

> MENU LABELING 101

What You Need to Know



Menu Labeling 101

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Introduction

Understanding Menu Labeling

Labeling provisions in the **Affordable Care Act (ACA)** require that restaurants and other retail food establishments provide access to nutrition information. This includes the display of calorie information for standard menu items and access to additional nutrient information for those same items.

As a result, the **Food and Drug Administration (FDA)** has released menu label regulations. The final guidance for industry on Menu Labeling was published in the Federal Register on May 5, 2016. On May 4, 2017, the FDA extended the compliance date from May 5, 2017 to May 7, 2018.



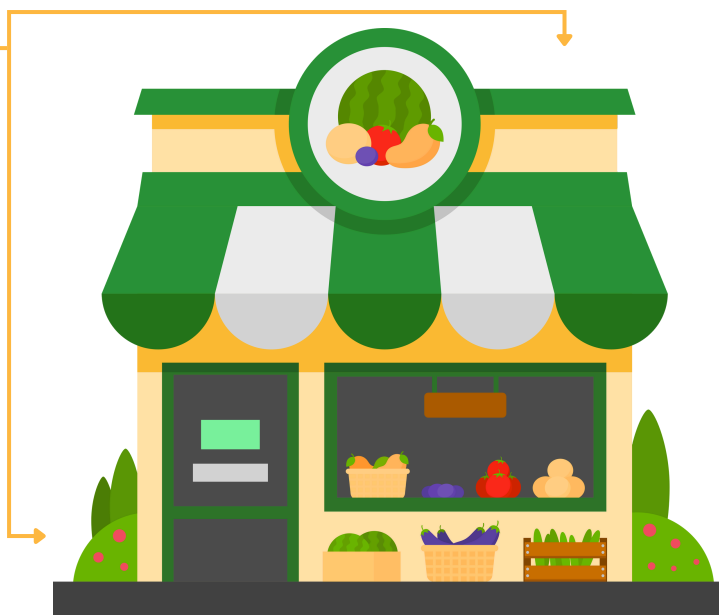
Covered Establishments

Who has to comply?

These new regulations apply to restaurants and similar retail food establishments if they are part of a chain of 20 or more locations, doing business under the same name (regardless of ownership, aka franchises), offering for sale substantially the same menu items, and offering for sale restaurant-type foods. So what does that really mean? Here are some examples:

Grocery Stores

Many of the hundreds of Grocery stores offer made-to-order sandwiches from their deli. Although we don't think of grocery stores as restaurants, they are considered covered establishments because they are selling "restaurant-type" items and are, again, "part of a chain with 20 or more locations doing business under the same name (regardless of the type of ownership of the locations) and offering for sale substantially the same menu items."



Grocery establishments with delis and/or salad bars, then, are considered "covered establishments." We can conclude from this that all similar grocery stores are covered, too. However, retail stores with a deli or café would also be considered.



Covered Establishments

Who has to comply?



Fast Food Franchise

There are thousands of food franchises all over the country. And *because* they are franchises, they are not all owned by the same person. In fact, there are cases where one person owns fewer than 20 locations.

Also, fast-food franchises are often found inside other establishments (universities, truck stops, airports, malls, etc.) Initially, it might seem that these restaurants could be exempt.

The CFR addresses the franchise case with the language: “... *regardless of the type of ownership...*” So we can conclude that franchises are considered covered establishments. From this, then, we can conclude that ***all chain restaurants, all chain coffee shops, all chain bakeries, and any of these that are located inside a school or university, movie theater, hotel, amusement park, etc. are “covered establishments.”***



Covered Establishments

Who is **not** covered?

EXEMPT



Establishments with >20 locations



Food Trucks



Sidewalk Carts



Airlines



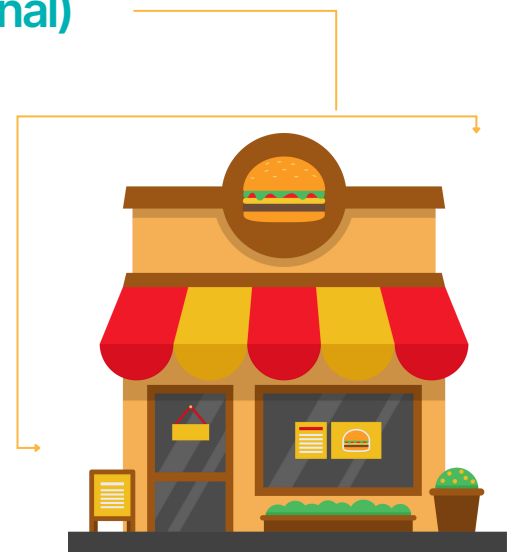
Trains

EXAMPLE: Jill's Hometown Burgers (Fictional)

There are 21 of these restaurants throughout the United States. 19 of the restaurants serve only hamburgers and fries. Two of them — located on the coast — serve primarily fish sandwiches and with one or two hamburger selections.

