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New Federal Menu Labeling Requirements

The U.S. Food and Drug Administration (FDA) is expected to issue final regulations detailing nutrition fact labeling requirements for menus and vending machines by the end of 2011 and will begin enforcing the regulations in mid-2012. These regulations implement sections of the Patient Protection and Affordable Care Act of 2010 (the Act) that were enacted to combat obesity and other health problems and address Americans' increasing consumption of foods prepared outside the home. The menu labeling requirements are mandatory for any chain of restaurants or similar retail food establishments with 20 or more locations that operate under the same name and sell substantially the same menu items, including franchise systems. On April 1, 2011, the FDA provided a preview of the nutrition labeling rules by publishing proposed regulations (the Proposed Regulations) and accepted public comments on the Proposed Regulations through July 5, 2011. The Proposed Regulations present the FDA's view on which establishments are subject to the menu labeling requirements, how the nutrition facts must be displayed and how the Act will coincide with state and local labeling regulations.

[Click here](#) to read the full article about the proposed regulations on our website.

While awaiting the release of the final regulations, proactive franchisors may prepare by focusing on the following items:

- Identify the procedures and resources required for the franchise system to implement the new federal requirements, including: (a) a food scientist to test and determine the necessary nutrition information, (b) a marketing specialist to design and print the updated materials and (c) legal counsel or a compliance specialist versed in the new labeling requirements to confirm that the updated materials are compliant.
- Review and revise the franchise documentation to ensure that the franchise agreement requires the franchisee to comply with the new labeling requirements and to implement menu changes mandated by the franchisor within a quick timeframe.
- Determine how to roll out the changes to the franchisees and who will cover the expenses. Consider whether such changes would fall into a category of expenses covered by a system-wide advertising fund.
- Consider how to protect the franchisor from FDA enforcement, including modifications to the indemnification provision of the franchise agreement.

If you have questions about the federal labeling requirements or would like advice on protecting your franchise system, please contact Cheng Cohen LLC.

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