

# Menu Labeling

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# Background

- ACA Enacted March 23, 2010
- FDA issued proposed rule in 2011
  - Received ~900 Comments
- Issued final rule on December 1, 2014
  - Menu labeling compliance date – December 1, 2015
- Issued 2<sup>nd</sup> final rule on July 10, 2015
  - Menu labeling compliance date – December 1, 2016
- Compliance Date: May 7, 2018

# Breaking News!

- The FDA is extending the compliance date for menu labeling requirements from May 5, 2017 to **May 7, 2018**.
- This extension allows for further consideration of opportunities to reduce costs and enhance the flexibility of the requirements.
- 60-day comment period began May 4, 2017.

# Key Components

- Definitions
- Alcohol
- Multi-Serving Foods
- Menus and menu boards and displaying calories
- Self-service food and food on display
- Succinct statement concerning the suggested daily caloric intake
- Written nutrition information
- Determining nutrition content of food
- Effective Date

# Definitions

# Covered Establishments

- **Restaurants or similar retail food establishments**
  - Retail establishment that offers for sale “restaurant type food”
- **Part of a chain with 20 or more locations**
  - Fixed locations
- **Doing business under the same name**
  - Name presented to the public or the name of the parent entity if no name is presented to the public, (e.g., concession stand); this includes slight variations of the name, (e.g., due to location, region, or size)

# Covered Establishments

## (Continued)

- **Offering for sale substantially the same menu items**
  - A significant proportion of menu items that use the same general recipe and are prepared in substantially the same way with substantially the same food components even if the name of item varies (e.g. “Bay View Crab Cake” and “Ocean View Crab Cake”)
- **Other restaurants or similar retail food establishments that offer for sale “restaurant-type food” that voluntarily register with FDA to be covered**

# Examples of Covered Facilities

- Restaurants - quick service and sit-down
- Grocery and convenience stores
- Food take-out facilities and pizza delivery services
- Entertainment venues (e.g. movie theaters, amusement parks)
- Cafeterias
- Coffee shops
- Superstores
- Some managed food service operations



# Restaurant-Type Foods

- Restaurant-type foods are foods usually eaten on the premises, while walking away, or soon after arriving at another location;  
**and**
- Served in restaurants or other establishments in which food is served for immediate consumption or which is sold for sale or use in such establishment;  
**or**
- Processed and prepared primarily in a retail establishment and offered for sale to be consumed elsewhere and which is not offered for sale outside such establishment

# Examples of Restaurant-Type Foods

- Meals served at sit-down restaurants
- Foods purchased at a drive-through
- Take out and delivery foods
- Hot buffet foods
- Foods ordered from a menu or menu board at grocery store and intended for immediate consumption
- Foods that are self-serve and intended for immediate consumption

# Examples of Foods Not Considered Restaurant-Type Foods

- Foods eaten over several eating occasions
  - Loaves of bread
  - Bags/boxes of rolls, cookies, candy
  - Whole cakes
- Foods that are not self serve and not intended solely for an individual (deli salads, items sold by weight)
- Foods that are usually further prepared before consuming (deli meats and cheeses)
- Bulk foods (e.g. nuts, dried fruits)

# Foods That Are Covered

- **Standard menu items**
  - Restaurant type food routinely included on a menu or menu board or routinely offered as a self-service food or food on display
- **Combination meals**
  - Standard menu item that consists of more than one food item; may be represented on the menu or menu board narratively, numerically, or pictorially
  - May include, or be, a variable menu item
- **Variable menu items**
  - Standard menu item that comes in different flavors, varieties, or combinations and is listed as a single menu item

# Foods That Are Covered

- **Food on display**
  - Restaurant-type food that is visible to the customer before the customer makes a selection, so long as there is not an ordinary expectation of further preparation by the consumer before consumption
- **Self-service food**
  - Restaurant type food that is available at a salad bar, buffet line, cafeteria line, or similar self-service facility and that is served by customers themselves; includes self-serve beverages

# Alcohol Covered

- Covered establishments must disclose calories and other nutrition information for alcoholic beverages that are on menus and menu boards
- Exemption for alcohol that is on display behind the bar (and not on the menu, menu board, or not self service) at covered establishments

# Foods that are Exempt

- **Custom Order**
  - A food order that is prepared in a specific manner based on an individual customer's request, which requires a deviation from the usual preparation of a standard menu item
- **Daily Special**
  - Menu item that is prepared and offered for sale on a particular day, is not routinely listed on a menu or menu board, or offered for sale by the establishment and is promoted as a special menu item for that day
- **Foods that are part of a customary market test**
  - Food that appears on the menu or menu board for fewer than 90 consecutive days

# Foods that are Exempt (continued)

- **Temporary menu item**
  - Foods that appear on a menu or menu board for less than a total of 60 calendar days per year
- **General use condiments**
  - Condiments that are available for general use, e.g., flasks of pancake syrup on the table
- **Foods that are not on a menu or menu board and are not on display or self-serve**
  - These foods are not considered “standard menu items”



