THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
FOOD AND DRUG ADMINISTRATION

Draft Guidance for Industry Implementation of the Menu Labeling Provisions of Section 4205 of the Patient Protection and Affordable Care Act	))))	Docket No. FDA-2010-D-0370

COMMENTS OF

CENTER FOR SCIENCE IN THE PUBLIC INTEREST

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October 11, 2010

Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, MD 20852

Re: Docket No. FDA-2010-D-0370
Draft Guidance for Industry: Implementation of the Menu Labeling Provisions of Section 4205 of the Patient Protection and Affordable Care Act

The Center for Science in the Public Interest (CSPI)[1] strongly supports the FDA's draft guidance for menu labeling and respectfully submits the following comments.

Covered establishments. The law is clear that menu labeling should not only apply to chain restaurants, but also to other similar retail food establishments. The FDA's existing definition -- establishments that offer for sale directly to the consumer food for immediate consumption, consumed either on or off the premises where the food is purchased-- will continue to be used for enforcement of the Nutrition Labeling and Education Act (NLEA), and also should apply to menu labeling. It would be confusing and difficult to implement a different definition for menu labeling.

We concur that foods for carry out and delivery are covered by the law. We support the FDA's interpretation that offering substantially the same menu items means that the recipes and preparation techniques are similar, even if the name of the menu item is different. For example, if a restaurant offers the same recipe for its ribs in all restaurants, but calls them Texas Ribs in one location and Tennessee Ribs in another, it is still the same menu item and should be labeled.

We agree with the FDA's examples of covered establishments, including table service restaurants, quick service restaurants, coffee shops, delicatessens, food take out and/or delivery establishments, convenience stores, movie theaters, cafeterias, bakeries/retail confectionary stores, food service vendors (such as, lunch wagons, ice cream shops, mall cookie counters, and sidewalk carts), and transportation carriers (for example, airlines and trains).

Many different kinds of food establishments sell prepared foods for immediate consumption. People need nutrition information about those foods whether that food is eaten sitting down at a table service restaurant or taken back to their desk from a food cart.

[1] CSPI, a nonprofit consumer organization supported by approximately 800,000 members and subscribers to its *Nutrition Action Healthletter*, has worked since 1971 to improve health policies and conduct education programs in the areas of nutrition and food safety.

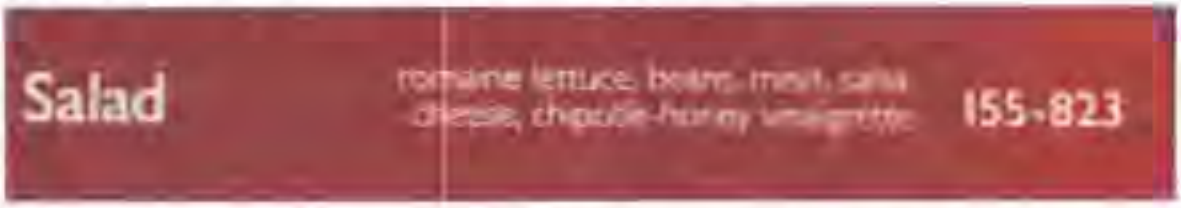
Numerous food-service establishments offer other services or entertainment to their customers. Offering those services does not affect people's need for nutrition information. For example, though people may go to a movie theater primarily to see a movie, the movie theater is also a food-service establishment, selling large amounts of calories through its concession stand. It is essential that theaters provide clear calorie labeling for their popcorn, sugary beverages, and candy. Bowling alleys, amusement parks, stadiums, casinos, miniature golf food stands, and other entertainment venues that sell food also should provide nutrition labeling if they are part of a chain. Hotels with standard menus for their restaurants or in room dining should be covered.

All vending machines owned or operated by a person with 20 or more vending machines are covered by the law. The FDA lacks the authority to exempt any types of vending machines or groups of vending operators. For example, bulk vending machines must be in compliance with the law. It should be relatively easy for companies to post the number of calories next to the price on a gumball vending machine.

Covered food. The FDA should use its established definition of food for menu labeling, as proposed.

Calories must be listed for the standard menu item as offered for sale. The calories posted must be for the menu item, as it is usually offered for sale. The total calorie number posted must include all of the components that are included in the standard menu item and that are listed in the menu description. For example, the menu selection below lists that a salad comes standard with lettuce, beans, meat, salsa, cheese, and dressing. The restaurant is not allowed to include in the calorie range a salad that does not include all those components. That is, the range cannot be listed for a salad with just meat and lettuce or just beans, salsa, and lettuce, or without dressing. The range should be listed as 670-820 calories.

This is not an appropriate calorie posting, since the total calories listed do not include all the components included in the standard menu item:



NYC

Alcoholic beverages and meats must be labeled. We also agree that all standard items listed on a menu or menu board are covered by the law, including meat, poultry, and alcoholic beverages. Wine, beer, and mixed drinks listed on the menu must include calorie labeling. However, mixed drinks, bottles of beer, or glasses of wine at a bar, where a menu is not provided, would not be covered.

Congress clearly did not intend for restaurants to only provide calorie postings on a single medium in each restaurant, as asserted by the National Restaurant

Association. The law clearly requires that all menu boards and menus include calorie labeling. For example, if a restaurant has both an inside and drive-through menu board, both must list calories. In addition, the law requires the information to again be posted for foods on display or in a self-serve arrangement, even if those items also are listed on the menu board. Calories must be supplied again with the other nutrients required in written form, as required in Sec. 4205(b)(ii)(III). The definition of menus and menu boards as the primary writing from which ordering decisions are made was intended to distinguish menus from marketing materials in the store, not to limit the law's labeling requirements to a single medium in each restaurant.

Food on display should be labeled with a sign in proximity to each item for the portion size as usually offered for sale. We agree with FDA's interpretation of the law. The law makes clear that the calories should be provided right next to each item, on a sign. The FDA should clarify that the law does not allow companies to provide the calories via a notebook or pamphlet next to the whole salad bar or buffet line. The law can only be satisfied with a sign posted in immediate proximity to each displayed item.

The information provided must be easy to read from the point where someone is choosing their food. We agree with the FDA that the calories should be at least as large and prominent as the name or price of the item. It will need to be clearly apparent which sign goes with each item, by proximity and by including the name of the product.

In addition, the information should be provided for the portion size of the menu item as offered for sale. For example, calories should be posted for each size beverage available at the fountain-soda dispenser. Scones, muffins, and other items should be labeled for the size of the item as sold. Deli items or prepared foods that are dished up into standard containers should have signs posted next to each item with calories counts for each container size available. For example, potato salad that is typically dished up into half pint, pint, and quart containers should list calories for one half pint of potato salad, one pint of potato salad, and a quart of potato salad. For self-serve items that customers can dish up in varying amounts, the FDA should make clear to companies that they should use the same serving sizes as for packaged food labeling and those should be described in standard household measures. For example, next to the potato salad on the salad bar, calories should be listed as calories per cup.

