

## Q&A: New Federal Nutrition-Disclosure Rules for Certain Restaurants *Updated April 7, 2010*

President Barack Obama signed the Patient Protection and Affordable Care Act into law March 23, 2010. One section of the bill – [Section 4205](#) – requires restaurants with 20 or more locations nationally to add calorie counts to menus, menu boards and drive-thru menu boards for standard menu items. It also requires covered restaurants to make additional nutrition data available to guests on request.

The National Restaurant Association supports the law. A single, consistent national standard for nutrition disclosure in restaurants helps consumers make choices that are best for themselves and their families. The federal standard provides uniform nutrition-labeling requirements that multi-state restaurants can implement nationwide. Before the law, restaurant operators had to comply with a patchwork of state and local menu-labeling regulations. The differing requirements made it difficult for restaurants to comply and consumers to understand.

### **1. What does the new federal law require?**

Generally, the law requires covered restaurants to provide calorie counts on menus, menu boards and drive-thru menu boards for all standard menu items. The law also requires those restaurants to make available additional written nutrition data about standard menu items upon request.

The law amends the federal [Food, Drug and Cosmetic Act](#) to bring restaurants under the law's labeling requirements for the first time. [Read the legislative language for Section 4205.](#)

### **2. Which restaurants must provide mandatory nutrition labeling?**

The nutrition-disclosure requirements apply to restaurants that are part of a chain that operates 20 or more locations under the same trade name, regardless of the ownership type of the locations, which offer “substantially the same menu items” for sale.

The law also applies to “retail food establishments” that are similar to foodservice operations. It doesn't define those establishments. However, based on the way the Food and Drug Administration has interpreted other parts of the Food, Drug and Cosmetic Act, it likely means that the new restaurant labeling requirements apply to any establishment owned by a company with 20 or more locations under the same trade name where food is served for immediate consumption. For example, this could include foodservice facilities in hospitals or schools; food at convenience stores served for immediate consumption; and mobile carts.

The law also applies to vending machines owned by companies that operate 20 or more machines.

### **3. When does the law take effect?**

The law took effect when the bill was signed March 23, 2010. However, mandatory requirements aren't expected to take effect until after FDA finalizes regulations telling restaurateurs how to comply.

The FDA has until March 23, 2011, to propose implementing regulations. The proposed rule will kick off a public comment period, and the FDA will follow with a final rule.

That means the exact timetable for compliance is unclear. However, covered restaurants are expected to have six months to comply after final regulations are complete. In the meantime, the FDA is required to send quarterly reports to Congress on its progress in finalizing the regulations.

#### **4. Which menu items will require mandatory nutrition labeling?**

All “standard” menu items. The law defines standard menu items as items offered for sale for at least 60 days per calendar year.

The law exempts some menu items, including:

- Temporary items appearing on the menu for fewer than 60 days per calendar year.
- Items not listed on menus or menu boards (for example, condiments and items placed on the table or counter for general use).
- Daily specials.
- Custom orders.
- Customary test market items appearing on a menu for fewer than 90 days (the FDA will provide a more precise definition when it issues regulations).

#### **5. What information are restaurants required to provide on menus, menu boards and drive-thru menu boards?**

Covered restaurants are required to provide the following information for standard menu items:

- Number of calories per standard menu item. The calorie count for standard servings must appear next to menu item names. The FDA will provide more details on how restaurants must display that information.
- A prominent, clear and conspicuous statement about the availability of additional nutrition information (see more below).
- A succinct statement concerning suggested daily caloric intake. The statement must be posted prominently on the menu to help guests understand calories in the context of a daily diet. The FDA will specify the language for this statement in its regulations.

#### **6. What additional nutrition information must covered restaurants provide on request?**

In addition to calorie counts on menus, menu boards and drive-thrus, restaurateurs covered by the law must make additional nutrition data available in writing, on the premises, to guests who request it. Required information includes data on:

- Calories.
- Calories from fat.
- Total fat.
- Saturated fat.
- Cholesterol.
- Sodium.
- Carbohydrates.
- Sugars.
- Dietary fiber.
- Protein.

The law allows the FDA to add additional nutrients if the agency decides it would help consumers maintain healthful diets. For example, the FDA is expected to require covered restaurants to include trans fat data at some point.

**7. Is nutrition information required for self-service menu items, such as on a buffet or salad bar?**

Yes, calorie counts must be posted for self-service items and food or beverage items on display. Restaurateurs must post signs adjacent to each standard menu item offered on a buffet, salad bar or similar self-service line where the foods or beverages are on display and visible to consumers.

The sign must disclose calories per item or per serving. (The FDA will provide further guidance on what constitutes a serving.)

The law requires covered restaurateurs to provide calorie counts for self-service items, but restaurateurs and similar retail establishments don't have to offer nutrition information other than calories.

**8. How would a restaurateur provide a calorie count for an item that comes in different flavors or varieties?**

Many menus list single items available in a variety of flavors or combinations. Examples include soft drinks, ice cream, pizza, doughnuts and children's combination meals.

The legislation gives the FDA leeway to define how restaurants can determine and disclose nutrition data for those menu items. The FDA could decide, for example, to require restaurants to provide nutrition data in ranges or averages for such items.

**9. Are alcoholic beverages covered by the new law?**

Alcoholic beverages are not expected to be covered by the new law. Under a 1974 memorandum of understanding, the FDA ceded authority to regulate the labeling of most alcoholic beverages to the Alcohol and Tobacco Tax and Trade Bureau.

**10. Does the law recognize serving-size and formulation variation that occurs in restaurant meal preparation?**

Congress recognizes there is variation in preparing restaurant meals. A serving of pasta, for example, might not have the same number of noodles or amount of sauce each time it's prepared.

As a result, the new law doesn't require an exact count for prescribed nutrient levels. It does, however, require covered restaurants to show they have a "reasonable basis" for the nutrition data they present. To meet this standard, restaurants must demonstrate that they have used reasonable means to derive their information. This can be achieved through nutrient databases, cookbooks, laboratory analysis and other reasonable means described in FDA regulations and related guidance. (See [21 C.F.R., 101.10.](#))

Furthermore, the law directs the agency to look at all the factors that could cause variations in restaurant nutrition content. Some factors the FDA must consider in determining restaurant compliance:

- Reasonable variation in serving size and formulation of menu items.
- Standardization of recipes and preparation methods.
- Inadvertent human error.
- Employee training.
- Ingredient variations.

**11. Are there any protections for restaurants if the nutrition data isn't exact?**

As discussed above, the information does not need to be exact but the restaurant must demonstrate that it relied upon a reasonable basis in determining the nutrition data provided.

**12. How does the new law affect the menu labeling law in my state or city?**

One of the goals of the new law is to provide a single, consistent means of disclosing nutrition data in restaurants. As such, the new law provides for federal preemption of non-identical state and local laws. Specifically, the law prohibits state or local requirements that are not identical to:

- Chain restaurant menu labeling requirements under the new law; and
- Terms and conditions for other restaurants' participation in the voluntary menu labeling program under the new law.

**13. What if you're not covered by the federal law but want to provide information?**

Some restaurants with fewer than 20 locations might want to voluntarily provide nutrition data. The FDA is required to publish within 120 days (*i.e.*, July 21, 2010) terms by which operators not subject to the federal law may voluntarily provide nutrition data. That will allow restaurants to sign up for the federal program and receive the advantages contained in the law: a single, uniform standard for all locations and protection from unreasonable lawsuits.