



Calorie Labeling Requirements Will Apply to Restaurants and Similar Retail Food Establishments

Matthew V. Wilson

A newly enacted FDA regulation stemming from a provision in the 2010 Affordable Care Act mandates that chain restaurants and similar retail food establishments include calorie counts and other disclosures on all menus, menu boards, and at certain other designated locations. Generally, the new rule applies to restaurants and retail food establishments that are part of a chain of 20 or more locations, doing business under the same name, and offering for sale substantially the same menu items.

With a goal of encouraging improved health and providing consumers with clear and consistent nutrition information in a direct and accessible manner, all covered establishments must list calorie information for standard menu items, provide a succinct statement about suggested daily caloric intake, notify consumers of the availability of additional nutrition information, and provide a written breakdown of the nutrition values associated with offered menu items. Seeking to standardize disclosure practices in the industry, the rule specifically address how a business should disclose the caloric count of various self-service and alcoholic beverages, combination meals, “up-sized” items, and custom-ordered toppings and condiments, among other wide ranging categories.

According to the rule, an establishment must have a reasonable basis for its calorie and nutrient content declarations, which may be supported by citing nutrition information obtained from sources such as nutrient databases, cookbooks, lab analyses, and other reasonable means. Furthermore, a restaurant must take reasonable steps to ensure that the method of food preparation and the portion sizes served match up with the disclosed information. To these ends, a representative of such restaurant is required to certify as to the truthfulness and completeness of the declarations and, upon request, provide information substantiating the nutrient values and the methodology used to derive such values.

As of the time of this alert, all covered establishments must be in compliance with the rule by December 1, 2015.

Note as well that the rule will apply to foods that are sold out of vending machines operated by a person engaged in the business of owning or operating 20 or more vending machines; however, the additional nutrition disclosures are not required for foods sold in vending machines. The FDA is allowing an additional year for vending machine operations to comply.

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