

Menu Labeling for Crew-Serve and Self-Serve Beverages

February 12, 2015

As it was required to do under the Affordable Care Act, the Food and Drug Administration (FDA) has published menu labeling regulations requiring that calorie information must be listed on menus and menu boards for standard menu items in certain restaurants and retail food establishments. The regulations also require covered establishments to provide calorie information on signs in close proximity to certain self-service foods and food on display. The new requirements are intended to make nutrition information available in a direct, accessible and consistent manner in order to enable consumers to make informed and healthful choices about the food and beverages they consume away from home.

The purpose of this communication is to provide an overview of the new menu labeling regulations as they apply to beverages. Within the next few weeks, we intend to supplement this summary with a more detailed question and answer document in which we will include some pictorial examples to further clarify the rules. We also are working on some tools that will provide you with the necessary information you need about the Coca-Cola beverages you serve. It's important to note, however, that this is just a summary of the menu labeling regulations intended to assist you in thinking about how to address your menus and menu boards; it is not intended as legal advice, and you should always consult your own legal advisors with questions for your particular circumstances.

Effective Date:

Restaurants and similar retail food establishments must be in compliance with the FDA menu labeling requirements by December 1, 2015.

What Food Establishments are Covered by the Rule:

Restaurants and similar retail food establishments ("Covered Establishments") that are subject to the Rule are:

- part of a chain with 20 or more locations;
- that are doing business under the same name;
- offer basically the same menu items; and
- sell "restaurant-type" food and beverages.

If a restaurant or similar retail food establishment does not meet the Covered Establishment as defined by the Rule, they can choose to formally opt in and be subject to the Rule and all of its requirements.

Covered establishments include:

- Sit-down and fast food restaurants
- Drive-through windows
- Food take-out and delivery establishments
- Grocery stores, superstores, convenience stores or delicatessens which serve foods and beverages intended for immediate consumption or to be consumed shortly after purchase
- Cafeterias, Food facilities in universities and colleges
- Bakeries, coffee shops, ice cream shops, confectionaries, etc.

- Food facilities in entertainment venues (e.g., concession stands, movie theaters, bowling alleys and amusement parks)

Establishments **not** covered by the new requirements are:

- Food in transportation vehicles, such as food trucks, airplanes and trains.
- Food on menus in elementary, middle and high schools that are part of U.S. Department of Agriculture school feeding programs

What Constitutes a Menu or Menu Board:

Menus and menu boards are defined as the primary writing of the restaurant or similar retail food establishment from which a consumer makes an order selection. They typically include the name of a standard menu item and price, and can be used by a consumer to make an order selection at the time the consumer is viewing the writing. They can include:

- Specialty menus, e.g., drink, dessert and kids menus
- Drive-through menus or menu boards
- On-line menus if they can be used to place an order
- Flyers, coupons, mailers, etc. if they can be used to place an order

Labeling Requirements for Beverages on Menus and Menu Boards:

For standard menu items, including crew-served and self-serve beverages, there are four basic requirements :

1. Posting a calorie declaration on menus and menu boards adjacent to the name of the beverage or the price. In addition, for self-serve beverages, the calories must be listed not only on the menu or menu board, but also on a sign or placard that is placed on or adjacent to the equipment.
2. Posting the following succinct statement on the bottom of the menu board and on the bottom of all menu pages: "2,000 calories a day is used for general nutrition advice, but calorie needs vary." An alternate statement for children's menus may be used.
3. Posting on menus and menu boards a statement that "Additional nutrition information is available upon request." This statement should be posted on the bottom of the menu board, and for menus, on the bottom of the first page that lists menu items. This statement must be immediately above, below, or beside the succinct statement mentioned above.
4. Having available the additional written nutrition information available in the establishment.

The remainder of this document will focus on the first of these requirements separating the requirements for calorie declaration on the menu or menu board and what is required at a self-service beverage location.

