

Food labeling: nutrition labeling of standard menu items assignment



States and localities are not allowed to have “ additional or different nutrition labeling requirements for food sold in restaurants or similar retail food establishments that are ‘ part of a chain with 20 or more locations doing business under the same name... and offering for sale substantially the same menu items’ [Federal Register, 2011]. Regardless of the region these establishments are located; this regulation will require restaurants to provide nutrition labeling in all their franchises.

For food items that are not subject to federal requirements, States and localities are allowed to impose nutrition labeling requirements and can also have nutrition labeling requirements for foods sold in non-chain (those with less than 20 locations) restaurants as well. It is permissible for States and localities to have certain nutrition labeling requirements for other food that is exempt from nutrition labeling considering that such food is not required to have nutrition labeling under federal requirements [Federal Register, 2011].

This would include food sold in schools, hospitals, movie theaters etc because these establishments would not be considered restaurants or similar retail food establishments [Federal Register, 2011] In the article entitled “ The Myth of Market Failure”, Madden describes market failures as bad deeds in the market, because of these “ bad deeds” government officials assert we need regulations as laws as correctives [Madden].

The FDA believes however, that although the usual market failures that validate regulatory action cannot be found, the main support for government action is the absence of nutritional information which stems from the lack of incentives for restaurants to provide that information on their own [Federal

Register, 2011]. This absence is a standard for market failure. Information asymmetry can be found here as well as “ one party in the transaction has information that puts them at an advantage and the other party at a disadvantage” [Snyder, 2011].

Providing nutrition labels on menu items will give consumers the information they need to make healthier food choices. Due to the costs that will be involved in conducting a nutritional analysis for menu items there will be some negative impacts. The kaldor hicks efficiency can be seen here as well, a consumer will be worse off as estaurants will have to increase their prices to make up for expenses, however they will be “ compensated” as they will now have additional information regarding menu items to help them make informed decisions.

Restaurants will now have new competition as chains will compete as to who can supply the healthiest food with fewer calories, this would be a positive outcome resulting from the proposed regulation if finalized. Other intended positive outcomes would include the reduction of the rate of obesity as well as a healthier society; additionally there would also be an increase in demand or nutritionists as well as dieticians to conduct nutritional analysis on menu items.

According to the FDA the potential cost to the industries in the absence of this new federal regulatory policy could have been several times the cost of the proposed rule; however they are unable to estimate the total cost and benefits if the labeling requirements are not enacted [FDA-2011-F-01 72].

Had the ACA not been enacted, chain retail food establishments would have

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had to acquire nutrition analysis for their menu items and train employees. Establishments that were subject to pre-existing State or local laws will need to remake and replace some of their menus to comply with the proposed requirements [FDA-2011-F-0172].

The expenses incurred to comply with the State and local laws will not reduce the cost of complying with the proposed requirements because the laws and requirements differ. In order to meet the terms of the new proposed requirements, establishments must conduct an analysis to determine the nutrient information for menu items. For restaurants the average per chain cost of analysis will range from \$22, 000 to \$69, 300 with a mean estimate of about \$45, 600 [FDA201 1-801 72].

The FDA estimates however that only about 48 percent of establishments will need to have a nutritional analysis done as other establishments will already have the necessary information [FDA-2011-F-0172]. For large restaurant chains, the estimated cost for analysis will range from a low 1.3 million to a high 35.6 million with a mean of approximately 23.5 million [FDA-201 1-F-01 72]. These new federal requirements will not be applied to temporary menu items, daily specials and foods that are apart of market test therefore only a portion of items would need to be analyzed which can possibly reduce the cost of esting [FDA-2011-F-0172].

There are various stake holders that will be affected by this new proposed rule. The first and most obvious stake holders are consumers. A majority of consumers are supporting this proposed regulation as it gives them the right to have access to the nutrient content of food items that they will be

consuming [Public Health Law Center 2009]. They will be able to make informed decisions on healthy food choices when eating out. This will have a positive impact as it acts as a prevention and intervention method for lowering the rate of obesity.

New competition will arise between chain restaurants to produce healthier food choices for Consumers as a high caloric count on food items may deter consumers from purchasing them, another positive impact of the regulation. The Center for Science in the Public Interest (CSPI) is an organization that acts as a voice of the American public on nutrition [CSPI, 2011]; it greatly supports the proposed regulation however, they do disagree with several of the provisions.

They encourage the FDA to revise the definition of restaurants and similar retail food establishments long with revision on the specific food that needs to have nutritional information [CSPI, 2011]. The National Restaurant Association filed menu labeling comments on July 5, 2011 and are a primary advocate of the regulation. In their comments they had made several suggestions on altering the regulation and state ' We encourage the FDA to incorporate our suggested changes in determining the final regulations.

We want to make it easy for restaurants to share nutrition information with consumers. " [NRA, 201 1] " The Food Marketing Institute (FMI) is the national trade association that conducts rograms in public affairs, food safety, research, education and industry relations" [FMI, 2011]. While the FMI supports this proposed regulation, the agency believes that supermarkets should be excluded. The FMI states that the FDA has grossly underestimated

the number of items required to be labeled at a typical supermarket under the proposed rule which was said to be 40 [FMI, 2011].

They also believe that supermarkets are generally not similar retail food establishments; they support this by stating that congress did not define what the term " similar retail food establishment' is [FMI, 2011]. Opponents to the legislation argue that menu labeling imposes burdens on the restaurant industry which will in turn burden consumer as costs will be shifted to them. The costs of having food items analyzed are very high and can possibly put small enterprises out of business [Public Health Law Center, 2009].

Restaurants are opposing this regulation as they believe that accurate menu labeling is not practical because of continuous changing specials and consumer ordering preferences [Public Health Law Center, 2009]. They also wonder whether menu labeling laws significantly impact consumer choices and behaviors. This is a bit surprising considering the National Restaurant Association is in favor of the proposed law. The Nutrition Labeling and Education Act of 1990, also known as NLEA, added a section to the FD&C which states that food is considered to be misbranded unless it has the appropriate label or if the labeling contains nutrition information.

Regulations that will implement the NLEA must require nutrition labels on food products to include total calories, calories from fat, total fat, saturated fat, sugars, proteins, vitamins and minerals [GPO, 201 1] all of which help consumers make wise food choices. The Menu Education and Labeling Act, also known as MEAL, was conducted on a city and state level in respects to menu

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labeling on a national level [DeLauro, 2009]. This Act was made in hopes of closing any loopholes in the NLEA act which as stated previously requires most food packages to provide nutrition information.

The MEAL act requires that chain restaurants with 20 or more locations to provide consumers with information on calories, sodium, fats and carbohydrates, this indicates that it works hand in hand with the proposed regulation [DeLauro, 2009]. The Department of Health and Human Services is the agency overseeing implementation of the proposed rule. It is the government's principal agency for protecting the health of all Americans and to provide essential human services [DHHS, 201 1]. It works closely with state and local governments.

The departments programs are administered by 11 operating divisions along with 8 agencies in the U. S. Public Health Service and 3 human services agencies CDHHS, 201 1]. Under the department is the Food and Drug Administration (FDA) which is the implementing agency. Its mission is to address food and feed safety, nutrition nd other critical areas to achieve public health goals [FDA, 201 1]. The FDA was chosen as the implementing agency because it is the DHHS agency in charge of food and drug safety, which is one of the missions of the proposed regulation.