Menu Labeling

Cheese Fries for 700 Calories Please
State and Local Menu Labeling Laws

• Each apply differently
  • Number of locations to trigger
  • Menu items covered
  • The size/appearance of the label
  • Supplemental nutritional information required

• Potential for larger compliance cost for concepts in multiple jurisdictions
FDA Menu Labeling Law

3 Initial Questions

• What establishments are covered?

• What nutritional disclosures are required?

• What menu items must have nutritional disclosures?
What Establishments are Covered?

• “Covered establishments” - restaurants or similar retail establishments that:

  1. Have more than **20 locations**;

  2. Do business under the **same name**; and,

  3. Offer for sale substantially the **same menu items**.

What establishments are not covered?
What Nutritional Disclosures are Required?

3 things on all menus and menu boards:

1. **Calories**: in each “standard menu item”

2. **Succinct Statement**: “2,000 calories a day is used for general nutrition advice, but calories needs vary.”

3. **Additional Nutrition Statement**: “Additional nutrition information is available upon request.”
What Nutritional Disclosures are Required?

1. **Calories**
   - *How to display calories?*
   - *Where to display calories?*
   - *How to approach varieties/flavors?*
What Nutritional Disclosures are Required?

2. Succinct Statement

• Each page of menu:

  • Standard: “2,000 calories a day is used for general nutrition advice, but calorie needs vary.”

  • Children’s Menu: “1,200 to 1,400 calories a day is used for general nutrition advice for children ages 4-8 years, but calorie needs vary” or “1,200 to 1,400 calories a day is used for general nutrition advice for children ages 4-8 years and 1,400 to 2,000 a day for children 9-13 years, but calorie needs vary.”
What Nutritional Disclosures are Required?

3. Additional Nutrition Information

• First page containing menu items: “Additional nutrition information available upon request.”
  • Must be available in writing upon request:
    1. Total Calories;
    2. Calories from fat;
    3. Total fat;
    4. Saturated fat;
    5. Trans fat;
    6. Cholesterol;
    7. Sodium;
    8. Total carbohydrates;
    9. Dietary Fiber;
   10. Sugars; and
   11. Protein.

• Dealing with insignificant amounts (all versus 6 or more)
What Menu Items must have Disclosures?

- All “Standard Menu Items,” which are defined as items “routinely included on a menu”
- Excluded:
  - Temporary menu items
  - Daily specials
  - Custom orders
  - Market test items
  - Condiments meant for general use
  - Alcoholic Beverages on display
How to Determine Nutrient Content?

• Based on how item is “typically” prepared

  • Nearest 5-calorie increment up to and including 50 calories; nearest 10-calorie increment above 50 calories

  • Must have a “reasonable basis” and keep records of method
How does the FDA Menu Labeling Rule Impact State Laws?

- **Covered Establishments**
  - Pre-empts any inconsistent state or local regulations directed to covered establishments.

- **Non-Covered Establishments**
  - Non-covered establishments may register with the FDA to voluntarily comply.
Nuts and Bolts – Risks, Impact & Compliance Strategies

• Large Franchise Systems

• Emerging Franchise Systems
FDA Enforcement

• Risks associated with franchisee non-compliance

• Risks associated with system non-compliance
Working with the FDA

• Guidance indicates possible flexibility

• Obtaining additional guidance and information
State and Local Enforcement

• Enforcement of the FDA rule by state and local authorities

• Risks associated with individual franchisee non-compliance
Private Enforcement

• Will menu labeling feed the plaintiffs’ bar?

• Applebee’s Weight Watchers Menu

• Chili’s Guiltless Grill

• Impact of Current Trends in Consumer Product Litigation
  • California
An Ounce of Prevention: Education and Training

• Opportunities
  • Initial franchisee training
  • Restaurant opening training
  • Manager training

• Add module to food safety training that kitchen employees receive
An Ounce of Prevention: Franchise Agreement Updates

• <20 Units
  • Opting in
  • State and local laws
  • Future with more than 20 units
  • Indemnification

• >20 Units
  • System standards
  • Indemnification
An Ounce of Prevention: Supply Chain Contract Updates

- <20 Units
  - Opting in
  - State and local laws
  - Future with more than 20 units
  - Indemnification

- >20 Units
  - System standards
  - Indemnification
Maintaining Compliance

• Ongoing Franchisee Education

• Ongoing Supply Chain Maintenance and Verification
  • Standard menu and products
  • LTOs and other short-term menu items
Q&A
• Question: “I am the owner of a chain of 20 restaurants. Twelve of my restaurants are full-service restaurants and operate under the name Ed’s Bar & Grill. My other restaurants operate under Super Studio 3, Super Studio Lite and Super Studio Grill. These establishments are generally found in movie theaters or may be stand alone in malls. We offer four variations of expanded menus in each establishment. How would I determine whether my restaurants are covered establishments?”
Q/A FROM FDA GUIDANCE SECTION 5.17

• Question: “If a pizza coupon that states “1 large 2 toppings pizza $9.99” is attached to a takeout menu, does the menu item on this coupon require calorie information?”
Question: “The menu labeling final rule only applies to items that are standard menu items at covered establishments. If there is a restaurant chain that sells some specific dishes in less than 20 of its locations, would those specific items be covered? For example, if Mary’s Seafood Restaurant only sells “Cajun-style shrimp” in its New Orleans’s location (i.e., not in any other Mary’s Seafood Restaurant across the country), would this dish be covered?”