

# FDA TO BEGIN ENFORCEMENT OF Menu and Menu Board Labeling Rules:

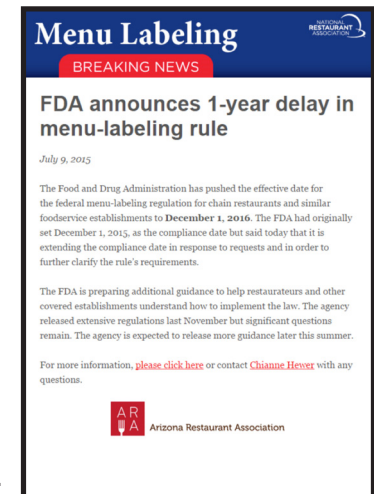
## WHAT DOES IT MEAN FOR GROWING RESTAURANTS SYSTEMS?

An often overlooked section of the Patient Protection and Affordable Care Act is Menu Labeling, yet restaurateurs need to read the fine print. Restaurants with 20 or more locations nationwide doing business



under the same name – whether under common ownership or franchised – who offer substantially similar “restaurant-type food”, will be required by law as of Dec. 1 to disclose specific nutritional information about the food items offered. While the law was passed in 2010 and certain restaurants have already voluntarily complied, the Food and Drug Administration has announced that it will begin enforcing the new rules on Dec. 1, 2016.

In March, the FDA published a guidance memorandum to restaurant owners, franchisors and franchisees as a roadmap to comply with the new rules though many industry professionals are still wrestling with questions. Here are a few key aspects of the new rules, including who they will impact and how to incorporate the rules into day-to-day business.



## WHO IS SUBJECT TO THE NEW RULE?

By definition, a “covered establishment” subject to the new rules is a restaurant or similar retail food establishment that sells restaurant-type food as part of a chain with 20 or more locations doing business under the same name, which offers for sale substantially the same restaurant-type food items. The FDA identifies bakeries, cafeterias, coffee shops, convenience stores, delicatessens, food

service facilities located within entertainment venues, food service vendors, food takeout and/or delivery establishments, grocery stores, retail confectionery stores, superstores, quick service restaurants and table service restaurants as covered establishments although that list is not intended to be exhaustive.

**WHAT TYPE OF FOOD PRODUCTS ARE SUBJECT TO THE NEW RULE?**

The rule applies to menu items (including combination meals) that are routinely included on a menu or menu board or offered as a self-service food or food on display. While not exhaustive, the types of food items identified as restaurant-type food by the FDA includes food for immediate consumption, food purchased at a drive-thru, take-out and delivery pizza, hot buffet foods, self-service foods, foods on display that are intended for individual consumption, and alcoholic beverages served as standard menu items at covered establishments.

**WHAT TYPE OF FOOD PRODUCTS ARE NOT SUBJECT TO THE NEW RULE?**

The rules do not apply to condiments, daily specials, temporary menu items, custom orders, food that is part of a market test and self-service food and food on display that is offered for sale for less than a total of 60 days per calendar year or fewer than 90 consecutive days in order to test consumer acceptance.

**WHAT NEEDS TO BE DISCLOSED ON MENUS OR MENU BOARDS?**

There are general format requirements for declaring calories on menus and menu boards. Restaurant owners and operators utilizing menus or menu boards must declare the number of calories (in five calorie increments) contained in each standard menu item listed on the menu or menu board and provide specific statements about the significance of the information provided and the availability of additional nutritional information upon request. There are also specific rules regarding the disclosure of calories of variable menu items, added toppings on standard menu items, and items sold from vending machines. Restaurant operators will also be required, upon request, to verify the nutritional information provided.

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