

CLIENT ALERT

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**Nutritional Labeling New to the Menu**

July 20, 2010

**Menu Labeling Required for Most Retail Food Outlets**

Nutritional labeling on menus will be required for chain restaurants, coffee shops, delis, movie theaters, bakeries, ice cream shops, and vending machines. The Patient Protection and Affordable Care Act, the new healthcare reform law, includes a requirement that chain restaurants with 20 or more locations post calorie counts on menu boards and have additional nutrition information -- including total calories, total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and total protein -- available at a customer's request. Other food retailers and distributors may register and voluntarily comply with the requirements.

**FDA Menu Labeling Regulations are Coming**

The Food and Drug Administration ("FDA") is responsible for developing rules and regulations to implement the new nutritional labeling requirements. As part of its rule-making process, FDA published a notice in the Federal Register seeking comments on how the new labeling requirements should be implemented. Comments will be accepted by FDA until September 7, 2010, and the agency has until March 23, 2011, to issue proposed regulations.

We expect FDA regulations will mandate how varieties and combo meals will be handled, how accurate the labeling information will have to be, and what will be required on marketing materials, to name a few requirements. We also expect that states will help with enforcement of the Federal requirements and that consumer groups will continue to pressure restaurants to offer healthier choices.

Despite that menu labeling requirements are already in place in New York City, California, and several other municipalities and states, the new Federal requirements preempt these local and state laws to permit a national approach, better protections, and flexibility in how additional nutrition information is provided.

**Womble is Uniquely Positioned to Help**

Womble Carlyle, through our [FDA Practice Group](#) and [Restaurant Team](#) is uniquely positioned to assist restaurants and other clients in monitoring the rule-making process, commenting to FDA, and developing a strategy to implement the new requirements. Our FDA Food Practice is led by [Peggy Binzer](#), who has extensive experience in nutrition labeling. Peggy has worked with dozens of food manufacturers in implementing the Nutrition Labeling and Education Act (NLEA), the law that required nutrition labeling of foods. In addition, she spent over seven years as Counsel for FDA's Office of Nutrition Products and Labeling and maintains strong relationships with FDA. Finally, she served as Senior FDA Counsel on the Senate Health Education Labor & Pensions Committee, the Senate Committee with jurisdiction over FDA's implementation of restaurant labeling.

Womble Carlyle's [Restaurant Team](#) includes lawyers from across a variety of disciplines who have joined together to address the unique and diverse needs of restaurant owners and operators, whether they are franchisors, franchisees, or independents. We represent restaurateurs in every aspect of their businesses, including business organization, corporate finance, acquisitions and divestitures, supply chain management, anti-trust, franchising, distribution, FDA regulatory compliance, intellectual property, real estate, green practices, labor and employment, tax, bankruptcy, and dispute resolution. For more information about our Restaurant Team, please click [here](#).

For more information about the matters described in this Client Alert, please contact [Peggy Binzer](#) at (202) 857-4546 or [PBinzer@wcsr.com](mailto:PBinzer@wcsr.com) or one of our other [Restaurant](#) professionals.

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