



THE COMPLETE GUIDE TO THE FDA'S MENU LABELING RULE



MAIN DISHES	
Grilled Prawns	110 cal.
Chicken with Mushrooms	260 cal.
Philly Cheesesteak Sandwich	640 cal.

TASTY

A stylized illustration of a burger with a sesame seed bun, cheese, and a tomato slice.

HOURS OF OPERATION	
Monday	11am - 10pm
Tuesday	11am - 10pm
Wednesday	11am - 10pm
Thursday	11am - 10pm



At first glance, how many calories do you think this dish has?



Sure, the salad contains some calorie-rich cheese, hearty chicken, and protein-packed walnuts - but there's a lot of green in that image. Some dried cranberries. Tangerines. All good things ... with maybe just a touch of the bad, right? And it's a salad, after all! So what do you think? Three hundred and fifty calories? Five hundred?



The common Applebee's diner might assume this salad is light on calories, heavy on nutrition. They may assume this salad is a healthier alternative to, say, the restaurant's cheeseburger, which has 970 calories. Well, think again, dear reader. This dinner portion pecan-crust chicken salad with dressing packs a whopping 1,360 calories. Considering the FDA recommends a daily calorie consumption of 2,000 calories, this salad eats up almost 70% of your daily allowance. It also contains 2,640 mg of sodium, which is over the FDA suggested daily amount of 2400 mg.

*Picks jaw up off the ground.
Fights sudden urge to take up running.
Looks up Crossfit schedule.*

Not the punch to the gut you'd expect from a salad.

The calorie: it has a substantial impact on the way we eat, regulate our weight, and purchase food and beverage. While the nutritional value of a meal isn't determined by number of calories alone, "calories in, calories out" remains the most basic way to measure the likelihood of weight loss or gain.

Currently in the United States:



People are eating 1/3 of their daily calories away from home



38% of adults are obese



58% of people [can't identify 2,000 calories](#) worth of food



In 2014, the Obama administration set out to make a change. The Menu Labeling Final Rule, part of the Affordable Care Act, would require restaurants and other food establishments to disclose the caloric content of each menu item. **Restaurants or retail establishments with 20 or more locations are required to comply with new rule by May 7, 2018.**



ARE YOU IN NEW YORK CITY?

Watch out: your menus will need to **comply with the new rule by August 21**. According to [FSR Magazine](#), “Starting May 22, the Departments of Health and Consumer Affairs will begin educating businesses during regular inspections in New York. Come August 21, both agencies will take the gloves off and start issuing notices of violation subject to fines for not complying. Chain restaurants and food retailers will have to fork up between \$200-\$600 in fines.”

But with the status of the federal law, the National Restaurant Association is doubting the legitimacy of New York’s move. Cicely Simpson, executive vice president, National Restaurant Association, says, “Just as we feared, city and state governments are taking advantage of the federal menu labeling delay. Federal preemption on menu labeling is the law of the land. The one year delay of implementation does not negate that preemption therefore New York City’s announcement is in violation of federal law.”

It remains to be seen whether restaurants in New York will ignore the rule and pay the fines while waiting for the federal law to take effect.



Fish

- Grilled Salmon \$22 | 500 cal.
- Baked Lemon Haddock . . . \$24 | 500 cal.
- Cod croquettes \$22 | 400 cal.



While the rule aims to improve transparency so consumers can make informed choices about what they are eating, the new regulation also requires restaurants and other food establishments to make some significant changes. Restaurant chains, franchisees, and other establishments have incurred significant operational expenses to re-engineer menus and alter their food stock and preparation.

To complicate things further, the new rule found itself in limbo with possible changes to the Affordable Care Act. While many establishments have taken the necessary leaps and bounds to prepare for the change, the Trump administration [announced via the Federal Register](#) that, “In the Federal Register of December 30, 2016, we stated that the compliance date for the final rule would be May 5, 2017. We are extending the compliance date to May 7, 2018. We are taking this action to enable us to consider how we might further reduce the regulatory burden or increase flexibility while continuing to achieve our regulatory objectives, in keeping with the Administration’s policies.”