We support the FDA's interpretation that food on display should be labeled whether the food is accessed by the customer or a restaurant employee. It should include salad bars, buffet lines, cafeteria lines, and self-serve, fountain soft drinks. We encourage the FDA to make clear that it also includes candy on display at a movie theater; pastries or doughnuts at a bakery, doughnut shop, or grocery store; ice cream behind a glass case in an ice cream shop; burrito components that customers can see and choose among at restaurants like Chipotle; and sandwich fixings at a deli. We agree that an extra calorie tag is not needed if a customer can pick up an item and easily examine its Nutrition Facts label prior to purchasing it, such as an open rack of packaged chips.

Custom orders. We support the FDA's interpretation of custom orders.

Calorie disclosures

Definition of menus and menu boards. We support the FDA's interpretation of the definition of menus and menu boards. The law is clear that calories must be posted directly on drive-through menu boards. The law does not allow for restaurants to use alternative signs or stanchions as an substitute to drive-through menu boards. Even given different zoning laws around the country, drive-through menu board have ample room for calories (though, marketing messages and photos of menu items may need to be altered to accommodate the calorie postings).

We agree that specialty menus, beverage menus, children's menus, and all other menus from which people order must include calorie labeling. We also agree that Internet menus and take out menus are covered, since a great deal of food is ordered to carry out and people often make ordering decisions off of Internet menus. On airlines, product lists in airline magazines also should include calorie labeling.

It is vital that the calorie postings be clear and conspicuous. As menus and menu boards come in different sizes and designs, we realize that the FDA cannot specify a particular font or size for calorie postings. The calorie labeling should be at least as large as the name or price of the item, whichever is larger. Equally as important is the FDA guidance that the calories be as prominent as the name or price. The color, font size, font type, contrasting background, and other characteristics should all be comparable to the name and price of the item, making it as easy to see and read as the other core ordering information.

In addition, calorie numbers over 1,000 must include a comma to make it easier for people to read the numbers. People are accustomed to seeing commas after the thousands place. Menus should comply with that standard way of presenting numbers. For example, calories should be posted as 1,220, not as 1220.

Calorie postings must be adjacent to the menu item. It must be clear which calorie number goes with which menu item. To facilitate readability, the number of calories should be directly to the right of the menu item and to the left of the price. Also, this proximity is essential to making the calorie information easy to use. For example, the calories for vending machines, foods on display, and self-serve foods must be immediately adjacent to the item. The law does not allow for companies to list the calories together on a single poster, sign, or pamphlet. For example, a company could not meet the requirements of the law by posting a sign listing the calorie counts for all the items in a vending machine together on a single sign. The information must be posted immediately adjacent to the food item or the selection button on vending machines.

Rounding calorie numbers is essential. It is essential that calorie numbers be rounded as the FDA has laid out in its guidance, and as is required for Nutrition Facts labels. Unrounded calorie numbers would imply a precision that is misleading. Also, it is harder to make comparisons between unrounded numbers.

Additional written nutrition information

The statement regarding the availability of additional nutrition information should be prominent and readily obvious on menus and menu boards. The font size should be at least as large as menu item names or prices on the menu. The color, font size, font type, contrasting background, and other characteristics all should be as prominent as the name and price of the menu items, making it as easy to see and read as the other basic ordering information.

We agree with the FDA guidance that the statement should appear once on menu boards. For menus, the statement should appear at the bottom of the first page or at the first appearance of the term "calories." For menus with more than two pages, the statement may appear either on every page. Alternatively, on succeeding pages, there should be a symbol linking the calorie labeling to the required statement.

Trans fat should be included among the additional nutrients provided. We agree with the FDA guidance that trans fat should be included and urge the FDA to require this through its menu labeling regulations, given the detrimental health effects of trans fat and that trans fat is required to be listed on Nutrition Facts labels.

Format of the additional nutrition information. The FDA should give more guidance about the format that companies should use to provide the additional nutrition information. The written materials should be easy to read. The information should be provided in a font size no smaller than 12 point, should not be in all capital letters (which are hard to read), and should have a contrasting background. It also should be in the same order as the menu or menu board, to make the menu items easier to find on the pamphlet/poster.

The information should be readily available. It should not be provided in a format that requires people to leave their place in line or leave their table to access the information. In addition, the nutrition information should not be given in a format that greatly hinders the speed of ordering. For example, the additional nutrition information should not be provided via a poster at the back of the restaurant. The format also should allow people to make comparisons between menu items. For example, information provided through a computer kiosk on which only one menu item can be pulled up at a time should not satisfy this requirement.

Additional comments in response to agency questions.

Contractors/managed food service. Food sold by contractors and managed food service should be covered if the establishments run by the company offer for sale substantially the same menu items using standardized recipes. For example, if a school food service uses a central kitchen or cooks the same menu and recipes for more than 20 schools, it should provide calorie and other nutrition labeling on any menu boards at school, on-line menus, or menus sent home to parents. If a food service management company cooks the same recipes and has substantially similar menus at different workplace cafeterias or on college

campuses, those cafeterias should provide calorie labeling. What is relevant to the law is that the company name is the same (i.e., ARAMARK, Compass Group, or Bon Appetit), not the name of the workplace or its cafeteria. If the majority of the menu items and recipes are tailored specifically to an individual workplace, we agree that would not be covered. Airlines that serve the same menu items or recipes on more than 20 planes are covered.

Prepared foods at grocery and convenience stores should be labeled. Grocery stores sell a great deal of food for immediate consumption. It would be unfair if a stand-alone bakery had to provide calorie labeling, but the bakery in a grocery store did not. Grocery stores should provide calorie labeling for bakery items, prepared deli foods (such as pasta salad, chicken salad, or sandwiches), prepared meals and side dishes, freshly cooked pizza, fountain soft drinks, salad bars, and other food for immediate consumption. Although grocery stores sell many packaged foods that are covered by the Nutrition Labeling and Education Act, they also act as similar retail food establishments, and must provide nutrition labeling to their customers for their prepared foods. The same is true for prepared foods in convenience stores, such as hot dogs, burritos, doughnuts, and fountain soft drinks.

The law does not allow an exemption from menu labeling for grocery or convenience stores based on an arbitrary percentage of total sales that are from food for immediate consumption (just as it does not allow for such an exemption for movie theaters or other retail food establishments that make money from activities other than food sales). Also, Congress clearly intended for take-out foods to be labeled. Industry assertions that the type of container the food is placed in or the provision of utensils as an indication of whether a food must be labeled are erroneous. In addition, many restaurant foods are served in multiple servings (for example, loaves of bread, whole cakes, whole pizzas, and buckets of chicken) or are sold by weight (for example, deli salads). Such foods from grocery stores are not exempt from menu labeling.

Finally, the type of ownership of grocery stores, such as a co-op, is irrelevant to whether a store is considered a chain. The law clearly requires chains operating under the same name to provide calorie labeling, regardless of the type of ownership. Grocery store co-ops face a similar situation as that faced by independent franchise owners of chain restaurants.

Menu items must be labeled as offered for sale, even if they provide multiple servings. The law is clear: calories must be posted per menu item as it is usually offered for sale. The FDA cannot allow and restaurants cannot choose to label items for only a fraction of a menu item. For example, the calorie count for an appetizer cannot be divided into four servings. It must be labeled as it is listed on the menu.

