

# Food Industry Watch



## Nutrition Labels in Food Establishments

August 2010

### Chain Restaurants to Disclose Calorie Content at Point of Sale

#### Watch List

- The US Food and Drug Administration (FDA) will propose specific menu labeling regulations for chain restaurants and vending machine operators by March of 2011. Restaurateurs and vending machine operators will have the opportunity to comment on the proposed regulations.
- Following a period of public comment, the rules will be finalized by the FDA. Affected businesses will then have approximately six months to demonstrate full compliance.

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#### Key Takeaways

- A provision of US healthcare legislation enacted by Congress in 2010 requires that chain restaurants and vending machine operators with more than 20 outlets to post calorie information on menus, menu boards, drive-through displays and vending machines.
- Additional nutritional information such as sodium, carbohydrate, fat and trans-fat content must be available to the consumer upon request.
- Proponents of the legislation claim that menu labeling will help consumers make healthier food choices which will, in turn, reduce the incidence of obesity and obesity-related illnesses.
- Critics call the legislation costly, unnecessary and unlikely to have an effect on purchasing decisions. They also contend that it discriminates against chain restaurants and represents an intrusion by government on personal behavior.
- The legislation will likely have both positive and negative implications for business. On the plus side, restaurants with lower-calorie food items may become known as healthier eating venues, which could enhance reputation, strengthen competitiveness and improve profit potential. Negative effects could include cost increases related to compliance and revenue loss due to declining demand for some high-calorie food items.
- Some research suggests that the presence of calorie information on menus improves food choice, but the effect is fairly small.



### Executive Summary

For nearly 20 years, the FDA has required the use of Nutrition Facts labels on food items sold in retail stores. The labels are designed to provide consumers with easy-to-understand information about nutritional content with the expectation that informed consumers will choose healthier options. Restaurant food has been exempt from this legislation. However, in 2006, New York City became the first legislative body to extend nutrition labeling laws to food sold by large chain restaurants and vending machine operators. After the regulations took effect in New York City, more than 20 other state, county and municipal governments took similar action. Then in 2010, the US Congress included national menu labeling legislation in the healthcare reform bill. This legislation, which supersedes most state and local regulations, requires that large restaurant chains and vending machine companies to disclose calorie content at the point of sale. Other nutrition facts must be available upon customer request.

Advocates for menu labeling believe that consumers have a right to know the calorie count and nutritional value of the food they purchase in restaurants. They expect consumers to begin making better food choices, which will cause restaurants to offer healthier fare, which will ultimately help reduce obesity.

Opponents of the legislation believe that it is a costly and unnecessary burden on businesses and an intrusion by government into matters of personal behavior.

Whether or not menu labeling will actually change behavior and reduce obesity is unknown. Several studies indicate that access to calorie or nutritional information can influence food choice although the effect is fairly small. In New York City, for example, researchers examined the behavior of 12,000 customers in 275 locations before and after calorie posting regulations took effect. One in six fast-food customers reported using the information, and those who used it reported buying an average of 100 fewer calories (Spencer & Wang, 2010).



### History

The menu labeling issue has a 20-year history.

**1990.** President George H. W. Bush signed the Nutrition Labeling and Education Act, (NLEA), a federal law requiring the use of nutrition labels on most packaged foods. The law also required all health-related claims on food and beverage packaging (such as “light,” “low fat” or “reduced fat”) to meet standards set by the Food and Drug Administration (FDA). Food and beverage products served in restaurants were not covered under the NLEA.

**1997.** The FDA began regulating the use of words like “light,” “low fat” and “heart healthy” on restaurant menus.

**2003.** The Center for Science and the Public Interest (CSPI), a consumer advocacy organization focused on improving health and nutrition, began pressuring Congress to mandate the use of nutrition labels on restaurant menus.

**2006.** FDA legislation requiring trans-fat labeling on packaged food products took effect.

**2006.** New York City Board of Health banned the use of trans-fats in restaurant cooking. At the same time, the board passed an initial round of menu labeling regulations. These laws were challenged by the New York State Restaurant Association and subsequently overturned in US District Court.

