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INFORMATIONAL BULLETIN NO: 2018-05-08 FDA MENU LABELING: FINAL RULE

It is estimated that Americans consume a third of their daily calories from food prepared outside the home, including food from restaurants and similar retail establishments. Many people do not know, or underestimate, the calorie and nutrient content of these foods. In an effort to help consumers make informed choices, California has adopted federal menu labeling requirements which took effect May 7, 2018.

Q: Who is covered by the new requirements?

This rule applies to all restaurants, grocery stores, and similar retail food establishments if they are (1) part of a chain with 20 or more locations nationwide (regardless of the type of ownership, such as individual franchises), (2) doing business under the same name, (3) offering for sale substantially the same menu items, (4) sell restaurant-type food.

Establishments such as restaurants that are quick service and/or sit-down, grocery and convenience stores that serve restaurant-type food, food take-out establishments and pizza delivery chains, food facilities in entertainment venues (e.g., movie theaters, bowling alleys), buffets, cafeterias, chain coffee shops and bakeries, superstores, and food facilities located in universities and colleges if they meet the criteria.

Q: What Does the Law Require?

- Disclose calorie information on menus and menu boards for standard menu items (including online order menus and drive thru menu boards).
- Disclose calorie information on signs adjacent to standard menu items provided through self-serve such as buffet lines, cafeteria lines, and in bakery cases.
- Post a succinct statement regarding daily calorie intake: "2,000 calories/day is used for general nutrition advice, but calorie needs vary."
- Post on menus and menu boards a statement that additional written nutrition information is available upon request for standard menu items. Additional information shall include total calories, calories from fat, total fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrate, dietary fiber, sugars, protein.

Q: What is the format for declaring calories on menu and menu boards?

- Calories for each standard menu item listed on 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.

Q: What is considered a standard menu item?

Standard menu item means a food or beverage offered for sale by a food facility on all menus, self-service bars, and on display for at least 60 days per calendar year.

Q: What is meant by “similar retail food establishments”?

A “restaurant or similar retail food establishment” is a retail establishment that offers for sale restaurant-type food.

Examples of foods that generally would be considered restaurant-type food	Examples of foods that generally would not be considered restaurant-type food
<ul style="list-style-type: none">• Food for immediate consumption at a sit-down or quick service restaurant• Food purchased at a drive-through establishment• Food purchased at a drive-through establishment• Take-out and delivery pizza; hot pizza at grocery and convenience stores that is ready to eat; pizza slice from a movie theater• Hot buffet food, hot soup at a soup bar, and food from a salad bar• Foods ordered from a menu/menu board at a grocery store intended for individual consumption (e.g., soups, sandwiches, and salads)• Self-service foods and foods on display that are intended for individual consumption (e.g., sandwiches, wraps, and paninis at a deli counter; salads plated by the consumer at a salad bar; cookies from a mall cookie counter; bagels, donuts, rolls offered for individual sale)	<ul style="list-style-type: none">• Certain foods bought from bulk bins or cases (e.g., dried fruit, nuts) in grocery stores• Foods to be eaten over several eating occasions or stored for later use (e.g., loaves of bread, bags or boxes of dinner rolls, whole cakes, and bags or boxes of candy or cookies)• Foods that are usually further prepared before consuming (e.g., deli meats and cheeses)• Foods sold by weight that are not self-serve and are not intended solely for individual consumption (e.g., deli salads sold by unit of weight such as potato salad, chicken salad), either prepacked or packed upon consumer request

Q: What foods are exempt from labeling?

- Custom Orders- 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
- 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/menu board and are not on display or self-serve
- Foods that are part of a customary market test=Food that appears on the menu or menu board for less than 90 consecutive days.

Q: Are vending machines exempt from the requirements?

No. On or before July 26, 2018, any person operating 20 or more vending machines shall:

- a) allow a prospective purchaser to examine the nutrition facts panel for each item OR
- b) provide a sign or display in close proximity to each article of food or the selection button that discloses the calories in each item offered for sale.

Q: Is alcohol covered by the federal menu labeling regulations?

Yes. The menu labeling requirements apply to alcoholic beverages served as standard menu items when listed on the menu and menu boards. Alcohol on display or behind the bar used to prepare mixed drinks is exempt.

Q: Are there any food facilities that are exempt from requirements?

The following food facilities are not required to comply: school cafeterias, food trucks, planes, trains, hotels with complimentary breakfast, and in-patient only food service.

For more information, visit the FDA website:

<https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm515020.htm>