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Duff on Hospitality Law

Comment Period for New FDA Draft Regulations About Menu Labeling Ends June 6

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The Federal Drug Administration (FDA) has released its long anticipated draft regulations about menu labeling, which describe how the agency intends to enforce Section 4205 of the Patient Protection and Affordable Care Act of 2010, signed into law by President Obama just over a year ago. The FDA is accepting comments from the public on the proposed regulations until **June 6, 2011**.

To review, Section 4205 amends the Federal Food, Drug, and Cosmetic Act to require restaurants (or similar "retail food establishments" and certain vending machine operators) that are parts of chains of 20 or more locations to disclose on menus and menu boards:

1. How many calories are in each menu item served;
2. A "succinct" statement about suggested daily calorie intake, conspicuously posted somewhere on the menu and menu board; and
3. A statement that additional nutritional information is available upon request (which implies, of course, that the restaurant needs to have all of this information available for each standard menu item and that it must be accurate).

The FDA's role is to enforce this law and the draft regulations describe, in a mere 183 pages, the agency's proposed ideas about how to do so. For example, the FDA's proposed rules address everything from what the wording "menu boards" means to whether convenience stores qualify as "retail food establishments," from recommended font sizes for menu disclosures to what constitutes a "reasonable basis" for a restaurant believing its nutritional information is accurate.

National menu labeling requirements were really just a matter of time, and the NRA is a strong supporter. Until Section 4205 became law, federal laws about menu labeling applied only to voluntary reporting of nutritional information-in broad strokes, if you provided the information, it had to be true-but there were and are numerous state and local laws that require certain information to be disclosed. This mishmash of rules and laws has created confusion for national chains, as well as for local operators with a strong Internet presence. The hope is that national rules will streamline the process through which restaurants go to make sure their menus and other forms of advertisement are properly labeled and otherwise comply with laws applicable to both general advertising concerns and the advertising of foods and beverages.

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Smaller operators should also take note. While these regulations do not currently apply to independent or small chain restaurants, they do (or will, when final) provide a "safest case" set of criteria that can be used to analyze menus and other forms of advertisement where nutritional information is disclosed.

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