Serving size information on packaged foods can be confusing. In one study, two-thirds of people could not correctly calculate the nutrition information in a 20-ounce bottle of soda that was labeled as 2.5 servings.[2] People will have similar difficulties understanding the nutrition information for menu items if they are labeled as having more than one serving.

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2 Rothman R., Housam R., Weiss H., et al. "Patient Understanding of Food Labels: The Role of Literacy and Numeracy." *American Journal of Preventive Medicine* 2006, vol. 31 (5), pp. 391-398.

In addition, it would be deceptive to label muffins, pastries, desserts, entrees, and other menu items as multiple servings since they are often consumed by one person.

People tend to finish what is on their plate when eating out. In one study, 69% of people said they finished their meal in a restaurant most or all of the time. Thirty percent of people said they base the amount of food they eat on how much they are served.[3] Studies demonstrate that restaurant diners consume more food when they are served larger rather than smaller portions. [4] It would be misleading to allow restaurants to apply the small serving sizes on packaged foods to menus.

Even for items clearly meant for more than one person, it will be clearer to let diners determine how many people will share it and divide the calories accordingly. For example, if a pizza shop labeled a large pizza as three servings, but a family of four shared it, the math would get complicated. Same would be true of a baguette, a cake, or a bucket of chicken. Additionally, it is important that people be able to easily compare items on the menu without having to bring a calculator. For example, if the whole menu item is labeled, it would be easier for a person to compare and choose between a chicken quesadilla appetizer and quesadilla entrée.

Variable menu items and combination meals. In writing the menu labeling regulations, the FDA should help to ensure that restaurants and similar retail food establishments provide meaningful nutrition labeling for menu items that come in multiple flavors and varieties and combination meals. Such labeling should be done in as uniform a manner across the industry as possible to ease consumer use of the information and reduce confusion.

Variable menu items do not include different sizes of an item that are listed on the menu. The FDA should make clear that each size of a menu item listed on the menu, menu board, or display tag, must be accompanied by a calorie posting. For example, calorie information should be provided for all servings sizes of soft drinks or French fries. Those items do not constitute variable menu items.

This provision also does not apply to items that are listed on the menu that can be put together in varying combinations (the law requires all items listed on the menu to be labeled). Calories must be posted for each pizza topping, sandwich component, omelet selection, sundae toppings, or salad ingredient or dressing that is listed on the menu or that is on display. For example, the calorie postings in Figure 1 are not in compliance with the law. Each option listed on the menu should be labeled as in Figure 2.

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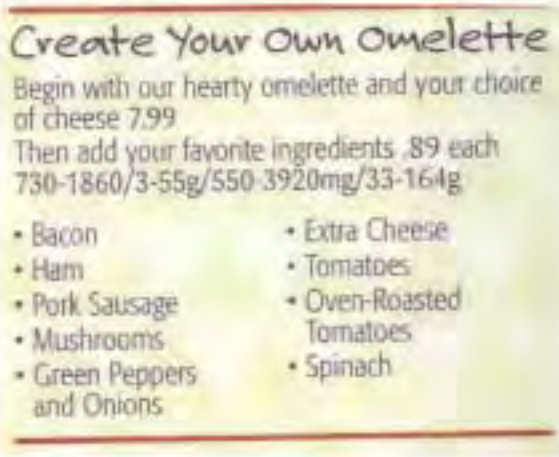
3 American Institute for Cancer Research. *Awareness and Action: AICR Surveys on Portion Size, Nutrition, and Cancer Risk*. Washington, D.C.: AICR, 2003.

4 Diliberti N, Bordi PL, Conklin MT, Roe LS, Rolls BJ. "Increased Portion Size Leads to Increased Energy Intake in a Restaurant Meal." *Obesity Research* 2004, vol. 12(3), pp.562-568.

Figure 1: Not allowed

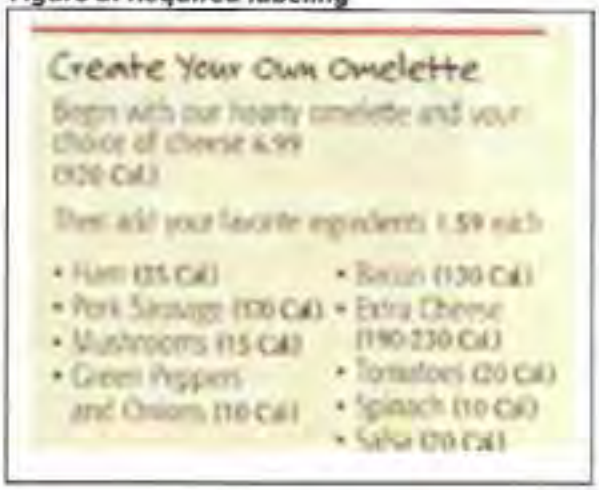


Create Your Own Omelette

Begin with our hearty omelette and your choice of cheese 7.99
Then add your favorite ingredients .89 each
730-1860/3-55g/550-3920mg/33-164g

- Bacon
- Ham
- Pork Sausage
- Mushrooms
- Green Peppers and Onions
- Extra Cheese
- Tomatoes
- Oven-Roasted Tomatoes
- Spinach

Figure 2: Required labeling



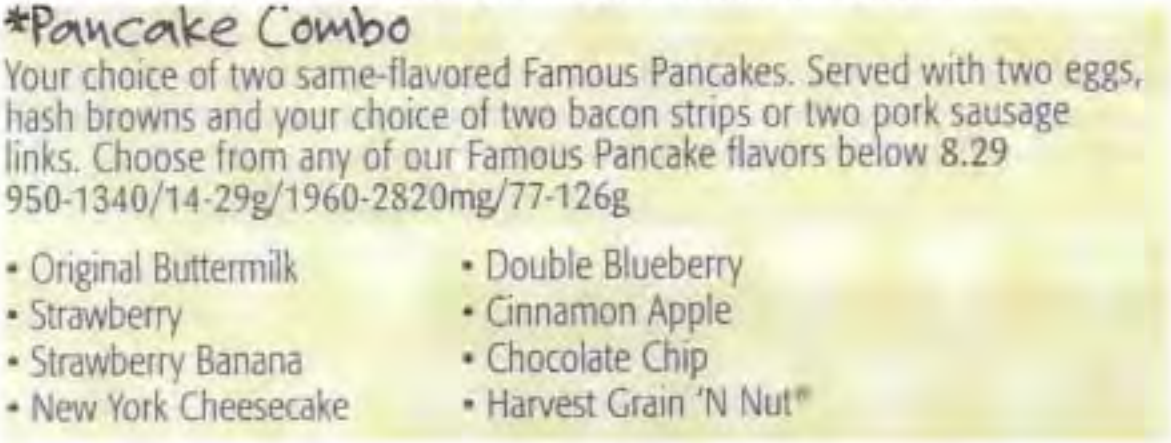
Create Your Own Omelette

Begin with our hearty omelette and your choice of cheese 6.99
(920 Cal.)

