or next to the machines. The American Heart Association believes these are all welcome additions to the mandatory menu labeling law, and we applaud New York City's goals to reflect the same standards for the city policy.

Standardizing calorie information on menus is easier for larger fast food chains, where food preparation and portion sizes are highly controlled. However, accurate nutrient composition databases and software for labeling are widely available and it is easier than ever before for all restaurants to calculate calorie content in menu offerings.¹³ No matter which restaurant customers choose, they need and deserve the calorie and nutrition information. The ability of customers to customize ingredients in some of their meal selections does pose a challenge. However, for most food items, a close estimate of calories will provide consumers the information they need to make an informed and healthy choice.

The American Heart Association continues to advocate for swift, strong implementation of the federal regulations. Ultimately, it would be in the best interest of public health to have calorie labeling mandated in all food service establishments. Restaurants not covered by the federal law remain subject to any state and local regulations, and the association will work to ensure that restaurants with fewer than 20 locations adopt menu labeling as well. As the New York City law currently impacts restaurants with 15 or more locations, the American Heart Association therefore strongly supports the extension of the federal rules to food service establishments that maintain 15 – 19 locations nationally. By mirroring the federal regulations for all restaurants with 15 or more locations, New York City can be a true partner with our federal leaders to better support restaurants and ensure compliance in advance of the national standard.

A healthy diet is essential to sound cardiovascular health and this legislation should help consumers to do a better job managing their weight, thereby reducing their risk factors for chronic disease. On behalf of the American Heart Association / American Stroke Association, thank you for your attention and consideration of our support for this proposed update to Amendment 81. Thank you.

¹¹ Namba, A. Exploratory Analysis of Fast-Food Chain Restaurant Menus Before and After Implementation of Local Calorie-Labeling Policies, 2005–2011. *Prev Chronic Dis*: 2013; 10.

¹² Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148, 2010: 124 Stat. 573.

¹³ U.S. Food and Drug Administration, *Calories Count: Report of the Working Group on Obesity* (July 1, 2009), accessed at: <http://www.fda.gov/Food/LabelingNutrition/ReportsResearch/ucm081770.htm>

**Menu Labeling Testimony Joseph Masher
President, NATO Theatre Owners of New York State, Inc.**

- **Good afternoon. My name is Joe Masher, and I am the President Director of the National Association of Theatre Owners of New York State, a not-for-profit trade association representing movie theatres.**
- **In New York City we represent 37 movie theatres, 312 screens, and 1,800 employees across the 5 boroughs.**
- **We are here today to oppose the menu labeling requirements.**
- **If the desire is for New York City's requirements to be in line with the federal requirements, then we believe that the Board of Health is premature.**
- **The federal requirements were originally supposed to take place on December 1st of this year.**
- **However, the FDA recently announced that they are delaying the requirements for a full year, until December 1st of 2016.**
- **Accordingly, if New York City is to follow suit, this hearing should be taking place next July, not today.**
- **After all, New York City already has menu labeling, at significant cost to the business community.**
- **Why would the City ask it's food service establishments to make changes now, and then possibly again in just a year?**
- **There are several issues that the FDA will decide during the course of this one-year delay.**
- **One issue includes how caloric information will be posted for multiple serving items, such as a bottle of wine, a full pizza pie, or even a bucket of popcorn.**
- **Should that be by the glass, by the slice, or divided in half?**

**Menu Labeling Testimony Joseph Masher
President, NATO Theatre Owners of New York State, Inc.**

- **The same is true of standard menu items that come in different flavors, varieties, or combinations that are listed as a single menu item.**
- **This includes soft drinks that may be dispensed by the new Freestyle or Spire machines, as well as ice creams, and desserts like donuts.**
- **Determining the caloric amounts for these items can be done through ranges, averages or other methods as determined by the FDA.**
- **This determination has not yet happened.**
- **And, it won't happen at least for another year.**
- **Why would we rush to change the New York City menu labeling regulations, and again impose costs on businesses, until we are certain what the federal regulations will require?**
- **Accordingly, instead of listing December 1, 2015 as the effective date for these New York City regulations, there should instead be language stating that these regulations will become effective only until the federal regulations become effective, without stating a specific date.**
- **This way, if the federal regulations are further delayed, New York City food service establishments will not have to rush to comply with *new* New York City's regulations, and then very likely have to make other changes once the federal regulations take effect.**
- **We respectfully urge the Board of Health to take these points into consideration before passing this amendment to the Health Code.**
- **Thank you.**