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NEW FDA FOOD MENU LABELING RULES



Who must comply with the new rules?

The new FDA food menu labeling requirements apply to restaurants, grocery stores, movie theatres, and other retail food establishments that are:

1. Part of a chain of **20 or more locations**;
2. Doing business under the same name (regardless of the type of ownership); and
3. Offering for sale substantially the same menu items.

An establishment also may voluntarily register to be covered and thereby may not be obligated to comply with different state and local requirements.

What kind of food is covered?

The new labeling requirements apply to **standard menu items**, which the law defines as restaurant-type food that is routinely included on a menu or menu board or routinely offered as self-service food or food on display. Restaurant-type foods are foods that are intended for immediate consumption, either eaten on the premises, while walking away, or soon after arriving at another location. This may include alcoholic beverages. The following items are excluded from the labeling requirements: daily specials, condiments that are for general use, temporary menu items, custom orders, and food that is part of a customary market test.

As mentioned, the new food menu labeling requirements apply to alcoholic beverages that are standard menu items listed on a menu or menu board and to self-service alcoholic beverages (e.g., bottles of beer in a cooler near the register at a quick service restaurant). However, alcoholic beverages that are on display and are not self-service foods are not covered. For example, a bottle of liquor behind a bar used to prepare mixed drinks is not subject to the labeling requirements; alcoholic beverages that are ordered by customers at the bar and are not on a menu or menu board are also exempt.

What information needs to be disclosed on menus and menu boards or otherwise available upon request?

Covered establishments will be required to post the following information on **menus** and **menu boards** (i.e., any primary writing, including online, from which a customer may make an order of food or beverage):

1. Calorie information for all standard menu items;
2. A statement that says: “2,000 calories a day is used for general nutrition advice, but calorie needs vary”; and
3. A statement that says: “Additional nutrition information available upon request.”

The new FDA rules impose formatting requirements for each of these disclosures, and it generally requires the information to be conspicuously displayed using a color, font size, and contrasting background that render the information likely to be read and understood by average customers.

Covered establishments must also make **detailed nutrition information** (including the amount of calories, fat, protein, sodium, sugars, cholesterol, total carbohydrate, and other nutrients) for standard menu items **available upon customer request**. Related to this requirement, covered establishments must:

1. Have a reasonable basis for their nutrient declarations (e.g., use information from nutrition databases (such as the USDA’s), laboratory analysis, or Nutrition Facts labels on packaged foods);
2. Take reasonable steps to ensure that the method of preparation and amount of a standard menu item adhere to the factors on which its nutrient values were determined; and
3. Make records substantiating those values available to the FDA within a reasonable period of time upon request.

These new FDA food menu labeling rules were originally to be effective as of December 1, 2015. Covered establishments now must comply with these new rules by **December 1, 2016**, but the FDA has stated it will not enforce the rules until **May 5, 2017**.