



1 *items, the restaurant or similar retail food establish-*  
2 *ment shall disclose the information described in sub-*  
3 *clauses (ii) and (iii).*

4 “(ii) *INFORMATION REQUIRED TO BE DISCLOSED*  
5 *BY RESTAURANTS AND RETAIL FOOD ESTABLISH-*  
6 *MENTS.—Except as provided in subclause (vii), the*  
7 *restaurant or similar retail food establishment shall*  
8 *disclose in a clear and conspicuous manner—*

9 “(I)(aa) *in a nutrient content disclosure*  
10 *statement adjacent to the name of the standard*  
11 *menu item, so as to be clearly associated with the*  
12 *standard menu item, on the menu listing the*  
13 *item for sale, the number of calories contained in*  
14 *the standard menu item, as usually prepared*  
15 *and offered for sale; and*

16 “(bb) *a succinct statement concerning sug-*  
17 *gested daily caloric intake, as specified by the*  
18 *Secretary by regulation and posted prominently*  
19 *on the menu and designed to enable the public*  
20 *to understand, in the context of a total daily*  
21 *diet, the significance of the caloric information*  
22 *that is provided on the menu;*

23 “(II)(aa) *in a nutrient content disclosure*  
24 *statement adjacent to the name of the standard*  
25 *menu item, so as to be clearly associated with the*

1           *standard menu item, on the menu board, includ-*  
2           *ing a drive-through menu board, the number of*  
3           *calories contained in the standard menu item, as*  
4           *usually prepared and offered for sale; and*

5                   “(bb) *a succinct statement concerning sug-*  
6                   *gested daily caloric intake, as specified by the*  
7                   *Secretary by regulation and posted prominently*  
8                   *on the menu board, designed to enable the public*  
9                   *to understand, in the context of a total daily*  
10                  *diet, the significance of the nutrition informa-*  
11                  *tion that is provided on the menu board;*

12                  “(III) *in a written form, available on the prem-*  
13                  *ises of the restaurant or similar retail establishment*  
14                  *and to the consumer upon request, the nutrition infor-*  
15                  *mation required under clauses (C) and (D) of sub-*  
16                  *paragraph (1); and*

17                  “(IV) *on the menu or menu board, a prominent,*  
18                  *clear, and conspicuous statement regarding the avail-*  
19                  *ability of the information described in item (III).*

20                  “(iii) *SELF-SERVICE FOOD AND FOOD ON DIS-*  
21                  *PLAY.—Except as provided in subclause (vii), in the*  
22                  *case of food sold at a salad bar, buffet line, cafeteria*  
23                  *line, or similar self-service facility, and for self-service*  
24                  *beverages or food that is on display and that is visible*  
25                  *to customers, a restaurant or similar retail food es-*

1        *establishment shall place adjacent to each food offered*  
2        *a sign that lists calories per displayed food item or*  
3        *per serving.*

4            *“(iv) REASONABLE BASIS.—For the purposes of*  
5        *this clause, a restaurant or similar retail food estab-*  
6        *lishment shall have a reasonable basis for its nutrient*  
7        *content disclosures, including nutrient databases,*  
8        *cookbooks, laboratory analyses, and other reasonable*  
9        *means, as described in section 101.10 of title 21, Code*  
10       *of Federal Regulations (or any successor regulation)*  
11       *or in a related guidance of the Food and Drug Ad-*  
12       *ministration.*

13           *“(v) MENU VARIABILITY AND COMBINATION*  
14        *MEALS.—The Secretary shall establish by regulation*  
15        *standards for determining and disclosing the nutrient*  
16        *content for standard menu items that come in dif-*  
17        *ferent flavors, varieties, or combinations, but which*  
18        *are listed as a single menu item, such as soft drinks,*  
19        *ice cream, pizza, doughnuts, or children’s combina-*  
20        *tion meals, through means determined by the Sec-*  
21        *retary, including ranges, averages, or other methods.*

22           *“(vi) ADDITIONAL INFORMATION.—If the Sec-*  
23        *retary determines that a nutrient, other than a nutri-*  
24        *ent required under subclause (ii)(III), should be dis-*  
25        *closed for the purpose of providing information to as-*

1        *sist consumers in maintaining healthy dietary prac-*  
2        *tices, the Secretary may require, by regulation, disclo-*  
3        *sure of such nutrient in the written form required*  
4        *under subclause (ii)(III).*

5            *“(vii) NONAPPLICABILITY TO CERTAIN FOOD.—*

6                    *“(I) IN GENERAL.—Subclauses (i) through*  
7                    *(vi) do not apply to—*

8                            *“(aa) items that are not listed on a*  
9                            *menu or menu board (such as condiments*  
10                           *and other items placed on the table or*  
11                           *counter for general use);*

12                           *“(bb) daily specials, temporary menu*  
13                           *items appearing on the menu for less than*  
14                           *60 days per calendar year, or custom or-*  
15                           *ders; or*

16                           *“(cc) such other food that is part of a*  
17                           *customary market test appearing on the*  
18                           *menu for less than 90 days, under terms*  
19                           *and conditions established by the Secretary.*

20                    *“(II) WRITTEN FORMS.—Subparagraph*  
21                    *(5)(C) shall apply to any regulations promul-*  
22                    *gated under subclauses (ii)(III) and (vi).*

23            *“(viii) VENDING MACHINES.—*

24                    *“(I) IN GENERAL.—In the case of an article*  
25                    *of food sold from a vending machine that—*

1           “(aa) does not permit a prospective  
2           purchaser to examine the Nutrition Facts  
3           Panel before purchasing the article or does  
4           not otherwise provide visible nutrition in-  
5           formation at the point of purchase; and

6           “(bb) is operated by a person who is  
7           engaged in the business of owning or oper-  
8           ating 20 or more vending machines,

9           the vending machine operator shall provide a  
10          sign in close proximity to each article of food or  
11          the selection button that includes a clear and  
12          conspicuous statement disclosing the number of  
13          calories contained in the article.

