



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Eating and Drinking Establishments – Regulations – Nutrition Labeling

Number: 21-20

Originating Department:
Office of Health and Human Services

Effective Date:
April 20, 2021

Office of Health and Human Services
Montgomery County Regulation on:

EATING AND DRINKING ESTABLISHMENTS – REGULATIONS - NUTRITION LABELING

Issued by: County Executive
COMCOR No. 15.15A.01

Authority: Code Section 2-42A(e)

Supersedes: Executive Regulation 7-10, in part
Council Review Method (1) Under Code Section 2A-15

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Effective Date: April 20, 2021

Sunset Date: None

SUMMARY: This regulation amends Section 15.15A.01 of the Code of Montgomery County Regulations to update the formatting.

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BACKGROUND:

COMCOR 15.15A.01 Eating and Drinking Establishments – Nutrition Labeling

15.15A.01.01 Definitions

Calorie – The energy content of food. The Calories may be expressed to the nearest 5 Calorie increment up to and including 50 Calories and the nearest 10 Calorie increment above 50 Calories.

Calories from Fat – The Calorie content derived from the total fat. The Calories from fat may be expressed to the nearest 5 Calorie increment up to and including 50 Calories and the nearest 10 Calorie increment above 50 Calories.



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Chain Eating and Drinking Establishment – An eating and drinking establishment that has at least 20 locations in the United States, is not a grocery store, convenience store, or movie theater, and that:

- a. does business under the same trade name, regardless of the ownership of individual locations; and,
- b. offers substantially the same menu items.

Cholesterol – A sterol or class of solid cyclic alcohol naturally found in animal tissue as expressed in milligrams to the nearest 5 milligram increment.

Clearly and Conspicuously – Of a font type and size such that an average consumer may read the information when standing at the ordering counter or from a menu or food tag. The information must be easily located on the menu, menu board, self-service unit, or display case.

Combination Meal – A standardized menu item that is comprised of two or more food items or provides a consumer the option of selecting two or more food items from a menu or menu board.

Condiment – A sauce, sweetener, or seasoning that is not listed on a menu or menu board and is placed on a table or counter for general use or provided to the customer upon request without charge. Condiments include, but are not limited to, individual sugar packets, ketchup, mustard, hot sauce, salt, and pepper.

Convenience Store – A retail business that primarily provides the consumer a convenient location to quickly purchase an item or items from a wide array of products that is not an eating and drinking establishment.

Director – The Director of the Department of Health and Human Services or designated agents or designee.

Eating and Drinking Establishments – Any enterprise that prepares, serves, or sells food or drink for human consumption, on or off the premises, with or without charge. A food service facility includes any restaurant, coffee shop, retail market, cafeteria, short-order café, luncheonette, tavern, sandwich stand, soda fountain, and any food service facility in an industry, institution, hospital, club, school, church, catering kitchen, or camp.

Fiber – A non-digestible carbohydrate as expressed in grams.



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Food Tag – A label or sign that identifies any food item displayed for sale such as in a display case, salad bar, or buffet.

Garnish – A food item that is not a condiment and that is placed on a plate or in a carryout container to adorn the menu item, improve the presentation, or to add flavoring to a menu item (such as a lemon).

Grocery Store – A store primarily engaged in the retail sale of bakery products, canned foods, dry goods, fresh fruits and vegetables, fresh and prepared meats, seafood, and poultry, and nonfood grocery products.

Menu Item – Standardized menu item.

Menu or Menu Board – The primary writing of an eating and drinking establishment from which a consumer makes an order selection. A menu includes a take-out menu, table tent, wine or beverage lists or a placemat. Advertisements (such as coupons or window posters) are not included in the definition.

Point of Ordering – That point at which a consumer orders food or drink from a menu or menu board, or selects a food or drink from a self-service unit or display case.

Protein – Complex organic compounds comprised of a chain of amino acids as expressed in grams.

Saturated Fat – The sum of all fatty acids containing no double bonds as expressed in grams.

Self-Service – Where a consumer has the ability to directly obtain a menu item that is prepackaged or from a salad bar, cafeteria line, buffet, or beverage station without ordering from a menu or a menu board.

Serving or Serving Size – The amount of food customarily consumed per eating occasion by persons 4 years or age or older which is expressed in a common household measure that is appropriate to the food. The serving size must be calculated according to applicable federal law.

Single Menu Item – A food or drink as it is listed on a menu or menu board separate from any other menu item.



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Sodium – The amount of sodium chloride as expressed in milligrams to the nearest 5 milligram increment when the menu item contains 5 to 140 milligrams of sodium and to the nearest 10 milligram increment when the menu item contains greater than 140 milligrams.

Standardized Menu Item – A food or drink item as usually prepared and offered for sale. A standardized menu item does not include a food or drink item that:

- a. appears on the menu for less than 60 cumulative days per calendar year;
- b. is not listed on a menu or menu board, including an item that is placed on a table or counter for general use without charge;
- c. is a test-market menu item that appears on the menu for less than 90 cumulative days per calendar year; or
- d. is a daily special.

Sugars – A simple carbohydrate that is the sum of all free mono- and disaccharides as expressed in grams.

Total Carbohydrates – Compounds of carbon, hydrogen, and oxygen as sugars, starches, and fiber. Total carbohydrate content shall be calculated by subtraction of the sum of protein, total fat, moisture, and ash from the total weight of the food and expressed in grams.

Total Fat – The amount of total lipid fatty acids as expressed in grams of triglycerides.

