



## **MENU LABELING**

### **BACKGROUND**

On May 1, 2017, the FDA released a pre-publication version of an interim final rule on menu-labeling regulations required by Section 4205 of Obamacare, which extended compliance and enforcement of the menu labeling rule until May 7, 2018. FDA enforcement of the menu labeling rule was expected to begin on May 5, 2017. The delay was good news for convenience store owners because it allowed more time for Congress or the Administration to correct the onerous requirements. However, after the House passed a legislative solution to the burdensome menu labeling rules last year, the Senate never took up the bill for a vote.

### **THE MENU-LABELING RULE SUMMARY**

Unfortunately, under the final rule, convenience store owners with 20 or more locations doing business under the same name and offering for sale substantially the same menu items, are required to list calorie information for standard menu items, such as posting calorie information on menus and menu-boards. Specifically, the number of establishments owned and operated by a particular company/individual is not what matters under the rule. What matters is whether there are multiple locations doing business under the same name (and offering for sale substantially the same menu items). For example, if you own three businesses and there are no other businesses with that name, you are not covered. If you own three stores all with a branded name then you do meet this criteria. The menu labeling final rule also requires covered establishments to provide, upon consumer request and as noted on menus and menu boards, written nutrition information about total calories, total fat, calories from fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrates, fiber, sugars and protein.

### **COMMON SENSE NUTRITION DISCLOSURE ACT**

The “Common Sense Nutrition Disclosure Act” (H.R. 772) was reintroduced this year by Reps. Cathy McMorris Rodgers (R-WA) and Tony Cardenas (D-CA), and Senators Roy Blunt (R-MO) and Angus King (I-ME) offered companion legislation (S. 261). The bills would give retailers the flexibility they need to comply with the menu labeling regulations. In February, the House passed the bill via a 266-157 bipartisan vote, and it is now time for the Senate to bring the bill to the floor for a vote.

The legislation would modify the regulation by permitting retailers to identify a single primary menu while not having to include nutrition labeling in other areas of the store. Furthermore, the bill clarifies that advertisements and posters do not need to be labeled and provides flexibility in disclosing the caloric content for variable menu items that come in different flavors or varieties, and for combination meals. Lastly, the bill would ensure that retailers acting in good faith are not penalized for inadvertent errors in complying with the rule and stipulates that individual store locations are not required to have an employee “certify” that the establishment has taken reasonable steps to comply.

**“THE ASK”** *Committee: Senate Health, Education, Labor and Pensions Committee*

PMAA urges the Senate to act on the “Common Sense Nutrition Disclosure Act” (S. 261) and pass the bill as quickly as possible.

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