Then add your favorite ingredients 1.59 each

- Ham (35 Cal.)
- Pork Sausage (100 Cal.)
- Mushrooms (15 Cal.)
- Green Peppers and Onions (10 Cal.)
- Bacon (130 Cal.)
- Extra Cheese (190-230 Cal.)
- Tomatoes (20 Cal.)
- Spinach (10 Cal.)
- Salsa (70 Cal.)

The following menu also would not be in compliance with the law. Each pancake flavor listed on the menu should be accompanied by the calorie count in that item.

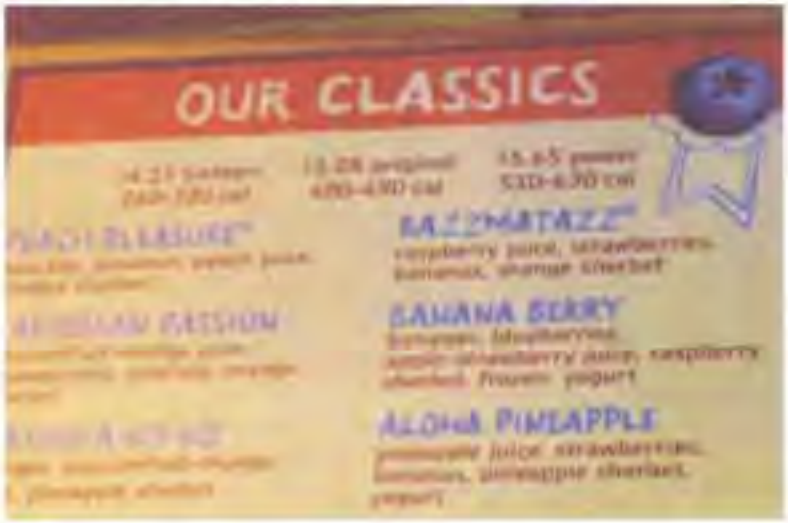


*Pancake Combo

Your choice of two same-flavored Famous Pancakes. Served with two eggs, hash browns and your choice of two bacon strips or two pork sausage links. Choose from any of our Famous Pancake flavors below 8.29
950-1340/14-29g/1960-2820mg/77-126g

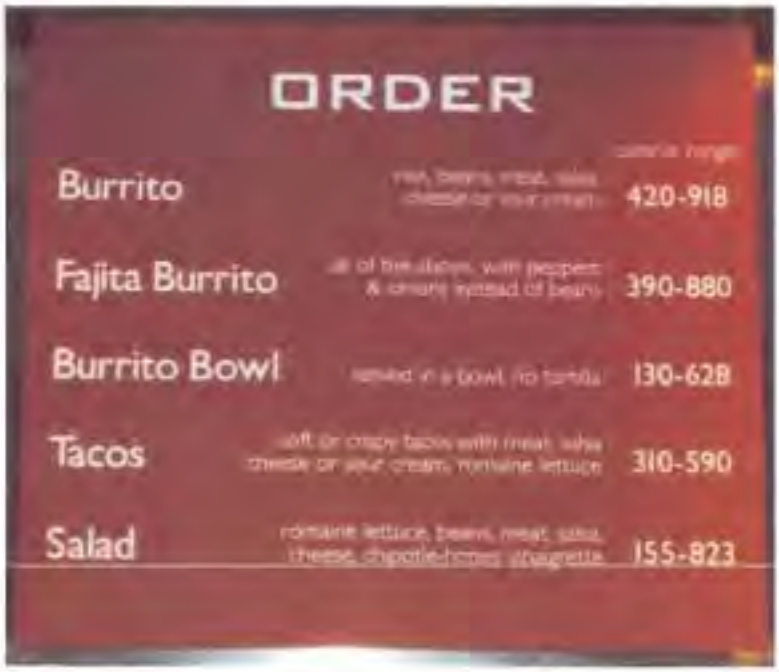
- Original Buttermilk
- Strawberry
- Strawberry Banana
- New York Cheesecake
- Double Blueberry
- Cinnamon Apple
- Chocolate Chip
- Harvest Grain 'N Nut®

The menu below also would not in compliance with the law. The calorie content of each smoothie listed on the menu must be posted next to each type of smoothie.



The FDA should ensure that restaurants post ranges of calories as infrequently as possible. Posting wide ranges of calories for a single menu item is not informative to customers and does not allow them to make informed choices. For example, a menu listing that the calories for a burrito could range from 400 to 900 calories does not allow a person to make an informed choice (as shown below). If ranges are used, the calories for the menu options that are responsible for that range must be disclosed.

Posting a wide range of calories (as in the menu below) is not informative to customers.



For menu items that come in different flavors, varieties, or combinations but that are listed as a single menu item, the median value for calories or other nutrients for all flavors, varieties, or combinations should be listed on menus or menu boards if the calories for all flavors, varieties or combinations are within 20% of the median. Listing the median would be easier for restaurants to post and easier for customers to read and use than ranges. For example, the median calorie content for a single scoop, sugar cone ice cream should be listed next to the single scoop cone option on the menu board, as long as the calories for all available flavors are within 20% of the median.

If the calories or other nutrient values are not within 20% of the median, then the range for all the flavors, varieties, or combinations of the complete menu item should be listed from the lowest to the highest value and the restaurant must disclose the calories for each menu choice that is responsible for the range. That could be accomplished in a number of ways, depending on the type of menu and the choice of options that contributes to there being a range:

- If a menu item that comes in different varieties is on display, the calories will be listed on a placard adjacent to the item, as required by law. For example, muffins could be listed on the menu board as 420-630 calories. The basis for that range would be explained because each muffin in the bakery case would be accompanied by a display tag listing the calories for each type of muffin.

- Often menu items include a main dish with a choice of sides or toppings, and those sides and toppings are described on the menu. The menu should list calories for each side and for the main dish in the description on the menu. For example, a menu would read:

  Pancake Combo 1,200-1,420 calories $8.20

  Two pancakes (600 calories) served with two eggs (200 calories), hash brown (300 calories), and your choice of two bacon strips (100 calories) or two pork sausage (320 calories).

  However, if the main dish (for example, an omelet) has a description of ingredients like green pepper, tomato, etc., that are not choices but are the standard ingredients for the item, the calories for those ingredients do not have to be listed. For example, it could be listed as:

  The Big Steak Omlette 1,490 calories $10.59

  Tender strips of steak, hash browns, green peppers, onions, tomatoes and cheddar cheese. Served with salsa.

- If a menu item is not on display or the variable components of the menu item are not listed on the menu, nutrition information for each individual flavor or variety or each individual menu item that can be chosen as part of a combo meal should be provided by means of an in-store brochure, booklet, or other device that is easily

accessible to customers at the point of ordering. Signage should alert customers to the availability of such information.

For combination meals, the standard or default options should be used to calculate the calories for the menu or menu board. For example, if the meal depicted on the menu board is shown with fries, then calories for the meal should be calculated including fries. In addition, if more than a majority (50%) of a certain meal is sold with a particular type of beverage or side dish, those items should be used to calculate the posted calories. For example, since the majority of combo meals are sold with full-calorie soft drinks, the calories for the meal including a full-calorie soft drink should be posted.