Calorie Declaration on a Menu or Menu Board:

1. How the calorie declaration must appear is dependent on how the menu or menu board refers to beverages.
 - a. If beverages are referred to in a general way, e.g., "beverages", "soft drinks", "Coca-Cola Fountain Beverages", "Coca-Cola Freestyle® 100+ Drink Choices", then the calorie declaration can be displayed in a range covering all beverage options and cup sizes.
 - b. If beverages are referred to by individual flavors or varieties, e.g., Sprite®, Fanta® Orange, Blue Raspberry, the calorie declaration must be provided for each flavor or variety in each cup size. If there are beverages that are individually called out but have the same amount of calories, these beverages can be grouped together by brand and one calorie declaration for each cup size can be provided for the group.
2. Calorie Declarations must be made:
 - a. by each cup size;
 - b. adjacent to the name or price;
 - c. in a size no smaller than the size of the name or price, whichever is smaller; and
 - d. in the same color or a color at least as conspicuous as the name and with the same contrasting background.
 - e. The term "Calories" or "Cal" must either appear as a heading above a column listing the number of calories or adjacent to the calorie number, and generally must be in the same type size, color and contrasting background as the calorie number.
 - f. For crew-served beverages, calories may be based on a standard beverage fill or standard ice fill **if** the establishment has a standard beverage fill or dispenses a standard ice fill. The amount of ice fill however, does not have to be disclosed as part of the calorie declaration (i.e., "120 Cal per 12 fl oz small with 1/3 ice"). If the establishment does not have a standard beverage fill or standard ice fill, calories must be declared based on the full volume of the cup served without ice.
 - g. For establishments that offer self-serve beverages only, calories must be declared both on the menu board and at the self-serve location based on the full volume of the cup served without ice.

Menu Board showing brand variety listed with exact calories:

For illustrative purposes only

		Beverages		
		Small	Medium	Large
		\$1.29	\$1.59	\$1.69
		XXX Cal	XXX Cal	XXX Cal
		XXX Cal	XXX Cal	XXX Cal
		XXX Cal	XXX Cal	XXX Cal
		XXX Cal	XXX Cal	XXX Cal
		XXX Cal	XXX Cal	XXX Cal

Menu board using a generic term, no individual variety called out with a calorie range:

For illustrative purposes only

	Beverages		
	Small \$1.29	Medium \$1.59	Large \$1.69
	0 - XXX Cal	0 - XXX Cal	0 - XXX Cal

Calorie Declaration for Beverages at a Self-Service Location:

In addition to providing calorie declaration on the menu or menu board, if the establishment has a self-service beverage fountain, calories must generally be declared on either:

- a sign adjacent to and clearly associated with the corresponding beverage; or
- a single sign or placard listing the calorie declarations for several beverages along with the names of the beverages, so long as the sign or placard is located where a consumer can view the name, calorie declaration, and serving or unit of a particular beverage while selecting that beverage.

The FDA has not provided specific guidance on what it means for a sign or placard to be “adjacent” to the food, but it should be close enough that a consumer can read the information when making their beverage selection.

The calorie declaration on signs for self-serve beverages:

- must be based on the total number of fluid ounces in the cup in which the self-service beverage is served without ice; and
- must be accompanied by the term “fluid ounces,” and if applicable, a description of the cup size (e.g., “140 calories per 12 fluid ounces (small).”
- If the calorie declaration is provided on a sign that does not include the beverage’s name, price, or both, the calorie declaration, the term “Calories” or “Cal” and the amount of the serving, e.g., “12 fluid ounces (small)”, must be “clear and conspicuous.”
- If however, the calorie declaration at the self-service location is provided on a sign that includes the beverage name, price, or both, the calorie declaration, the term “Calories” or “Cal” and the amount of the serving, e.g., “12 fluid ounces (small)”, must be in a type size no smaller than the type size of the name or price of the beverage, whichever is smaller, and in the same color (or a color that is at least as conspicuous) and contrasting background (or a background that is at least as contrasting).

The statement, "Additional nutrition information is available upon request" and the succinct statement noted above must also appear on a single sign or placard used to declare calories for self-serve beverages.

For next generation beverage dispensing equipment such as Coca-Cola Freestyle®, a request to the FDA for an extension of time to comply with the Rule will be officially submitted by the ABA. The need for the additional time is to allow the software for the user interface to be written so that calories will be disclosed at the time a consumer chooses their beverage. We are cautiously optimistic that this extension will be granted however, it may not and customers should be prepared to be in compliance with an alternate solution, such as a placard.

