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Health Care Reform

Section 4205: Nutrition Labeling of Standard Menu Items at Chain Restaurants

The following is a summary of the U.S. Food and Drug Administration's menu labeling legislation:

On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act into law. This health care reform legislation includes a provision, Section 4205, requiring mandatory nutrition labeling for food sold at chain restaurants and similar retail food establishments with over 20 locations.

This uniform national nutrition standard is endorsed by the NRA to prevent a patchwork of state and local regulations. Once enforced, states and localities will no longer be able to require additional nutrient information on menus.

Last year, August 2010, the U.S. Food and Drug Administration (FDA) presented a Draft Guidance for Industry which provided questions and answers regarding implementation of the menu labeling provisions of section 4205. Due, in part, to the extensive comments they received on their draft guidance, the Food and Drug Administration acknowledged that the restaurant industry might require more guidance and time to comply with the provisions that went into effect when the bill was signed last March. They withdrew the draft and state and local authorities were told not to enforce the regulations until the final rule is published.

Earlier this spring, April 2011, the FDA announced its [proposed rules](#) implementing the menu labeling provisions of last year's health care reform law. They are currently accepting comments which they plan to review and then issue a final rule later this year. Rules are not expected to be reinforced until sometime in 2012.

What we have learned with the April draft is—as expected—restaurants and similar retail food establishments that are part of a chain with 20 or more establishments will be required to post calorie information on their menus and make additional nutrition data available to customers requesting this information.

Specifically, the following information will need to be provided to consumers:

- Calories in each standard menu item that appears on the menu, menu board, online menus and take-out menus (beverages, salad bars and buffets included). Calories must be placed adjacent to menu items under the heading “Calories” or “Cal” and should appear in a type size at least as large as the name or the price of the menu item, whichever is larger, with the same prominence, i.e., same color and contrasting background. Calories for self-



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service items are to be posted on a sign placed adjacent to each food item—serving sizes are to be determined by FDA.

- A succinct statement that puts the calories information in the context of a total daily caloric intake must be included on the menu. FDA will provide specific language for this statement.
- Written nutrition information available to consumers upon request. A statement regarding the availability of this information must be disclosed on the menu and should read, “Additional nutrition information is available upon request.”
 - Nutrients to be listed include: total calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrate, dietary fiber, sugars and protein. Trans fat is also expected.

Examples of establishments included in the provision are bakeries, grocery stores, convenience stores, coffee shops, ice cream parlors and cafeterias. However, movie theaters, airplanes and bowling alleys are exempt because according to the FDA their primary business is not to sell food.

Of interest, alcoholic beverages will be exempt from nutrition labeling. Other exemptions include:

- Items not listed on the menu such as condiments and other items placed on the table for general use
- Daily specials
- Temporary menu items/specials (less than 60 days/year)
- Custom orders
- Market test items (less than 90 days)
- Pre-packaged food that bears a complete Nutrition Facts label

Restaurants will be required to show proof of the reasonable basis and documentation of nutrition analysis (i.e., using On The Menu, LLC) of requested during inspection.

On The Menu is keeping close tabs on section 4205 and will continue to provide updates on our blog. This document provides a summary of legislation. Please contact us with any questions. We are dedicated to keeping you informed.