Despite the fact that there are 20 or more locations and they are doing business under the same name, the menu items are not "substantially the same."

Jill's Hometown Burgers would not be considered a "covered establishment."



Any establishment not covered may voluntarily register to be covered using Form FDA 3757.



Standard Menu Items

Which items need to have this information?

Calories and additional nutrition information will need to be available for all **STANDARD MENU ITEMS**. A **STANDARD MENU ITEM** is a **RESTAURANT-TYPE FOOD** that is routinely included on a menu or menu board or routinely offered as a self-service food or food on display.

EXAMPLE: Restaurant-type Foods

- » A standard meal or item (steak, salad, etc.) from a sit-down, full-service restaurant
- » A standard snack or beverage (muffin, latte, etc.) from a coffee shop or bakery
- » A standard meal or item (cheeseburger, french fries, etc.) from a fast-food restaurant
- » Foods purchased at a drive-through window
- » Take-out and delivery food, such as pizza – either already baked or take-and-bake
- » Foods, such as made-to-order sandwiches, ordered from a menu or menu board at a grocery store or delicatessen
- » Self-serve foods from a salad or hot food bar, either at a restaurant or grocery store
- » Popcorn purchased at a movie theater or amusement park
- » Alcoholic beverages that are standard menu items





Standard Menu Items

Which items are exempt?

Foods not subject to these regulations include grocery-type items that may be ready for immediate consumption but that consumers usually store for use at a later time or customarily further prepared.

- » Large amounts of deli meats and cheese
- » A whole cake or loaf of bread
- » Nuts from bulk bins



BUT The following items are exempt:



- » Foods purchased at a drive-through window
- » Take-out and delivery food, such as pizza – either already baked or take-and-bake
 - » Foods, such as made-to-order sandwiches, ordered from a menu or menu board at a grocery store or delicatessen
 - » Self-serve foods from a salad or hot food bar, either at a restaurant or grocery store
- » Popcorn purchased at a movie theater or amusement park
- » Alcoholic beverages that are standard menu items



Required Information

FDA-regulated menu items **require** three informational elements:



1

Calorie information for standard menu items

2

A calorie statement regarding daily caloric intake

3

Additional nutritional information *and*;

4

A written statement telling customers that this information is available upon request



21 CFR 101.11 also spells out the **format**, **placement**, and **location** of these elements.



Required Information

What information do I need to make available?

You must display the number of calories contained in each standard menu item listed on the menu or menu board, as usually prepared and offered for sale.

CALORIES

CALORIE STATEMENT

ADDITIONAL NUTRITIONAL INFORMATION

For menu items that have variable options, you must declare either both options (when there are only two variables) separated by a slash or, for items with more than two choices, you must list the caloric range.

CALORIES

CALORIE STATEMENT

ADDITIONAL NUTRITIONAL INFORMATION

Somewhere near the bottom of your menu or menu board, you need to post the following statement or one similar to it:

A 2,000 calorie daily diet is used as the basis for general nutrition advice; however, individual calorie needs may vary.

You must have the following information available and readily accessible, in either print or digital forms, and you need a written statement saying so:

CALORIES

CALORIE STATEMENT

ADDITIONAL NUTRITIONAL INFORMATION

- » Calories from fat
- » Saturated fat
- » Sodium
- » Cholesterol
- » Protein
- » Total fat
- » Trans fat
- » Total carbohydrates
- » Dietary fiber
- » Sugars



Layout Rules

CALORIES

CALORIE STATEMENT

ADDITIONAL NUTRITIONAL INFORMATION

Calories must be posted on the menu or menu board next to the name or price of the item.

For self-service foods or foods on display, calories must be posted in close proximity and clearly associated with the food item, for example on the sneeze guard of a buffet line.

1 - **Calories** must be listed **adjacent** to the name of or price of each standard menu item

2 - For menu items that have **variable options**, you must declare either both options (when there are only two variables) separated by a slash or, for items with more than two choices, you must list the caloric range.

3 - You must include a printed calorie statement at the bottom of each menu board.