In this guide, we’ll clarify the FDA’s current Menu Labeling Final Rule, its pros and cons, the politics that have thrust its future into uncertainty, and how restaurants can prepare for the new rule.



THE POLICY: FREQUENTLY ASKED QUESTIONS

What is the new compliance date?

May 7, 2018

Who does it apply to?

Any restaurants or similar retail food establishments with 20 or more locations

What are some examples of “restaurant-type food” affected?

- Food at full service or quick service restaurants
- Drive-through food
- Take-out and delivery pizza
- Hot pizza at grocery and convenience stores
- Pizza slices from a movie theater
- Hot buffet food
- Hot soup at a soup bar
- Food from a salad bar
- Foods ordered from a menu or menu board at a grocery store
- Self-service foods and foods on display (e.g., sandwiches, cookies from a mall cookie counter, bagels, and donuts)

Does the rule [apply to alcohol](#)?

Yep, the rule applies to booze, too – with conditions. The rule applies to alcoholic beverages that are standard menu items, like featured cocktails or beers listed on a drink menu. The rule does not apply to bar rail liquors that are not on the menu but considered standard to have on hand, like bottles of whisky or scotch found behind the bar.

In other words, if it's on the menu, you have to list the calories.

How do food establishments [gather caloric information](#)?

Caloric and nutritional information must be gathered through **laboratory analysis, cookbooks, nutrient databases, and other reasonable means**, including use of Nutrition Facts on labels on packaged foods.

See the “How Do Restaurants Prepare?” section for more on how to comply.

How must restaurants [display caloric information](#)?

Calorie Display

- Using the words “calories or cal”, establishments must disclose a calorie count for all items on menus and menu boards
- The calorie counts must be clear and prominent
- In the event of variable menu items, calorie ranges can be disclosed
- For foods on display or self-service foods, like a buffet or fountain drinks, calories per serving must be displayed

Statement of Caloric Intake

Establishments must provide a written statement on menus with the FDA's suggested daily caloric intake of 2,000 calories. According to the FDA, the purpose of this is to "enable consumers to understand, in the context of a total daily diet, the significance of the calorie information provided on menus and menu boards."

Additional Nutrition Information

Establishments are required to have additional, more comprehensive nutritional information available upon request, including total calories, calories from fat, saturated fat, cholesterol, trans fat, carbohydrates, sugar, fiber, and protein.

Establishments must let patrons know this additional information is available upon request through a statement on menus and menu boards.

Are there formatting requisites for the calorie label?

Yes! The number of calories must appear:

- next to the name or the price of the associated standard menu item in a type size no smaller than that of the name or the price of the associated standard menu item (whichever is smaller)
- in the same color used for the name of the associated menu item
- with the same background used for the associated menu item

Which items are exempt from the calorie labeling?

Condiments, general use items, daily specials, custom orders, and temporary items (those that appear on the menu for less than 60 total days of the year or 90 consecutive days)

What are the consequences of failing to comply?

While the penalties are a little vague, the FDA states that if an establishment fails to follow the calorie labeling guidelines, that “standard menu item offered for sale in a covered establishment shall be deemed misbranded under the FD&C Act [21 C.F.R. Section 101.11(f)]” and violating the menu labeling rule also means “an FD&C Act violation.”

What does this mean for restaurants?

According to [Food Safety Magazine](#), “Under the Menu Labeling Rule and the FD&C Act, FDA retains the discretion to hold those with supervisory responsibility, including those who are responsible individuals who certify the menu labeling, criminally liable for a misbranding violation.”

If charged under the misbranding violation penalties, a first offense misbranding violation could result in a misdemeanor, which is punishable by a [maximum of one year in federal prison and/or a \\$1,000 fine](#). A second offense, or an offense deemed intentionally misleading, could mean [a felony charge, with up to three years in prison and/or a \\$10,000 fine](#).



THE PROS, CONS, AND COMPLEXITIES



Pro: Consumers can trust that restaurants will be more transparent.

