

Regulatory Alert: FDA Delays Menu Labeling Rule

Retailers, Restaurants Have an Additional Year to Comply; Rule Expected to be Made More Flexible

May 2, 2017

On May 1, 2017, the U.S. Food and Drug Administration (FDA) [announced](#) that it would be publishing in the Federal Register an interim final rule to extend the compliance date for the menu labeling regulation (21 CFR § 101.11) to May 7, 2018. The interim final rule in prepublication format is available [here](#).

In addition to extending the timetable for compliance, FDA is seeking comments on the following matters:

1. Calorie disclosure signage for self-service foods, including buffets and grab-and-go foods;
2. Methods for providing calorie disclosure information other than on the menu itself, including how different kinds of retailers might use different methods;
3. Criteria for distinguishing between menus and other information presented to the consumer.

This indicates FDA is considering adding flexibility to these aspects of the regulation. Retailers who have yet to fully implement their menu labeling compliance program may wish to wait to do so to see how FDA will change the regulation over the next year.

Comments are due by July 3, 2017.

In the interim final rule, FDA notes:

Retailers with many different and diverse business models have raised concerns about how the rule lacks flexibility to permit them to provide meaningful nutrition information to consumers given their type of business and different operations. Moreover, we continue to receive many questions about calorie disclosure signage for self-service foods, including buffets and grab-and-go foods. We do not want to proceed with a rule that might turn out to be too inflexible to support innovation in delivering information to consumers. In addition, we have received questions regarding how to distinguish a menu, which requires the posting of calorie information, from advertisements and other marketing pieces, which do not require calorie information. Many of these menu questions are complex and have highlighted for the agency the need for further consideration and clarification. How to address the natural calorie variations for foods has also been raised by stakeholders as an issue that needs additional guidance and clarity. Finally, some

entities with certain business models have stated that they continue to have questions about what provisions of the final rule are applicable to them.

The retail and restaurant community should therefore expect to receive further guidance from FDA on:

- How to address natural calorie variations for foods
- How the rule applies to online ordering of foods

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