# Menus and Menu Boards

- Defined as the **primary writing** of the restaurant or similar retail food establishment from which a customer makes an order selection
- Includes the name and price of the menu item and can be used to place an order by customer
- Includes specialty menus, e.g., drink menu, dessert menu (even when there is a separate general menu)
- Includes drive-through menu boards and electronic menus and menu boards
- Includes online menus if consumer can order online/phone

# Requirements of the Final Rule

# Displaying Calories on Menus and Menu Boards

- **Calories for each standard menu item listed on a menu or menu board must be displayed adjacent to the name or price of the menu item**
  - In a type size no smaller than that of the name or price of the menu item, whichever is smaller
  - With certain color and contrast requirements
  - Rounded in accordance with the requirements

# Displaying Calories on Menus and Menu Boards

- **For menu items that come in different flavors or varieties that are listed as a single item, calorie declarations must be presented:**
  - With a slash when there are only two options (e.g., "150/250 calories")
  - As a range if there are three or more options (e.g., "150-300 calories")

# Displaying Calories on Menus and Menu Boards

- Covered establishment not required to create a new menu or menu board or redesign existing menu or menu board
- *If* a column format is used, the term “Calories” or “Cal” must appear at the top of the column in a type size no smaller than the name or price of the menu item, whichever is smaller
- A string format is also acceptable –
  - Example: Grilled Burger - Bibb lettuce, vine-ripened tomatoes, shaved red onions, crisp pickle slices, on a toasted brioche bun \$xx.xx. Cal: 650

# Displaying Calories on Menus and Menu Boards

## Variable menu item:

Chicken sandwich (grilled or fried) 350/550 Calories..... \$7.99

Chicken sandwich (grilled/baked/fried) 350-550 Cal..... \$7.99

## Combination meal:

Cheeseburger with choice of side salad, or chips..... \$4.79

450/550 Calories

Cheeseburger with choice of side salad, fruit, or chips... \$4.79

450 – 550 Calories

# Displaying Calories on Menus and Menu Boards

Sandwich	Cal.	Price
1. Chicken sandwich (grilled/fried)	350/550	\$7.99
2. Chicken sandwich (grilled/baked/fried)	350-550	\$7.99
3. Soft Drinks	0-130	\$2.79
4. Beverages		\$2.79
– Diet Cola, Diet Lemon-Lime	0	
– Cola	120	
– Fruit Punch	130	
– Lemon-Lime	110	

# Displaying Calories on Menus and Menu Boards

## Burgers and Sandwiches

With your choice of French fries (Cal. 520); Fresh fruit salad served with mango sorbet (Cal. 130); a cup of soup (Cal. 150-230); or yellow rice with black beans (Cal. 280)

1. Cheeseburger (Cal. 420) - \$5.50
2. Bacon Cheeseburger (Cal. 550) - \$6.49
3. Club Sandwich (Cal. 530) - \$7.00



# Displaying Calories for Beverages that are not self-serve

- Must state number of calories in full volume of the cup as served without ice UNLESS you ordinarily dispense and offer for sale a standard beverage fill that is less than the volume of the cup or dispense a standard ice fill

# Displaying Calories for Toppings

- **Calorie disclosures for toppings will depend on how the toppings are listed on the menu.**
  - “Toppings” without listing individual toppings can be declared using a range.
  - Individually listed toppings must have specific calorie disclosure, but can be grouped if declaration would be the same.

# Displaying Calories for Toppings

**PLAIN PIZZA PIE: SMALL (12") 500 CAL**  
**\* MEDIUM (14") 750 CAL \* LARGE**  
**(16") 1000 CAL**

<u>Toppings</u>	<u>Added cal</u>		
	Small	Med	Large
Pepperoni	200	300	400
Sausage	250	350	450
Green			
Peppers	15	20	25

**ICE CREAM SCOOP: 300**  
**CAL**

<u>Toppings</u>	<u>Added cal</u>
Almonds .....	25
Fudge.....	50

# Displaying Calories for Multi-Serving Foods

- **Calories for multi-serving foods can either:**
  - Be listed for the entire standard menu item or
  - Be listed per individual unit (e.g. slice of pizza) provided the total number of units is included and the menu item is normally prepared and served in discrete units (e.g. whole pizza cut into slices)

# Self-Serve Foods and Foods on Display

- **Must have a sign(s) near the food with the number of calories per serving or per item**
  - “300 calories per muffin”
  - “200 calories per scoop of potato salad”
  - “140 calories per 12 fluid ounces (small)”
- **Succinct statement and statement of availability**

# Calorie Declarations for Self-Serve Foods and Foods on Display

## The final rule provides 3 options:

- On a sign adjacent to and clearly associated with the corresponding food
  - Including calories directly on the package of “grab and go” items
- On a sign attached to the sneeze guard
- On a single sign or placard listing the calorie declaration for several food items (so long as it’s located where the consumer can view the information while making their selection)

# Calorie Declarations for Self-Serve Foods and Foods on Display

- **For variable menu items that appear on the menu or menu board and are self-service foods or foods on display, and there is no clearly identifiable upper bound to the range**
  - The menu or menu board must include a statement, adjacent to the name or price of the item, referring customers to the self-service facility for calorie information, e.g., “See buffet for calorie declarations.”

