



Menu and Vending Machine Labeling

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Section 4205 of the Affordable Care Act

- Effective March 23, 2010
- Amends certain nutrition labeling provisions of Federal Food, Drug and Cosmetic Act (FD&C Act)
- Requires that covered restaurants and similar retail food establishments (SRFEs) provide nutrition information for standard menu items



Affordable Care Act Section 4205

- Applies to restaurants and SRFEs
 - with ≥ 20 locations
 - doing business under the same name and
 - offering for sale substantially the same menu items
- Applies to a person who is engaged in the business of owning or operating ≥ 20 vending machines



Why Menu Labeling?

- 2/3 of adult population is overweight or obese
- 1/3 of calories consumed outside the home
- Information on calories generally not available at point of purchase in restaurants and similar retail food establishments
- One tool to help people maintain healthy weight



What does the law require?

- Covered restaurants and SRFEs must
 - Disclose calories on menus and menu boards for standard menu items
 - Provide statement of suggested daily caloric intake on menus and menu boards
 - Disclose calorie content for food on display and self-service food
 - includes food at a salad bar, buffet line, self-service beverage line or other self-service facility
 - Provide written nutrition information upon consumer request
 - Provide statement that written nutrition information is available on request



Other Requirements of Section 4205

- Preempts state and local laws that are not identical to federal law for covered establishments
- Permits restaurants and SRFEs not covered by the federal requirements to voluntarily register to become subject to the federal requirements



Proposed Rules Published on April 6, 2011

- Proposed rule for nutrition labeling in restaurants and similar retail food establishments [Docket FDA-2011-F-0172]
- Proposed rule for calorie labeling of food items in vending machines [Docket FDA-2011-F-0171]



Key Components of Proposed Rule

- What establishments are covered?
- What are menus/menu boards?
- What are standard menu items?
- How to display calories for standard menu items?
- How to display calories for self-service foods and foods on display?
- What is the succinct statement concerning suggested daily caloric intake posted on menus/menu boards?
- What is in the written nutrition information?



What Establishments are Covered?

- Restaurants and SRFEs
 - Part of a chain with 20 or more locations
 - Doing business under the same name
 - Offering for sale substantially the same menu items
 - Restaurants and SRFEs that voluntarily register to be subject to the federal requirements



Proposed Rule: What are Restaurants and SRFEs?

- A retail establishment that sells restaurant or restaurant-type food to consumers
- Sale of food is the primary business activity
 - Establishment presents itself as a restaurant; or
 - > 50% of retail establishment's gross floor area is used for preparation, purchase, service, consumption, or storage of food



Proposed Rule: Restaurants and SRFEs

- **Generally Yes**

- Table service dining
- Quick service/fast food
- Cafeterias
- Pastry/confectionary stores
- Coffee shops
- Snack bars
- Ice cream parlors
- Multi-purpose establishments that present themselves as restaurants
- Grocery stores
- Convenience stores

- **Generally No**

- Movie Theaters
- Amusement Parks
- General merchandise stores
- Hotels
- Trains
- Planes





What are Menus/Menu Boards?

- Menu/menu board is the primary writing from which a consumer makes an order selection
- Menu can include several different types: breakfast, lunch, dinner, dessert, beverage, children's, electronic and menus on the internet
- “Primary writing” is from the perspective of the consumer (any menu a consumer can order from)



What are Standard Menu Items?

- Proposed Definition: A restaurant or restaurant-type food that is routinely
 - included on a menu or menu board or
 - that is routinely offered as a self-service food or food on display
- Includes combination meals and variable menu items



How Should Calories be Displayed on Menus and Menu Boards?

- Calorie declaration must be provided on all menus/menu boards.
- FDA proposed that:
 - The term “Calories” or “Cal” may appear as a heading above a column listing number of calories of standard menu items
 - Number of calories must be declared to
 - nearest 5-calorie increment up to and including 50 calories
 - nearest 10-calorie increment above 50 calories
 - <5 calories may be declared as zero
 - Calorie declaration must be in same color, or in a color at least as conspicuous, as the color of the name or price of the associated standard menu item
 - Calorie declaration must be no smaller than type size of name or price of associated standard menu item; whichever is smaller

How Should Calories be Displayed for Variable Menu Items?

