FDA Issues Final Rules on Menu and Vending Machine Nutrition Labeling Requirements

On November 25, 2014, the Food and Drug Administration (FDA) released final regulations implementing nutrition labeling requirements for retail food establishments and vending machines. The regulations implement Section 4205 from the Patient Protection and Affordable Care Act, which amended Section 403(q) of the Federal Food, Drug, and Cosmetic Act (FD & C Act), to require that chain restaurants and other similar retail food establishments, as well as vending machines, provide consumers with more nutrition information. Mandatory compliance with the restaurant labeling regulation begins December 1, 2015, while covered operators must comply with the vending machine labeling requirements by December 1, 2016. FDA’s press release regarding these rules and links to each rule are available at: http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm423952.htm.

Labeling Requirements for Restaurants and Similar Retail Food Establishments

Applicability

- The menu labeling regulation applies to restaurants and “similar retail food establishments” if they are: part of a chain of 20 or more locations, doing business under the same name, and offering for sale substantially the same menu items.

- Entities that are not required to comply with the regulation may “volunteer” to comply by registering with FDA.

- Restaurants and “similar retail food establishments” are defined as entities serving “restaurant type food” including bakeries, cafeterias, coffee shops, convenience stores, grocery stories, and food service facilities located within entertainment venues (e.g. movie theatres). The term “restaurant type food” encompasses food typically eaten either on the retail premises, while walking away from the premises, or soon after arriving at another location.

- Importantly, FDA decided to include most food service establishments located within other retail or entertainment venues within the scope of the rule (such as bookstores and movie theatres) after receiving a number of comments disfavoring a more complicated approach that would have only subjected such establishments to the requirements of the rule if the primary business activity of the retail or entertainment venue is to sell food.

- Some foods purchased in grocery stores that require further preparation before they can be consumed, such as deli meat and salads, are not subject to the regulation. In addition, food served on mobile transportation venues, such as trains and airplanes, is not covered under the rule because the term “location” refers to a fixed position or site.

Requirements Imposed Under the Rule
Entities subject to the menu labeling regulation must list on the menu or menu board: calorie information and the statement “2,000 calories a day is used for general nutrition advice, but calorie needs vary”.

Covered entities must make available, on request, nutrition information about total calories, total fat, calories from fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrates, fiber, sugars, and protein.

Labeling Requirements for Articles of Food Sold in Vending Machines

The final rule, “Food Labeling; Calorie Labeling of Articles of Food in Vending Machines”, covers vending machine operators who own or operate 20 or more vending machines, or who otherwise voluntarily elect to be covered by the rule. Those subject to the rule will be required to provide calorie information for vending machine food for which nutrition information is not visible prior to purchase. Key provisions of the Vending Machine rule are highlighted below.

- The Rule’s broad definition of “vending machine” encompasses not only vending machines that sell soft drinks and packaged snacks, but also machines that dispense hot beverages, refrigerated prepared food, and even bulk products such as nuts, candies, or gumballs.

- Foods sold in vending machines with front-of-pack labeling stating the calories, serving size, and servings per container meet the requirements of this rule. This nutrition information, however, must meet specific font size and color requirements, and also be visible “without any obstruction.” Vending machine dispensing coils may be considered an obstruction to the visibility of this required information.

- Under the rule, calorie declarations must be provided for foods that do not display visible nutrition information prior to purchase. Such calorie declarations may be provided on a sign placed in, on, or adjacent to the vending machine. Calorie declarations must be clear, conspicuous, and prominently placed so that a prospective purchaser may easily read such information. Nutrition information in brochures or booklets does not meet the requirements of this rule; however, electronic or digital displays of calorie information are permitted.

Please let us know if you have any questions about FDA’s final rules on menu and vending machine nutrition labeling requirements.