14          “(ix) VOLUNTARY PROVISION OF NUTRITION IN-  
15          FORMATION.—

16                 “(I) IN GENERAL.—An authorized official of  
17                 any restaurant or similar retail food establish-  
18                 ment or vending machine operator not subject to  
19                 the requirements of this clause may elect to be  
20                 subject to the requirements of such clause, by reg-  
21                 istering biannually the name and address of  
22                 such restaurant or similar retail food establish-  
23                 ment or vending machine operator with the Sec-  
24                 retary, as specified by the Secretary by regula-  
25                 tion.

1           “(II) *REGISTRATION*.—Within 120 days of  
2           *enactment of this clause, the Secretary shall pub-*  
3           *lish a notice in the Federal Register specifying*  
4           *the terms and conditions for implementation of*  
5           *item (I), pending promulgation of regulations.*

6           “(III) *RULE OF CONSTRUCTION*.—Nothing  
7           *in this subclause shall be construed to authorize*  
8           *the Secretary to require an application, review,*  
9           *or licensing process for any entity to register*  
10          *with the Secretary, as described in such item.*

11          “(x) *REGULATIONS*.—

12           “(I) *PROPOSED REGULATION*.—Not later  
13          *than 1 year after the date of enactment of this*  
14          *clause, the Secretary shall promulgate proposed*  
15          *regulations to carry out this clause.*

16           “(II) *CONTENTS*.—In promulgating regula-  
17          *tions, the Secretary shall—*

18           “(aa) *consider standardization of rec-*  
19          *ipes and methods of preparation, reasonable*  
20          *variation in serving size and formulation of*  
21          *menu items, space on menus and menu*  
22          *boards, inadvertent human error, training*  
23          *of food service workers, variations in ingre-*  
24          *dients, and other factors, as the Secretary*  
25          *determines; and*

1                   “(bb) specify the format and manner of  
2                   the nutrient content disclosure requirements  
3                   under this subclause.

4                   “(III) REPORTING.—The Secretary shall  
5                   submit to the Committee on Health, Education,  
6                   Labor, and Pensions of the Senate and the Com-  
7                   mittee on Energy and Commerce of the House of  
8                   Representatives a quarterly report that describes  
9                   the Secretary’s progress toward promulgating  
10                  final regulations under this subparagraph.

11                  “(xi) DEFINITION.—In this clause, the term  
12                  ‘menu’ or ‘menu board’ means the primary writing of  
13                  the restaurant or other similar retail food establish-  
14                  ment from which a consumer makes an order selec-  
15                  tion.”

16                  “(c) NATIONAL UNIFORMITY.—Section 403A(a)(4) of  
17                  the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343–  
18                  1(a)(4)) is amended by striking “except a requirement for  
19                  nutrition labeling of food which is exempt under subclause  
20                  (i) or (ii) of section 403(q)(5)(A)” and inserting “except  
21                  that this paragraph does not apply to food that is offered  
22                  for sale in a restaurant or similar retail food establishment  
23                  that is not part of a chain with 20 or more locations doing  
24                  business under the same name (regardless of the type of  
25                  ownership of the locations) and offering for sale substan-

1 *tially the same menu items unless such restaurant or simi-*  
2 *lar retail food establishment complies with the voluntary*  
3 *provision of nutrition information requirements under sec-*  
4 *tion 403(q)(5)(H)(ix)”.*

5 *(d) RULE OF CONSTRUCTION.—Nothing in the amend-*  
6 *ments made by this section shall be construed—*

7 *(1) to preempt any provision of State or local*  
8 *law, unless such provision establishes or continues*  
9 *into effect nutrient content disclosures of the type re-*  
10 *quired under section 403(q)(5)(H) of the Federal*  
11 *Food, Drug, and Cosmetic Act (as added by sub-*  
12 *section (b)) and is expressly preempted under sub-*  
13 *section (a)(4) of such section;*

14 *(2) to apply to any State or local requirement*  
15 *respecting a statement in the labeling of food that*  
16 *provides for a warning concerning the safety of the*  
17 *food or component of the food; or*

18 *(3) except as provided in section*  
19 *403(q)(5)(H)(ix) of the Federal Food, Drug, and Cos-*  
20 *metic Act (as added by subsection (b)), to apply to*  
21 *any restaurant or similar retail food establishment*  
22 *other than a restaurant or similar retail food estab-*  
23 *lishment described in section 403(q)(5)(H)(i) of such*  
24 *Act.*