



S.1756 - The Common Sense Nutrition Disclosure Act of 2013

Intends to comprehensively address concerns by restaurants and food retailers with FDA's proposed interpretation of Nutrition Labeling of Standard Menu Items at Chain Restaurants provision included as Section 4205 of the Patient Protection and Affordable Care Act (PPACA).

Menu Items with Multiple Servings

Under the regulations proposed by FDA to implement the menu labeling provisions included in Section 4205 of the PPACA, covered establishments must provide calorie information for the whole menu item, irrespective of the number of servings in the product delivered to customers. For example, pizza must be labeled per whole pie, not per slice.

The proposed bill as drafted would permit covered establishments greater flexibility in providing calorie information. Establishments would be allowed to present calorie information by selecting one from among several approaches. These include: for the whole product; the number of servings and the number of calories per serving; or the number of calories per the common unit of division. Accordingly, a restaurant could provide calorie information for pizza by the slice and for a platter of lasagna by the number of servings in the platter and the calories per serving.

Remote Ordering Establishments

The bill would permit establishments that receive the majority of orders from customers who are off-premises – such as restaurants that offer delivery service – to provide calorie information on a remote-access menu, instead of an on-premise menu. Establishments that receive minimal in-store traffic would not be required to purchase and maintain costly calorie labeling of in-store menu boards and, instead, could provide the relevant calorie information either online or with a printed take-away menu made available to customers.

Reasonable Basis

PPACA stipulates that establishments must have a reasonable basis for ascertaining nutrient content disclosure. The bill would clarify the reasonable basis provision so that establishments acting in good faith are not penalized for inadvertent human error and reasonable variations in serving sizes and ingredients.

Variable Menu Items

The regulations as proposed by FDA would require establishments to provide calorie ranges for variable, or “build your own,” menu items – such as pizzas or burritos – even if the range exceeds 1,000 calories. The bill would permit establishments to select from several options the appropriate manner for providing calorie information for variable menu items. Specifically authorized approaches include ranges, averages, individual labeling of flavors or components, or labeling of a preset standard build (the version of the menu item served most commonly).

Restaurants or Similar Retail Food Establishments

The bill would codify FDA's “Option 2” approach to menu labeling by only covering establishments that derive more than half of their total revenue from the sale of food that is prepared on-site. Pre-packaged food (which already has nutrition labeling) would not be considered in this equation. This legislation clarifies FDA's statutory objectives under menu labeling without unnecessarily burdening most grocery stores and convenience stores.