- Variable Menu Item Proposed Definition
 - A standard menu item that comes in different flavors, varieties, or combinations, and is listed as single menu item
- FDA proposed: calories for variable menu items must be displayed in ranges
 - FDA discussed alternatives including using averages or a combination of averages/ranges



Proposed Rule: Displaying Calories on Self-Service Foods and Foods on Display

- If food has sign near it with name of food, price or both, calories per displayed food item or per serving must be declared on the sign
- If no signage already exists for these foods, establishment must place a sign adjacent to the food with number of calories per item or serving



Do Alcoholic Beverages Need to be Labeled?

- Unclear that section 4205 was intended to cover alcoholic beverages
- Proposed rule: alcoholic beverages should not be covered by menu labeling requirements
- FDA invited public comment on whether or not alcoholic beverages should be covered



What menu items are NOT subject to the menu labeling requirements?

- Custom orders
- Daily specials
- Temporary menu items on menu < 60 days
- Test market items on menu <90 days
- Condiments for general use
 - e.g., salt/pepper placed on tables, ketchup and mayonnaise dispensers placed on counters to be used by any customer



Proposed Rule: Succinct Statement

“ A 2,000 calorie daily diet is used as the basis for general nutrition advice; however, individual calorie needs may vary”

- Statement must be posted at bottom of menu/menu board in type size no smaller than smallest type size for any calorie declaration on same menu/menu board
- Requested comment on whether there should be a different statement on children’s menus



Proposed Rule: Written Nutrition Information

“Additional nutrition information available upon request”



Proposed Rule: Written Nutrition Information

- Statement must be in type size no smaller than smallest type size for any calorie declaration appearing on same menu/menu board
- Posted at bottom of menu/menu board immediately below succinct statement
- Written nutrition information may be provided on a counter card, sign, poster, handout, binder, booklet or electronic device (computer), or in any other material that similarly permits the declaration in written form of the required nutrition information



Proposed Rule: Written Nutrition Information to be Provided Upon Request

- **Total calories (cal)**
- **Total calories derived from fat (fat cal)**
- **Total fat**
- **Saturated fat (g)**
- ***Trans* fat (g)**
- **Cholesterol (mg)**
- **Sodium (mg)**
- **Total carbohydrate (g)**
- **Dietary fiber (g)**
- **Sugars (g)**
- **Protein (g)**



Proposed Rule: Voluntary Registration

- A restaurant or SRFE not automatically subject to the federal requirements may elect to become subject to the requirements by registering with FDA
- Establishments that register will not be subject to non-identical State or local menu labeling requirements
- Must register with FDA every other year to renew registration



Future Plans

- FDA received >900 comments that are under review
- FDA proposed final rule to become effective six months from date of publication of final rule
 - Requested written comments on alternatives to proposed effective date
- Hope to issue Final Rule in late 2011
- FDA does not intend to enforce the self-executing provisions at this time and encourage our state and local partners to proceed in a similar way



Vending Machine Labeling





Affordable Care Act: Section 4205 Vending Machine Labeling

- Law applies to a person who is engaged in the business of owning or operating 20 or more vending machines
- Vending machine operator must provide calorie information for the food unless
 - Prospective purchaser can examine the Nutrition Facts Panel before purchasing the food
 - Consumer has access to visible nutrition information at the point of purchase



How Should Calories be Displayed?

- Term “Calories” or “Cals” must appear adjacent to the number of calories for the food
- Calories must be identical to calories on Nutrition Facts panel; however, if food contains multiple servings, the total calories per package must be displayed



How Should Calories be Displayed?

- Calorie declaration may be in a similar color and a type size no smaller than the name of the food, price of the food, or selection number (e.g. A9)
- Calories may be on sign adjacent to machine or on stickers affixed to machine
- Calories may be disclosed on LCD panels, but must be seen prior to purchase



Future Plans

- FDA is reviewing comments on the vending machine proposed rule
- FDA proposed that the final rule become effective one year from the date of publication, but requested comments on other alternatives
- Hope to issue Final Rule late in 2011



For more information

- **Menu and Vending Machine Labeling**
www.fda.gov/Food/LabelingNutrition/ucm217762.htm