

# SAFEGUARDS

SGS CONSUMER TESTING SERVICES

FOOD

NO. 153/10 SEPTEMBER 2010

## IMPLEMENTATION OF THE MENU LABELING PROVISIONS - AFFORDABLE CARE ACT

On August, 25th 2010 the US Food and Drug Administration (FDA) published draft guidance for the industry regarding the Implementation of the Menu Labeling Provisions of Section 4205 of the Patient Protection and Affordable Care Act of 2010 also known as the Affordable Care Act.<sup>1</sup> The Patient Protection and Affordable Care Act of 2010 was signed into law on March, 23<sup>rd</sup> 2010<sup>2</sup>.

Section 4205 of this Act establishes requirements for nutrition labeling of standard menu items for chain restaurants, similar retail food establishments, and chain vending machine operators. Certain provisions of section 4205 require the FDA to issue rules before they can be implemented. The US FDA is required to issue proposed regulations relation to section 4205 provisions no later than March, 23<sup>rd</sup> 2011. FDA has indicated that a final guidance will be published by December 2010.

Americans consume one-third of their total calories on foods prepared outside of the home<sup>3</sup>. The Center for Disease Control and Prevention (CDC) states that approximately 67% of adults<sup>4</sup> and 31.7% of children ages 2 to 19 are overweight or obese<sup>5</sup>. "Being overweight or obese increases the risk of a number of diseases, including coronary heart disease, type 2 diabetes, stroke and certain type of cancer"<sup>6</sup>.

Section 4205 of the Affordable Care Act amends Section 403 of the Food Drug and Cosmetic Act of 1938. This amendment requires restaurants and similar

retail food establishments with 20 or more locations nationwide to provide calorie information for menu items, food on display and self-service food and additional written nutritional information for menu items. Additionally vending machine operators that own 20 or more machines are to disclose calories for foods.

For these food establishments, the provisions that became requirements immediately upon enactment of the law include:

1. Disclosing the number of calories in each standard menu item on menus and menu boards,
2. Making additional written nutrition information available to consumers upon request,

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<sup>1</sup> [Guidance for Industry – Questions and Answers regarding Implementation of the Menu Labeling](#)

<sup>2</sup> [Provisions of Section 4205 of the Patient Protection and Affordable Care Act of 2010](#)  
[Patient Protection and Affordable Care Act of 2010](#)

<sup>3</sup> [Backgrounder - Keystone Forum on Away-From-Home Foods: Opportunities for Preventing Weight Gain and Obesity Report](#)

<sup>4</sup> [CDC Fast facts – Obese and Overweight](#)

<sup>5</sup> [Ogden, C.L., M. Carroll, L. Curtin, et al., "Prevalence of High Body Mass Index in US Children and Adolescents, 2007-2008," Journal of American Medical Association, 303\(3\), 242-249, 2010](#)

<sup>6</sup> [CDC Overweight and Obesity – Health Consequences](#)

The logo for SGS, consisting of the letters 'SGS' in a bold, sans-serif font. A vertical line is positioned to the right of the letters, and a horizontal line is positioned below the letters, forming an L-shaped frame around the text.

3. Providing a statement on menus and menu boards about the availability of the additional written nutrition information,
4. Providing calorie information (per serving or per food item) for most self-service items and food on display, on a sign adjacent to each food item.

In addition, chain vending machine operators must immediately disclose, in a clear and conspicuous manner, calories for articles of food that do not permit a prospective purchaser to examine the Nutrition Facts Panel before purchasing the article or do not otherwise provide visible nutrition information at the point of purchase.

Establishments covered under this law per the FDA are restaurants or similar retail food establishments that meet all parts of these statements; are part of chains with 20 or more locations, doing business under the same name regardless of ownership and offering for sale substantially the same menu items. Internet menus and take-out menus will need to comply with this law.

Calories will have to be listed on the menu and/or menu boards next to the name of the item in the same size type as the name (or price – whichever is bigger), same type style and same contrasting background. Calories amount is to be listed as per the current regulations under 21 Code of Federal Regulations (CFR) 101.109 ©(1). This will apply to all food which includes meat poultry dished and alcoholic beverages. Foods not include in the law are daily specials, temporary menu items of less than 60 days per calendar year, custom orders, food that is part of a market test of less than 90 days and pre-package items with Nutrition Facts Panel that the consumer can view prior to purchase.

A statement of “Additional nutrition information is available upon request” is required to be posted on all menu and menu boards in the same type style and size as the calories. This additional information will include Calories, Calories from Fat, Total Fat, Saturated Fat, Cholesterol, Sodium, Total Carbohydrate, Sugars, Dietary Fiber and Total Protein.

While this law is more complicated, covers more operations and foods; similar laws have been passed in California (effective January, 1<sup>st</sup> 2011), Davidson County, Tennessee (effective March, 31<sup>st</sup> 2010), King County, Washington

(effective December, 31<sup>st</sup> 2008), Massachusetts (effective November, 1<sup>st</sup> 2010), New York City (effective May, 5<sup>th</sup> 2008), Oregon (effective January, 1<sup>st</sup> 2011) and Philadelphia (effective January, 1<sup>st</sup> 2010).<sup>7</sup>

All SGS laboratories perform US nutritional analysis utilizing Association of Official Analytical Chemists International (AOAC) methodology for determining the macro nutrients and vitamins and Inductively Coupled Plasma/Atomic Absorption (ICP/AA) methodology for determining the minerals concentrations in a wide variety of food products.

SGS will follow up and inform interested parties as developments on issues that affect the commercial industry. Throughout our global network of laboratories, we are able to provide a range of services, including analytical testing, auditing, inspections and consultancy of food articles for the US and worldwide markets. Please do not hesitate to contact us for further information.

<sup>7</sup> [Center for Science in the Public Interest – Comparison of Menu Labeling Policies](#)

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