15.15A.01.02 Applicability and Exceptions

A. Applicability

Under Chapter 15, Section 15-15A of the Montgomery County Code, 2014, as amended, chain eating and drinking establishments with at least 20 locations in the United States must post the Calories of each standardized menu item on the menu or menu board adjacent to the name of that item and provide additional written nutrition information to a consumer upon request.

B. Exceptions

This regulation does not apply to:



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1. grocery stores;
2. convenience stores;
3. movie theaters;
4. condiments;
5. garnishes; or
6. self-serve pre-packaged items whose label already contains complete nutritional labeling.

15.15A.01.03 Menu Labeling – General

- A. Calorie Labeling. An eating and drinking establishment must post the number of Calories (as “Calories” or other approved descriptive designation), calculated according to applicable federal law:
1. Menu and menu board. On all menus and menu boards adjacent to each menu item.
 2. Self service and display cases: Per serving or per item on a food tag adjacent to each food or drink offered for sale.
 3. Combination meals or menu items of differing flavors or variety: As a range of the minimum and maximum values of Calories for a menu item if listed as a single menu item and if:
 - a. offered as a combination meal;
 - b. offered in more than one flavor or variety.
- B. Required Statements: An eating and drinking establishment must post the following statements on each menu or menu board at the point of ordering and in accordance with Section IV(C) of these regulations:



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1. A statement regarding the suggested daily Caloric intake as determined by the United States Department of Health and Human Services; and
 2. A statement regarding the availability in writing and upon request of additional nutrition information as required in Section III(C).
- C. Additional Nutrition Information:
1. An eating and drinking establishment must make the following nutrition information for each menu item available in writing upon request:
 - a. Calories;
 - b. Calories from fat;
 - c. total fat;
 - d. saturated fat;
 - e. cholesterol;
 - f. sodium;
 - g. total carbohydrates;
 - h. sugars;
 - i. fiber; and
 - j. protein.
 2. The additional nutrition information may be calculated according to the Code of Federal Regulations Titles 9 and 21 and any other applicable federal law, expressed in the increments indicated in section I and listed with an approved descriptive designation. Nutritional information may also be calculated using nutrient databases, laboratory analysis or other reliable verifiable means of analysis.



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3. The additional nutrition information must be provided per serving or per menu item when obtained from a self-service unit or a display case.
4. The additional nutrition information must be provided as a range of the minimum and maximum values for each menu item if:
 - a. listed as a single menu item and if offered as a combination meal;
 - b. if substitution of one or more ingredients is permitted as so indicated on the menu; or,
 - c. if offered in more than one flavor or variety.
5. Nutritional value increments may be rounded consistent with U.S. Food and Drug Administration Center for Food Safety and Applied Nutrition/Office of Nutrition, Labeling, and Dietary Supplements April 2008, Appendix H: Rounding the Values According to FDA Rounding Rules.

15.15A.01.04 Posting of Information

- A. The number or range of Calories must be clearly and conspicuously posted adjacent to each menu item so as to be clearly associated with that menu item. For menu items that are offered in a variety of sizes, the number or range of Calories must be posted for each size offered. For beverages, the number or range of Calories must be posted for a full serving without the addition of ice.
- B. The statements required in Section III(B) must be clearly and conspicuously posted on a menu and on a menu board. In the event multiple menu boards are installed in succession the requirement statement must be posted on at least one of the menu boards. In the event a menu item is obtained from a self-service unit or a display case and the item is not listed on a menu or menu board, the required statements must be posted at the self-service unit or display case.
- C. The additional nutrition information must be provided in a form that is clear and conspicuous, clearly associated with the food item, and easily accessible in writing to the consumer.
- D. Alcoholic Beverage



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1. Food and Drink Establishments must provide nutritional labeling of alcoholic beverages listed on a menu or menu board. A separate wine or beverage list is considered a menu or menu board. An approved method for nutrition labeling of alcoholic beverages is to collectively label alcoholic beverages in a clear and prominent position using the average nutritional values for beers, wines and spirits. Nutritional labeling of alcoholic beverages collectively shall otherwise be in accordance with the provisions of these regulations.

Food and Drink Establishments that collectively label alcoholic beverages shall use the following average nutritional values:

- a. wine – 5 ounces: 122 calories, 4 grams carbohydrate, 7 milligrams sodium;
- b. regular beer – 12 ounces: 153 calories, 13 grams carbohydrate, 14 milligrams sodium;
- c. light beer – 12 ounces: 103 calories, 6 grams carbohydrate, 14 milligrams sodium; and
- d. distilled spirits (80 proof gin, rum, vodka, or whiskey) – 1.5 ounces: 96 calories.

15.15A.01.05 Enforcement

- A. When an eating and drinking establishment is inspected by the Director for compliance with Chapter 15 of the Montgomery County Code, 2014, as amended, the Director must verify that the information required in Sections III and IV of this regulation is available and properly posted. The owner, food service manager, or person in charge of an eating and drinking establishment must be given written notice of any violation, including time frames for compliance.
- B. The Director may request an establishment verify the accuracy of the information provided. The verification must be provided to the Director within 30 days of the date requested.
- C. The Director must investigate each complaint alleging a violation of this regulation and take appropriate action, including issuing a civil citation, when compliance cannot be otherwise obtained.



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- D. Any violation of this regulation is a Class A civil violation. Each day a violation exists shall be considered a separate offense. The Director may suspend a license issued under Chapter 15 for up to three days if the Director finds that an owner has failed to correct all violations within the time frames established or knowingly and repeatedly violated this regulation.

Approved:

Handwritten signature of Marc Elrich in black ink.

Marc Elrich, County Executive

2/23/21

Date

Approved as to form and legality:

Handwritten signature of Amy J. Diber in blue ink.

Office of the County Attorney

2/10/21

Date