

Grocery Stores, Movie Theaters Among Venues Affected by New, Broad-Reaching FDA Menu Labeling Rule

Owners and operators of grocery stores, convenience stores, movie theaters and even vending machines may have been surprised by language in the U.S. Food and Drug Administration's (FDA) recently released new rules on menu labeling. Prior to the release, most had assumed that the FDA would begin requiring chain restaurants to post calorie counts on their menus; but a slight turn of language—defining a retail establishment as one that offers "restaurant-type food"—means that now many retail and entertainment venues are subject to the new rules.

According to those rules, restaurants with 20 or more locations doing business under the same name and offering for sale substantially the same menu items must provide calorie and other nutrition information for standard menu items, including food on display and self-service food. Calories must now be displayed clearly on menu boards next to the name or price of the item. The rule also requires establishments to provide, upon consumer request, written nutrition information about total calories, total fat, calories from fat, saturated fat, trans fat and other assorted nutrition information.

The sweep of establishments covered under the new rule is broad. A restaurant or similar retail food establishment is defined by the FDA as a retail establishment that offers for sale "restaurant-type food," which is generally defined as food that is usually eaten on the premises of the establishment, while walking away or soon after arriving at another location. The rule also requires calorie labeling for certain alcoholic beverages—including specialty menu drinks—and certain foods sold at entertainment venues such as movie theaters and amusement parks. Examples of retail food establishments include:

- Sit-down restaurants
- Fast-food restaurants
- Bakeries
- Coffee shops
- Grocery and convenience stores

Operators will have one year from the date of publication of the final labeling

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rule—a deadline of December 1, 2015—to comply with the requirements.

The full impact of the new rule changes is yet to be determined. However, in its original cost-benefit analysis, the FDA estimated that the menu labeling rule is expected to cost the food industry about \$315 million to implement—about \$1,000 per establishment—and about \$44 million per year after that.

In addition to the rules affecting chain restaurant operators, vending machine operators who own or operate 20 or more vending machines will also be subject to the requirements and will have to prominently post calorie information on a sign in, on or adjacent to the vending machine. Operators will have two years to comply, however, with a deadline of December 1, 2016.

As with any new legislation and regulation, there are many nuances to the rules. For example, there are strict definitions regarding the full range of nutrition information that establishments must provide, the definition of a chain restaurant, how to determine exactly what kind of food falls under the rule and how to substantiate the nutrition claims a restaurant is providing. Additionally, there are specific penalties for not implementing the rules. In questionable cases involving the above information, it is advisable to seek experienced counsel that can help answer these questions and keep restaurants in compliance.

If you would like to know more about the information in this alert, please contact Reinhart's [Food and Beverage Practice attorneys](#).

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