Statement of suggested calorie intake. The law requires menus and menu boards to include a succinct statement regarding suggested daily caloric intake to enable the public to understand the calorie labeling for individual items and put them into context of a daily diet. The contextual statement should be clear, easy to comprehend, and help people understand how the posted calories on the menu compare to recommended calorie intakes.

Of course, recommended calorie intakes vary for individuals based on gender, weight status, and activity levels. The FDA should require the use of a calorie recommendation suitable to the U.S. population. In determining the population calorie recommendation, the FDA should consider that two-thirds of American adults and one-third of children are either overweight or obese and just 45% of adults meet physical activity recommendations.[5] The calorie recommendation should be protective of the population. In this case, the FDA should use the lower end of calorie recommendations, rather than the upper end, otherwise it risks encouraging overeating by a significant proportion of the population. It would make sense, and minimize consumer confusion, to keep the calorie recommendation the same as the 2,000 calories on Nutrition Facts labels. Thus, we recommend that the following statement be put on menus and menu boards:

"The Average Adult Should Consume about 2,000 Calories a Day."

If the calorie basis for Daily Values is changed for packaged food labeling, the FDA should adjust the menu contextual statement to make it consistent.

The FDA should develop and encourage the use of a similar statement for children's menus, based on average calorie requirements for young children.

This statement should be prominent and readily obvious on menus and menu boards. The font size should be *at least* as large as the largest menu item name or price on the menu. The color, font size, font type, contrasting background, and other characteristics should all be as prominent as the names and prices of menu items, making it as easy to see and read as other basic ordering information.

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5 Macera CA, Jones DA, Yore MM, et al. "Prevalence of Physical Activity, Including Lifestyle Activities Among Adults -- United States, 2000--2001." *MMWR* 2003, vol. 52(32), pp. 764-769.

The statement should be placed at least once on each menu board. For menus, it should be present on each page view that contains labeled menu items (i.e., when the menu is open, the statement should be on one of the pages in view).

Enforcement and implementation

We suggest that the FDA give restaurants six months to comply from the date of issuing the final menu labeling guidance to the date when FDA begins full enforcement of menu labeling. Most large chains already have analyzed the calorie content of their menu items because they have outlets in cities or states that already require restaurant labeling. Even for those that do not have it, menu analysis should be underway given the guidance from the FDA already and menu redesign should be possible within six months.

The law permits states and localities to enforce menu labeling, as long as the requirements are the same as the national law. We urge the FDA to work with states and localities to add menu labeling to their restaurant inspections. Ideally, menu-labeling provisions should be added to the Model Food Code in its next revision. The states and localities that have already passed menu labeling laws or regulations are likely to be willing. The key activity by restaurant inspectors would be to check that the information is posted in the appropriate format.

Restaurant inspections are historically a state and local responsibility. States and localities have the legal and labor infrastructure in place. It would be inefficient, redundant, and expensive to have FDA inspectors going into all chain restaurants around the country. It would be most effective and cost efficient to work through this strong, existing state and local infrastructure. The FDA could provide training and guidance to states and localities regarding menu labeling enforcement.

The FDA should allow (and encourage) state and local jurisdictions to impose penalties for noncompliance and allow them to be compensated for the additional work of menu inspections.

To make menu labeling as useful as possible, the FDA, working together with state and local health departments, and perhaps the National Restaurant Association and local affiliates, should mount as large and persistent an education campaign as possible. Some observers suggest that Nutrition Facts labels have not been as effective as they could be due to the lack of an education program. Let's not make that mistake again. The reductions in calories purchased in restaurants could be augmented by a vigorous education campaign.

Again, we strongly support the FDA's guidance on menu labeling. We would be happy to talk further about the menu labeling guidance and elaborate on our comments.

For more information contact, Margo G. Wootan, D.Sc., Director of Nutrition Policy, Center for Science in the Public Interest.

Exercise surprises, p. 7 | Improving food labels, p. 12 | Simple salmon, back cover

DECEMBER 2009
$2.50

Nutrition Action HEALTH LETTER

CENTER FOR SCIENCE IN THE PUBLIC INTEREST

BIG

MOVIE THEATERS FILL BUCKETS...AND BELLIES

BY JAYNE HURLEY & BONNIE LIEBMAN

Ready to sit back and enjoy the movie? Not yet. First, the theater is hoping you'll stop by the concession stand for a snack. You know, something light...like, say, a bucket of popcorn with the calories of a Hamburger plus a Quarter Pounder plus a Big Mac at McDonald's.

Surely, no one expects you to sit through a two-hour movie with nothing to eat or drink. After all, you're burning dozens of calories in there, what with all that leg crossing, shifting around in your seat...and reaching for some popcorn.

With all that activity, you can really work up an appetite, especially if you're still growing. And, sad to say, many adults are.

Continued on p. 2.

BIG Movie Theaters Fill Buckets ...and BELLIES

What's the healthiest snack to buy at the movies? You can go for 400 to 1,200 calories' worth of popcorn that (at many theaters) is essentially fried in one to three days' worth of saturated fat. Or you can buy a package of candy with 300 to 1,100 empty calories (plus at least half a day's sat fat if it's chocolate). Soft drinks dispatch another 150 to 500 calories to your thirsty fat cells. The best snack at the movies? No snack at all.

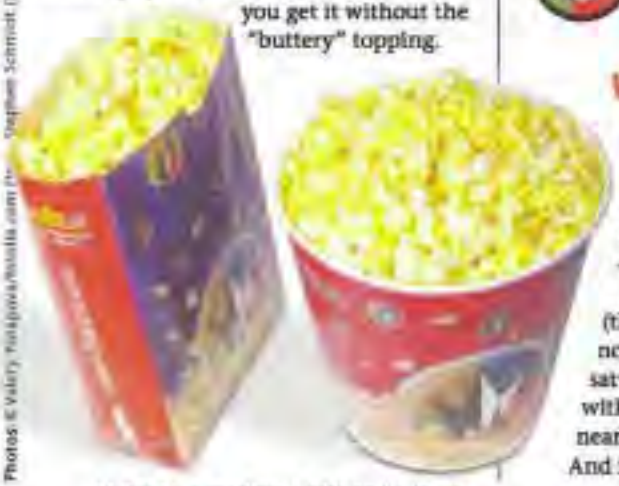
Information compiled by Amy Ramsay, with help from Melissa Fryputnewicz.

POPCORN

"Did you know that popcorn is among the healthiest—and tastiest—snacks around?" asks the Web site of the Popcorn Board, an industry group. "It's a whole grain food that's low in calories and fat and it's a complex carbohydrate."

Maybe that's one reason people fork over $4 to $8 for a bag or tub of popcorn when they enter a movie theater. It sounds like they're munching on a stalk of broccoli, for goodness sakes.