**2007.** A revised version of the New York City menu labeling regulations was signed into law. It mandated calorie labeling on menus in chain restaurants with 15 or more outlets.

**2007-2010.** Menu labeling regulations were introduced or adopted in more than 20 states and municipalities including California; Oregon; Illinois; Ohio; Texas; Oklahoma; King County (Seattle), WA and Philadelphia, PA.

**2010.** The US Congress passed a national healthcare reform bill which included menu labeling language.

This legislation superseded state and local regulations.

### Highlights of the Legislation

Menu labeling legislation is contained in Section 4205 of the 2010 healthcare bill. The bill says:

- The FDA is accountable for developing and enforcing the regulations.
- All chain restaurant and vending machine operators with 20 or more outlets are affected.
- Calorie content must be displayed on menus, menu boards, drive-through displays and vending machines. Wall posters, counter brochures and tray liners are not adequate.
- Calorie content must appear adjacent to each food item.
- Special or temporary menu items offered for less than 60 days are exempt.
- A statement about recommended daily caloric intake must also appear on the menu to provide context for the customer.
- Other nutritional information such as sodium, carbohydrate, fat or saturated fat content must be available in a written form on the premises of the eating establishment.
- A statement about the availability of other nutritional information must appear on the menu or menu board.
- In self-service venues, calorie information must be provided on written signs located adjacent to each food and beverage item (e.g., salad bar ingredients, drinks, buffet items).
- Restaurants must have a “reasonable basis” for their calorie claims (e.g., nutrient databases, cookbooks, lab analyses).
- In the case of vending machines, calorie information must be provided in close proximity to each food item or its selection button.



The FDA will issue more specific standards (such as font size for calorie labels) in March of 2011. A period of public comment will follow during which the restaurant and vending industries can provide input and recommendations to the FDA. When a final set of standards is released, restaurateurs will have approximately six months to bring their eating establishments into full compliance. The new federal standards will supersede state and local regulations.

### Rationale for Legislation

This legislation was developed as part of a broader strategy to combat obesity in the United States. According to the Centers for Disease Control and Prevention (CDC), more than one-third of US adults and 16 percent of US children are now considered obese. Since 1980, obesity rates for adults have doubled and childhood obesity rates have tripled. Rising obesity rates have led to higher rates of heart disease, diabetes and some cancers. The economy has also been affected. Healthcare costs associated with obesity grew by nearly 50% between 1995 and 2003, increasing from \$52 billion to \$75 billion (CDC, 2009).

Halting and reversing the obesity trend is a priority for the Obama administration (and First Lady Michelle Obama), so it is not surprising that menu labeling was included in the 2010 healthcare reform bill. Advocates for menu labeling say that the legislation is necessary for many reasons.

- **Americans eat out frequently.** Today Americans eat out an average of four times per week. They consume one-third of their total calories away from home and spend 47 percent of their food dollars in eating establishments (CSPI, 2010).
- **Restaurant portion sizes are growing.** According to a 2003 study by New York University researchers Lisa Young and Marion Nestle, most "marketplace" portion sizes are two to eight times larger than standard servings as defined by the US Department of Agriculture (USDA) and the FDA.

A USDA standard serving of meat, for example, is two to three ounces, but a steak served in a restaurant nearly always exceeds eight ounces and may be as large as 24 ounces. The same study confirms that restaurant portion sizes have grown over time. Hamburgers, fries and sodas sold in fast-food outlets today are two to five times larger than those sold in the 1950s. (Table 1). Because larger portions have become commonplace, consumers have difficulty recognizing appropriate serving sizes and would benefit from information about caloric content at the point of sale.

- **Consumers have the right to know the calorie content of the food they purchase.** According to the CSPI, calorie information should be viewed in the same light as fuel efficiency data for automobiles or energy usage data for appliances. It is vital information that could affect the purchase decision and should therefore be provided in an easy-to-understand format prior to the sales transaction (CSPI, n.d.).

