

## **Regulatory Alert: FDA Releases Supplemental Menu Labeling Guidance** *More Information Provided on Labeling of Grab-and-Go, Self-Service Items and Enforcement*

May 17, 2018

On May 7, 2018 FDA released [supplemental guidance](#) for the [Menu Labeling Rule](#). The Menu Labeling Rule went into effect on May 7, 2018. The rule has very significant impacts on restaurants and food retailers among other retail food establishments. This regulatory alert covers the key aspects of the guidance.

### **Are individual signs with a calorie declaration required to be next to each buffet item?**

No. A single sign with multiple food items meets the requirements of the regulation so long as the consumer can view the name, calorie declaration, and serving or unit of a particular menu item while selecting that item.

### **Are menus/menu boards required to be posted at each location where self-service food is offered?**

No. An establishment can choose to use a single sign to list only the calorie declarations for each standard menu item offered only at that particular self-service location in the store or restaurant, and would not be required to list calorie declarations for all standard menu items, because those declarations could be listed elsewhere in close proximity to selection of those standard menu items.

### **Is separate signage required for grab and go items with calorie stickers or nutrition facts labels?**

No. If a grab and go item has a nutrition facts label that may be examined by the consumer before purchase or a sticker with the calories for the entire package then a separate sign is not required.

### **If calorie declarations are declared on the package of grab-and-go items, do the succinct statement<sup>1</sup> and statement of availability of written nutrition information need to be on every individual package?**

No. The succinct statement and statement of availability may be on a separate sign in close proximity to the food that the customer can easily read as they are making their order selections.

### **Are the succinct statement providing context about calories in a daily diet and statement regarding the availability of additional written nutrition information required on every sign for self-service food?**

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<sup>1</sup> “2,000 calories a day is used for general nutrition advice, but calorie needs vary”

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No. For self-service foods and foods on display, these statements may be on an individual sign adjacent to the food itself, on a separate, larger sign in close proximity to the food that the customer can easily read as he or she is making his or her order selections; or on a large menu board that the consumer can easily read as he or she is ordering his or her food.

**Does a quick-service/takeout establishment without menu boards in its establishment have to create menu boards in addition to paper or online menus to comply with the rule?**

No. The menu labeling rule does not require establishments to have menus or menu boards; however, if they do, they must be labeled so consumers have access to the required nutrition information. However, in lieu of having a menu board, other alternatives such as electronic devices or paper menus or laminated menus may be used.

**Does a covered pizza restaurant that uses both online menus and menu boards inside the establishment have to declare the calorie information on the menu boards?**

Yes. Even though you declare calories on the online menu, if you choose to use a menu board in the covered establishment, calorie declarations for the standard menu items must be declared on the menu board.

**Does a covered establishment that serves family-style dishes, such as salads and pasta bowls that serve multiple people have to include the total calorie amount for each dish on the menu or menu boards?**

Yes in the case of multiple-serving standard menu items that are not offered for sale divided into discrete units, the calories declared must be for the entire standard menu item as usually prepared and offered for sale. However, you may, in addition to declaring the calories for the entire standard menu item, declare the number of suggested servings and the calories per suggested serving, but this must be in addition to declaring the calories for the entire standard menu item.

**How does FDA intend to approach enforcement of the menu labeling rule?**

FDA does not intend to penalize or recommend the use of criminal penalties for minor violations such as:

- Inadvertently missing a calorie declaration for a standard menu item on a buffet when other items are labeled;
- Minor discrepancies in the type size/color contrast of calorie declarations, provided that they are readable;
- Minimal variations or inadvertent error that would only minimally impact the calorie declaration or other nutrition information, such as adding extra slices of pepperoni on a pizza or adding an extra dollop of ketchup on a hamburger when not typically added; or
- Not rounding your calorie declaration correctly in accordance with the menu labeling rule.

**We are a covered establishment that sells hot rotisserie chicken and prepared vegetables. We have two different suppliers and the nutrition information is slightly different for the items from each**

**supplier due to natural variation in the food. How should we determine the calorie and nutrient information for our standard items?**

The menu labeling rule requires a covered establishment to have a reasonable basis for its nutrient declarations, which provides flexibility for a covered establishment to take such natural variation into account when determining the calorie content and calorie declaration for a standard menu item. You should take reasonable steps to determine calorie and nutrition information for standard menu items that may vary slightly due to natural variation. FDA understands that the calorie content of non-uniform menu items, such as pieces of chicken, prepared vegetables, or whole fruit (e.g., whole apple or whole banana) vary depending on the size (e.g., different sized apples, bananas, or baked potatoes) and other factors, such as the composition of the items (e.g., chicken breast, thigh, or drumstick) or the growing conditions of the fruits and vegetables. This natural variation can be taken into account as a part of your reasonable basis when determining your calorie counts and other nutrition information for your standard menu items as they are usually offered and prepared in your establishment.

**Must information on the reasonable basis of items be stored on the premises of the covered establishment?**

No. The reasonable basis information is not required to be stored on the premises. It may be stored at the corporate headquarters or another location for the duration of the time that the standard menu items are offered for sale at the covered establishment. Upon request and within a reasonable period of time the information must be provided to FDA.

**Are menu items that are not sold in more than 20 locations of a chain, but are standard menu items at one or more locations of that particular chain, covered under the menu labeling rule?**

Yes. If a covered establishment is offering for sale a restaurant-type food that is routinely included on their menu or menu board or routinely offered as a self-service food or food on display at only one location, that item is covered under the menu labeling requirements because it meets the definition of a standard menu item, and thus calorie and other nutrition information is required.

**A covered establishment offers “Chef Creations” that use extra produce as it becomes available from the produce department, so the ingredients routinely change and often on a daily basis. Must the establishment declare calorie information for these items?**

No, so long as they are not routinely offered.

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