Turns out the Popcorn Board is right...*if* you're talking low-fat popcorn or (fat-free) air-popped. Eating a tub of *movie theater* popcorn is more like eating an 8 oz. bag of potato chips, and that's assuming your theater pops in the best oil available *and* you get it without the "buttery" topping.



Photos © Valery Rokhovets/fotolia.com (top); Stephen Schmidt (bottom)

At Regal, a medium (left) and a large popcorn each has 1,200 calories and three days' worth of saturated fat.

Here's what we found when we sent samples of popcorn and toppings from the three largest theater chains to an independent lab for analysis. (Each gave us nutrition facts for its popcorn. But just to be sure, we analyzed samples from three different theaters for each chain. For two of the chains—Regal and AMC—we went to theaters in the Washington, D.C., area. For Cinemark, our samples came from Texas, Illinois, and Maryland.)

REGAL ENTERTAINMENT GROUP®

WITH 548 theaters in 39 states plus the District of Columbia, Regal is the largest chain in the United States. It pops in coconut oil, which is 90 percent saturated. (In contrast, lard is 40 percent saturated.)

Translation: A "small" popcorn (that's about 11 cups' worth) with no buttery topping has 34 grams of saturated fat. So even if you split it with a friend (unlikely), you each get nearly a day's worth of artery paste. And it gets worse from there.

A "medium" (20 cups) or a "large" (also 20 cups) has 60 grams of sat fat. Of course, a large means a free refill (Yay!), so there's no limit to the damage you can do.

Suggestion: Move your cardiologist's phone number to your speed dial before the lights go down.

Just kidding. It takes years to clog those arteries...and years for your blood pressure to respond to the salt shock. (550 milligrams of sodium—a third of a day's worth—for a small and 980 mg for a medium or large).

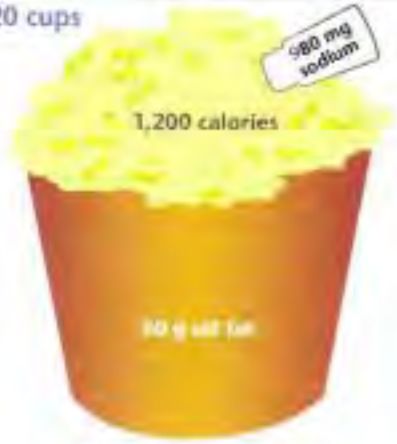
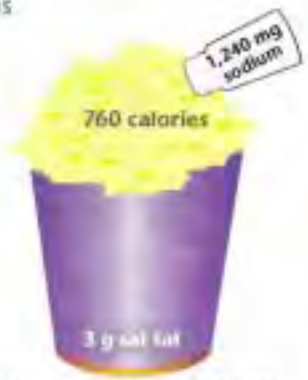
The calories, on the other hand, may show up much sooner...and where you least want them.

Budget 670 for a small and 1,200 for a medium or large. You could think of each small as a Pizza Hut Personal Pan Pepperoni Pizza and each medium or large as two. But the two pizzas pack "only" a day's worth of sat fat—nowhere near the three days' worth in a medium or large popcorn.

How can a medium and large at Regal each hold the same 20 cups of popcorn?

Simple. The taller medium comes in a bag with straight sides, while the squatter large comes in a tapered tub that's wider at the top (see photo). The tub sure looks like it holds more. Other than for the free refill (shudder), why else would moviegoers pay $8 for a large (a medium is $7)?

Nutrition Action Healthletter (ISSN 0885-7792) is published 10 times a year (monthly except bi-monthly in Jan./Feb. and Jul./Aug.).
POSTMASTER: Send changes to *Nutrition Action Healthletter*, 1875 Connecticut Ave., N.W., Suite 300, Washington, DC 20009-5728.
Application to mail at Periodical postage rates approved at post office of Washington, DC, and at additional offices.
 One-year subscription (10 issues): $24. Two years: $42. – Vol. 36 No. 10

	REGAL (popped in coconut oil)	AMC (popped in coconut oil)	CINEMARK (popped in non-hydrogenated canola oil)
SMALL	11 cups  1 Tbs. "buttery" topping adds 130 calories 2 g sat fat 0 g trans fat	6 cups  1 Tbs. "buttery" topping adds 120 calories 2 g sat fat 0 g trans fat	8 cups  1 Tbs. "buttery" topping adds 130 calories 2 g sat fat 0 g trans fat 1 Tbs. butter topping adds 130 calories 9 g sat fat 0.4 g trans fat
MEDIUM	20 cups  1½ Tbs. "buttery" topping adds 200 calories 3 g sat fat 0 g trans fat	9 cups  1½ Tbs. "buttery" topping adds 180 calories 3 g sat fat 0 g trans fat	14 cups  1½ Tbs. "buttery" topping adds 200 calories 3 g sat fat 0 g trans fat 1½ Tbs. butter topping adds 200 calories 14 g sat fat 0.6 g trans fat
LARGE	20 cups  2 Tbs. "buttery" topping adds 260 calories 4 g sat fat 0 g trans fat	16 cups  2 Tbs. "buttery" topping adds 240 calories 4 g sat fat 0 g trans fat	17 cups  2 Tbs. "buttery" topping adds 260 calories 5 g sat fat 0 g trans fat 2 Tbs. butter topping adds 260 calories 18 g sat fat 0.7 g trans fat

Notes: Cup estimates based on 11 grams of popcorn per cup. Topping serving sizes for all chains based on Regal numbers. Daily limits for 2,000 cals: Sat Fat: 20 g, Sodium: 1,500 mg.

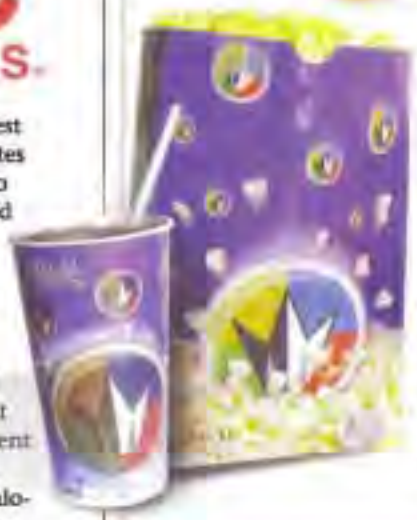
Another oopsy-daisy: According to Regal, a medium has 720 calories, while a large has 960 calories. Both are lower than our lab results. Oh well. What's an extra 200 to 500 calories when your snack hovers around the 1,000-calorie mark? They don't call them tubs for nothing.

Toppings: For customers who think plain popcorn isn't soaked in enough oil, Regal offers a "buttery" topping. According to Regal and the topping manufacturer, it adds 130 calories to a small, 200 calories to a medium, and 260 calories to a large.

We analyzed the topping to make sure that it had no trans fat. But we didn't check to see how much topping the concession staff at Regal—or any other chain—adds. Odds are, it varies. And odds are, it's more than what Regal claims.

>>>>>

COMBOS



A combo at Regal (medium popcorn plus medium soda) has 1,610 calories. That's like eating six scrambled eggs with cheddar cheese, four bacon strips, and four sausage links before the lights come up.

