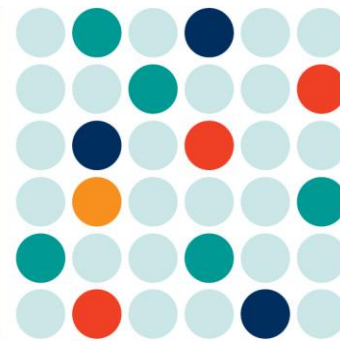


# LEGAL UPDATE

July 2015

By: Richard S. Frazer



## HOW THE AFFORDABLE CARE ACT WILL AFFECT RESTAURANTS AND VENDING MACHINE OPERATORS

The FDA has issued two rules implementing Section 4205 of The Patient Protection and Affordable Care Act (known as The Affordable Care Act) which amended Section 403(q) of The Federal Food, Drug, and Cosmetic Act (known as FFDC). The new FDA rules require calories to be listed on certain menus in chain restaurants and other places selling restaurant-type food and on certain vending machines.

The rules apply nationally and preempt similar state laws. The menu labeling rules take effect on December 1, 2015 for restaurants, and apply to restaurants and similar retail food establishments that are part of a chain with 20 or more locations and that are doing business under the same name; offer basically the same menu items; and sell “restaurant-type” food.

### THE MENU LABELING RULES COVER:

- Sit-down and fast-food restaurants, bakeries, coffee shops and restaurant-type foods in certain grocery and convenience stores.
- Take-out and delivery foods, such as pizza.
- Foods purchased at drive-through windows.
- Foods that you serve yourself from a salad or hot-food bar.
- Alcoholic drinks such as cocktails when they appear on menus.
- Foods at places of entertainment, such as movie theaters.

The vending machine rules, which take effect December 1, 2016, cover vending machines if their operator owns or operates 20 or more of them. Currently, calorie information is not always visible before items are purchased and removed from vending machines. Under the new rule, the calories will be listed on the front of the package or on a sign or sticker near the food or selection button.

### EXAMPLES OF FOOD ITEMS THAT ARE NOT COVERED UNDER THE RULE INCLUDE:

- Foods sold at deli counters and typically intended for more than one person.
- Bottles of liquor displayed behind a bar.
- Food in transportation vehicles, such as food trucks, airplanes and trains.
- Food on menus in elementary, middle and high schools that are part of U.S. Department of Agriculture school feeding programs (although vending machines in such locations are covered).

### NUTRITIONAL INFORMATION DISPLAY GUIDELINES:

Calorie information on menus and menu boards will need to be clearly displayed. The calorie count cannot be in smaller type than the name or price of the menu item (whichever is smaller). For salad bars and buffets, the calorie information must be displayed on signs near the foods.

The following reminder must be included on menus and menu boards: “2,000 calories a day is used for general nutrition advice, but calorie needs vary.”

Menus and menu boards will tell consumers that they may ask for additional written nutrition information, which will include total calories, calories from fat, total fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrates, sugars, fiber and protein. The information may come from nutrient databases, cookbooks, laboratory analyses, the Nutrition Facts label, and other sources.

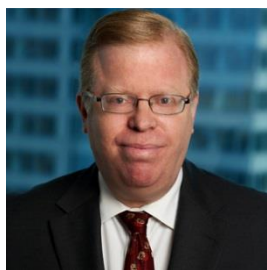
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*Even if not covered by the new rules, restaurant and food establishments and vending machine operators may voluntarily comply by registering with the*

*FDA. Failure to comply by those covered by the rules could result in warnings from the FDA, FDA seeking injunctive enforcement action and/or the imposition of penalties. Should you have any questions or concerns regarding compliance with the new rules, please contact Richard S. Frazer at (212)326-0416 or [rfrazer@pryorcashman.com](mailto:rfrazer@pryorcashman.com).*

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## ABOUT THE AUTHOR



**RICHARD S. FRAZER, PARTNER  
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Richard Frazer, a member of Pryor Cashman’s Corporate Group, has an expansive corporate practice. He represents a diverse group of clients that includes celebrity chefs, restaurants, hotels, fashion icons, Fortune 500 corporations, banks, investors, pharmaceutical companies and technology firms.

In addition to serving as co-leader of the firm’s Securities and Corporate Finance practice, Rich has built a reputation as the “go-to” lawyer for clients in the restaurant, food and beverage sector.

A self-proclaimed “foodie” and a member of the James Beard Foundation, Rich heads up the firm’s representation of clients in the restaurant, food and beverage industries. His clients in this sector include celebrity chefs, food manufacturers, independent restaurants, specialty food stores, local chains and some of the nation’s largest franchisees.

Rich’s “soup to nuts” legal representation reflects his deep understanding of the business issues restaurant owners, investors, manufacturers and distributors face and enables his clients to save time and money by having a single firm handle all their legal matters. Rich advises on business formation, startup and expansion financing, licensing, operational issues and franchising. He provides clients with the sound counsel they need to grow and protect their businesses, brands and bottom lines. He carefully negotiates and drafts contracts that enable clients to expand their markets and profit margins while protecting their reputations and interests.

Summer Associate Tara Raghavan assisted in the preparation of this article.