

# One Minute Memo®



## New Sweeping Calorie and Nutrition Labeling Requirements for Restaurants

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With Americans eating and drinking about one-third of their calories away from home, the Food and Drug Administration has finalized new menu labeling [requirements](#) to make calorie and nutrition information available to help consumers make informed choices for themselves and their families when dining out. Congress initially passed a national labeling law in 2010 as part of the Affordable Care Act. Nationwide compliance with the new FDA requirements is required by **December 1, 2015**.

The following is a list of the key requirements:

1. Applies to all restaurants and similar retail food establishments nationwide with (a) 20 or more locations, (b) doing business under the same name, and (c) offering for sale substantially the same menu items (similar but separate requirements have also been enacted for food sold from vending machines);
2. All menu boards must clearly and conspicuously contain the following two statements: (a) “2,000 calories a day is used for general nutrition advice, but calorie needs vary,” and “Additional written nutrition information available upon request”;
3. “Menu boards” subject to these disclosure requirements are defined as all primary writings from which the consumer makes his or her order sections (e.g., in-store menu boards, Internet menus, takeaway menus);
4. Calorie information must be clearly and conspicuously displayed next to the name or price of “standard menu items” (i.e., routinely included on menu or offered, excluding condiments, daily specials, temporary menu items, custom order, and customary market test foods, and food offered for sale for less than a total of 60 days per calendar year or fewer than 90 consecutive days to test consumer acceptance), but no specific color, font size, or contrasting background is required;
5. Calorie information must be declared on signs adjacent to foods on display and self-serve foods (e.g. salad bars, buffets) that are standard menu items;
6. When a menu or menu board lists flavors or varieties for an entire individual variable menu item, the calories must typically be declared separately for each listed flavor or variety, or flavors and varieties may be grouped together as a single listing if they have the same calorie content;

7. If the menu or menu board does not list flavors or varieties, and only includes a general description of the variable menu item (e.g., "soft drinks"), the calories must be declared for each option with a slash between the two calorie declarations where only two options are available (e.g., "150/200 calories"), or as a range where more than two options are available (e.g., "100-250 calories");
8. The following written nutrition information must be available to consumers upon their request: total calories, calories from fat, total fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrates, fiber, sugars, and protein;
9. Finally, "[w]hen a standard menu item, including a beverage, is listed on a menu or menu board by name with different sizes, or each size has its own price, each size would constitute a standard menu item rather than a different flavor, variety, or combination, and each standard menu item must include a calorie declaration";
10. A covered establishment must have a reasonable basis for its nutrient content declarations and take reasonable steps to ensure that the method of preparation and amount of a standard menu item adheres to the factors on which nutrient values were determined;
11. Violations may result in enforcement actions for injunctive relief and criminal and civil penalties.

[Robert B. Milligan](#) is partner and [D. Joshua Salinas](#) is an associate in Seyfarth's Los Angeles office who regularly provide food and beverage advice to clients concerning legal requirements. If you have any questions or would like to discuss the new requirements in further detail, please contact your Seyfarth Shaw LLP attorney, Robert B. Milligan at [rmilligan@seyfarth.com](mailto:rmilligan@seyfarth.com) or D. Joshua Salinas at [jsalinas@seyfarth.com](mailto:jsalinas@seyfarth.com).

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