Restaurants may be able to increase consumer trust with better transparency. With knowledge of caloric intake, diners will now have the power to make informed decisions. Instead of ordering a 1,500 calorie milkshake, consumers might think twice when they compare that tally against their 2,000 recommended daily calorie allowance. (Or they might just say, whatever, it's cheat day!)

The daily allowance reminder also serves to remind consumers of their own “calorie ceiling”. [A study from the Johns Hopkins Bloomberg School of Public Health](#) found that a greater awareness of the 2,000 calorie index can result in better food choices: participants who received a weekly text message that reminded them of their calorie allowance were twice as likely to identify a 2,000 calorie daily value than those who didn't receive a reminder.



Con: The menu labeling rule assumes all calories are created equal.

As purveyors of food, we know that nutrition cannot be based on calories alone. But the menu labeling legislation emphasizes calorie counts above all else. So a health conscious consumer who's started counting calories might choose an iceberg lettuce salad with nonfat dressing and croutons because of the lighter calorie count rather than the nutrient-rich quinoa bowl, with good-fat avocado, olive oil, cashews, and salmon - which may have twice the calories.

Menu labeling doesn't include complete nutritional information, which can create what Forbes called "an inherent bias against dietary fat." [Authors Dr. Sean Lucan and Dr. James DiNicolantonio](#) warn that the menu labeling rule parallels what occurred in the 80s and 90s when public health denounced fat and "companies re-engineered food offerings so that lower-calorie sugars and starches replaced higher-calorie fats and oils. The result was not only that people ate more added sugars and refined starches, but they also felt less full and ate more of everything. Obesity and diabetes rates went up accordingly."



Pro: Restaurants may begin to reduce the calories in their food.

Sometimes you just want wings, fries, and gravy, calories be damned. Many studies have denounced the effectiveness of calorie counts on menus: one study found that only 8% of fast food patrons make healthy choices based on calorie counts, and nutrition postings went unnoticed by two-thirds of study participants.

While consumers don't seem to be significantly changing their habits, restaurants are becoming more aware of the calories in their items and making small adjustments in an effort to reduce the count. Julia Wolfson, a PhD candidate at Johns Hopkins Bloomberg School of Public Health, [found](#) that, of 66 restaurants she studied, the five restaurants that voluntarily disclosed their calories had an average calorie count of 262, compared to 402 from those without calorie counts. With similar findings, [a 2015 study from Health Affairs](#) found that "average calories per item were 139 calories lower in restaurants that posted their nutritional information." These surveys would suggest that restaurants with disclosed calorie counts might be thinking twice before using a few extra spoonfuls of butter.



Con: The transition and maintenance of displaying calories is expensive and complicated for restaurants.

“Restaurants say a single new menu board can cost anywhere from \$800 to \$5,000. And that cost, multiplied by at least 20, can amplify quickly. Subway, the country’s biggest restaurant chain by locations, has nearly 27,000 U.S. stores.” That’s a jaw-dropping minimum of \$21,600,000, [according to the Chicago Tribune](#). What’s more is that some business models make it extraordinarily difficult to manage accurate calorie indexes. These businesses feel like they’ve been set up for failure. Pizza chains have been particularly vocal about their dissatisfaction with the regulation, with Domino’s citing that its toppings could yield [34 million combinations](#). (It should be noted that [the FDA doesn’t require pizza chains to list every topping combination](#), only calorie ranges based on available toppings.)





THE POLITICS

The Menu Labeling Final Rule was established as part of the Obama administration's Affordable Care Act (ACA or Obamacare). As the Trump administration took office and introduced the plan to repeal and replace Obamacare with the American Health Care Act (AHCA), the future of the menu labeling rule became uncertain because it was not included in the AHCA.

Despite its exclusion, many expected that the FDA would move forward with the enforcement of the rule starting on May 5, 2017. [Even though the AHCA was withdrawn on March 24, 2017, the FDA announced that the menu labeling rule's enforcement would be delayed until May 7, 2018](#) to "allow for further consideration of what opportunities there may be to reduce costs and enhance the flexibility of these requirements beyond those reflected in the interim final rule." The delay was a result of several industry groups petitioning the administration to delay the compliance date in late April 2017.

