

A pineapple with its green crown sits in a field of green grass. The background is a bright blue sky with soft white clouds. A white rectangular box with a dark teal border is centered over the image, containing the conference title and dates.

# THE HOSPITALITY LAW CONFERENCE

April 24 - 26, 2017 • Houston, Texas

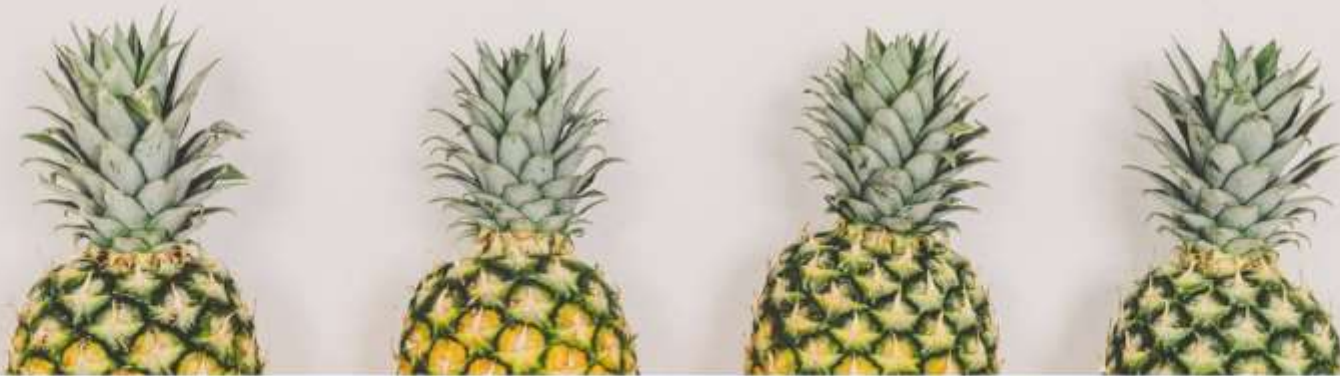
# The Truth In Menu:

The Current State of Labeling Requirements  
for Restaurant Menus

2017 HOSPITALITY  
LAW CONFERENCE

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APRIL 24 - 26



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- Member of GrayRobinson's Nationwide Alcohol Beverage & Food Law Department.
- Handles licensing and regulatory compliance issues for members of the alcohol beverage industry, tobacco industry and food industry.
- Served as a Regulatory Counsel for FDA's Office of Regulatory Affairs prior to joining GrayRobinson.



# How Did We Get Here?

## History of Federal Food Labeling

- Federal Food and Drug Act of 1906
- Food, Drug, and Cosmetic Act (“FDCA”) (1938)
- Nutritional Labeling and Education Act of 1990

## Restaurant Menu Labeling

- Growing Obesity Rates
- Increase in Consumption Outside of the Home
- State and Local Regulations



# Federal Restaurant Menu Labeling Requirement

- On March 23, 2010 President Obama signed the Patient Protection and Affordable Care Act (“ACA”).
- Section 4205 of the ACA amended the FDCA to require menu labeling at “Covered Establishments”.



# Federal Restaurant Menu Labeling Requirement

Compliance/Enforcement Date:

May 5, 2017



# Covered Establishments

- Restaurants or similar retail food establishments;
- Part of a chain with 20 or more locations;
- Doing business under the same name; and
- Offering for sale substantially the same menu items.



# Menu Items

## Covered Food

- Standard menu items
- Combination meals
- Variable menu items
- Food on display
- Self-service food

## Exempt Food

- Non-restaurant type foods
- Foods that are not on a menu/menu board and are not on display or self-serve
- Custom foods
- Daily special food items or meals
- Foods that are part of a customary market test
- Temporary menu items
- General use condiments





# Menu

“Menu or menu board means’ the primary writing of the covered establishment from which a customer makes an order selection” 21 C.F.R. § 101.11(a).

Factors used to determine whether a writing is a “menu:”

- Does it list the name of a standard menu item (or an image depicting the standard menu item)?
- Does it list the price of the standard menu item?
- Can the writing be used by a customer to make an order selection at the time the customer is viewing the writing?



# What Must Appear on the Menu?

1. Calorie content for each standard menu;
2. Statement regarding the recommended daily caloric intake;  
and
3. Statement that additional nutritional information is available upon request.



# Required Statements

- “2,000 calories a day is used for general nutrition advice, but calorie needs vary.”
- “Additional nutrition information available upon request.”



# Where Does This Information Go?

- Calories must be displayed adjacent to the name or price of the menu item in a type size no smaller than that of the name or price of the menu item, whichever is smaller, 21 C.F.R. §101.11(b)(2)(A).
- Recommended daily caloric intake statement should appear on the bottom of each page of the menu. 21 C.F.R. §101.11(b)(2)(B).
- Statement regarding additional nutritional information should appear at the bottom of the first page of the menu. 21 C.F.R. §101.11(b)(2)(C).



# Anna's Decadent Dining Experience

Chicken sandwich (grilled or fried) Chicken sandwich served two ways.	\$10.00	350/550 Cal
Fish sandwich (grilled/baked/fried) Fish sandwich that is even better than the chicken!	\$15.00	350-550 Cal
Burger with choice of fries or chips The burger might just beat them all!	\$20.00	450/550 Cal
Hotdog with choice of fries or chips We also have hotdogs!	\$5.00	450 -550 Cal
A platter of cookies Because one cookie is never enough.	\$20.00	80 Cal/cookie, 10 cookies

2,000 calories a day is used for general nutrition advice, but calorie needs vary Additional nutrition information available upon request.



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# Determination of the Nutrition Content of Food

Covered establishments must have a reasonable basis  
for nutrient content declarations.

21 C.F.R. §101.11(c).



# Enforcement

“A standard menu item offered for sale in a covered establishment shall be deemed misbranded under ... the Federal Food, Drug, and Cosmetic Act if its label or labeling is not in conformity with paragraph (b) or (c) of this section.” 21 C.F.R. §101.11(c).

“FDA intends to work with state and local authorities, as appropriate, to ensure that implementation and enforcement of the menu labeling requirements are uniformly applied.”



FDA, Guidance for Industry: A Labeling Guide for Restaurants and Retail Establishments Selling Away From-Home Foods – Part II (Menu Labeling Requirements in Accordance with 21 CFR 101.11), <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/UCM461963.pdf>



# Additional Considerations

- Preemption of Existing State and Local Menu Labeling Requirements
  - Voluntary Registration
- Catering Menus
- Online Ordering
- Alcoholic Beverages





# Questions?

Thank you!

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