**Table 1: Marketplace serving sizes then and now**

Food or beverage	1950s	2003
French fries	2.4 ounces	Up to 7.1 ounces
Fountain soda	7.0 ounces	12 to 64 ounces
Hamburger patty	1.6 ounces	Up to 8.0 ounces
Hamburger sandwich	3.9 ounces	4.4 to 12.6 ounces
Muffin	3.0 ounces	6.5 ounces
Pasta serving	1.5 cups	3.0 cups
Chocolate bar	1 ounce	2.6 to 8 ounces

Source: <http://www.mealsmatter.org/Eating-ForHealth/Topics/article.aspx?articleId=53>



- **Consumers want access to calorie information.** In a 2008 survey of more than 1,000 adults conducted by Caravan Opinion Research Corporation, 78 percent of respondents agreed with the statement: "Fast food and other chain restaurants should list nutritional information on menus and menu boards." Similar results have been obtained in at least three other national surveys (CPSI, n.d.).
- **Menu labeling is a logical extension of packaged food labeling.** Food and beverage producers have been required to post nutritional information on packaged items since 1990, but restaurants and other food vendors have been exempt from the legislation. Advocates of menu labeling say the time has come to level the playing field and make calorie information available on a much broader basis.
- **Menu labeling is the most effective delivery system.** Proponents of the legislation emphasize that putting calorie content directly on menus, menu boards and drive-through displays is essential. The information is much less useful when provided on wall posters, tray liners, counter brochures or websites.

### Criticisms

Opponents of the legislation offer these criticisms:

- It discriminates against and unfairly penalizes large chain restaurants.
- It represents an intrusion by government on personal behavior.
- There is no definitive evidence that menu labeling changes purchasing behavior.
- Calorie count is just one aspect of a food purchase decision. Taste, convenience and price are also important.
- Consumers will be forced to pay more for food as restaurants and vending machine operators raise prices to recover the cost of compliance.

- It will be difficult to ensure the accuracy of most menu information.
- Calorie information is available on the Internet for those who want it.
- Vendors like Starbucks offer tens of thousands of drink combinations, each with a unique set of ingredients. Providing calorie information about every option would be virtually impossible.

Although major trade associations for the restaurant and vending industries were initially opposed to menu labeling regulations, most now support national legislation. They believe a single standard applied consistently across the United States will be easier and less costly to comply with than the proliferation of state and local regulations enacted between 2007 and 2010.

### Impact on Business

Menu labeling regulations are expected to create both challenges and opportunities for approximately 200,000 US restaurants and 85 percent of the vending machine industry. Potential impacts include the following:

- **Cost increases.** Many businesses will incur new costs when the regulations take effect. Staff increases may be necessary to manage compliance, and other costs associated with determining calorie content, producing or modifying menus and maintaining menu accuracy will rise. While cost increases are expected by most restaurant chains and vending machine operators, the total cost of complying with a single set of national regulations should be lower than the cost of meeting many different state and local standards.
- **Gain or loss of business.** Assuming calorie information on menus does change purchasing behavior, restaurants with lower-calorie options may take business away from those that offer higher-calorie fare.



- Liability issues.** If the calorie information proves to be incorrect, restaurants and vending machine operators may be sued by unhappy consumers. The legislation as currently written attempts to reduce the risk of frivolous litigation by requiring a “reasonable basis” for calorie and nutritional claims, rather than exact calorie counts.
- Product reformulation and menu changes.** Some businesses may take steps to revamp their menu offerings—dropping higher calorie items, trimming serving sizes and reformulating products to improve nutritional value. According to the CPSI, chain restaurateurs in New York City cut calorie and fat content on many items after menu posting requirements went into effect in 2007. Starbucks, for example, reduced beverage calories by an average of 14 percent and fat by 35 percent. Calories for pastry items were cut by an average of 5 percent, with fat reduced by 15 percent. See Table 2 for additional examples.
- Higher revenue potential.** Providing nutritional information on menus may help businesses increase revenues. Research conducted at the University of Missouri in 2008 compared customer willingness to pay higher prices for menu items displayed with and without nutritional content. They found that buyers were willing to pay up to \$8.99 for a low-fat menu item when its nutritional content was displayed on the menu. That same item could only command \$6.99 when no nutritional content was present on the menu. Consumers were unwilling to pay any premium for an item perceived as unhealthy, even if nutritional information was shown on the menu. This suggests that businesses may be able to price healthier items more aggressively after menu labeling regulations take effect (Hwang & Lorenzen, 2008).
- Changes to reputation.** As calorie information becomes more widely available, business reputation may be affected, either positively or negatively. Those with higher calorie menu items may be viewed as purveyors of junk food, while those with lower calorie choices may become known as healthier eating places. This happened to Subway following a marketing campaign built around Jared Fogle’s “Subway Diet.” Despite the fact that the majority of Subway’s menu items are not low in calories or fat, the chain was able to create a positive impression about its “healthy” menu, a factor that is believed to have contributed to sales growth.