	Calories	Sat Fat (g)
REGAL		
1 medium popcorn, 1 medium soda	1,610	60
1 large popcorn, 2 medium sodas	2,020	60
AMC		
1 large popcorn, 1 large soda	1,440	57
1 large popcorn, 2 large sodas	1,850	57
CINEMARK		
1 large popcorn, 1 large soda	1,320	4
1 large popcorn, 2 large sodas	1,730	4

AMC THEATRES

AMC, the nation's second-largest chain (with 307 theaters in 30 states and the District of Columbia), also pops in coconut oil. The only good news: AMC's popcorns aren't as super-sized as Regal's. But they're bigger than the company acknowledges.

According to AMC, a small popcorn contains 225 calories. In fact, the small AMC popcorns that we bought weighed about 50 percent more than the company claimed. Our AMC smalls contained 370 calories and 20 grams of saturated fat—about what you'd get from that classic healthy snack: eight pats of butter.

Based on what we were served, AMC lowballs its other sizes as well.

For example, the company's 430-calorie medium morphed into 590 calories and 33 grams of saturated fat. And the 660-calorie large became a 1,030-calorie behemoth with 57 grams of sat fat. It's like eating a pound of baby back ribs topped with a scoop of Häagen-Dazs ice cream (except for the extra day's worth of sat fat in the popcorn).

What's next: fun-house mirrors that make you look skinny on your way out of the theater?

Toppings: Fake-butter fans must love AMC. The chain lets patrons pump their own "buttery" topping. No skimpy tablespoon of extra fat on a small or two tablespoons on a large, like Regal claims to use. With 120 calories per tablespoon, you should be able to squeeze another 200 to 500 calories into the bucket of fat cells in your lap.

CINEMARK

The Best Seat in Town

Cinemark, with 296 theaters in 39 states, deserves some applause. The nation's third largest chain pops in non-hydrogenated canola oil instead of coconut.

Assuming you add no "buttery" topping, your heart can escape a Cinemark popcorn relatively unscathed. Your belly (and blood pressure) won't be so lucky.

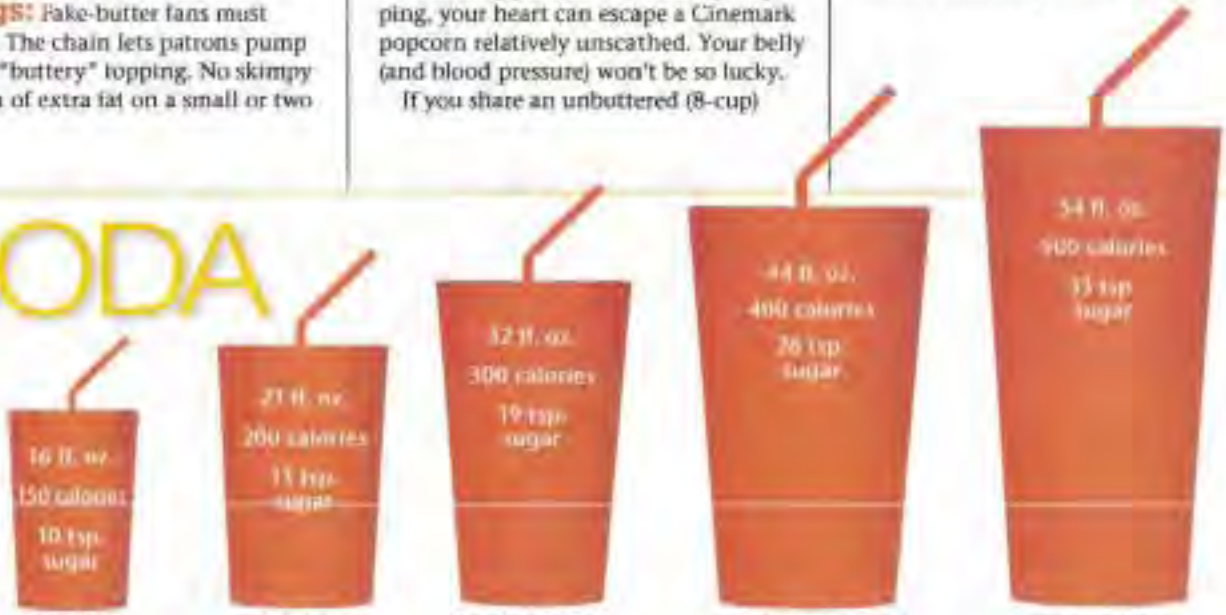
If you share an unbuttered (8-cup) small with a fellow moviegoer, each of you will walk away with about 200 calories (seasoned with 340 milligrams of sodium).

That's the best you can expect from movie theater popcorn, unless you ask the theater to pop you a batch without salt. (All the Cinemark, AMC, and Regal locations we called said they would do that.)

A medium popcorn (14 cups) at Cinemark reaches 760 calories and a large (17 cups) hits 910 calories (and 1,500 mg of sodium—an entire day's quota). Since when is half-a-day's-calories' worth of corn, oil, and salt called a "snack"? Maybe since America started competing in the Sumo Belly-Lifting Olympics.

Photo: Stephen Schmidt

SODA



Notes: Ice takes up about a quarter of the cup. There are 4 grams of sugar in every teaspoon.

Toppings: Cinemark may use the healthiest popping oil, but you can still run into problems at the pump.

At some Cinemarks, the topping is essentially the same "buttery" non-hydrogenated soybean oil used by other chains. So for each tablespoon that you (or the servers) pour over your popcorn, you're adding another 130 calories that (we're guessing) you won't burn by the end of the day.

At other Cinemarks (especially in the West), the topping is made from real butter. Would you add butter to your French fries?

Each tablespoon of the butter topping delivers 9 grams of saturated fat—half a day's limit—plus 0.4 grams of naturally occurring trans fat, which will boost your LDL ("bad") cholesterol as much as man-made trans does.

So get out the calculator...and that extra dose of Lipitor. You just turned your large popcorn into two Big Macs.

SODAS & COMBOS

A bag or tub of popcorn can make you thirsty, and theaters aren't about to let their customers suffer. So they offer sodas to wash down the salt and oil.

A small ranges from 16 ounces (2 cups) at Cinemark to 32 ounces (4 cups) at Regal. Assume that about a quarter of it is filled with ice. Even so, you're talking 150 to 300 calories' worth of sugar (unless you get a diet soda or water).

A large is only for those who possess a reinforced bladder (or arrive with a supply of Depends). It ranges from 44 ounces (5½ cups) at Cinemark or AMC to 54 ounces (nearly 7 cups) at Regal. Okay, so you may not need an extra 400 to 500 calories—and 26 to 33 teaspoons of sugar—right now. But who knows? Maybe a famine is just around the corner.

To save you money (how thoughtful), theaters offer combos. For example, for a mere $12, Regal hands you a medium popcorn and a medium soft drink, and AMC dishes up a large popcorn and a large soda. Where else can you be so distracted (by the movie) that you don't realize you've just swallowed 1,400 to 1,600 calories?

