

E-ALERT | Food & Drug

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NUTRITION LABELING FOR CHAIN RESTAURANT FOODS ESTABLISHED BY HEALTHCARE REFORM LEGISLATION

The healthcare reform legislation that President Obama signed into law today includes a section requiring nutrition labeling for standard menu items sold by chain restaurants with 20 or more locations doing business under the same name and offering substantially the same menu items. The requirements will apply to menus and menu boards (including drive-in menu boards), self-service food and food on display, and vending machines. The legislation expressly preempts the patchwork of state and local menu labeling laws that have sprung up across the country.

DECLARATION OF CALORIES

Menus and menu boards must display the number of calories next to the listing for each standard menu item. The menu or menu board must also include a statement about the suggested daily caloric intake, to provide context for how many calories of the daily diet each menu item provides.

Self service food and food on display (e.g., salad bar, buffet line, cafeteria line), including beverages, must include a sign adjacent to each food that lists the calories per displayed food item or per serving.

Additionally, a person who owns or operates 20 or more vending machines, and whose vending machines sell items that do not display nutritional information at the point of purchase, must provide a sign in close proximity to each food item or to the selection button that conspicuously discloses the number of calories contained in the item.

ADDITIONAL NUTRITIONAL INFORMATION AVAILABLE UPON REQUEST

The menu or menu board must include a statement that additional nutritional information is available upon request. Such information must be made available in written form, and must include the nutrition information currently provided on packaged food labels, including (on a per-serving basis) the amount of calories, total fat, saturated fat, cholesterol, sodium, total carbohydrates, sugars, fiber, and protein.

FOOD ITEMS EXEMPT FROM NUTRITION LABELING REQUIREMENTS

Certain food items are exempt from the nutrition labeling requirements:

- items not listed on a menu or menu board (e.g., condiments, items placed on the table or counter for general use);
- daily specials;
- temporary menu items (on the menu for less than 60 days per calendar year);

- custom orders; and
- food that is part of a market test and appearing on the menu for less than 90 days.

MODIFICATIONS OF NUTRITION LABELING FOR MENU VARIABILITY

Recognizing that menu variability exists for certain items, the legislation permits modification of nutrition labeling for items that come in different flavors, varieties, or combinations, but that are listed as a single menu item (e.g., soft drinks, ice cream, pizza, doughnuts, children's combination meals) by allowing nutrition labeling to provide ranges, averages, or other methods.

PROMULGATION OF PROPOSED REGULATIONS WITHIN 1 YEAR

The legislation does not specify an effective date for the new requirements, but requires FDA to promulgate proposed regulations within 1 year to carry out the new requirements.

IMPACT OF NEW REQUIREMENTS

These menu labeling requirements were generally welcomed by both the restaurant industry and consumer advocacy groups. The industry appreciated the establishment of uniform requirements across the country, rather than the disparate collection of state and local requirements that have been enacted or proposed in recent years. Consumer advocates hailed the new mandate to provide restaurant customers with information to enable them to make healthier dietary choices. Studies of consumer purchasing behavior in jurisdictions that already have menu labeling have produced conflicting results, so it remains to be seen whether nutrition labeling of restaurant foods on a national scale will have an impact on consumer purchasing and consumption patterns.

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