

CRS Insights

FDA Finalizes New Rules for Calorie Labeling in Restaurants

Agata Dabrowska, Analyst in Health Policy (adabrowska@crs.loc.gov, 7-9455)

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In 2010, President Obama signed the Affordable Care Act (ACA) into law, with a provision mandating nutrition labeling in retail food establishments nationwide. The following year, FDA proposed two rules establishing calorie labeling requirements for food items sold in restaurants and vending machines, both of which were recently finalized (published in the **Federal Register** on [December 1, 2014](#)). The labeling rules are to take effect in one year (December 1, 2015) for restaurants and in two years (December 1, 2016) for vending machines.

High rates of obesity and chronic disease have prompted various state and local nutrition labeling initiatives. The 1990 Nutrition Labeling and Education Act ([P.L. 101-535](#)) authorized FDA to require nutrition labeling of most foods and dietary supplements but exempted restaurants from this requirement. Yet, [consumption](#) data indicates that Americans consume more than one-third of their calories outside the home, and [frequent eating out is associated with increased caloric intake](#). Some studies have shown that [posting nutrition information on menus and menu boards in restaurants may help consumers lower their overall calorie intake](#), prompting public health stakeholders to advocate for federal nutrition labeling standards.

Entities covered by the new regulation include restaurants and similar retail food establishments (SRFEs) with 20 or more locations, doing business under the same name and offering the same menu items for sale. The rule also applies to certain foods sold at supermarkets and convenience stores, as well as entertainment venues such as bowling alleys and movie theaters. FDA issued a second rule requiring calorie labeling of food items sold in vending machines, covering those operators who own 20 or more machines nationwide. See [Table 1](#) for a list of covered food establishments and retailers.

Table 1. Entities and Food Covered by FDA Rule

What's Covered?	What's Not Covered?
Restaurants and fast food establishments	Foods sold at deli counters and typically intended for more than one person
Bakeries, coffee shops, and restaurant type-foods in grocery and convenience stores	Bottle of liquor displayed behind a bar
Take-out and delivery foods, including pizza	Food in transportation vehicle (e.g., food trucks, airplanes, and trains)
Self-serve foods from salad or hot-food bars	Food on menus in schools that are part of the USDA school nutrition programs (although vending machines in such locations are covered)
Alcoholic drinks, such as cocktails, when they appear on menus	
Foods at entertainment venues, such as movie theaters, amusement parks, and bowling alleys	

Source: FDA, "How Many Calories? Look at the Menu!" press release, November 25, 2014, <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm423082.htm>.

To better help consumers understand calorie information in the context of a daily diet, FDA also

requires display of a succinct statement concerning suggested caloric intake, such as "2,000 calories a day is used for general nutrition advice, but calorie needs vary," on menus and menu boards; this includes electronic menus such as tablets and online menus for food take-out and delivery establishments. In addition to display of calorie information, covered establishments will also be required to provide, upon consumer request, written nutrition information about fat, cholesterol, sodium, total carbohydrates, fiber, sugars, and protein.

Prior to the federal rule, state and local menu labeling regulations had resulted in a patchwork of labeling requirements, making compliance challenging for chain food establishments. Several restaurant chains (e.g., McDonald's, Panera Bread, and Starbucks) had moved forward with nationwide nutrition labeling prior to FDA's final rule, expressing [support](#) for a federal menu labeling standard.

[Some question FDA's interpretation of the ACA provision](#), arguing that the final rule is more stringent than that initially proposed. Representatives of the [grocery industry](#) have expressed concern over the broad definition of covered establishments, citing that implementing menu labeling would be costly and complex for grocery and convenience stores. FDA has included some flexibility, exempting certain foods purchased in retail establishments, such as items that are intended for more than one person to eat (e.g., a loaf of bread, rotisserie chicken), and items sold at deli counters, such as meats, cheeses, and bulk salads.

Although it remains to be seen what effect, if any, menu labeling will have on obesity rates and health outcomes, [nutrition](#) and [public health stakeholders](#) generally support the new labeling regulations. When FDA published the proposed rule in April 2011, alcoholic beverages and establishments whose primary purpose is not to sell food (e.g., movie theaters, bowling alleys, and other entertainment venues) would have been exempted from menu labeling requirements. The recently published final rule, however, includes alcoholic beverages and entertainment venues, as well as grocery stores and pizza companies.

Proponents of the regulations suggest that mandatory menu labeling may incentivize restaurants to offer lower calorie options and provide consumers with healthier choices. A recent [study](#) in the ***American Journal of Preventive Medicine*** reported that new menu items in restaurant chains in 2013 contained about 60 fewer calories compared with menu items in 2012, a 12% drop in calories. [Findings from studies examining the relationship between nutrition labeling and behavior change are mixed](#); yet with two-thirds of Americans overweight or obese, some say providing calorie counts is an important tool that may help consumers make more informed food decisions.