The National Restaurant Association isn't exactly thrilled, with NRA Executive Vice President of Government Affairs and Policy [Cicely Simpson stating](#), "The National Restaurant Association is concerned with the impact of the delay in the implementation of the federal menu labeling law just days before the scheduled effective date. This delay upends plans that have been in motion for years throughout the food industry. We will continue to strongly advocate on behalf of what is best for small businesses and American consumers."

Even if the Trump administration were to revamp the menu labeling rule in the future, [many believe the rule would be softened](#) rather than thrown away entirely. The expense for restaurants, the public's interest in caloric information, and the [National Restaurant Association support of the menu labeling policy](#), further complicate the politics behind the rule.

While the compliance date has been firmly moved to May 7, 2018, the unpredictability of the current administration could affect the rule further. TouchBistro will be sure to report on any future changes to the rule.



HOW DO RESTAURANTS PREPARE?

While menu labeling is an onerous task for restaurant chains and franchisors, there are some tools you can use to make the transition and the maintenance of calorie counts easier.



Calorie Counting Software

First you'll need to calculate the amount of calories in your dishes. The FDA stipulates that you must use laboratory analysis, cookbooks, or nutrient databases to adequately provide caloric information. Tech companies have developed software to help automate this process.

MenuCalc: Web-based nutrition database developed with the National Restaurant Association

Nutritics: Menu planning software that includes a nutrition calculator, which also flags allergens and breaks down calories and nutrition

NutritionistPro: A database of more than 82,000 foods, this software allows restaurant managers to create nutrition facts labels for USA, Canada, UK/Europe, and China/Hong Kong



Agile Menu Development

White space! Short descriptions! It's every menu design best practice. But not so fast: those minimalist menus are about to get crowded with the addition of calories for every meal, calorie allowance statements, and that obligatory note on additional nutritional information.

To update menus quickly and easily, consider using the following tools:

Menu design software: In-house menu designs and restaurant-specific templates can save you valuable time, effort, and money. When you outsource your menu design, you may need to engage in a lengthy approval process with a cost associated for every adjustment.

Digital/tablet menu: Go with the greener option. Digital menus on a tablet eliminate the need to print hundreds of new menus for a simple switch – when a change is made, the menu updates instantly. Digital menu boards, after an initial investment, have the same benefit.



Hire a Nutritionist

Some restaurant chains are seeing the new rule as an opportunity to brand themselves as a healthy choice for diners. Hiring a staff nutritionist can help guide you through this process. Nutritionists work in tandem with chefs to ensure that menu items are indeed healthy and balanced, but they also act as a health authority for the restaurant.

[As one Quick Service Restaurant magazine article stated](#), “restaurants with nutritionists or dietitians often have an advantage when it comes to labeling. Because they’ve developed the recipes from a nutrient-based perspective, nutritionists are able to provide analyses of menu items; they also save restaurants the expense of bringing in a third party.”

Investing in a nutritionist goes beyond the calorie count. [Nutritionists also add value by](#) researching food trends, conducting competitive analysis, creating recipes, analyzing nutrients, and ensuring all dishes and ingredients are on brand, so that once the corporate head office makes a change, it's applied uniformly across the entire franchise.



CONCLUSION

Health and wellness is in vogue, in policy, and doesn't seem to be going anywhere fast. As food policy adapts for shifts in consumer demands, a changing industry, and an unpredictable political landscape, agility is more important than ever for chain restaurants.

With fast communication, innovative technology, and strong corporate staff, an otherwise frustrating logistical challenge can become an opportunity. If you're worried about high calorie counts, know that reducing a recipe by one tablespoon of olive oil is often enough to knock 100 calories off the total. Maybe use one spoon of butter instead of three. If you're worried that your menu is high in calories yet confident that it's high nutritional value, educate your guests with call out boxes that explain the nutritional value of ingredients.

There are so many ways to make small changes. In the end, the policy aspires to promote the health of our guests. The better consumers feel about their food choices, the more likely they'll come back for more.



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