

FDA will begin enforcing menu labeling requirements in less than two months. Covered establishments must be prepared.

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After many delays, the U.S. Food and Drug Administration is slated to begin enforcing its menu labeling rule on May 5, 2017. The *Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments* rule, codified at 21 CFR 101.11, applies to retail food establishments with twenty (20) or more locations. These establishments must provide information on their menus including (i) calorie counts for standard menu items, (ii) a succinct statement regarding recommend calorie intake and, (iii) a statement regarding the availability of additional written nutritional information.

What types of establishments must comply?

The menu labeling requirements apply to retail food establishments that are part of a chain with 20 or more locations doing business under the same name and offering for sale substantially the same menu items. This includes bakeries, cafeterias, coffee shops, convenience stores, delicatessens, food service facilities and concession stands located within entertainment venues (such as amusement parks, bowling alleys, and movie theatres), food service vendors (such as ice cream shops and mall cookie counters), food takeout or delivery establishments (such as pizza takeout and delivery establishments), grocery stores, retail confectionary stores, superstores, quick service restaurants and table service restaurants.

What are covered establishments required to do?

As mentioned above, covered establishments must:

- Clearly and conspicuously display calorie information for standard items on menus and menu boards, next to the name or price of the item.
- Provide on the menu or menu board a succinct statement regarding recommend calorie intake.
- Provide on the menu or menu board a statement regarding the availability of additional written nutritional information.
- Develop and maintain written information for a standard menu item in a covered establishment which provides the amount of total calories, calories from fat, total fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrate, dietary fiber, sugars, and protein in that item. It may be provided by counter card, sign, poster, handout, booklet, loose-leaf binder, menu, or electronic device or by other similar means.

Is this required for all menu items?

No. These requirements only apply to standard menu items. A standard menu item is a restaurant-type food that is routinely included on a menu or menu board or routinely offered as a self-service food or food on display. These requirements typically will not apply to (i) seasonal

menu items offered for sale as temporary menu items, (ii) daily specials or, (iii) condiments for general use typically available on a counter or table.

Does the rule apply to alcoholic beverages?

Yes. The menu labeling rule applies to alcoholic beverages that are standard menu items that are listed on a menu or menu board. However, the requirements do not apply to alcoholic beverages that are on display, but are not self-service foods. For example, bottles of alcohol that are on display behind a bar that a bartender uses to prepare drinks that are not listed on a menu or menu board are not covered. Similarly, the menu labeling requirements do not apply beers on tap that are not self-serve or listed as a standard menu item on a menu or menu board.

A standard menu item offered for sale in a covered establishment is deemed misbranded under the Food Drug and Cosmetic Act (FD&C Act) if its label or labeling does not conform to the FDA’s menu labeling rule. Similarly, if the calorie and additional nutrition information is not accurate, the foods would be considered misbranded. Foods found to be misbranded under the labeling rule are subject to the same penalties that misbranded packaged foods are subject to under the FD&C Act.

Although these requirements may appear straightforward, testing or otherwise developing the necessary basis for the calorie counts and nutritional information can be costly and time consuming. Additionally, redesigning and distributing properly labeled menus can be a time consuming process. With less than two months until FDA begins enforcement, time is of the essence and covered establishments should evaluate their menus and prepare for these changes.



Anna Wiand is an associate in GrayRobinson’s Tampa office, and a member of the firm’s Nationwide Alcohol Beverage and Food Law Practice Group. She focuses her practice on matters relating to regulated products, including laws governing the alcohol beverage, food, cosmetics, cannabis, and tobacco industries. Anna counsels companies about how to comply with the complex variety of federal, state, and local rules and regulations that govern the manufacturing, distribution, marketing, sale, and consumption of these heavily regulated products. Prior to joining GrayRobinson, Anna worked in Washington, D.C. as Regulatory Counsel for the U.S. Food and Drug Administration. At the FDA, her work focused on Food and Tobacco products.



For more information regarding the FDA Menu Labeling Rule or assistance with compliance, please contact GrayRobinson’s Food Law Group at foodlaw@gray-robinson.com or (866) 382-5132.