# Calorie Declarations for Foods on Display

- **If foods on display are also listed on the menu or menu board they must**
  - Meet the requirements for declaration of calories on menus and menu boards AND
  - Meet the requirements for foods on display



# Calorie Declarations for Self-Serve Foods and Foods on Display

## **Packaged food that has a Nutrition Facts Label in accordance with 21 CFR 101.9:**

- If the consumer can examine the packaged food, including its label prior to purchasing the food, then additional calorie information would not need to be displayed and other forms of nutrition information (e.g. a pamphlet or binder) are not required
- The statement of availability would not be required if the label provides the additional written nutrition information required

# Items that may be covered under 21 CFR 101.9 and require full nutrition labeling



- **Remember to consider if a food is covered under NLEA (and should have full nutrition labeling)**
  - particularly grab-and-go foods

# Succinct Statement

To enable consumers to understand, in the context of a total daily diet, the significance of the calorie information provided on menus and menu boards

**“2,000 calories a day is used for general nutrition advice, but calorie needs vary”**

- Optional statements are permitted on children’s menus and menu boards

Must appear on the bottom of each page of a multi-page menu and the bottom of a menu board, above, below or beside the Statement of Availability.

# Written Nutrition Information

- The statement “Additional nutrition information available upon request” is required on menus and menu boards
- For menus it is required on the first page of the menu with menu items listed either above, below or beside the Succinct Statement
- For menu boards it must appear on the bottom of the menu board either above, below, or beside the Succinct Statement
- Written nutrition information must include the nutrients that are currently required in the Nutrition Facts label on packaged foods (except vitamins and minerals)

# Written Nutrition Information

## Can be in the form of:

- Posters
- Tray liners
- Counter cards
- Signs
- Handouts
- Booklets
- Computer/kiosk

# Written Nutrition Information

- For a variable menu item or combination meal, the nutrition information must be listed separately for each component in the variable menu item.
- Where the number of variations is large, e.g., pizza, the nutrition information must be declared for the basic preparation and separately for each topping or other variable component.

# Written Nutrition Information

- When the nutrition information for different flavors, varieties, or components of combinations are the same, the nutrition information for these food items would only need to be listed once, with the food items grouped together.

# Written Nutrition Information

## Raspberry or Peach Flavored Iced tea (14 ounces)

- Total calories 5 calories
- Total fat 0 g
- Sodium 15 mg
- Total Carbohydrate 1 g
- Protein 0 g
- Not a significant source of calories from fat, saturated fat, trans fat, cholesterol, dietary fiber, and sugars.



# Determining Nutrition Content

- **Covered establishment must have reasonable basis for its nutrient content declarations**
- **Nutrient values can be determined by:**
  - Nutrient databases
  - Laboratory analysis
  - Nutrition Facts label
  - Cookbooks
  - Other reasonable means, (e.g. a combination of various basis)

# Determining Nutrition Content

- **Upon FDA request, covered establishments must provide information substantiating their nutrient values.**
- **Two signed/dated statements are needed to:**
  - Certify that the information contained in the nutrient analysis is accurate and complete, and
  - Certify that the covered establishment has taken reasonable steps to ensure the method of preparation and amount of the standard menu items adhere to the factors on which its nutrient values were determined.

# Contact Information

**Mailbox to submit questions on  
menu labeling:**

[CalorieLabeling@fda.hhs.gov](mailto:CalorieLabeling@fda.hhs.gov)

# Education, Outreach, and Enforcement Strategy

Office of Nutrition and Food Labeling  
CFSAN, FDA

# Extension of Compliance Date for Menu Labeling

FDA

**Compliance date is May 7, 2018**

# Education and Outreach Efforts

- Menu Labeling Mailbox ([CalorieLabeling@fda.hhs.gov](mailto:CalorieLabeling@fda.hhs.gov))
- Face-to-face meetings and teleconferences
- Presentations and webinars
- Site visits
- Educational module (*in development*)
- Handouts (*in development*)

# Enforcement Considerations

- FDA investigators
- Partnerships with States and Locals
- States and Locals may adopt identical requirements and choose to enforce them
- Contracts
- Training and education
- Consumer complaints

# Questions?

[CalorieLabeling@fda.hhs.gov](mailto:CalorieLabeling@fda.hhs.gov)



# Resources

- The final guidance is available online at FDA.gov at: [www.fda.gov/menuandvending](http://www.fda.gov/menuandvending)
- Additional questions and presentation or meeting requests may be submitted to our menu labeling inbox at: [CalorieLabeling@fda.hhs.gov](mailto:CalorieLabeling@fda.hhs.gov)