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FDA Issues Two Final Rules to Help Consumers Keep Track of Calories

The U.S. Food and Drug Administration (FDA) recently finalized two rules requiring that calorie information be listed on menus and menu boards in chain restaurants and similar retail food establishments, as well as on certain vending machines. In announcing the finalization of the two rules, FDA Commissioner Margaret A. Hamburg, M.D. stated that “Americans eat and drink about one-third of their calories away from home and people today expect clear information about the products they consume. Making calorie information available on chain restaurant menus and vending machines is an important step for public health that will help consumers make informed choices for themselves and their families.”

The rules were issued pursuant to requirements emanating from the 2010 Patient Protection and Affordable Care Act. The final rules were published Dec. 1, 2014, in the Federal Register and become effective on differing dates. The final rule for calorie disclosures on menus and menu boards will be codified at 21 CFR 101.11 and will go into effect Dec. 1, 2015, one year after publication. The final rule for calorie disclosures on vending machines will be codified at 21 CFR 101.8 and will go into effect two years from publication Dec. 1, 2016.

Menu Labeling Requirements

FDA’s final rule for nutrition labeling in chain restaurants and similar retail food establishments was issued to ensure that consumers are provided with clear and consistent nutrition information in a direct and accessible manner for the foods they eat and buy for their families. Covered establishments will be required to clearly display calorie information for standard menu items on menus and menu boards. The calorie count cannot be in smaller type than the name or price of the menu item (whichever is smaller). For salad bars and buffets, the calorie information must be displayed on signs near the foods. Additionally, to help consumers put the calorie information in the context of their total daily diet, the rule calls for a succinct statement about suggested daily caloric intake to be included on menus and menu boards which indicates: “2,000 calories a day is used for general nutrition advice, but calorie needs vary.”

Covered establishments will also be required to post the following statement on menus and menu boards about the availability of additional written nutrition information upon request – “Additional nutrition information available upon request.” Written nutrition information must be available, on the premises, which includes the total measurements for total calories, calories from fat, total fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrates, sugars, fiber and protein. The information may come from nutrient databases, cookbooks, laboratory analyses, the Nutrition Facts label, and other sources and must be presented in a clear and conspicuous manner, using color, type size, and contrasting background that allow the information to be read and understood by an ordinary individual under customary conditions of purchase and use.

Covered Establishments

To be covered under the final rule, an establishment must be a restaurant or similar retail food establishment, as defined in the final rule. In addition, the establishment must: (1) be part of a chain of 20 or more locations, (2) doing business under the same name, and (3) offering for sale, substantially the same menu items at each location. Covered establishments and foods include the following:

- > Sit-down and fast-food restaurants, bakeries, coffee shops and restaurant-type foods in certain grocery and convenience stores.
- > Take-out and delivery foods, such as pizza.
- > Foods purchased at drive-through windows.
- > Foods that you serve yourself from a salad or hot-food bar.
- > Alcoholic drinks such as cocktails when they appear on menus.
- > Foods at places of entertainment, such as movie theaters and bowling alleys.

Not Covered by Menu Labeling Requirements

Examples of food items that are not covered under the rule include:

- > Foods sold at deli counters and typically intended for more than one person.
- > Bottles of liquor displayed behind a bar.
- > Food in transportation vehicles, such as food trucks, airplanes and trains.
- > Food on menus in elementary, middle and high schools that are part of U.S. Department of Agriculture school feeding programs (although vending machines in such locations are covered).

Vending Machine Requirements

The vending machine rules cover vending machines if their operator owns or operates 20 or more of them. Currently, calorie information is not always visible before items are purchased and removed from vending machines. Under the new rule, the calories will be required to be listed on the front of the package or calorie information may be placed on a sign (e.g., small placard, sticker, and poster) near the article of food or selection button. Electronic or digital displays may also be used. Operators of covered vending machines will also be required to disclose contact information on the machines or otherwise with the required calorie declarations to enable FDA to contact operators for enforcement purposes.

This *GT Alert* was written by **Justin J. Prochnow**. Questions about this information can be directed to:

- > [Justin J. Prochnow](mailto:prochnowjj@gtlaw.com) | +1 303.572.6562 | prochnowjj@gtlaw.com
- > Or your [Greenberg Traurig](#) attorney

Albany +1 518.689.1400	Denver +1 303.572.6500	New York +1 212.801.9200	Shanghai +86 (21) 6391.6633
Amsterdam +31 (0) 20 301 7300	Fort Lauderdale +1 954.765.0500	Northern Virginia +1 703.749.1300	Silicon Valley +1 650.328.8500
Atlanta +1 678.553.2100	Houston +1 713.374.3500	Orange County +1 949.732.6500	Tallahassee +1 850.222.6891
Austin +1 512.320.7200	Las Vegas +1 702.792.3773	Orlando +1 407.420.1000	Tampa +1 813.318.5700
Boca Raton +1 561.955.7600	London* +44 (0) 203 349 8700	Philadelphia +1 215.988.7800	Tel Aviv^ +972 (0) 3 636 6000
Boston +1 617.310.6000	Los Angeles +1 310.586.7700	Phoenix +1 602.445.8000	Warsaw~ +48 22 690 6100
Chicago +1 312.456.8400	Mexico City+ +52 (1) 55 5029 0000	Sacramento +1 916.442.1111	Washington, D.C. +1 202.331.3100
Dallas +1 214.665.3600	Miami +1 305.579.0500	San Francisco +1 415.655.1300	Westchester County +1 914.286.2900
Delaware +1 302.661.7000	New Jersey +1 973.360.7900	Seoul∞ +82 (0) 2 369 1000	West Palm Beach +1 561.650.7900

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