

MENU LABELING

● what you need to know ●



an eBook from ESHA Research

02

Labeling provisions in the ACA (Affordable Care Act) require that restaurants and other retail food establishments provide access to nutrition information. This includes the display of calorie information for standard menu items and access to additional nutrient information for those same items.

As a result, the FDA (Food and Drug Administration) has released menu label regulations. The final guidance for industry on Menu Labeling was published in the Federal Register on May 5, 2016. On May 4, 2017, the FDA extended the compliance date from May 5, 2017 to May 7, 2018.

WE OFFER THIS EBOOK TO GIVE YOU A JUMPING OFF POINT FOR THE PROCESS.

.....

Topics include:

- **COVERED ESTABLISHMENTS**
- **RESTAURANT-TYPE FOOD**
- **REQUIRED NUTRITION INFORMATION**
- **MENUS AND MENU BOARD LAYOUT**
- **DETERMINING NUTRIENT CONTENT**

03

EXAMPLES

COVERED ESTABLISHMENTS DO I HAVE TO COMPLY?



These new regulations apply to restaurants and similar retail food establishments if they are part of a chain of 20 or more locations, doing business under the same name (regardless of ownership—aka franchises), offering for sale substantially the same menu items, and offering for sale restaurant-type foods.

So what does that really mean? Here are some examples:

EXAMPLE: TACO BELL (FAST-FOOD FRANCHISE)

There are thousands of Taco Bell Restaurants all over the country. And because they are franchises, they are not all owned by the same person. In fact, there are cases where one person owns fewer than 20 Taco Bell Restaurants. In addition, Taco Bell Restaurants are often found inside other establishments —universities, truck stops, airports, malls etc.

Initially, it might seem that these restaurants could be exempt. But, the CFR addresses the franchise case with “ ... regardless of the type of ownership...”

Therefore, the Taco Bell Restaurants are considered covered establishments.

From this, then, we can conclude that all chain restaurants (Chili's, Taco Bell, Olive Garden, etc.), all chain coffee shops (Starbucks, Caribou Coffee, etc.) all chain bakeries (Au Bon Pain, Cinnabon, etc.) and any of these that are located inside a school or university, movie theater, hotel, amusement park, etc. are “covered establishments.”

EXAMPLE: SAFEWAY (GROCERY STORE)

Many of the hundreds of Safeway food stores offer made-to-order sandwiches from their deli. Although we don't think of grocery stores as restaurants, they are considered covered establishments because they are selling “restaurant-type” items and are, again, “part of a chain with 20 or more locations doing business under the same name (regardless of the type of ownership of the locations) and offering for sale substantially the same menu items.”

Safeways with delis and/or salad bars, then, are considered “covered establishments.”

We can conclude from this that all similar grocery stores are covered, too. However, retail stores with a deli or café would also be considered such as Target, Fred Meyer, Wal-Mart, etc.

04

Who is not covered?

- Establishment with fewer than 20 locations
- Food trucks
- Sidewalk carts
- Trains and airlines

EXAMPLE: JILL'S HOMETOWN BURGERS (FICTIONAL)

There are 21, of these restaurants throughout the United States. 19 of the restaurants serve only hamburgers and fries. Two of them (located on the coast) serve primarily fish sandwiches and with one or two hamburger selections. Despite the fact that there are 20 or more locations and they are doing business under the same name, the menu items are not "substantially the same."

Jill's Hometown Burgers would not be considered a "covered establishment."

EXAMPLE

Any establishment not covered may, however, voluntarily register to be covered. You must use Form FDA 3757.

You can find this form at <http://www.fda.gov/downloads/aboutfda/reportsmanualsforms/forms/ucm239947.pdf>

LINK



05

EXAMPLE: RESTAURANT- TYPE FOODS

RESTAURANT-TYPE FOODS AND STANDARD MENU ITEMS

HOW DO I DETERMINE WHICH ITEMS NEED TO HAVE THIS INFORMATION?



Calories and additional nutrition information will need to be available for all STANDARD MENU ITEMS.

What is a STANDARD MENU ITEM? A STANDARD MENU ITEM is a RESTAURANT-TYPE FOOD that is routinely included on a menu or menu board or routinely offered as a self-service food or food on display.

