



FEDERAL MENU LABELING LAW

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MENU LABELING laws are one way to provide consumers with information they need to make healthy choices when eating away from home. In March 2010 the federal government adopted a menu labeling law as part of the Patient Protection and Affordable Care Act.¹ This law requires that large chain restaurants and similar retail food establishments, and certain owners and operators of vending machines, post calorie information on their menus or machines, and make other nutrition information available on request. The law also restricts what menu labeling laws state and local governments may adopt. The Food and Drug Administration (FDA) is in the process of drafting regulations to implement the federal law.² The regulations are expected to be final by the end of 2011.

Q What businesses are covered under the federal menu labeling law?

A The law applies to chain restaurants and similar retail food establishments with 20 or more locations nationally, and vending machine owners or operators with 20 or more vending machines that dispense food or drinks.

“The law requires that the calorie content for each standard menu item or food be displayed.”

Q What is a “similar retail food establishment?”

A The term “similar retail food establishment” will be defined in the FDA rule. Before the menu labeling law was passed, the FDA defined “restaurants or other establishments” and “retail food establishment” to include institutional cafeterias, transportation carriers, delicatessens, caterers of ready-to-eat foods, lunch counters, cookie counters in malls, convenience stores, and the like.³ However, in the proposed regulations the FDA has proposed a narrower definition of “similar retail food establishment.” The final definition of this phrase will determine how broadly the menu labeling law will be applied.

Q What does the law require chain restaurants and similar retail food establishments to do?

A The law requires:

- » That the calorie content for each standard menu item or food be displayed on all menus, including menu boards, drive-through boards, internet and take-out menus.
- » That the menu provide information on the total daily recommended calories.
- » That written information be available on request providing the nutrient content of menu items including total number of calories from fat and the total amount of fat, saturated fat, trans fat, cholesterol, sodium, carbohydrates, sugars, fiber and protein in each serving.

Q What does the law require vending machine owners and operators to do?

A The law requires that vending machine owners and operators display calorie content for each item sold, either by:

- » Making the Nutrition Facts Panel on the item visible to the purchaser, or
- » By placing a sign near the food item that states the number of calories in the food item.



Q How will the law be enforced?

A Although the law has been in effect since March 23, 2010, the FDA has delayed enforcement until the regulations implementing the law take effect. This will likely occur in 2012. The regulations are expected to include information on how the law will be enforced. While states also have the authority to enforce the federal menu labeling requirements,⁴ the FDA has encouraged state and local governments to also delay enforcement until the regulations are final.

Q May state and local governments enact menu labeling laws that apply to the same businesses covered by the federal law?

A Yes. State and local governments may enact laws that have the same requirements as the federal law and regulations. However, state and local governments may not require restaurant chains or similar retail food establishments with 20 or more locations or vending machine operators with 20 or more machines to comply with *different* requirements than those imposed by the federal law. Enacting their own laws will allow state and local governments to monitor and enforce the requirements instead of relying on the federal government to do so.

Q May state and local governments enact menu labeling laws for businesses that are not covered by the federal law?

A Yes. State and local governments may impose different, stricter requirements on chains of restaurants and similar retail food establishments that have fewer than 20 locations and vending machine owners and operators with fewer than 20 machines. However, businesses can avoid complying with such state or local laws by voluntarily registering with the FDA and complying with the federal law.



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1 21 U.S.C. § 343(q)(5) (2010).

2 Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments, Proposed Rule, 76 Fed. Reg. 19,192 (Apr. 6, 2011) (to be codified at 21 C.F.R. pts. 11, 101).

3 Guidance for Industry: A Food Labeling Guide for Restaurants and Other Retail Establishments Selling Away-From-Home Foods, DEP'T HEALTH & HUMAN SERV. FED. DRUG ADMIN. (2008), <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm053455.htm>.

4 21 U.S.C. § 337 (b)(1) (2010).