

Duff on Hospitality Law

Full Disclosure: The Impact of New Food-Labeling Regulations

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What is the impact of the FDA's New Food-Labeling Regulations? The new rules cover any restaurant or "retail food establishment" selling "restaurant-type food." Does that include the wide array of retail and hospitality businesses, including bakeries, cafeterias, coffee shops, convenience stores? This post sheds insights on how these new regulations might affect hoteliers and restaurateurs. - Greg

In the spirit of the giving season, [the FDA has finally issued its long-awaited final rules on menu labeling](#), which had languished in draft form for several years. But for many hospitality businesses, the agency's year-end gift is little more than a lump of coal. That is because when the rules go into effect on December 1, 2015, they will require restaurants, hotels, and other sellers of "restaurant-type food" to provide nutrition information for the items on their menus, closing what the FDA perceived as a "regulatory gap" in the food-labeling sphere.

The new rules apply primarily to chain or franchise establishments (although the FDA is quick to point out that other businesses may voluntarily opt in if desired)! Specifically, the rules cover any restaurant or "retail food establishment" that is part of a chain of twenty or more locations doing business under the same name, serving substantially similar food items at each location. Sounds simple enough, but it is the FDA's definition of "restaurant" that has caused considerable heartburn. In the view of the agency, a restaurant can be any one of a wide array of retail and hospitality businesses, including bakeries, cafeterias, coffee shops, convenience stores, delicatessens, bowling alleys, amusement parks, grocery stores, fast food restaurants, table service restaurants, or any establishment offering for sale what the FDA has helpfully dubbed "restaurant-type food."

[What is "restaurant-type food," exactly?](#) According to the new rules, it is food that is usually eaten at the restaurant, or while walking away, or "soon after arriving at another location," and is either sold for immediate consumption or is ready-to-eat somewhere else. In other words, whether it's take-out, dine-in, or maybe a deli sandwich for dinner tonight, the rules will apply.

[So, what makes a restaurant part of a chain?](#) According to the agency, it must be doing business under the same name (or a substantially similar name, such as "Restaurant" and "Restaurant Express") as at least nineteen other locations, and must serve the same or substantially similar menu items. "Locations" include restaurants within other facilities, and

indeed multiple restaurants within the same building (a mall, for example) are counted individually. If the restaurant has no name of its own – for example, a cafeteria in an office building or an unnamed hotel café – then the restaurant is considered to be doing business under the name of its parent entity. So, that means that if each of a hotel’s twenty or more locations has an identically-named or unnamed restaurant (including the one providing room service), the rules will apply to them. On the other hand, the rules would not apply to a hotel restaurant if it has its own unique name.

To comply with the rules, businesses must include calorie and other nutrition information on their menus, menu boards, signs adjacent to the food, or the like – essentially, wherever the standard food items and prices are listed. They also must print a “succinct statement” informing customers of the recommended daily caloric intake for adults or children, depending on the menu’s target audience. Restaurants also must keep nutrition information for their standard fare on hand in case it is requested by a customer – and the restaurant must note on the menu that such information is available.

Failing to adhere to the rules is sure to cause quite the bellyache, as well. In response to public comments, the FDA noted that any person exercising authority and supervisory responsibility over a restaurant or similar retail food establishment could be liable for a violation. That could mean that even the owner of a single franchise could get his or her goose cooked if that location isn’t up to snuff.

If there is any silver lining for the hotel industry, though, it is that these rules today don’t apply to alcoholic beverages that are “food on display” and not self-service, such as those bottles of liquor behind the hotel bar. Of course, any drinks that are listed as standard menu items still will need to be labeled. Bon appétit!

For more information about the new Food Labeling Regulations, please visit the [Federal Register website](#). Also if you have any questions, please contact [Greg Duff](#).

Tags: FDA Menu Labeling