A combo for two people is even more economical. At Regal (1 large popcorn and 2 medium sodas) and AMC (1 large popcorn and 2 large drinks), you pay about $17 for roughly 2,000 calories. What a deal. You'll still have money left over for dinner and dessert after the movie.

True, you might be a tad less hungry if you go back for a free refill. The problem is, you have to walk all the way to the concession stand for it. That's dozens of steps!

Maybe someday theaters will have employees walk up and down the aisles offering free refills of popcorn and soda during the movie. In the meantime, they could at least offer bigger buckets. Maybe garbage bags would work.

Photo: Stephen Schmidt.

CANDY

An 8 oz. bag (1 cup) has as many calories (around 1,200) as a 16 oz. T-bone steak plus a buttered baked potato.

Theaters stock oversized packages of candy (usually 4 to 5 ounces) so you don't find yourself halfway through a thriller with your mouth empty. (Heads up: the calories, saturated fat, and other numbers printed on the box are typically for a puny 1½-ounce serving, which you'll probably polish off before the previews are over.)

You can munch through a box of AirHeads, Sour Jacks, Jolly Rancher Gummies, or Welch's Fruit Snacks for 300 to 400 empty sugar calories. What's a movie without 11 to 17 teaspoons of sugar? (Don't be fooled by the Fruit Snacks. They're mostly sugar and grape juice concentrate.)

Another option: blow 400 to 500 calories and at least half a day's sat fat on a box of Raisinets, Butterfinger Minis, Milk Duds, Sno-Caps, or other chocolate candies. Then there's Reese's Pieces: 1,160 calories, 35 grams of sat fat, and 30 teaspoons of sugar to go with the 1,200 calories and 60 grams of sat fat in your popcorn and the 500 calories and 33 teaspoons of sugar in your large drink. Urp!

	Calories	Sugar (grams)	Sat Fat (grams)
AirHeads Xtremes Sweetly Sour Belts (3 oz.)	300	45	0
Sour Jacks, Original (3.5 oz.)	300	48	0
Sour Patch, Watermelon (3.3 oz.)	370	64	0
Welch's Fruit Snacks, Mixed Fruit (4.1 oz.)	370	66	0
Jolly Rancher Gummies (4.5 oz.)	390	72	0
Twizzlers (5 oz.)	460	59	0
Sour Patch Kids (5 oz.)	490	92	0
SweeTarts (6 oz.)	680	136	0
Nerds (7 oz.)	790	185	0
AirHeads (3.2 oz.)	360	51	3
Skittles, Original (4 oz.)	450	87	4
Skittles, Sour (3.6 oz.)	420	75	5
Junior Caramels (4.3 oz.)	540	69	7
Skittles, Crazy Cores (7.2 oz.)	830	156	7
Milk Duds (3 oz.)	370	44	8
Junior Mints XL (4.3 oz.)	570	107	8
Cookie Dough Bites, Mint (3.1 oz.)	400	42	10
Sun-Maid Milk Chocolate Raisins (3.5 oz.)	430	63	10
Butterfinger Minis (3.5 oz.)	450	45	10
Sno-Caps (3.3 oz.)	400	53	11
Cookie Dough Bites, Original (3.1 oz.)	420	42	11
Raisinets (3.5 oz.)	420	60	11
M&M's, Milk Chocolate (3.4 oz.)	480	62	11
Buncha Crunch (3.2 oz.)	440	49	12
Goobers (3.5 oz.)	510	44	12
Whoppers (2.8 oz.)	350	48	13
M&M's, Peanut (3.3 oz.)	790	79	16
Reese's Pieces (4 oz.)	580	61	20
Reese's Pieces (8 oz.)	1,160	122	35

Source: company information. Daily limits for 2,000 cals: Sat Fat: 20 g, Sugar: 40 g (10 tsp.).

Association Of State And Territorial Health Officials
2231 Crystal Drive, Suite 450 | Arlington, Virginia 22202
(202) 371-9090 | www.astho.org

September 7, 2010

Division of Dockets Management (HFA-305)
United States Food and Drug Administration
5630 Fishers Lane Room 1061
Rockville, MD 20852

Re: Disclosure of Nutrient Content Information for Standard Menu Items Offered for Sale at Chain Restaurants or Similar Retail Food Establishments and for Articles of Food Sold From Vending Machines

Docket ID Numbers: FDA-2010-N-0298 and FDA-2007-0545

Dear Sir:

The Association of State and Territorial Health Officials (ASTHO) is pleased to submit the following recommendations in response to the request for comments, data, and other information helpful to the implementation of section 4205 of the Patient Protection and Affordable Care Act of 2010. ASTHO represents the 57 state and territorial health officials of the United States, the U.S. Territories, and the District of Columbia. ASTHO has 20 affiliate organizations and several affinity groups who represent over 120,000 employees of the state health agencies. Our members are dedicated to formulating and influencing sound public health policy and its implementation and assuring excellence in statewide public health practice.

The ASTHO affinity group, the State Environmental Health Directors, is involved in the full range of food safety prevention and response functions. They provide policy direction, information, advice, and oversight to ASTHO's efforts to strengthen state environmental health programs. Many of them will be the primary link between federal agencies and on-the-ground efforts for setting and/or enforcing food safety standards in restaurants, grocery stores, and other food establishments in the United States. According to preliminary data analysis of ASTHO's 2010 Member Survey, 36 state health agencies noted that they are responsible for regulation and inspection of food service establishments.

SUPPORTERS OF NATIONAL MENU LABELING POLICY

National Restaurant Association

Grocery Manufacturers Association

Brinker International

Alabama Restaurant Association

Applebee's

Auntie Anne's

Bahama Breeze

Baskin Robbins

Bonefish Grill

Carrabba's Italian Grill

Chili's

Connecticut Restaurant Association

Culvers

Darden Restaurants

Delaware Restaurant Association

Dine Equity

Dunkin Donuts

Fleming's Prime Steakhouse and Wine Bar

Florida Restaurant Association

IHOP

Illinois Restaurant Association

International Foodservice Distributors Association

International Franchise Association

Kentucky Restaurant Association

Longhorn Steak House

Louisiana Restaurant Association

Maggiano's Little Italy

Maryland Restaurant Association

Massachusetts Restaurant Association

McDonalds

National Chicken Council

National Fisheries Institute

Nevada Restaurant Association

New Jersey Restaurant Association

New York Restaurant Association

Ohio Restaurant Association

Olive Garden

On the Boarder

OSI Restaurant Partners

Outback Steak House

Red Lobster

Roy's

Seasons 52

Sonic Corporation

The Capitol Grill

Society for Adolescent Medicine

Society for Nutrition Education

Society of State Directors of Health, Physical Education & Recreation

South Carolina Eat Smart, Move More Coalition

Sustainable Food Center (TX)

Joseph W. Thompson, MD, MPH
Surgeon General, State of Arkansas

Tennessee Menu Labeling Coalition

Trust for America's Health

University of Arkansas for Medical Sciences, Fay W. Boozman College of Public Health

Upstream Public Health (OR)

Washington Coalition for Promoting Physical Activity

Yale Prevention Research Center (CT)

Young People's Healthy Heart Program (ND)