- A standard meal or item (steak, salad, etc.) from a sit-down, full-service restaurant
- A standard snack or beverage (muffin, latte, etc.) from a coffee shop or bakery
- A standard meal or item (cheeseburger, french fries, etc.) from a fast-food restaurant
 - Foods purchased at a drive-through window
 - Take-out and delivery food, such as pizza – either already baked or take-and-bake
 - Foods, such as made-to-order sandwiches, ordered from a menu or menu board at a grocery store or delicatessen
 - Self-serve foods from a salad or hot food bar, either at a restaurant or grocery store
- Popcorn purchased at a movie theater or amusement park
- A scoop of ice cream, milk shake or sundae from an ice cream store
- Hot dogs or frozen drinks prepared on site in a convenience or warehouse store
- Alcoholic beverages that are standard menu items

Foods not subject to these regulations include grocery-type items that may be ready for immediate consumption but that consumers usually store for use at a later time or customarily further prepared.

- Large amounts of deli meats and cheese
- A whole cake or loaf of bread
- Nuts from bulk bins

06

But, the following are exempt:

- Condiments for general use – ketchup and mustard placed on the table, salt and pepper, etc.
- Daily specials or other temporary/seasonal items that are offered for fewer than 60 days per year
- Custom orders
- Food that is part of a customary market test: These are menu items that appear on a menu/menu board for fewer than 90 consecutive days and are used to test consumer acceptance of the product
- Self-service food and food on display that is offered for sale less than a total of 60 days per calendar year or fewer than 90 consecutive days to test consumer acceptance
- Alcoholic beverages that are on display behind a bar that a bartender uses to prepare drinks.
(For example, mixed drinks/rail drinks that are prepared by a bartender behind the bar and that are not listed on a menu or menu board.)

EXEMPT



07

REQUIRED NUTRITION INFORMATION

WHAT DO I NEED TO MAKE AVAILABLE?



There are three required elements:

REQUIRED

CALORIES

CALORIE STATEMENT

ADDITIONAL NUTRITION INFORMATION

CALORIES

You must display the number of calories contained in each standard menu item listed on the menu or menu board, as usually prepared and offered for sale.

For menu items that have variable options, you must declare either both options (when there are only two variables) separated by a slash or, for items with more than two choices, you must list the caloric range.

EXAMPLE

EXAMPLE: PIZZA

On your menu board, you must declare calories for each item as prepared (example: 200 cal/slice, 8 slices). In addition, you must declare the calories for each additional topping available (example: roasted garlic, 5 cal/slice).

CALORIE STATEMENT

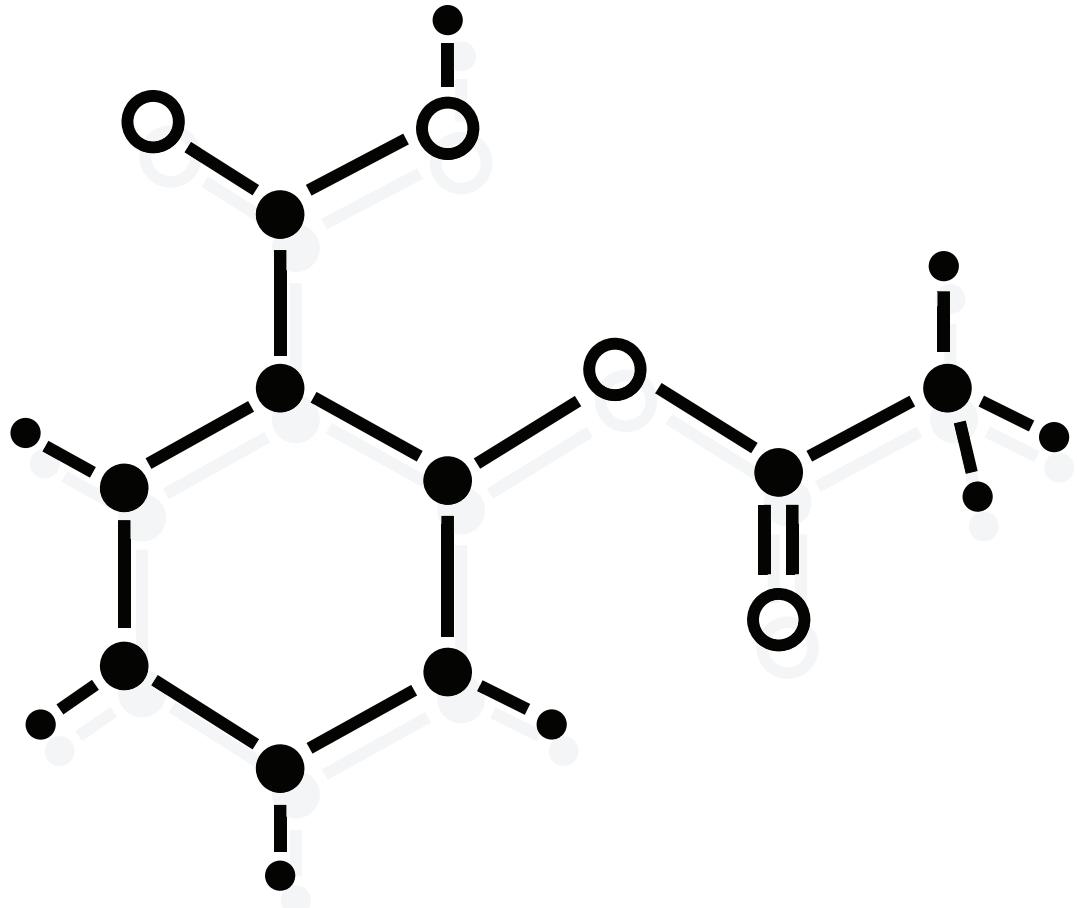
You will also have to post somewhere near the bottom of your menu or menu board the following statement or one similar to it: "A 2,000 calorie daily diet is used as the basis for general nutrition advice; however, individual calorie needs may vary."