The rules aren't overly concerned with the format on how the calories should be displayed on a menu board (size, color, etc.), other than it has to be obvious. Namely, the calories for each item must be "clearly associated with" and "adjacent to" the name or picture of the standard menu item AND the font size for the calorie display must be the same or larger than that used for the price or the name (whichever is smaller). The color used and contrast with the background must also be similar or similarly conspicuous.



Layout Rules

CALORIES

CALORIE STATEMENT

ADDITIONAL NUTRITIONAL INFORMATION

Additional nutrition information can be made available to customers in a variety of print and digital formats so long as the information is accessible to customers without the need to use their own electronic device.

Such material may include counter cards, signs, posters, handouts, booklets, loose-leaf binders, electronic devices, menus, or any other form of written material that similarly permits the written declaration of the required nutrient content information for all standard menu items.



Additionally, you can provide the information on an app or website, provided access to the written nutrition information is available on the premises of the establishment.

Good news: The layout for the additional nutrients can look however you want.



Determining Nutrient Content

How do I get a nutritional analysis?

If you are a franchise owner, most likely your changes will come from the corporate office. If not, you will have to determine the nutrient content by:

- » Investing in a reputable software program for in-house analysis
- » Contacting a consultant to take care of the analysis for you
- » Sending samples to a lab for nutritional analysis
- » Most likely, you will use a combination of all three

Regardless of which you choose, make sure to document your process. In the case of an audit, the FDA likes to see that you have made a good-faith effort.

Explore the pros and cons of each option with our *Obtaining a Nutritional Analysis* eBook



DOWNLOAD A COPY





Conclusion

What's my plan of action?

Determine if you are a **covered establishment**

1

If yes, determine which **menu items** need to be labeled

2

Perform a **nutritional analysis** on your menu items

3

Update menus and other communication materials with **nutritional information**

4

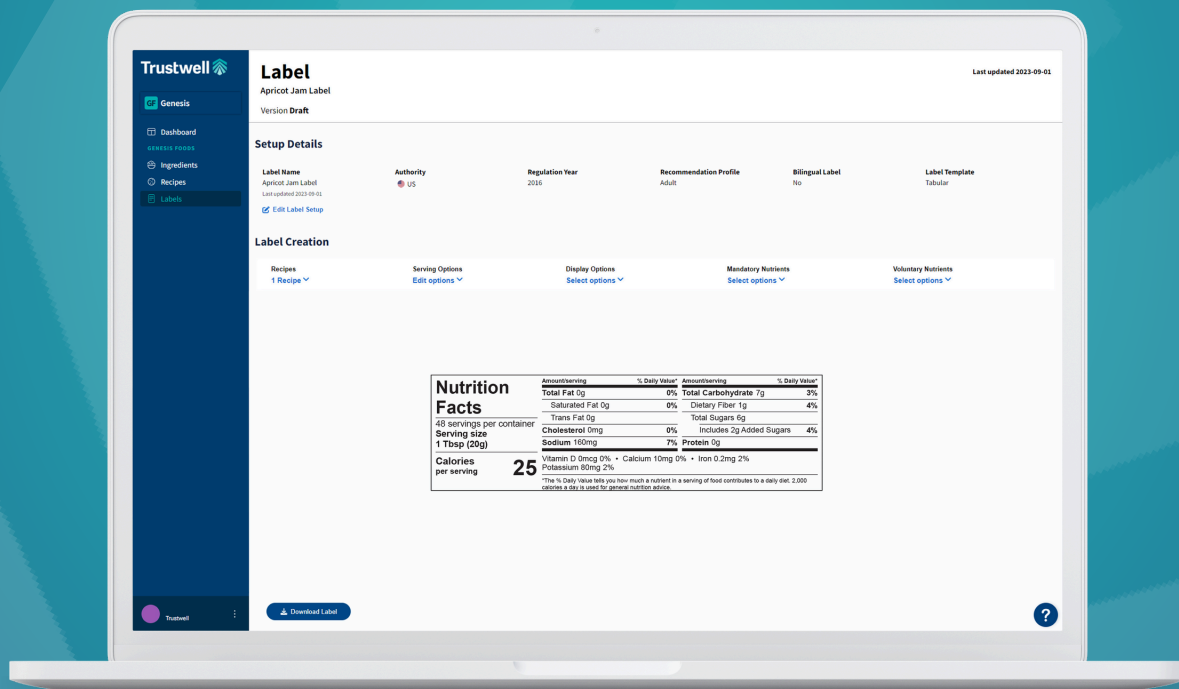
Repeat! It's not going to be a "one and done" process. You will need to continually update and revise your nutritional analysis and menus

5



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- 30%** reduction in compliance & labeling costs
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