**Table 2 Changes in calorie count before and after NYC menu labeling regulations**

	Calories	Calories	Change
	March 2007	June 2008	%
Dunkin’ Donuts: Glazed cake stick	490	360	- 130 (27%)
KFC: Boneless buffalo wings	530	420	- 110 (21%)
McDonalds: Fries (large)	570	500	- 70 (12%)
Starbucks: Blueberry muffin	400	320	- 80 (20%)

Source: [http://cspinet.org/new/pdf/reformulation\\_fact\\_sheet.pdf](http://cspinet.org/new/pdf/reformulation_fact_sheet.pdf)



### Additional Business Impact

Although menu labeling legislation will have its most direct effect on chain restaurants and vending machine companies, other businesses may also be impacted. Independent restaurants, catering companies and other food-service providers are expected to come under increasing pressure to provide calorie content on their menus. Doing so may provide a source of differentiation.

Businesses outside the food service industry could also benefit if menu labeling changes their employees' eating behavior. A study issued by the Conference Board in April of 2008 said that obese employees cost US businesses \$45 billion per year in medical expenses and work loss. Any action that reduces obesity in the workplace could therefore be positive for the business community.

### Current Research: Menu Labeling & Purchase Decisions

The key assumption underlying menu labeling legislation is that when consumers know the calorie content of menu items, they will make better food choices and maintain healthier weights. Some academic research supports that assumption; other studies are less conclusive.

In a 2008 review of literature, Lisa Harnack and Simone French of the University of Minnesota reported on six studies assessing the impact of calorie information on food choices. Five of those studies suggested that access to calorie information can improve food choice. Following are highlights of the research:

- Male and female college students across all body-weight categories chose fewer carbohydrate-rich foods when calorie information was provided in cafeterias.
- Female hospital employees across all bodyweight categories bought an average of 10 percent fewer calories per meal when calorie labels were used in the cafeteria.

- About 15 percent of hospital employees who agreed to view nutritional information about food ordered in the cafeteria changed their orders after seeing the information.
- About 20 percent of a group of adolescents modified their meal orders after viewing the calorie content of the foods they had chosen. Three-quarters of those who changed their orders requested fewer calories; the rest ordered higher calorie food.
- After viewing calorie information about four menu items (hamburger platters, turkey sandwiches, chef salads, chicken), study participants said they were less inclined to buy the burger platter and more inclined to buy the turkey sandwich. Purchase intentions for the other items did not change (Harnack & French, 2008).

While these studies support a link between calorie information and food choice, Harnack and French warn that the effect is "small." That conclusion was confirmed in a recent study conducted by the New York City health department comparing purchase behavior in fast-food restaurants before and after menu labeling regulations took effect. According to a report in the Wall Street Journal, one in six fast-food customers said they used the calorie information, and those who did bought about 100 fewer calories than those who did not (Spencer & Wang, 2010).

Most experts agree that menu labeling alone will not solve society's weight problem. However, many consider it an essential element of a public health campaign against obesity.

### Regulatory Environment

The FDA regulates menu labeling and the use of words like "light," "low fat" and "heart healthy" on restaurant menus.

### Acronyms

CSPI: Center for Science and the Public Interest

FDA: Food and Drug Administration  
 NLEA: Nutrition Labeling and Education Act  
 USDA: United States Department of Agriculture

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