Combination Meals:

Calories must be listed for combination meals which come with more than one food item and are standard menu items. While these rules apply to combos that include beverages, they also apply even if a beverage is not part of the combo (e.g., soup and salad). The calorie declaration includes the total calories for all food items that make up the combination meal. Because the items that are included in the combo have been disclosed on the menu board elsewhere, the total calorie amount for the combo meal can be listed as a range. The listing depends on how many choices are available as follows:

Listed on the menu or menu board	Calorie Declaration
Two options for menu items in combo meal (e.g., sandwich with soft drink or milk)	Calories are listed for each option with a slash separating declarations (e.g., 350/450 cal)
Three or more options for menu items in a combo meal (e.g., sandwich with soft drink, tea or milk)	Calories are listed as a range (e.g., 350-500 cal)
Option to increase or decrease the size of the combo meal	The calorie difference is listed for the increase/decrease of size with a slash between declarations (e.g., adds 100/150 calories) for two options or a range for three or more options (e.g., subtracts 100-250 calories)

Which image of a beverage can be shown with a combo meal is dependent upon how calories are disclosed elsewhere on the menu board, i.e., under "Beverages".

- If the calorie declaration has been made for individual beverage varieties elsewhere on the menu or menu board, an image of a branded paper or glass cup can be displayed with the combo meal – see example below



1) Cheese Burger
 Meal \$X.XX XXX – XXX Cal
 Sandwich \$X.XX XXX – XXX Cal



2) Chicken Sandwich
 Meal \$X.XX XXX – XXX Cal
 Sandwich \$X.XX XXX – XXX Cal



1) Cheese Burger
 Meal \$X.XX XXX – XXX Cal
 Sandwich \$X.XX XXX – XXX Cal



2) Chicken Sandwich
 Meal \$X.XX XXX – XXX Cal
 Sandwich \$X.XX XXX – XXX Cal

For illustrative purposes only

- If the calorie declaration for beverages has been made as a range elsewhere on the menu or menu board, a clear glass with a liquid or a glass or paper cup using a company logo may be shown. Use of these general beverage images should not trigger the need for a calorie declaration for individual beverage varieties.



1) Cheese Burger
 Meal \$X.XX XXX – XXX Cal
 Sandwich \$X.XX XXX – XXX Cal



1) Cheese Burger
 Meal \$X.XX XXX – XXX Cal
 Sandwich \$X.XX XXX – XXX Cal

For illustrative purposes only

Seasonal Items:

Labeling requirements do not apply to beverages offered for sale less than 60 days per year or fewer than 90 consecutive days in order to test consumer acceptance.

How to Calculate Calorie Declaration:

Calories are declared to the nearest 5-calorie increment up to and including 50 calories and to the nearest 10-calorie increment above 50 calories, and amounts less than 5 calories may be expressed as zero.

Additional Nutrition Information Provided Upon Consumer Request:

If consumers request additional nutrition information, the following must be provided in the order listed using the corresponding units of measure and rounded according to FDA requirements used for packaged retail products:

- Total Calories (cal)
- Total Fat (g)
- Calories from Fat (fat cal)
- Saturated Fat (g)
- Trans Fat (g)
- Cholesterol (mg)
- Sodium (mg)
- Total Carbohydrate (g)
- Dietary Fiber (g)
- Sugars (g)
- Protein (g)

The additional nutrition information must be in written form on the premises of the establishment and provided to the consumer upon request. It can be provided on posters, tray liners, signs, counter cards, handouts, booklets and computers or kiosks

Enforcement of the Regulations:

A standard menu item offered for sale in a covered establishment is considered by FDA to be “misbranded” if it is not labeled in compliance with the new FDA menu labeling regulations. Introducing, delivering for introduction, or receiving misbranded food in interstate commerce, or misbranding a food while it is in interstate commerce or being held for sale after shipment in interstate commerce, are prohibited acts under the Federal Food, Drug, and Cosmetic Act, carrying the potential for criminal penalties and civil action. FDA expects to issue guidance to help covered establishments with compliance, and has indicated that enforcement will be considered on a case-by-case basis depending on the specific facts and circumstances.

FDA Regulation Link:

<http://www.gpo.gov/fdsys/pkg/FR-2014-12-01/pdf/2014-27833.pdf>