

# TRIAL COURT UPHOLDS NYC REGULATION MANDATING CHAIN RESTAURANT MENU LABELING FOR EXCESS SALT CONTENT

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On February 24, 2016, a New York state trial judge ruled that chain restaurants in New York City must warn customers about menu items containing high levels of sodium. At issue is a municipal regulation adopted by the New York City Board of Health in September of 2015 that applies to chain restaurants operating in the city; the rule defines a “chain” as restaurants with 15 or more locations nationwide. The new rule requires chain restaurants to label menu items containing 2,300 milligrams or more of sodium with a salt shaker symbol and a warning that consuming high levels of salt can increase blood pressure and risk of heart disease and stroke.

2,300 milligrams of salt is the approximate equivalent of one tablespoon of salt. According the U.S. Food and Drug Administration (FDA), the average daily sodium intake for Americans is 3,400 milligrams per day, an excessive amount that raises blood pressure and poses health risks. In general, the FDA recommends that Americans should limit daily sodium consumption to 2,300 milligrams, warning that such an amount is an upper safe limit, not a recommended daily allowance.

New York is the first city in the nation to adopt a regulation requiring such a sodium warning. The new law authorizes city health inspectors to impose a fine of \$200 per violation.

A few months after the new regulation’s adoption, the National Restaurant Association (NRA) filed a lawsuit in the trial court for New York County, seeking to block enforcement of the labeling requirement. In the case of *National Restaurant Association v. The New York City Department of Health and Mental Hygiene et al.*, Case number 654024/2015, the industry trade association sought a preliminary injunction to stop enforcement of the chain menu disclosure requirement, analogizing the rule to former mayor Michael Bloomberg’s failed efforts to ban large-sized sodas. The regulation banning large soda sales ultimately was struck down by the New York Court of Appeals in 2014, on the grounds that the New York City Board of Health had exceeded its authority by enacting a restriction that infringed upon the legislative jurisdiction of the New York City Council. In the case of sodium content labeling, the NRA noted that the New York City Council twice previously failed to pass legislation that would restrict sodium content in restaurant foods, first in 2011 and later in 2014.

The industry plaintiff also argued that the regulation unfairly targets only a certain class of restaurant owners, *i.e.*, chains, while other restaurants throughout New York City are allowed to serve customers foods that may contain high levels of salt free of warnings; this discriminatory application rendered the rule arbitrary and capricious under New York State law, according to the NRA. Additionally, the plaintiff argued that many so-called chains are not all owned by a

single corporation, but often are comprised of many different franchisees; this compounded the regulation's unfairness, according to the NRA.

Following a hearing on the issue, however, New York Supreme Court Judge Eileen Rakower rejected the industry group's arguments. Judge Rakower reasoned that the sodium labeling rule is not a ban on sales like former mayor Bloomberg's soda initiative, but a justifiable duty to inform consumers regarding the contents of food they consume at restaurant chains. The court also accepted the health agency's argument that New York City's charter grants the New York City Department of Health and Mental Hygiene broad authority relating to all matters that affect health in New York City, including the power to regulate the city's food supply.

The affected chain restaurants operating in New York City currently have until March 1, 2016, to comply with the sodium rule, or face the possibility of fines. However, an appeal of Judge Rakower's decision is expected.

For more information regarding the New York City sodium rule, or menu disclosure requirements generally, please contact the [GrayRobinson Food Law Group](#).