



# Final Rules for Restaurant Menu Labeling

**Claudine Kavanaugh, PhD, MPH, RD**  
**Office of Foods and Veterinary Medicine**  
**FDA**



## Section 4205 of the Patient Protection and Affordable Care Act

- Enacted March 23, 2010
- Amends certain nutrition labeling provisions of the Federal Food, Drug, and Cosmetic Act
  - Covers menu and vending machine labeling
- Issued proposed rules on April 6, 2011
  - Received ~900 comments for menu labeling
  - Received ~250 comments for vending machine labeling



## Who is covered by Section 4205?

- Applies to restaurants and similar retail food establishments (SRFEs)
  - 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
- Applies to restaurants and SRFEs that voluntarily register with FDA to be covered



## What does section 4205 require for Restaurants and SRFEs?

- Disclose calorie information on menus and menu boards for standard menu items
- Post a succinct statement concerning suggested daily caloric intake on menus and menu boards
- Disclose calorie information on signs adjacent to foods on display and self-service foods that are standard menu items
- Provide written nutrition information upon consumer request
- Post on menus and menu boards a statement that written nutrition information is available upon request



# Key Components of the Menu Labeling Final Rule

- **Covered establishments**
- **Restaurant-type food**
- **Alcohol**
- Menus/menu boards and displaying calories
- Combination Meals
- Self-service food and food on display
- Succinct statement concerning the suggested daily caloric intake
- Written nutrition information
- **Determination of nutrition content of food**
- **Effective Date**



## Covered Establishments

- Establishments are covered that are
  - Part of a chain with 20 or more locations
  - Doing business under the same name
  - Offering for sale substantially the same menu items
  - **And offering for sale “restaurant type food”**
- Other restaurants or similar retail food establishments that offer for sale “restaurant-type food” that want to be covered can register with FDA to be covered.
- *We broadened the types of establishments that were covered in the proposed rule but narrowed the types of food that would require labeling.*





## Restaurant Type Foods

Food usually eaten on the premises, while walking away, or soon after arriving at another location

Examples:

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



## Foods Not Considered Restaurant Type Foods

### Examples:

- Foods eaten over several eating occasions
  - Loaves of bread
  - Bags/boxes of rolls, cookies
  - 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 Exempt

The following foods are exempt from the rule:

- Custom Order
- Daily Special
- Food that are part of a customary market test for less than 90 days
- Temporary menu item – on menu for less than a total of 60 calendar days
- General use condiments
- Foods that are not on a menu/menu board and are not on display or self-serve.



## Examples of Facilities That Are Covered

- 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



## Alcohol Covered in Final Rule

- Not covered in the proposed rule
- Majority of comments supported covering alcohol
  - Public health rationale
  - FDA has jurisdiction to cover
- Now, 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.



## Menus and Menu Boards

- Menus and menu boards are defined as the **primary writing** of the restaurant or similar retail food establishment from which a customer makes an order selection (includes online menus if consumer can order online/phone)
- 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 the name and price of the menu item and can be used to place an order by the customer



## Displaying Calories on Menus and Menu Boards

- Calories for each standard menu item listed on a menu/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
- For menu items that come in different flavors or varieties that are listed as a single item, calorie declarations where there are only two options available must be presented with a slash between the two calorie declarations (e.g., "150/250 calories") or as a range (e.g., "150-300 calories") if there are three or more options





## Displaying Calories Combination Meals

- A combination meal is a standard menu item that consists of more than one food item, for example a meal that includes a sandwich, a side dish, and a drink. A combination meal may be represented on the menu or menu board in narrative form, numerically, or pictorially.





## Self-Serve Foods and Foods on Display

- Self-service food means restaurant-type food that is available at a salad bar, buffet line, cafeteria line, or similar self-service facility, including self-serve beverages and that is served by customers themselves.
- Foods on display means 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 (e.g. ice cream, bagels, donuts on display behind a glass counter).
- 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

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”**

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



## 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 macronutrients that are currently required in the Nutrition Facts label on packaged foods



# Determination of the Nutrition Content of Food

- Covered establishment must have reasonable basis for its nutrient content declarations
  - Not using “80/120 rule standard” from 21 CFR 101.9(g) used for packaged food
- Nutrient values can be determined by:
 

<ul style="list-style-type: none"> <li>– Nutrient databases</li> <li>– Laboratory analysis</li> <li>– Nutrition Facts label</li> </ul>	<ul style="list-style-type: none"> <li>-Cookbooks</li> <li>-other reasonable means</li> </ul>
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# Determination of the Nutrition Content of Food

- Upon request from FDA covered establishments must provide information substantiating their nutrient values.
- A signed/dated statement is needed to certify that the information contained in the nutrient analysis is accurate and complete
- A signed/dated stated is also needed to 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.





# Preemption

- State or locality may establish nutrition labeling requirements identical to Federal requirements. State or local jurisdiction would then enforce its own requirements
- Establishments not covered (e.g. chains with less than 20 establishments) may be subject to regulation by states unless they voluntarily register to be covered with FDA
- States/localities can petition the agency to be exempt from the requirements. FDA has already received a petition from the City of Philadelphia to be exempt from preemption





## Effective Date

- One year effective date-Effective **December 1, 2015**
  - Proposed 6 months in proposed rule
- Balances the industry's need for additional time with the public health need for this information



## Next Steps

- Development of guidance for the industry
- Completion of enforcement strategy
  - Education focused the first year
- Stakeholder outreach



## Contact Information

[claudine.kavanaugh@fda.hhs.gov](mailto:claudine.kavanaugh@fda.hhs.gov)

Mailboxes to submit questions on menu labeling  
and vending machine labeling –

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

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