08

ADDITIONAL INFORMATION

In addition, you must have readily available, either printed or easily accessible electronic form, information for:

- Calories from fat
- Total fat
- Saturated fat
- Trans fat
- Cholesterol
- Sodium
- Total carbohydrate
- Dietary fiber
- Sugars
- Protein



09

LAYOUT RULES

HOW DO I DISPLAY THE INFORMATION ON MENUS AND MENU BOARD?



CALORIES

Calories must be posted on the menu or menu board next to the name or price of the item. For self-service foods or foods on display, calories must be posted in close proximity and clearly associated with the food item, for example on the sneeze guard of a buffet line.

The rules aren't overly concerned with the format on how the calories should be displayed on a menu board (size, color, etc.), other than it has to be obvious. Namely, the calories for each item must be "clearly associated with" and "adjacent to" the name or picture of the standard menu item AND the font size for the calorie display must be the same or larger than that used for the price or the name (whichever is smaller).

The color used and contrast with the background must also be similar or similarly conspicuous.



10

ADDITIONAL NUTRITIONAL INFORMATION

Additional nutrition information can be made available to customers in a variety of print and digital formats so long as the information is accessible to customers without the need to use their own electronic device.

Such material may include counter cards, signs, posters, handouts, booklets, loose-leaf binders, electronic devices, menus, or any other form of written material that similarly permits the written declaration of the required nutrient content information for all standard menu items.

Additionally, you can provide the information on an app or website, provided access to the written nutrition information is available on the premises of the establishment.

Good news: The layout for the additional nutrients can look however you want.

Food Item	Amount
Calories from fat	50
Total fat	6g
Saturated fat	1.5g
Trans fat	0g
Cholesterol	35mg
Sodium	500mg
Total carbohydrate	21g
Dietary fiber	2g
Sugars	2g
Protein	18g

11

DETERMINING NUTRIENT CONTENT

HOW DO I GET A NUTRITIONAL ANALYSIS?



If you are a franchise owner, most likely your changes will come from the corporate office.

If not, you will have to determine the nutrient content by:

- Investing in a reputable software program for in-house analysis;
- Contacting a consultant to take care of the analysis for you;
- Sending samples to a lab for chemical analysis.

(Mostly likely, you will use a combination off all three.)

LINK

We have an ebook available at www.esha.com/news-events/ebooks/ that goes over the pros and cons of each option.

Regardless of which you choose, make sure to document your process. In the case of an audit, the FDA likes to see that you have made a good-faith effort.

CONCLUSION

WHAT IS MY PLAN OF ACTION?



1. Determine if you are a covered establishment.
2. If yes, determine which menu items need to be labeled.
3. Perform a nutritional analysis on your menu items.
4. Update menus and other communication materials with nutrition information.
5. Repeat! It's not going to be a "one and done" process. You will need to continually update and revise your recipe analysis and menus.

12



ESHA Research has been the leading provider of nutrition databases, food and supplement labeling, and nutrition analysis software solutions for more than 30 years. Our team of consultants are knowledgeable in nutrition, labeling, and regulatory compliance, ensuring your unique needs are met.

If we can be of assistance, please do not hesitate to contact us:

info@esha.com

1-800-659-3742 option 2

503-585-6242 option 2